

**Hong Kong International Arbitration Centre  
ADJUDICATION RULES**

## Table of Contents

Contents	Page No.
1. Introductory Notes .....	P.3
2. Section I – Object and Administration of Adjudication .....	P.4
3. Section II – The Referral Process .....	P.4
4. Section III – Conduct of the Adjudication .....	P.7
5. Section IV – Adjudication Decisions and Costs .....	P.10
6. Section V – Supplementary Provisions .....	P.12

## **INTRODUCTORY NOTES**

Adjudication is here intended to provide a quick process for the resolution of disputes which arise during the currency of a contract, with any decision to remain binding until any fuller consideration in subsequent arbitration or litigation.

These rules are based on a consideration of the following English sources: the Housing Grants, Construction and Regeneration Act 1996 (“the HGCRA 1996”) and SI 1998 No 649 the Scheme for Construction Contracts (England & Wales) Regulations (“the Scheme”); ICE Conditions of Contract (7<sup>th</sup> edition) and Adjudication Procedure (1997); JCT Standard Form of Building Contract 1998, Amendment No 4, 2002; Technology & Construction Solicitors Association 2002 Version 2.0 Procedural Rules for Adjudication; Construction Industry Council Model Adjudication Procedure (2<sup>nd</sup> edition); the Arbitration Act 1996.

These rules are also based on consideration of the following Hong Kong sources: Airport Core Programme Adjudication Rules (1992 edition); Condition of Contracts Sub-Committee Paper on ADR for Public Works, Construction Adjudication Rules 2003 (“the CCSC paper”).

The CCSC paper provides for a party to the contract to refuse to adjudicate, making it an optional process only. It also proposes an extended timetable.

The HGCRA 1996 by section 108 imposes very tight time limits on the appointment of an adjudicator and the reaching of his or her decision. There is no possibility of a responding party refusing to participate in the adjudication. These provisions are mandatory if the contract is governed by English law, and failure to comply results in contractual rules for adjudication being replaced in their entirety with the Scheme.

These rules should also be suitable for contracts other than for construction.

# **HKIAC ADJUDICATION RULES**

## **SECTION I – OBJECT AND ADMINISTRATION OF ADJUDICATION**

### **Object of adjudication**

1. The object of adjudication is to obtain the fair resolution of any dispute arising under the contract without unreasonable delay or expense and these rules shall be interpreted accordingly.
2. Any adjudication shall be by a sole adjudicator in accordance with these rules and the terms of the contract and its applicable law.

### **Administration of adjudication**

3. The adjudication will be administered by Hong Kong International Arbitration Centre (“HKIAC”), whose address is:  
  
38<sup>th</sup> Floor, Two Exchange Square  
8 Connaught Place  
Hong Kong  
Tel: +852 2525 2381  
Fax: +852 2524 2171  
[www.hkiac.org](http://www.hkiac.org)
4. The place of adjudication shall be HKIAC, and the language of the adjudication shall be English, with all written communications made and any hearings conducted in English, unless the parties and the adjudicator otherwise agree.
5. Notwithstanding any other rule herein, the parties shall remain jointly and severally liable for the fees and expenses of HKIAC until fully paid.
6. Reference herein to days means calendar days. A notice or document may be served or provided by any effective means.

## **SECTION II – THE REFERRAL PROCESS**

### **Request for adjudication**

7. Any party to the contract (“the referring party”) may at any time make a written request (“the request for adjudication”) to refer to adjudication any dispute arising under the contract.
8. The request for adjudication shall be served on every other person who is party to the contract and to the dispute (“responding party”), and on HKIAC.

9. The request for adjudication shall contain a concise statement of the nature and background of the dispute, the issues arising and the remedy sought. It shall also contain the name of each responding party and its address for service.

#### **Appointment of adjudicator**

10. At the same time as the referring party serves the request for adjudication, it shall also serve on each responding party, and on HKIAC, a list (“list of nominees”) of at least 3 names of nominees for adjudicator with their current fee rates and any other conditions of appointment.
11. At the same time as a responding party serves the notice of participation confirming its agreement to participate, it shall provide its list of nominees, which shall be served on the referring party and HKIAC, and on any other responding party.
12. Before a party serves its list of nominees, it shall ensure that its nominees are willing and able to act as adjudicator in relation to the dispute. It shall ascertain whether its nominees have any financial or personal or any other conflicting interest in the result of the adjudication, which shall be declared to the other parties and to HKIAC.
13. Within 14 days of receipt of the request for adjudication, the parties will attempt to agree on a mutually acceptable person to be nominated as adjudicator. Any such agreement shall be notified immediately to HKIAC who shall promptly appoint the nominee as adjudicator.
14. Failing any such agreement within the time specified as above, each party shall thereupon send to HKIAC a combined list of all nominees, deleting the name of any nominee objected to, and indicating an order of preference for those names remaining.
15. After 21 days from receipt of the request for adjudication, HKIAC shall promptly appoint an adjudicator from among the names on those combined lists returned to it, in accordance with the deletions and orders of preference.
16. If, for any reason whatsoever, it should not be possible to appoint an adjudicator in accordance with the procedure under this heading, then HKIAC shall promptly and in its absolute discretion appoint an adjudicator of its choice who is willing and able to act.

