

Singapore Mediation Centre
Authorised Nominating Body under the Building and Construction Industry Security
of Payments Act (Cap. 30b, Revised Edition 2006)

PRACTICE DIRECTION TO ADJUDICATORS
PD01-17

CONFLICTS OF INTEREST IN APPOINTMENT
& HOLDING OF ADJUDICATION CONFERENCES

1. Appointment of Adjudicator

- 1.1 This paragraph states the principles which should be applicable in determining the existence of conflict in any appointment of an adjudicator, having regard to the legislative objectives of the Building and Construction Industry Security of Payment Act (the “**Act**”) and the complexion of adjudication proceedings.

Eligibility of Adjudicator

- 1.2 Pursuant to section 29(2) of the Act, a person is not eligible to be an adjudicator in relation to a contract if the person is a party to the contract, or is otherwise related to a party to the contract in such manner as may be prescribed, or if there exists such circumstances as may be prescribed.
- 1.3 Regulations 11(2) and (3) of the Building and Construction Industry Security of Payment Regulations (the “**Regulations**”) shall also apply when determining the eligibility of an adjudicator:

“(2) For the purposes of section 29(2) of the Act, a person is *not eligible to be an adjudicator in relation to a contract if the person is related to a party to the contract in the following manner*:

- (a) the person is an employee or a partner of the party, or where the party is a corporation, the person is a director or a shareholder of the corporation;
- (b) the person is an employee, a director, a partner or a shareholder of any corporation which owns or is owned by the party;
- (c) the person is a parent, spouse or sibling of the party; or
- (d) the person has assisted the party to prepare any document for, or has provided any advice to, the party in relation to the contract.

- (3) In paragraph (2) —

“corporation” has the same meaning as in section 4(1) of the Companies Act (Cap. 50);

“parent” includes a step-parent or an adoptive parent;

“sibling” means a brother or sister, and includes a step-brother or step-sister or an adopted brother or sister.”

[Emphasis added]

- 1.4 The ineligibility of a person to be appointed as an adjudicator under Regulation 11(2)(b) should extend to anyone who has been “an employee or a partner of the party”, or where the party is a corporation, the person has been “a director or a shareholder of the corporation”, at any time preceding 3 years from the date of the filing of the adjudication application.
- 1.5 The ineligibility of a person to be appointed as an adjudicator under Regulation 11(2)(b) should extend to anyone who has been “an employee, a director, a partner or a shareholder of any corporation which owns or is owned by the party” at any time preceding 3 years from the date of filing of the adjudication application. For the purpose of determining the ineligibility of a person as shareholder, Regulation 11(2)(b) shall be understood to mean a shareholder whose beneficial interest exceeds 1% of the paid up capital of the corporation.
- 1.6 The ineligibility of persons to be appointed as an adjudicator under Regulation 11(2)(d) should extend to any person or any principal in a firm who has “assisted the party to prepare any document for, or has provided any advice to, the party in relation to the contract” at any time within 3 years preceding the date of filing of the adjudication application.
- 1.7 In paragraph 1.6 of PD01-17, “principal” is defined as a partner, director, consultant or any employee who is in a capacity to act or advise the party in question.

Duty to Disclose Interest

- 1.8 Pursuant to section 29(3) of the Act, a person who is in any way, whether directly or indirectly, interested in any contract or other matter which relates to an adjudication application referred to him by the Authorised Nominating Body (the “ANB”) shall immediately disclose the nature of his interest to the ANB.

Eligibility of Review Adjudicator

- 1.9 Where a nominee for the appointment of a review adjudicator is in a relationship with the adjudicator whose determination is under review and the said relationship corresponds with the descriptions in paragraphs 1.2 to 1.7 of PD01-17, the principles and procedure as set out in paragraphs 1.1 and 1.8 of PD01-17 shall apply to determine the eligibility of the nominee for the appointment.

2. Holding an Adjudication Conference

2.1 An adjudication conference is to allow parties an opportunity to air their concerns and for the adjudicator to clarify any doubts he may have regarding the case submitted by parties.

2.2 The attention of adjudicators is drawn to section 16(4) of the Act, which provides:

“(4) Subject to subsection (3), *an adjudicator may do all or any of the following in relation to an adjudication:*

- (a) conduct the adjudication in such manner as he thinks fit;
- (b) require submissions or documents from any party to the adjudication;
- (c) set deadlines for the submissions or documents to be provided by any party and for the submissions or responses thereto by any other party;
- (d) appoint, after notifying the parties, an independent expert to inquire and report on specific issues relevant to the adjudication;
- (e) call a conference of the parties;
- (f) carry out an inspection of any construction work, construction site, goods or any other matter to which the adjudication relates;
- (g) issue such directions as may be necessary or expedient for the conduct of the adjudication.”

[Emphasis added]

2.3 While the wording of section 16(4) of the Act is permissive and implies that the adjudicator has the option of doing any or all of the above, adjudicators should nonetheless hold an adjudication conference unless there are compelling reasons not to do so (for example, where the sum in dispute is less than \$25,000).

2.4 An adjudicator should also call for an adjudication conference if it is requested by one party, unless there are circumstances which may suggest that this may not be appropriate.

2.5 When an adjudicator has decided to call for an adjudication conference, he should take note of section 16(5) of the Act, which states:

“(5) Where an adjudicator has called for a conference of the parties to an adjudication, *a party to the adjudication shall not be represented by more than 2 representatives* (whether legally qualified or otherwise) *unless the adjudicator permits otherwise.*”

[Emphasis added]

2.6 If an adjudicator considers that an adjudication conference is not necessary, he should notify the Singapore Mediation Centre of the reasons for not holding such a

conference as soon as practicable but no later than before the submission of his draft Determination.

- 2.7 Where the information and documents made available to the adjudicator indicate that calling an adjudication conference in accordance with section 16(4)(e) of the Act would result in incurring unnecessary expense, the adjudicator should indicate in his Determination the reasons for which an adjudication conference was not necessary.

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