



ADJUDICATION RULES

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PREAMBLE

Where any agreement, submission or reference provides for adjudication under the Adjudication Rules (the Rules), the parties shall be taken to have agreed that the adjudication shall be conducted in accordance with the Rules, or such amended Rules the HKIS may have adopted to take effect before the commencement of the adjudication. The Rules are subject to such modifications as the parties may agree in writing at any time.

SECTION I – GENERAL

Object of adjudication

1. The object of adjudication is to facilitate timely processing of contract payments and to provide an interim mechanism for speedy resolution of payment disputes under construction contracts.

Administration of adjudication

2. The adjudication will be administered by The Hong Kong Institute of Surveyors (“the HKIS”), whose address is

Room 1205,
12/F, Wing On Centre,
11 Connaught Road Central,
Sheung Wan,
Hong Kong

3. Notwithstanding any other rule herein, the party making the request for adjudication shall remain liable for the fees and expenses of the HKIS until fully paid.

SECTION II – THE APPOINTMENT PROCESS

Appointment of adjudicator

4. The party making the request (“The Claimant”) to The Hong Kong Institute of Surveyors (“the HKIS”) for appointment of adjudicator must complete an application form [App Adj] to the HKIS together with supporting documents and payment of application fee.
5. The application form must be submitted within one (1) working day after the date of issuance of the notice of adjudication.
6. The HKIS will notify the Claimant and acknowledge receipt of the application form within one (1) working day by sending a confirmation email to the Claimant’s e-mail address stated under the application form.
7. Based on the panel of adjudicators maintained by the HKIS, the HKIS shall appoint a single adjudicator as the adjudicator and inform the Claimant and the Respondent in writing of the appointment, within five (5) working days beginning on the commencement date of the adjudication.
8. The HKIS retains the full discretion on nomination of adjudicator.
9. In making its appointment of adjudicator, the HKIS shall select an adjudicator whom it considers as appropriate, and may take into account the following factors:
 - (a) the nature and the amount of the dispute;
 - (b) whether the adjudicator who possesses the required qualifications would be available to accept the appointment;
 - (c) any consideration in respect of the independence and impartiality of the person to be appointed as an adjudicator;
 - (d) any stipulations in the relevant agreement; and/or
 - (e) other factors as the HKIS considers relevant.
10. Notwithstanding the above, an adjudicator nominated by the HKIS is not eligible to be appointed and act as adjudicator for an adjudication of a payment dispute if:
 - (a) that adjudicator nominated is a party (or employee or agent of a party) to the contract under which the payment dispute arose; or

- (b) circumstances exist that give rise to justifiable doubts as to the nominated adjudicator's impartiality or independence.
11. If an adjudicator is considered suitable for nomination, he/she will be approached and asked to confirm certain matters in writing, including (but not limited to) whether:
- (a) the subject matter of the dispute falls within the sphere of his/her normal professional practice;
 - (b) he/she will be able to undertake the task within the time limits set out in the Technical Circular of "Implementation of the Spirit of Security of Payment Legislation in Public Works Contracts" issued by the Development Bureau ("DEVB TC No. 6/2021");
 - (c) he/she is satisfied that he/she has no current involvements that would give rise to a real or perceived conflict of interests, or any such involvements in the past five years;
 - (d) he/she will act independently, impartially and in a timely manner and avoid incurring unnecessary expenses;
 - (e) he/she will comply with the principles of natural justice and decide the payment dispute in accordance with the applicable law; and
 - (f) there are no circumstances likely to give rise to justifiable doubts as to his/her impartiality and independence.
12. The adjudicator must, from the time of accepting the appointment and throughout the adjudication proceedings, disclose to the parties to the adjudication any circumstances likely to give rise to justifiable doubts as to the adjudicator's impartiality and independence.
13. The HKIS may take such action as it deems appropriate where an adjudicator fails to respond to a request for appointment as adjudicator within 1 (one) working day of the request being made.
14. A person selected as an adjudicator shall disclose any circumstances likely to create an impression of bias or prevent him/her from acting promptly. The HKIS, upon receipt of such disclosure, may exercise its discretion on whether to appoint the selected adjudicator or another person as an adjudicator.
15. The appointed adjudicator and the HKIS are not agents of, or acting in any capacity for, any of the parties. The appointed adjudicator is not an agent of the HKIS.

