

Building and Construction Industry Security of Payment Act 2004

Table of Contents

Long Title

Part 1 PRELIMINARY

1 Short title

2 Interpretation

3 Definitions of construction work, goods and services

4 Application of Act

Part 2 RIGHTS TO PROGRESS PAYMENTS

5 Entitlement to progress payments

6 Amount of progress payment

7 Valuation of construction work, goods and services

8 Due date for payment

9 Effect of "pay when paid provisions"

Part 3 PAYMENT CLAIMS AND RESPONSES

10 Payment claims

11 Payment responses, etc.

12 Entitlement to make adjudication applications

Part 4 ADJUDICATION OF PAYMENT CLAIM DISPUTES

13 Adjudication applications

14 Appointment of adjudicator

14A Appointment of replacement adjudicator

15 Adjudication responses

16 Commencement of adjudication and adjudication procedures

17 Determination of adjudicator

18 Adjudication review applications

18A Appointment of replacement review adjudicator

19 Adjudication review procedures, etc.

20 Withdrawal of adjudication applications and adjudication review applications

21 Effect of adjudication determinations and adjudication review determinations

22 Payment of adjudicated amount

Part 5 MEASURES TO ENFORCE PAYMENT OF ADJUDICATED AMOUNT

23 Consequences of not paying adjudicated amount

24 Direct payment from principal

25 Lien on goods supplied

26 Right to suspend work or supply

27 Enforcement of adjudication determination as judgment debt, etc.

Part 6 GENERAL PROVISIONS RELATING TO ADJUDICATION

28 Authorised nominating bodies

28A Authorised nominating body to maintain trust account

29 Eligibility criteria for adjudicators

30 Costs of adjudication proceedings

31 Adjudicator's fees and expenses

32 Protection from liability for adjudicators and authorised nominating bodies

33 Confidentiality of adjudication

34 Effect on other proceedings

Part 7 MISCELLANEOUS

35 Act to bind Government

36 No contracting out

37 Service of documents

38 Exemption

39 Amendment of specified periods

40 Delegation of powers

41 Regulations

Legislative History

Abbreviations

Comparative Table

BUILDING AND CONSTRUCTION INDUSTRY SECURITY OF PAYMENT ACT 2004

2020 REVISED EDITION

This revised edition incorporates all amendments up to and including 1 December 2021 and comes into operation on 31 December 2021

An Act to facilitate payments for construction work done or for related goods or services supplied in the building and construction industry, and for matters connected therewith.

[3 January 2005: Sections 1, 28 and 40 ;
1 April 2005: Sections 2, 3, 4, 29 to 39, 41 and 42 and Parts II to V]

PART 1

PRELIMINARY

Short title

1. This Act is the Building and Construction Industry Security of Payment Act 2004.

Interpretation

2. In this Act, unless the context otherwise requires —
 - “adjudicated amount” means the amount of a progress payment that is determined to be payable under section 17 or 19, as the case may be;
 - “adjudication” means the adjudication of a payment claim dispute in accordance with Part 4, and includes an adjudication review under that Part;
 - “adjudication determination”, in relation to an adjudication, means the determination of the adjudicator;
 - “adjudication response” means a response to an adjudication application lodged by a respondent under section 15(1);
 - “adjudicator” means a person appointed under this Act to determine a payment claim dispute that has been referred for adjudication, and includes —
 - (a) a replacement adjudicator appointed under section 14A(3);
 - (b) a review adjudicator or a panel of review adjudicators appointed under section 18(5)(b); and

(c) a replacement review adjudicator or a replacement member of a panel of review adjudicators appointed under section 18A(3);

“authorised nominating body” means a person authorised under section 28(1);

“claimant” means a person who is or claims to be entitled to a progress payment under section 5;

“claimed amount” means the whole or part of any progress payment claimed by a claimant in a payment claim, and includes any interest payable under section 8(5);

“construction contract” means an agreement under which —

(a) one party undertakes to carry out construction work, whether including the supply of goods or services or otherwise, for one or more other parties; or

(b) one party undertakes to supply services to one or more other parties;

“construction site”, in relation to a contract between a claimant and a respondent, means —

(a) the land on which or the premises at which the claimant has been, is or will be carrying out construction work; or

(b) the land or the premises in relation to which goods or services have been, are being or will be supplied under the contract;

“contract” means a construction contract or a supply contract, and includes a construction contract or a supply contract that has been terminated;

“costs”, in relation to an adjudication, includes —

(a) the application fee payable to an authorised nominating body; and

(b) the fees and expenses of the adjudicator;

“day” means any day other than a public holiday within the meaning of the Holidays Act 1998;

“due date”, in relation to a progress payment, means the date on which the progress payment becomes due and payable under section 8;

“land” has the meaning given by section 4 of the Land Titles Act 1993;

“owner”, in relation to a contract between a claimant and a respondent, means —

- (a) a person who —
 - (i) enters into a contract, whether with the respondent or any other person, for the carrying out of construction work at or on, or for the supply of goods or services in relation to, the construction site concerned by the respondent or other person, as the case may be; and
 - (ii) is not engaged by any other person to carry out construction work at or on, or to supply goods or services in relation to, the construction site concerned; or
- (b) where there is no such person — a person who owns the construction site concerned;

“patent error”, in relation to a payment claim, means an error that is obvious, manifest or otherwise easily recognisable on the face of the claim;

“payment claim” means a claim made by a claimant for a progress payment under section 10;

“payment response”, in relation to a construction contract, means a response to a payment claim made by a respondent under section 11(1) or 12(4);

“principal”, in relation to a respondent named in a payment claim served by a claimant under section 10, means a person who is liable to make payment to the respondent for or in relation to the whole or part of the construction work that is, or the whole or part of the goods or services that are, the subject of the contract between the respondent and the claimant;

“progress payment” means a payment to which a person is entitled for the carrying out of construction work, or the supply of goods or services, under a contract, and includes —

- (a) a single or one-off payment (including a final payment); or
- (b) a payment that is based on an event or a date (including a final payment);

“respondent” means a person who is or may be liable to make a progress payment under a contract to a claimant;

“response amount” means —

- (a) in relation to a construction contract — the amount that a respondent proposes to pay to a claimant in a payment response provided under

section 11(1) or 12(4) or as varied under section 12(4); or

- (b) in relation to a supply contract — the amount of the claimed amount in a payment claim that a respondent has paid to the claimant on or before the due date, if any;

“supply contract” means an agreement under which —

- (a) one party undertakes to supply goods to any other party who is engaged in the business of carrying out construction work or who causes to be carried out construction work;
- (b) the supply is for the purpose of construction work carried out or caused to be carried out by the second-mentioned party; and
- (c) the firstmentioned party is not required to assemble, construct or install the goods at or on the construction site,

but does not include any prescribed agreement.

[47/2018]

Definitions of “construction work”, “goods” and “services”

3.—(1) In this Act, unless the context otherwise requires and subject to subsection (2) —

“construction work” means —

- (a) the construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of buildings or structures (whether permanent or not) that form, or are to form, part of the land;
- (b) the construction, alteration, repair, restoration, maintenance, extension, demolition or dismantling of any works that form, or are to form, part of the land, including walls, roadworks, powerlines, telecommunication apparatus, aircraft runways, docks and harbours, railways, inland waterways, pipelines, reservoirs, water mains, wells, sewers, industrial plant and installations for the purpose of land drainage, coast protection or defence;
- (c) the installation in any building, structure or works of fittings that form, or are to form, part of the land, including systems of heating, lighting, air conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection, and security or communications systems;

- (d) any operation which forms an integral part of, is preparatory to, or is for rendering complete, works of the kind mentioned in paragraph (a), (b) or (c), including —
 - (i) land reclamation;
 - (ii) site clearance, earth moving, excavation, tunnelling and boring;
 - (iii) the laying of foundations;
 - (iv) the erection, maintenance or dismantling of scaffolding;
 - (v) the prefabrication of components to form part of any building, structure or works, whether carried out at or on the construction site or elsewhere; and
 - (vi) site restoration, landscaping and the provision of roadways and other access works;
- (e) the external or internal cleaning of buildings, structures or works, so far as it is carried out in the course of their construction, alteration, repair, restoration, maintenance or extension; or
- (f) the painting or decorating of the external or internal surfaces of any building, structure or works;

“goods” means —

- (a) materials or components to form part of any building, structure or works arising from construction work; or
- (b) plant or materials (whether supplied by sale, hire or otherwise) for use in connection with the carrying out of construction work;

“services” means —

- (a) the conduct of feasibility studies, planning services, the submission of applications or other documents to any relevant authority, site supervision services, professional engineering services, or architectural, design, surveying or quantity surveying services, in relation to construction work;
- (b) project management services in relation to construction work;
- (c) building, engineering, exterior or interior decoration or landscape

advisory services in relation to construction work; or

(d) the provision of labour to carry out construction work.

