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CONSTRUCTION INDUSTRY PAYMENT
AND ADJUDICATION ACT 2009

An Act to facilitate regular and timely payment, provide a mechanism for speedy dispute resolution through adjudication and provide security and remedies for the recovery of payment in the construction industry.

ARRANGEMENT OF SECTIONS

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Construction Industry Payment and Adjudication Act 2009.

   (2) This Act comes into operation on a date to be appointed by the Minister by notification in the Gazette.

Interpretation

2. (1) In this Act, unless the context otherwise requires –

   “adjudication” means an adjudication under this Act.

   “adjudication proceedings” means an adjudication conducted by an adjudicator.

   “adjudication decision” means the decision made by an adjudicator under section 26 of this Act and includes an adjudication review determination made under section 28(3) of this Act where the context so requires.

   “adjudicator” means an individual appointed to decide a dispute that is referred to adjudication or to review an adjudication decision under section 27 of this Act.

   “Adjudication Control Authority” means the body prescribed by the Minister to administer adjudication for the purposes of this Act.
“certificate” means a certificate issued or to be issued pursuant to a construction work contract.

“connected person” means a party who is directly or indirectly controlled by the other party through shareholding or management control.

“construction contract” means a construction work contract or construction consultancy contract.

“construction consultancy contract” means a contract to carry out consultancy services in relation to construction work and include architectural, engineering, surveying and project management services.

“construction work” means the construction, extension, installation, repair, maintenance, renewal, removal, renovation, alteration, dismantling, or demolition of –

(a) any building, erection, edifice, structure, wall fence or chimney, whether constructed wholly or partly above or below ground level;

(b) any road, harbour works, railway, cableway, canal or aerodrome;

(c) any drainage, irrigation or river control work;

(d) any electrical, mechanical, water, gas, petrochemical, or telecommunication work; or

(e) any bridge, viaduct, dam, reservoir, earthworks, pipeline, sewer, aqueduct, culvert, drive, shaft, tunnel or reclamation work,

and includes –

(i) any work which form an integral part of, or are preparatory to or temporary for the works described in paragraphs (a) to (e), including site clearance, soil investigation and improvement, earthmoving, excavation, laying of foundation, site restoration and landscaping; or

(ii) procurement of construction materials, equipment or workers, as necessarily required for any works prescribed in paragraphs (a) to (e).
as defined in and subject to such amendment from time to time in the Akta Lembaga Pembangunan Industri Pembinaan Malaysia 1994 (Act 520)

“construction work contract” means a contract to carry out construction work.

“cross claim” means a set off or counterclaim.

“contract administrator” means an architect, engineer, superintending officer or other person howsoever designated who administers the construction work contract.

“court” means a court constituted under the Courts of Judicature Act 1964 (Act 91) or the Subordinate Courts Act 1948 (Act 92).

“dispute” means the assertion of a legal right, cause or claim and the rejection thereof.


“head work contract” means a construction work contract made between the registered proprietor, lessee or developer of the site and the contractor carrying out construction work.

“High Court” means the High Court in Malaya or the High Court in Sabah and Sarawak.

“Minister” means the Minister of Works, otherwise the minister charged with the responsibility for construction work as assigned by the Federal Government.

“payment” means debt or damages arising under a construction contract.

“payment bond” means a bank guarantee, insurance bond or security deposit to secure against non payment under the head work contract.

“performance bond” means a bank guarantee, insurance bond or security deposit provided under the construction work contract.
“principal” means a party who has contracted with and is liable to make payment to another party where that other party has in turn contracted with and is liable to make payment to a further person in a chain of construction work contracts.

“retention money” means money retained from the progress payments under the construction work contract and includes a retention bond.

“site” means the place where the construction work is affixed whether on-shore or off-shore.

“working day” means a calendar day but exclude weekends and public holidays declared at the State or Federal Territory where the site is located

(2) The Minister may, by order published in the Gazette, modify the definition of construction contract and construction work in section 2(1) of this Act.

Scope and application of the Act

3. (1) This Act shall apply to every construction contract (whether or not the contract is expressed to be governed by the law of Malaysia) that concerns construction work at an identified site within the territory of Malaysia.

