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# Construction Industry Security of Payment Bill

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# A BILL

## To

Facilitate the recovery of payments under construction contracts; to provide a mechanism for speedy resolution of payment disputes under certain construction contracts through adjudication proceedings; to give a right to a party to a construction contract, under certain circumstances, to suspend or reduce the rate of progress of the construction work or the supply of related goods and services under the contract; and to provide for related matters.

Enacted by the Legislative Council.

### **Part 1**

#### **Preliminary**

##### **Division 1—Short Title and Commencement**

###### **1. Short title and commencement**

- (1) This Ordinance may be cited as the Construction Industry Security of Payment Ordinance.
- (2) Subject to subsection (3), this Ordinance comes into operation on the expiry of 8 months after the day on which it is published in the Gazette.

- (3) The following provisions come into operation on the day on which this Ordinance is published in the Gazette—
- (a) Division 1 of Part 1;
  - (b) section 2 (in so far as it relates to Divisions 1, 2 and 4 of Part 5, except section 66);
  - (c) Divisions 1, 2 and 4 of Part 5, except section 66;
  - (d) Part 6.

## Division 2—Interpretation

### 2. Interpretation

(1) In this Ordinance—

**adjudicated amount** (經審裁款額) means an amount determined under section 42;

**adjudication notice** (審裁通知)—see section 25(1);

**adjudication proceedings** (審裁程序), in relation to a payment dispute, means the process of adjudicating the payment dispute in accordance with Part 3;

**adjudication rules** (《審裁規則》), in relation to a nominating body, means the rules made by the body in respect of the conduct of adjudication proceedings;

**adjudicator** (審裁員) means an individual appointed in accordance with Part 3 to determine a payment dispute for which adjudication proceedings are initiated;

**admitted amount** (認付款額)—see section 19(2)(c)(i);

**claimant** (申索人) means a claiming party who initiates adjudication proceedings;

**claimed amount** (申索款額)—see section 18(3)(c);

**claiming party** (申索方)—see section 18(1);



**common parts** (公用部分) has the meaning given by section 2 of the Building Management Ordinance (Cap. 344);

**construction contract** (建造合約)—

- (a) means a legally enforceable agreement under which—
  - (i) a party agrees to carry out construction work for another party; or
  - (ii) a party agrees to supply related goods and services for construction work to another party; but
- (b) does not include a development contract under which the whole consideration payable is calculated otherwise than by reference to the value of the construction work carried out or the related goods and services supplied;

**construction site** (建造工地)—

- (a) in relation to a construction contract for carrying out construction work—means the place where the construction work is, or is to be, carried out under the contract; or
- (b) in relation to a construction contract for supplying related goods and services for construction work—means the place where the construction work is, or is to be, carried out;

**construction work** (建造工作)—see section 3;

**main private contract** (總私人承包合約)—see section 4(2);

**nominating body** (提名團體) means a body corporate the name of which is listed on the register established and kept under section 61(1)(b);

**occupation permit** (佔用許可證) means—

- (a) an occupation permit or temporary occupation permit issued under section 21(2) of the Buildings Ordinance (Cap. 123); or
- (b) an instrument issued by the Director of Housing (or a person authorized by the Director of Housing) certifying that a building constructed by or on behalf of the Hong Kong Housing Authority is completed;

**owner** (擁有人) means a person who—

- (a) enters into a construction contract with another person for that other person to—
  - (i) carry out construction work on a construction site; or
  - (ii) supply related goods and services for construction work on a construction site; and
- (b) is not engaged by any other person to—
  - (i) carry out construction work on the construction site under a construction contract; or
  - (ii) supply related goods and services for construction work on the construction site under a construction contract;

**panel of adjudicators** (審裁員名單), in relation to a nominating body, means the panel established and maintained by the body under section 63(a);

**paying party** (付款方)—see section 18(1);

**payment claim** (付款申索)—see section 18(1);

**payment deadline** (付款期限)—

- (a) in relation to a progress payment—means the date by which the progress payment is required to be paid under section 15; or

- (b) in relation to an adjudicated amount—means the date on which the period within which the adjudicated amount is required to be paid under section 43 expires;

**payment dispute** (付款爭議)—see section 23;

**payment response** (付款回應)—see section 19(1);

**payment response deadline** (付款回應期限), in relation to a payment response, means the date by which the payment response must be served under section 20;

**progress payment** (進度款) means a payment for carrying out construction work, or supplying related goods and services for construction work, under a construction contract and includes—

- (a) a one-off payment;
- (b) an interim payment or a final payment; and
- (c) a payment that is payable on the occurrence of an event or on a date;

**public contract** (公共合約)—see section 4(1);

**related goods and services** (相關貨品及服務)—see section 6;

**residential unit** (住宅單位), in relation to a building—

- (a) means a separate unit—
  - (i) contained in the building; and
  - (ii) constructed solely or principally for human habitation; but
- (b) does not include any premises in the building used, or intended to be used, solely or principally for any of the purposes specified in Schedule 1;

**respondent** (答辯人) means a paying party against whom adjudication proceedings are initiated;

**Secretary** (局長) means the Secretary for Development;

**selected body** (獲選團體) means—

- (a) the nominating body selected by a respondent under section 27(3)(a); or
- (b) the nominating body selected by a claimant under section 27(4)(a);

**specified structure** (指明構築物) means any building, structure or works specified in Schedule 2;

**subcontract** (分包合約)—see section 5.

- (2) For the purposes of this Ordinance, a residential unit is an existing residential unit if—
  - (a) in the case of a certificate of exemption having been issued under section 5(a) of the Buildings Ordinance (Application to the New Territories) Ordinance (Cap. 121) in respect of building works for the building that contains the residential unit—
    - (i) a letter has been issued by the Director of Lands confirming that the Director of Lands has no objection to the building being occupied; or
    - (ii) a certificate of compliance or consent to assign has been issued by the Director of Lands in relation to the land on which the building is situated; or
  - (b) in any other case—an occupation permit has been issued in relation to the building that contains the residential unit.

### 3. **Meaning of *construction work***

- (1) Construction work is—

- (a) the construction, installation or erection of a specified structure; or
  - (b) the replacement, extension, renewal, alteration, repair, restoration, maintenance, dismantling or demolition of, or the addition to, an existing specified structure.
- (2) Without limiting subsection (1), any work mentioned in that subsection includes—
- (a) work that is carried out to an integral or ancillary part of a specified structure, including—
    - (i) making architectural features;
    - (ii) undertaking utilities and services installations;
    - (iii) landscaping; and
    - (iv) painting or decorating external or internal surfaces; and
  - (b) work that is preparatory to, or for rendering complete, any work mentioned in that subsection, including—
    - (i) site clearance, site investigation, excavation, filling, tunnelling and boring;
    - (ii) provision of access roads and scaffolding;
    - (iii) construction and maintenance of site offices; and
    - (iv) site restoration.
- (3) In subsection (2)—

***utilities and services installation*** (公用設施及裝備裝置) includes any electrical and mechanical installation, building services installation, electronic installation, radio and broadcasting installation and telecommunication installation.

**4. Meanings of *public contract* and *main private contract***

- (1) A construction contract is a public contract if—
- (a) a party to the contract is one or more owners; and
  - (b) either—
    - (i) if there is only one owner—the owner is a specified entity; or
    - (ii) if there is more than one owner—at least one of the owners is a specified entity.
- (2) A construction contract is a main private contract if—
- (a) a party to the contract is one or more owners; and
  - (b) either—
    - (i) if there is only one owner—the owner is not a specified entity; or
    - (ii) if there is more than one owner—none of the owners is a specified entity.

- (3) In this section—

*specified entity* (指明實體) means any of the following—

- (a) the Government;
- (b) a body specified in Schedule 3;
- (c) a subsidiary undertaking (within the meaning of section 4 of Schedule 1 to the Companies Ordinance (Cap. 622)) of a body specified in Schedule 3.

**5. Meaning of *subcontract***

- (1) If a construction contract (*Contract A*) (or part of Contract A) is entered into for—

- (a) carrying out any construction work under another construction contract (***Contract B***); or
- (b) supplying any related goods and services for construction work under Contract B,

Contract A is a subcontract of Contract B, whether or not a party to Contract A is also a party to Contract B.

- (2) To avoid doubt, Contract A is not a subcontract of Contract B if Contract A is entered into after the discharge or termination of Contract B.

**6. Meaning of *related goods and services***

- (1) In relation to construction work, related goods and services are any of the following—
  - (a) goods of the following kind—
    - (i) materials or components supplied for forming part of a specified structure arising from the construction work;
    - (ii) plant, equipment or materials for use in connection with carrying out the construction work;
  - (b) services of the following kind—
    - (i) providing manpower resources for the carrying out of the construction work;
    - (ii) transporting the goods specified in paragraph (a);
    - (iii) disposing any materials in connection with the construction work;
    - (iv) conducting feasibility or planning studies that may give rise to the construction work;

- (v) providing consultancy services in connection with the construction work;
  - (vi) providing engineering testing services in connection with the construction work.
- (2) In subsection (1)—

*consultancy services* (顧問服務) means services relating to project planning, project management, design, procurement, contract administration, asset management, asset maintenance, site supervision, surveying or quantity surveying.

### **Division 3—Application**

#### **7. Ordinance applies to certain public contracts and their subcontracts**

- (1) This Ordinance applies to—
- (a) a public contract—
    - (i) that is entered into on or after the commencement date of this subsection; and
    - (ii) the contract value of which, as at the date on which the contract is entered into, is not less than the value specified in Schedule 4; and
  - (b) a subcontract of the public contract.
- (2) Subsection (1) applies to a contract or subcontract—
- (a) whether written or oral, or partly written and partly oral; and
  - (b) whether governed by the law of Hong Kong or not.