(2) The Minister may, by order in the *Gazette*, modify the definition of “construction work”, “goods” or “services” in subsection (1) by adding to, varying or deleting any part of the definition.

Application of Act

4.—(1) Subject to subsection (2), this Act applies to any contract that is made in writing on or after 1 April 2005, whether or not the contract is expressed to be governed by the law of Singapore.

(2) This Act does not apply to —

- (a) any contract for the carrying out of construction work at or on, or the supply of goods or services in relation to, any residential property (within the meaning of the Residential Property Act 1976), which does not require the approval of the Commissioner of Building Control under the Building Control Act 1989;
- (b) any contract to the extent that —
 - (i) it contains provisions under which a party undertakes to carry out construction work, or to supply goods or services, as an employee (within the meaning of the Employment Act 1968) of the party for whom the construction work is to be carried out or the goods or services are to be supplied; or
 - (ii) it deals with construction work carried out outside Singapore, or goods or services supplied in relation to construction work carried out outside Singapore;
- (c) any terminated contract to the extent that —
 - (i) the terminated contract contains provisions relating to termination that permit the respondent to suspend progress payments to the claimant until a date or the occurrence of an event specified in the contract; and
 - (ii) that date has not passed or that event has not occurred;
- (d) any contract for the prefabrication, in Singapore, of components intended for construction work to be carried out on a construction site outside

Singapore, where any one of the parties to the contract is not —

- (i) a body corporate incorporated under any written law in Singapore;
 - (ii) a limited partnership registered under the Limited Partnerships Act 2008; or
 - (iii) a person carrying on a business that is registered under the Business Names Registration Act 2014; and
- (e) such other contract or class of other contracts as may be prescribed. [47/2018]

(3) To avoid doubt, this Act —

- (a) applies to a contract that deals with the prefabrication (whether in or outside Singapore) of components that will form part of any building, structure or works, where the contract is for the supply of these prefabricated components for construction work to be carried out on a construction site in Singapore; and
- (b) does not apply to claims made between former parties to a contract in relation to any construction work that is carried out, or goods or services that are supplied, at the time of or after the termination of the contract. [47/2018]

(4) For the purpose of this section, a contract is treated as being made in writing —

- (a) if the contract is made in writing, whether or not it is signed by the parties to the contract;
- (b) if the contract is made by an exchange of written communications;
- (c) if the contract made otherwise than in writing is recorded by one of the parties to the contract, or by a third party, with the authority of the parties to the contract; or
- (d) if the parties to the contract agree otherwise than in writing by reference to terms that are in writing.

(5) Where a contract is not wholly made in writing, the contract is treated as being made in writing for the purpose of this section if, subject to the provisions of this Act, the matter in dispute between the parties to the contract is in writing.

PART 2

RIGHTS TO PROGRESS PAYMENTS

Entitlement to progress payments

5. Any person who has carried out any construction work, or supplied any goods or services, under a contract is entitled to a progress payment.

Amount of progress payment

6. The amount of a progress payment to which a person is entitled under a contract is —

- (a) the amount calculated in accordance with the terms of the contract; or
- (b) if the contract does not contain such provision, the amount calculated on the basis of the value of the construction work carried out, or of the goods or services supplied, by the person under the contract.

Valuation of construction work, goods and services

7.—(1) Construction work carried out, or goods or services supplied, under a contract are to be valued —

- (a) in accordance with the terms of the contract; or
- (b) if the contract does not contain such provision, having regard to the matters specified in subsection (2).

(2) For the purpose of subsection (1)(b), construction work carried out, or goods or services supplied, under a contract are to be valued —

- (a) having regard to —
 - (i) the contract price for the construction work, goods or services;
 - (ii) any other rate or price specified in the contract; and
 - (iii) any variation agreed to by the parties to the contract by which the contract price, or any other rate or price specified in the contract, is to be adjusted by a specific amount,

or, in the absence of the matters mentioned in sub-paragraphs (i), (ii) and (iii), then having regard to the rates or prices prevailing in the building and construction industry at the time the construction work was carried out, or the goods or services were supplied;

- (b) if any part of the construction work, goods or services is defective —

- having regard to the estimated cost of rectifying the defect; and
- (c) in the case of materials or components that are to form part of any building, structure or works arising from the construction work — having regard to the basis that the only materials or components to be included in the valuation are those that have become or, on payment, will become the property of the party for whom the construction work is being carried out.

Due date for payment

8.—(1) Where a construction contract provides for the date on which a progress payment becomes due and payable, the progress payment becomes due and payable on the earlier of the following dates:

- (a) the date as specified in or determined in accordance with the terms of the contract;
- (b) the date immediately upon the expiry of 35 days after —
 - (i) if the claimant is a taxable person under the Goods and Services Tax Act 1993 who has submitted to the respondent a tax invoice for the progress payment — the date the tax invoice is submitted to the respondent; or
 - (ii) in any other case — the date on which or the period within which the payment response is required to be provided under section 11(1) (whether or not a payment response is provided).

(2) Where a construction contract does not provide for the date on which a progress payment becomes due and payable, the progress payment becomes due and payable immediately upon the expiry of 14 days after —

- (a) if the claimant is a taxable person under the Goods and Services Tax Act 1993 who has submitted to the respondent a tax invoice for the progress payment — the date the tax invoice is submitted to the respondent; or
- (b) in any other case — the date on which or the period within which the payment response is required to be provided under section 11(1) (whether or not a payment response is provided).

(3) Where a supply contract provides for the date on which a progress payment becomes due and payable, the progress payment becomes due and payable on the earlier of the following dates:

- (a) the date as specified in or determined in accordance with the terms of the contract;
- (b) the date immediately upon the expiry of 60 days after the relevant payment claim is served under section 10.

(4) Where a supply contract does not provide for the date on which a progress payment becomes due and payable, the progress payment becomes due and payable immediately upon the expiry of 30 days after the relevant payment claim is served under section 10.

(5) The interest payable on the unpaid amount of a progress payment that has become due and payable is at the higher of the following rates:

- (a) the rate specified in or determined in accordance with the terms of the contract;
- (b) the rate prescribed in respect of judgment debts under the Supreme Court of Judicature Act 1969.

[47/2018]

(6) For the purpose of subsections (1) and (2) and subject to the Goods and Services Tax Act 1993, the claimant may submit the tax invoice mentioned in subsection (1)(b)(i) or (2)(a) at any time after the payment response mentioned in subsection (1)(b)(ii) or (2)(b) (as the case may be) is provided, despite anything to the contrary in the contract.

Effect of “pay when paid provisions”

9.—(1) A pay when paid provision of a contract is unenforceable and has no effect in relation to any payment for construction work carried out or undertaken to be carried out, or for goods or services supplied or undertaken to be supplied, under the contract.

(2) In this section —

“money owing”, in relation to a contract, means money owing for construction work carried out, or for goods or services supplied, under the contract;

“pay when paid provision”, in relation to a contract, means a provision of the contract by whatever name called —

- (a) that makes the liability of one party (called in this definition the first party) to pay money owing to another party (called in this definition the second party) contingent or conditional on payment to the first party by a further party (called in this definition the third party) of the whole or any part of that money;

- (b) that makes the due date for payment of money owing by the first party to the second party contingent or conditional on the date on which payment of the whole or any part of that money is made to the first party by the third party;
- (c) that otherwise makes the liability to pay money owing, or the due date for payment of money owing, contingent or conditional on the operation of any other contract or agreement; or
- (d) that is of such kind as may be prescribed.

PART 3

PAYMENT CLAIMS AND RESPONSES

Payment claims

10.—(1) A claimant may serve one payment claim in respect of a progress payment on —

- (a) one or more other persons who, under the contract concerned, is or may be liable to make the payment; or
- (b) any other person specified in or identified in accordance with the terms of the contract for this purpose.

