

## **Adjudication Rules**

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### **PART A - OBJECTIVES**

#### **Object of adjudication**

1. The objective of adjudication is to reach a fair, expeditious and cost-effective decision on disputes arising under construction and architectural contracts. The adjudicator appointed by the Hong Kong Institution of Architects(HKIA) is a subject-matter expert with sufficient number of years of experience in the construction and/or architecture industry, who will decide on matters brought to his/her attention by disputing parties and in some cases with the assistance of his/her own specialist consultants who are familiar with the matter at hand as well as the adjudication procedures.
2. The HKIA has been admitted to the Register of Adjudicator Nominating Bodies to perform the functions and obligations of an Adjudicator Nominating Body (ANB) for the purpose of implementing Security of Payment (SOP) Provisions in public works contracts under the provisions and procedural requirements as stipulated within DEVB Technical Circular (Works) No. 6/2021. The HKIA Adjudication Rules 2022 (the "Rules") have been developed in relation to these SOP Provisions and relate to prompt payment issues (payment disputes) under various public works contracts ("contracts") and these Rules shall be interpreted on this basis.
3. Any adjudication conducted under these Rules shall be determined by a sole adjudicator in accordance with the terms and conditions of the contract and its applicable law.

### **PART B – ADMINISTRATIVE ARRANGEMENTS**

#### **Administration of adjudication**

4. The adjudication will be administered by the Contract Dispute Resolution Committee of the HKIA, whose address is:  
The Hong Kong Institution of Architects,  
19/F, One Hysan Avenue, Causeway Bay  
(Attention: Contract Dispute Resolution Committee)  
Tel: 2511 6323  
Fax: 2519 6011 / 2519 3364  
Email: [bp@hkia.org.hk](mailto:bp@hkia.org.hk)

5. The place of adjudication shall be Hong Kong, and the language of the adjudication shall be the language used in the contract, with all written communications made and any hearings conducted in that language, unless the parties and the adjudicator otherwise agree.
6. Notwithstanding any other provision herein, the parties shall remain jointly and severally liable for the fees and expenses of the HKIA and the adjudicator until such fees and expenses are fully paid.
7. Reference herein to "day" or "days" means "working day" or "working days".
8. Any written communication may be served and delivered to the HKIA by hand on or before 4.00pm on a working day (Monday through Friday other than a general holiday) under the prescribed form(s). The HKIA does not operate on Saturdays or Sundays and general holidays.
9. Any written communication is deemed to have been received on the day it is so delivered to the HKIA.

## **PART C – THE ADJUDICATION PROCEDURE**

### **Application for adjudication – the Request**

10. Any party to a public works contract ("contract") may at any time submit a written request to the HKIA using Form 2 ("the Request") to refer to adjudication payment disputes arising under the contract.
11. The Request shall be served simultaneously on every other person who is party to the contract and to the dispute.
12. The Request shall contain a concise statement of the nature and description of the payment dispute, the issues arising and the amount claimed and remedy sought. It shall also contain the name of the Claimant and each responding party and its address for service.
13. The Request shall be accommodated by the prescribed fees as determined by the HKIA. Any failure to deposit the entire sum required within 3 days of having served the Request shall entitle the HKIA to terminate the proceedings.

### **Appointment of adjudicator**

14. Within 3 days of receipt of the Request, the HKIA shall nominate the adjudicator from its established panel using Form 3 which sets out the standard terms and conditions of appointment of the adjudicator, having ascertained whether the nominee is willing and able to act impartially or independently having no financial or personal interest in relation to the dispute for the party initialing the Request ("the Claimant") and for the party responding to the Request ("the Respondent") to consider.
15. Prior to the nomination of an adjudicator, the potential nominee shall submit a written statement to the Adjudicator Appointment Sub-committee of the HKIA using Form 4 "Notice of Acceptance of Appointment to act as Adjudicator" declaring that: the adjudicator is aware that there are no circumstances likely to give rise to justifiable doubts as to the adjudicator's independence or impartiality in respect of the adjudicator's appointment;  
the adjudicator also acknowledges an ongoing duty incumbent on the adjudicator throughout the adjudication process to disclose, without delay, any circumstances likely to