16. No suit or other legal proceedings shall lie against the HKIS or any person acting under the direction of the HKIS with respect to anything done or omitted to be done in the discharge or purported discharge of the HKIS's functions or duties under the DEVB TC No. 6/2021.
17. The HKIS shall not provide any advice relating to the DEVB TC No. 6/2021, including such rules and regulations thereunder.
18. Any decision on the appointment of adjudicator by the HKIS is final and conclusive and shall not be subject to any review or appeal.
19. If for any reason whatsoever the appointed adjudicator is unable to act or resigns, the Claimant may make a fresh request for adjudication.
20. The HKIS is not liable, by reason of having appointed or nominated the adjudicator, for anything done or omitted to be done by the adjudicator in the discharge or purported discharge of his/her functions.

Confidentiality of adjudication

21. The parties to the adjudication, and the adjudicator must not disclose or give to another person any information relating to:
 - (a) an adjudication; or
 - (b) an adjudication decision made in the adjudication.
22. Despite paragraph 21 of the Rules, the parties to the adjudication may disclose or give to another person information referred to in paragraph 21 of the Rules if:
 - (a) the information is in the public domain;
 - (b) the disclosure is made with the consent of:
 - (i) each of the parties to the adjudication; and
 - (ii) the adjudicator for the adjudication;
 - (c) the disclosure is made to the HKIS;
 - (d) the disclosure is necessary for the purpose of settlement of the adjudicated amount;
 - (e) the disclosure is made in another adjudication, a court proceeding, arbitration or any other dispute resolution proceeding in connection with

the contract in respect of which the payment dispute under the adjudication arises;

- (f) the disclosure is made in accordance with the contract or a requirement imposed by law; or
- (g) the disclosure is made to:
 - (i) a professional or any other adviser of the party for the purpose of seeking legal or other professional advice;
 - (ii) insurers or bankers for reasonable commercial purposes;
 - (iii) enable proper applications for or assessments of payments; or
 - (iv) the parties under the contract.

Payment on account

23. Within 5 (five) working days upon the notification of the appointment of adjudicator by the HKIS, the Claimant shall deposit a sum with the HKIS in accordance with the following schedule:

Disputed amount	Deposit
Less than or equal to HK\$200,000	HK\$7,500
Above HK\$200,000	HK\$15,000

Any failure to deposit the entire sum required shall entitle the adjudicator to resign by given notice in writing to the parties.

24. Following the conclusion of the adjudication, the adjudicator shall collect the adjudicator’s fees and expenses out of the funds deposited in the HKIS. Any surplus funds remaining after the adjudicator’s fees and expenses have been paid in full in accordance with paragraph 70 of the Rules shall be returned by the HKIS to the Claimant.

SECTION III – CONDUCT OF THE ADJUDICATION

Claimant to serve adjudication submission

25. The Claimant must in writing serve an adjudication on the adjudicator and the opposing party (“The Respondent”) within 1 (one) working day after the date on which the adjudicator is appointed.
26. An adjudication submission:
 - (a) must be in writing;
 - (b) must identify the notice of adjudication to which it relates; and
 - (c) must contain any supporting documents and evidence that the Claimant considers relevant to the adjudication.

Respondent to serve adjudication response

27. The Respondent may in writing serve an adjudication response on the adjudicator and the Claimant within:
 - (a) 20 (twenty) working days after the date on which the adjudication submission is served on the Respondent; or
 - (b) any longer period the adjudicator specifies.
28. An adjudication response:
 - (a) must be in writing;
 - (b) must set out the Respondent’s reply to the adjudication submission; and
 - (c) must contain any supporting documents and evidence that the Respondent considers relevant to the adjudication.

Jurisdiction of adjudicators

29. The adjudicator’s jurisdiction is limited to determining:
 - (a) the payment dispute that is referred to adjudication by the Claimant; and
 - (b) any other matters that are of a consequential or ancillary nature necessary to exercise or complete the exercise of the jurisdiction conferred by sub-paragraph 29(a) of the Rules.

30. The adjudicator has the power to rule on his/her own jurisdiction.

Adjudicator to conduct adjudication

31. The adjudicator must conduct the adjudication in the manner the adjudicator considers appropriate within the powers provided under paragraph 33 of the Rules.

32. When conducting an adjudication, the adjudicator is not bound by the rules of evidence 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.