(2) A payment claim must be served —

- (a) not later than —
 - (i) the date, or the last day of a period, specified in, or determined in accordance with, the terms of the contract relating to the purpose of this subsection; or
 - (ii) the date prescribed for the purpose of this subsection if the contract does not contain such terms; and
- (b) not later than 30 months after the following, whichever is applicable:
 - (i) the date on which the goods and services to which the amount in the payment claim relates were last supplied;
 - (ii) the latest of the following dates:
 - (A) the date on which the construction work to which the

amount in the payment claim relates was last carried out;

(B) the issuance date of the last document, as at the time the payment claim is served, certifying the completion of the construction work under a contract;

(C) the issuance date of the last temporary occupation permit as at the time the payment claim is served.

[47/2018]

(3) In subsection (2) —

(a) a payment claim that is served before the date or last day mentioned in subsection (2)(a)(i) is deemed to have been served on that date or day, as the case may be; and

(b) a payment claim that is served before the prescribed date mentioned in subsection (2)(a)(ii) is deemed to have been served on that date.

[47/2018]

(4) A payment claim —

(a) must state the claimed amount, calculated by reference to the period to which the payment claim relates; and

(b) must be made in such form and manner, and contain such other information or be accompanied by such documents, as may be prescribed.

(5) Nothing in subsection (1) prevents the claimant from serving an unpaid payment claim in accordance with subsection (2).

[47/2018]

(6) In this section —

“issuance date”, for a document, means the date that the document is served;

“temporary occupation permit”, in respect of a building or part of a building, means —

(a) a temporary occupation permit granted under the Building Control Act 1989 for the building or part of the building; or

(b) a certificate of statutory completion issued under that Act for that building or part of that building where no temporary occupation permit is granted;

“unpaid payment claim” means —

- (a) a payment claim for which full payment has not been received, and for which an adjudication application has not been brought; or
- (b) a payment claim for which —
 - (i) full payment has not been received; and
 - (ii) an adjudication application has been brought, but was withdrawn for any reason or rejected without adjudication because the claimant’s entitlement to make an adjudication application had not arisen under section 12, or because the adjudication application did not comply with the requirements under section 13(2) or (3).

[47/2018]

Payment responses, etc.

11.—(1) A respondent named in a payment claim served in relation to a construction contract must respond to the payment claim by providing, or causing to be provided, a payment response to the claimant —

- (a) by the date as specified in or determined in accordance with the terms of the construction contract, or within 21 days after the payment claim is served under section 10, whichever is the earlier; or
- (b) where the construction contract does not contain such provision, within 14 days after the payment claim is served under section 10.

[47/2018]

(2) A respondent named in a payment claim served in relation to a supply contract may respond to the payment claim by paying to the claimant the claimed amount, or such part of the claimed amount as the respondent agrees to pay, or by raising objections in writing, by the due date.

[47/2018]

(3) A payment response provided in relation to a construction contract —

- (a) must identify the payment claim to which it relates;
- (b) must state the response amount, if any;
- (c) must state, where the response amount is less than the claimed amount, the reason for the difference and the reason for any amount withheld; and
- (d) must be made in such form and manner, and contain such other

information or be accompanied by such documents, as may be prescribed.

(4) A respondent may vary a payment response which the respondent has provided to a claimant if, and only if, the variation —

- (a) is made in such form and manner as may be prescribed; and
- (b) is provided to the claimant by the date or within the period that a payment response is required to be provided under subsection (1) or within the dispute settlement period under section 12(5).

Entitlement to make adjudication applications

12.—(1) Subject to subsection (2), a claimant who, in relation to a construction contract, fails to receive payment by the due date of the response amount which the claimant has accepted in writing is entitled to make an adjudication application under section 13 in relation to the relevant payment claim.

[47/2018]

(2) Where, in relation to a construction contract —

- (a) the claimant disputes a payment response provided by the respondent; or
- (b) the respondent fails to provide a payment response to the claimant by the date or within the period mentioned in section 11(1),

the claimant is entitled to make an adjudication application under section 13 in relation to the relevant payment claim if, by the end of the dispute settlement period, the dispute is not settled or the respondent does not provide the payment response, as the case may be.

(3) For the purpose of subsection (2)(a), a claimant is considered to dispute a payment response if the claimant does not in writing accept the payment response.

[47/2018]

(4) A claimant who has served a payment claim in relation to a supply contract is entitled to make an adjudication application under section 13 in relation to the payment claim if —

- (a) the claimant fails to receive payment by the due date of the claimed amount; or
- (b) the claimant disputes the response amount, where the response amount is less than the claimed amount.

(5) During the dispute settlement period, in addition to any other action that the claimant or the respondent may take to settle the dispute —

- (a) the claimant or the respondent may seek clarification from the other party on any matter relating to the relevant payment claim; and
- (b) the respondent may provide the claimant with a payment response where the respondent has failed to do so under section 11(1), or vary the payment response provided under that section.

(6) In this section, “dispute settlement period”, in relation to a payment claim dispute, means the period of 7 days after the date on which or the period within which the payment response is required to be provided under section 11(1).

PART 4

ADJUDICATION OF PAYMENT CLAIM DISPUTES

Adjudication applications

13.—(1) A claimant who is entitled to make an adjudication application under section 12 may, subject to this section, apply for the adjudication of a payment claim dispute by lodging the adjudication application with an authorised nominating body.

(2) An adjudication application must not be made unless the claimant has, by written notice containing the prescribed particulars, notified the respondent of the claimant’s intention to apply for adjudication of the payment claim dispute.

(3) An adjudication application —

- (a) must be made within 7 days after the entitlement of the claimant to make an adjudication application first arises under section 12;
- (b) must be made in writing addressed to the authorised nominating body requesting it to appoint an adjudicator;
- (c) must contain such information or be accompanied by such documents as may be prescribed;
- (d) must be accompanied by such application fee as may be determined by the authorised nominating body; and
- (e) may contain or be accompanied by such other information or documents (including expert reports, photographs, correspondences and submissions) as the claimant may consider to be relevant to the application.

(4) The authorised nominating body must, upon receiving an adjudication application —

- (a) serve a copy thereof on the respondent; and
- (b) serve on the principal (if known) and the owner concerned a written notice that the application has been made.

(5) The notice mentioned in subsection (4)(b) must contain such particulars as may be prescribed.

Appointment of adjudicator

14.—(1) The authorised nominating body must, upon receiving an adjudication application, refer the adjudication application to a person who is on the register of adjudicators established under section 28(4)(a) and whom the authorised nominating body considers to be appropriate for appointment as the adjudicator to determine the adjudication application.

(2) The person to whom the adjudication application has been referred under subsection (1) may agree or decline to determine the adjudication application.

(3) The authorised nominating body must, within 7 days after receiving the adjudication application, serve a written notice confirming the appointment of an adjudicator on the claimant, the respondent, the principal (if known) and the owner concerned.

Appointment of replacement adjudicator

14A.—(1) Where an authorised nominating body becomes aware that —

- (a) an adjudicator appointed under section 14 has ceased to meet the eligibility criteria for adjudicators under section 29; or
- (b) the adjudicator has become unable to perform the adjudicator’s duties for any reason,

the authorised nominating body must refer the adjudication application to a person who is on the register of adjudicators established under section 28(4)(a) and whom the authorised nominating body considers to be appropriate for appointment as the replacement adjudicator to determine the adjudication application.

[47/2018]

(2) The person to whom the adjudication application has been referred under subsection (1) may agree or decline to determine the adjudication application.

[47/2018]

(3) The authorised nominating body must, within 7 days after becoming aware of the matters in subsection (1)(a) or (b) (as the case may be) serve on the claimant, the

respondent, the principal (if known) and the owner concerned a written notice confirming the appointment of the person who has agreed to determine the adjudication application referred to the person under subsection (1) as the replacement adjudicator.

[47/2018]

Adjudication responses

15.—(1) A respondent must, within 7 days after receiving a copy of an adjudication application under section 13(4)(a), lodge with the authorised nominating body a response to the adjudication application.

(2) The adjudication response —

- (a) must be made in writing addressed to the authorised nominating body;
- (b) must identify the adjudication application to which it relates;
- (c) must contain such information or be accompanied by such documents as may be prescribed; and
- (d) may contain or be accompanied by such other information or documents (including expert reports, photographs, correspondences and submissions) as the respondent may consider to be relevant to the adjudication response.

(3) Subject to subsection (4), the respondent must not include in the adjudication response an objection of any nature, unless —

- (a) where the adjudication relates to a construction contract — that objection was included in the relevant payment response provided by the respondent to the claimant; or
- (b) where the adjudication relates to a supply contract — that objection was raised by the respondent to the claimant in writing on or before the relevant due date.

