

# **Construction Industry Security of Payment Ordinance**

## **ADJUDICATION RULES**

### **Article 1 – Scope of Application**

- 1.1. The Hong Kong Institute of Architects (HKIA) Security of Payment Adjudication Rules (“**Rules**”) shall apply to adjudications referred to HKIA under the Construction Industry Security of Payment Ordinance (Cap. 652) (the “**Ordinance**”) pursuant to contracts defined under the Ordinance.
- 1.2. These Rules and its corresponding Schedules shall come into force on [DATE] (“Effective Date”). All adjudications falling within Article 1.1 above and with the Notice of Adjudication served on HKIA on or after the Effective Date shall adopt these Rules. The parties may by written agreement agree to adopt an earlier version of these Rules. The adopted Rules will remain in effect for the entire adjudication proceedings, even if a newer version of the Rules is issued after the Effective Date.

### **Article 2 – Interpretation of the Rules**

- 2.1. References in these Rules to the Ordinance, including any terms defined in the Ordinance, refer to the Construction Industry Security of Payment Ordinance (Cap. 652).
- 2.2. Where the Rules conflict with a provision of the Ordinance or a mandatory provision of any applicable law, the relevant provision of the Ordinance or the law shall prevail.
- 2.3. These Rules include any Schedules referred to herein as amended from time to time by HKIA, in force on the date the Notice of Adjudication is served on HKIA.
- 2.4. HKIA shall have the power to interpret all provisions of these Rules including any Schedule referred to herein, subject to any circular or direction from the Development Bureau of the Government of the Hong Kong Special Administrative Region of the People’s Republic of China (the “**Development Bureau**”) pursuant to Section 62(2)(d) of the Ordinance. The adjudicator may interpret the Rules insofar as they relate to its powers and duties hereunder. In the event of any inconsistency between such interpretation and any interpretation by HKIA, HKIA's interpretation shall prevail.
- 2.5. HKIA has no obligation to give reasons for any decision it makes in respect of any adjudication initiated under the Rules and the Ordinance. Unless otherwise determined by HKIA, all decisions made by HKIA under the Rules and the Ordinance are final and, to the extent permitted by any applicable law, not subject to appeal.
- 2.6. References in these Rules to the singular include the plural and vice versa.

27. HKIA may from time to time issue practice notes on its website to supplement and implement these Rules for the purpose of facilitating the administration of adjudications governed by them and the Ordinance.

### **Article 3 – Written Communications and Time Limits**

31. All written communications between the parties and the Adjudicator shall be transmitted in a manner that provides for instantaneous or same-day receipt by the intended recipients such as email, facsimile, or same-day physical delivery and with record of receipt. Email or facsimile is only acceptable if there is a record of receipt of transmission by the receiving party.
32. All written communications to HKIA shall, pursuant to Section 68 of the Ordinance, be served on HKIA at its [physical address by same-day delivery, facsimile number, and/or email address] as stated on HKIA’s website. Email or facsimile is only acceptable if there is a record of receipt of transmission by the HKIA.
33. The date of service of any written communication shall be the date on which such communication has been received by the intended recipient.
34. If the circumstances of the case so justify, HKIA may amend the time limits provided for in these Rules, as well as any time limits that it has set. HKIA shall not amend any time limits set by the Adjudicator unless the Adjudicator directs otherwise. HKIA shall not amend any time limits which have been set in the Ordinance
35. Time limits under the Rules will begin to run on the first working day following the service of any written communication on the intended recipient. “Working day” has the same meaning as assigned to it under Section 22 of the Ordinance.
36. All written communications between any party and the Adjudicator shall be communicated to all other parties. No party or its representatives shall have any ex parte communication relating to the adjudication with the Adjudicator.

### **Article 4 – Adjudicator Nominating Body Functions and Fees**

- 4.1. HKIA shall perform the functions of a nominating body as set out in the Ordinance.
- 4.2. HKIA shall, pursuant to Section 65(1) of the Ordinance, be entitled to charge a fee for its services (“**ANB Fee**”). ANB Fee is determined based on the sum in dispute as set out in the Fee Schedule that is published on HKIA’s website on the date on which the Notice of Adjudication is served on HKIA.
- 4.3. Notwithstanding Article 4.2, if the respondent raises any set off against the claimant in an adjudication response in accordance with Article 8.3, but the amount is more than

that set out in the payment response (“**additional set off**”), the Adjudicator shall direct that the ANB Fee be recalculated by adding the additional set off amount to the sum in dispute, if:

- (a) The adjudicator has jurisdiction to determine the issues arising from the additional set off amount; and
- (b) The materials relating to the additional set off amount is not to be disregarded pursuant to Section 37 of the Ordinance.