**8. Ordinance applies to certain main private contracts and their subcontracts**

- (1) Also, this Ordinance applies to—
  - (a) a main private contract—
    - (i) that is entered into on or after the commencement date of this subsection; and
    - (ii) subject to subsections (3) and (4), the contract value of which, as at the date on which the contract is entered into, is not less than the value specified in Schedule 4; and
  - (b) a subcontract of the main private contract.
- (2) Subsection (1) applies to a contract or subcontract—
  - (a) whether written or oral, or partly written and partly oral; and
  - (b) whether governed by the law of Hong Kong or not.
- (3) The contract value of the main private contract under subsection (1)(a)(ii) must not include any value other than—
  - (a) the value of the carrying out of construction work referred to in section 3(1)(a) under the main private contract;
  - (b) the value of the carrying out of construction work under the main private contract—
    - (i) that is referred to in section 3(1)(b); and
    - (ii) that requires the approval and consent of the Building Authority under section 14(1) of the Buildings Ordinance (Cap. 123) for it to commence or be carried out; and

- (c) the value of the supply of related goods and services under the main private contract for the construction work specified in paragraph (a) or (b).
- (4) The contract value of the main private contract under subsection (1)(a)(ii) must also not include the value of the carrying out of construction work, or the supply of related goods and services for construction work, under the main private contract at a construction site that is—
  - (a) an existing residential unit; or
  - (b) the common parts of a building (as defined by section 2 of the Building Management Ordinance (Cap. 344)) that contains one or more existing residential units.

**9. When does Ordinance not apply**

- (1) This Ordinance does not apply to—
  - (a) a construction contract to the extent that it contains provisions under which the consideration payable for construction work carried out, or related goods and services supplied, under the contract, is to be calculated otherwise than by reference to the value of—
    - (i) the construction work carried out; or
    - (ii) the related goods and services supplied; or
  - (b) a construction contract to the extent that it contains provisions under which a party to the contract undertakes to carry out construction work, or supply related goods and services, as an employee (as defined by section 2(1) of the Employment Ordinance (Cap. 57)) of another party to the contract for whom—

- (i) the construction work is to be carried out; or
  - (ii) the related goods and services are to be supplied.
- (2) This Ordinance does not apply to a construction contract to the extent that it deals with—
  - (a) construction work carried out outside Hong Kong; or
  - (b) related goods and services supplied for construction work carried out outside Hong Kong.
- (3) This Ordinance does not apply to a main private contract or its subcontract to the extent that the contract or subcontract deals with the carrying out of construction work, or the supply of related goods and services for construction work, at a construction site that is—
  - (a) an existing residential unit; or
  - (b) the common parts of a building (as defined by section 2 of the Building Management Ordinance (Cap. 344)) that contains one or more existing residential units.

**10. Application to Government**

This Ordinance applies to the Government.

**11. No contracting out of Ordinance**

- (1) This Ordinance has effect despite anything to the contrary in any provision in a contract or agreement.
- (2) A provision in a contract or agreement, whether in writing or not, is void to the extent that—
  - (a) it is inconsistent with this Ordinance;

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- (b) it has the effect of excluding, modifying or restricting the operation of this Ordinance; or
  - (c) it may be construed as an attempt to deter a person from taking action under this Ordinance.
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## Part 2

### Payments

#### Division 1—Interpretation

#### 12. Interpretation of Part 2

In this Part—

**billing date** (發單日), in relation to a progress payment under a construction contract, means—

- (a) a date stated in, or worked out under, the contract as the date on which a payment claim for the progress payment may be made; or
- (b) if the contract does not provide for such a date—the last day of a calendar month—
  - (i) that is no earlier than the month immediately following the month in which the contract is made; and
  - (ii) in which a payment claim for the progress payment may be made for—
    - (A) construction work that has been carried out up to the last day of that calendar month under the contract; or
    - (B) related goods and services that have been supplied up to the last day of that calendar month under the contract;

**carried out** (進行) includes, except in paragraph (b) of the definition of **billing date**, undertaken to be carried out;

**supplied** (供應) includes, except in paragraph (b) of the definition of **billing date**, undertaken to be supplied.

## **Division 2—Progress Payments**

### **13. Right to progress payments**

A person is entitled to a progress payment if the person—

- (a) has carried out construction work under a construction contract; or
- (b) has supplied related goods and services under a construction contract.

### **14. Amount of progress payment**

- (1) The amount of a progress payment to which a person is entitled under a construction contract is—
  - (a) the amount assessed in accordance with the contract; or
  - (b) if the contract does not provide for a method assessing the amount of the progress payment—the amount assessed on the basis of the value of—
    - (i) construction work carried out by the person under the contract; or
    - (ii) related goods and services supplied by the person under the contract.
- (2) For the purposes of subsection (1)(b), construction work carried out, or related goods and services supplied, under a construction contract are to be valued having regard to—
  - (a) the contract price or rate for the construction work or related goods and services;
  - (b) any other price or rate specified in the contract;

- (c) any variation agreed to by the parties to the contract by which the contract price or rate, or any other price or rate specified in the contract, is to be adjusted by a specific amount;
- (d) in the absence of the matters referred to in paragraphs (a), (b) and (c)—a reasonable price or rate at the time the construction work was carried out or at the time the related goods and services were supplied; and
- (e) if any part of the construction work or related goods and services is defective or does not conform to the requirements of the contract but the paying party accepts the construction work or related goods and services—
  - (i) the deduction for the estimated cost of rectifying any defect or correcting any non-conformance; or
  - (ii) the deduction for the diminution in the value of the construction work or related goods and services,whichever is more reasonable.

## 15. Payment deadline for progress payment

- (1) A progress payment under a construction contract is required to be paid by the date on which a period of 60 days after the date on which the payment claim for the progress payment is served (or taken to be served) under section 18 (*60-day period*) expires.

- (2) However, if the parties to the construction contract concerned agree on another date by which a progress payment is required to be paid (*specified date*), and the specified date is earlier than the date on which the 60-day period expires, the progress payment is required to be paid by the specified date.
- (3) For the purposes of subsection (2), if the specified date is worked out having regard to a billing date for the progress payment and the payment claim for the payment is served on a date later than the billing date—
  - (a) the date on which the payment claim is served is taken to be the billing date for the payment; and
  - (b) the specified date is to be worked out accordingly.

### **Division 3—Certain Provisions in Construction Contracts**

#### **16. Progress payment provisions**

The parties to a construction contract may agree on—

- (a) the number of progress payments under the contract;
- (b) the interval between those payments;
- (c) the amount of each of those payments;
- (d) the circumstances in which those payments may be claimed;
- (e) subject to section 15, the date by which those payments are required to be paid; and
- (f) subject to section 20, the date by which the payment response for each payment claim for those payments is required to be served.



**17. Conditional payment provisions**

(1) A conditional payment provision in a construction contract is unenforceable between the parties to the contract and has no effect in relation to any payment for—

- (a) construction work carried out under the contract; or
- (b) related goods and services supplied under the contract.

(2) In this section—

**conditional payment provision** (有條件付款條文), in relation to a construction contract, means a provision in the contract by whatever name called—

- (a) that makes the liability of a party (**Party A**) to pay money owing to another party (**Party B**) contingent or conditional on payment of the whole or any part of that money by a further party (**Party C**) to Party A;
- (b) that makes the date on which money owing by Party A to Party B becomes payable contingent or conditional on the date on which payment of the whole or any part of that money is made by Party C to Party A; or
- (c) that otherwise makes the liability to pay money owing, or the date on which money owing becomes payable, contingent or conditional on the operation of any other contract or agreement;

**money owing** (欠款), in relation to a construction contract, means money owing for—

- (a) construction work carried out under the contract; or
- (b) related goods and services supplied under the contract.

## Division 4—Payment Claims and Payment Responses

### 18. Payment claims

- (1) A person who is or who claims to be entitled to a progress payment (*claiming party*) may serve a claim for the payment (*payment claim*) on another person who, under the construction contract concerned, is or may be liable to make the payment (*paying party*).
- (2) For the purposes of this Ordinance, if a payment claim for a progress payment is served before the billing date for the payment, the payment claim is taken to be served on the billing date.
- (3) A payment claim for a progress payment must—
  - (a) be in writing;
  - (b) identify the construction work or related goods and services to which the payment relates; and
  - (c) state—
    - (i) the amount of the payment that the claiming party claims to be payable (*claimed amount*); and
    - (ii) how the claimed amount is calculated.
- (4) A claiming party may serve only 1 payment claim for a progress payment in a period that—
  - (a) begins on the billing date for the payment; and
  - (b) ends on the date immediately before the billing date for the next progress payment.
- (5) If a claiming party serves more than one payment claim in the period specified in subsection (4), the paying party may disregard any payment claim other than the first such claim.

- (6) A claiming party must not include in a payment claim any amount that is—
  - (a) the subject of any ongoing adjudication proceedings; or
  - (b) the subject of a determination that is binding on the claiming party under section 44.
- (7) If a claiming party fails to comply with subsection (3) or (6) in serving a payment claim, the claiming party is taken not to have served the payment claim.
- (8) An application for payment made under a construction contract that meets the requirements of this section is taken to be a payment claim.

## 19. Payment responses

- (1) A paying party served with a payment claim may reply to the payment claim by serving a response (*payment response*) on the claiming party.
- (2) A payment response must—
  - (a) be in writing;
  - (b) identify the payment claim to which it relates; and
  - (c) state (whichever of the following is applicable)—
    - (i) the amount that the paying party proposes to pay to the claiming party for the payment claim (*admitted amount*);
    - (ii) any difference between the claimed amount and the admitted amount;
    - (iii) how the admitted amount is calculated.
- (3) If the paying party fails to comply with subsection (2) in serving a payment response, the paying party is taken not to have served the payment response.