(2) This Act shall apply to every construction contract whether made in writing or otherwise.

(3) The Minister may, by order published in the Gazette, exempt the application of this Act or any part thereof to any construction contract or any class of construction contract.

Government to be bound

4. This Act shall apply to any construction contract to which the Federal Government or the Government of any component State of Malaysia is a party.

No contracting out of the Act

5. (1) Unless otherwise expressly permitted in this Act, the provisions of this Act shall have effect notwithstanding any provision to the contrary in any construction contract.
(2) Unless otherwise expressly permitted in this Act, any provision in a construction contract which excludes, modifies or restricts the operation of this Act is void.

(3) The Minister may, by order published in the Gazette, prescribe the type of provision in any construction contract which has the effect of excluding, modifying or restricting the operation of this Act.
PART II

PAYMENT

Prohibition of conditional payment

6. (1) Any provision in a construction contract making payment conditional as defined in section 6(2) of this Act is void.

(2) For the purposes of this section, it is a conditional payment provision when –

   (a) the obligation of one party to make payment is conditional upon that party having received payment from a third party; or

   (b) the obligation of one party to make payment is conditional upon the availability of funds or drawdown of financing facilities of that party.

Parties free to agree on progress payment

7. Subject to section 6 of this Act, the parties to a construction contract are free to agree between themselves on the manner and terms of payment including the number of progress payments, the interval between those payments, the manner to ascertain the amount of each of those payments and the date when each of those payments becomes due.

Default provisions in the absence of payment terms

8. (1) If the parties to a construction contract fail to agree on the terms of payment, the provisions in sections 8(2) to 8(4) of this Act shall apply to the extent that those provisions relate to any matter for which has not been agreed on between the parties.

(2) A party who has agreed to carry out construction work or provide construction consultancy services under a construction contract has the right to progress payment at a value calculated by reference to –

   (a) the contract price for the construction work or construction consultancy services;
(b) any other rate specified in the contract;

(c) any variation agreed to by the parties to the contract by which the contract price or any other rate specified in the contract is to be adjusted;

or in the absence of any the abovementioned matters, then based on fair and reasonable prices or rates prevailing in the construction industry at the time the construction work was carried out or construction consultancy services provided (except if the construction consultancy services are governed by statute, then based on the fees as prescribed by the relevant regulatory board pursuant to the statute); and

(d) If any part of the construction work is defective or the construction work or construction consultancy services is not in conformance with the contract, having regard to the estimated reasonable cost of rectifying the defect or correcting the non conformance or the diminution in the value of construction work or construction consultancy services performed, whichever is reasonable.

(3) The frequency of progress payment for construction work (other than supply of construction materials, equipment or workers) and construction consultancy services is monthly. For supply of construction materials, equipment or workers, the frequency of payment is as and when the supply is delivered.

(4) The due date for payment is thirty (30) calendar days from the receipt of the claim or invoice.

Payment claim under the Act

9. (1) For the purposes of this Act, an unpaid party shall serve a payment claim in respect of any payment whether in whole or in part arising under a construction contract on one or more persons who is liable to make the payment in accordance with the terms of the construction contract.

(2) The payment claim shall –

   (a) be made in writing;

   (b) state the claimed amount and due date for payment;
(c) contain sufficient details to identify the provision in the construction contract to which the payment relates;

(d) identify the work or services to which the payment relates; and

(e) state that it is made under this Act.

Payment response under the Act

10. (1) The non paying party named in a payment claim served in relation to a construction contract shall respond to the payment claim within ten (10) working days of the receipt of the payment claim by paying to the other party the claimed amount or paying such part thereof if part is admitted and serve a payment response to the other party.

(2) The payment response shall-

(a) be made in writing;

(b) state the amount admitted and paid (if any);

(c) state, where the amount admitted is less than the claimed amount, the reason for disputing the difference.

(3) The payment response may include a cross claim which shall contain sufficient details to identify provisions in the construction contract to which the cross claim relates.