Where there are alternative claims, only the principal claim will be taken into account for the calculation of the sum in dispute, except where the Adjudicator considers it appropriate to take into account the amount of any alternative claim. Any interest claim shall not be taken into account for the calculation of the sum in dispute except where the Adjudicator determines that doing so would be appropriate. The ANB Fee is to be determined by HKIA accordingly. HKIA shall notify the parties of the adjusted ANB Fee as soon as possible.

- 4.4. HKIA shall publicise the ANB Fee on its website. HKIA may adjust the ANB Fee from time-to-time.
- 4.5. Subject to Section 41(a) of the Ordinance, if the HKIA has not received the ANB Fee by the third working day after the ANB has received the Notice of Adjudication, HKIA may suspend or otherwise refuse to proceed with the appointment of the Adjudicator until such ANB Fee has been paid.
- 4.6. Where the HKIA fails to appoint the Adjudicator within the period prescribed by the Ordinance (i.e. 7 working days), the HKIA may, in appropriate circumstances and in its absolute discretion, waive or reduce the ANB Fee for any subsequent reapplication.
- 4.7. Where a question arises as to the applicability of the Ordinance to a payment dispute, including HKIA’s competence to act as the nominating body in respect of the adjudication, the adjudication shall proceed to the extent that HKIA is satisfied, prima facie, that the contract in dispute falls under the scope of the Ordinance. Any question as to the jurisdiction of the Adjudicator shall be decided by the Adjudicator, once appointed, pursuant to Article 10 of these Rules and Section 33 of the Ordinance.
- 4.8. To the extent that HKIA requires information from any of the parties to fulfil its functions under the Ordinance and/or these Rules, it may request that information from any party.

## **Article 5 – Initiation of the Adjudication**

- 5.1. The Notice of Adjudication, as described pursuant to Section 25 of the Ordinance, shall take the form of **Form A** appended to these Rules.
- 5.2. The Notice of Adjudication shall be accompanied by payment to HKIA of the ANB Fee. The ANB Fee may be paid in accordance with the payment instructions on HKIA's website.

## **Article 6 – Nomination and Appointment of Adjudicator**

- 6.1. Subject to Articles 4.2, 4.3, and 4.5 of these Rules, HKIA shall appoint an Adjudicator in accordance with Sections 26 or 27 of the Ordinance, failing which the adjudication proceedings are terminated according to Section 41(a) of the Ordinance.
- 6.2. The HKIA shall appoint an Adjudicator from any panel of adjudicators that the HKIA maintains on its website at the time of appointment.
- 6.3. An Adjudicator appointed under these Rules shall be and remain at all times impartial and independent of the parties.
- 6.4. At the time a potential Adjudicator is approached by the HKIA, the Adjudicator shall be provided with relevant basic information of the parties and the contract in order to facilitate him or her to (a) sign a declaration form in the form of **Form B** appended to these rules confirming his or her availability to decide the dispute and his or her impartiality and independence; and (b) disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence in accordance with Section 29 of the Ordinance.
- 6.5. The HKIA shall appoint the Adjudicator within 7 working days after the date on which the Notice of Adjudication is served on the ANB.
- 6.6. In relation to Section 26(2)(a) or Section 27(5)(a) of the Ordinance, as the case may be, HKIA shall provide the parties with the Adjudicator's curriculum vitae, contact details, signed declaration form, and the Adjudicator's hourly rate and allow the parties a period for them to comment on such proposed appointment.
- 6.7. The appointment of an Adjudicator by HKIA shall not be hindered by any controversy with respect to whether the adjudication of a payment dispute was initiated in a timely manner pursuant to Section 24 of the Ordinance or whether the Notice of Adjudication complies with the requirements of Section 25 of the Ordinance or Article 5.1 of these Rules.
- 6.8. An Adjudicator, once appointed and throughout the adjudication proceedings, shall disclose to the parties and the HKIA without delay any such circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence, pursuant to Section 29(3) of the Ordinance.

- 6.9. The Adjudicator and HKIA are not agents of, or acting in any capacity for, any of the Parties. The Adjudicator is not an agent, servant or contractor of HKIA.

## **Article 7 – Adjudication Submission**

- 7.1. The claimant shall communicate its adjudication submission to all other parties and to the Adjudicator within one working day after the date on which the Claimant is informed of the appointment of the Adjudicator.
- 7.2. The adjudication submission shall include the following particulars:
- (a) A statement of the facts supporting the claim;
  - (b) The points at issue;
  - (c) The legal arguments supporting the claim, if any; and
  - (d) The relief or remedy sought.
- 7.3. The claimant shall annex to its adjudication submission relevant supporting materials on which it relies.