- (4) A paying party may amend a payment response that the paying party has served on a claiming party by serving on the claiming party an amended response by the payment response deadline.
- (5) For the purposes of subsection (4), a payment response may be amended more than once by the payment response deadline.
- (6) A certificate or assessment issued under a construction contract in response to an application for payment made under the contract that meets the requirements of this section is taken to be a payment response.

## 20. Payment response deadline

- (1) A payment response in reply to a payment claim must be served by the earlier of the following—
  - (a) the payment deadline of the progress payment;
  - (b) the date on which a period of 30 days after the date on which the payment claim is served (or taken to be served) under section 18 (***30-day period***) expires.
- (2) However, if the parties to the construction contract concerned agree on another date by which a payment response is required to be served (***specified date***), and the specified date is earlier than the date on which the 30-day period expires, the payment response is required to be served by the specified date.
- (3) For the purposes of subsection (2), if the specified date is worked out having regard to a billing date for the progress payment and the payment claim for the payment is served on a date later than the billing date—

- (a) the date on which the payment claim is served is taken to be the billing date for the payment; and
- (b) the specified date is to be worked out accordingly.

**21. Consequences of not serving payment responses**

If a paying party fails to serve a payment response in reply to a payment claim by the payment response deadline, the paying party—

- (a) is to be regarded as disputing the claimed amount that has not been paid by the paying party by the payment response deadline; and
  - (b) is not permitted to raise any set off in the adjudication proceedings in relation to the payment claim.
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## Part 3

### Adjudication of Payment Disputes

#### Division 1—Interpretation

#### 22. Interpretation of Part 3

(1) In this Part—

*adjudication response* (審裁回應)—see section 31(1);

*adjudication submission* (審裁陳詞)—see section 30(1);

*CFI* means the Court of First Instance;

*determination* (裁定) means a determination made by an adjudicator under section 42;

*dispute resolution proceedings* (解決爭議程序) includes arbitration proceedings;

*party* (方、一方), in relation to adjudication proceedings, means a party to the proceedings;

*reply to an adjudication response* (審裁答覆)—see section 32(1);

*working day* (工作日) means a day that is not—

(a) a general holiday;

(b) a Saturday; or

(c) a black rainstorm warning day or gale warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1).

(2) In this Part, a reference to costs of adjudication proceedings is to be construed according to section 53.

## Division 2—Payment Disputes

### 23. When does payment dispute arise

- (1) For the purposes of this Ordinance, a payment dispute arises between a claiming party and a paying party if—
  - (a) the claiming party has served a payment claim on the paying party under section 18; and
  - (b) any of the events specified in subsection (2) occurs.
- (2) The events are—
  - (a) that the paying party serves a payment response on the claiming party under section 19 in which—
    - (i) the claimed amount is disputed in full; or
    - (ii) the admitted amount is less than the claimed amount;
  - (b) that the paying party—
    - (i) serves a payment response on the claiming party under section 19 in which an admitted amount is stated to be paid; but
    - (ii) fails to pay the admitted amount in full by the payment deadline of the progress payment; and
  - (c) that the paying party fails to serve a payment response in reply to the payment claim by the payment response deadline.
- (3) For the purposes of section 24, a payment dispute arises on the day following—
  - (a) if the payment dispute arises on the occurrence of an event specified in subsection (2)(a) or (c)—the payment response deadline; or

- (b) if the payment dispute arises on the occurrence of an event specified in subsection (2)(b)—the payment deadline of the progress payment.
- (4) Despite subsection (1), if a construction contract provides for a claim handling procedure for a claim for any additional payment, a payment dispute does not arise to the extent that it relates to the additional payment unless any of following events occurs before the payment claim for the additional payment is served under section 18—
- (a) an assessment on the additional payment has been made in accordance with the claim handling procedure;
  - (b) an assessment on the additional payment has not been made in accordance with the claim handling procedure—
    - (i) if the claim handling procedure provides for a period within which the assessment is to be made—within the period; or
    - (ii) otherwise—within a reasonable period.
- (5) In this section—

***additional payment*** (額外款項) means any payment that is provided for in a construction contract in relation to any expenditure or loss that is incurred by a party to the contract because of—

- (a) the delay or disruption of the construction work or the supply of related goods and services for the construction work; or
- (b) any variation to the construction work, or the supply of related goods and services for the construction work, that may be made under the contract;



*claim handling procedure* (申索處理程序), in relation to a claim for any additional payment, means a procedure for—

- (a) analyzing and determining the liability for the additional payment; and
- (b) assessing the amount of the additional payment.

#### **24. Right to initiate adjudication proceedings for payment disputes**

A claiming party may, within 28 days beginning on the date on which a payment dispute arises, initiate adjudication proceedings for the payment dispute.

### **Division 3—Initiating Adjudication Proceedings, Adjudicators and Adjudication Submissions and Responses**

#### **25. How to initiate adjudication proceedings**

- (1) A claimant may initiate adjudication proceedings for a payment dispute against a respondent by serving a written notice of adjudication (*adjudication notice*) on the respondent.
- (2) An adjudication notice must state—
  - (a) the names and addresses of the claimant and the respondent;
  - (b) the nature and description of the payment dispute;
  - (c) the claimed amount, the admitted amount and the amount paid in relation to the payment dispute; and
  - (d) if no nominating body, or more than one nominating body, is specified in the construction contract concerned for a payment dispute—the names of the 2 nominating bodies nominated by the claimant under section 27(2).

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- (3) The claimant must also serve the adjudication notice—
- (a) if only 1 nominating body is specified in the construction contract concerned for a payment dispute—on the nominating body on the same date on which the notice is served on the respondent under subsection (1); or
  - (b) if no nominating body, or more than one nominating body, is specified in the construction contract concerned for a payment dispute—on the selected body within 8 working days after the date on which the notice is served on the respondent under subsection (1).
- (4) Subject to subsections (5), (6) and (7), a claimant may serve only 1 adjudication notice for a payment dispute.
- (5) If a claimant withdraws any adjudication proceedings for a payment dispute under section 40, the claimant may, within the period specified in section 24, initiate any other adjudication proceedings for the payment dispute by serving another adjudication notice for the payment dispute.
- (6) If—
- (a) only 1 nominating body for a payment dispute is specified in a construction contract; and
  - (b) any adjudication proceedings for the payment dispute are terminated on the ground set out in section 41(a), (e), (f) or (g),
- the claimant may, within 28 days after the date on which the adjudication proceedings are terminated, initiate any other adjudication proceedings for the payment dispute by serving another adjudication notice for the payment dispute.

- (7) Despite subsection (3)(b), if—
- (a) a nominating body is selected under section 27 in any adjudication proceedings for a payment dispute; and
  - (b) the adjudication proceedings are terminated on the ground set out in section 41(a), (e), (f) or (g) (*previous adjudication*),
- the claimant may, within 28 days after the date on which the previous adjudication is terminated, initiate any other adjudication proceedings for the payment dispute (*new adjudication*) by serving another adjudication notice for the payment dispute on the respondent and the selected body in the previous adjudication on the same date.
- (8) Despite subsection (2)(d), an adjudication notice served under subsection (7) is not required to state the names of the 2 nominating bodies nominated by the claimant under section 27(2).
- (9) If a claimant serves an adjudication notice on a selected body in a previous adjudication under subsection (7)—
- (a) the body is taken to be the selected body in the new adjudication and is to comply with section 27(5) for the purposes of the new adjudication; and
  - (b) the new adjudication is to proceed accordingly.

**26. Appointment of adjudicator by nominating body agreed by parties**

- (1) This section applies if—
- (a) a claimant initiates adjudication proceedings for a payment dispute against a respondent; and
  - (b) only 1 nominating body is specified in the construction contract concerned as the nominating body for the payment dispute.

- (2) The nominating body must, within 7 working days after the date on which the adjudication notice is served on the body—
  - (a) nominate and appoint an adjudicator in accordance with the adjudication rules of the body; and
  - (b) inform the claimant and respondent in writing of the appointment.

## 27. Appointment of adjudicator in other ways

- (1) This section applies if—
  - (a) a claimant initiates adjudication proceedings for a payment dispute against a respondent; and
  - (b) either—
    - (i) no nominating body is specified in the construction contract concerned as the nominating body for the payment dispute; or
    - (ii) more than one nominating body is specified in the construction contract concerned for the selection of the nominating body for the payment dispute (*potential nominating bodies*).
- (2) The claimant must, in the adjudication notice—
  - (a) in the case of subsection (1)(b)(i)—nominate 2 nominating bodies; or
  - (b) in the case of subsection (1)(b)(ii)—nominate 2 nominating bodies from the potential nominating bodies.
- (3) The respondent must, within 5 working days after the date on which the adjudication notice is served on the respondent—

- (a) select one of the nominating bodies from the claimant's nomination; and
  - (b) serve a written notice on the claimant to inform the claimant of the nominating body selected by the respondent.
- (4) If the respondent fails to inform the claimant under subsection (3), the claimant must, within 3 working days after the expiry of the deadline mentioned in that subsection—
- (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.
- (5) The selected body must, within 7 working days after the date on which the adjudication notice is served on the body—
- (a) nominate and appoint an adjudicator in accordance with the adjudication rules of the body; and
  - (b) inform the claimant and respondent in writing of the appointment.

## **28. Who may be appointed as adjudicators**

- (1) Subject to subsection (2), an individual may be appointed as an adjudicator in relation to a payment dispute if the individual is on the panel of adjudicators of a nominating body.
- (2) An individual is ineligible to be appointed as an adjudicator in relation to a payment dispute if—
  - (a) the individual has a conflict of interest in respect of the appointment; or

- (b) circumstances exist that give rise to justifiable doubts as to the individual's independence or impartiality.

