

Arbitration Board for the Building Industry

RULES

FAST-TRACK  
BINDING ADVICE

18 November 2016

ARBITRATION BOARD FOR THE BUILDING INDUSTRY

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## Definitions

In these Rules, the terms below have the following meanings:

*FT proceedings*

the Fast-Track Binding Advice proceedings as referred to in these Rules.

*The Arbitration Board:*

Stichting Raad van Arbitrage voor de Bouw (RvA).

*Chairman:*

the Chairman of the RvA or, in his absence or in the event of incompatibility of positions, the Vice-Chairman of the Arbitration Board.

*Council of Arbitrators:*

the arbitrators as appointed and in office in accordance with Article 13 of the Articles of Association of the Arbitration Board.

*The Binding Advisor:*

The Binding Advisor or three Binding Advisors appointed according to these Rules.

*Secretariat:*

the office of the Arbitration Board (RvA).

*FT Coordinator:*

A member of the Council of Arbitrators designated by the Chairman.

## Rules

### Article 1

These Rules provide for the method, according to the FT proceedings, of handling disputes that are submitted to the RvA or its Council of Arbitrators.

### The course of the proceedings

#### Article 2

1. A party or parties wishing to initiate FT proceedings shall provide written notification of this to the other party or parties and the RvA simultaneously. This notification will include a brief statement of the points of dispute to be raised in the FT proceedings, the nature of the technical and/or legal expertise needed for assessment of the points of dispute and the factors determining the urgency of the situation.
2. Permission to handle the dispute as FT proceedings must be obtained from the Chairman. To that end, the parties are required to have explicitly agreed on FT proceedings according to these Rules, and the dispute as presented in accordance with the parties' wishes must be suitable, in its entirety or in part, for FT proceedings.

3. To enable the latter point to be assessed, as the case arises the Chairman may order that a management meeting between the (representatives of) the parties and an FT Coordinator designated by the Chairman. This meeting will be held as soon as possible, preferably within two working days after the notification referred to in paragraph 1, and may take place collectively at a location to be further determined, as well as by video or conference call.
4. At this meeting, the parties shall further explain the request as referred to in paragraph 1 (first and second sentence) and shall indicate how many Binding Advisors they would like (one or three). These matters are discussed with the parties by the FT Coordinator as well as the period of time expected to be involved in preparing and handling the dispute. The FT Coordinator shall then determine, in consultation with the parties in so far as possible, which of these points of dispute, if any, are suitable for FT proceedings. At the management meeting the parties may make procedural arrangements that are at variance with the procedure laid down in Article 5 et seq. (as regards, for example, the length of documents in the proceedings, the provision of proof, and type/structure and extent of the reasons for the binding advice). The outcome of the management meeting are recorded in a report that is sent to the parties.
5. The fixed rate applicable for standard FT proceedings, which is dependent on the number of Binding Advisors, is be charged as a deposit in equal shares to each of the parties.
6. This fixed rate for standard FT proceedings is based on one or three Binding Advisors and always assumes two written rounds, one hearing and one written decision, all as further described in these Rules.
7. If the parties want one or more of these elements expanded, and/or the Binding Advisor takes the view that this is necessary, the parties are notified as soon as possible as to whether the rate for the standard FT proceedings will be adjusted accordingly, in which respect the rates in accordance with the most recent RvA deposit and moderation table will serve as guidance. In addition, the RvA is entitled to charge an adjusted rate if the parties' issue entails that the Binding Advisor and secretary must consistently work outside of office hours. In such cases, the RvA shall provide a statement of the adjusted rate in advance in so far as possible. If necessary, a supplement to the deposit may be required.
8. If the parties decide not to continue the FT proceedings after the management meeting, each of them shall owe the RvA € 750.00 excluding VAT as compensation for the RvA's costs for the management meeting.

