

The Hong Kong Institution of Engineers (HKIE)
Construction Industry Security of Payment Ordinance
Practice Note on Adjudicator's Fees, Expenses, Costs of the Adjudication

1. Scope of Application and Interpretation

- 1.1. This Practice Note applies to adjudications under the Construction Industry Security of Payment Ordinance, Cap. 652 (the “**Ordinance**”) and the **HKIE** Adjudication Rules (the “**Rules**”).
- 1.2. This Practice Note is intended to supplement the Rules. Where there is a conflict between the provisions of the Rules and this Practice Note, the Rules will prevail.
- 1.3. The **HKIE** may interpret the terms as well as the scope of application of this Practice Note as it considers appropriate.

2. Payments to Adjudicator

- 2.1. Payments to the adjudicator are to be made at the conclusion of the adjudication, either upon the the adjudicator serving the determination to ANB within the period allowed under the Ordinance or upon termination of the adjudication under Section 41(b), (c), (d), (h), or (i) of the Ordinance.
- 2.2. Payments to the adjudicator shall be made by the **HKIE** from funds deposited by the parties in accordance with Article 16 of the Rules. If insufficient funds are held at the time a payment is required, the **HKIE** shall request the parties to settle the outstanding amount before service of the determination on the parties.
- 2.3. When an adjudicator serves its determination on the ANB, or upon termination of the adjudication under Section 41(b), (c), (d), (h), or (i) of the Ordinance, the adjudicator shall submit to the **HKIE** an invoice indicating the work undertaken and the time spent to date in connection with the adjudication and any fees incurred.
- 2.4. Following receipt of an adjudicator's invoice pursuant to paragraph 2.3, the **HKIE** shall circulate the invoice to the parties before any such payment is made. If a party has any comment on the invoice, the party should inform the **HKIE** in writing within **two (2)** days.

3. Adjudicator's Fees

- 3.1. The adjudicator's fees shall be determined in accordance with Article 15 of the Rules.
- 3.2. In the event that the parties jointly agreed, pursuant to Section 42(5)(b), to allow a longer period for making the Determination, the adjudicator shall inform the **HKIE** of the new fee cap, so that the **HKIE** may adjust the amount of deposits to be held by them.

- 3.3. When the adjudicator is required to travel to or from Hong Kong for the purposes of adjudication proceedings, the adjudicator shall be entitled to reimbursement equivalent to 50% of the adjudicator's hourly rate for any time spent traveling.

4. Adjudicator's Expenses

- 4.1. The adjudicator's reasonable expenses shall be borne by the parties and reimbursed in accordance with paragraphs 4.2 to 4.5 below.

- 4.2. An adjudicator required to travel outside his or her usual jurisdiction of residence or business for the purpose of a hearing or conference under the Rules shall:

- a) Be reimbursed at cost for expenses he or she reasonably incurs travelling from and returning to his or her usual place of residence or business, including inter alia airfares, train fares, transport to and from an airport or train station, upon receipt and verification by the HKIE of supporting invoices or receipts. The reimbursement of the cost of travel shall be limited to flexible economy or business class fares; and
- b) Be paid a *per diem* allowance as stated on HKIE's website at the time the expenses are incurred. The expenses covered by the *per diem* allowance include the following items which will not be reimbursed at cost:
 - (i) Hotel accommodation (if applicable);
 - (ii) Meals and beverages;
 - (iii) Laundry, dry cleaning, ironing and other housekeeping services;
 - (iv) Inner-city transport (excluding travel to and from an airport or train station);
 - (v) Communication costs (telephone calls, faxes, internet, post, etc.); and
 - (vi) Gratuities.

An adjudicator is not required to submit receipt or invoices in order to claim the *per diem* allowance. Evidence of travel for the purposes of the adjudication is sufficient.

- 4.3. An adjudicator not required to travel outside his or her usual jurisdiction of residence or business for the purpose of the conduct of the adjudication proceedings, including but not limited to attend a hearing or conference or carry out an inspection of the construction site, any construction work or any other thing to which the payment dispute relates, shall be reimbursed at cost for expenses he or she reasonably incurs:

- a) On inner-city transport travelling from and returning to his or her usual place of residence or business; and
- b) Purchasing meals and beverages;

upon receipt and verification by the HKIE of supporting invoices or receipts.

- 4.4. An adjudicator may be reimbursed at cost for any photocopying charges upon receipt and verification by the **HKIE** of supporting invoices or receipts.
- 4.5. Any expenses reasonably incurred and not covered in paragraphs 4.2 to 4.4 above may be reimbursed at cost upon receipt and verification by the **HKIE** of supporting invoices or receipts.
- 4.6. The expenses of the adjudicator determined in accordance with this paragraph 4 shall not be included in the determination of the adjudicator's fees in accordance with paragraph 3 above.

5. Costs of independent expert, inspection etc.

- 5.1. Where the adjudicator has appointed an independent expert, or directed the inspection of a construction site, any construction work, or any other thing carried out under Section 35(1) of the Ordinance, those costs shall be considered as costs of the adjudication proceedings under Section 54(1)(a)(iii) of the Ordinance.
- 5.2. Where the costs mentioned in paragraph 5.1 above are contemplated, the adjudicator shall inform the **HKIE** so that the **HKIE** may request supplementary deposits to be held by them.