Consequence of failure to serve payment response

11. If the non paying party fails to respond to the payment claim as provided in section 10 of this Act, it is deemed that the entire payment claim is disputed.
PART III
ADJUDICATION OF DISPUTES

Right to refer disputes to adjudication

12. (1) A party to a construction contract has the right at any time (but subject to the Limitation Act 1953 (Act 254), Sabah Limitation Ordinance (Cap 72) or Sarawak Limitation Ordinance (Cap 49) as the case may be) to refer to adjudication against the other party to the construction contract any dispute or disputes arising under or in connection with the construction contract including for withholding of certificate and non-payment of payment claim made under this Act. Provided that the right to refer to adjudication by reason of non-payment is subject to prior compliance with the provisions in sections 9 to 11 of this Act.

(2) The right to refer any dispute or disputes to adjudication may be exercised even if the dispute is the subject of proceedings between the same parties or concerns the same subject matter in court, arbitration, or other dispute resolution process.

(3) A party to the adjudication proceedings may self-represent or be represented by representatives that the party considers appropriate.

Relationship between adjudication and other dispute resolution process

13. (1) Notwithstanding the right to refer any dispute to adjudication, the parties to a construction contract are not prevented from submitting the dispute to another dispute resolution process such as in court, arbitration, mediation or other process agreed by the parties in the construction contract, whether or not the proceedings of the other dispute resolution process takes place concurrently with the adjudication proceedings.

(2) If a party to a construction contract submits any dispute to another dispute resolution process while the dispute is the subject of adjudication, the submission to that other dispute resolution process does not bring to an end the adjudication proceedings or affect the adjudication in any way.
(3) The adjudication proceedings is terminated if, before the adjudicator decides the dispute, that dispute is settled by agreement between the parties in writing or finally decided by arbitration or the court.

(4) The adjudication decision is binding unless –

(a) the adjudication decision is set aside by the High Court pursuant to section 34 of this Act;

(b) the subject matter of the decision is settled by agreement between the parties in writing; or

(c) the dispute is finally decided by arbitration or the court.

(5) An adjudication review determination under section 28 shall have the same effect as if it is an adjudication decision for the purposes of this Act.

(6) Unless stayed pursuant to section 26(7) of this Act, the parties and the contract administrator (if any) under the construction contract shall give effect to the adjudication decision.

Initiation of adjudication

14. (1) The aggrieved party to the dispute in the construction contract (the claimant) initiates adjudication proceedings by serving a notice of adjudication on the other party (the respondent).

(2) The notice of adjudication shall –

(a) be made in writing;

(b) state the nature and a brief description of the dispute or disputes;

(c) state the remedy sought; and

(d) state that it is made under this Act.

(3) The claimant may provide other supporting documents with the notice of adjudication.

(4) The adjudication shall be conducted by a sole adjudicator.
Selection of adjudicator

15. (1) Upon the service of the notice of adjudication the claimant may elect to agree on an adjudicator with the respondent or may make a request in writing with a copy of the notice of adjudication to the Adjudication Control Authority to nominate an adjudicator.

(2) If the claimant elects to agree on an adjudicator and the parties agree on an adjudicator, the claimant shall make a request in writing with a copy of the notice of adjudication to the agreed person to act as adjudicator. Provided that if the agreed person is not an accredited adjudicator, the claimant shall apply in writing and obtain the authorization of the Adjudication Control Authority before making the request to the agreed person to act as adjudicator. The Adjudication Control Authority shall respond in writing within seven (7) working days from the receipt of the application in writing by the claimant.

(3) If the parties fail to agree on an adjudicator or the Adjudication Control Authority does not authorize the agreed person to act as adjudicator, the claimant shall apply in writing with a copy of the notice of adjudication to the Adjudication Control Authority to nominate an adjudicator. The Adjudication Control Authority shall nominate an adjudicator within seven (7) working days from the receipt of the application in writing by the claimant.

(4) The parties to a construction contract can only agree to an adjudicator after a dispute has arisen.

Eligibility to act as adjudicator

16. (1) A person is eligible to act as adjudicator provided the person is an accredited adjudicator on the register of accredited adjudicators maintained by the Adjudication Control Authority or authorized by the Adjudication Control Authority under section 16(3) of this Act.

(2) A person may be on the register of accredited adjudicators if the person is an individual with such qualifications, expertise and experience as prescribed by the Adjudication Control Authority.

