

MODEL LAW ON STATUTORY ADJUDICATION

Contents

CHAPTER I. PRELIMINARY PROVISIONS	4
<i>Article 1. Commencement date and application.....</i>	<i>4</i>
<i>Article 2. Scope of Application.....</i>	<i>4</i>
<i>Article 3. Construction Contracts.....</i>	<i>4</i>
<i>Article 4. Meaning of Construction Work, Goods and Services.....</i>	<i>5</i>
<i>Article 5. [Exclusion of/Application to] Residential Occupiers.....</i>	<i>7</i>
<i>Article 6. Definitions and Interpretation.....</i>	<i>7</i>
 CHAPTER II. PAYMENTS.....	 8
 PART 2.1 Prohibition of Conditional Payment Provisions in a Construction Contract	
<i>Article 7. Conditional Payment Provisions Ineffective</i>	<i>8</i>
PART 2.2 Payment provisions	
<i>Article 8. Right to progress payments.....</i>	<i>8</i>
<i>Article 9. Dates for Payment</i>	<i>9</i>
<i>Article 10 Parties free to agree on payment provisions in a construction contract.....</i>	<i>9</i>
<i>Article 11 Amount and timing of progress payment.....</i>	<i>10</i>
<i>Article 12 Due date for payment.....</i>	<i>11</i>
<i>Article 13 Interest on late payment.....</i>	<i>11</i>
<i>Article 14 Prohibited provisions relating to payment of retention money.....</i>	<i>11</i>
PART 2.3 Procedure for making and responding to applications for payment	
<i>Article 15 Application for payment.....</i>	<i>12</i>
<i>Article 16 Payment Certificate.....</i>	<i>12</i>
<i>Article 17 Liability for paying application for payment.....</i>	<i>13</i>
<i>Article 18 Consequence of not paying the amount of an application for payment where no Payment Certificate provided.....</i>	<i>13</i>
<i>Article 19 Consequences of not paying amount certified by Payment Certificate.....</i>	<i>14</i>
PART 2.4 Suspension of performance	
<i>Article 20 Suspension of construction work.....</i>	<i>15</i>

CHAPTER III. ADJUDICATION OF CLAIM DISPUTES.....	16
Article 21. <i>Right to Refer to Adjudication.....</i>	16
Article 22. <i>Commencement of Adjudication</i>	16
Article 23. <i>Notice of Adjudication.....</i>	16
Article 24. <i>Preliminary Response.....</i>	17
Article 25. <i>A Dispute.....</i>	17
 CHAPTER IV. ADJUDICATOR	 17
Article 26. <i>Appointment of adjudicator</i>	17
Article 27. <i>Acceptance of appointment</i>	18
Article 28. <i>Declaration of Impartiality and Independence</i>	19
Article 29. <i>Failure or Impossibility to act</i>	19
Article 30. <i>Appointment of substitute adjudicator</i>	20
 CHAPTER V. ADJUDICATION SUBMISSIONS.....	 20
Article 31. <i>Adjudication Claim.....</i>	20
Article 32. <i>Adjudication Response.....</i>	20
Article 33. <i>Adjudication Reply.....</i>	21
Article 34. <i>Further Submission</i>	21
 CHAPTER VI. CONDUCT OF ADJUDICATION.....	 21
Article 35. <i>Jurisdiction of adjudicator.....</i>	21
Article 36. <i>Duties and obligations of adjudicator.....</i>	22

Article 37.	<i>Powers of adjudicator.....</i>	22
Article 38.	<i>When adjudicator’s powers not affected.....</i>	23
Article 39.	<i>Representation at adjudication proceedings</i>	23
Article 40.	<i>Withdrawal and Recommencement of adjudication.....</i>	23
Article 41.	<i>Consolidation of adjudications</i>	24
CHAPTER VII.	<i>ADJUDICATOR’S DECISION</i>	24
Article 42.	<i>Making of Decision</i>	24
Article 43.	<i>Form and Content of Decision.....</i>	25
Article 44.	<i>Service of Decision</i>	25
Article 45.	<i>Correction of Decision</i>	26
Article 46.	<i>Effect of Decision</i>	26
CHAPTER VIII.	<i>COSTS OF ADJUDICATION PROCEEDINGS</i>	26
Article 47.	<i>Costs of Adjudication Proceedings</i>	26
Article 48.	<i>Adjudicator’s fees and expenses</i>	27
CHAPTER IX.	<i>RECOURSE AGAINST ADJUDICATION DECISION</i>	28
Article 49.	<i>Application for setting aside.....</i>	28
Article 50.	<i>Stay of adjudication decision.....</i>	29
CHAPTER X.	<i>ENFORCEMENT OF ADJUDICATION DECISION</i>	30
Article 51.	<i>Enforcement of adjudication decision as judgment</i>	30
CHAPTER XI.	<i>GENERAL PROVISIONS</i>	30
Article 52.	<i>Immunity of adjudicator</i>	30
Article 53.	<i>Adjudicators not compellable as witnesses</i>	31
Article 54.	<i>Relationship between adjudication and other dispute resolution process.....</i>	31
Article 55.	<i>Service of Documents.....</i>	31
Article 56.	<i>Confidentiality.....</i>	31
APPENDICES		
Appendix 1	<i>Definitions and Interpretation [separate document]</i>	

MODEL LAW ON STATUTORY ADJUDICATION
For construction disputes

CHAPTER I. INTRODUCTORY PROVISIONS

Article 1. COMMENCEMENT AND APPLICATION

- (1) This law comes into force on [xx date xx] (“the Commencement Date”).
- (2) This law has effect notwithstanding any provision to the contrary in any agreement or contract.

Article 2. SCOPE OF APPLICATION

- (1) This law reforms the law in relation to construction contracts and in particular includes provision for a system of statutory adjudication to:
 - a. make provisions for the timely resolution of all disputesⁱ arising under a construction contract;
 - b. facilitate the regular and timely interim and finalⁱⁱ account payment for works undertaken pursuant to a construction contract;
 - c. provide a formal payment regime to guarantee regular interim payments under a construction contract;
 - d. provide a process to ensure the prompt recovery of payments due under a construction contract; and
 - e. provide for the recognition and enforcement of adjudicator’s decisions speedily and summarily.

Article 3. CONSTRUCTION CONTRACTS

- (1) In this law a “construction contract” means an agreement whether made orally or in writing with a person for any of the following—
 - (a) the carrying out of construction work including the provision of goods or services in relation thereto;
 - (b) arranging for the carrying out of construction work by others, whether under sub-contract to them or otherwise;
 - (c) providing their own labour, or the labour of others, for the carrying out of construction work.