[47/2018]

(4) Despite subsection (3), the respondent may include in the adjudication response an objection mentioned in subsection (3) if —

- (a) in the case of an adjudication that relates to a construction contract —
 - (i) the circumstances of that objection only arose after the respondent provided the relevant payment response to the claimant; or
 - (ii) the respondent could not reasonably have known of the circumstances when providing the relevant payment response to

the claimant; or

- (b) in the case of an adjudication that relates to a supply contract —
 - (i) the circumstances of that objection only arose after the relevant due date; or
 - (ii) the respondent could not reasonably have known of the circumstances by the relevant due date.

[47/2018]

(5) The authorised nominating body must, upon receiving an adjudication response —

- (a) serve a copy thereof on the claimant; and
- (b) serve on the principal (if known) and the owner concerned a written notice that the adjudication response has been lodged.

(6) The notice mentioned in subsection (5)(b) must contain such particulars as may be prescribed.

Commencement of adjudication and adjudication procedures

16.—(1) An adjudication commences immediately upon the expiry of the period mentioned in section 15(1) within which the respondent may lodge an adjudication response.

(2) If an adjudicator is appointed under section 14A(3), a new adjudication commences as if the adjudication under subsection (1) had not commenced, immediately upon expiry of the period mentioned in section 14A(3) within which the notice confirming the adjudicator's appointment must be served.

[47/2018]

(3) Subject to subsection (4), an adjudicator must reject —

- (a) any adjudication application that is not made in accordance with section 13(3)(a), (b) or (c); and
- (b) any adjudication response that is not lodged within the period referred to in section 15(1).

[47/2018]

(4) Despite subsection (3), an adjudicator may accept any adjudication application that is not made in accordance with section 13(3)(c) if the adjudicator is satisfied that the non-compliance does not materially prejudice the respondent.

(5) An adjudicator must —

- (a) act independently, impartially and in a timely manner;
- (b) avoid incurring unnecessary expense; and
- (c) comply with the principles of natural justice.

(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.

(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.

(8) The parties to an adjudication must comply with any requirement made or direction issued by the adjudicator in accordance with this section.

(9) An adjudicator's power to determine an adjudication application is not affected by the failure of —

- (a) the respondent to provide a payment response or lodge an adjudication response; or
- (b) any of the parties to comply with the adjudicator's call for a conference of the parties or any other requirement made or direction issued by the adjudicator,

and in the event of any such failure, the adjudicator may determine the application on the

basis of the information and documents available to the adjudicator.

(10) The determination of an adjudicator on any adjudication application must be in writing.

Determination of adjudicator

17.—(1) An adjudicator must determine an adjudication application —

(a) within 7 days after the commencement of the adjudication under section 16(1) or (2) (as the case may be) or within such longer period as may have been requested by the adjudicator and agreed to by the claimant and the respondent, if the adjudication relates to a construction contract and the respondent —

(i) has failed to make a payment response and to lodge an adjudication response by the commencement of the adjudication; or

(ii) has failed to pay the response amount, which has been accepted by the claimant, by the due date; or

(b) in any other case, within 14 days after the commencement of the adjudication under section 16(1) or (2) (as the case may be) or within such longer period as may have been requested by the adjudicator and agreed to by the claimant and the respondent.

[47/2018]

(2) An adjudicator must, in relation to an adjudication application, determine —

(a) the adjudicated amount (if any) to be paid by the respondent to the claimant;

(b) the date on which the adjudicated amount is payable;

(c) the interest payable on the adjudicated amount; and

(d) the proportion of the costs of the adjudication payable by each party to the adjudication,

and must include, in the determination, the reasons therefor.

(3) In determining an adjudication application, an adjudicator must disregard any part of a payment claim or a payment response related to damage, loss or expense that is not supported by —

(a) any document showing agreement between the claimant and the respondent

on the quantum of that part of the payment claim or the payment response;
or

- (b) any certificate or other document that is required to be issued under the contract.

[47/2018]

(4) Subject to subsection (5), in determining an adjudication application, an adjudicator may only have regard to the following matters:

- (a) the provisions of this Act;
- (b) the provisions of the contract to which the adjudication application relates;
- (c) the payment claim to which the adjudication application relates, the adjudication application, and the accompanying documents thereto;
- (d) the payment response to which the adjudication application relates (if any), the adjudication response (if any), and the accompanying documents thereto;
- (e) the results of any inspection carried out by the adjudicator of any matter to which the adjudication relates;
- (f) the report of any expert appointed to inquire on specific issues;
- (g) the submissions and responses of the parties to the adjudication, and any other information or document provided at the request of the adjudicator in relation to the adjudication;
- (h) any other matter that the adjudicator reasonably considers to be relevant to the adjudication.

(5) In determining an adjudication application, an adjudicator is not bound by any payment response, or any assessment in relation to the progress payment, that is provided in the contract to be final or binding on the parties to the contract, whether subject to any term or condition or otherwise.

(6) The adjudicator must not consider an objection from the respondent of any nature that was not included in the adjudication response, unless —

- (a) the circumstances of that objection only arose after the respondent lodged the adjudication response with the authorised nominating body;
- (b) the respondent could not reasonably have known of those circumstances when lodging the adjudication response with the authorised nominating body; or

(c) the objection relates to a patent error.

[47/2018]

(7) If, in determining an adjudication application, an adjudicator has determined in accordance with section 7 —

(a) the value of any construction work carried out under a construction contract; or

(b) the value of goods or services supplied under a contract,

the adjudicator (or any other adjudicator) must, in any subsequent adjudication application that involves the determination of the value of that work or of those goods or services, give the construction work or the goods or services (as the case may be) the same value as that previously determined unless the claimant or respondent satisfies the adjudicator concerned that the value thereof has changed since the previous determination.

(8) If the determination of an adjudicator contains —

(a) a clerical mistake;

(b) an error arising from an accidental slip or omission; or

(c) a defect of form,

the adjudicator may, on the adjudicator's own initiative or on the application of the claimant or the respondent, correct the mistake, error or defect, as the case may be.

(9) Except as provided in subsection (8), the adjudicator must not change his or her determination on any adjudication application.

(10) The authorised nominating body —

(a) must serve a copy of the adjudication determination, and any amended adjudication determination, on the claimant and the respondent; and

(b) must serve on the principal (if known) and the owner concerned a written notice that the adjudication determination has been made or amended, as the case may be.

(11) The notice mentioned in subsection (10)(b) must contain such particulars as may be prescribed.

Adjudication review applications

18.—(1) This section applies to a respondent who is a party to an adjudication if the

adjudicated amount exceeds the relevant response amount by the prescribed amount or more, and to a claimant who is a party to an adjudication if the claimed amount exceeds the adjudicated amount by the prescribed amount or more.

[47/2018]

(2) Subject to subsection (3), where a respondent or a claimant to whom this section applies is aggrieved by the adjudicator's determination, the respondent or claimant may, within 7 days after being served the adjudication determination, lodge an application for the review of the determination with the authorised nominating body with which the application for the adjudication had been lodged under section 13.

[47/2018]

(3) Where the respondent is required in consequence of the adjudication determination to pay an adjudicated amount to the claimant, the respondent must not lodge any application for the review of the determination unless the respondent has paid the adjudicated amount to the authorised nominating body.

[47/2018]

(4) An adjudication review application —

- (a) must be made in writing addressed to the authorised nominating body requesting it to appoint one or more review adjudicators to determine the application;
- (b) must contain such information or be accompanied by such documents as may be prescribed; and
- (c) must be accompanied by such application fee as may be determined by the authorised nominating body.

(5) The authorised nominating body must, upon receiving an adjudication review application —

- (a) serve —
 - (i) a copy thereof on the claimant or the respondent, as the case may be; and
 - (ii) a written notice that the application has been made on the principal (if known) and the owner concerned; and
- (b) subject to subsection (7) and in accordance with the prescribed criteria, appoint a review adjudicator or a panel of 3 review adjudicators.

[47/2018]

(6) The authorised nominating body must, within 7 days after receiving the adjudication review application, serve a written notice confirming the appointment of the review adjudicator or the panel of review adjudicators (as the case may be) on the parties

to the adjudication review, the principal (if known) and the owner concerned.

(7) For the purpose of subsection (5)(b) —

- (a) section 14(1) and (2) applies with the necessary modifications; and
- (b) the authorised nominating body must not appoint an adjudicator whose determination is the subject of the adjudication review.