Powers of the adjudicator

33. The adjudicator may:

- (a) establish the procedures for conducting the adjudication proceedings;
- (b) determine the language or languages to be used in the adjudication proceedings;
- (c) extend the deadline for service of an adjudication response under paragraph 27 of the Rules;
- (d) request or allow the Claimant or the Respondent to submit further written submissions;
- (e) request or allow a party to the adjudication to produce any document or provide any information that the adjudicator reasonably requires;
- (f) set deadlines for the submission, production of documents and provision of information;
- (g) appoint, with the consent of the parties to the adjudication, an independent expert to inquire or report on any specific matter;
- (h) call a conference of the parties to the adjudication;
- (i) carry out an inspection of the construction site, any construction work or any other thing to which the payment dispute relates including opening up of any construction work done and conducting tests or experiments;

- (j) decide on the proportion of the fees and expenses of the adjudicator and any independent expert appointed under sub-paragraph 33(g) of the Rules to be paid by the parties to the adjudication; and
 - (k) issue any direction as may be necessary or expedient for the conduct of the adjudication.
34. The parties to the adjudication must comply with any request or direction of the adjudicator made or given in writing in accordance with paragraph 33 of the Rules. All communications between a party and the adjudicator must be simultaneously copied to the other party.

Parties may be represented in adjudication proceedings

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

Circumstances where the adjudicator must disregard submission etc.

36. The adjudicator must not consider any submission or response made by a party to the adjudication unless it was given to the adjudicator within the time that the party may give it to the adjudicator.
37. The adjudicator must disregard any submission, evidence or document submitted by a party to the adjudication or any part of it to the extent that it comprises submission or evidence that:
- (a) the other party was unaware of on the date on which the notice of adjudication was served;
 - (b) should reasonably have been served before the date on which the notice of adjudication was served; and
 - (c) cannot be fairly considered and responded to by the other party.

When the adjudicator's powers not affected

38. The adjudicator's power to determine a payment dispute is not affected by the failure of:
- (a) the Respondent to serve an adjudication response on the Claimant under paragraph 27 of the Rules; or
 - (b) any of the parties to the adjudication to:

- (i) make a submission (other than an adjudication submission under paragraph 25 of the Rules) within the time allowed by the adjudicator;
- (ii) comply with the adjudicator's call for a conference of the parties; or do any other thing that the adjudicator requests or directs; or
- (iii) do any other thing the adjudicator requests or directs.

Resignation of the adjudicator

39. The adjudicator may resign by giving notice in writing to the parties to the adjudication if
- (a) the Claimant fails to pay the deposit in accordance with paragraph 23 of the Rules; or
 - (b) the adjudicator considers that it is not possible to decide the dispute fairly within the period specified in paragraph 48 of the Rules.
40. A resignation takes effect on:
- (a) the date specified in the notice; or
 - (b) if no date is so specified, it will be the date on which the notice is served on the parties to the adjudication.
41. Where, prior to any decision being given, the adjudicator resigns, the Claimant may make a fresh request for adjudication in relation to the same or any dispute.

Withdrawal of adjudication proceedings

42. The Claimant may at any time withdraw an adjudication by serving a notice of withdrawal in writing on the adjudicator and the Respondent and the HKIS.
43. When the adjudication is withdrawn by the Claimant, the Claimant shall be liable to pay the fees and expenses incurred in relation to the adjudication up to and including the date on which the adjudication is withdrawn unless the adjudicator orders otherwise.
44. The Claimant who withdraws an adjudication must bear the fees and expenses of the adjudicator and of any independent expert appointed under sub-paragraph 33(g) of the Rules unless the adjudicator orders otherwise.

Termination of adjudication proceedings

45. An adjudication is terminated if:
- (a) the Claimant fails to serve an adjudication submission on the adjudicator and the Respondent within the time specified in paragraph 25 of the Rules;
 - (b) the Claimant serves a notice of withdrawal under paragraph 42 of the Rules;
 - (c) the Respondent pays the claimed amount stated in the notice of adjudication in full to the Claimant;
 - (d) the adjudicator resigns under paragraph 39 of the Rules or becomes unable or unsuitable to act as the adjudicator;
 - (e) the payment dispute is settled by agreement in writing between the parties to the adjudication;
 - (f) the payment dispute is determined by arbitration;
 - (g) the adjudicator fails to deliver an adjudication decision in accordance with paragraph 48 of the Rules; or
 - (h) the adjudicator decides under paragraphs 29 and 30 of the Rules that he/she has no jurisdiction on the payment dispute.
46. The adjudicator shall be entitled to collect reasonable fees and expenses incurred up to the date of the service of notice of termination of the adjudication proceedings or the date of settlement if:
- (a) the parties settle the dispute before the making of the adjudicator's decision; or
 - (b) the adjudicator's appointment is terminated pursuant to paragraph 45 of the Rules.