- (2) References in this law to a construction contract do not include a contract of employment (within the meaning of the [local employment laws of the contracting state]) under which a party undertakes construction work, or supplies goods or services as an employee of the party for whom the construction work is to be carried out or the goods or services are to be supplied.ⁱⁱⁱ
- (3) The [*Government of the Contracting State*] may by order add to, amend or repeal any of the provisions of sub-articles (1), (2) or (3) as to the agreements which are construction contracts for the purposes of this law or are to be taken or not to be taken as included in references to such contracts.
- (4) Where an agreement relates to construction work, goods or services and other matters, this law applies to it only and in so far as it relates to construction work, goods or services.
- An agreement relates to construction work, goods or services in so far as it makes provision of any kind within sub-articles (1) or (2) of this article.
- (5) This law applies only to construction contracts which—
- (a) are entered into after the Commencement Date; and
 - (b) apply to the carrying out of construction work or the provision of goods or services in relation thereto, or any part thereof, in or within the territorial limits of the Contracting State.
- (6) This law applies whether or not the law of the Contracting State is otherwise the applicable law in relation to the contract.

Article 4. MEANING OF “CONSTRUCTION WORK” “GOODS” AND “SERVICES”.

- (1) In this law unless the context otherwise requires and subject to sub-paragraph (2) below:

“construction work” means—

- (a) construction, erection, alteration, repair, restoration, maintenance, extension, demolition or dismantling of buildings, structures or civil works undertaken in the territory of the Contracting State (whether destined for use in the Contracting State or elsewhere);
- (b) construction, erection, alteration, repair, restoration, maintenance, extension, demolition or dismantling of any works including (without prejudice to the foregoing) walls, roadworks, power-lines, electronic, internet, telecommunications apparatus, aircraft runways, wharfs, docks, harbours, energy platforms, railways, canals, inland waterways, pipelines, reservoirs, aqueducts, water-mains, wells, sewers, energy and/or electricity networks,

water networks, gas networks, telephone and/or communication supply networks;

- (c) industrial plant and installations for purposes of land drainage, coastal protection or coastal defence;
- (d) installation in any building, structure or works of fittings, including (without prejudice to the foregoing) systems of heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply, fire protection, security or communications systems;
- (e) external or internal cleaning of buildings and structures, so far as carried out in the course of their construction, erection, alteration, repair, restoration, maintenance, extension, demolition or dismantling;
- (f) operations which form an integral part of, or are preparatory to, or are for rendering complete, such operations as are previously described in subparagraphs (a)-(e), including but not limited to:
 - (i) site clearance, earth-moving, excavation, tunnelling, boring; laying of foundations; erection, maintenance or dismantling of scaffolding or cranes; site restoration; landscaping; the provision of roadways and/or other access works;
 - (ii) prefabricating, customized components or any building or structure or works, whether carried out at or on the construction site or elsewhere (whether destined for use in the Contracting State or elsewhere);
- (g) painting or decorating the internal or external surfaces of any building or 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 including the submission of applications or other documents or any relevant authority, site supervision services, professional engineering services; architectural, design, surveying or quantity surveying services, in relation to construction work;
- (b) project management or other supervisory or project planning and/or co-ordination services in relation to construction work;
- (c) building, engineering, exterior or interior decoration or landscaping services in

relation to construction work;

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

Article 5. [EXCLUSION OF/APPLICATION TO] RESIDENTIAL OCCUPIERS

- (1) This law **[does not apply/applies also]**¹ to a construction contract with a residential occupier.
- (2) A construction contract with a residential occupier means a construction contract which principally relates to works on a dwelling which one of the parties to the contract occupies, or intends to occupy, as their residence.
- (3) In this subsection “dwelling” means a dwelling-house or a flat; and for this purpose—
- a. “dwelling-house” does not include a building containing a flat; and
 - b. “flat” means separate and self-contained premises constructed or adapted for use for residential purposes and forming part of a building from some other part of which the premises are divided horizontally.
- (4) The Government of the Contracting State may by order amend subsection (1).
- (5) [Conditions on which amendments may be made]^{iv}.

Article 6. DEFINITIONS AND INTERPRETATION

- (1) In this law, words and phrases shall be given the meaning ascribed to them in **Appendix 1** to this law.

¹ Art 5 is optional.

CHAPTER II. PAYMENTS

Payments

PART 2.1—Prohibition of conditional payment provisions of construction contracts

Article 7. CONDITIONAL PAYMENT PROVISIONS INEFFECTIVE

- (1) Any payment provision in a construction contract which is conditional on the paying party having first received payment from a third party is void and of no legal effect. Accordingly, any such provision may not be used as a basis for withholding payments that are due and payable under a construction contract.
- (2) Any payment obligation which is conditional upon the availability of funds or drawdown of financing facilities by the paying party is also void and of no legal effect.
- (3) In this article, a conditional payment provision in a construction contract means a provision of the contract that—
 - (a) makes the obligation of the paying party to pay any amount owed to the receiving party conditional on the paying party having first received payment from a third party; or
 - (b) seeks to make the due and payable date for payment of any amount owed by the paying party to the receiving party contingent on the date on which the paying party receives payment from a third party; or
 - (c) is commonly referred to in the construction industry as a “pay when paid” or “pay if paid” clause in a construction contract.
- (4) Subject to the provisions of article 10(2) below, a payment obligation that is conditional upon the issue of a payment application by the receiving party, is not a conditional payment provision for the purposes of this article 7.

Part 2.2—Payment provisions

Article 8 RIGHT TO PROGRESS PAYMENTS

- (1) A party who carries out construction work under a construction contract has the right to payment by instalments, stage or progress payments unless the duration of the work is either specified or estimated by the parties to be less than [45 days].
- (2) For the purposes of this law, an instalment, stage or progress payment includes a final claim, final account claim, and/or any payment consequent on a final payment application or payment certificate under a construction contract.

Article 9. DATES FOR PAYMENT

- (1) Every construction contract shall provide:
 - a. a mechanism for the determination of what payments become due under the construction contract; and,
 - b. when such payments are due and payable.
- (2) Contractual provisions which prevent the timely payment for construction work or the provision of goods or services in relation thereto within a reasonable time after the carrying out of such construction work, or the provision of such goods or services, are void and of no legal effect.