### **Article 3**

1. Within two weeks after the request to the Chairman to that end:
  - the parties must each submit their Opinion on the dispute simultaneously,
  - so that a date can be set for the meeting between the Binding Advisor and the parties (hearing), they shall specify any scheduling conflicts for a period of 4 to 6 weeks following the date of this request and,
  - each of them shall pay the share of the deposit requested from them.
2. Each of the parties will be given the opportunity to respond to the Opinion(s) of the other party or parties by means of a written Response to the Opinion.

3. The parties must submit this Response simultaneously within two weeks of the request to that end.
4. The Opinion and the Response thereto must not exceed 20 A4 pages each, excluding exhibits. In both cases, a font of at least 10 points must be used with a line interval of at least 1.5 and a margin on the left-hand side of at least 4 cm.
5. The Chairman or (if appointed) the Binding Advisor may order a party to abridge the aforementioned documents if the document exceeds the intended length without – always in the opinion of the Chairman or Binding Advisor – that being justified by the complexity of the case or being called for according to the requirements of a full hearing or the requirements of the proper administration of justice. Exhibits that in fact constitute (an elaboration on) the Opinion or Response are not permitted.
6. Postponement of the submission of the Opinion and/or the Response thereto and the submission of further documents is only possible if the other party consents to such or if the Chairman or (if appointed) the Binding Advisor permits this. The date on which the meeting with the parties is to take place may require revision as a result.
7. Pending the proceedings, each claimant is authorised to amend, increase or reduce the claim. An amendment or increase of claim may only be permitted by the Binding Advisor if the respondent has had the opportunity to comment on it in writing or verbally and if the Binding Advisor does not deem the amendment, increase or reduction of claim unreasonable in respect of that party.
8. Additional exchange of documents will only take place with the consent or at the request of the Binding Advisor.
9. No parties other than the original parties to the proceedings or their legal successors may be involved in the proceedings. Impleading, joinder and/or intervention by/of a third party or the joinder of disputes due to connection is excluded.
10. In the event that the deposit or a supplement to the deposit required by the Binding Advisor has not been made by the date set for doing so, the Binding Advisor is authorised to suspend his activities and/or to stay or discontinue the proceedings. In the event that a Binding Advisor has not yet been appointed, the Chairman has that authority.
11. The Binding Advisor is authorised to do all things he deems conducive to the proper adjudication of the dispute. In the event that a Binding Advisor has not yet been appointed, the Chairman has that authority.
12. The proceedings are conducted in the Dutch language unless the parties have explicitly agreed otherwise and the Binding Advisor has consented in this regard.

**The Binding Advisor(s):**

**Article 4**

1. The Binding Advisor is selected from the Council of Arbitrators and appointed by the Chairman.
2. Within two weeks of being requested to do so, or (if applicable) at the management meeting (see Article 2, paragraphs 3 and 4 above), the parties shall inform the Chairman of the number of Binding Advisors to be appointed (1 or 3), as determined by them in consultation. In the event that this notification is not made in good time or jointly, the Chairman shall decide on the number of Binding Advisors.
3. The members of the Council of Arbitrators who are appointed as Binding Advisors shall notify the Chairman as soon as possible after receiving their appointment whether they accept their appointment or whether they are unable to accept their appointment, stating the reason(s).
4. The validity of the reason(s) for being unable to accept the appointment is determined by the Chairman.
5. A Binding Advisor who accepts his appointment shall notify the Secretariat accordingly as soon as possible; the Secretariat will pass this on to the parties in writing.

#### **Article 5**

A lawyer listed in a file maintained by the RvA as referred to in Article 15 of the Articles of Association of the RvA shall be assigned to the Binding Advisor *ex officio* as secretary. The secretary has an advisory vote.

#### **The meeting with the parties**

##### **Article 6**

1. A meeting between the Binding Advisor and the parties takes place within three weeks of receipt of the last Response to the Opinion.
2. The parties are given the opportunity to explain their positions verbally at the meeting.
3. Written arguments may also be submitted. The allotted speaking time is a maximum of 30 minutes.
4. If the Binding Advisor deems this necessary, an opportunity will be given during the meeting or at a date to be determined to provide proof (including the examination of witnesses), to inspect premises and/or to inspect the work.