give rise to justifiable doubts as to the adjudicator's impartiality or independence; the adjudicator shall comply with the principles of natural justice and decide the payment disputes in accordance with the contract and the applicable law; the adjudicator shall be familiar with the requirements of the Rules; and the adjudicator shall devote sufficient time to conduct the adjudication in a timely manner without incurring unnecessary expense.

16. The parties to the adjudication and the adjudicator must not disclose or give to another person any information relating to— the adjudication; or the decision rendered in the adjudication.
17. Despite the provision of Clause 16 of the Rules, the Adjudicator may disclose or give to another person information if—
  - the information is in the public domain;
  - the disclosure is made with the consent of each of the parties to the adjudication;
  - the disclosure is made to an ANB to assist with the operations of the SOP Provisions;
  - the disclosure is necessary for the purpose of settlement of the adjudicated amount;
  - the disclosure is made in another adjudication, a court proceeding, arbitration or any other dispute resolution proceedings in connection with the contract in respect of the payment dispute under which the adjudication arises;
  - the disclosure is made in accordance with the contract or a requirement imposed by law; or
  - the disclosure is made to a professional or any other adviser of the party for the purpose of seeking legal or other professional advice; insurers or bankers for reasonable commercial purposes; enable proper applications for or assessments of payments; or
  - the Employer/ Client.
18. Within 2 days of having receipt of the nominee's appointment to act as adjudicator, the parties do not raise any substantial issues relating the nominee's conflict of interest in the matter, the HKIA shall promptly and in its absolute discretion appoint the nominee as adjudicator.
19. The HKIA shall confirm the appointment of an adjudicator in writing to the parties using Form 5 "Appointment of the Adjudicator" and to the adjudicator as soon as possible following the appointment.
20. No person shall be appointed as adjudicator who is an employee of any of the parties, or who has any financial or personal interests whatsoever in relation to the dispute or any other conflicting interest as a result of the adjudication, except with the express written consent of the parties.

#### **Claimant's submissions**

21. The Claimant shall serve its submissions on the adjudicator, the Respondent(s) and the HKIA within 1 day from the date of the appointment of the adjudicator.
22. The submissions shall include copies of all documents which have a direct bearing on the issues in dispute. The documents shall be consecutively paragraphed, and page numbered with a table of contents identifying the documents submitted.

#### **Adjudication response – The Response**

23. Within 20 days of receipt of the Claimant's submissions, the Respondent(s) shall serve its written response to the Notice of Adjudication, the Request, the Claimant's submissions and accompanying documentation ("the Response") on the Claimant and the adjudicator with a copy to the HKIA.

24. The Response shall contain concise submissions in relation to the Notice of Adjudication, the Request and the Claimant's submissions. The Response shall also contain copies of any additional documents, not contained in the Request and the Claimant's submissions, which have an important and direct bearing on the issues in dispute. The documents shall be consecutively paragraphed and page numbered with a table of contents identifying the additional documents submitted.

**Payments on account**

25. The adjudicator may from time to time direct the parties to make deposits with the HKIA as payments on account of the anticipated costs of the adjudication. Upon receipt of the deposits, the HKIA will acknowledge receipt of payment.
26. Should a party fail to provide its share of the deposits as required, its share may be paid by the other party. Any failure to deposit the entire sum required by the specified period shall entitle the adjudicator to terminate the proceedings.
27. Following the conclusion of the adjudication, the adjudicator shall collect the adjudicator's fees and expenses out of the funds deposited with the HKIA. Any surplus funds remaining after the adjudicator's fees and expenses have been paid in full shall be returned to the party that deposited it, unless otherwise directed by the adjudicator.