Parties may agree on express terms for payments

Article 10. PARTIES FREE TO AGREE ON PAYMENT PROVISIONS IN CONSTRUCTION CONTRACT

- (1) The parties to a construction contract are free to agree between themselves on a mechanism for determining—
 - (a) the number of payments under the contract;
 - (b) the interval between those payments;
 - (c) the amount of each of those payments or the circumstances/events under which they become due; and
 - (d) the date[s] when each of those payments becomes due and payable.
- (2) Such provisions may not be made dependent or conditional on:
 - (a) the carrying out of obligations² [*excluding any obligation to make payment*] under another contract; or
 - (b) any decision by any third party as to whether any obligations under another contract have been carried out;unless the contract is an agreement by the parties for the carrying out of obligations by another party and the obligations are on that other party to carry out those requirements.
- (3) Such provisions will also be ineffective where the date for payment is to be determined by reference to the provision of a notice or certificate to the party to whom the payment is due (“the receiving party”) of a certificate or notice from another party relating to what payments are due under the contract.
- (4) Where the parties have failed to agree on a mechanism to determine the amount and

² UK law says this excludes obligations to make payment.

the timing of payments due under the contract as described in sub-articles (1) to (3) hereof, to the extent that the provisions of the contract relate to any matter for which a mechanism has not been agreed, the provisions of articles 11-12 of this law shall apply.

Default provisions for payments in absence of express terms

Article 11. AMOUNT AND TIMING OF PROGRESS PAYMENT

- (1) The amount of a progress payment shall be calculated by reference to—
 - (a) the relevant period for that payment as determined in sub-article (2) below;
 - (b) the value of the work carried out, or to be carried out, up to and during that period in accordance with the contract;
 - (c) the relevant provisions in the contract for its valuation, or if no such provisions have been agreed, the provisions in sub-article (4) below;
 - (d) deductions of retention money or liquidated damages;
 - (e) any set off or abatement under the contract of which notice has been given; and
 - (f) other claims under the contract of which notice has been given.
- (2) The relevant period for the valuation of work for inclusion in each progress payment under a contract is—
 - (a) the period commencing on the day of the month on which work was commenced under the contract and ending on the last working day of that month (the **first period**); and
 - (b) from the date of the commencement of the contract, on the same date, or the last working day of each month after the first period (the **relevant period**).
- (3) The value of the work referred to in sub-paragraph (1)(b) above shall be calculated with regard to—
 - (a) the contract price for the work;
 - (b) including, where the contract permits, the value of any materials brought on to the site for inclusion in the works;
 - (c) any other rates or prices set out in the contract;
 - (d) any variation to the work under the contract; and
 - (e) if any work is defective, the reasonable estimated cost of rectifying the defect.

- (f) the reasonable value of any other claims under the contract of which notice has been given.
- (4) If the contract does not expressly provide for the matters referred to in sub-article (3)(a) to (f) above, the value of work must be calculated with regard to—
- (a) the reasonable value of the work carried out in the relevant period and the value of any materials on site;
 - (b) the reasonable value of any variation to the work under the contract;
 - (c) if any work is defective, the reasonable estimated cost of rectifying the defect; and
 - (d) the reasonable value of any other claims under the contract of which notice has been given.

Article 12. DUE AND PAYABLE DATE FOR PAYMENT

In default of agreement, any instalment, stage or progress payment under a contract becomes due and payable on the date occurring 21 days after an application for payment is served.

Miscellaneous provisions relation to payment

Article 13. INTEREST ON LATE PAYMENT

- (1) Interest on late payments is payable to the receiving party from the due and payable date for payment under the contract until the date on which it is paid.
- (2) The interest referred to in subsection (1) is payable—
 - (a) at the rate stipulated in the contract; or
 - (b) if the parties have not agreed a rate under the contract, at the rate or rates prescribed by local legislation or local regulations in the Contracting State; or
 - (c) if no such legislation or regulation exist, at the rate of [xx]%.

Article 14. PROHIBITED PROVISIONS RELATING TO PAYMENT OF RETENTION MONEY

- (1) Any term in a contract that purports to—
 - (a) make the payment of retention money conditional on anything other than the due performance of the contractor's obligations under the contract; or

- (b) make the date on which payment of retention money is payable later than the date on which the contractor has performed its obligations under the contract to the extent and to the standard agreed under the contract, is void.
- (2) Any provision in a contract where the purpose, or one of the purposes of which is to limit or avoid the application of any of the provisions of this article 14, is void.

Part 2.3—Procedure for making and responding to payment claims

Article 15. APPLICATION FOR PAYMENT

- (1) A party may serve an application for payment —
 - (a) where the contract provides for the application for payment to be made, at the end of the first or relevant period as specified in, or determined in accordance with the terms of the contract; or
 - (b) if the contract does not otherwise provide for the payment of instalments, stage or progress payments, at the end of the first or relevant period referred to under the contract or in accordance with the provisions of this law; or
 - (c) if the contract does not provide for the service of an application for payment in the case of any other entitlement to payment expressly agreed under the contract, following the completion of all of the construction work, or the provision of goods or services to which the entitlement to payment relates.
- (2) An application for payment must—
 - (a) be in writing;
 - (b) contain sufficient details to identify the construction contract and, where/if in writing, the terms of the contract to which the payment relates;
 - (c) identify the construction work and the relevant period to which the payment relates;
 - (d) state an amount applied for and the due date for payment;
 - (e) indicate the manner in which the applicant calculated the amount applied for;
 - (f) state that it is made under this law; and
 - (g) provide supporting documentary evidence of the work carried out.

Article 16. PAYMENT CERTIFICATE

- (1) The party under the contract who is in receipt of an application for payment (“the paying party”) may reply to the application by providing a payment certificate to the receiving party.

- (2) A payment certificate must—
 - (a) be in writing;
 - (b) identify the application for payment to which it relates; and
 - (c) state a sum to be paid, if any, being the certificated amount.
- (3) If the certificated amount is less than the amount applied for in the application for payment, the payment certificate must additionally indicate—
 - (a) the manner in which the paying party calculated the certificated amount;
 - (b) the paying party's reason or reasons for the difference between the certificated amount and the amount applied for in the payment application; and
 - (c) in a case where the difference is because the paying party proposes to withhold all or any part of an application for payment, reasonable particulars of the ground or grounds for withholding the payment.
- (4) If the paying party elects not to respond to an application for payment and issue a payment certificate, or fails to provide the particulars required by article 16(3)(a)-(c) above, then they become liable to pay the sum applied for in the application for payment in full. Such payment is without prejudice to the paying party's right later to challenge the whole or any part of the application for payment in adjudication proceedings or any other dispute resolution procedure to establish the true value of the application for payment or reduce the sum owed by reason of any ground[s] which it could have raised in response to the application for payment.

Article 17. LIABILITY FOR PAYING APPLICATION FOR PAYMENT

- (1) A paying party becomes liable to pay the amount of an application for payment on the due and payable date for the payment to which the application for payment relates if—
 - a. a receiving party serves an application for payment on a paying party; and
 - b. the paying party does not provide a payment certificate to the receiving party within—
 - i. subject to sub-article (ii), the time required by the contract; or
 - ii. if the contract does not provide any time limit for the paying party to respond, or provides for a time limit in excess of [14] days, [14]^v days after the application for payment is served.