Appointment of replacement review adjudicator

18A.—(1) Where an authorised nominating body becomes aware that —

- (a) a review adjudicator or a member of a panel of review adjudicators appointed under section 18(5)(b) has ceased to meet the eligibility criteria for adjudicators under section 29; or
- (b) a review adjudicator or a member of a panel of review adjudicators has become unable to perform the adjudicator’s duties for any reason,

the authorised nominating body must refer the adjudication review application to a person who is on the register of adjudicators established under section 28(4)(a) and whom the authorised nominating body considers to be appropriate for appointment as the replacement review adjudicator or a replacement member of a panel of review adjudicators to determine the adjudication review application in place of the review adjudicator or member of a panel of review adjudicators in paragraph (a) or (b), as the case may be.

[47/2018]

(2) The person to whom the adjudication review application has been referred under subsection (1) may agree or decline to determine the adjudication review application.

[47/2018]

(3) The authorised nominating body must, within 7 days after becoming aware of the matters in subsection (1)(a) or (b) (as the case may be) serve on the parties to the adjudication review, the principal (if known) and the owner concerned a written notice confirming the appointment of the person who has agreed to determine the adjudication review application referred to the person under subsection (1) as the replacement review adjudicator or the replacement member of the panel of review adjudicators, as the case may be.

[47/2018]

(4) The authorised nominating body must not appoint an adjudicator whose determination is the subject of the adjudication review.

[47/2018]

Adjudication review procedures, etc.

19.—(1) An adjudication review commences on the date immediately after the authorised nominating body confirms the appointment of the review adjudicator or the panel of review adjudicators (as the case may be) under section 18(6).

(2) If an adjudicator is appointed under section 18A(3) to replace a review adjudicator, or if 3 adjudicators are appointed under section 18A(3) to replace 3 members of a panel of review adjudicators, a new adjudication review commences —

- (a) immediately upon expiry of the period mentioned in section 18A(3) within which the notice confirming the adjudicator’s appointment must be served; and
- (b) as if the adjudication review under subsection (1) had not commenced.

[47/2018]

(3) If 2 or fewer adjudicators are appointed under section 18A(3) to replace 2 or fewer members of a panel of review adjudicators, the adjudication review resumes for the reconstituted panel to hear and determine so much of the adjudication review as the panel considers fit —

- (a) immediately upon expiry of the period mentioned in section 18A(3) within which the notice confirming the adjudicator’s appointment must be served; and
- (b) whether or not any part of the adjudication review has been heard by the previous panel of adjudicators.

[47/2018]

(4) In subsection (3), the reconstituted panel may have regard to the evidence given and arguments adduced during the part of the adjudication review heard by the previous panel of review adjudicators.

[47/2018]

(5) The review adjudicator or the panel of review adjudicators (as the case may be) must reject any adjudication review application that is not made —

- (a) within the period mentioned in section 18(2); or
- (b) in accordance with section 18(4)(a) or (b).

(6) The review adjudicator or the panel of review adjudicators (as the case may be) must determine the adjudication review application within —

- (a) 14 days after the commencement of the adjudication review under subsection (1) or (2), as the case may be;
- (b) the remainder of the 14 days after the resumption of the adjudication review under subsection (3); or

- (c) such longer period as may have been requested by the review adjudicator or the panel of review adjudicators (as the case may be) and agreed to by the claimant and the respondent.

[47/2018]

(7) In relation to any adjudication review application, a review adjudicator or a panel of review adjudicators (as the case may be) may —

- (a) substitute the adjudication determination that is the subject of the adjudication review for any other determination as is considered appropriate; or
- (b) refuse the adjudication review application.

(8) A review adjudicator or a panel of review adjudicators (as the case may be) must determine under subsection (7)(a) —

- (a) the adjudicated amount (if any) to be paid by the respondent to the claimant;
- (b) the amount (if any) to be returned by the authorised nominating body to the respondent;
- (c) where the adjudicated amount mentioned in paragraph (a) is different from the amount that the respondent has paid to the authorised nominating body under section 18(3), the date on which the difference in amount is payable;
- (d) the interest payable on any such amount; and
- (e) the proportion of the costs of the adjudication review payable by each party to the adjudication review,

and must include, in the determination, the reasons therefor.

[47/2018]

(9) In determining an adjudication review application, the review adjudicator or the panel of review adjudicators (as the case may be) must disregard any part of a payment claim or a payment response related to damage, loss or expense that is not supported by —

- (a) any document showing agreement between the claimant and the respondent on the quantum of that part of the payment claim or the payment response; or
- (b) any certificate or other document that is required to be issued under the contract.

[47/2018]

(10) In determining an adjudication review application, the review adjudicator or the panel of review adjudicators, as the case may be —

- (a) may only have regard to the matters mentioned in section 17(4)(a) to (h) and the adjudication determination that is the subject of the adjudication review; and
- (b) is not bound by any payment response, or any assessment in relation to the progress payment, that is provided in the contract to be final or binding on the parties to the contract, whether subject to any term or condition or otherwise.

(11) The review adjudicator or the panel of review adjudicators (as the case may be) must not consider an objection from the respondent of any nature that was not included in the adjudication response, unless —

- (a) the circumstances of the objection only arose after the respondent lodged the adjudication response with the authorised nominating body;
- (b) the respondent could not reasonably have known of those circumstances when lodging the adjudication response with the authorised nominating body; or
- (c) the objection relates to a patent error.

[47/2018]

(12) Where a panel of review adjudicators is appointed to determine an adjudication review application, the determination must be decided in accordance with the opinion of the majority of the review adjudicators on the panel.

(13) Sections 16(5) to (10) and 17(7) to (11) apply, with the necessary modifications, in relation to adjudication review applications.

Withdrawal of adjudication applications and adjudication review applications

20.—(1) An adjudication application may be withdrawn by the claimant at any time upon serving a notice of withdrawal on —

- (a) the adjudicator;
- (b) the authorised nominating body which appointed the adjudicator; and
- (c) the respondent.

(2) An adjudication review application may be withdrawn by the party who lodged the application at any time upon serving a notice of withdrawal on —

- (a) the review adjudicator or the panel of review adjudicators, as the case may

- be;
- (b) the authorised nominating body which appointed the review adjudicator or the panel of review adjudicators, as the case may be; and
 - (c) the other party to the adjudication review application.

[47/2018]

Effect of adjudication determinations and adjudication review determinations

21.—(1) An adjudication determination made under this Act is binding on the parties to the adjudication and on any person claiming through or under them, unless or until —

- (a) permission of the court to enforce the adjudication determination is refused under section 27;
- (b) the dispute is finally determined by a court or tribunal or at any other dispute resolution proceeding; or
- (c) the dispute is settled by agreement of the parties.

[Act 25 of 2021 wef 01/04/2022]

(2) An adjudication review determination under section 19(7)(a) has effect as if it were an adjudication determination for the purposes of this Act.

(3) This section does not affect the right of any party to challenge an adjudication determination or an adjudication review determination in any proceeding before a court or tribunal or in any other dispute resolution proceeding.

Payment of adjudicated amount

22.—(1) Where, in relation to an adjudication application, the adjudicator has determined that the respondent must pay an adjudicated amount to the claimant, then except as provided in subsection (2) and section 18(3), the respondent must pay that amount —

- (a) within 7 days after the adjudicator’s determination is served on the respondent; or
- (b) by the date on which the adjudicated amount is determined by the adjudicator to be payable,

whichever is the later.

[47/2018]

(2) Where a respondent is required in consequence of the adjudication determination to pay an adjudicated amount to the claimant, and the claimant is entitled under

section 18(2) to lodge an application for the review of the adjudication determination, the respondent must pay that amount —

- (a) not earlier than 7 days but within 10 days after the respondent is served the adjudicator's determination;
- (b) within 7 days after the respondent is served the adjudication review determination of an adjudication review brought by the claimant; or
- (c) on or before the date (if any) determined by the review adjudicator or the panel of review adjudicators under section 19(8)(c) as the date that the amount is payable,

whichever is the later.

[47/2018]

(3) Where an application for the review of an adjudicator's determination has been lodged by the respondent, an authorised nominating body to whom an adjudicated amount has been paid under section 18(3) must pay the relevant amount to the party who is entitled to payment —

- (a) within 7 days after the adjudication review determination is served on that party; or
- (b) on or before a later date (if any) determined by the review adjudicator or the panel of review adjudicators under section 19(8)(c) as the date that the amount is payable.

[47/2018]

(4) Where the adjudicated amount under an adjudication review determination is higher than the adjudicated amount under the adjudication determination, a respondent who has paid the adjudicated amount under the adjudication determination to the authorised nominating body under section 18(3) must pay the difference to the claimant —

- (a) within 7 days after the adjudication review determination is served on the respondent; or
- (b) on or before a later date (if any) determined by the review adjudicator or the panel of review adjudicators under section 19(8)(c) as the date that the amount is payable.

