

Insights

GOVERNMENT ISSUES MODEL ADJUDICATION DOCUMENTS

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SUMMARY

On 10 February 2025, the Development Bureau (“**DEVB**”) issued a suite of model adjudication documents (“**Model Documents**”), including a set of model adjudication rules (“**Model Rules**”).

This suite of Model Documents is not issued so as to be binding or operative in their own right. Rather, they are issued as guidance (perhaps strong guidance) for the various entities who will apply to Government to be recognised as approved adjudicator nominating bodies, “**ANBs**”, for the purposes of the Construction Industry Security of Payment Ordinance (Cap. 652) (“**Ordinance**”).

Although it remains uncertain to what extent the Model Documents will be adopted by nominating bodies, the Model Documents offer a preview of how the Ordinance might function when it comes into operation on 28 August 2025.

INVITATION FOR APPLICATION FOR ADMISSION TO THE ANBS REGISTER

Under the Ordinance, the DEVB will establish and keep a register of nominating bodies (the ANBs).

The ANBs will perform a range of functions under section 64 of the Ordinance, including to nominate and appoint individuals to be adjudicators.

DEVB currently is inviting organisations in the construction industry to apply for admission to the register of ANBs. Applicants must submit supporting proposals, which must make reference to the following Model Documents:

- [DEVB's model adjudication rules](#)
- [DEVB's model practice note on jurisdiction of adjudicators](#)
- [DEVB's model practice note on case management](#)

- [DEVB's model practice note on writing of determination](#)
- [DEVB's model practice note on adjudicator's fees, expenses and costs of proceedings](#)
- [DEVB's model code of conducts for adjudicators](#)

The Ordinance provides a framework of the statutory adjudication regime, the detailed rules and procedures of which will be fleshed out in the adjudication rules to be issued by individual ANBs.

Under DEVB's guidelines (Part (B) of the Guidance Notes to the Application Form (Form no. ANB/02)), each applicant must highlight in its draft supporting proposal all modifications that depart from the Model Documents, and provide explanation and justification on each modification made. Therefore, it is expected that the final versions of the adjudication rules issued by each ANB largely will follow the structure of the Model Documents.

DEVB'S MODEL ADJUDICATION RULES

One of the Model Documents is the Model Rules, the key features of which are summarised below:

1. Articles 7 and 8: The adjudication submission must contain the following particulars: (a) a statement of the facts supporting the claim, (b) the points at issue, (c) the legal arguments supporting the claim, if any, and (d) the relief or remedy sought. The adjudication response must "reply" to the particulars of the adjudication submission. If the adjudication response includes a set off, the adjudication response must include the particulars above in respect of the set off raised.
2. Article 10.2: A plea that the adjudicator does not have jurisdiction must be raised no later than in the adjudication response.
3. Article 13: Procedures on how independent expert opinion is obtained are provided under Article 13.
4. Articles 17.6 and 17.7: A request to correct an adjudication determination under section 45 of the Ordinance (correction of computational or typographical error or any error of a similar nature) must be communicated within one working day after the determination is communicated to the parties. Any correction to the determination must be issued by the adjudicator within five working days after the determination is communicated.

The Model Rules also provide a "Fee Schedule", which suggests that:

1. ANBs' (administration) fees should be capped at the amounts of HK\$8,000 to HK\$100,000, depending on the amount of the disputed sum.

2. Adjudicators are to be divided into “adjudicators” and “senior adjudicators”, with “adjudicators” only being able to handle disputes where the disputed sum is HK\$5M or below.
3. The hourly rates of adjudicators and senior adjudicators should be capped between HK\$2,000 to HK\$4,000, depending on their seniority. Parties can agree to a higher cap for senior adjudicators if the disputed sum is over HK\$10M.
4. The overall fees of adjudicators (whether senior or not) should be capped at HK\$1,100,000 for cases involving a disputed sum of more than HK\$250M, unless the parties agree to an increase in the cap. There are other capped amounts, depending on the amount of the disputed sum.

Technically, the Model Rules are not mandatory and are for the ANBs’ reference. However, given that ANBs are required to give explanation and justification for each departure from the Model Rules, it remains to be seen to what extent each ANB’s adjudication documents might depart from the Model Rules.

FINAL PREPARATION BY STAKEHOLDERS

As stated above, the Ordinance will come into operation on 28 August 2025.

There is much for stakeholders in the construction industry to do before the Ordinance comes into operation, e.g. update standard contracts and payment terms, review existing contract administration practices, and review the dispute resolution procedures and identify how the adjudicator is to be appointed and by which ANB. During their internal review process, stakeholders should keep themselves updated and informed of any new developments as they occur.

RELATED PRACTICE AREAS

- Commercial Construction & Engineering
- Construction Disputes
- Litigation & Dispute Resolution
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MEET THE TEAM



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