

Memorise our handy acronym: “RIDGEMONT SOLICITORS”

It will help you remember key aspects of the Housing Grants, Construction & Regeneration Act 1996 (the Act)

Residential

R is for *residential occupier*. Where a contract is with a residential occupier, the Act does not apply and so the rights and obligations contained in the Act (ie adjudication and payment), must be expressly inserted into the contract for them to apply.

In

I is for *in writing*. It used to be the case that a contract needed to be in writing for the Act to apply to it, but that condition was removed over 10 years ago.

Dispute

D is for *disputes arising under the contract*. Only disputes of that sort can be adjudicated.

Grab

G is for a *smash & grab claims*. They are possibly the most common form of claim that is taken to adjudication, namely one where no Payment or Pay Less Notice are served in response to a valid Payment Application and so the payee claims everything contained in its Payment Application via adjudication and will expect to succeed.

Enforcement

E is for *enforcement proceedings*, which are what a successful party in adjudication will need to start in the Technology & Construction Court, if the losing party does not comply with the Decision of the Adjudicator.

Mess

M is for the mess that adjudications often become because they are carried out at great speed and with little effective control by Adjudicators.

Operations

O is for *construction operations*. The Act only applies to construction contract and they are contracts for the carrying out of construction operations, arranging for the carrying out of construction operations by others, or providing labour for the carrying out of construction operations. Construction operations are defined in the Act.

Notices

N is for the 4x Notices that are at the heart of the Act: (1) Payment Notice (2) Pay Less Notice (3) Notice of Intention to Refer a Dispute to Adjudication and (4) Referral Notice.

Time

T is for the importance and shortness of time in both the adjudication and payment regimes contained in the Act.

Scheme

S is for The Scheme for Construction Contracts (England and Wales) Regulations 1998 (as amended), that provides the statutory adjudication and payment provisions to the extent that a construction contract fails to expressly set them out or it does so but invalidly.

Ordinary

O is for the all too ordinary nature of most adjudicators. See also *Mess* above.

Less

L is for *Pay Less Notice*. This is the notice that a payor must serve a prescribed period before the final date for payment, and which if it does not serve, it may then end up having to pay more than is properly due to the payee.

Interim

I is for interim payment. It was the regularisation of interim payment for works throughout a construction project that the Act was created to ensure above all else.

Costs

C is for *adjudication costs*. A party will not be able to recover its costs in adjudication (ie lawyers and experts costs) from its losing opponent, unless there is a contractual provision that is contained in the construction contract and confers power on the adjudicator to allocate his/her fees and expenses as between the parties, or it is made in writing after the giving of notice of intention to refer the dispute to adjudication. These provisions are rare.

Insolvency

I is for insolvent losing party. Ie if you win in adjudication but a losing party can't pay you because the Decision makes it insolvent, what was the point in adjudicating?

True

T is for *true valuation*. The opposite of a smash and grab claim (see above) is a true valuation claim. The first is an entitlement to payment for works based only on a failure by the payor to serve the correct notices on time and the second is one based on the true and proper value of the works.

One

O is for *one dispute and one contract*. Parties can only adjudicate one dispute under one contract at a time, unless they agree otherwise.

Rare

R is for it is rare to succeed in resisting enforcement of an Adjudicator's Decision in court. The courts are loathe not to enforce.

Suspension

S is for the right of a payee not paid a sum due by the final date for payment, to suspend performance of any or all its obligations under the contract until it is paid.



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