#### **Adjudicator to have no conflicting interest**

17. No person shall be appointed as adjudicator who is an employee of any of the parties, or who has any financial or personal or any other conflicting interest in the result of the adjudication, except with the written consent of the parties.

#### **Adjudication submissions**

18. HKIAC shall confirm the appointment of an adjudicator in writing to the parties and to the adjudicator as soon as possible following the appointment.

19. Within 7 days of receipt of written confirmation of the appointment of the adjudicator, the referring party shall serve its written referral submissions (“the referral submissions”) on each responding party and the adjudicator with a copy to HKIAC.
20. The referral submissions shall contain concise submissions in relation to the dispute. They shall contain copies of all documents which have an important and direct bearing on the issues.
21. The dispute is deemed referred to the adjudicator in receipt by him or her of the referral submissions.
22. Within 7 days of receipt of the referral submissions, each responding party shall serve its written response submissions (“response submissions”) on the referring party, any other responding party and the adjudicator with a copy to HKIAC.
23. The response submissions shall contain concise submissions in relation to the dispute. They shall contain copies of any further documents, not contained in the referral submissions, which have an important and direct bearing on the issues.

**Payment on account**

24. On the instructions of the adjudicator, each party shall, within 7 days, deposit the sum of HK\$50,000 with HKIAC, or such other sum as the adjudicator shall in his or her absolute discretion require, as a payment on account of the costs of adjudication.
25. The adjudicator may at any time direct the parties to make further deposits with HKIAC as payment on account of the additional anticipated costs of adjudication.
26. If any party fails to make any deposit as required, its share may be paid by any other party. Any failure to deposit the entire sum required shall entitle the adjudicator to stay the proceedings.
27. Following the conclusion of the adjudication, the adjudicator shall collect the adjudicator’s fees and expenses out of the funds deposited in HKIAC. Any surplus funds remaining after the adjudicator’s fees and expenses have been paid in full in accordance with Clause 74 shall be returned by the instructions of the adjudicator by HKIAC to the party that deposited it, unless otherwise directed by the adjudicator.

## **SECTION III – CONDUCT OF THE ADJUDICATION**

### **Overriding duties of the adjudicator**

28. The adjudicator shall act impartially and fairly, and in accordance with these rules and the terms of the contract and its applicable law and shall avoid incurring unreasonable expense or delay.

### **Adjudication procedure**

29. The adjudicator may take the initiative in ascertaining the facts and the law necessary to determine the dispute.
30. The adjudicator shall have the widest available discretion to decide on the procedure to be followed in the adjudication.
31. The adjudicator shall give each party an opportunity, reasonable in the circumstances of the adjudication, of putting its case and dealing with that of the other parties.
32. 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.
33. The adjudicator may decide 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 submissions alone.
34. The adjudicator shall fix the date, time and place of any meetings, hearings or inspections as he considers appropriate and shall give the parties reasonable advance notice.
35. Any party may be assisted or represented by such advisers or representatives (whether legally qualified or not) as it considers appropriate. A party shall notify the other parties, the adjudicator and HKIAC immediately of any such representation.

### **Witnesses**

36. 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.
37. The adjudicator may allow, refuse or limit the appearance of witnesses at any hearing, whether witnesses of fact or expert witnesses.
38. 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.

39. The adjudicator may allow the evidence of a witness to be presented in written form. Any party may make representations that a witness should attend for oral examination at a hearing, and the adjudicator may so direct.
40. 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**

41. By the terms of the contract or by further written agreement, the parties may limit the powers of the adjudicator or confer any power upon him or her.
42. Subject to the above rule, and 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 meet and question any party or representative or witness;
  - (c) To make any inspection or site visit, and to carry out or require to be carried out any test or experiment or opening up;
  - (d) To direct the inspection, preservation, storage or interim custody of any property or sample or thing under the control of any party;
  - (e) To appoint no more than 2 experts, whether legal or technical, independent of the parties, to assist the adjudicator;
  - (f) To request any further submissions or representations or statements, and at any time to permit any party to amend the aforesaid;
  - (g) 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;
  - (h) 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;
  - (i) Otherwise to issue directions relating to the conduct of the adjudication.
43. The adjudicator has power to rule on his or her own jurisdiction and the validity of his or her appointment.
44. The adjudicator may open up, revise and 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.

### **Parties to facilitate adjudication**

45. 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.
46. 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 as to the payment of the costs of the adjudication or the costs of the parties.

### **Consolidation and joinder**

- 47. 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.
- 48. Any party may at any time ask that additional parties be joined to the adjudication. Such joinder is subject to the agreement of the adjudicator and the current and additional parties. The additional parties shall be bound by these rules, unless otherwise agreed by the adjudicator and the parties.

### **Resignation of adjudicator**

- 49. The adjudicator may resign 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.
- 50. The authority of an adjudicator is personal and ceases on the adjudicator's death.