**PART D - CONDUCT OF THE ADJUDICATION**

**Overriding duties of the adjudicator**

28. The adjudicator shall act impartially and fairly, and in accordance with these Rules, the terms and conditions of the contract and its applicable law.
29. The adjudicator shall avoid incurring unreasonable expense or delay in adjudicating the dispute.
30. The adjudicator shall decide the dispute and deliver the adjudication decision to the parties and the HKIA within 55 working days from the date of his or her appointment or any longer period agreed by the parties.

**Adjudication procedure**

31. The adjudicator may take the initiative in ascertaining the facts and the law necessary to determine the dispute.
32. The adjudicator shall have the widest available discretion to decide on the procedure to be followed in the adjudication.
33. The adjudicator shall give each party a reasonable opportunity, of putting its case and dealing with that of the other parties.
34. The adjudicator shall consider any relevant information submitted to or obtained by him or her, and shall make available to the parties any information to be taken into account in reaching his or her decision.
35. The adjudicator is not bound by the rules of evidence when conducting the adjudication and may receive and take into account any relevant evidence or information, whether or not it would be otherwise admissible in a court of law.
36. The adjudicator having considered the parties submissions may decide in his or her sole discretion whether or not to convene a hearing, whether or not otherwise to take oral evidence, and whether or not to proceed to determine the dispute on the basis of documents alone.

37. The adjudicator shall fix the date and time of any meetings, hearings or inspections as he or she considers appropriate and shall give the parties reasonable advance notice of such matters.
38. The adjudicator shall hold any meetings and hearings at the premises of the HKIA as far as practicable. The costs of renting the premises at the HKIA or other premises shall be borne by the parties in equal share.

**Witnesses**

39. Before any hearing, the adjudicator may require each party to give notice of the identity and qualifications of witnesses to be called, and to exchange witness statements.
40. The adjudicator may allow, refuse or limit the appearance of witnesses at any hearing, whether witnesses of fact or expert witnesses.
41. Any witness who gives oral evidence at a hearing may be questioned by each party or their representatives under the control of the adjudicator. The adjudicator may put questions to the witness at any stage.
42. Any party may make representations that a witness should attend for oral examination at a hearing, and the adjudicator may so direct.
43. If a witness fails to attend as directed, the adjudicator may attach such weight to the written evidence as he or she thinks fit or exclude it altogether.

**Powers of the adjudicator**

44. Without prejudice to any other power granted to the adjudicator by these Rules, his or her powers shall include the following:
  - (a) To make use of his or her own specialist knowledge;
  - (b) To establish the procedures for conducting the adjudication proceedings;
  - (c) To determine the language or languages to be used in the adjudication proceedings;
  - (d) To extend the deadline for service of an adjudication Response;
  - (e) To request or allow a party to the adjudication to produce any document or provide any information that the adjudicator reasonably requires;
  - (f) To set deadlines for the submission, production of documents and provision of information;
  - (g) To meet and question any party or representative or witness;
  - (h) To make any inspection or site visit, and to carry out or require to be carried out any test or experiment or opening up;
  - (i) To direct the inspection, preservation, storage or interim custody of any property or sample or thing under the control of any party;
  - (j) To request any further submissions or representations or statements, and at any time to permit any party to amend the aforesaid;
  - (k) To direct any party to produce to every other party and to the adjudicator for inspection, and to supply copies of any documents in that party's possession, custody or control;
  - (l) To give directions as to the timetable for the adjudication, or as to any deadlines, or limits as to the length of written documents or oral representations;
  - (m) To appoint, with the consent of the parties to the adjudication, an independent expert to inquire or report on any specific matter;
  - (n) To decide on the proportion of the fees and expenses of the adjudicator and any independent expert appointed under sub-clause 44(m) to be paid by the parties to the adjudication; and
  - (o) Otherwise to issue directions relating to the conduct of the adjudication.