## **Article 8 – Adjudication Response**

- 8.1. The respondent shall communicate its adjudication response to all other parties and to the Adjudicator pursuant to Section 31 of the Ordinance within 20 working days after the date on which the adjudication submission was served on the respondent. The Adjudicator may extend this time limit where he or she concludes that such an extension is justified.
- 8.2. The adjudication response shall reply to the particulars of the adjudication submission (set out in Article 7.2(a) to (c) of these Rules) and may specify the adjudication submission, document or evidence (or any part of it) given by claimant that fulfils the grounds under Section 31(3)(b) of the Ordinance. Where the respondent has raised an objection to the jurisdiction of the Adjudicator, the adjudication response shall contain the factual and legal basis of such objection.
- 8.3. Subject to Section 21(b) of the Ordinance, a respondent may raise set off in the adjudication proceedings in relation to the payment claim. Examples may include, but are not limited to, entitlements to liquidated damages for delay, damages for correcting defective works, etc. Where any set off is raised, the adjudication response shall also include the following particulars:
- (a) A statement of the facts supporting the set off raised;
  - (b) The points at issue;

- (c) The legal arguments supporting the set off raised, if any; and
  - (d) The relief or remedy sought.
84. The respondent shall annex to its adjudication response all supporting materials on which it relies, subject to any direction or requirement imposed by the Adjudicator.

#### **Article 9 – Reply to an Adjudication Response**

91. The claimant shall communicate its Reply to an Adjudication Response to all other parties and to the Adjudicator pursuant to Section 32 of the Ordinance within 2 working days after the date on which the Adjudication Response was served on the claimant. The Adjudicator may extend this time limit where he or she concludes that such an extension is justified.
92. The Reply to an Adjudication Response may only specify the adjudication response, document or evidence (or any part of it) given by respondent that fulfils the grounds under Section 32(3) of the Ordinance.

#### **Article 10 – Jurisdiction of Adjudicator**

- 10.1. The Adjudicator may, pursuant to Section 33 of the Ordinance, rule on his or her own jurisdiction, including any objections with respect to the existence, validity, or scope of the underlying contract or the applicability of the Ordinance to the underlying contract, or any grounds relating to Section 33(1) of the Ordinance.
- 10.2. A plea that the Adjudicator does not have jurisdiction shall be raised no later than in the Adjudication Response pursuant to Article 8 of these Rules. A party is not precluded from raising an objection to the Adjudicator's jurisdiction by the fact that it has participated in the process of nomination and appointment of the Adjudicator.
- 10.3. If a question arises before the appointment of the Adjudicator as to:
- (a) the existence, validity or scope of the underlying contract; or
  - (b) the applicability of the Ordinance to the adjudication; or
  - (c) the competence of HKIA to administer the adjudication;

the adjudication shall proceed and any such question shall be decided by the Adjudicator once appointed.

## **Article 11 – Conduct of Proceedings**

- 11.1. Subject to these Rules and Sections 35 to 37 of the Ordinance, the Adjudicator shall adopt suitable procedures for the conduct of the adjudication in order to avoid unnecessary delay or expense, having regard to the complexity of the issues, the sum in dispute, and the Adjudicator's obligations under the Ordinance, provided that such procedures ensure equal treatment of the parties and afford the parties a reasonable opportunity to present their case.
- 11.2. The Adjudicator and the parties shall do everything necessary to ensure the fair and efficient conduct of the adjudication.
- 11.3. The Adjudicator is not bound by the rules of evidence and subject to Section 37 of the Ordinance, may receive and take into account any relevant document, evidence or information, whether or not it would be admissible in a court of law.
- 11.4. In all matters not expressly provided for in these Rules, HKIA, the Adjudicator and the parties shall act in the spirit of these Rules.
- 11.5. The Adjudicator shall make every reasonable effort to ensure that its Determination is valid.

## **Article 12 – Representation**

- 12.1. The parties may be represented by persons of their choice, subject to Articles 12.2 and 12.3. The names, addresses, telephone numbers and/or email addresses of party representatives shall be communicated to all other parties, HKIA, and the Adjudicator once appointed. The Adjudicator or HKIA may require proof of authority of any party representatives.
- 12.2. After the appointment of the Adjudicator, any proposed change by a party to its representatives shall be communicated promptly to all other parties, the Adjudicator, and HKIA.
- 12.3. The Adjudicator may, after consulting with the parties, take any measure necessary to avoid a conflict of interest arising from a change in party representatives, including by excluding the proposed new party representatives from representing in the adjudication proceedings.

## **Article 13 – Experts**

- 13.1. The Adjudicator, unless otherwise agreed by the parties, may appoint one or more independent experts to assist the Adjudicator in assessing the evidence submitted by the parties. Such expert shall report to the Adjudicator, in writing, on specific issues to be

determined by the Adjudicator. After consulting with the parties, the Adjudicator shall establish terms of reference for the expert, including the expert's fees, and shall communicate such terms of reference to the parties and HKIA.

