

## **Building Affairs Expert Determination Centre Guidelines and Procedures for Nomination of Expert**

Please read these *Guidelines and Procedures for the Nomination of Expert in respect of Expert Determination on Building related Technical Issues or Disputes* (these “**Guidelines for Nomination**”) before applying for the nomination of expert.

### **1. INTRODUCTION**

The Building Affairs Expert Determination Centre (“**BAEDC**”) intends to be a platform to promote the use of expert determination, being an additional dispute resolution system, in respect of building related technical issues or disputes, including but not limited to water seepage, decoration or fitting out works, repair and maintenance works for existing buildings (but excluding disputes on the handover status of new flats or commercial units) and liability of unauthorized building works<sup>1</sup>.

Such expert determination shall, in the absence of manifest error, be final and conclusive in relation to the building related technical issues or disputes between the parties to the disputes and binding on the parties.

Accordingly, upon receiving an application for the nomination of expert in this regard, BAEDC will nominate an expert from the relevant area under its List of Experts who shall enter into a separate engagement agreement with the parties and determine the building related technical issues or disputes.

These Guidelines for Nomination provide guidance to users who wish to make use of expert determination and seek for nomination of expert in this connection.

### **2. DEFINITION AND INTERPRETATION**

2.1. In these Guidelines for Nomination, the following expressions, except where the context otherwise requires, have the following meanings:-

**“Application Form”** means the “*Application Form for the Nomination of Expert in respect of Expert Determination on Building related Technical Issues or Disputes*” as adopted by BAEDC;

**“BAEDC”** means the Building Affairs Expert Determination Centre set up by the HKIS;

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<sup>1</sup> The areas of disputes available for expert determination are subject to revision by BAEDC from time to time at its absolute discretion.

<b>“Business Days”</b>	means a day other than a general holiday in accordance with the General Holidays Ordinance (CAP. 149) or Saturday;
<b>“Expert”</b>	means the nominated expert appointed by the Parties as expert to determine their building related technical issues or disputes;
<b>“HKIS”</b>	means The Hong Kong Institute of Surveyors;
<b>“List of Experts”</b>	means the list of experts in respect of expert determination on building related technical issues or disputes maintained by BAEDC from time to time;
<b>“HKIS Member”</b>	means a member of the HKIS holding a Professional Grade of Membership (FHKIS or MHKIS)
<b>“Parties”</b>	means the relevant parties to the building related technical issues or disputes in respect of which an application for the nomination of expert is made to BAEDC, and each a <b>“Party”</b> ; and

2.2 Unless the context otherwise specifies:

- (a) References to any guidelines, directions and/ or other documents issued by BAEDC and/ or HKIS shall include any such guidelines, directions and/ or other documents as amended, modified, or supplemented from time to time, regardless of whether such changes are of a substantial nature or not.

2.3. References to **“conflict of interest”** include the situations:-

- (a) when a HKIS member acting for any person or when in contemplation of acting for a prospective person whose interests conflict or may conflict with the Parties;
- (b) when a HKIS member personally or any firm or company carrying on practice as surveyors of which he is a partner or director acts for any of the Parties; and

- (c) any other situation regarded as conflict of interest situation under the Rules of Conduct and/ or other documents or notices issued by the HKIS from time to time.

### **3. ELIGIBILITY**

- 3.1. Currently, BAEDC is aimed at facilitating the use of expert determination on building related technical issues or disputes only. Accordingly, the nature of the disputes should be building related and arising out of or in connection with<sup>2</sup>:-
  - (a) Water seepage;
  - (b) Decoration or fitting out works;
  - (c) Repair and maintenance works for existing buildings (but excluding dispute on the handover status of new flats or commercial units); and
  - (d) Liability of unauthorized building works.
- 3.2. BAEDC reserves its right to decline, at its sole and absolute discretion, an application for the nomination of expert in respect of expert determination, for instance, the Parties have instituted parallel litigation, arbitration and/ or other alternative dispute resolution proceedings.
- 3.3. All applications for nomination of expert by BAEDC in respect of expert determination shall be made by joint application to BAEDC as specified herein.
- 3.4. The Parties are required to submit the following documents, when applying for nomination of expert by BAEDC in respect of expert determination:-
  - (a) a duly completed and signed Application Form together with all necessary documents; and
  - (b) a properly crossed cheque/ cashier order representing the administration fee set out in paragraph 8.1 below.