**29. Adjudicator to declare and disclose interests**

- (1) When an individual is approached by a nominating body in connection with the individual's possible appointment as an adjudicator in relation to a payment dispute, the individual must declare in writing that—
  - (a) the individual has no conflict of interest in respect of the appointment; and
  - (b) either—
    - (i) there are no circumstances likely to give rise to justifiable doubts as to the individual's independence or impartiality as the adjudicator; or
    - (ii) there are circumstances likely to give rise to justifiable doubts as to the individual's independence or impartiality as the adjudicator.
- (2) If the individual makes a declaration under subsection (1)(b)(ii), the individual must, together with the declaration, disclose in writing the circumstances.
- (3) From the time of accepting the appointment as an adjudicator until the adjudication proceedings are completed, an adjudicator must, as soon as the adjudicator is aware, disclose in writing any circumstances likely to give rise to justifiable doubts as to the adjudicator's independence or impartiality.
- (4) A declaration or disclosure under this section must be made in a way specified in the adjudication rules of the nominating body concerned.

**30. Claimant to serve adjudication submission**

- (1) A claimant must serve on the adjudicator and the respondent a written submission identifying the adjudication notice to which the submission relates (*adjudication submission*).
- (2) An adjudication submission must be served within 1 working day after the date on which the claimant is informed of the appointment under section 26(2)(b) or 27(5)(b).
- (3) An adjudication submission may contain any supporting documents and evidence that the claimant considers relevant to the adjudication.

**31. Respondent to serve adjudication response**

- (1) A respondent must serve on the adjudicator and the claimant a written submission in reply to the adjudication submission (*adjudication response*).
- (2) An adjudication response must be served within—
  - (a) 20 working days after the date on which the adjudication submission is served on the respondent; or
  - (b) a longer period that the adjudicator specifies.
- (3) An adjudication response—
  - (a) may contain any supporting documents and evidence that the respondent considers relevant to the adjudication; and
  - (b) may specify the adjudication submission, document or evidence (or any part of it) given by the claimant that comprises a submission, document or evidence—

- (i) of which the respondent was unaware on the date on which the adjudication notice is served;
- (ii) that should reasonably have been served on the respondent before the date on which the adjudication notice is served; and
- (iii) that cannot be fairly considered and responded to by the respondent.

### **32. Claimant to serve reply to adjudication response**

- (1) A claimant must serve on the adjudicator and the respondent a written submission in reply to the adjudication response (*reply to an adjudication response*).
- (2) A reply to an adjudication response must be served within—
  - (a) 2 working days after the date on which the adjudication response is served on the claimant; or
  - (b) a longer period that the adjudicator specifies.
- (3) A reply to an adjudication response may only specify the adjudication response, document or evidence (or any part of it) given by the respondent that comprises a submission, response, document or evidence—
  - (a) of which the claimant was unaware on the date on which the adjudication notice is served;
  - (b) that should reasonably have been served on the claimant before the date on which the adjudication notice is served; and
  - (c) that cannot be fairly considered and responded to by the claimant.



## **Division 4—Conduct of Adjudication Proceedings**

### **33. Jurisdiction of adjudicators**

- (1) The jurisdiction of an adjudicator is limited to determining—
  - (a) the payment dispute for which a party initiates adjudication proceedings under section 24; and
  - (b) any other matters that are necessary to exercise the jurisdiction conferred by paragraph (a).
- (2) An adjudicator has the power to rule on the adjudicator's own jurisdiction.

### **34. Adjudicator to conduct adjudication proceedings**

- (1) An adjudicator must conduct adjudication proceedings in the way the adjudicator considers appropriate within the powers, and subject to the duties, under section 35.
- (2) When conducting adjudication proceedings, an adjudicator—
  - (a) is not bound by the rules of evidence; and
  - (b) subject to section 37, may receive and take into account any relevant document, evidence or information, whether or not it would be admissible in a court of law.

### **35. Powers and duties of adjudicator**

- (1) An adjudicator in determining a payment dispute may exercise the following powers—
  - (a) to establish the procedures in conducting the adjudication proceedings for the payment dispute;
  - (b) to determine the language or languages to be used in the proceedings;

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- (c) to extend the period for an adjudication response to be served under section 31(2)(b);
  - (d) to extend the period for a reply to an adjudication response to be served under section 32(2)(b);
  - (e) to request or allow a party to submit further written submission that the adjudicator reasonably requires;
  - (f) to request or allow a party to produce any document or evidence, or provide any information, that the adjudicator reasonably requires;
  - (g) to specify a period within which the submission of further written submission, the production of documents or evidence, or the provision of information is to be made;
  - (h) to appoint an independent expert to inquire or report on any specific matter, unless otherwise agreed by the parties;
  - (i) to call a conference of the parties;
  - (j) to 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;
  - (k) to direct any opening up of any construction work done or any tests or experiments to be conducted;
  - (l) to give any direction as may be necessary or expedient for the conduct of the proceedings.
- (2) An adjudicator in determining a payment dispute must perform the following duties—
- (a) to declare and disclose interests;
  - (b) to act independently, impartially and in a timely way and to avoid incurring unnecessary expenses;

- (c) to conduct adjudication proceedings in accordance with the adjudication rules of the nominating body that appoints the adjudicator;
  - (d) to comply with the principles of natural justice.
- (3) The parties must comply with any request made or direction given by the adjudicator under subsection (1).

**36. When powers of adjudicator not affected**

- (1) The power of an adjudicator to determine a payment dispute in adjudication proceedings is not affected by the failure of—
- (a) the respondent to serve an adjudication response under section 31;
  - (b) the claimant to serve a reply to an adjudication response under section 32; or
  - (c) any of the parties—
    - (i) to make a submission (other than an adjudication submission) within the period specified by the adjudicator; or
    - (ii) to comply with any request made or direction given by the adjudicator under section 35.
- (2) In the event of a failure set out in subsection (1), the adjudicator may determine the payment dispute on the basis of the documents, evidence and information available to the adjudicator.

**37. Circumstances in which adjudicator must disregard submission etc.**

- (1) An adjudicator must not consider any submission, response or reply made by a party unless it is served on the adjudicator within the specified period.

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- (2) Subsection (3) applies if a party (**Party A**) specifies in an adjudication response or a reply to an adjudication response that the submission, response, document or evidence (or any part of it) given by the other party comprises a submission, response, document or evidence—
- (a) of which Party A was unaware on the date on which the adjudication notice is served;
  - (b) that should reasonably have been served on Party A before the date on which the adjudication notice is served; and
  - (c) that cannot be fairly considered and responded to by Party A.
- (3) If an adjudicator is satisfied that the submission, response, document or evidence (or any part of it) specified by Party A as mentioned in subsection (2) comprises a submission, response, document or evidence falling within the descriptions in subsection (2)(a), (b) and (c), the adjudicator must disregard the submission, response, document or evidence (or the part of it) to the extent that it falls within those descriptions.
- (4) In subsection (1)—
- specified period** (指明期間) means—
- (a) in relation to an adjudication submission—the period specified in section 30(2);
  - (b) in relation to an adjudication response—the period specified in section 31(2)(a) or (b) (as applicable);
  - (c) in relation to a reply to an adjudication response—the period specified in section 32(2)(a) or (b) (as applicable); or

- (d) in relation to any further written submission—the period specified for the submission by the adjudicator concerned under section 35(1)(g).

### **38. Parties may be represented**

A party may be represented by any other person (whether legally qualified or not) that the party considers appropriate.

### **39. Resignation of adjudicator**

- (1) If an adjudicator considers that it is not possible to make a determination fairly within the period required under section 42(5), the adjudicator may resign by—
  - (a) serving a written notice of resignation on each party on the same date; and
  - (b) serving a written notice of resignation on the nominating body that appoints the adjudicator.
- (2) The resignation made under subsection (1) takes effect on the date on which the notice of resignation is served on the parties.
- (3) If an adjudicator considers that a circumstance under section 28(2)(a) or (b) has arisen in relation to the adjudicator for the payment dispute concerned, the adjudicator must resign by—
  - (a) serving a written notice of resignation on each party on the same date; and
  - (b) serving a written notice of resignation on the nominating body that appoints the adjudicator.
- (4) The resignation made under subsection (3) takes effect on the date on which the notice of resignation is served on the parties.

**40. Withdrawal of adjudication proceedings**

- (1) A claimant may at any time withdraw the adjudication proceedings by serving a written notice of withdrawal on—
  - (a) the respondent;
  - (b) the nominating body on which the adjudication notice has been served; and
  - (c) if an adjudicator has been appointed—the adjudicator.
- (2) If the adjudication proceedings are withdrawn under subsection (1), the claimant must bear the costs of the adjudication proceedings unless the adjudicator determines otherwise.

**41. Termination of adjudication proceedings**

Adjudication proceedings are 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);
- (c) the claimant serves a notice of withdrawal under section 40(1);
- (d) the respondent pays the claimant in full the amount claimed in the proceedings;
- (e) the adjudicator resigns under section 39(1) or (3);
- (f) the nominating body considers that the adjudicator is unable or ineligible to act as the adjudicator;
- (g) the adjudicator fails to serve a determination on the nominating body under section 42(5);

- (h) the payment dispute is settled by written agreement between the parties; or
- (i) the payment dispute is determined in any court or other dispute resolution proceedings.

