

Singapore Mediation Centre
Authorised Nominating Body under the Building and Construction Industry Security
of Payment Act

PRACTICE DIRECTION TO ADJUDICATORS
PD 01-22

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 prevailing 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 11(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 -
- (i) is an employee or a partner of the party;
 - (ii) is a director or substantial shareholder of the party, where the party is a company or foreign company;
 - (iii) is an employee, a director, a substantial shareholder or a partner of any corporation, partnership or limited liability partnership that owns or is owned by the party;
 - (iv) is the sole proprietor of the party, where the party is a sole proprietorship;
or
 - (v) is a spouse, step-parent, stepchild, stepbrother or stepsister of the party,

at any time within the 3 years immediately preceding the date on which the adjudication application is lodged with an authorised nominating body;

- (b) the person is a child, parent or sibling of the party;
- (c) the person, or an affiliate of the person, has assisted the party to prepare any document for, or has provided any advice or service to, the party in relation to the contract or the construction project to which the contract relates.

(3) In paragraph (2) —

“affiliate”, in relation to a person, means —

- (a) an employee or employer of the person;
- (b) an individual who is employed by the person’s employer, and who supervises or is supervised by the person;
- (c) a director of a company or foreign company in which the person is also a director;
- (d) a partner of a partnership or limited liability partnership in which the person is also a partner;
- (e) a child or stepchild of the person;
- (f) a parent or step-parent of the person; or
- (g) a spouse of the person;

“child” includes an adopted child;

“company”, “corporation” and “foreign company” have the meanings given by section 4(1) of the Companies Act (Cap.50);

“limited liability partnership” has the meaning given by section 2(1) of the Limited Liability Partnerships Act (Cap. 163A);

“parent” includes an adoptive parent;

“partnership” means –

- (a) a partnership within the meaning given by section 1 of the Partnership Act (Cap. 391); or
- (b) a limited partnership registered under the Limited Partnerships Act (Cap. 163B);

“sibling” means a brother or sister, and includes an adopted brother or sister;

“substantial shareholder”, in relation to a company or a foreign company with a share capital, has the meaning given by section 81 of the Companies Act.”

[Emphasis added]

Duty to Disclose Interest

- 1.4 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**”), or becomes aware that he does not meet the eligibility criteria in section 29(1) of the Act or is not eligible to be an adjudicator in relation to a contract for any reason mentioned in section 29(2)(a) or (b) of the Act, shall immediately disclose the nature of his interest, ineligibility or the reason for which he is not eligible (as the case may be) to the ANB.

Eligibility of Review Adjudicator

- 1.5 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 and 1.3 of PD 01-22, the principles and procedure as set out in paragraphs 1.1 and 1.4 of PD 01-22 shall apply to determine the eligibility of the nominee for the appointment.

Failure to make Determination

- 1.6 In accordance with section 31(2) of the Act, *“an adjudicator is not entitled to be paid, and must not retain, any fee in relation to an adjudication application if the adjudicator fails to make a determination on the application within the time allowed by section 17 or 19 (as the case may be) otherwise than because the application is withdrawn or terminated or the dispute between the claimant and respondent is settled.”*

[Emphasis added]

- 1.7 The fundamental ethos of the Act is to help the parties resolve disputes quickly and at low cost. If an adjudicator recuses himself due to a conflict of interest before or during the adjudication proceedings or is otherwise replaced due to his inability to perform his duties as an adjudicator for any reason, and fails to make a determination, he will not be entitled to fees for any work done in relation to that adjudication application.

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(6) of the Act, which provides:

“(6) Subject to subsection (5), an adjudicator may do all or any of the following in relation to an adjudication:

- (a) conduct the adjudication in such manner as the adjudicator 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(6) 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(7) of the Act, which states:

“(7) Where an adjudicator has called for a conference of the parties to an adjudication, *a party to the adjudication must 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 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(6)(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.

Issued by:

**Singapore Mediation Centre
1 October 2022**