### **4. NOMINATION PROCEDURE**

- 4.1. The process for nominating an expert is as follows:
  - (a) The Parties shall jointly submit the Application Form to BAEDC together with all necessary documents (the “**Application**”).

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<sup>2</sup> The areas of disputes available for expert determination are subject to revision by BAEDC from time to time at its absolute discretion.

- (b) BAEDC acknowledges the Application.
- (c) BAEDC selects relevant expert(s) from the List of Experts of the relevant Areas of Technical Issues or Disputes and confirms with the relevant expert(s) his eligibility to act based on the submitted Application Form.
- (d) The relevant expert(s) shall confirm in writing his eligibility to act within seven (7) Business Days. If the relevant expert(s) does not reply within seven (7) Business Days, or the relevant expert(s) refuses to be nominated due to actual or perceived conflict of interest or any other reasons, paragraph (c) is repeated until a relevant expert confirms in writing of his eligibility to act. Should there be no suitable expert, in the opinion of BAEDC, to determine the building related technical issues or disputes set out in the Application Form, the parties will be notified accordingly.
- (e) Subsequently, BAEDC will notify the Parties of the result of the nomination (the “**Nomination Notification**”) and will provide the Parties with the CV and any other relevant details of the nominated expert. Generally, such nomination shall be binding on the Parties, and no application for re-nomination will be allowed, unless with valid justifications.
- (f) Within seven (7) Business Days of the date of the Nomination Notification, the Parties shall notify BAEDC in writing of their acceptance or objections (with valid justifications, for instance, conflict of interest). BAEDC shall consider the reasons for objections to the nominated expert and if upheld, paragraph (c) is repeated.
- (g) Upon receipt of the written confirmation by the Parties, BAEDC will send a proforma expert determination agreement and a proforma expert determination rules and procedures to the Parties and the nominated expert.<sup>3</sup>
- (h) The Parties shall then settle the terms of expert determination agreement (including but not limited to the Expert’s fees and expenses) and the rules and procedures of the expert determination proceedings with the nominated expert through written communications and/ or attendance of a preliminary meeting as the nominated expert considers fit and formally appoint the nominated expert as Expert. If the Parties fail to enter into an expert determination agreement with the nominated expert within a reasonable time, the Parties shall submit a fresh application.

4.2. Please also refer to Schedule 1 of these Guidelines for Nomination for a

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<sup>3</sup> The proforma expert determination agreement and the proforma expert determination rules and procedures to the Parties provided by BAEDC in accordance with paragraph 4.1 (g) above are provided for the Parties’ reference only and the Parties shall settle the terms of engagement and the rules and procedures governing the expert determination process with the Expert in each case after careful discussion among themselves.

flowchart of the above-mentioned nomination process.

- 4.3. The information of the nominated expert as set out in the CV and/ or other materials provided by BAEDC to the Parties in accordance with paragraph 4.1 (e) above are provided by the nominated expert. BAEDC shall not be obliged to verify any such information and such information shall not be relied as representations made by BAEDC.
- 4.4. For the purposes of paragraph 4.1 (f) above, in determining whether the justifications of an objection are valid or not, BAEDC will, at its sole discretion, consider whether the nominated expert would be unfit or unsuitable to conduct an expert determination and/ or whether the conflict of interest would impair the independence or impartiality of the expert by reason of the current and historic relationships between the nominated expert and the Parties or any of them. The decision of BAEDC on an objection shall be final and no appeal on the same is allowed.

## **5. CONFLICT OF INTEREST**

- 5.1. At any time, the nominated expert shall disclose to BAEDC and the Parties any actual, perceived or potential conflict of interest with the Parties. If a Party is aware of any actual, perceived or potential conflict of interest between the Parties or any of them and the nominated expert, the Party shall also raise objections based on conflict of interest to BAEDC within the period prescribed in paragraph 4.1 (f) above.
- 5.2. BAEDC has no obligation to conduct conflict checks over the nominated expert. With respect to the nomination process stated in paragraph 4 above, BAEDC's decision relies solely on the disclosure from the nominated expert and the objections made by the Parties or any of them.
- 5.3. If, at any time, the Expert becomes aware of any circumstance which might reasonably be considered to affect the Expert's ability to act independently, impartially, free of bias or becomes aware of any vested interest, the Expert has a duty to inform the Parties immediately and provide them with reasonable details. Unless the Parties agree otherwise, the Expert must then immediately terminate the expert determination process.
- 5.4. If the expert determination process is terminated by reason of paragraph 5.3 above and the Parties continue to seek expert determination through BAEDC, they shall submit a fresh application to BAEDC as stated in paragraph 4 above.

