

Register of Nominating Bodies
Construction Industry Security of Payment Ordinance (Cap. 652)
Conditions of Registration

Introduction

1. On 27 December 2024, the Construction Industry Security of Payment Ordinance (Cap. 652) (hereinafter referred to as “**the Ordinance**”) was gazetted. According to section 1(3) of the Ordinance, the provisions of the Ordinance in respect of the functions of the Secretary for Development (“**SDEV**”) for establishing and keeping the register of nominating bodies (hereinafter referred to as “**the Register**”) and for determining an application for registration or renewal of registration as a nominating body has come into operation on the date of gazette.
2. On 10 February 2025, the Development Bureau (“**DEVB**”) has published on its website the eligibility criteria for admission to the Register. Eligible applicants may submit application form and supporting documents in accordance with the Guidance Notes for Application for Admission to the Register of Nominating Bodies (hereinafter referred to as “**the Guidance Notes**”).
3. On [date of receipt of application], DEVB received an application from [name of the ANB] (hereinafter referred to as “**the ANB**”).
4. Upon consideration of the application from the ANB, DEVB has notified the ANB, on [date of the notification], to demonstrate compliance on Part (D) of the Guidance Notes pursuant to paragraph 5 of the Guidance Notes.
5. On [date of the notification], DEVB has notified the ANB, pursuant to paragraph 7 of the Guidance Notes, of its successful application together with these **Conditions of Registration** as set out in ensuing paragraphs.

Condition I – General Obligations

6. The ANB shall perform the following functions and administrative duties in an appropriate manner and in accordance with any direction given by DEVB pursuant to section 62(2)(d) of the Ordinance, and shall not delegate to any other entity or abrogate such functions and duties unless otherwise directed by DEVB.

Functions of the ANB (as per section 64 of the Ordinance)

- (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 ANB 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 the Ordinance by the ANB;
- (g) to provide training for individuals who are on its panel of adjudicators;
- (h) to provide DEVB with documents or information required by DEVB; and
- (i) to perform any other functions that are —
 - (i) conferred or imposed on the ANB under the Ordinance; or
 - (ii) directed by DEVB for the purposes of the Ordinance.

Administrative duties of the ANB (non-exhaustive duties incidental to its functions or ensuring its proper exercise of the functions)

- (a) to determine whether an individual is unable or ineligible to act as an adjudicator;
- (b) to receive the adjudicator's determination and serve it on claimant / respondent after receipt of the fees and expenses of the adjudicators;
- (c) to ensure security of confidential information;
- (d) to develop and operate a system for feedback and complaint against an adjudicator;
- (e) to submit regular or ad-hoc reports to DEVB for the purposes of performance monitoring;
- (f) to attend regular or ad-hoc adjudication review meetings;
- (g) to facilitate DEVB's investigation into a complaint against the ANB; and
- (h) to facilitate the audit conducted by DEVB on the ANB's work to ensure the compliance with procedures.

Probity

7. The ANB's staff (including any authorized persons and members) concerned shall be fit and proper persons, and have sufficient knowledge and experience to perform the functions and obligations of the ANB under the Ordinance.
8. The ANB shall prohibit its staff (including any authorized persons and members) concerned from offering, soliciting and accepting advantages in performing the functions and obligations of an ANB under the Ordinance.
9. The ANBs shall also prohibit all individuals on its panels of adjudicators from offering, soliciting and accepting advantages in the conduct of adjudication proceedings.

Conflicts of interest

10. The ANB shall have procedures in place to ensure its staff (including any authorized persons and members) concerned do not have any conflicts of interest in performing the functions and obligations as an ANB.

Change management

11. The ANB shall promptly inform DEVB any material change in:
 - (a) its status (e.g. its company registration status or legal status) or organization structure;
 - (b) where applicable, its supporting entities' status (e.g. its company registration status or legal status) or organization structure; or
 - (c) where applicable, the relationship between the ANB and its supporting entities (e.g. the supporting entities ceased to offer supporting role to the ANB),which may affect the ANB's registration.
12. The ANB shall submit for DEVB's acceptance any intended change to the following documents or information at least two months before the target effective date of such change and shall only implement the change after DEVB's acceptance in writing:
 - (a) training programme/courses for individuals to be included in the ANB's panels of adjudicators;
 - (b) assessment mechanism for including or retaining an individual in the ANB's panels of adjudicators and any other related matters, which include but not limited to eligibility criteria for Adjudicator and Senior Adjudicator, assessment

panel or committee or the like for management of the panels of adjudicators, and mode of assessment;