Article 18. CONSEQUENCES OF NOT PAYING THE AMOUNT OF AN APPLICATION FOR PAYMENT WHERE NO PAYMENT CERTIFICATE PROVIDED

- (1) Where or if the paying party elects not to provide the receiving party with a payment

certificate within the prescribed time, and/or fails to pay the amount of the application on or before the due date for payment, the paying party shall be liable to pay the amount of the application for payment to the receiving party without deduction;

- (2) In any enforcement proceedings, upon proof of the circumstances referred to in sub-article (1) above, the receiving party may recover from the paying party, as a debt due to the receiving party-
 - (i) the unpaid amount of the application for payment;
 - (ii) the reasonable costs of recovery awarded against the paying party by the tribunal seized with the application for enforcement of the application for payment.
- (3) Pending payment, the receiving party may serve notice on the paying party of the receiving party's intention to suspend the carrying out of the work under the contract.
- (4) A notice of suspension as referred to in sub-article (3) must state—
 - a. the ground or grounds on which the proposed suspension is based; and
 - b. that the notice is given under this law.

Article 19. CONSEQUENCES OF NOT PAYING CERTIFICATED AMOUNT IN THE MANNER INDICATED BY PAYMENT CERTIFICATE

- (1) If—
 - (a) a receiving party serves an application for payment on a paying party;
 - (b) the paying party provides a payment certificate to the receiving party within the time allowed;
 - (c) the payment certificate indicates a certificated amount that the paying party proposes to pay to the receiving party; and
 - (d) the paying party fails to pay the whole, or any part, of the certificated amount on or before the due date for the payment to which the payment certificate relatesthe consequences specified in sub-article (2) shall apply.
- (2) Upon proof of the facts set out in sub-article (1) above, before any tribunal seized with the application for enforcement of the amount of the payment certificate the receiving party—
 - (a) may recover from the paying party, as a debt due to the receiving party-
 - (i) the unpaid portion of the certificated amount;
 - (ii) the reasonable costs of recovery awarded against the paying party by the tribunal seized with the enforcement of the amount of the payment certificate; and

- (b) may serve notice on the paying party of the receiving party's intention to suspend the carrying out of the work under the contract.
- (3) A notice referred to in sub-article (2)(b) must state—
 - (a) the ground or grounds on which the proposed suspension is based; and
 - (b) that the notice is given under this law.

Part 2.4—Suspension of Construction Work

Article 20. SUSPENSION OF CONSTRUCTION WORK

- (1) A party who carries out work under a contract has the right to suspend work or partially to suspend work under that contract if—
 - (a) any of the following circumstances applies:
 - (i) a sum claimed in an application for payment is not paid in full by the due date for its payment, and no payment certificate has been provided by the party who it is claimed is liable to make the payment; or
 - (ii) a certificated amount is not paid in full by the due date for its payment even though a payment certificate given by the paying party indicates a certificated amount that the paying party proposes to pay to the receiving party; or
 - (iii) the paying party has not complied with an adjudicator's determination that it must pay an amount to the receiving party by a particular date; and
 - (b) the receiving party has served on the paying party a written notice of their intention to suspend or partially to suspend work; and
 - (c) the amount mentioned in paragraph (a)(i) or (ii) is not paid, or the determination mentioned in paragraph (a)(iii) is not complied with, within 5 working days after the date of that notice.
- (2) If the receiving party exercises the right to suspend work as conferred by subsection (1), the receiving party—
 - (a) shall not be deemed to be in breach of the contract;
 - (b) shall not be held liable for any loss or damage suffered by the paying party, or by any person claiming through it;
 - (c) shall be entitled to an extension of time to complete the contract, and shall be entitled to recover any costs incurred as a consequence of the suspension and [subsequent] remobilization; and
 - (d) Such action [by the receiving party] shall be without prejudice to any other of its rights under the contract, including any right to terminate the contract; and
 - (e) may at any time lift the suspension, even if the amount has not been paid or the determination has not been complied with by the paying party.

- (3) For the avoidance of doubt, subsection (2)(c) does not affect the receiving party's existing rights to recover (whether in an adjudication or otherwise) any costs, losses or expenses incurred as a consequence of any delay to the works that exist other than by reason of this [article].
- (4) If the receiving party exercises the right conferred by subsection (1), the exercise of that right does not—
 - (a) affect any rights that would otherwise have been available to it; or
 - (b) enable the paying party to exercise any rights that may otherwise have been available to it under that sub-section as a direct consequence of the receiving party exercising the right conferred by subsection (1).
- (5) The right to suspend work under a contract ceases when the payer pays the amount stated in the payment application, payment certificate or awarded by an adjudicator in full, or an adjudicator's decision is not upheld by the Court or any tribunal called upon to finally determine the dispute. Following payment, or the subsequent quashing of the application for payment or unpaid part thereof, the receiving party will be allowed a reasonable period to remobilize.

CHAPTER III. Adjudication

Article 21. RIGHT TO REFER A DISPUTE TO ADJUDICATION

- (1) Any party to a construction contract has the right to and may refer a dispute arising under the contract to adjudication ("the referring party") by the procedure set out in this Chapter III at any time.

Article 22. COMMENCEMENT OF ADJUDICATION

- (1) An adjudication in respect of a dispute commences on the date on which a Notice of Adjudication ("the Notice") is served by the referring party on the responding party^{vi}.

Article 23. NOTICE OF ADJUDICATION

- (1) The Notice shall be in writing and shall be given to every other party to the contract. The Notice shall include—
 - (a) the nature and a brief description of the dispute and of the referring and responding parties to the claim;
 - (b) details of the relevant provisions of the contract relating to the adjudication

- agreement and the claim;
- (c) details of where and when the dispute has arisen;
 - (d) the nature of the redress which is sought;
 - (e) the names and addresses of the parties to the contract (including, where appropriate, the addresses which the parties have specified for the giving of notices); and
 - (f) a statement that it is made under this law.

Article 24. PRELIMINARY RESPONSE

- (1) A party served with a Notice (“the responding party”) who disputes the claim, either wholly or partly, may serve a Preliminary Response in writing on the referring party specifying in general terms the basis of its objection to the claim and, in respect of a claim arising in respect of a payment application, the amount disputed.
- (2) A Preliminary Response issued under sub-article (1) shall be served by the responding party on the referring party within [7] days after service of the Notice.

