

By post and email at [wp1s@devb.gov.hk](mailto:wp1s@devb.gov.hk)

15 March 2018

Development Bureau (Works Branch)  
Works Division 2, Works Policies 3 Section  
15/F, West Wing, Central Government Offices  
2 Tim Mei Avenue, Tamar

[Attn: Mr Vitus NG, Principal Assistant Secretary (Works) 3]

Dear Mr NG

**Re: Draft Proposal on Register of Adjudicator Nominating Bodies**

Thank you for inviting the Institution to provide views on the captioned subject. We are pleased to provide herewith our views and suggestions on the subject matters for your consideration.

Thank you for your attention.

Yours sincerely



Ir Thomas CHAN Kwok Cheung  
President  
The Hong Kong Institution of Engineers

Enc

Enclosure

**Views on Draft Proposal on Register of Adjudicator Nominating Bodies (“ANBs”)  
under the Security of Payment Legislation (“SOPL”)**

Part I - Proposed Admission Requirements	Comments from the HKIE
<p>1. An applicant must be:</p> <p>(a) a limited company registered in the Hong Kong Special Administrative Region (“HKSAR”) with main business (<i>DEVB Note 1: The main business of a limited company can be established by referred to its Articles of Association</i>) relating to dispute resolution; or</p> <p>(b) a professional institution established under a dedicated ordinance in HKSAR relating to architecture, surveying, engineering, project management, construction or dispute resolution (including the Hong Kong Institute of Architects, the Hong Kong Institute of Surveyors and the Hong Kong Institution of Engineers).</p> <p>and must have an established office in HKSAR for receiving notices of adjudication and other documents served by hand, post, email or fax transmission.</p>	<p>1(a). There seems no restriction on registering a limited company in the Hong Kong SAR which is dedicated to dispute resolution as its main business. Claimants may prefer “commercial” ANBs which have shown favouritism to the claimant group. In order to facilitate assessment of the main business of the limited company, the meaning of “relating to dispute resolution” should be made clearer.</p>
<p>2. An applicant who regularly enters into construction contracts (<i>DEVB Note 2: Construction contracts are contracts under which a party undertakes to carry out construction work or to supply construction related goods and services</i>) shall not be eligible for admission to the Register of Adjudicator Nominating Bodies (“the Register”) maintained by the Development Bureau (“DEVB”).</p>	<p>2. The meaning of “regularly” should be made clearer, e.g. in the past three years, etc. Some companies with business related to dispute resolution may provide construction related services, e.g. in the capacity of a claim consultant.</p>
<p>3. An applicant must have:</p> <p>(a) procedures for <u>determining</u> and <u>reviewing</u> if a person satisfies the qualifying criteria for adjudicators (<i>DEVB Note 3: Eligibility criteria of adjudicator under the SOPL: (a) a person is eligible to be an adjudicator for adjudication if he is an individual on the list of adjudicators of an adjudicator nominating body on DEVB’s register of adjudicator nominating bodies on the commencement date of that adjudication; and (b) a person is</i></p>	<p>3(a). As the qualifying criteria for adjudicators may differ from one ANB to another, a minimum requirement should be clearly stated by DEVB for assessment of the application document.</p>

Part I - Proposed Admission Requirements	Comments from the HKIE
<p><i>not eligible to be the adjudicator if he is a party to the contract, or if there are circumstances that give rise to justifiable doubts as to his impartiality or independency)</i> who the applicant intends to refer adjudication applications to, including:</p> <ul style="list-style-type: none"> <li>• pre-qualification requirements;</li> <li>• code of practice / rules of conduct;</li> <li>• training programs;</li> <li>• accreditation scheme;</li> <li>• continuous professional development;</li> <li>• performance monitoring process;</li> <li>• procedures in the identification, reporting and rectification of unsatisfactory adjudicator performance, including delisting of adjudicators.</li> </ul>	
<p>(b) a <u>published list</u> of at least <b>five</b> adjudicators (<i><b>DEVB Note 4:</b> The intention is to exclude ANBs that have only 1 adjudicator on their lists. Agreeing such an ANB in the contract will be no different from agreeing an adjudicator in the contract prior to dispute arises, which is against the provision that parties can only agree the specific adjudicator after dispute arises</i>) who are available for providing adjudication, including:</p> <ul style="list-style-type: none"> <li>• name of adjudicators</li> <li>• adjudicators’ areas of expertise / core competencies</li> </ul>	<p>3(b).Referring to 1(a) above, in order to alleviate the fear of adjudication being dominated by “commercial” ANBs, at least one of the proposed ANBs should be from those institutions which are exempt from tax under Section 88 of the Inland Revenue Ordinance.</p>
<p>4. An ANB on the register shall submit the following annual returns to the DEVB:</p> <p>(a) <u>summary of adjudication cases referred to the ANB;</u> including the number of disputes referred to the ANB, adjudication parties (i.e. employer, main contractor, sub-contractor, consultant, sub-consultant, supplier), nature of dispute (i.e. financial dispute or dispute on entitlement to extension of time), amount claimed, amount decided by the adjudicator and adjudication period.</p> <p>(b) <u>summary of complaints;</u> including the number of complaints, brief investigation, nature and status of follow-up / preventive actions.</p>	<p>4. The purpose of submission of annual returns for assessing the eligibility of ANB to be maintained on the list is suggested to be clarified.</p>

<b>Part I - Proposed Admission Requirements</b>	<b>Comments from the HKIE</b>
<p>The ANB shall on request of the DEVB provide further details of a complaint, its investigation and follow-up / preventive actions.</p> <p>(c) list of adjudicators; and</p> <p>(d) list of construction contracts entered into by the ANB in the preceding year.</p>	

<b>Part II - Proposed Application Procedure</b>	<b>Comments</b>
<p><b>(A) Application Submission</b></p> <p>1. The applicant shall submit an original application form together with the necessary supporting documents to substantiate that the applicant has fulfilled the admission requirements. The supporting documents shall include at least the following:</p> <p>(a) Company Information</p> <ul style="list-style-type: none"> <li>• Corporation details (including certificate of incorporation and business registration certificate)</li> <li>• Profile of the organisation and membership (where applicable)</li> <li>• A list of construction contracts, if any, entered into by the applicant in the preceding year</li> </ul>	<p>1(a). To avoid conflict of interest or bias, DEVB is suggested to request for more details of the applicant's previous construction contracts and construction services agreements so that the claimant/ respondent could have more information before proposing/ selecting.</p>