- (c) methodologies for nominating and appointing an adjudicator for an adjudication proceeding, including outline procedures for handling issues relating to conflict of interest and preferences/requirements of the adjudicating parties, and relevant templates or proforma of adjudication notice and correspondences between the ANB, potential adjudicators and the adjudicating parties during the nomination and appointment process;
- (d) the ANB's adjudication rules, practice notes and code of conduct; and
- (e) the ANB's schedule of ANB's fees and expenses for its services provided in connection with an adjudication proceeding, and the sum(s) or rate(s), specified by the ANB, of any *per diem* allowance in respect of expenses incurred by an adjudicator during an adjudication proceeding.

Publishing information on the ANB's dedicated website

13. ANB shall publish the following information on its dedicated website:

- (a) the documents or information, listed under paragraph 12, as accepted by DEVB;
- (b) the fee for including an individual in the ANB's panels of adjudicators (empanelment fee) and, if applicable, the fee for renewal (renewal fee);
- (c) the ANB's panels of adjudicators;
- (d) the structure of adjudicator's fee as imposed by DEVB, covering the hourly rate cap and the capped amount of adjudicator's fee;
- (e) the way of service of adjudication notices and any other related correspondences with the ANB; and
- (f) mechanism, procedure and fee (if any) for lodging a complaint against an adjudicator.

Chinese translation for items specified in paragraphs 12(c), 12(d), 12(e), 13(d), 13(e) and 13(f) are required.

Condition II – Specific Obligations

Establish and Maintain the ANB's Panels of Adjudicator

Eligibility criteria for inclusion of an individual in the ANB's panels of adjudicators

14. The eligibility criteria for Adjudicator and Senior Adjudicator shall include DEVB's basic eligibility criteria as set out in Appendix II to the Guidance Notes (i.e. professional qualification, post-qualification experience, integrity, training and suitability and competency) and the ANB's additional criteria (if any) as proposed by the ANB in its application for registration and as accepted by DEVB (or any subsequent changes accepted by DEVB).
15. In particular, the training required for inclusion of an individual in the ANB's panels of adjudicators shall comply with the basic training modules as set out in Appendix I to the Guidance Notes.

Establish two-tier panel

16. The ANB shall establish a Panel of Adjudicators and a Panel of Senior Adjudicators based on corresponding eligibility criteria.
17. The assessment of application by an individual for inclusion in the ANB's panels of adjudicators shall be conducted by the ANB's assessment panel or committee or the like as proposed by the ANB in its application for registration and as accepted by DEVB (or any subsequent changes accepted by DEVB).

Management of the panels of adjudicators

18. The ANB shall establish and maintain a system to ensure that the individuals on the ANB's panels of adjudicators observe their obligations as set out in the Ordinance, the ANB's adjudication rules, the ANB's code of conduct and DEVB's guideline on conflicts of interest in adjudication.
19. The system shall also ensure that the individuals on the ANB's panels of adjudicators follow the best practices as set out in the ANB's practice notes, except for situations where the ANB is satisfied that there is reasonable excuse to depart from the best practices.
20. The system shall include a mechanism for determining appropriate actions against an individual on the ANB's panels of adjudicators who has contravened the requirements mentioned in paragraphs 18 and 19 or that the individual no longer fulfils the ANB's eligibility criteria for Adjudicator or Senior Adjudicator.

Nomination and Appointment of Adjudicators

Adherence to the ANB's methodologies

21. The ANB shall adhere to the methodologies, as proposed by the ANB in its application for registration and as accepted by DEVB (or any subsequent changes accepted by DEVB), for nominating and appointing adjudicators and handling conflict of interest.

Fair nomination and appointment process

22. The ANB shall put in place a mechanism to ensure fair nomination and appointment process, including:
 - (a) the selection of candidates and subsequent nomination and appointment are handled and decided by designated persons of the ANB, who have declared no conflicts of interest in respect of the payment dispute concerned;
 - (b) the selection, nomination and appointment process is carried out expeditiously, fairly and without bias towards any individual on its panels of adjudicators or towards either of the adjudicating parties;
 - (c) the candidates selected for nomination and appointment are, having regard to the ANB's selection criteria (such as the candidates' qualification, experience, skills, past performance, his/her proposed fees and, if applicable, the requirements of the adjudicating parties), suitable for the payment dispute concerned;
 - (d) checking on existence of conflicts of interest between a candidate and the adjudicating parties has been conducted and any reasonable concerns raised by an adjudicating party on potential conflicts of interest have been addressed as far as reasonably practicable before concluding the appointment of adjudicator.