Article 25. A DISPUTE

- (1) For the purposes of this law a dispute arises when a responding party –
 - (a) in the case of a claim arising from an application for payment, as described in Chapter II, when a responding party fails or refuses to accept or respond to the referring party’s application for payment; or
 - (b) fails to issue a Preliminary Response to the Notice in the time required by sub-article 24(2); or
 - (c) fails to accept or respond to any part of the claim in the Notice; or
 - (d) disputes the claim or any part of the claim in the Notice whether by way of its Preliminary Response or otherwise.

CHAPTER IV

Article 26. APPOINTMENT OF ADJUDICATOR

- (1) The parties may agree in the contract on the person to be appointed as adjudicator in respect of any dispute arising under or in connection with the contract; or
- (2) The parties may agree at any time before the commencement of the adjudication on

the person to be appointed as adjudicator in respect of a dispute, in which case that person will be appointed as adjudicator to adjudicate that dispute.

- (3) If the parties have not agreed the person to be appointed as adjudicator as provided for in sub-articles 26(1) or (2) or the person agreed upon is not willing or is not able or available to act as adjudicator, and if the parties have agreed on a procedure for the appointment of an adjudicator in default of acceptance of the person so named in the contract, that procedure will apply.
- (4) If an adjudicator is not appointed under sub-articles 26(1), (2) or (3), the adjudicator shall be appointed upon request of the referring party to any authorized Adjudicator Nominating Body ("ANB") [*or if there is only one ANB, that ANB*].
- (5) An ANB means a body [not being a natural person, or a party to the dispute] which has been approved by [*the contracting state, ministry or public agency dealing with trade or law*], and holds itself out publicly as a body which will select an adjudicator when requested to do so by a party seeking to refer a dispute to adjudication.
- (6) Any request for the appointment of an adjudicator shall be made within [10]^{vii} days of the service of the Notice on the responding party and must be accompanied by a copy of the Notice and the contract including any agreement to refer disputes to adjudication, and/or a statement that the referral to adjudication is made pursuant to this law, together with a copy of any Preliminary Response. The request for the appointment of an adjudicator must be made in the form prescribed by the ANB, and include the payment of any fee stipulated for the making of the appointment.

Article 27. ACCEPTANCE OF APPOINTMENT

- (1) A person nominated to act as adjudicator shall indicate within two days from receipt of the nomination request whether they are prepared to accept the appointment^{viii} and the terms upon which they are prepared to act. The adjudicator shall not be an employee, servant or agent of any of the parties, nor shall they have any interest, financial or otherwise relating to the dispute or the parties to the contract.
- (2) The adjudicator shall at all times act fairly and impartially in relation to the parties and in their determination of the dispute. Upon notification of their acceptance of the appointment, the adjudicator must also issue to the parties a written declaration of impartiality and independence in the form specified in Article 28.
- (3) If the adjudicator rejects the appointment or fails to notify acceptance of the appointment within the period specified in sub-article (1) of this article, the parties

shall proceed to appoint another person to be an adjudicator in the manner provided under article 26.

Article 28. DECLARATION OF IMPARTIALITY AND INDEPENDENCE

- (1) The adjudicator shall at the time of the acceptance of appointment as the adjudicator make a declaration in writing to the parties that:
 - (a) there is no conflict of interest in respect of their appointment;
 - (b) they will act independently and impartially;
 - (c) there are no circumstances likely to give rise to justifiable doubts as to their impartiality and independence; and
 - (d) that in the event any circumstances arise during the course of the adjudication, they will forthwith notify the parties of the circumstances and if necessary, withdraw from the adjudication.
- (2) Alternatively, if after the adjudicator has declared any conflict of interest or circumstances likely to give rise to justifiable doubts as to the adjudicator's impartiality and independence, and both parties agree in writing that notwithstanding such declaration the adjudicator may continue and adjudicate the dispute, the adjudicator may accept the appointment to adjudicate the dispute.
- (3) Any challenge to the appointment of an adjudicator should be notified by the party raising the challenge as soon as practicable after the facts giving rise to the challenge are known or ought to be known by the party.
- (4) Notwithstanding any challenge to their appointment, the Adjudicator may in their discretion proceed and complete the adjudication subject to the parties' right[s] of recourse under articles 49 and 50.

Article 29. FAILURE OR IMPOSSIBILITY TO ACT

- (1) An adjudicator's mandate terminates if –
 - (a) the adjudicator dies, resigns or is unable through illness or any other cause to complete the adjudication; or
 - (b) the parties mutually agree to terminate the mandate of the adjudicator.
- (2) Termination of the adjudicator's mandate entitles the adjudicator to payment for their time spent and expenses incurred in working on the adjudication up to the time of their receipt of the notice of termination from the parties, unless the resignation or termination is due to

the adjudicator's misfeasance.

Article 30. APPOINTMENT OF SUBSTITUTE ADJUDICATOR

- (1) Where the mandate of the adjudicator terminates under article 29, the parties may proceed to appoint another person to be the adjudicator in the manner provided under article 26.

CHAPTER V. ADJUDICATION SUBMISSIONS

Article 31. ADJUDICATION CLAIM

- (1) Within 7 Days of being served the adjudicator's notification of acceptance of appointment under article 27(1), the referring party must serve a written Adjudication Claim including all supporting documents and other written evidence on the adjudicator and the responding party.
- (2) An Adjudication Claim must contain:
 - (a) the names and service addresses of the referring party and the responding party;
 - (b) the particulars of the relevant contract, including:
 - (i) the date the contract was made;
 - (ii) the contract number or reference,
 - (iii) the project title or reference,
 - (iv) a brief description of the project;
 - (v) a summary of the relevant terms of the contract; and
 - (c) particulars of the agreement to refer disputes to adjudication;
 - (d) such other information or documents relevant to the Adjudication Claim including any relevant application for payment, and the response of the paying party (if any); and
 - (e) a copy of the Notice, Preliminary Response, and any application for the appointment of an adjudicator in the form prescribed by and submitted by the referring party to the ANB, together with a copy of the receipt for any fee paid in respect of the application.

Article 32. ADJUDICATION RESPONSE

- (1) Within 7 days of being served the Adjudication Claim or as otherwise agreed by the parties or as directed by the adjudicator, the responding party shall serve a written Adjudication Response together with any supporting documents and

any written evidence on the adjudicator and the referring party.

- (2) An Adjudication Response shall:
 - (a) identify the Adjudication Claim to which it relates;
 - (b) contain details of the response to the Adjudication Claim; and
 - (c) be accompanied by all evidence, information or documents relied on by the responding party.
- (3) If, after the expiry of the period specified under sub-article (1) of this article, the responding party fails to serve an Adjudication Response, the adjudicator may proceed with and complete the adjudication and deliver the decision on the basis of the material before them.