SECTION IV – ADJUDICATION DECISIONS AND COSTS

Adjudication decisions

47. The adjudicator must determine:
- (a) the payment dispute referred to the adjudicator;
 - (b) the adjudicated amount, if any, to be paid by the Respondent to the Claimant, or, as the case may be, any amount to be paid by the Claimant to the Respondent;
 - (c) the interest payable on the adjudicated amount;
 - (d) the date on which the adjudicated amount is payable; and
 - (e) the proportion of the fees and expenses of the adjudicator and of any independent expert appointed under sub-paragraph 33(g) of the Rules payable by each party to the adjudication.
48. The adjudicator must by hand or if otherwise agree between the adjudicator and the HKIS, through the HKIS, deliver an adjudication decision to the parties to the adjudication within:
- (a) 55 (fifty-five) working days after the date on which the adjudicator is appointed; or
 - (b) any longer period agreed by the parties to the adjudication.
49. An adjudication decision:
- (a) must be in writing; and
 - (b) must contain reasons for the decision unless otherwise agreed by the parties to the adjudication.
50. The adjudicator shall serve a copy of the adjudication decision, including any corrected adjudication decision made under paragraph 52 of the Rules, on the parties and the HKIS.
51. Notwithstanding paragraph 50 of the Rules, before releasing the adjudication decision to the parties, the adjudicator may require full payment of the adjudicator's fees and expenses to be deposited with the HKIS.

Adjudicators may correct typographical errors etc.

52. The adjudicator may, on his/her own initiative or at the request of a party to the adjudication, correct in the adjudication decision any computational or typographical errors or any errors of a similar nature.
53. Any request made by a party under paragraph 52 of the Rules shall be in writing and served on the adjudicator, with copies to the HKIS and to the other party. Before acting on the request, the adjudicator shall afford the other party an opportunity to respond to the request, reasonable in the circumstances and in light of the time limits above, and shall consider any response.
54. Any correction must be done within 5 (five) working days after the date on which the decision is delivered to the parties to the adjudication under paragraph 48 of the Rules.
55. For the avoidance of doubt:
 - (a) any correction done to an adjudication decision does not affect the validity of the decision; and
 - (b) the time limit set out in paragraph 56 of the Rules runs from the date on which the decision is delivered to the parties to the adjudication under paragraph 48 of the Rules.

Settlement of adjudicated amount

56. If the adjudicator determines in an adjudication decision that a party to the adjudication is required to pay an adjudicated amount to the other party, the party must pay the amount to that other party on or before the following date:
 - (a) the date specified by the adjudicator in the adjudication decision; or
 - (b) if no date is specified by the adjudicator in the adjudication decision, it shall be a date that is within 30 (thirty) days after the date on which the adjudication decision is delivered to the parties to the adjudication under paragraph 48 of the Rules.

Interest on late payment of adjudicated amount

57. If the party fails to pay the adjudicated amount in accordance with paragraph 46 of the Rules, the other party is entitled to interest on the unpaid. Interest is calculated on a simple interest basis at the judgment debt rate prescribed from time to time by the Rules of the High Court (Chapter 4 of the Laws of Hong Kong) from the day after the payment due date under paragraph 56 of the Rules.

Costs and expenses of adjudication incurred by parties

58. 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 regardless of whether a party has caused the costs or expenses to be incurred by the other party unnecessarily or for any other reason.