No charging of fees from an individual included in the ANB's panels of adjudicators for nomination and appointment as adjudicator for a payment dispute

23. The ANB shall not charge or collect from an individual who is on the ANB's panels of adjudicators any fees in relation to being nominated and/or appointed as an adjudicator for a payment dispute, whether such fees are in the form of a fixed sum, a share of the adjudicator's fees received from the adjudicating parties or otherwise.

ANB's fee and expenses

24. The ANB shall charge the adjudicating parties the ANB's fees and expenses for nomination and appointment strictly in accordance with the adjudication rules and the

schedule of fees and expenses as proposed by the ANB in its application for registration and as accepted by DEVB (or any subsequent changes accepted by DEVB).

25. Where the ANB determines an adjusted ANB Fee for an adjudication proceeding pursuant to Article [4.3] of the ANB's adjudication rules, the ANB shall inform the parties in a timely manner.
26. The ANB shall exercise its discretion under Article [4.6] of its Adjudication Rules reasonably.

Facilitate Adjudication Proceedings

27. The ANB shall maintain at all times an established office in the Hong Kong Special Administrative Region (HKSAR) for receiving adjudication notices and other related documents.
28. The ANB shall adopt the adjudication modules (including adjudication rules, practice notes and code of conduct for adjudicators) as proposed by the ANB in its application for registration and as accepted by DEVB (or any subsequent changes accepted by DEVB).
29. The ANB shall exercise its functions under the Ordinance to facilitate adjudication proceedings in an expeditious, fair and reasonable manner, and in accordance with the Ordinance and the adjudication modules as mentioned in paragraph 28.
30. The ANB shall not hinder or unduly interfere with the independent exercise of an adjudicator's powers under the Ordinance.

Collection and handling of deposit from adjudicating parties

31. The ANB shall collect deposit from the adjudicating parties in accordance with the ANB's adjudication rules and relevant practice notes at appropriate times.
32. The ANB shall ensure that the amount of deposit requested does not far exceed a sufficient amount for settlement of adjudicator's entitled fees and expenses at the conclusion of an adjudication proceeding.
33. Further to Article [16.8] of the ANB's adjudication rules, the ANB shall place the deposit made by the adjudicating parties in a non-interest earning account.
34. The ANB shall return any unexpended balance of the deposit to the adjudicating parties as soon as reasonably practicable.

Adjudicator's fee and expenses

35. The ANB shall monitor that the adjudicator's fees and expenses are reasonable, having regard to the nature and complexity of the matters involved in the proceeding, the time required and the expertise and experience of the adjudicator, and in accordance with the ANB's adjudication rules and the structure of adjudicator's fee as imposed by DEVB and published on the ANB's website (covering the hourly rate cap and the capped amount of adjudicator's fee).
36. Where the ANB determines an adjusted fee cap for an adjudicator's fee for an adjudication proceeding pursuant to Article [\[15.1\]](#) of the ANB's adjudication rules, the ANB shall inform the parties in a timely manner.

Confidentiality and Privacy

Confidential Information

37. The ANB shall observe, and shall take all reasonable measures to ensure that all its staff (including any authorized persons and members) shall observe, section 52 of the Ordinance.
38. The ANB shall also ensure that all confidential information as specified in section 52 of the Ordinance in the possession of the ANB is protected at all times from unauthorized access or disclosure.

Personal Information / Data

39. The ANB shall observe, and shall take all reasonable measures to ensure that all its staff (including any authorized persons and members) shall observe, the Personal Data (Privacy) Ordinance (Cap. 486).

Complaints

Mechanism and procedures for complaint against adjudicators

40. The ANB shall establish a mechanism for handling complaints lodged by adjudicating parties against adjudicators. The mechanism shall cover:
 - (a) scope of complaint that the adjudicating parties may lodge against an adjudicator appointed by the ANB;
 - (b) procedure of lodging such complaint and handling of such complaint by the ANB;
 - (c) an independent investigation conducted by the ANB on such complaint;

- (d) a timely resolution; and
- (e) appropriate remedies and sanctions where the complaint is substantiated.