(3) Unless there is exceptional ground to refuse authorization, the Adjudication Control Authority shall authorize a person agreed by the parties to act as adjudicator on a particular dispute notwithstanding that
the person is not an accredited adjudicator on the existing register of accredited adjudicators.

(4) A person who is directly or otherwise interested in any matter connected with the construction contract or subject matter in dispute is conflicted by interest and is not eligible to act as adjudicator in the dispute.

(5) All accredited adjudicators and those persons authorized under section 16(3) of this Act shall be subjected to the code of conduct and practice of adjudication established by the Adjudication Control Authority.

**Appointment of adjudicator**

17. (1) The agreed or nominated adjudicator shall within three (3) working days from the request of the claimant in writing to act as adjudicator serve a notice in writing to the parties that the adjudicator is willing and able to act as adjudicator. The notice shall also –

   (a) state the proposed terms of appointment and fees to be charged by the adjudicator if the terms of appointment and fees differ from the standard terms of appointment and fees published in the regulations, otherwise it is deemed that the terms of appointment and fees are based on those published in the regulations;

   (b) contain a declaration that there is no conflict of interest; and

   (c) contain a disclosure of any circumstance likely to give rise to justifiable doubts as to the adjudicator’s impartiality and independence.

(2) The parties are bound by the standard terms of appointment and fees published in the regulations unless the proposed terms of appointment or fees in the notice in section 17(1) of this Act differ wherein the parties may negotiate the terms of appointment and fees with the agreed or nominated adjudicator.

(3) The agreed or nominated adjudicator may hold a preliminary meeting with the parties after the service of the notice in section 17(1) of this Act to
acquaint with the dispute and afford an opportunity to the parties to resolve
the dispute amicably.

(4) The agreed or nominated adjudicator shall within five (5) working
days from the service of the notice in section 17(1) of this Act serve on the
parties a notice of acceptance of appointment of adjudicator in writing. The
notice of acceptance of appointment of adjudicator is conclusive that the
adjudicator is appointed and on the terms as set out in the notice served
pursuant to section 17(1) of this Act subject to modification on the terms of
appointment or fees or both.

(5) If the parties do not receive a notice of acceptance of appointment of
adjudicator, the claimant may apply in writing to the Adjudication Control
Authority to nominate another adjudicator. The Adjudication Control
Authority shall nominate another adjudicator within 7(seven) working days
from the receipt of the application in writing by the claimant.

Adjudication claim

18. (1) The claimant shall serve on the adjudicator and the respondent the
adjudication claim within ten (10) working days from the receipt of the
notice of acceptance of appointment of adjudicator or any further time that
the parties may agree or which the adjudicator may allow as reasonably
required.

(2) The adjudication claim shall –

(a) be made in writing;

(b) state the nature and description of the dispute or disputes in
detail; and

(c) state the remedy sought.

(3) The claimant shall provide comprehensive supporting documents
including contractual justifications with the adjudication claim.

Adjudication response

19. (1) The respondent shall serve on the adjudicator and the claimant the
adjudication response within ten (10) working days from the receipt of the
adjudication claim or any further time that the parties may agree or which
the adjudicator may allow as reasonably required.
(2) The adjudication response shall be made in writing and answer the adjudication claim. The adjudication response may include a cross claim by the respondent provided the cross claim was included in the payment response where the claimant has previously served a payment claim under this Act. The cross claim shall similarly comply with the requirements of section 18 (2) of this Act as if it is a claim.

(3) The respondent may provide supporting documents including contractual justifications with the adjudication response but shall do so to support the cross claim (if any).

(4) The claimant may serve on the adjudicator and the respondent the reply to the adjudication response within five (5) working days from the receipt of the adjudication response and if the adjudication response includes a cross claim, the reply to the adjudication response shall be made in writing and answer the adjudication response.

Jurisdiction of adjudicator

20. (1) The adjudicator’s jurisdiction in relation to any dispute is limited to any matter permitted by this Act that is referred to adjudication by the parties.

(2) The parties to adjudication may at any time by agreement in writing extend the jurisdiction of the adjudicator to decide any other matter not already referred to the adjudicator.