Article 33. ADJUDICATION REPLY

- (1) Within 7 Days of being served with the Adjudication Response or within such timescale as is agreed by the parties, or as directed by the adjudicator, the referring party may serve a written Adjudication Reply together with any supporting evidence, information or documents on the adjudicator and the responding party.

Article 34. FURTHER SUBMISSIONS^{ix}

- (1) Unless the parties mutually agree, or the adjudicator directs otherwise, no further submissions, evidence or documents relating to the dispute shall be admitted in the adjudication.

CHAPTER VI CONDUCT OF ADJUDICATION

Article 35. JURISDICTION OF ADJUDICATOR

- (1) An adjudicator's jurisdiction is limited to determining the dispute which is the subject of the Notice served by the referring party.
- (2) Notwithstanding sub-article (1) of this article, the parties, with the consent of the adjudicator, may at any time before the conclusion of the adjudication agree in writing to extend the jurisdiction of the adjudicator to include for decision any other matter^x relevant to the dispute arising out of the contract.
- (3) Any challenge to the jurisdiction of the adjudicator should be notified by the

party raising the challenge as soon as practicable after the facts giving rise to the challenge are known or ought to be known by the party.

- (4) Notwithstanding any challenge to their jurisdiction, the adjudicator may in their discretion proceed and complete the adjudication subject to the parties' right[s] of recourse under articles 49 and 50.

Article 36. DUTIES AND OBLIGATIONS OF ADJUDICATOR

- (1) An adjudicator must—
- (a) as required by article 27(2) of this law, act fairly, and impartially;
 - (b) act in accordance with the principles of natural justice;
 - (c) act in accordance with the powers and duties prescribed by this law; and
 - (d) as required by Article 28((1)(d) of this law, forthwith disclose any conflict of interest arising after the commencement of the adjudication to the parties.

Article 37. POWERS OF THE ADJUDICATOR

- (1) An adjudicator shall have the power to -
- (a) decide the procedure for the conduct of the adjudication and conduct the adjudication in such manner as they consider appropriate;
 - (b) issue any direction as may be necessary or expedient;
 - (c) inquisitorially take the initiative to ascertain the facts and the law required for the decision;
 - (d) call for a conference or meeting with both parties;
 - (e) conduct a hearing, settle the procedure for such hearing, including the power to limit the hearing time;
 - (f) appoint independent experts or advisers to inquire and report to them on specific elements of the dispute, provided always that such advice is provided to the parties for their comment and submission prior to concluding the decision;
 - (g) carry out an inspection of the works, or any other thing or location to which the dispute relates;
 - (h) review, revise or substitute any certificate, instruction or opinion issued by any person pursuant to the terms of the contract;
 - (i) subject to the provisions of article 42 below, extend any time limit

- imposed on the parties as reasonably required;
- (j) order interrogatories to be served and answered by or on any party to the adjudication;
- (k) order the production of any evidence either on the application of a party or of their own motion;
- (l) order that any evidence be given on oath; and
- (m) award financing costs and interest^{xi} as provided for in the contract.

Article 38. WHEN ADJUDICATOR'S POWERS NOT AFFECTED

- (1) The adjudicator's power to determine a dispute shall not be affected by the failure of—
 - (a) the responding party to serve an Adjudication Response to the Adjudication Claim under article 32; or
 - (b) any of the parties' failure or refusal to comply with any direction or request made by the adjudicator.
- (2) If any failure of the kind referred to in this article 38(1) occurs in an adjudication, the adjudicator may—
 - (a) draw any inferences from that failure that they think fit; and
 - (b) proceed to determine the dispute based on the evidence, documents and information made available.

Article 39. REPRESENTATION AT ADJUDICATION PROCEEDINGS

- (1) Any party in the adjudication may be represented by any person (whether legally qualified or not) that they consider to be appropriate.

Article 40. WITHDRAWAL AND RECOMMENCEMENT OF ADJUDICATION PROCEEDINGS

- (1) A referral to adjudication may be withdrawn if—
 - (a) the referring party serves a written notice of withdrawal on the adjudicator and the responding party withdrawing the dispute which is the subject of the Adjudication Claim on terms as to costs acceptable to the responding party; save that if the responding party objects to the withdrawal and the

- adjudicator recognises a legitimate interest on the part of the responding party in obtaining a decision in respect of the dispute referred, the adjudicator may refuse to sanction the withdrawal and direct that the adjudication be continued on such terms as to costs as they think fit; or
- (b) the parties to the adjudication agree on the withdrawal of the dispute.

- (2) The referring party may recommence an adjudication in respect of the dispute by serving a fresh Notice if -
 - (a) the adjudication was withdrawn under sub-paragraph (1) of this article without any decision having been rendered by the adjudicator, or
 - (b) any decision made by the adjudicator becomes void under article 44(2).

Article 41. CONSOLIDATION OF ADJUDICATION PROCEEDINGS^{xii}

- (1) If two or more adjudications arising from the same contract are being adjudicated on before the same adjudicator, the adjudicator may, with the written consent of the parties to those adjudications, consolidate them and adjudicate the disputes together in a single adjudication.
- (2) Where the parties and the adjudicator have agreed to consolidate two or more adjudications under this Article, they agree also to extend the time for the delivery of the decision up to a further 21 days, or such further time as the adjudicator may reasonably require.
- (3) The adjudicator shall issue directions for the conduct of the consolidated adjudication to ensure the economical and expeditious determination of the dispute within any extended time frame for the delivery of the decision.

CHAPTER VII. ADJUDICATOR'S DECISION

Article 42. MAKING OF ADJUDICATION DECISION

- (1) The adjudicator must determine any dispute and deliver the decision to the parties within –
 - (a) 35 days from the service of the Adjudication Claim by the referring party; or

- (b) such further time as the parties to the adjudication both agree.
- (2) If a dispute is settled by agreement between the parties before the decision is given, the adjudicator—
 - (a) shall, if requested by both parties in writing, terminate the adjudication; and/or
 - (b) may, if requested by both parties, record the settlement in the form of a decision on agreed terms.

Article 43. FORM AND CONTENTS OF ADJUDICATOR'S DECISION

- (1) A decision must –
 - (a) be in writing;
 - (b) be signed;
 - (c) be dated;
 - (d) decide the dispute referred for determination;
 - (e) state the reasons upon which it is based, unless the parties to the adjudication agree in writing that the requirement for the adjudicator to give reasons is dispensed with;
 - (f) include the adjudicator's determination of the allocation and amount of the Adjudication Costs; and
 - (g) state the time for payment of any sum due or Adjudication Costs.