## **Division 5—Adjudicator’s Determinations**

### **42. Determinations**

- (1) For the purposes of any adjudication proceedings for a payment dispute, an adjudicator must determine—
  - (a) the payment dispute; and
  - (b) the proportion and the amount of the costs of the adjudication proceedings payable by each party.
- (2) However—
  - (a) the adjudicator is not required to make a determination under subsection (1)(a) if—
    - (i) the adjudication proceedings are terminated on any of the grounds set out in section 41; or
    - (ii) the adjudicator decides under section 33 that the adjudicator does not have jurisdiction to determine the payment dispute under this Part; and
  - (b) the adjudicator is not required to make a determination under subsection (1)(b) if the adjudicator is not entitled to be paid any fees or expenses for the adjudication proceedings under section 55.
- (3) If the adjudicator determines under subsection (1)(a) that a party is entitled to an extension of time for completing the construction work or the supply of related goods and

- services for construction work under the construction contract concerned, the adjudicator must also determine—
- (a) the number of days that the time for completing the construction work or the supply of related goods and services under the contract is to be extended; and
  - (b) the amount payable based on the extension of time.
- (4) If the adjudicator determines under subsection (1)(a) that a party is liable to make a payment under the construction contract concerned, the adjudicator must also determine—
- (a) the total amount payable in relation to the payment dispute (including any amount under subsection (3)(b)) and the costs of the adjudication proceedings; and
  - (b) the amount of interest payable (if any), whether expressed in an actual amount or by reference to a rate.
- (5) The adjudicator must make a determination and serve it on the nominating body that appoints the adjudicator within—
- (a) 55 working days after the date on which the adjudicator is appointed; or
  - (b) a longer period agreed by the parties.
- (6) A determination made under this section must—
- (a) be in writing; and
  - (b) contain reasons for the determination.
- (7) As soon as reasonably practicable after a determination is served under subsection (5), the nominating body must serve the determination on each party.



- (8) Despite subsection (7), if the nominating body is satisfied that the fees and expenses of the adjudicator payable by the parties have not been paid, the nominating body may withhold the service of the determination on the parties until the fees and expenses are paid.

#### **43. Payment deadline for adjudicated amounts**

- (1) If an adjudicator determines that a party is liable to pay an adjudicated amount to another party, the party must pay the amount to that other party—
- (a) within the period specified by the adjudicator in the determination for the party to pay the amount to that other party; or
  - (b) if no such period is specified—within 30 days after the date on which the determination is served on the parties under section 42(7).
- (2) For the purposes of a determination, a period specified under subsection (1)(a) must not begin on a date before the date on which the determination is served on the parties under section 42(7).

#### **44. Effect of determinations**

A determination is binding on the parties unless—

- (a) it is set aside by the CFI under section 48;
- (b) the payment dispute to which the determination relates is settled by written agreement between the parties; or
- (c) the payment dispute is determined in any court or other dispute resolution proceedings.

**45. Adjudicators may correct typographical errors etc.**

- (1) An adjudicator may, on the adjudicator's own initiative or at the request of a party, correct in a determination any computational or typographical error or any error of a similar nature.
- (2) To avoid doubt—
  - (a) any correction made to a determination under this section does not affect the validity of the determination; and
  - (b) the time limit set out in section 43(1)(b) runs from the date on which the determination is served on the parties under section 42(7).

**46. Valuation of works etc. in later adjudications**

- (1) Subsection (2) applies if an adjudicator has, under section 42(1)(a), determined—
  - (a) the value of any construction work carried out under a construction contract; or
  - (b) the value of any related goods and services supplied under a construction contract.
- (2) If any later adjudication involves working out the value of the construction work or of the related goods and services, the adjudicator for the later adjudication must give the work, or the goods and services, the same value as that previously determined.
- (3) However, subsection (2) does not apply if the claimant or respondent in the later adjudication satisfies the adjudicator for the later adjudication that the value of the construction work, or the related goods and services, has changed since the previous adjudication.

## **Division 6—Setting Aside or Enforcement of Determinations**

### **47. Interpretation of Division 6**

In this Division—

*set aside application* (撤銷申請), in relation to a determination, means an application to set aside the determination under section 48.

### **48. Application for setting aside determinations**

- (1) The CFI may, on an application made by a party to adjudication proceedings, set aside a determination made in the proceedings if—
  - (a) the determination was improperly procured through fraud or bribery;
  - (b) there has been a material denial of natural justice in the proceedings;
  - (c) the adjudicator has not acted independently or impartially in the proceedings; or
  - (d) the adjudicator has acted in excess of the adjudicator's jurisdiction in the proceedings.
- (2) A set aside application may only be made within 14 days after the date on which the determination is served on the parties under section 42(7).
- (3) A set aside application must be supported by an affidavit by the applicant—
  - (a) exhibiting—
    - (i) the determination; and
    - (ii) the construction contract to which the determination relates; and

- (b) stating the ground of the application.
- (4) The party making a set aside application must pay into the CFI as security the unpaid portion of the adjudicated amount that the party is liable to pay, in the way the CFI directs, pending the final determination of the application.
- (5) The leave of the CFI is required for any appeal from a decision of the CFI to grant or refuse a set aside application.

#### 49. Enforcement of determination as judgment

- (1) A determination made in adjudication proceedings may, with leave of the CFI, be enforced in the same way as a judgment of the High Court in its civil jurisdiction.
- (2) An application to enforce a determination (*enforcement application*) may only be made by a party to the adjudication proceedings after the expiry of the payment deadline of the adjudicated amount under the determination.
- (3) Also, an enforcement application may only be made if no set aside application in relation to the determination is pending.
- (4) An enforcement application must be supported by an affidavit by the applicant—
  - (a) exhibiting—
    - (i) the determination; and
    - (ii) the construction contract to which the determination relates; and
  - (b) stating that at the time the application is made, the adjudicated amount has not been paid in full.

- (5) The CFI must grant leave within 7 days after the date on which an enforcement application is made unless—
  - (a) a set aside application in relation to the determination is pending; or
  - (b) the CFI is satisfied that—
    - (i) the determination is no longer binding on the parties; or
    - (ii) the adjudicated amount has been paid in full.
- (6) If leave is granted under subsection (5), the CFI may enter judgment in terms of the determination.
- (7) The leave of the CFI is required for any appeal from a decision of the CFI to grant or refuse an enforcement application.

## **Division 7—General and Miscellaneous Matters relating to Adjudication**

### **50. Effect of adjudication on other proceedings**

- (1) This Part does not affect any right of a party to a construction contract to submit a payment dispute relating to or arising from the contract in any court or other dispute resolution proceedings.
- (2) If a payment dispute being adjudicated is submitted in any court or other dispute resolution proceedings, the submission does not terminate or otherwise affect the adjudication proceedings.

### **51. Confidentiality of adjudication**

- (1) A person must not disclose or give to another person any information relating to—

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- (a) any adjudication proceedings; or
  - (b) a determination.
- (2) Despite subsection (1), a person may disclose or give to another person information referred to in that subsection if—
- (a) the information is in the public domain;
  - (b) the disclosure is made with the consent of each party to the adjudication proceedings;
  - (c) the disclosure is made to a nominating body because of the operation of this Part;
  - (d) the disclosure is necessary for the purpose of setting aside or enforcing the determination;
  - (e) the disclosure is made in any other adjudication proceedings or any court or other dispute resolution proceedings in connection with the construction contract in respect of which the payment dispute under the adjudication arises;
  - (f) the disclosure is made in accordance with a requirement imposed by law; or
  - (g) the disclosure is made to—
    - (i) a professional or any other adviser of the person for the purpose of seeking legal or other professional advice;
    - (ii) an insurer authorized under the Insurance Ordinance (Cap. 41), a bank as defined by section 2(1) of the Banking Ordinance (Cap. 155) or a money lender licensed under the Money Lenders Ordinance (Cap. 163), for reasonable commercial purposes; or

- (iii) any other person who is responsible for administering the construction contract in respect of which the payment dispute under the adjudication arises.

## **52. Costs of parties**

A party is not liable to pay any costs or expenses incurred by the other party (other than the costs of adjudication proceedings) as a result of or in relation to the adjudication proceedings.

## **53. Costs of adjudication proceedings**

- (1) For the purposes of this Part, the costs of adjudication proceedings—
  - (a) include—
    - (i) the fees charged under section 64(1) and payable to the nominating body that appoints the adjudicator and the expenses incurred by the body;
    - (ii) the fees and expenses of the adjudicator specified in subsection (2); and
    - (iii) the costs of any independent expert appointed, or of any inspection of a construction site, any construction work or any other thing carried out, under section 35(1); but
  - (b) do not include the costs or expenses incurred by a party as a result of or in relation to the adjudication proceedings.
- (2) An adjudicator is entitled to be paid the amount for fees and expenses for adjudicating a payment dispute, having regard to the work done and expenses incurred by the adjudicator.

- (3) Without limiting subsection (4), the parties are jointly and severally liable to pay the costs of the adjudication proceedings.
- (4) Subject to section 40(2), the parties are each liable to pay the costs of the adjudication proceedings—
  - (a) in the proportions that the adjudicator determines; or
  - (b) if the adjudicator is not required to determine the proportion of the costs of the adjudication proceedings under section 42(2)(b)—in equal proportions.

- (5) In subsection (2)—

***adjudicating*** (審裁), in relation to an adjudicator, includes accepting the appointment as the adjudicator and considering and determining the payment dispute in the adjudication.

#### **54. Matters to be considered in determining proportions of costs of adjudication proceedings**

In determining the proportion of the costs of adjudication proceedings payable by a party, the adjudicator may consider the following matters—

- (a) the relative success of the party in the proceedings;
- (b) whether the party initiated or participated in the proceedings—
  - (i) for an improper purpose;
  - (ii) vexatiously or frivolously; or
  - (iii) without a reasonable prospect of success;
- (c) whether the party has acted unreasonably leading up to the proceedings;



- (d) whether the party has acted unreasonably in the conduct of the proceedings;
- (e) if the party is the respondent—the reasons given by the party for not making the progress payment that is the subject of the adjudication notice;
- (f) whether the proceedings are withdrawn by the claimant under section 40(1);
- (g) any other matter the adjudicator considers relevant in making the determination.