Withdrawal and recommencement of adjudication proceedings

21. (1) The adjudication claim or cross claim may be withdrawn at any time if the claimant or respondent, as the case may be, serves on the adjudicator and the other party a notice of withdrawal in writing.

(2) Any party who has withdrawn an adjudication claim or cross claim is free to commence adjudication on the claim or cross claim by serving a new notice of adjudication in accordance with section 14 of this Act.

(3) If an adjudicator dies, resigns or is unable through illness or any other cause to complete the adjudication proceedings, the adjudication proceedings come to an end. The parties are free to recommence adjudication proceedings afresh.
Consolidation of adjudication proceedings

22. If two or more adjudication proceedings are ongoing, the adjudicator may, with consent of all the parties to those adjudication proceedings, consolidate and decide those adjudication proceedings in the same proceedings.

Duties of the adjudicator

23. (1) The adjudicator shall act independently, impartially and in a timely manner and avoid incurring unnecessary expense.

(2) The adjudicator shall comply with the principles of natural justice.

Powers of the adjudicator

24. The adjudicator will conduct the adjudication proceedings in the manner as the adjudicator considers appropriate and includes having the power to –

(a) establish the procedure including limiting the submission of documents by the parties;
(b) require discovery, submissions or production of documents from the parties;
(c) set deadlines for submissions and production of documents;
(d) use own specialist knowledge;
(e) appoint independent experts to inquire and report on specific matters with the consent of the parties;
(f) call for meetings with the parties;
(g) conduct any hearing;
(h) carry out inspection of the site, work, material or goods relating to the dispute including opening up any work done;
(i) inquisitorially take the initiative in ascertaining the facts and the law required for the decision;
(j) issue such direction as may be necessary or expedient;

(k) order the interrogatories to be answered;

(l) order that any evidence to be given on oath or affirmation;

(m) open up, review and revise any certificate, decision, instruction, opinion or valuation of the parties or contract administrator relevant to the dispute;

(n) decide on any matter notwithstanding no certificate has been issued in respect of the matter; and

(o) award financing costs and interest.

Jurisdiction and power of adjudicator not affected by failure to respond

25. The jurisdiction and power of the adjudicator to decide the dispute is not affected by the failure of any of the party to respond and the adjudicator may in such circumstance proceed ex-parte to draw inferences and decide the dispute based on available information.

Adjudication decision

26. (1) Subject to section 31(4) of this Act, the adjudicator shall decide the dispute and serve the adjudication decision to the parties within -

   (a) forty two (42) working days from the service of the adjudication response or reply to the adjudication response (if any); or

   (b) forty two (42) working days from the time prescribed for the service of the adjudication response if none has been served; or

   (c) such further time as agreed to by the parties;

failing which the adjudication decision is void.

(2) In making the adjudication decision, the adjudicator shall take into consideration all matters found by and brought before the adjudicator in the adjudication proceedings.
(3) The adjudication decision shall be made in writing and contain reasons unless the requirement for reasons is dispensed with by the parties.

(4) The adjudication decision shall also determine the adjudicated amount (if any) to be paid by one party to the other and the date on which the adjudicated amount is payable and all other matters in dispute on rights and obligations of the parties to the contract.

(5) The adjudicator shall serve a copy of the adjudication decision (including any corrected adjudication decision made under section 26(6) of this Act) on the parties and the Adjudication Control Authority.

(6) The adjudicator may correct any computation, clerical, typographical other error of a similar nature on the adjudicator’s own initiative or at the request of any party.

(7) Any party who makes an application under Section 34 of this Act or refer the dispute to arbitration or the court for final determination may apply to the High Court to stay the effect and enforcement of the adjudication decision pending the disposal of the application or final determination. The High Court may grant a stay on such terms as it deems fit but if the adjudication decision involves a monetary payment the High Court may order that the party making the application deposits the adjudicated amount or part thereof with the Adjudication Control Authority as security if a stayed is granted. If the High Court orders that part of the adjudicated amount be deposited with the Adjudication Control Authority, the balance of the adjudicated amount shall be paid to the other party.

**Review of adjudication decision**

27. (1) Any party which is aggrieved with the decision of the adjudicator may within seven (7) working days from the receipt of the adjudication decision make an application to the Adjudication Control Authority with a copy served on the other party for review of the adjudication decision.