132. The provisions of Articles 6.3 to 6.4 of these Rules shall apply by analogy to any expert proposed or appointed by the Adjudicator. The expert's obligations shall be to the Adjudicator only.
133. The parties shall give the expert any relevant information or produce for his or her inspection any relevant documents or materials that he or she reasonably requires of them. Any dispute between a party and such expert as to the relevance of the required information or production shall be referred to the Adjudicator for decision.
134. Upon receipt of the expert's report, the Adjudicator shall send a copy of the report to the parties who shall be given the opportunity to express their opinions on the report. The parties shall be entitled to examine any document on which the expert has relied in his or her report.
135. The Adjudicator may, on his/her own initiative, or at the request of either party, request the expert, after delivering the report, to attend a conference at which the parties shall have the opportunity to be present and to examine the expert. The provisions of Article 11 of these Rules shall be applicable to such proceedings.
136. The fees and expenses of the expert shall be considered to be costs of the adjudication proceedings pursuant to Section 54(1)(a)(iii) of the Ordinance.
137. The provisions of Article 11.1, 11.2, 11.3, and 11.4 of these Rules shall apply by analogy to any expert appointed by the Adjudicator.

#### **Article 14 – Hearings and Conferences**

- 14.1. The Adjudicator shall decide whether the adjudication shall be conducted solely on the basis of documents and other materials. The Adjudicator may, on his/her own initiative, or at the request of either parties, hold a hearing or conference for the parties to present evidence or oral arguments.
- 14.2. In the event of a hearing or conference, the Adjudicator shall give the parties adequate advance notice of the relevant date, time and place.
- 14.3. The Adjudicator may determine the manner in which any witness of fact or expert is examined.
- 14.4. The Adjudicator may make directions for the translations of oral statements made at a hearing or conference and for a record of the hearing or conference if he or she deems that either is necessary in the circumstances of the case.



- 14.5. Hearings or conferences shall be held in private unless the parties agree otherwise. The Adjudicator may require any witness of fact or expert to leave the hearing or conference room at any time during the hearing or conference.
- 14.6. Costs of any hearing venue or translation costs that may be required shall be paid by the adjudicator or the HKIA, and would be costs of adjudication proceedings under Section 54 of the Ordinance.

#### **Article 15 - The Adjudicator's Fees and Expenses**

- 15.1. The Adjudicator's Fees shall be calculated in accordance with the Fee Schedule published on HKIA's website on the date on which the Notice of Adjudication is served on HKIA and is subject to the capped amount corresponding to the sum in dispute. The adjudicator's fee might exceed the capped amount if the parties have jointly agreed, pursuant to Section 42(5)(b), a longer period for making the Determination by the adjudicator. The fee cap for the Adjudicator's fee may be increased either by mutual agreement of the parties or by a suggested new cap from the ANB or the Adjudicator, which must then be jointly agreed upon by the parties.
- 15.2. If additional set off is raised in an adjudication response, the sum in dispute shall be recalculated in accordance with the principles set out in Article 4.3 and HKIA shall determine and adjust the Adjudicator's fee cap accordingly. HKIA shall notify the parties of the adjusted capped amount as soon as possible.
- 15.3. The Adjudicator's Fees shall cover the activities of the Adjudicator from the time of his or her appointment until the rendering of the Adjudicator's Determination pursuant to Section 42 of the Ordinance.
- 15.4. The Adjudicator is entitled to reimbursement of expenses in accordance with the Practice Note on Fees and Expenses published on HKIA's website on the date on which the Adjudicator was appointed.

#### **Article 16 – Deposits for the Adjudicator's Fees and Expenses**

- 16.1. As soon as practicable after receipt of the Notice of Adjudication, HKIA shall, in principle, request the Claimant and the Respondent each to deposit with HKIA an equal amount as an advance for the Adjudicator's fees and expenses.
- 16.2. HKIA may request the parties to make supplementary deposits with HKIA after consulting with or upon the request of the Adjudicator, and in accordance with the Fee Schedule.

163. HKIA may request the parties to make supplementary deposits with HKIA in respect of the costs of any expert appointed by the Adjudicator pursuant to Article 13 of these Rules.
164. HKIA may request the parties to make supplementary deposits with HKIA in respect of the costs of any hearing venue or translation costs.
165. If the required deposits are not paid in full to HKIA within the time period set by HKIA, HKIA shall so inform the parties in order that one or another of them may make the required payment.
166. If a party pays the required deposits on behalf of another party, the Adjudicator shall take such payment into account when issuing the Determination.
167. After the adjudication has been withdrawn or terminated, HKIA shall render an accounting to the parties of the deposits received and shall return any unexpended balance to the parties in the shares in which the deposit was paid by the parties to HKIA, or as otherwise instructed by the Adjudicator.
168. HKIA shall place the deposits made by the parties in a dedicated account at a reputable licensed Hong Kong deposit-taking institution. In selecting the account, HKIA shall have due regard to the possible need to make the deposited funds available immediately.