45. The parties to the adjudication must comply with any request or direction of the adjudicator made or given in accordance with Clause 44. All communications between a party to the adjudication and the adjudicator must be simultaneously copied to the other party.
46. No decision, opinion, instruction, direction, certificate or valuation given by the Project Manager or Supervisor / Service Manager / Architect / Surveyor / Supervising Officer / Maintenance Surveyor shall disqualify either from being called as a witness and giving evidence before an adjudicator on any matter whatsoever relevant to the payment dispute so referred to the adjudicator as aforesaid.
47. The adjudicator may review any decision, opinion, instruction, direction, requirement, notice, certificate or valuation made under or in connection with the contract, unless such is stated in the contract to be final and conclusive.
48. The adjudicator has power to rule on his or her own jurisdiction and the validity of his or her appointment.

**Parties may be represented in adjudication proceedings**

49. A party to the adjudication may be represented by the representatives (whether legally qualified or not) that the party considers appropriate.

**Parties to facilitate adjudication**

50. The parties shall do all things necessary for the proper and expeditious conduct of the adjudication, and shall comply with any request or direction made by the adjudicator.
51. If, without showing sufficient cause, any party fails to comply with a request or direction of the adjudicator, or otherwise fails to comply with these Rules, the adjudicator may:
  - a) Make a decision dismissing all or part of a party's submissions;
  - b) Continue with the adjudication in the absence of a party or witness or document or evidence;
  - c) Draw such adverse inferences from that failure to comply as the adjudicator feels are justified in the circumstances;
  - d) Make a decision on the basis of the information properly provided to the adjudicator;
  - e) Attach such weight as the adjudicator thinks fit to any evidence submitted to the adjudicator outside any period he or she may have requested or directed;
  - f) Make such order as the adjudicator thinks fit.
  - g) Consolidation and joinder
52. By agreement between the parties and the adjudicator, the adjudicator may adjudicate at the same time on more than one dispute arising under the same contract, or on related disputes under different contracts.

**Resignation of adjudicator**

53. The adjudicator may resign by giving notice in writing to the parties to the adjudication if the adjudicator considers that it is not possible to decide the dispute fairly within the specified period and where it appears to the adjudicator that the dispute is the same or substantially the same as one which has previously been referred to adjudication with a decision given in that adjudication. A resignation takes effect on the later of (a) the date specified in the notice; and (b) the date on which the notice is served on the parties to the adjudication and the HKIA.
54. The authority of an adjudicator is personal and ceases on the adjudicator's death.

**Revoking the appointment**

55. By agreement between the parties, the appointment of an adjudicator may be revoked at any time on giving written notice to the adjudicator and to the HKIA.
56. The HKIA shall have the power to revoke the appointment of an adjudicator at any time on giving written notice to the parties and to the adjudicator should the adjudicator fail to carry out its duties and responsibilities diligently under the Rules. Before revoking the appointment, the HKIA shall afford the adjudicator a reasonable opportunity to respond, and shall consider the response accordingly.
57. If, for any reason whatsoever, a party objects to the appointment of an adjudicator, or fails to comply with these Rules, that objection or failure shall not otherwise invalidate the appointment or any decision.

**Termination of adjudication**

58. By agreement between the parties, the adjudication may be terminated at any time on giving written notice to the adjudicator and to the HKIA.
59. The Claimant may at any time withdraw an adjudication by serving a notice of withdrawal in writing on the adjudicator, the Respondent(s) and the HKIA.
60. The Claimant who withdraws an adjudication must bear the fees and expenses of the adjudicator and of any independent expert appointed unless the adjudicator orders otherwise.
61. An adjudication is terminated if—
  - a) the Claimant fails to serve an adjudication submission on the adjudicator and the Respondent(s) within the specified time;
  - b) the Claimant serves a notice of withdrawal;
  - c) the Respondent pays the claimed amount stated in the Request in full to the Claimant;
  - d) the adjudicator resigns;
  - e) the adjudicator becomes unable or unsuitable to act as the adjudicator under the Rules, or the adjudicator becomes ineligible to act as the adjudicator under the Rules;
  - f) the payment dispute is settled by agreement in writing between the parties to the adjudication;
  - g) the payment dispute is determined by arbitration or court proceedings;
  - h) the adjudicator fails to deliver an adjudication decision in accordance with the Rules; or
  - i) the adjudicator decides that he/she has no jurisdiction to determine the payment dispute.