(2) The written application for review of the adjudication decision shall-

   (a) be made in writing;

   (b) specify the grounds; and

   (c) be accompanied with the adjudication decision and other relevant documents.
(3) The party applying for review shall also with the application deposit with the Adjudication Control Authority the adjudication review fee and the adjudicated amount (if any) payable to the other party ordered in the adjudication decision. The adjudicated amount will be held by the Adjudication Control Authority as stakeholder pending the determination of the adjudication review.

(4) Within seven (7) working days from the receipt of the application for review of the adjudication decision and the payment of the adjudication review fee and adjudicated amount (if applicable), the Adjudication Control Authority shall appoint a panel of three (3) adjudicators from the register of accredited adjudicators to conduct the review. The Adjudication Control Authority shall notify the parties of the appointment in writing.

(5) The Adjudication Control Authority shall not appoint as review adjudicator the adjudicator whose decision is the subject of the adjudication review or any person who is conflicted by interest.

Conduct of adjudication review

28. (1) The review adjudicators shall undertake and determine the review within fourteen (14) working days from the appointment by the Adjudication Control Authority or such further time as agreed to by the parties.

(2) The review adjudicators will have the same powers as provided in sections 24, 26 (6) and 29 (1) of this Act and will conduct the review as they deem appropriate including holding a hearing, if necessary.

(3) The review adjudicators may confirm, set aside or vary the adjudication decision as they consider appropriate including directing the payment of the adjudicated amount (if any) deposited with the Adjudication Control Authority to the appropriate party. The determination shall be decided by a majority decision of the review adjudicators.

(4) The review adjudicators’ determination shall be made in writing and served on the parties and the Adjudication Control Authority.

(5) The party applying for the adjudication review may, at any time, withdraw the application by serving a notice of withdrawal in writing on the other party, the review adjudicators and the Adjudication Control
Authority. On receipt of the notice of withdrawal, the Adjudication Control Authority shall remit the payment of the adjudicated amount deposited by the applicant (if any) to the other party but the review adjudicators’ fee will be forfeited.

(6) If in the course of the review, at any time before the service of the review adjudicator’s determination, any review adjudicator dies, resigns or is unable through illness or any other cause to undertake and complete the review, the review shall continue before the remaining review adjudicators, not being less than two, and the panel of review adjudicators pursuant to section 28 of this Act shall be deemed to be duly constituted notwithstanding the absence or inability of the review adjudicator as aforesaid. In any such case the review shall be determined in accordance with the determination of the majority of the remaining review adjudicators, and if there is no majority the review shall be determined.

Cost of adjudication proceedings

29. (1) The adjudicator in making the adjudication decision shall decide which party shall pay the adjudicator’s fees and expenses including the proportion and amount of the fees and expenses.

(2) Each party shall bear its own costs in any event including the costs of representation in any adjudication proceedings or adjudication review under this Act.

Adjudication Control Authority

30. (1) The Minister shall by notification published in the Gazette prescribe the body that shall be the Adjudication Control Authority for the purposes of this Act.

(2) The Adjudication Control Authority shall have the power to –

(a) accredit adjudicators and establish and maintain a register of accredited adjudicators;

(b) establish and administer codes of conduct and practice of adjudication;

(c) provide training and conduct examinations for individuals to become accredited adjudicators;
(d) recommend to the Minister the terms of appointment and scale of standard fees for the services of adjudicators acting under this Act;

(e) facilitate and provide administrative support for the conduct of adjudications under this Act and charge appropriate administrative charges;

(f) receive and hold as security fees and expenses on behalf of the adjudicator from the parties; and

(g) undertake such other duties or functions as may be imposed by this Act or as may be directed by the Minister.

Adjudicator’s fees and expenses

31. (1) An adjudicator is entitled to be paid fees of an amount that is agreed between the adjudicator and the parties to the adjudication, otherwise it is deemed that the adjudicator’s fee is based on the standard fee published in the regulations. The fee for adjudication review is fixed at the standard adjudication review fee published in the regulations.

(2) The parties to the adjudication are jointly and severally liable to pay the adjudicators fees and expenses and the adjudicator may recover the fees and expenses due as a debt.