## **6. INFORMATION IN THE APPLICATION FORM**

- 6.1. In selecting the relevant expert(s) to determine the building related technical issues or disputes, BAEDC relies on the information provided by the Parties in the Application Form. As such, the Parties shall provide sufficient background information in the Application Form to enable BAEDC and the relevant

expert(s) to understand the issues and/ or disputes.

- 6.2. The Parties shall not submit any confidential and/ or other sensitive information to BAEDC in their Application Form.
- 6.3. BAEDC shall be allowed to disclose all or any part of the information contained in the Application Form to any relevant expert(s) during the nomination process in paragraph 4 above.
- 6.4. For research, experience sharing and/or statistical purposes, BAEDC and HKIS shall be entitled to collect anonymous information/ data in respect of a summary of the expert determination proceedings and the fees charged by the nominated experts upon completion of the expert determination in compliance with Personal Data (Privacy) Ordinance (Cap. 486).

## **7. CONTRACTUAL RELATIONSHIP OF THE APPOINTMENT**

- 7.1. Generally, expert determination is purely contractual, as such, the Parties and the nominated expert shall ensure that they understand and agree with the terms of the expert determination agreement in respect of the engagement of the nominated expert and the rules and procedures governing the expert determination process before commencing expert determination.
- 7.2. BAEDC will provide the Parties and the nominated expert with a proforma expert determination agreement and a proforma expert determination rules and procedures for their reference only. The Parties shall then settle all the terms of engagement and the rules and procedures governing the expert determination process with the nominated expert before commencement of the expert determination procedure.
- 7.3. If the Parties fail to enter into an expert determination agreement with the nominated expert within a reasonable time and, if all of the Parties still wish to resolve their building related technical disputes or issues through expert determination by an expert nominated by BAEDC, they shall submit a fresh application. That being said, BAEDC reserves its right to reject, at its sole discretion, any fresh applications made by the same Parties on the same (or substantially the same) building related technical disputes or issues, if such re-applications are caused by the Parties failing to reasonably agree on the terms of the expert determination agreement and the expert determination rules and procedures.

## **8. COSTS AND EXPENSES**

- 8.1. Subject to any notice issued by BAEDC providing otherwise, the administration fees as announced by BAEDC from time to time shall be payable by the Parties upon application.
- 8.2. Please note that the administration fee, once paid, is non-refundable under any

circumstances, including but not limited to the situation where BAEDC is of the opinion that there is no suitable expert to determine the building related technical issues or disputes.

- 8.3. Fees to be paid to the HKIS in accordance with paragraph 8.1 above shall be paid free of any bank charges, transfer fees, or any withholdings, in Hong Kong Dollars (HKD), by cheque/ cashier's order only. The cheque/ cashier's order should be properly crossed and made payable to "*The Hong Kong Institute of Surveyors*" and enclosed with the Application Form.

## **9. LIMITATION ON LIABILITY**

- 9.1. After the issuance of the Nomination Notification, the role of BAEDC and its responsibility in the expert determination will be fully discharged, even if the Parties and the nominated expert fail to agree the expert determination rules and procedures with the proposed expert, and/ or fail to enter into a mutually agreed expert determination agreement.
- 9.2. BAEDC and the HKIS (or any of their employees, consultants, officers, members or representatives whatsoever) shall not be liable to any of the Parties and/ or the nominated expert in contract, tort, negligence, breach of statutory duty or otherwise for any loss, damage, costs or expenses of any nature (direct, indirect or consequential) whatsoever incurred or suffered by them due to any act and/ or omission, save where such act was done or omitted to be done in a dishonest manner.
- 9.3. Without prejudice to the aforesaid, if for any reason, BAEDC and the HKIS (or any of their employees, consultants, officers, members or representatives whatsoever) is found to be liable to the Parties or any of them notwithstanding paragraph 9.2, such liability shall not exceed the administration fees actually received by the HKIS.

Date: October 2022

**Schedule 1 –  
Flow Chart of the nomination of expert process**