**55. Supplementary provisions on fees and expenses of adjudicator**

- (1) An adjudicator is not entitled to be paid any fees or expenses for adjudication proceedings if the proceedings are terminated on the ground set out in section 41(e), (f) or (g).
- (2) However, subsection (1) does not apply if the adjudicator has decided under section 33 that the adjudicator did not have jurisdiction to determine the payment dispute under this Part.
- (3) If the CFI sets aside a determination under section 48, the adjudicator is still entitled to be paid the adjudicator's fees and expenses for the adjudication proceedings.
- (4) Subsection (3) only applies if the adjudicator acted in good faith in adjudicating (as defined by section 53(5)) the payment dispute in the adjudication.

**56. Disapplication of adjudication of time-related disputes for main private contracts and subcontracts**

- (1) If a payment dispute concerns a dispute in relation to which the amount is to be determined on the basis of an assessment on a claiming party's extension of time entitlement under a main private contract or its subcontract (*time-related dispute*)—
    - (a) the claiming party may not initiate adjudication proceedings for the payment dispute under section 24 to the extent that it relates to the time-related dispute; and
    - (b) the adjudicator has no jurisdiction to determine the time-related dispute under this Part.
  - (2) However, if the claiming party and the paying party agree on the extension of time in relation to the time-related dispute but do not agree on the amount payable by the paying party based on the extension of time—
    - (a) the claiming party may initiate adjudication proceedings for the time-related dispute under section 24; and
    - (b) the adjudicator has jurisdiction to determine the time-related dispute under this Part.
  - (3) This section expires on a day to be appointed by the Secretary by notice published in the Gazette.
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## Part 4

### Right to Delay Work or Supply

#### 57. Interpretation of Part 4

In this Part—

*delay* (延遲) means suspend or reduce the rate of progress;

*intended starting date* (擬開始日) means the date on which the person serving a notice of intention intends to start delaying the carrying out of construction work, or the supply of related goods and services;

*notice of intention* (意向通知) means a notice to delay the carrying out of construction work, or the supply of related goods and services;

*working day* (工作日) means a day that is not—

- (a) a general holiday; or
- (b) a black rainstorm warning day or gale warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1).

#### 58. Claiming party's right to delay work or supply

- (1) A claiming party may delay carrying out the construction work, or supplying the related goods and services, under a construction contract if all the conditions set out in subsection (2) are satisfied.
- (2) The conditions are—
  - (a) that the claiming party has served a payment claim for a progress payment on a paying party under section 18;
  - (b) that the paying party has—

- 
- (i) served a payment response on the claiming party under section 19 in which an admitted amount is stated to be paid; but
    - (ii) failed to pay the admitted amount in full by the payment deadline of the progress payment;
  - (c) that after the payment deadline of the progress payment and at least 5 working days before the intended starting date, the claiming party—
    - (i) has served on the paying party a notice of intention that meets the requirements set out in subsection (3); and
    - (ii) has notified the owner of the claiming party's intention to delay carrying out the construction work or supplying the related goods and services; and
  - (d) that the admitted amount is not paid in full before the intended starting date.
- (3) A notice of intention must—
- (a) be in writing;
  - (b) state that it is served under this Ordinance; and
  - (c) indicate the claiming party's intention to delay carrying out the construction work, or supplying the related goods and services, under the construction contract.
- (4) Unless the claiming party specifies the intended starting date in a notice of intention, for the purposes of subsection (2), the date after 5 working days after the date on which the notice of intention is served on the paying party is taken to be the intended starting date.
- (5) A claiming party exercising the right under subsection (1)—

- (a) is not to be regarded as in breach of the construction contract;
- (b) is not liable for any loss or damage suffered by the paying party, or by any person claiming through the paying party, as a result of delaying the carrying out of the construction work, or the supply of the related goods and services;
- (c) is entitled to a reasonable extension of time to complete the contract;
- (d) is entitled to recover from the paying party any loss and expenses that have reasonably been incurred as a result of delaying the carrying out of the construction work, or the supply of the related goods and services; and
- (e) must resume the carrying out of the construction work or the supply of the related goods and services within 5 working days after the date on which the claiming party receives the admitted amount in full.

**59. Claimant's right to delay work or supply**

- (1) A claimant may delay carrying out the construction work, or supplying the related goods and services, under a construction contract if all the conditions set out in subsection (2) are satisfied.
- (2) The conditions are—
  - (a) that the respondent has failed to pay to the claimant the adjudicated amount in full by the payment deadline of the adjudicated amount;
  - (b) that after the payment deadline of the adjudicated amount and at least 5 working days before the intended starting date, the claimant—

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- (i) has served on the respondent a notice of intention that meets the requirements set out in subsection (3); and
    - (ii) has notified the owner of the claimant's intention to delay carrying out the construction work or supplying the related goods and services; and
  - (c) that the adjudicated amount is not paid in full before the intended starting date.
- (3) A notice of intention must—
- (a) be in writing;
  - (b) state that it is served under this Ordinance; and
  - (c) indicate the claimant's intention to delay carrying out the construction work, or supplying the related goods and services, under the construction contract.
- (4) Unless the claimant specifies the intended starting date in a notice of intention, for the purposes of subsection (2), the date after 5 working days after the date on which the notice of intention is served on the respondent is taken to be the intended starting date.
- (5) A claimant exercising the right under subsection (1)—
- (a) is not to be regarded as in breach of the construction contract;
  - (b) is not liable for any loss or damage suffered by the respondent, or by any person claiming through the respondent, as a result of delaying the carrying out of the construction work, or the supply of the related goods and services;
  - (c) is entitled to a reasonable extension of time to complete the contract;

- (d) is entitled to recover from the respondent any loss and expenses that have reasonably been incurred as a result of delaying the carrying out of the construction work, or the supply of the related goods and services; and
  - (e) must resume the carrying out of the construction work or the supply of the related goods and services within 5 working days after the date on which the claimant receives the adjudicated amount in full.
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## **Part 5**

### **Miscellaneous Matters**

#### **Division 1—Interpretation**

##### **60. Interpretation of Part 5**

In this Part—

*function* (職能) includes a power and a duty.

#### **Division 2—Administration**

##### **61. Functions of Secretary**

- (1) For the purposes of this Ordinance, the functions of the Secretary are—
  - (a) to oversee the performance of the functions of a nominating body set out in section 63;
  - (b) to establish and keep a register of nominating bodies; and
  - (c) to perform any other functions that are conferred or imposed on the Secretary under this Ordinance.
- (2) Without limiting subsection (1), the Secretary may—
  - (a) determine an application for registration, or renewal of registration, as a nominating body;
  - (b) suspend or cancel the registration of a nominating body;
  - (c) regulate the fees of a nominating body or adjudicator;



- (d) give to a nominating body any direction that the Secretary considers appropriate in relation to any function of the body set out in section 63;
  - (e) inquire or investigate into a complaint or information against a nominating body; and
  - (f) require a nominating body to provide any document or information in relation to any function of the body set out in section 63.
- (3) The Secretary may, in writing, delegate to a public officer any of the Secretary's functions under this Ordinance.
- (4) However, the power to delegate conferred by subsection (3) may not be delegated.

## **62. Right of appeal against decisions of Secretary**

- (1) A body corporate that is aggrieved by any of the following decisions made by the Secretary under section 61(2)(a) or (b) in respect of the body corporate may appeal to the Administrative Appeals Board—
- (a) a decision to refuse to register the body corporate as a nominating body;
  - (b) a decision to refuse to renew the registration of the body corporate as a nominating body;
  - (c) a decision to suspend the registration of the body corporate as a nominating body;
  - (d) a decision to cancel the registration of the body corporate as a nominating body.
- (2) An appeal does not suspend the decision unless the Secretary decides otherwise.

**63. Functions of nominating body**

For the purposes of this Ordinance, the functions of a nominating body are—

- (a) to establish and maintain its panel of individuals for the nomination and appointment of adjudicators;
- (b) to nominate and appoint an individual to be an adjudicator;
- (c) to receive and refer adjudication notices to adjudicators;
- (d) to regulate the conduct of adjudication proceedings, including the making of adjudication rules and practice notes of the body for matters in relation to adjudication;
- (e) to make and administer a code of conduct for adjudicators;
- (f) to establish and publish schedules of fees and expenses for services provided under this Ordinance by the body;
- (g) to provide training for individuals who are on its panel of adjudicators;
- (h) to provide the Secretary with documents or information required by the Secretary; and
- (i) to perform any other functions that are—
  - (i) conferred or imposed on a nominating body under this Ordinance; or
  - (ii) directed by the Secretary for the purposes of this Ordinance.

**64. Nominating body may charge certain fees**

- (1) A nominating body may charge a party to adjudication proceedings a fee for any service provided by the body in connection with the proceedings.
- (2) A nominating body may—
  - (a) charge an individual a fee for including the individual in the panel of adjudicators of the body; and
  - (b) charge an individual who is included in the panel of adjudicators of the body a training fee.

**65. Immunity from civil liability**

- (1) Neither an adjudicator nor a nominating body is civilly liable for an act done or omitted to be done by the adjudicator or the body in good faith in performing or purportedly performing a function under this Ordinance.
- (2) Neither the Secretary nor a public officer is civilly liable for an act done or omitted to be done by the Secretary or the public officer in good faith in performing or purportedly performing a function under this Ordinance.
- (3) Subsection (2) does not affect any liability of the Government for the act or omission of the Secretary or the public officer.