#### **Article 17 – Adjudicator’s Determination**

- 17.1. The Adjudicator may communicate his or her Determination to HKIA by email, facsimile, or physical delivery to the email address, facsimile number, and/or physical address stated on HKIA’s website. The Determination shall be signed by the Adjudicator and shall state the date on which it was made. The Adjudicator shall in all cases provide HKIA with the requisite number of signed physical copies of the Determination to enable HKIA to provide one signed physical copy to each party and retain one signed physical copy for HKIA’s records.
- 17.2. Upon receipt of the Determination, HKIA shall affix its seal to the Determination and, subject to any lien under Article 17.5 below, communicate it to the parties without delay.
- 17.3. For the purposes of Section 42(7) of the Ordinance, HKIA will communicate the Determination to the parties by email, facsimile, and/or physical delivery in accordance with the contact details provided in the Notice of Adjudication, or as otherwise instructed by the parties or the Adjudicator.
- 17.4. The delivery by HKIA of either a signed electronic copy by email, or a signed copy by facsimile, or a signed physical copy by physical delivery of the Determination to the parties, whichever is earliest, shall constitute delivery of the Determination for the

purposes of Section 42(7) of the Ordinance. Where HKIA delivers a copy of the Determination to the parties by email or facsimile in the first instance, it will also deliver an original signed copy of the Determination to each party.

- 17.5. HKIA shall have a lien over any Determination to secure the payment of any outstanding fees and expenses of the adjudicator payable by the parties and may refuse to communicate the Determination to the parties until all such fees and expenses have been paid in full, whether jointly or by one or other of the parties.
- 17.6. The Adjudicator may, on his/her own initiative, or at the request of any party, correct computational or typographic errors or any error of a similar nature in the Determination pursuant to Section 45 of the Ordinance. Any request to correct a Determination pursuant to Section 45 of the Ordinance shall be communicated to the Adjudicator, the other party, and HKIA within one working day after communication of the Determination pursuant to Article 17.3 of these Rules.
- 17.7. Any correction to the Determination must be issued by the Adjudicator within five working days after communication of the Determination pursuant to Article 17.3 of these Rules. Any correction to the Determination shall be in writing, and shall be served on the parties pursuant to Articles 17.1 to 17.4 of these Rules.
- 17.8. Where the Adjudicator specifies in his/her Determination that a party must pay an adjudicated amount to the other party under these Rules within a period of time, the period shall be set with consideration of the time when the determination is served by ANB to both parties, and taking into account any time period for correction to the Determination.

#### **Article 18 - Removal of Adjudicator**

- 18.1. A party may request HKIA to determine whether the Adjudicator should be removed from his or her office because he or she is unable or ineligible to act pursuant to Section 41(f) of the Ordinance. HKIA shall determine any request under this provision.
- 18.2. A party that intends to request removal of the Adjudicator shall send notice of its request within five working days after the appointment of the Adjudicator, or five working days after that party became aware of the circumstances mentioned in Article 18.1.
- 18.3. Any request to remove an Adjudicator shall be communicated to HKIA, all other parties, and the Adjudicator. The request shall state the reasons for the removal.
- 18.4. Unless the Adjudicator resigns, HKIA shall decide on the request for removal. Pending determination of the request, the Adjudicator may continue the adjudication.

- 18.5. If HKIA determines that the Adjudicator should be removed from his or her office as Adjudicator, HKIA shall so declare and proceed to terminate the Adjudication pursuant to Section 41 of the Ordinance and Article 20 of these Rules.

#### **Article 19 - Resignation of the Adjudicator**

- 19.1. If the Adjudicator considers that it is not possible to issue the Determination fairly within the period required under Section 42(5) of the Ordinance, the Adjudicator may resign by serving a written notice of resignation upon each party and the HKIA.
- 19.2. The notice of resignation shall be communicated in written form by email, fax, or other method that provides for instantaneous transmission.
- 19.3. Where an Adjudicator has resigned under this Article, the Adjudicator will not be entitled to receive fees under these Rules.

