



AALCO HONG KONG REGIONAL ARBITRATION CENTRE

亞非法協香港區域仲裁中心

AALCO Hong Kong Regional Arbitration Centre Construction Industry Security of Payment Ordinance Practice Note on Case Management

1. Scope of Application

- 1.1 This Practice Note applies to all adjudications under the Construction Industry Security of Payment Ordinance, Cap. 652 (the “**Ordinance**”) and the AALCO Hong Kong Regional Arbitration Centre (“**AALCO-HKRAC**”) Security of Payment Adjudication Rules (“**Rules**”) and serves as guidance to the case management of any adjudication under the Ordinance.
- 1.2 This Practice Note is intended to supplement the Rules. Where there is a conflict between the provisions of the Rules and this Practice Note, the Rules will prevail.

2. Conduct of Proceedings

- 2.1 The adjudicator shall conduct the adjudication proceedings in a timely manner and ensure that the determination is made and served on the nominating body that appointed the adjudicator within 55 working days after the date on which the adjudicator is appointed. This time limit may be extended if agreed by all parties.
- 2.2 The adjudicator shall conduct the adjudication proceedings in accordance with the Rules.
- 2.3 Claimant’s adjudication submission should set out the Claimant’s case in full. An adjudication submission may contain any supporting documents and evidence that the Claimant considers relevant to the adjudication. Guidance is set out below on specific information that will normally be annexed:
 - (i) A copy of the duly executed construction contract between the parties to the adjudication to carry out the construction work or to provide the related goods and services;
 - (ii) If a copy of the construction contract is not available, then a copy of other documents to demonstrate that there was an agreement to carry out the construction work or to provide the related goods and services;
 - (iii) A copy of the payment claim;
 - (iv) A copy of the payment response, if any;
 - (v) A copy of the payment record if an admitted amount is partly or fully paid; and
 - (vi) Any other supporting documents and evidence the Claimant considers relevant to the adjudication.

- 2.4 Supporting documents as defined in paragraph 2.3(vi) above should be confined to only those supporting documents and evidence relevant to the adjudication. In all circumstances, parties should refrain from appending unnecessary or duplicative documents or evidence.
- 2.5 The submissions and documents set out in paragraph 2.3 shall generally be provided [by email] in [PDF] format unless otherwise directed by the adjudicator.
- 2.6 An adjudicator may request or allow a party to submit further written submissions or provide any document or evidence where he/she reasonably requires, bearing in mind his/her duties under Section 35(2)(b) and (d) of the Ordinance. Additional information that the adjudicator reasonably requires may include (but are not limited to):
- (i) An agreement/contract or documents to demonstrate the payment terms agreed between the parties;
 - (ii) The contract rates (e.g. bill of quantities) agreed by the parties for the valuation of variations; and
 - (iii) For time related disputes, the details of the extension of time granted in order for prolongation costs to be determined.
- 2.7 Upon receipt of the parties' submissions, the adjudicator shall duly review the submissions, including any assessment made by the contract administrator if submitted by the parties.
- 2.8 Where the adjudicator is presented with an adjudicator's determination on the value of construction work or related goods and services under the same construction contract, the adjudicator shall, pursuant to Section 46 of the Ordinance, give the work, or the goods and services, the same value as that previously determined, unless the adjudicator is satisfied that the value has changed since the previous determination.
- 2.9 The adjudicator has the power to grant an extension of time for serving the adjudication response, or any reply to an adjudication response. In all circumstances, the adjudicator should consider the following non-exclusive factors when exercising his/her power:
- (a) Whether it would be fair to allow the extension;
 - (b) Whether the extension would significantly delay proceedings;
 - (c) Whether a party has had sufficient or reasonable time to consider the matter for which the extension is sought.
- 2.10 The adjudicator may resign from his/her role as adjudicator if, after assessing the case, is of the view that it is not possible to make a determination fairly within the required period. An adjudicator may resign by serving a written notice of resignation on each party and the nominating body that appoints the adjudicator on the same day.
- 2.11 With reference to the Guideline on Conflicts of Interest, if the adjudicator considers that any of the following circumstances has arisen, he/she must resign by serving, on the

same day, a written notice of resignation on each party and the nominating body that appoints the adjudicator:

- (a) he/she has a conflict of interest in respect of the payment dispute concerned; or
- (b) circumstances exist that give rise to justifiable doubts as to the adjudicator's independence or impartiality in considering the payment dispute.