**66. Adjudicators not compellable witnesses**

An adjudicator who has determined a payment dispute under this Ordinance must not be compelled to give evidence or provide or produce any document or other material in—

- (a) any civil proceedings in connection with the payment dispute;
- (b) an arbitration in connection with the payment dispute; or

- (c) any other dispute resolution proceedings in connection with the payment dispute.

### **Division 3—Service**

#### **67. Service of adjudication documents**

- (1) A document that is authorized or required to be served under Part 3 (other than an adjudication notice or a written notice under section 27(3)(b) or (4)(b)) must be served—
  - (a) in a way specified by the nominating body concerned; or
  - (b) if no way is so specified—in a way specified by the adjudicator.
- (2) An adjudication notice that is authorized or required to be served on a nominating body or selected body under section 25(3)(a) or (b), (5), (6) or (7) must be served on the body in a way specified by the body.

#### **68. Service of documents on parties**

- (1) This section applies to a document—
  - (a) that is authorized or required to be served under—
    - (i) Part 2;
    - (ii) section 27(3)(b) or (4)(b); or
    - (iii) Part 4; or
  - (b) that is an adjudication notice.
- (2) The document may be served by a party to a construction contract (*servicing party*) on another party to the contract (*receiving party*) in a way agreed between the parties.

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- (3) If no way is so agreed, the document may be served by a serving party on a receiving party—
- (a) by leaving it at, or sending it by registered post to, the last known residence or place of business of the receiving party; or
  - (b) without affecting paragraph (a)—
    - (i) if the receiving party is an individual—by delivering it to the receiving party by hand;
    - (ii) if there is a record of receipt of fax transmission by the receiving party—by sending it by fax transmission to the last known fax number of the receiving party; or
    - (iii) if there is a record of receipt of electronic mail transmission by the receiving party—by sending it by electronic mail transmission to the last known electronic mail address of the receiving party.
- (4) Subsection (5) applies if—
- (a) a document is served under subsection (2) but there is no agreement between the parties on how to determine the date of service of the document; or
  - (b) a document is served under subsection (3).
- (5) The document is taken, in the absence of evidence to the contrary, to have been served on the receiving party—
- (a) if it is left at the receiving party's last known residence or place of business—on the day on which it is so left;
  - (b) if it is sent by registered post—on the day after the day on which it is so sent;

- (c) if it is delivered by hand—on the day on which it is so delivered; or
- (d) if it is sent by fax transmission or electronic mail transmission—on the day on which it is so transmitted.

### **Division 4—Amendment of Schedules**

#### **69. Secretary may amend Schedules**

The Secretary may, by notice published in the Gazette, amend Schedule 1, 2, 3 or 4.

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## Part 6

### Related Amendment

#### 70. Administrative Appeals Board Ordinance amended

The Administrative Appeals Board Ordinance (Cap. 442) is amended as set out in section 71.

#### 71. Schedule amended

The Schedule—

##### Add

- “80. Construction Industry Security of Payment Ordinance ( of 2024)
- A decision of the Secretary for Development—
- (a) to refuse to register a body corporate as a nominating body under section 61(2)(a);
  - (b) to refuse to renew the registration of a body corporate as a nominating body under section 61(2)(a);
  - (c) to suspend the registration of a body corporate as a nominating body under section 61(2)(b); or

- (d) to cancel the registration of a body corporate as a nominating body under section 61(2)(b).”
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## Schedule 1

[ss. 2 & 69]

### **Premises Excluded from Definition of *Residential Unit* in Section 2(1)**

1. A hotel or guesthouse within the meaning of section 2A of the Hotel and Guesthouse Accommodation Ordinance (Cap. 349)
  2. A student hostel or staff quarter
  3. A hospital within the meaning of section 4 of the Private Healthcare Facilities Ordinance (Cap. 633)
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## Schedule 2

[ss. 2 & 69]

### Specified Structures

1. Any new land formed by reclamation or site formation, man-made slope, landslide hazard mitigation measures, earth-retaining structure, cavern or underground space, including the access tunnel or shaft of the underground space
2. Any residential, commercial, industrial, institutional, communal or recreation building (whether it is constructed wholly or partly above or below ground level), including its foundation or support
3. Any walkway, cycle track, road, highway, railway, tramway, cableway, aerial ropeway or any other works used for the purpose of pedestrian or vehicular commuting (whether they are wholly or partly at-grade, on bridge or viaduct or in tunnel), including the lighting, traffic control facility, cover and noise barrier contained in such works
4. Any airport, helipad or any other works used for the purpose of air navigation, including the traffic control and logistic facility contained in such works
5. Any canal, port, container terminal, typhoon shelter, dock, pier, quay, jetty, beacon, lighthouse, landing steps, mooring dolphin, floating pontoon, slipway, tide gauge station or any other works used for the purpose of marine navigation, including the traffic control and logistic facility contained in such works

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6. Any beach, promenade, harbour steps or any other works used for the purpose of any coastal recreational activity
  7. Any seawall, breakwater or any other works used for the purpose of protection of any shore or harbour
  8. Any power generation plant or installation, gas production plant, storage facility, flue gas treatment facility, flue gas discharge facility, pipeline, gas supply pressure regulating installation, power transformation facility, power transmission and distribution line or any other works used for the purpose of supply of electricity, fuel or gas
  9. Any underground telecommunication line, cable landing station or any other works used for the purpose of telecommunication
  10. Any dam, impounding reservoir, treatment facility, disposal or discharge facility, service reservoir, tank, well, pumping facility, aqueduct, channel, culvert, water mains or any other works used for the purpose of water supply, including the monitoring and control facility contained in such works
  11. Any dam, pond, flood lake, tank, treatment facility, disposal or discharge facility, pumping facility, channel, culvert, tunnel, pipeline or any other works used for the purpose of drainage, flood protection, river regulation or revitalization of water bodies, including the monitoring and control facility contained in such works
  12. Any tank, treatment facility, disposal or discharge facility, pumping facility, tunnel and associated drop or riser shaft, sewer, channel, culvert, tunnel, pipeline or any other works used for the purpose of sewage treatment and associated sludge

and odour treatment, including the monitoring and control facility contained in such works

13. Any landfill, incinerator, transfer facility, treatment facility, disposal or discharge facility or any other works used for the purpose of solid waste treatment, including the monitoring and control facility contained in such works
  14. Any storage, processing, treatment, sorting or transfer facility or any other works used for the purpose of management of construction waste or construction inert materials, including the monitoring and control facility contained in such works
  15. Any other building or structure (whether it is constructed wholly or partly above or below ground level), including its foundation or support
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## Schedule 3

[ss. 4 & 69]

### **Bodies Specified for Definition of *Specified Entity* in Section 4(3)**

1. Airport Authority
2. The Chinese University of Hong Kong
3. City University of Hong Kong
4. CLP Power Hong Kong Limited
5. Construction Industry Council
6. The Education University of Hong Kong
7. The Hong Kong Academy for Performing Arts
8. The Hong Kong and China Gas Company Limited
9. Hong Kong Baptist University
10. Hong Kong Cyberport Development Holdings Limited
11. The Hongkong Electric Company, Limited
12. Hong Kong Housing Authority
13. Hong Kong Housing Society

14. Hongkong International Theme Parks Limited
  15. The Hong Kong Polytechnic University
  16. Hong Kong Science and Technology Parks Corporation
  17. Hong Kong Sports Institute Limited
  18. Hong Kong Trade Development Council
  19. The Hong Kong University of Science and Technology
  20. Hospital Authority
  21. Kowloon-Canton Railway Corporation
  22. Lingnan University
  23. MTR Corporation Limited
  24. Ocean Park Corporation
  25. The University of Hong Kong
  26. Urban Renewal Authority
  27. Vocational Training Council
  28. West Kowloon Cultural District Authority
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## **Schedule 4**

[ss. 7, 8 & 69]

### **Contract Value of Public Contracts or Main Private Contracts for Purposes of Section 7(1)(a)(ii) or 8(1)(a)(ii)**

1. In relation to a public contract or main private contract for the carrying out of construction work (whether or not the contract is also for the supply of related goods and services), the value specified for section 7(1)(a)(ii) or 8(1)(a)(ii) (whichever is applicable) is \$5,000,000.
  2. In relation to a public contract or main private contract for the supply of related goods and services only, the value specified for section 7(1)(a)(ii) or 8(1)(a)(ii) (whichever is applicable) is \$500,000.
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## Explanatory Memorandum

The main objects of this Bill are—

- (a) to facilitate the recovery of payments under construction contracts;
- (b) to provide a mechanism for speedy resolution of payment disputes under certain construction contracts through adjudication proceedings; and
- (c) to give a right to a party to a construction contract, under certain circumstances, to suspend or reduce the rate of progress of the construction work or the supply of related goods and services under the contract.

2. The Bill contains 6 Parts and 4 Schedules.

### Part 1—Preliminary

#### *Division 1—Short Title and Commencement*

3. Clause 1 sets out the short title and provides for commencement.

#### *Division 2—Interpretation*

4. Clause 2 contains the definitions for the interpretation of the Bill. Clauses 3, 4, 5 and 6 provide for the meanings of *construction work*, *public contract*, *main private contract*, *subcontract* and *related goods and services*.



*Division 3—Application*

5. Clause 7 provides that the Bill applies to certain public construction contracts and their subcontracts.
6. Clause 8 provides that the Bill applies to certain main private construction contracts and their subcontracts.
7. Clause 9 excludes certain construction contracts from the application of the Bill, including a construction contract to the extent that it deals with construction work carried out outside Hong Kong.
8. Clause 10 provides that the Bill applies to the Government.
9. Clause 11 confirms that the Bill has effect despite anything to the contrary in any provision in a contract or agreement.