#### **Article 20 - Termination of the Adjudication**

- 20.1. On the grounds of Section 41 of the Ordinance, an adjudication is terminated if.
- (a) the nominating body fails to nominate and appoint an adjudicator under section 26(2)(a) or 27(5)(a);
  - (b) the claimant fails to serve an adjudication submission on the Adjudicator and the respondent within the period specified in Section 30(2) of the Ordinance;
  - (c) the claimant serves a notice of withdrawal under Section 40(1) of the Ordinance;
  - (d) the respondent pays the claimant in full the sum in dispute;
  - (e) the Adjudicator resigns under Section 39(1) or (3) of the Ordinance;
  - (f) HKIA considers that the Adjudicator is unable or ineligible to act as the adjudicator and determines to remove the Adjudicator under Article 18 of these Rules;
  - (g) the Adjudicator fails to serve a determination with the period required under Section 42(5) of the Ordinance;
  - (h) the payment dispute is settled by agreement in writing between the parties; or
  - (i) the payment dispute is determined in any court or other dispute resolution proceedings.
- 20.2. Where an adjudication is terminated pursuant to
- (1) Article 20.1(a) and (f) of these Rules, HKIA should issue and serve a notice to the Adjudicator (if applicable) and the parties recording the date of termination;

- (2) Article 20.1 (b) and (e) of these Rules, the Adjudicator should issue and serve a notice to HKIA and the parties recording the date of termination;
- (3) Article 20.1 (c), (d), (h) and (i) of these Rules, the claimant should issue and serve a notice to HKIA, the Adjudicator and the respondent recording the date of termination.

#### **Article 21 – Confidentiality**

All persons involved in the adjudication proceedings shall keep all information confidential in accordance with the Ordinance and these Rules.

#### **Article 22 – Complaints**

Any party may submit to HKIA a complaint about an Adjudicator in accordance with the complaint procedure published on HKIA's website at the time the complaint is submitted. HKIA shall determine any complaint in accordance with the complaint procedure.

## Fee Schedule

### (I) ANB Fee Structure

Sum in Dispute (in HK\$) (see note 1 & 2 below)	ANB's Fee for Nomination and Appointment of Adjudicators	Fee Cap (in HK\$)
not exceeding 1M	\$_____	HK\$8,000
> 1M up to 5M	\$_*	
> 5M up to 20M	\$_*	
> 20M up to 50M	\$_*	
> 50M up to 80M	\$_*	
> 80M up to 100M	\$_*	
exceeding 100M	\$_*	HK\$100,000

\* The first entry (i.e. ANB's Fee for sum in dispute not exceeding \$1M) shall not exceed \$8,000, whilst the entries with \* shall be of values gradually increasing from the first entry and shall not exceed \$100,000.

### (II) Adjudicator Fee Structure

Sum in Dispute (in HK\$) (see note 1 below)	Cases for Adjudicators/ Senior Adjudicators	Required <u>Minimum</u> Post- qualification Experience	Required <u>Minimum</u> Claim Handling / Dispute Resolution Experience	Hourly Rate Cap (in HK\$)
up to 5M	Adjudicators	7 years	5 years	2,000
	Senior Adjudicators (if parties agreed)	12 years	10 years	3,000
> 5M to 10M	Senior Adjudicators	12 years	10 years	3,000
> 10M		18 years	15 years	4,000 #

# Parties can agree to have a higher hourly rate than the cap for the appointment of senior professional to be their adjudicators.

### **Capped amount of Adjudicator's Fee**

<b>Sum in Dispute (in HK\$) (see note 1 &amp; 2 below)</b>	<b>Capped amount of Adjudicator's Fee (in HK\$)</b>
Up to 1,000,000	64,000
> 1,000,000 to 3,000,000	64,000 + 3.800% of & over 1,000,000
> 3,000,000 to 5,000,000	140,000 + 3.500% of & over 3,000,000
> 5,000,000 to 10,000,000	210,000 + 2.400% of & over 5,000,000
> 10,000,001 to 20,000,000	330,000 + 1.260% of & over 10,000,000**
> 20,000,001 to 50,000,000	456,000 + 0.680% of & over 20,000,000**
> 50,000,001 to 80,000,000	660,000 + 0.333% of & over 50,000,000**
> 80,000,001 to 250,000,000	760,000 + 0.200% of & over 80,000,000**
exceeding 250,000,000	1,100,000**

\*\* The adjudicator's fee might exceed the capped amount if the parties have jointly agreed pursuant to Article 15.1.

### **Note 1:**

Subject to **Note 2** below, the sum in dispute is calculated based on information available at the time of the Notice of Adjudication is served on the ANB:

If a payment response has been served by the payment response deadline:

- (i) the ***claimed amount*** (i.e. ***payment claim***) minus ***admitted amount*** (i.e. ***payment response***) for payment dispute on ***admitted amount*** being less than the ***claimed amount***, and any outstanding portion of the ***admitted amount*** not fully paid by the payment deadline (if applicable); or
- (ii) outstanding portion of the ***admitted amount*** for payment dispute solely on ***admitted amount*** not fully paid by the payment deadline; or

If there is no payment response served by the payment response deadline:

- (iii) the ***claimed amount***.