[47/2018]

PART 5

MEASURES TO ENFORCE PAYMENT OF ADJUDICATED AMOUNT

Consequences of not paying adjudicated amount

23.—(1) Where a respondent fails to pay the whole or any part of the adjudicated amount to a claimant in accordance with section 22, the claimant may do either or both of the following:

- (a) serve a written notice on the respondent of the claimant's intention to exercise a lien under section 25 on goods supplied by the claimant to the respondent under the contract concerned that are unfixed and which have not been paid for;
- (b) serve a written notice on the respondent under section 26 of the claimant's intention to suspend carrying out construction work or supplying goods or services under the contract concerned.

(2) Without limiting subsection (1), where a party to an adjudication fails to pay the whole or any part of the adjudicated amount to any other party in accordance with section 22, the aggrieved party may apply for and enforce the adjudication determination as if it were a judgment debt in accordance with section 27.

Direct payment from principal

24.—(1) Where a respondent fails to pay the whole or any part of the adjudicated amount to a claimant in accordance with section 22, the principal of the respondent may pay the whole or any part of the outstanding amount in accordance with the procedure set out in subsection (2).

(2) The procedure by which the principal may make payment to the claimant is as follows:

- (a) the principal must serve a notice of payment on the claimant stating that direct payment must be made, and serve a copy thereof on the respondent and the owner (if the principal is not the owner);
- (b) the respondent must, if the respondent has paid the adjudicated amount to the claimant, show proof of such payment to the principal and the owner (if the principal is not the owner) within 2 days after receiving the notice mentioned in paragraph (a);
- (c) if the respondent fails to show proof of payment in accordance with paragraph (b), the principal is entitled to pay the whole or any part of the outstanding amount of the adjudicated amount to the claimant.

(3) Where the principal is a licensed housing developer under the Housing Developers (Control and Licensing) Act 1965 with a Project Account opened under section 9 of that Act, the claimant is not entitled to exercise the lien under section 25 or

suspend work or supply under section 26 for 21 days after being served the notice of payment under subsection (2)(a) by the principal, unless the principal had previously defaulted on any payment to the claimant under this section in relation to the same contract.

(4) Any payment by the principal under this section —

- (a) may be treated by the principal as payment to the respondent in reduction (by the amount of the payment) of any amount that the principal owes, or may in future owe, to the respondent in connection with the construction work, or the goods or services, concerned; or
- (b) may be recovered by the principal as a debt due from the respondent.

(5) Where the principal has paid the whole or any part of the adjudicated amount under this section, the subsequent setting aside of the relevant adjudication determination does not affect any rights conferred on the principal under this section.

Lien on goods supplied

25.—(1) Subject to the provisions of this Act, the claimant has a lien on goods supplied by the claimant to the respondent under the contract concerned that are unfixated and which have not been paid for.

(2) The lien under subsection (1) subsists if, and only if —

- (a) the claimant has served on the respondent the notice mentioned in section 23(1)(a);
- (b) a copy of the notice has been served by the claimant on the principal (if known) and the owner concerned;
- (c) 7 days have elapsed since the notice was served on the respondent, the principal (if known) and the owner, or since the last of them was served the notice; and
- (d) the claimant has not been paid the adjudicated amount.

(3) The lien under subsection (1) does not give the claimant any priority over the liens on the goods existing before the date on which the firstmentioned lien arises.

(4) The claimant has no rights to exercise the lien mentioned in subsection (1) —

- (a) if the goods concerned are owned by a person other than the claimant or the respondent; or
- (b) during the period mentioned in section 24(3).

Right to suspend work or supply

26.—(1) Subject to the provisions of this Act, a claimant may suspend the carrying out of construction work, or the supply of goods or services, under a contract if, and only if —

- (a) the claimant has served on the respondent the notice mentioned in section 23(1)(b);
- (b) a copy of the notice has been served by the claimant on the principal (if known) and the owner concerned;
- (c) 7 days have elapsed since the notice was served on the respondent, the principal (if known) and the owner, or since the last of them was served the notice; and
- (d) the claimant has not been paid the adjudicated amount.

(2) During the period of suspension exercised in accordance with subsection (1) —

- (a) the claimant is not liable to the respondent, the principal or the owner for any loss or damage suffered by the respondent, the principal or the owner (as the case may be) or by any person claiming through or under the respondent, the principal or the owner; and
- (b) the respondent, the principal and the owner have no claim against the claimant for any loss or damage suffered as a result of the suspension, but the principal and the owner may recover liquidated damages or any other remedy from the respondent pursuant to any contract or under any law.

(3) If the claimant, in exercising the right to suspend the carrying out of construction work or the supply of goods or services in accordance with subsection (1), incurs any loss or expenses as a result of the removal by the respondent from the contract of any part of the work or supply —

- (a) the respondent is liable to pay the claimant the amount of any such loss or expenses; and
- (b) any such loss or expenses may be recovered by the claimant as a debt due from the respondent.

(4) Where a claimant has suspended the carrying out of construction work or the supply of goods or services under a contract in accordance with subsection (1), the claimant must resume such work or supply within 3 days after being paid the adjudicated amount.

(5) Where a claimant has suspended the carrying out of construction work or the

supply of goods or services under a contract in accordance with subsection (1), and —

- (a) the principal, who is a licensed housing developer under the Housing Developers (Control and Licensing) Act 1965 with a Project Account opened under section 9 of that Act, has served a notice of payment under section 24(2)(a) on the claimant; and
- (b) the principal has not previously defaulted on any payment to the claimant under section 24 in relation to the same contract,

the claimant must resume such work or supply within 3 days after being served the notice of payment under section 24(2)(a).

(6) The claimant is liable to pay for any loss or damage suffered by the respondent or the principal as a result of any failure to resume carrying out construction work or supplying goods or services (as the case may be) under subsection (4) or (5).

(7) Any period of suspension under subsection (1) must be disregarded in computing for the purposes of any contractual time limit the time taken, by the party exercising the right of suspension or by a third party (other than the respondent), to complete any construction work or the supply of any goods or services directly or indirectly affected by the exercise of the right of suspension.

(8) Where the contractual time limit mentioned in subsection (7) is set by reference to a date rather than a period, the date must be adjusted accordingly.

Enforcement of adjudication determination as judgment debt, etc.

27.—(1) An adjudication determination made under this Act may, with permission of the court, be enforced in the same manner as a judgment or an order of the court to the same effect.

[Act 25 of 2021 wef 01/04/2022]

(2) Where permission of the court is so granted, judgment may be entered in the terms of the adjudication determination.

[Act 25 of 2021 wef 01/04/2022]

(3) An application for permission to enforce an adjudication determination may not be filed in court under this section unless it is accompanied by an affidavit by the applicant stating that the whole or part of the adjudicated amount has not been paid at the time the application is filed.

[Act 25 of 2021 wef 01/04/2022]

(4) If the affidavit mentioned in subsection (3) indicates that part of the adjudicated amount has been paid, the judgment is to be for the unpaid part of the adjudicated amount.

(5) Where any party to an adjudication commences proceedings to set aside the adjudication determination or the judgment obtained pursuant to this section, that party must pay into the court as security the unpaid portion of the adjudicated amount that that party is required to pay, in such manner as the court directs or as provided in the Rules of Court, pending the final determination of those proceedings.

(6) The grounds on which a party to an adjudication may commence proceedings under subsection (5) include, but are not limited to, the following:

- (a) the payment claim was not served in accordance with section 10;
- (b) the claimant served more than one payment claim in respect of a progress payment, otherwise than permitted under section 10;
- (c) the payment claim was in respect of a matter that has already been adjudicated on its merits in proceedings under this Act;
- (d) the adjudication application or the adjudication review application was not made in accordance with the provisions of this Act;
- (e) the adjudicator failed to comply with the provisions of this Act in making the adjudication determination;
- (f) the adjudication determination requires the claimant to pay an adjudicated amount to the respondent;
- (g) a breach of the rules of natural justice occurred in connection with the making of the adjudication determination;
- (h) the making of the adjudication determination was induced or affected by fraud or corruption.

[47/2018]

(7) A respondent may not commence proceedings under subsection (5) on any ground if the objection to support that ground was not included in the respondent's adjudication response, unless —

- (a) the circumstances of the objection to support that ground only arose after the respondent lodged the adjudication response with the authorised nominating body; or
- (b) the respondent could not reasonably have known of those circumstances when lodging the adjudication response with the authorised nominating body.