3. Limitations on the submission

- 3.1 Claimants in adjudication proceedings under the Ordinance may be provided guidance on the page and size limits of its submissions in Form A appended to the Rules.
- 3.2 The adjudicator may adjust or give directions on the page limit for the adjudication submission, adjudication response, reply to adjudication response or any further written submission, insofar as such adjustment or direction do not adversely impact the adjudicator's ability to render a timely determination.
- 3.3 Pursuant to Section 37(1) of the Ordinance, the adjudicator must not consider any submission, response or reply unless it is served on the adjudicator within the specified period as defined under Section 37(4) of the Ordinance.
- 3.4 A party may under Section 37(2) of the Ordinance specify in an adjudication response or a reply to an adjudication response that a submission, response, document, or evidence (or any part of it) that has been given by the other party should be disregarded on the basis that:
 - (i) The party receiving the submission, response, document, or evidence (or any part of it) was unaware of that item on the date on which the adjudication notice was served;
 - (ii) That the item should reasonably have been served on the party before the date on which the adjudication notice was served; and
 - (iii) The party cannot fairly consider and respond to that item.
- 3.5 When receiving such objection, the adjudicator must carefully consider the objection and only disregard the submission, response, document or evidence (or the part of it) to the extent that it falls within those descriptions specified in Section 37(2) of the Ordinance.

4. Hearings and Conferences

- 4.1 By default, a conference or hearing is not required, and matters can be resolved by written submissions only.
- 4.2 The adjudicator has the power to call for a conference or hearing if he/she deems necessary and should provide the parties with the following information when informing them that a conference or hearing is required:

- (i) The proposed date and length of time the conference or hearing;
- (ii) Proposed venue of the conference or hearing (including whether it will take place virtually);
- (iii) Language of the conference or hearing (including whether any interpreters are required); and
- (iv) Agenda for the conference or hearing, including any particular points the adjudicator wishes to receive oral submissions on.

4.3 Each party may request for a conference or hearing. In making a request, the party should state in writing:

- (i) The purpose of the conference or hearing and explain why a conference or hearing is necessary given the circumstances;
- (ii) Proposed dates for the conference or hearing;
- (iii) Proposed venue for the conference or hearing (including whether it will take place virtually);
- (iv) Estimated duration of the conference or hearing;
- (v) Representatives that will appear at the conference or hearing;
- (vi) Proposed language of the conference or hearing (including whether any interpreters are required); and
- (vii) Indication as to what documents will be referred to at the conference or hearing.

5. Adjudicator-Appointed Experts

5.1 An adjudicator has the power to appoint an independent expert to inquire or report on any specific matter, unless otherwise agreed by the parties. The adjudicator may consider appointing an independent expert in the following circumstances:

- (i) The adjudicator considers the expert's opinion on any specific matter(s) to be crucial to the adjudicator's determination, without which the adjudicator's determination may not be complete or correct; and
- (ii) The adjudicator considers it appropriate and proportionate in terms of time and costs to appoint an independent expert.

5.2 To facilitate the adjudicator's consideration of appointing the expert as mentioned in paragraph 5.1, and before deciding to appoint an expert, the adjudicator should seek the parties' views within a short period of time (such as 2 days) on whether the expert's opinion on any specific matter(s) to be crucial to the adjudicator's determination, without which the adjudicator's determination may not be complete or correct, as well as whether it would be appropriate and proportionate to in terms of time and costs to appoint such an expert.

5.3 As soon as possible after the adjudicator's decision to appoint an independent expert, the adjudicator shall give directions on the process for the appointment. Parties should be given an opportunity to either propose, agree, and/or comment on the proposed expert candidate(s). The proposed expert candidate should declare in writing that: -

- (1) he/she has no conflict of interest in respect of the appointment; and
- (2) either (a) there are no circumstances likely to give rise to justifiable doubts as to the candidate's independence or impartiality to be appointed as the expert; or (b) there are circumstances likely to give rise to justifiable doubts as to the candidate's independence or impartiality to be appointed as the expert.

If the candidate makes a declaration under sub-para (2)(b), he/she must, together with the declaration, disclose in writing the circumstances.

- 5.4 Following the appointment of the expert, the adjudicator shall consult with the expert and the parties to establish terms of reference for the expert in accordance with Article 13.1 of the Rules.

6. Site Inspection, Opening Up of Construction Work, Tests and Experiments

- 6.1 An adjudicator may carry out or require a party to carry out an inspection of the construction site, any construction work or any other thing to which the payment dispute relates.

- 6.2 If a party wishes to request a site inspection, they should provide the following information in writing:

- (i) The purpose and reason for the inspection, including explanations as to why the inspection is necessary and whether the information can be shown via submissions and documentation;
- (ii) Proposed dates for the site inspection;
- (iii) Propose agenda/rundown/checklist for the inspection;
- (iv) The exact location of the area of the site to be inspected;
- (v) Estimated duration of the inspection;
- (vi) Estimated costs of the inspection;
- (vii) Proposed representatives/attendees of the inspection and their role;
- (viii) Notice and/or authority from the main contractor or site owner granting permission to enter the site.

- 6.3 If the adjudicator exercises his power to carry out an inspection, he/she should provide the following information to the parties:

- (i) Date and time to be reserved for the inspection;
- (ii) Rundown/checklist/agenda for the inspection;
- (iii) Inspection location(s); and
- (iv) Invite the parties to obtain permission to enter the site

- 6.4 The adjudicator may also, upon application of a party or on his own initiative direct any opening up of any construction work done, or direct that tests or experiments be conducted. The adjudicator should take into account the time and costs required to open

up any construction work or conduct any tests or experiments when exercising this power.