Article 44. SERVICE OF DECISION

- (1) The adjudicator must serve a copy of the decision on every party to the adjudication within the time prescribed or agreed for its delivery to the parties.
- (2) Unless otherwise agreed by the parties, a decision which is not made within the prescribed or agreed time for its delivery may, is void^{xiii}; and
- (3) If the decision is void, the parties may proceed to appoint a replacement Adjudicator, who may enter upon the dispute and render a decision on the basis of the parties existing submissions within 21 days of his/her appointment or such further time as may be agreed in writing by the parties.

Article 45. CORRECTION OF ADJUDICATOR'S DECISION

- (1) The adjudicator may, on his or her own initiative, or at the request of any party to the adjudication, correct in the decision any errors in computation or any clerical or typographical errors or any errors of a similar nature, within 7 days of the issue of the decision.
- (2) The provisions in article 43 and article 44 shall apply to any correction of a decision.

Article 46. Effect of Decision

- (1) A decision is binding and enforceable and continues to be of full effect until and unless –
 - (a) it is set aside by the competent court under article 49; or
 - (b) the dispute which is the subject matter of the decision is settled by a written agreement between the parties; or
 - (c) the dispute is finally decided by litigation or arbitration.

CHAPTER VIII. ADJUDICATION COSTS

Article 47. LIABILITY FOR AND PAYMENT OF ADJUDICATION COSTS

- (1) For the purposes of this section, Adjudication Costs^{xiv} include:
 - (a) the fees and expenses payable to the ANB, in connection with the appointment of an adjudicator;
 - (b) the adjudicator's fees and expenses calculated pursuant to this article 47; and
 - (c) the costs of any independent experts or advisers that are appointed pursuant to article 37(f);
 - (d) the legal and other fees and expenses of the parties, if, after the commencement of the adjudication, the parties so jointly agree in writing.
- (2) The adjudicator may decide which of the parties will pay the Adjudication Costs, and in what proportions, subject to article 48(3) below. Any decision about the Adjudication Costs must be recorded in the decision.

- (3) In making a decision about the Adjudication Costs under article 48(2), the adjudicator has the discretion to order that the Adjudication Costs be paid by either or both parties in the adjudication, and in what proportion, and in so doing, to fix the amount of the Adjudication Costs to be paid.
- (4) In exercising the discretion to order the payment of the Adjudication Costs under article 43(1)(f), the adjudicator may consider the extent to which the respective parties have succeeded in the adjudication, the parties' conduct before and during the adjudication, and any other matters they deem relevant.
- (5) If the Adjudicator does not make a decision under article 48(2), the parties to the adjudication must pay the Adjudication Costs in equal shares.
- (6) An agreement made by the parties prior to the commencement of the adjudication about how the Adjudication Costs, including the adjudicator's fees and expenses, are to be apportioned, is not binding on the parties to the adjudication, save and to the extent that the parties both confirm the agreement in writing after the commencement of the adjudication.

Article 48. ADJUDICATOR'S FEES AND EXPENSES

- (1) An adjudicator is entitled to be paid, by way of fees and expenses:
 - (a) in accordance with their terms and conditions to the extent agreed by the parties to the adjudication in advance or upon their acceptance of the appointment; or
 - (b) an amount in respect of their reasonable fees and expenses incurred in the conduct of the adjudication as settled by the adjudicator in the decision.
- (2) In the event that a court finds that the decision is void and unenforceable, the adjudicator is still entitled to be paid any fees or expenses relating to the adjudication, provided always that the adjudicator acted in good faith.
- (3) An adjudicator is not entitled to be paid any fees and expenses relating to the adjudication if the adjudicator fails to decide the dispute or serve the decision within the period specified under article 42 and article 44 respectively.
- (4) If an adjudication is withdrawn under article 40, or a dispute is settled under article 42(2), an adjudicator is entitled to be paid the fees and expenses incurred in the adjudication up to, and including, as the case may be, the date on which –
 - (a) the adjudication was withdrawn; or

- (b) if later, the adjudicator was notified in writing that the dispute has been settled, or a decision on agreed terms was made.
- (5) The parties to the adjudication are jointly and severally liable for the payment of the adjudicator's fees and expenses and such obligation continues notwithstanding any order by the adjudicator for payment of all or part of his/her fees and expenses by one or both of the parties.
- (6) The fees and expenses of the adjudicator shall be settled forthwith upon delivery of the decision or within such other time as may be permitted by the adjudicator and specified in the Decision.

CHAPTER IX. RECOURSE AGAINST ADJUDICATOR'S DECISION

Article 49. APPLICATION FOR SETTING ASIDE

- (1) An adjudicator's decision may be set aside by the Court only if –
 - (a) the applicant was not given proper notice of the appointment of the adjudicator or of the adjudication; or
 - (b) the adjudicator does not have the jurisdiction to deal with the dispute, or has acted in excess of his jurisdiction in connection with the making of the decision; or
 - (c) the appointment of the adjudicator was not in accordance with the agreement of the parties, or failing such agreement, was not in accordance with this law; or
 - (d) a breach of the rules of natural justice occurred during the adjudication or in connection with the making of the decision; or
 - (e) the making of the decision was induced or affected by fraud or corruption; or
 - (f) the Court finds that the decision is otherwise in conflict with public policy.
- (2) Where the part of the decision affected by any of the provisions in article 48(1) can be separated from the part not so affected, only that part of the decision so affected may be set aside.

- (3) An application for setting aside shall not be made –
 - (a) after 28 days from the date on which the decision is served on the applicant;
 - (b) after the decision is enforced by the Court in accordance with the provisions of article 50.
- (4) The restriction of a party's right to apply to set aside a decision set out in sub-article (3) does not apply to an application for setting aside on the ground that the making of the decision was induced or affected by fraud or corruption.
- (5) Where an application is made to set aside a decision, the Court may order that any money made payable under the decision shall be brought into Court or otherwise secured pending the determination of the application.
- (6) No appeal shall lie against any decision of the Court under this article save with the express permission of the Court.^{xv}

Article 50. STAY OF DECISION BY THE COURT

- (1) A party to the decision may apply to the Court for a stay of the decision only if –
 - (a) an application for setting aside under article 49(1) has been made; or
 - (b) an application for its enforcement has been made; or
 - (c) the dispute is pending final determination in other proceedings^{xvi}.
- (2) An application for setting aside under article 49(1), or the enforcement of the decision, or the reference of the dispute for final determination in other proceedings does not operate as a stay of the decision unless the Court, on hearing the application, so determines.
- (3) Without limiting the Court's discretion, when determining whether to grant a stay of a decision, the Court may take into consideration either of the following matters -
 - (a) where an amount of money is ordered to be paid in the decision, there is a real risk that the receiving party will not be able to repay the money paid to it in the event the dispute is finally resolved in favour of the applicant in the other proceedings, or
 - (b) there is a real risk that the making of the decision or a substantial part of it was

procured by fraud or corruption.