### **Revoking the appointment**

- 51. 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 HKIAC.
- 52. HKIAC 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. Such power shall be exercised in the absolute discretion of HKIAC, but only on the written request of any party who represents that the adjudicator is not acting, or is unable to conduct the adjudication, in accordance with these rules. Such request shall be served on HKIAC, with copies to the other parties and the adjudicator. Before exercising this power, HKIAC shall afford the other parties and the adjudicator a reasonable opportunity to respond to the request, and shall consider any such response.
- 53. 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**

54. By agreement between the parties, the adjudication may be terminated at any time on giving written notice to the adjudicator and to HKIAC.

### **No bar on fresh requests for adjudication**

55. Where, prior to any decision being given, an adjudicator resigns or dies, or the adjudicator's appointment is revoked, or the adjudication is terminated:
- (a) The parties may agree the nomination of a replacement adjudicator to be appointed by HKIAC, or may by agreement request HKIAC to appoint a replacement adjudicator of its choice; or
  - (b) Any party may make a fresh request for adjudication in relation to the same or any dispute.
56. The parties must 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.

## **SECTION IV – ADJUDICATION DECISIONS AND COSTS**

### **Adjudication decisions**

57. The adjudicator shall decide the matters in dispute set out in the request for adjudication, together with any other matters which the parties and the adjudicator agree should be within the scope of the adjudication.
58. The adjudicator shall reach a decision within 56 days of the referral submissions. The parties may agree, after the dispute has been referred to the adjudicator, for the adjudicator to reach a decision within any longer period.
59. The adjudicator may withhold delivery of its decision once reached until the adjudicator's fees and expenses have been fully paid, on written notice to the parties and HKIAC.
60. If the adjudicator, for any reason, fails to reach a decision within the time specified, the adjudication is thereupon terminated.
61. The adjudicator shall render his or her decision in writing, which shall be signed and dated by the adjudicator, and which shall:
- (a) State the dispute 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 adjudicator's fees and expenses, including the charges of HKIAC.

62. The adjudicator may make separate decisions on different issues at different times, save that all decisions shall be reached within the period set out above.
63. In rendering the decision, the adjudicator may order any remedy which could be ordered by the Court of Hong Kong SAR if the dispute was before it.
64. The adjudicator may order that any surplus sums deposited with HKIAC as payment on account of the costs of adjudication be paid out to any party.
65. Subject to the terms of the contract, the adjudicator may order that simple or compound interest on amounts which are the subject of the adjudicator be paid at such rates and for such periods as the adjudicator thinks appropriate.
66. 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 may monitor such consequences.
67. 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.
68. The parties shall implement the adjudicator's decision without delay. The adjudicator's decision is deemed to be a settlement agreement within the meaning of section 2C of the Arbitration Ordinance chapter 341 of the Laws of Hong Kong.

#### **Corrections and clarifications**

69. 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 mistake arising from an accidental slip or omission, provided that the initiative is taken or the request made within 7 days of the date of the decision. The adjudicator shall make any corrections within 7 days of any request.
70. 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 7 days of the date of the decision. The adjudicator shall make any clarification or additional decision within 7 days of any request.
71. Any such request under this heading shall be in writing and served on the adjudicator, with copies to HKIAC 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**

72. Except as elsewhere provided in these rules, the adjudicator is entitled to his or her fees and expenses, in reasonable amount and reasonably incurred.
73. Notwithstanding any other rule herein, the parties remain jointly and severally liable to the adjudicator for the adjudicator's fees and expenses to which the adjudicator is entitled until paid in full.
74. In the absence of direction by the adjudicator, each party shall bear its own costs, and shall pay an equal share of the adjudicator's fees and expenses.
75. The adjudicator may determine the proportions in which the parties shall pay its fees and expenses, including whether any party shall pay for a specific expense.
76. The adjudicator may direct that all or part of the legal or other costs of any party, such costs being reasonable in amount and reasonably incurred, be paid by any other party. The adjudicator has the power to assess such costs and shall do so if requested by any party.
77. If one party has already paid the adjudicator those 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.
78. Upon the adjudicator's resignation, or the adjudicator's failure to reach a decision within the time specified, the adjudicator shall be entitled to his or her fees and expenses only if the adjudicator acted reasonably in all the circumstances.
79. 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.
80. 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 HKIAC 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, HKIAC 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.

### **SECTION V – SUPPLEMENTARY PROVISIONS**

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

81. The adjudicator shall not be appointed as arbitrator in any subsequent arbitration between the parties, unless the parties otherwise agree in writing.

82. The adjudicator may be called as a witness in any subsequent arbitration or litigation and is entitled to his or her fees and expenses, in reasonable amount and reasonably incurred in acting as a witness.
83. 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.
84. 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**

85. None of HKIAC, HKIAC Council, HKIAC Secretariat or their staff, adjudicators nor experts appointed by 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.
86. The adjudicator is appointed to determine the disputes between the parties, and the adjudicator shall owe no duty of care to any third party.