**No bar on fresh requests for adjudication**

62. Where, prior to any decision being given, an adjudicator resigns or dies, or the adjudicator's appointment is revoked, or the adjudication is terminated, any party may make a fresh request for adjudication in relation to the same or any dispute.
63. The parties must not refer to adjudication any dispute which is the same or substantially the same as one which has previously been referred to adjudication with a decision given in that adjudication.

**PART E – ADJUDICATION DECISIONS AND COSTS**

**Adjudication decision**

64. The adjudicator shall decide the matters in dispute set out in the Notice of Adjudication, the Request, Claimant's submissions and the Respondent(s) Response together with any other matters which the parties and the adjudicator agree should be within the scope of the adjudication.
65. The adjudicator shall reach a decision within 55 working days from the adjudicator's appointment or any longer period agreed by the parties.
66. The adjudicator may withhold delivery of his or her decision once reached until the HKIA and adjudicator's fees and expenses have been fully paid.
67. If the adjudicator, for any reason, fails to reach a decision within the time specified, the adjudication is thereupon terminated.
68. The adjudicator shall render his or her decision to the parties in writing through the HKIA, which shall be signed and dated by the adjudicator, and which shall:
  - a) State the dispute(s) referred to the adjudicator;
  - b) State the adjudicator's decision;
  - c) State the reasons for the adjudicator's decision;
  - d) Record any admission (not otherwise recorded in writing) made by any party during the course of the adjudication; and
  - e) State the total amount of the HKIA and the adjudicator's fees and expenses.
69. In rendering the decision, the adjudicator shall have the power and jurisdiction to decide the time-related costs forming part of the payment disputes.
70. The adjudicator, in deciding the amount of time-related costs, shall have the power and jurisdiction to determine a party's entitlement to extension of time.
71. The adjudication decision on the time-related costs forming part of the payment disputes is binding and enforceable on an interim basis, but the extension of time so determined is not binding. However, a party shall not be liable for liquidated damages if the works have been completed within the extended time for completion so determined by the adjudicator.
72. The adjudicator may order that any surplus sums deposited with the HKIA as payment on account of the costs of adjudication be paid out to any party.
73. Subject to the terms and conditions of the contract, the adjudicator may order that simple or compound interest on amounts which are the subject of the adjudication be paid at such rates and for such periods as the adjudicator thinks appropriate.
74. The adjudicator may direct, as part of his or her decision, that records be kept by any party of the consequences of the decision. If the parties agree, the adjudicator himself or herself may monitor such consequences.
75. The decision of the adjudicator is binding on the parties as from the date upon which it is made, until the dispute is finally determined by legal proceedings, by arbitration (if the contract provides for arbitration or the parties otherwise agree to arbitration), or by agreement. The parties may agree to accept the decision of the adjudicator as finally determining the dispute.
76. The parties shall implement the adjudicator's decision without delay.

**Corrections and clarifications**

77. The adjudicator may on his or her own initiative, or at the request of any party, correct a decision so as to remove any clerical or computational or typographical errors or any errors of a similar nature, provided that the initiative is taken or the request made within 3 days of the date of the adjudicator's decision. The adjudicator shall make any corrections within 5 working days after the date on which the decision is delivered to the parties.