#### **The decision**

##### **Article 7**

1. The decision will be rendered in the form of Binding Advice (hereinafter: Advice). The rules of Dutch law apply as the standard on which the decision is based, unless the parties have agreed otherwise. If there is more than one Binding Advisor, the decision is made by a majority of votes. If possible, at the sole discretion of the Binding Advisor, he will render a verbal ruling on the day of the meeting with the parties.

2. The Binding Advisor will issue the Advice in writing within two weeks after the meeting with the parties or following the last permitted procedural act, except in special circumstances.
3. The Advice applies as conditional binding advice (a conditional settlement effected by a third party as referred to in Article 7:900(2) of the Dutch Civil Code). If none of the parties notify the other party or parties and the Binding Advisor in writing within two weeks after the date of the written Advice that they are unable to concur with the Advice, the nature of the Advice will cease to be conditional.
4. If one of the parties notifies the other party or parties and the Binding Advisor in writing within two weeks after the date of the written Advice that they are unable to concur with the Advice, the dispute may – exclusively after completion of the work – be put before the competent court or arbitrator anew. Until completion and during the course of those proceedings at first instance, the parties are required to act in accordance with the provisions in the Advice.

### **The costs**

#### **Article 8**

1. In the Advice, the RvA's costs for the handling of the dispute by the Binding Advisor are always be divided equally between the parties, independently of the degree of their success or lack of it. If the fixed rate for standard proceedings applies, the RvA's costs will be set accordingly. Compensation for the costs of legal assistance and of witnesses and/or experts is excluded at all times.
2. If the fixed rate for standard proceedings does not apply, the Binding Advisor is not bound by the amount of the deposit referred to in Article 4 of these Rules when determining the costs.
3. The Binding Advisor is authorised to deduct the amount of the fee payable to him and further costs incurred by him, including those of the RvA, from the deposit. If the deposit does not suffice for that purpose, the Binding Advisor may request additional payment; the Binding Advisor is not required to render his Decision before such additional payment has been made.
4. If, despite repeated demands, one or both parties should fail to pay the costs referred to in this article, the RvA is authorised to claim the amount due in court.

### **Other provisions**

#### **Article 9**

1. Members of the Council of Arbitrators to whom a case is assigned for the issue of binding advice are relieved of their assignment in the event of termination of this membership, unless the termination of membership is a result of the expiry of the calendar year in which the relevant member has reached the age of 70, or of resignation by the member from his membership.
2. Members to whom a case is assigned for the issue of binding advice are relieved of their assignment in the event that the Chairman suspends their membership due to serious non-performance.

3. A Binding Advisor may be relieved of his duties at the joint request of the parties. If a Binding Advisor is no longer able to perform his assignment de jure or de facto, he may be relieved of his assignment at the request of one of the parties. At the request of the most diligent party, the assignment to a Binding Advisor may be terminated if there are valid reasons for doing so, including the reason referred to in Article 1029(5) of the Dutch Code of Civil Procedure. The Chairman of the Arbitration Board decides on such requests. Should the request be granted, the relevant Binding Advisor will be replaced in accordance with the provisions in these Rules.
4. If a member of the Council of Arbitrators is exempted by the Chairman from accepting his appointment as Binding Advisor for valid reasons, and also in the event of the death of a Binding Advisor or any impediment barring him from continuing to fulfil his duties as Binding Advisor, including the situations referred to in paragraphs 1 and 2 of this article, the new appointment will be made as provided in paragraph 5 of this article.
5. If the assignment to one or more of the appointed Binding Advisors ends before his/their task has been completed, the Chairman is authorised to make a new appointment without prior written notice to the parties.

#### **Article 10**

The periods of time stated in these Rules are subject to the Dutch General Extensions of Time-limits Act.

#### **Article 11**

Points that are not governed by these Rules are decided by the Binding Advisor or, if he has not yet been appointed, by the Chairman.

#### **Article 12**

These Rules may be amended by the RvA's Board of Directors.