(3) The parties shall contribute and deposit in equal share a reasonable proportion of the fees as directed by the adjudicator in advance as security to be deposited with the Adjudication Control Authority.

(4) The adjudicator may require full payment of the fees and expenses to be deposited with the Adjudication Control Authority before releasing the adjudication decision to the parties. That notwithstanding, the adjudicator is obliged to make the adjudication decision within the time limit prescribed in section 26 (1) of this Act. The adjudication decision does not become void if the decision is released beyond the prescribed time limit if the adjudicator’s full payment of the fees and expenses is not deposited with the Adjudication Control Authority.

(5) An adjudicator is not entitled to any fees or expenses relating to the adjudication if the adjudicator fails to decide the dispute with the time limits prescribed in this Act.
Immunity of adjudicator and Adjudication Control Authority

32. (1) No suit or other legal proceedings shall lie against an adjudicator with respect to anything done or omitted to be done in good faith in the discharge of the duties and functions of the adjudicator under this Act.

(2) No suit or other legal proceedings shall lie against the Adjudication Control Authority or any person acting under the direction of the Adjudication Control Authority with respect to anything done or omitted to be done in good faith in the discharge of the duties and functions of the Adjudication Control Authority under this Act.

(3) An adjudicator cannot be compelled or required to give evidence in any arbitration or the court in connection with the same dispute where the adjudicator has acted or decided.

Confidentiality of adjudication

33. The adjudicator and any party to the dispute shall not disclose to another person any statement, admission or document made or produced for the purposes of adjudication except –

(a) with the consent of the other party;

(b) to the extent that the information is already in the public domain;

(c) to the extent that disclosure is necessary for the purposes of the enforcement of the adjudication decision or any proceeding in arbitration or the court; or

(d) to the extent that disclosure is required for any purpose under this Act or otherwise required in law.

Improperly procured adjudication decision

34. (1) If an adjudication decision has been improperly procured through fraud or bribery or denial of natural justice or that the adjudicator acted in excess of his jurisdiction, the aggrieved party may at any time apply to the High Court to set aside the adjudication decision.

(2) The application shall be made by originating summons (where appearance not required) accompanied by an affidavit of the plaintiff stating the grounds and particulars thereof.
PART IV
SECURITY OF PAYMENT AND REMEDIES

Payment and performance bonds

35. (1) For any head work contract –

   (a) having a contract price of more than a sum prescribed in the regulations; and

   (b) requiring a performance bond to be furnished or retention money to be withheld or both,

the party (with the exception of the Government and any other person as may be designated by the Minister in the regulations or by order published in the Gazette) awarding the contract shall furnish to the other party as beneficiary a payment bond issued by a bank licensed under the Banking and Financial Institutions Act 1989 (Act 372) for the financial protection of that other party carrying out construction work.

(2) For the purposes of section 35(1) of this Act, the party as beneficiary shall not be a connected person with the party awarding the contract. If the head work contract is awarded to a connected person, then the party awarding the contract shall furnish the payment bond to the party who has contracted with the connected person to carry out the construction work and that party may, subject to section 35(6) of this Act demand against the payment bond in the event of non-payment by the connected person notwithstanding that there is no privity of contract.

(3) The payment bond value shall be equivalent to the combined value of the performance bond and limit of retention money under the head work contract or construction work contract between the beneficiary and connected person, as the case may be. The payment bond shall be valid up to the expiry of the performance bond or release of the retention money withheld, whichever is the later.

(4) The payment bond shall be made in accordance with the prescribed form as set out in the regulations.

(5) The beneficial party to the payment bond is not obliged to commence any work under the construction work contract until that party receives the payment bond for the value and in the form as prescribed by this Act.
(6) Notwithstanding any provision to the contrary in the construction contract or performance bond, neither party can receive payment demanded against the payment bond or performance bond or utilize the retention money, as the case may be, unless that party is found entitled to do so under the construction contract as ordered in the adjudication decision, arbitration award or judgment of court whichever is the earlier.

Enforcement of adjudication decision as judgment

36. (1) An adjudication decision may, with leave of the High Court, be enforced in the same manner as a judgment or an order of the High Court to the same effect.