[47/2018]

(8) Without affecting a court's powers under any other written law or rule of law, a

court may, in any proceedings under subsection (5) —

- (a) set aside an adjudication determination in whole or in part;
- (b) remit the whole or any part of the adjudication determination to the adjudicator;
- (c) correct in the adjudication determination any clerical mistake, error arising from an accidental slip or omission, or a defect of form; and
- (d) award costs to any party to an adjudication.

[47/2018]

(9) Where the court makes an order of remission under subsection (8)(b) —

- (a) Parts 4 to 7 apply, with the necessary modifications, to the determination of the remitted issues by the adjudicator, as if the remitted issues were issues in an adjudication that commenced on a date specified by the court in the order; and
- (b) the adjudicator's determination of the remitted issues has effect as if it were an adjudication determination for the purposes of this Act.

[47/2018]

PART 6

GENERAL PROVISIONS RELATING TO ADJUDICATION

Authorised nominating bodies

28.—(1) The Minister may —

- (a) upon the application of any person, authorise the person to appoint adjudicators and undertake such other functions or duties as may be imposed under this Act, subject to such terms and conditions as the Minister may think fit; and
- (b) withdraw any such authorisation.

(2) The Minister may limit the number of persons who may, for the time being, be authorised under subsection (1).

(3) An authorised nominating body must provide the Minister with such information or documents as the Minister may request from time to time in relation to the activities of the authorised nominating body or its register of adjudicators established under subsection (4)(a), including but not limited to information as to the fees charged by the authorised nominating body or by the persons on its register of adjudicators for any

service provided under or by virtue of this Act.

(4) An authorised nominating body must, in relation to its authorisation under subsection (1) —

- (a) establish and maintain a register of adjudicators;
- (b) establish and administer codes of conduct or practice;
- (c) provide training for the persons who are on the register of adjudicators;
- (d) establish a schedule of fees for adjudication services provided under or by virtue of this Act, including an adjudicator's fees;
- (e) facilitate the conduct of adjudications under this Act, including the establishing of rules therefor not inconsistent with this Act or any other written law, and provide general administrative support therefor;
- (f) abide by any regulations that the Minister may prescribe; and
- (g) undertake such other functions or duties as may be imposed under this Act or as may be directed by the Minister.

[47/2018]

Authorised nominating body to maintain trust account

28A.—(1) An authorised nominating body must open and maintain a trust account with a bank for the purpose of holding the adjudicated amount mentioned in section 18(3).

[47/2018]

(2) An authorised nominating body must not withdraw any money from a trust account except for the purpose of subsection (3) or making a payment under section 22(3).

[47/2018]

(3) All interest earned from the maintenance of adjudicated amounts received in a trust account accrue to the authorised nominating body, which may dispose of the interest in such manner as the authorised nominating body considers fit.

[47/2018]

(4) Money held in a trust account is not available for payment of the debts of an authorised nominating body or liable to be paid or taken under or pursuant to an enforcement order or process of a court.

[47/2018]

[Act 25 of 2021 wef 01/04/2022]

(5) Nothing in subsection (4) takes away or affects any lawful claim that a claimant or a respondent has against money held in a trust account.

[47/2018]

(6) In this section —

“bank” has the meaning given by the Banking Act 1970;

“trust account” means a current or deposit account maintained in the name of the authorised nominating body at a bank, in the title of which the words “BCISOPA ANB — Adjudicated Amount Client Account” appear.

[47/2018]

Eligibility criteria for adjudicators

29.—(1) A person is eligible to be on the register of adjudicators established under section 28(4)(a) if the person is an individual with such qualifications, expertise or experience as may be prescribed.

(2) A person is not eligible to be an adjudicator in relation to a contract —

(a) 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

(b) if there exists such circumstances as may be prescribed.

(3) A person to whom an adjudication application has been referred by the authorised nominating body under section 14, 14A, 18 or 18A, and who —

(a) is or becomes interested in any way, whether directly or indirectly, in any contract or other matter that relates to the adjudication application; or

(b) is or becomes aware that the person —

(i) does not meet the eligibility criteria in subsection (1); or

(ii) is not eligible to be an adjudicator in relation to a contract for any reason mentioned in subsection (2)(a) or (b),

must immediately disclose the nature of his or her interest, the nature of his or her ineligibility or the reason for which he or she is not eligible (as the case may be) to the authorised nominating body.

[47/2018]

Costs of adjudication proceedings

30.—(1) The costs of any adjudication must not exceed such amount as the Minister may prescribe.

(2) An adjudicator must, in making a determination in relation to any adjudication

application, decide which party must pay the costs of the adjudication and (where applicable) the amount of contribution by each party.

(3) Where an adjudicator is satisfied that a party to an adjudication incurred costs of the adjudication because of frivolous or vexatious conduct on the part of, or unfounded submissions by, another party, the adjudicator may decide that the other party must pay some or all of those costs.

(4) A party to an adjudication must bear all other costs and expenses incurred as a result of or in relation to the adjudication, but may include the whole or any part thereof in any claim for costs in any proceeding before a court or tribunal or in any other dispute resolution proceeding.

Adjudicator's fees and expenses

31.—(1) Subject to this section, an adjudicator is entitled to be paid, in relation to an adjudication application —

- (a) such fees as may be specified by the authorised nominating body which appointed the adjudicator; and
- (b) such amount, by way of expenses, as may be agreed between the adjudicator and the parties to the adjudication or, if no such amount is agreed, then as the authorised nominating body considers to be reasonable having regard to the work done and expenses incurred by the adjudicator.

(2) 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.

[47/2018]

(3) Subsection (2) does not apply —

- (a) in circumstances in which an adjudicator requires payment of the fees mentioned in subsection (1) before the issue of the adjudicator's determination on the adjudication application; or
- (b) in such other circumstances as may be prescribed.

[47/2018]

(4) Where an adjudication application is withdrawn or terminated or the dispute between the claimant and the respondent is settled, the adjudicator is entitled to be paid the fees and expenses incurred in relation to the adjudication up to, and including, the date on which the adjudication application is withdrawn or terminated or the dispute is

settled, as the case may be.

(5) For the purposes of subsection (4) —

- (a) in the case of the withdrawal of an adjudication application — the applicant is liable to pay the fees and expenses of the adjudicator; and
- (b) in any other case — the parties to the adjudication are jointly and severally liable to pay the fees and expenses of the adjudicator.

(6) An adjudicator may recover the adjudicator's fees and expenses from a person liable to pay them as a debt due to the adjudicator.

Protection from liability for adjudicators and authorised nominating bodies

32.—(1) No liability shall lie against an adjudicator with respect to anything done or omitted to be done in good faith in the discharge or purported discharge of the adjudicator's functions or duties under this Act.

[47/2018]

(2) No liability shall lie against an authorised nominating body or any person acting under the direction of the authorised nominating body with respect to anything done or omitted to be done —

- (a) in good faith in the discharge or purported discharge of the authorised nominating body's function of nominating adjudicators under this Act; and
- (b) in good faith and with reasonable care in the discharge or purported discharge of any other functions or duties of the authorised nominating body under this Act.

[47/2018]

Confidentiality of adjudication

33.—(1) This section applies to the following information:

- (a) any statement or document created or made for the purposes of an adjudication;
- (b) any information (whether written or oral) that, for the purposes of an adjudication, is disclosed in the course of the adjudication.

(2) No party to a dispute or adjudicator may disclose to any other person (not being the principal or the owner concerned) any information to which this section applies, except —

- (a) with the consent of the party to whom the information relates;

- (b) to the extent that the information is already in the public domain;
- (c) to the extent that the disclosure is necessary for the purposes of, or in connection with, the adjudication, the enforcement of the adjudicator's determination, or any proceeding before a court or tribunal or any other dispute resolution proceeding;
- (d) to the extent that the disclosure is required for any purpose under this Act;
or
- (e) if the information will not be published in a form that could reasonably be expected to identify any particular person.

Effect on other proceedings

34.—(1) Nothing in this Act affects any right that a party to a contract may have —

- (a) to submit a dispute relating to or arising from the contract to a court or tribunal, or to any other dispute resolution proceeding;
- (b) to apply for adjudication under this Act, even though the dispute is the subject of proceedings in a court or tribunal or the subject of any other dispute resolution proceeding; or
- (c) to take any measures to which that party is entitled under Part 5 to enforce payment of any adjudicated amount.