78. The adjudicator may, at the request of any party, clarify any ambiguity in his or her decision, or make an additional decision on any matter referred to adjudication but not dealt with in the decision, provided that the request is made within 3 days of the date of the decision. The adjudicator shall make any clarification or additional decision within 5 working days after the date on which the decision is delivered to the parties.
79. Any correction done to an adjudication decision under this heading does not affect the validity of the decision.
80. Any such request under this heading shall be in writing and served on the adjudicator, with copies to the HKIA and to the other parties. Before acting on the request, the adjudicator shall afford the other parties an opportunity to respond to the request, reasonable in the circumstances and in light of the time limits above, and shall consider any response.

#### **Costs of adjudication**

81. Except as elsewhere provided in these rules, the adjudicator is entitled to his or her fees and expenses, in reasonable amount and reasonably incurred.
82. Notwithstanding any other provision herein, the parties remain jointly and severally liable to pay the adjudicator's fees and expenses in the proportions the adjudicator decides as part of the adjudication decision, including whether any party shall pay for a specific expense.
83. If one party has already paid the adjudicator fees and expenses which the adjudicator has ordered be paid by another party, the former shall have the right to recover that amount from the latter as a debt.
84. Upon the adjudicator's resignation, or the adjudicator's failure to reach a decision within the time specified, the adjudicator is not entitled to his or her fees and expenses.
85. Where the appointment of an adjudicator is revoked, the adjudicator shall be entitled to his or her fees and expenses unless the revocation was due to the adjudicator's own fault or misconduct.
86. Any dispute as to the adjudicator's entitlement to the adjudicator's fees and expenses, or the reasonable amount of his or her fees and expenses, shall be determined by the HKIA in its absolute discretion, on the written request of any party or the adjudicator, with copies to the other parties and the adjudicator. Before acting on the request, the HKIA shall afford the other parties and the adjudicator a reasonable opportunity to respond to the request, and shall consider any response. The adjudicator shall repay any amount already received but deemed excessive.
87. Each party shall bear its own costs and expenses in relation to the adjudication and shall not be entitled to claim such costs and expenses from the other parties. A party to an adjudication is not liable to pay any costs or expenses incurred by the other party to the adjudication as a result of or in relation to the adjudication even if a party has caused the costs or expenses to be incurred by the other party unnecessarily or for any other reason.

#### **PART F – SUPPLEMENTARY PROVISIONS**

##### **Subsequent arbitration or litigation**

88. The adjudicator shall not be appointed as arbitrator in any subsequent arbitration between the parties, unless the parties otherwise agree in writing.
89. In the event of any subsequent arbitration or litigation, any information or documents or evidence submitted or obtained during the course of the adjudication, and the decision of the adjudicator, shall be made available as appropriate.

90. In the event of any subsequent arbitration or litigation, the decision of the adjudicator shall not prevent the tribunal or court from considering the dispute anew.

**Exclusion of liability**

91. None of the HKIA, HKIA Council and its various Committees, HKIA Secretariat or their staff, or adjudicators shall be liable for any act or omission in connection with an adjudication conducted under these Rules, save where the act was done or omitted to be done dishonestly.
92. The adjudicator is appointed to determine the payment disputes between the parties, and the adjudicator shall owe no duty of care to any third party whatsoever.

**Miscellaneous**

93. Where it is one of a series of adjudications on the same contract, normal policy is to nominate the same adjudicator because of potential savings in costs and time unless both parties are in agreement not to re-appoint (in which case evidence of such agreement shall be provided when submitting the application for adjudication). Each application is treated on an individual basis and there may be circumstances where it may not be appropriate to nominate the same adjudicator. These could include (but not limited to):
- a) the availability of the adjudicator;
  - b) different type of dispute; or
  - c) other reasons which the HKIA consider making such a nomination inappropriate.
94. The HKIA is not obliged to seek representations from the parties concerning possible conflict of interest before appointing an adjudicator.
95. The appointment of adjudicator does not constitute any contract between the HKIA and the adjudicator.