Adjudicator's fees and expenses

59. The adjudicator is entitled to be paid for adjudicating a payment dispute:
- (a) the amount, by way of fees and expenses, agreed between the adjudicator and the parties to the adjudication; or
 - (b) if no amount is agreed, the amount, for fees and expenses, that is reasonable having regard to the work done and the expenses incurred by the adjudicator.
60. The Claimant and Respondent are jointly and severally liable to pay the adjudicator's fees and expenses.
61. The Claimant and Respondent are each liable to contribute to the payment of the adjudicator's fees and expenses:
- (a) in the proportions the adjudicator decides; or
 - (b) in equal proportions if the adjudicator has not decided.
62. The adjudicator is not entitled to be paid any fees or expenses for the adjudication if:
- (a) the adjudicator fails to make an adjudication decision either within the time required under paragraph 48 of the Rules or at all;
 - (b) or the adjudicator resigns during the course of the adjudication.
63. However, paragraph 62 of the Rules does not apply if:
- (a) the adjudication is withdrawn by the Claimant under paragraph 42 of the Rules; or
 - (b) the adjudicator decided that he/she did not have jurisdiction to adjudicate the payment dispute.

64. For the purposes of paragraph 62 of the Rules, the adjudicator does not fail to make an adjudication decision solely on the ground that the adjudicator refuses to deliver the adjudication decision until his/her fees and expenses are paid.
65. For the avoidance of doubt, the adjudicator remains empowered to decide his/her fees and expenses after termination of an adjudication under paragraph 45 of the Rules (except resignation of the adjudicator under paragraph 39 of the Rules and the adjudicator's failure to deliver an adjudication decision in accordance with paragraph 48 of the Rules).

Matters to be considered in deciding fees

66. This paragraph applies if the adjudicator is making a decision about the proportion of the adjudicator's fees and expenses to be paid by the Claimant and Respondent under sub-paragraph 33(j) of the Rules.
67. In making the decision, the adjudicator may consider the following matters:
 - (a) the relative success of the Claimant or Respondent in the adjudication;
 - (b) whether the Claimant or Respondent commenced or participated in the adjudication for an improper purpose;
 - (c) whether the Claimant or Respondent commenced or participated in the adjudication without reasonable prospects of success;
 - (d) whether the Claimant or Respondent has acted unreasonably leading up to the adjudication;
 - (e) whether the Claimant or Respondent has acted unreasonably in the conduct of the adjudication;
 - (f) the reasons given by the Respondent for not making the progress payment the subject of the adjudication application;
 - (g) whether the Respondent included additional reasons for not making the progress payment in the adjudication response that were not included in the payment response served on the Claimant;
 - (e) whether an adjudication application is withdrawn;
 - (h) if the adjudicator has ruled on his own jurisdiction, the reasons for such ruling;

- (i) the services provided by the in adjudicating the payment dispute, including the amount of time taken to consider discrete aspects of the amount claimed; and
- (j) any other matter the considers relevant in making the decision.

Fees and expenses of adjudicators

- 68. The adjudicator's fees and expenses is determined in accordance with the latest fee structure published by the HKIS plus any expenses reasonably incurred by the adjudicator during the adjudication.
- 69. At the time of delivering the adjudication decision to the HKIS, the adjudicator shall submit to the HKIS a copy of his/her direction to the parties to require full payment of fees and expenses including the date of payment to be made by the parties.
- 70. Before releasing the adjudication decision to the parties, the parties are required to deposit the full payment of the adjudicator's fees and expenses to the HKIS.
- 71. The adjudicator shall release the adjudication decision to the parties in dispute upon full payment of the adjudicator's fees and expenses to be deposited with the HKIS by the parties.
- 72. The HKIS shall pay to the adjudicator any fees and expenses deposited by the parties upon receiving a copy of the adjudication decision within the period specified under paragraph 48 of the Rules and refund to the parties any fees and expenses relating to the adjudication if the adjudicator fails to decide the dispute within the period specified under paragraph 62 of the Rules.
- 73. The HKIS shall be responsible for all payment of fees and expenses deposited under paragraph 71 of the Rules including any interest earned from such payment and such interest earned shall be retained by the HKIS.

Section V – Miscellaneous

74. Neither the adjudicator nor the HKIS is civilly liable for an act done or omitted to be done by the adjudicator or the adjudicator nominating body in good faith in:
- (a) performing or purportedly performing a function; or
 - (b) exercising or purportedly
- under the DEVB TC No. 6/2021.
75. The HKIS is not liable, by reason of having appointed or nominated the adjudicator, for anything done or omitted to be done by the adjudicator in the discharge or purported discharge of his/her functions.
76. 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 HKIS consider making such a nomination inappropriate.
77. The HKIS is not obliged to seek representations from the parties concerning possible conflict of interest before appointing an adjudicator.
78. The appointment of adjudicator does not constitute any contract between the HKIS and the adjudicator.