### **Note 2:**

For purpose of ANB Fee and capped amount of Adjudicator's Fee, the sum in dispute shall be calculated in accordance with Note 1 above but, where Article 4.3 and 15.2 apply, may be re-calculated accordingly.

## Form A - Notice of Adjudication

### **PART I**

**Date of Notice served on the respondent:**

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**Name of nominating body\*:**

(1)		Respondent to select one (1) nominating body
(2)		

\* Remarks:

- (i) If no nominating body is specified in the construction contract concerned as the nominating body for the payment dispute, **Claimant** must nominate 2 nominating bodies.
- (ii) If more than one nominating body is specified in the construction contract concerned for the selection of the nominating body for the payment dispute, **Claimant** must nominate 2 nominating bodies from the potential nominating bodies.
- (iii) **Respondent** must, within 5 working days after the date on which the adjudication notice is served on the respondent, select and indicate in the above boxes one of the nominating bodies from the claimant's nomination and serve a written notice on the Claimant to inform the Claimant of the nominating body selected by the Respondent.
- (iv) If the **Respondent** fails to inform the **Claimant** the selection, the **Claimant** must, within 3 working days after the expiry of the deadline mentioned above—
  - (a) select one of the nominating bodies from the Claimant's nomination; and
  - (b) serve a written notice on the Respondent to inform the Respondent of the nominating body selected by the Claimant.

### **PART II**

#### **1. Claimant's Details**

Company:			
Contact Person:			
Address:			
Phone:		Fax:	
Email Address			

#### **1A. Claimant's Representatives (if applicable)**

Company / Firm:			
Contact Person:			
Address:			
Phone:		Fax:	
Email Address			



## 2. Respondent's Details

Company:			
Contact Person:			
Address:			
Phone:		Fax:	
Email Address			

### 2A. Respondent's Representatives (if applicable)

Company / Firm:			
Contact Person:			
Address:			
Phone:		Fax:	
Email Address			

## 3. Contract Details

Please indicate: <input type="checkbox"/> Public Main contract <input type="checkbox"/> Private Main contract <input type="checkbox"/> subcontract (please also fill in <b>Part 3A-Main Contract Details</b> )	Please indicate: <input type="checkbox"/> Works contract <input type="checkbox"/> Supply contract, such as material/ plant/equipment, etc. <input type="checkbox"/> Consultancy services <input type="checkbox"/> Other service contract in relation to construction work: _____
Project Title or Reference (or a brief description of the project):	
Contract Number and a brief description of the contract made with Respondent:	
Contract Sum:	
Form of Contract <sup>1</sup>	
Contract is <input type="checkbox"/> written/ <input type="checkbox"/> oral/ <input type="checkbox"/> partly written and partly oral.	

<sup>1</sup> (Examples, GCC for Building Works/ Civil Eng. works/E&M Eng. works; NEC Engineering and Construction Contract (ECC)/ Term Service Contract (TSC)/ Professional Services Contracts (PSC); HKIS's Standard Form of Building Contracts; HKIA/HKICM/HKIS' Agreement and Schedule of Conditions of Building Contract; HKCA' Standard Form Domestic Sub-contract)

**3A. Main Contract Details** *[If Claimant is subcontractor, please fill in below, if known.]*

<input type="checkbox"/> Public Main contract		<input type="checkbox"/> Private Main contract	
Contract Number and Title			
Contractor Name			
Contract Sum			
Contact Person and email			
Contract Administrator		Company Name:	
		Contact Person:	

**4. Payment Claim: Claimed Amount** HK\$\_\_\_\_\_.

**5. Payment Response:**

(a) **Admitted Amount** ☐ no; ☐ yes, HK\$\_\_\_\_\_.

(b) **Set-off / Deduction** ☐ no;

☐ amount agreed by the Claimant, HK\$\_\_\_\_\_.

☐ amount disagreed by the Claimant, HK\$\_\_\_\_\_.

**6. Amount paid in relation to the payment dispute:** HK\$\_\_\_\_\_.

**7. Nature and Description of the Payment Dispute**

- ☐ Claimed Amount is disputed in full
- ☐ Admitted Amount less than Claimed Amount
- ☐ Failure to pay Admitted Amount in full by the payment deadline of the progress payment
- ☐ Failure to payment response on or before payment response deadline

Payment Dispute involving:

- ☐ Site measurement
- ☐ Valuation of works/services (including valuation of variations)
- ☐ Quality of works
- ☐ Time-related disputes (EOT / Delay / Disruption)

**8. Interest rate**

Please indicate if interest rate for late payment is specified in the contract:

☐ no.