- (4) In an application for a stay, the Court may –
 - (a) refuse a stay of the decision;
 - (b) order that the decision be partly or wholly stayed on such terms as it thinks fit;
 - (c) make any other order it thinks fit.
- (5) No appeal shall lie against any decision of the Court under this article, save with the express permission of the Court.

CHAPTER X. ENFORCEMENT OF ADJUDICATION DECISION

Article 51. ENFORCEMENT OF DECISION AS A JUDGMENT

- (1) A party who has secured a decision in its favour is entitled to have it enforced summarily upon application to the Court.
- (2) Upon application to the Court, a decision shall be enforced as if a judgment of the Court subject only to the provisions of this article.
- (3) The Court shall not enforce a decision to the extent that it is wholly or partly set aside under an application under article 49.
- (4) If an application for setting aside has been made under article 49, the Court may adjourn the hearing of the application and may also, on the application of the party entitled to enforcement of the decision, order the applicant to provide appropriate security.
- (5) No appeal shall lie against any decision of the Court under this article, save with the express permission of the Court.

CHAPTER XI. GENERAL PROVISIONS

Article 52. IMMUNITY OF ADJUDICATOR

- (1) An adjudicator shall not be under any civil or criminal liability for anything done, or omitted to be done in good faith, in the course of the exercise or intended exercise of any of the adjudicator's functions, duties or powers under this law.

Article 53. ADJUDICATORS NOT COMPELLABLE AS WITNESSES

- (1) An adjudicator cannot be compelled to give evidence in any civil proceedings on any issue or matter connected with the adjudication or their decision.

Article 54. RELATIONSHIP BETWEEN ADJUDICATION AND OTHER DISPUTE RESOLUTION PROCESSES

- (1) Nothing in this law prevents the parties to a contract from submitting the same dispute referred to adjudication to another dispute resolution procedure, whether or not the proceedings for the other dispute resolution procedure take place concurrently with the adjudication or otherwise.
- (2) If a party to a contract refers a dispute in an adjudication also to another dispute resolution procedure, such referral does not affect or operate to terminate the adjudication.

Article 55. SERVICE OF DOCUMENTS

- (1) Unless otherwise agreed by the parties –
 - (a) any document is deemed to have been served if it is:
 - (i) delivered to the addressee personally; or
 - (ii) delivered to the addressee's place of business, habitual residence or mailing address; or
 - (iii) sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter; or
 - (iv) sent electronically, or by any other effective means.
 - (b) the document is deemed to have been served on the day it is so delivered or sent.

Article 56. CONFIDENTIALITY

- (1) All submissions, evidence and information served by parties in an adjudication are confidential. Such confidentiality extends to -
 - (a) any statement, admission, or document created or made for the purposes of an adjudication; and

- (b) any information (whether written or oral) that, for the purposes of the adjudication, is disclosed in the course of the adjudication.
- (2) The adjudicator and any party to a dispute must not disclose to another person any of the information to which this Article applies except –
- (a) with the consent in writing of the relevant party;
 - (b) where the information is already in the public domain;
 - (c) to the extent that disclosure is necessary for the purposes of any civil or criminal proceedings in relation to the dispute; and/or
 - (d) to the extent that disclosure is required for any purpose under this law or otherwise required in any written law of [the Contracting State].

EXPLANATORY NOTE BY THE INTERNATIONAL STATUTORY ADJUDICATION FORUM ON THE MODEL LAW ON STATUTORY ADJUDICATION

A. Background to the Model Law TBC

B. Salient Features of the Model Law TBC

ENDNOTES FROM TEXT...

ⁱ Some of the drafting committee were keen to see this law restricted to payment claims only. This draft provides for the adjudication of all disputes and differences arising out of a construction contract.

ⁱⁱ This caused some difficulties initially in Malaysia, so it is important to state that the law is intended to apply to both stage/interim and final payments for work. It may be that its application to final payment disputes could be optional because in some cases they do not easily lend themselves to a swift adjudication process if they are substantial.

ⁱⁱⁱ Expanded definition which follows the Singapore SOP Act.

^{iv} Local law requirements to be complied with in order to make any amendment of the clause relating to residential occupiers. If the law applies to residential occupiers, query if and particular right to amend it is required.

^v

^{vi} Art. 22 requires a discussion, perhaps for debate in Singapore in September? Do we stipulate a specific time period within which a party may refer a dispute to adjudication or leave it to ordinary limitation periods? As drafted it is subject to ordinary limitation periods, the dispute may be referred “at any time” which is how it is treated in English law.

^{vii} Time being of the essence, if no application is made, then the Notice lapses.

^{viii} Terms and conditions need to be sent with acceptance, if not accepted by the parties, then the default position is that the adjudicator, like an arbitrator, is entitled to reasonable fees and expenses. If there is a dispute about it, then the court would need to decide, unless we devise another way for disputes about fees to be resolved. ANB’s could do this.

^{ix} Art 33 - Ch VI which follows, is the conduct of the adjudication, need to see the timeline for rendering of decision after this... to cross check]

^x For discussion in Singapore. Should we either not have this provision or specify that the new matter must arise out of the contract and be relevant to the original dispute?

^{xi} Discuss in Singapore. Should adjudicators have a separate power to award interest on any principal awarded in their decision?

^{xii} Consolidation of adjudications - Should we include this provision at all? Discuss in Singapore. Creates difficulties with timing.

^{xiii} We decided not to allow ratification of a late decision or service before declaration rendering the decision valid, we wanted a clear and simple outcome. The parties can extend time if they wish. Discussion point.

^{xiv} Ch VIII, on costs. For discussion in Singapore – what is the scope of the Adjudicator’s power to decide costs to include the parties’ legal fees and expenses. Both parties can ask the adjudicator to include a decision on their costs in the Decision, i.e. independently confer jurisdiction on the Adjudicator. However, separately should the ML include a provision giving the Adjudicator the power to award and assess party legal costs and expenses?³³

^{xv} Ch IX, enforcement: for discussion in Singapore - Do we want to preserve a limited right of appeal so that difficult legal questions about enforcement have the benefit of appeal jurisprudence? This arises below in other respects. The drafting group thought a restricted right of appeal was appropriate and in keeping with the underlying principles of statutory adjudication.

^{xvi} Article 49 - For discussion in Singapore – do we want to allow a stay if a final determination is underway, it rather defeats the overriding object of adjudication. There are good reasons not to permit a stay simply on the ground that a final determination of the dispute is under way in litigation or arbitration. Proceedings could be commenced simply for the purpose of securing a stay on a payment obligation, perhaps return of moneys called under a bond.

DRAFT