(2) If a party to a contract submits a dispute relating to or arising from the contract to a court or tribunal or to any other dispute resolution proceeding while the dispute is the subject of an adjudication under this Act, the submission to that other dispute resolution proceeding does not bring to an end or otherwise affect the adjudication.

(3) An adjudicator must terminate the adjudication proceedings on a dispute relating to or arising from the contract if, before the adjudicator determines the dispute, the dispute is determined by a court or tribunal or at any other dispute resolution proceeding.

(4) In any proceeding before a court or tribunal in relation to any matter arising under or by virtue of a contract, the court or tribunal —

- (a) is to allow for any amount paid to a party to the contract under, or for the purposes of, this Act in any order or award it makes in the proceeding; and
- (b) may make such orders as it considers appropriate, having regard to any action taken by a party to the contract in good faith and in reliance on an adjudication determination made under this Act.

PART 7

MISCELLANEOUS

Act to bind Government

35. This Act binds the Government.

No contracting out

36.—(1) The provisions of this Act have effect despite any provision to the contrary in any contract or agreement.

(2) The following provisions in any contract or agreement (whether in writing or not) are void:

- (a) a provision under which the operation of this Act or any part of this Act is, or is purported to be, excluded, modified, restricted or in any way prejudiced, or that has the effect of excluding, modifying, restricting or prejudicing the operation of this Act or any part of this Act;
- (b) a provision that may reasonably be construed as an attempt to deter a person from taking action under this Act.

(3) The Minister may, for the purpose of subsection (2)(a), prescribe the type of provisions in any contract or agreement, or any class thereof, which are deemed to have the effect of excluding, modifying, restricting or prejudicing the operation of this Act or any part of this Act.

(4) Except as provided in subsection (1), nothing in this Act limits or otherwise affects the operation of any other law in relation to any right, title, interest, privilege, obligation or liability of a person arising under or by virtue of a contract or an agreement.

Service of documents

37.—(1) Where this Act authorises or requires a document to be served on a person, whether the expression “serve”, “lodge”, “provide” or “submit” or any other expression is used, the document must be served on the person —

- (a) by delivering it to the person personally;
- (b) by leaving it during normal business hours at the person’s usual place of business;
- (c) by sending it by post or fax to the person’s usual or last known place of business;

- (d) by sending it by email to the person's email address; or
- (e) by sending it by any other electronic method authorised by regulations made under section 41(1) for the service of documents of that kind if the person consents to service of a document of that kind in that way.

[47/2018]

(2) Service of a document on a person under this section takes effect —

- (a) if the document is sent to the person's usual or last known place of business under subsection (1)(c) — when the document is received at that place;
- (b) if the document is sent by email — at the time that the email becomes capable of being retrieved by the person; or
- (c) if the document is sent by any other electronic method mentioned in subsection (1)(e) — at the time that the electronic communication transmitting the document becomes capable of being retrieved by the person.

[47/2018]

(3) In this section, “email address” means —

- (a) the last email address given by the addressee concerned to the person serving the document as the email address for the service of documents; or
- (b) the last email address of the addressee concerned known to the person serving the document.

[47/2018]

(4) The provisions of this section are in addition to, and do not limit or exclude, the provisions of any other law with respect to the service of documents.

Exemption

38. The Minister may, by regulations, exempt —

- (a) any person or class of persons; or
- (b) any, or any class of, contract, agreement, matter or transaction,

from all or any of the provisions of this Act, subject to such terms or conditions as may be prescribed.

Amendment of specified periods

39. The Minister may, by order in the *Gazette*, amend section 8(1)(b), (2), (3)(b) or

(4), 10(2)(b), 11(1)(a) or (b), 12(6), 13(3)(a), 14(3), 14A(3), 15(1), 17(1)(a) or (b), 18(2) or (6), 18A(3), 19(6), 22(1)(a), (2)(a) or (b), (3)(a) or (4)(a), 24(2)(b) or (3), 25(2)(c) or 26(1)(c), (4) or (5) by substituting a different period for the period for the time being specified therein.

[47/2018]

Delegation of powers

40.—(1) The Minister may, subject to such terms or conditions as the Minister thinks fit, delegate to any person all or any of the Minister’s powers, functions and duties under this Act, except —

- (a) the power of delegation conferred by this section; and
- (b) the power to make subsidiary legislation.

(2) The Minister may exercise any power or perform any function or duty conferred upon the Minister under this Act despite the delegation of that power, function or duty under subsection (1).

Regulations

41.—(1) The Minister may make regulations for or with respect to any matter that by this Act is required or permitted to be prescribed or that is necessary or convenient to be prescribed for carrying out or giving effect to this Act.

(2) Without limiting subsection (1), regulations may be made for or in connection with —

- (a) the forms to be used and the information or documents to be furnished;
- (b) the manner in which authorised nominating bodies are required to exercise their functions or perform their duties;
- (c) the form of records to be kept and maintained by the authorised nominating bodies, the information to be recorded and the submission of such records; and
- (d) the conduct of adjudicators.

LEGISLATIVE HISTORY

BUILDING AND CONSTRUCTION INDUSTRY SECURITY OF PAYMENT ACT 2004

This Legislative History is a service provided by the Law Revision Commission on a best-efforts basis. It is not part of the Act.

- 1. Act 57 of 2004—Building and Construction Industry Security of Payment Act 2004**

Bill	:	54/2004
First Reading	:	19 October 2004
Second and Third Readings	:	16 November 2004
Commencement	:	3 January 2005 (sections 1, 28 and 40)
		1 April 2005 (sections 2, 3, 4, 29 to 39, 41 and 42 and Parts II to V)

- 2. 2006 Revised Edition—Building and Construction Industry Security of Payment Act (Chapter 30B)**

Operation	:	31 January 2006
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- 3. Act 47 of 2018—Building and Construction Industry Security of Payment (Amendment) Act 2018**

Bill	:	38/2018
First Reading	:	10 September 2018
Second and Third Readings	:	2 October 2018
Commencement	:	15 December 2019

- 4. 2020 Revised Edition—Building and Construction Industry Security of Payment Act 2004**

Operation	:	31 December 2021
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- 5. Act 25 of 2021—Courts (Civil and Criminal Justice) Reform Act 2021 (Amendments made by)**

Bill	:	18/2021
First Reading	:	26 July 2021
Second and Third Readings	:	14 September 2021
Commencement	:	1 April 2022

Abbreviations

(updated on 29 August 2022)

G.N.	Gazette Notification
G.N. Sp.	Gazette Notification (Special Supplement)
L.A.	Legislative Assembly
L.N.	Legal Notification (Federal/Malaysian)
M.	Malaya/Malaysia (including Federated Malay States, Malayan Union, Federation of Malaya and Federation of Malaysia)
Parl.	Parliament
S	Subsidiary Legislation
S.I.	Statutory Instrument (United Kingdom)
S (N.S.)	Subsidiary Legislation (New Series)
S.S.G.G.	Straits Settlements Government Gazette
S.S.G.G. (E)	Straits Settlements Government Gazette (Extraordinary)

COMPARATIVE TABLE

BUILDING AND CONSTRUCTION INDUSTRY SECURITY OF PAYMENT ACT 2004

This Act has undergone renumbering in the 2020 Revised Edition. This Comparative Table is provided to help readers locate the corresponding provisions in the last Revised Edition.

2020 Ed.	2006 Ed.
4—(3)	4—(2A)
(4)	(3)
(5)	(4)
10—(3)	10—(2A)
(4)	(3)
(5)	(4)
(6)	(5)
12—(3)	12—(2A)
(4)	(3)
(5)	(4)

(6)	(5)
15—(4)	15—(3A)
(5)	(4)
(6)	(5)
16—(2)	16—(1A)
(3)	(2)
(4)	(2A)
(5)	(3)
(6)	(4)
(7)	(5)
(8)	(6)
(9)	(7)
(10)	(8)
17—(3)	17—(2A)
(4)	(3)
(5)	(4)
(6)	(4A)
(7)	(5)
(8)	(6)
(9)	(7)
(10)	(8)
(11)	(9)
19—(2)	19—(1A)
(3)	(1B)
(4)	(1C)
(5)	(2)
(6)	(3)
(7)	(4)
(8)	(5)
(9)	(5A)
(10)	(6)
(11)	(6A)
(12)	(7)

(13)	(8)
22—(2)	22—(1A)
(3)	(2)
(4)	(3)
37—(3)	37—(2A)
(4)	(3)
[<i>Omitted as spent</i>]	42