(2) Where leave of the High Court is so granted, judgment may be entered in the terms of the adjudication decision.

(3) The application for leave to enforce an adjudication decision shall be made by originating summons (where appearance not required) accompanied by an affidavit of the plaintiff and where applicable stating that the whole or part of the adjudicated amount has not been paid at the time the application is filed.

(4) If the affidavit referred to in section 36(3) of this Act indicates that part of the adjudicated amount has been paid, the judgment shall be for the unpaid part of the adjudicated amount.

(5) Leave can only be opposed on the ground that the adjudicated amount has been paid or that the adjudication decision has been improperly procured through fraud or bribery or denial of natural justice or that the adjudicator acted in excess of his jurisdiction.

(6) An adjudication decision entered as a judgment carries interest on judgment debt and may be enforced by execution in accordance with the Rules of the High Court 1980.

Suspension and reduction of rate of progress of performance

37. (1) A party who carries out construction work or construction consultancy services under a construction contract may suspend performance or reduce the rate of performance if the adjudicated amount pursuant to an adjudication decision has not been paid in whole or at all and the amount remains unpaid after the expiry of fourteen (14) calendar days notice in writing served on the other party of the unpaid party’s intention to suspend performance or reduce the rate of progress of performance, as the case may be.
(2) If the unpaid party exercises the right in section 37(1) of this Act, the unpaid party –

(a) is not in breach of contract;

(b) is entitled to a fair and reasonable extension time to complete the obligation under the contract; and

(c) is entitled to recover from the other party loss and expenses incurred as a result of the suspension or reduction in the rate of progress of performance.

(3) Where the unpaid party has suspended or reduced the rate of progress of performance under the contract in accordance with section 37(1) of this Act, the construction work or construction consultancy services shall be resumed in accordance with the contract within seven (7) working days after having been paid the adjudicated amount.

Direct payment from principal

38. (1) If a party fails to pay in whole or at all the adjudicated amount pursuant to an adjudication decision, the principal of that party may make payment to the unpaid party the outstanding amount provided that –

(a) the unpaid party shall have made a written request to the principal for payment;

(b) the principal shall serve a notice in writing on the party who failed to pay stating that direct payment would be made after the expiry of seven (7) working days;

(c) the party who has failed to pay shall, if payment of the outstanding adjudicated amount has been made, show proof of such actual payment to the principal within seven (7) working days after the receipt of the notice referred to in section 38(1)(b) of this Act; and

(d) if that party fails to show proof of payment, the principal is entitled to pay the outstanding adjudicated amount or any part of it to the unpaid party.

(2) The principal may recover the amount paid to the unpaid party as a debt or set off the same from any money due or become due by the principal to the party who has failed to pay the adjudicated amount.
Concurrent exercise of remedies

39. (1) The successful party of the adjudication decision may exercise any or all of the remedies provided in this Act concurrently if the adjudication decision is not complied with, provided that the adjudication has been conducted pursuant to this Act.

(2) The remedies provided by this Act are without prejudice to other rights and remedies available in the construction contract or at law and includes any penalty provided under written law.
PART V
MISCELLANEOUS

Service of notices and documents

40. All notices or other documents to be served under this Act may be served on the person–

(a) by delivering it to the person personally;

(b) by leaving it, during the normal business hours, at the usual place of business of the person; or

(c) by sending it by registered post to the usual or last known place of business of the person.

Regulations

41. (1) The Minister may make regulations on any matter that by this Act is required or necessary for carrying out or giving effect to this Act.

(2) Without prejudice to the generality of section 41(1) of this Act, regulations may be made for-

(a) the manner in which the Adjudication Control Authority is required to exercise or perform its duties and functions;

(b) the conduct of adjudicators;

(c) the form of records to be kept and maintained, information to be recorded and the submission of records;

(d) the prescribed form of payment bond;

(e) the form of standard terms of appointment; and

(f) the standard fee of adjudicators and adjudication review fee.

Exemption

42. The Minister may, by regulations or by order published in the Gazette, exempt –

(a) any person or class of persons; or
(b) any contract, matter or transaction or any class thereof, from all or any provision of this Act, subject to such terms and conditions as may be prescribed.