**Part 2—Payments**

*Division 1—Interpretation*

10. Clause 12 contains the definitions for the interpretation of Part 2.

*Division 2—Progress Payments*

11. Clause 13 states that a person who has carried out (or undertaken to carry out) construction work, or has supplied (or undertaken to supply) related goods and services, under a construction contract is entitled to a payment (*progress payment*).

12. Clause 14 provides for the amount of a progress payment to which a person is entitled under a construction contract.
13. Clause 15 provides for the deadline by which a progress payment is required to be paid.

*Division 3—Certain Provisions in Construction Contracts*

14. Clause 16 clarifies that the parties to a construction contract are free to agree on a progress payment provision in the construction contract.
15. Clause 17 states that a conditional payment provision in a construction contract is unenforceable between the parties.

*Division 4—Payment Claims and Payment Responses*

16. Clause 18 empowers a person who is or who claims to be entitled to a progress payment (***claiming party***) to serve a claim for the payment (***payment claim***) on another person who is or may be liable to make the payment (***paying party***).
17. Clause 19 provides that a paying party may reply to a payment claim by serving a response (***payment response***) on the claiming party.
18. Clause 20 provides for the deadline for a paying party to serve a payment response.
19. Clause 21 specifies the consequences on a paying party of not serving a payment response by the deadline.

### **Part 3—Adjudication of Payment Disputes**

#### *Division 1—Interpretation*

20. Clause 22 contains the definitions for the interpretation of Part 3.

#### *Division 2—Payment Disputes*

21. Clause 23 sets out how and when a payment dispute between a claiming party and a paying party arises.
22. Clause 24 provides that a claiming party may, within 28 days beginning on the date on which a payment dispute arises, initiate adjudication proceedings for the payment dispute.

#### *Division 3—Initiating Adjudication Proceedings, Adjudicators and Adjudication Submissions and Responses*

23. Clause 25 deals with the procedures for initiating adjudication proceedings. The claiming party who wishes to initiate adjudication proceedings (*claimant*) must serve a written notice of adjudication (*adjudication notice*) on the paying party against whom the proceedings are initiated (*respondent*).
24. Clauses 26 and 27 deal with the procedures for appointing an adjudicator.
25. Clause 28 sets out the circumstances in which an individual is or is not eligible to be appointed as an adjudicator.
26. Clause 29 requires an adjudicator to declare and disclose any interests that may affect the adjudicator's independence or impartiality.

27. Clause 30 provides that a claimant must serve an adjudication submission within 1 working day after the date on which the claimant is informed of the appointment of the adjudicator.
28. Clause 31 provides that a respondent must serve an adjudication response within 20 working days after the date on which the adjudication submission is served or a longer period that the adjudicator specifies.
29. Clause 32 provides that a claimant must serve a reply to an adjudication response within 2 working days after the date on which the adjudication response is served or a longer period that the adjudicator specifies.

*Division 4—Conduct of Adjudication Proceedings*

30. Clause 33 provides for the jurisdiction of an adjudicator.
31. Clause 34 requires an adjudicator to conduct adjudication proceedings within the powers, and subject to the duties, under clause 35.
32. Clause 35 specifies the powers and duties of an adjudicator, including the power to establish the procedures in conducting adjudication proceedings.
33. Clause 36 clarifies that the power of an adjudicator is not affected by the failure of any party to serve a response or reply, to make a submission (other than an adjudication submission), or to comply with any request made or direction given by the adjudicator.

34. Clause 37 sets out the circumstances in which an adjudicator must disregard a party's submission, response, document or evidence.
35. Clause 38 clarifies that a party may be represented by any other person, whether legally qualified or not.
36. Clause 39 enables an adjudicator to resign if the adjudicator considers that it is not possible to make a determination fairly within the period required under clause 42(5). It also requires an adjudicator to resign if the adjudicator considers that the adjudicator has become ineligible to be appointed as an adjudicator in relation to the payment dispute concerned.
37. Clause 40 enables a claimant to withdraw the adjudication proceedings at any time. However, the claimant must bear the costs of the proceedings unless the adjudicator determines otherwise.
38. Clause 41 sets out the circumstances in which adjudication proceedings are terminated.

*Division 5—Adjudicator's Determinations*

39. Clause 42 requires an adjudicator—
  - (a) to determine the payment dispute for which the adjudication proceedings are initiated and the proportion and the amount of the costs of the adjudication proceedings payable by each party; and
  - (b) to make a determination within 55 working days after the date on which the adjudicator is appointed or a longer period agreed by the parties.

40. Clause 43 provides that a party who is liable to pay an adjudicated amount in a determination must pay the amount within the period specified by the adjudicator.
41. Clause 44 provides for the effect of a determination.
42. Clause 45 empowers an adjudicator to correct any computational or typographical error or any error of a similar nature in a determination.
43. Clause 46 requires an adjudicator in a later adjudication to give the construction work, or related goods and services, the same value as that previously determined unless the adjudicator is satisfied that the value has changed since the previous adjudication.

*Division 6—Setting Aside or Enforcement of Determinations*

44. Clause 47 contains the definition for the interpretation of Division 6 of Part 3.
45. Clause 48 empowers the Court of First Instance (**CFI**), on an application made by a party to adjudication proceedings, to set aside a determination under certain circumstances. The party making the application must pay into the CFI as security the unpaid portion of the adjudicated amount.
46. Clause 49 provides that a determination may, with leave of the CFI, be enforced in the same way as a judgment of the High Court.

*Division 7—General and Miscellaneous Matters relating to Adjudication*

47. Clause 50 ensures that any right that a party to a construction contract may have to submit a payment dispute in any court or other dispute resolution proceedings is not affected.
48. Clause 51 prohibits a person from disclosing any information relating to any adjudication proceedings or determination, except under certain circumstances.
49. Clause 52 clarifies that a party is not liable to pay any costs or expenses incurred by the other party (other than the costs of adjudication proceedings) as a result of or in relation to the adjudication proceedings.
50. Clause 53 provides that the parties to adjudication proceedings are jointly and severally liable to pay the costs of the proceedings, which include the fees and expenses of the nominating body and the adjudicator. That clause also provides that the parties are each liable to pay the costs of the proceedings in the proportions that the adjudicator determines.
51. Clause 54 sets out the matters an adjudicator may consider in determining the proportions of the costs of the adjudication proceedings payable by the parties to the proceedings.
52. Clause 55 provides for supplementary provisions on the fees and expenses of an adjudicator.
53. Clause 56 provides for the disapplication of the adjudication of time-related disputes for main private construction contracts and their subcontracts. A claiming party may not initiate adjudication proceedings for a payment dispute if the amount in relation to the payment dispute is to be determined on the

basis of an assessment on the claiming party's extension of time entitlement under the main private construction contract or its subcontract.

#### **Part 4—Right to Delay Work or Supply**

54. Clause 57 contains the definitions for the interpretation of Part 4.
55. Clause 58 gives a claiming party a right to delay carrying out the construction work, or supplying the related goods and services, under a construction contract if the amount admitted by the paying party is not paid in full and certain other conditions are satisfied. A claiming party exercising the right is not to be regarded as in breach of the construction contract and is not liable for any resulting loss or damage.
56. Clause 59 gives a claimant a right to delay carrying out the construction work, or supplying the related goods and services, under a construction contract if the adjudicated amount is not paid in full and certain other conditions are satisfied. Again, a claimant exercising the right is not to be regarded as in breach of the construction contract and is not liable for any resulting loss or damage.

#### **Part 5—Miscellaneous Matters**

##### *Division 1—Interpretation*

57. Clause 60 contains the definition for the interpretation of Part 5.



*Division 2—Administration*

58. Clause 61 sets out the functions of the Secretary for Development (*Secretary*), including the functions to oversee the performance of the functions of a nominating body and to establish and keep a register of nominating bodies.
59. Clause 62 provides for a right of appeal against certain decisions of the Secretary.
60. Clause 63 sets out the functions of a nominating body, including the functions to nominate and appoint adjudicators and to regulate the conduct of adjudication proceedings.
61. Clause 64 specifies the fees that may be charged by a nominating body.
62. Clause 65 protects from civil liability an adjudicator, a nominating body, the Secretary or a public officer in respect of an act done or omitted to be done by them in good faith in performing or purportedly performing a function under the Bill.
63. Clause 66 protects an adjudicator from being compelled to give evidence or provide or produce any document or other material in any civil proceedings, arbitration or other dispute resolution proceedings.

*Division 3—Service*

64. Clause 67 sets out how a document that is authorized or required to be served under Part 3 (other than clause 27(3)(b) or (4)(b)) of the Bill must be served, including how an adjudication notice must be served on a nominating body by a claiming party.
65. Clause 68 sets out how a document that is authorized or required to be served under clause 27(3)(b) or (4)(b) or Part 2 or 4 of the Bill and an adjudication notice must be served on a party to a construction contract.

*Division 4—Amendment of Schedules*

66. Clause 69 empowers the Secretary to amend Schedules 1, 2, 3 and 4 to the Bill.

**Part 6—Related Amendment**

67. Part 6 (clauses 70 and 71) amends the Administrative Appeals Board Ordinance (Cap. 442).

**Schedules**

68. Schedule 1 sets out the premises that are excluded from the definition of *residential unit* in clause 2(1).
69. Schedule 2 contains a list of buildings, structures and works for the definition of *specified structure* in clause 2(1).
70. Schedule 3 contains a list of bodies specified for the definition of *specified entity* in clause 4(3).

## Construction Industry Security of Payment Bill

Explanatory Memorandum  
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71. Schedule 4 specifies the contract value of a public construction contract or main private construction contract for the purposes of clause 7(1)(a)(ii) or 8(1)(a)(ii).