Regular Reporting

Quarterly Reports

41. The ANB shall submit Quarterly Reports (within one month after the end of respective reporting period) to DEVB. The Quarterly Reports shall include but not limited to the following statistical information (unless otherwise directed by DEVB):

- (a) the number of adjudication notices served on the ANB;
- (b) the number of adjudicator's determination served on the ANB;
- (c) the number of and ground for withdrawal / termination of adjudication;
- (d) the number of adjudication proceedings with claimants falling under the categories of main contractor, 1st tier subcontractor, 2nd tier subcontractor (etc.), consultants and supplier;
- (e) in respect of adjudication proceedings instigated under 'public contract' or 'main private contract' (within the meaning under section 4 of the Ordinance), the number of respondents falling under the categories of the Government of HKSAR, bodies specified in Schedule 3 of the Ordinance or their subsidiary undertakings and private companies;
- (f) the number of adjudication proceedings instigated under construction contracts which are in relation to construction work falling under the categories of (i) new construction work, (ii) repair, maintenance, alteration or addition works;
- (g) the number of adjudication proceedings involved time-related payment disputes;
- (h) the number of adjudication proceedings with sum in dispute falling under each range as set out in the capped amount of adjudicator's fee imposed by DEVB;
- (i) the number of adjudication proceedings with adjudicated amount (excluding the part in respect of the costs of adjudication proceeding) falling under each range as set out in the capped amount of adjudicator's fee imposed by DEVB;
- (j) the number of working days taken by the ANB for the appointment of adjudicator for each adjudication proceedings;

- (k) the number of working days taken by the adjudicator to make a determination and serve it on the ANB for each adjudication proceedings;
- (l) the amount of ANB's fees and adjudicator's fees and expenses charged by the ANB and adjudicators;
- (m) the proportion of the costs of adjudication proceeding payable by the claimants and the respondents;
- (n) the number and relevant details of complaints against adjudicators and investigation by the ANB; and
- (o) the number of actions taken against an individual on the ANB's panels of adjudicator arising from the management of the panels or any complaints against adjudicators.

42. The reporting period for quarterly reports are as follows:

Quarter 1 : 1 January to 31 March

Quarter 2 : 1 April to 30 June

Quarter 3 : 1 July to 30 September

Quarter 4 : 1 October to 31 December

Annual Reports

43. The ANB shall submit an Annual Report (within January of the next calendar year) to DEVB that includes the consolidated statistical information (presented in the Quarterly Reports) and an overall diagnostic review with a view to identifying areas for improvement and/or enhancement.

44. The reporting period for Annual Report is from 1 January to 31 December each year.

Other Reports / Notifications

45. The ANB shall notify DEVB of any legal proceeding instituted against the ANB or any other relevant event that may disrupt the performance of its functions and obligations under the Ordinance and/or as required by these Conditions of Registration. The ANB shall make the notification in writing as soon as reasonably practicable upon becoming aware of the legal proceeding or the relevant event.

Condition III – Renewal, Cancellation and Suspension of Registration

46. DEVB may refuse to renew, or cancel, the registration of the ANB if:
- (a) the ANB fails to comply with any of these Conditions of Registration;
 - (b) the ANB no longer fulfils the eligibility criteria of an ANB as set out in the Guidance Notes;
 - (c) the ANB requests for cancellation of its registration in writing to DEVB; or
 - (d) the ANB inform DEVB in writing that it no longer intends to renew its registration.
47. In case of paragraph 46(c), the ANB shall provide at least 2-month prior notice to DEVB. In case of paragraph 46(d), the ANB shall provide prior notice to DEVB at least 2 months before the expiry of the validity period of registration.
48. If DEVB intends to cancel the registration of the ANB or accedes to the ANB's request under paragraph 46(c) or (d), DEVB shall notify in writing the ANB of the intention or decision, the reasons for the cancellation and the effective date of cancellation. The effective date of cancellation shall be at least 14 days after the date of the notification.
49. Without limiting paragraph 46, DEVB may suspend the registration of the ANB if the ANB fails to comply with any of these Conditions of Registration.
50. If DEVB intends to suspend the registration of the ANB, the DEVB shall notify in writing the ANB of the intention, the reasons for the suspension and the period of suspension. The earliest starting date of the period of suspension shall be at least 14 days after the date of the notification.

Development Bureau