☐ yes, please indicate the interest rate [     ] % and the contractual provision: \_\_\_\_\_

## 9. Preference on Adjudicator\*

- ☐ Senior Adjudicator [Reasons: \_\_\_\_\_]

☐ Language requirement: \_\_\_\_\_

☐ Others: \_\_\_\_\_

\*HKIA reserves right to nominate and appoint an appropriate Adjudicator.

## 10. Optional List of Attachments (please provide two (2) sets of each attachment)

- ☐ Relevant Contractual Terms and Conditions (if applicable)

☐ Copy of Payment Claim

☐ Copy of Payment Response Received (if any)

☐ Copy of prior Assessments (if applicable)

☐ Other relevant documents (e.g., expert reports, photographs, etc.)

Please indicate [ \_\_\_\_\_ ]

(use additional sheet if necessary)

### Reminders for Claimant on subsequent “Adjudication Submission”:

Once the adjudicator is appointed, the claimant is required to submit the **adjudication submission** (the submission) **within one working day** after the date on which the claimant is informed of the appointment under Section 26(2)(b) or Section 27(5)(b) of the Ordinance. The submission should be concise with clear reference(s) and indicative label(s) to any annex(es), if any. An adjudication submission may contain any supporting documents and evidence that the Claimant considers relevant to the adjudication. Below is example of information that is typically required to facilitate the resolution of the payment dispute.

- The submission refers to a specific payment claim.
- a copy of the payment claim and payment response (if any) and record of completion of relevant claim handling procedure (if applicable).
- a copy of the contract payment schedule (if applicable).
- a copy of the relevant contract. If a written contract does not exist, a document referring to the terms of the verbal agreement.
- other relevant submissions (e.g. correspondence between the parties relating to the payment claim, previous invoices, expert reports).
- record on the service of notice of adjudication to the respondent.

For the page limitation and format requirements for the adjudication submission, if any, please refer to HKIA’s website.

## Form B - Potential Adjudicator's Declaration of Acceptance

### Input by HKIA

Case number: \_\_\_\_\_

Adjudicator rank required for the case:

☐ Adjudicator ☐ Senior Adjudicator

I, the undersigned,

Last Name: \_\_\_\_\_

First Name: \_\_\_\_\_

(Please check one box)

### NON-ACCEPTANCE:

- ☐ **decline** to serve as the Adjudicator for the above-referenced case.

### ACCEPTANCE:

- ☐ **accept** to be nominated and, upon appointment is made, to serve as the Adjudicator for the above-referenced case.

By this acceptance, I declare that:

- (a) I have duly considered *Guideline on Conflicts of Interest in Adjudication under SOPL*;
- (b) to the best of my knowledge, there is no conflict of interest in respect of my appointment as the Adjudicator, and there are no circumstances likely to give rise to justifiable doubts as to my independence or impartiality as the Adjudicator;
- (c) I will act independently, impartially, and in a timely manner, and I will avoid incurring unnecessary expenses; and
- (d) I will comply with the principles of natural justice and decide the payment dispute in accordance with the applicable law.

- ☐ declare that I **accept** to be nominated and, upon appointment is made, to serve as the Adjudicator for the above-referenced case.

By this acceptance, I declare and **disclose** that:

- (a) I have duly considered the *Guideline on Conflicts of Interest in Adjudication under SOPL*;
- (b) to the best of my knowledge, there is no conflict of interest in respect of my appointment as the Adjudicator;
- (c) I will act independently, impartially, and in a timely manner, and I will avoid incurring unnecessary expenses;
- (d) I will comply with the principles of natural justice and decide the payment dispute in accordance with the applicable law; and
- (e) with reference to the *Guideline on Conflicts of Interest in Adjudication under SOPL*, there are circumstances, as listed in *Table 1*, that are likely to give rise to justifiable doubts as to my independence or impartiality as the Adjudicator.

*Table 1:*

<b>Guidelines relevant clauses</b>	<b>Relationships</b>

Besides, together with my **CV** attached, I disclose my **recent 3-year employment history** in *Table 2* for parties' reference.

*Table 2:*

<b>Duration</b>	<b>Employer Name</b>	<b>Position</b>
<i>e.g. 2021-2022 Dec</i>	<i>XXX</i>	<i>Director</i>

I shall, from the time of accepting the appointment until the adjudication proceedings are completed, as soon as I am aware, disclose to the parties to the adjudication and HKIA any conflict of interest and/or circumstances that are likely to give rise to justifiable doubts as to my independence or impartiality as the Adjudicator.

As the Adjudicator for the above-referenced case, I will charge this adjudication case with hourly rate: HK\$ \_\_\_\_\_/hr, subject to applicable ceiling as specified by HKIA, if any.

I declare that all of the above information provided is true to the best of my knowledge and belief.

Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_