



USERS' GUIDE TO ADJUDICATION: IRELAND >



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A guide for participants in adjudication in Ireland conducted under the Construction Contracts Act 2013

CIC 2017

USERS' GUIDE TO ADJUDICATION – IRELAND

Every effort has been made to ensure that this Guide is correct at the time of being sent for printing.

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▶ 1. INTRODUCTION

This *Guide* provides a general introduction to adjudication in the context of construction contracts, and in particular the right to adjudication provided for by the Construction Contracts Act 2013, referred to as 'the Act' for the purposes of this *Guide*.

Whether you wish to take a payment dispute to adjudication, or have received a notice of intention, it is hoped that this *Guide* will assist you. Please note however that the *Guide* is not intended to be comprehensive and should not be treated as a substitute for professional advice.

▶ 2. WHAT IS ADJUDICATION?

Adjudication is a way of resolving payment disputes in construction contracts. The Act provides parties to construction contracts with a right to refer payment disputes arising under the contract to adjudication. It sets out certain minimum procedural requirements which enable either party to a payment dispute to refer the matter to an independent party (the adjudicator) who is then required to make a decision within 28 days of the matter being referred.

Unless the contract says otherwise, adjudication does not necessarily achieve final settlement of a payment dispute because either of the parties has the right to have the same payment dispute heard afresh in court (or where the contract specifies arbitration, in arbitration proceedings). Nevertheless, experience from other countries shows that the majority of adjudication decisions are accepted by the parties as the final result.

The legislation provides that adjudication can be used at any time. For example, provided the parties have a contractual relationship it can be used to decide payment disputes with designers before construction begins; it can be used to resolve payment disputes with and between designers, contractors and subcontractors during construction; and with or between them after completion. See section 3

Once a payment dispute has arisen between the parties either party may seek adjudication. Once an adjudicator is appointed or selected by the parties, the party commencing the adjudication must refer the payment dispute to the adjudicator within a week and the adjudicator must decide the payment dispute within a further period of four weeks (subject to any agreed extension). Once the adjudicator has made their decision, the other party must comply with it: if they do not, a court hearing to compel compliance can usually be obtained. This is provided for under the Rules of the Superior Courts (Construction Contracts Act 2013) 2016 (see Appendix C); it is expected that this will be an expedited process. See section 10

Adjudication is therefore designed to be quick in comparison to other methods of payment dispute resolution such as arbitration or litigation, and it can also be used during the contract and afterwards. While adjudication is meant to be a straightforward process without the need to involve lawyers, you may wish to consider taking professional advice on your own particular circumstances.

Generally, adjudication is more cost effective than arbitration or litigation but complex cases will inevitably attract higher costs.

▶ 3. ESTABLISHING A RIGHT TO ADJUDICATE

How do I know whether I can go to adjudication or not?

The Act provides that a party to a construction contract has the right at any time to refer to adjudication a payment dispute arising under the contract.

Before you can refer a payment dispute to adjudication you need to make sure that:

- you have a payment dispute;
- the payment dispute arises under a contract;
- the contract is a 'construction contract' as defined by the Act.

Is my contract a 'construction contract' as defined by the Act?

A **construction contract** is defined in the Act as an agreement to undertake the following operations, among others (see Appendix A):

- construction, alteration, repair, maintenance, extension and demolition or dismantling of structures forming part of the land and works forming part of the land, whether they are permanent or not;
- the installation of mechanical, electrical and heating works and maintenance of such works;
- cleaning carried out in the course of construction, alteration, repair, extension, painting and decorating and preparatory works;
- painting or decorating the internal or external surface of any building, and the making, installing or repairing artistic works such as murals or sculptures that are attached to real property.

Contracts with architects, designers, engineers, project managers and surveyors are also included, as is the giving of advice on building, engineering, decoration and landscaping.

Is there anything that is excluded from the definition?

Yes, the following are excluded:

- **Supply-only contracts**, which is contracts for the manufacture or delivery to site of building or engineering services components or equipment, materials, plant or machinery.

Are there any other exclusions from the Act?

There are some other important exclusions, which are:

- **Where the value of the contract does not exceed €10,000.**
- **Contracts with residential occupiers**
The Act does not apply to contracts made with residential occupiers. This means that where work is carried out on a dwelling (house or flat) with a floor area less than 200 square metres and which one of the parties occupies or intends to occupy as their residence, then adjudication is excluded from the contract, unless there is an adjudication clause incorporated in the contract. It must be one of the parties to the contract that occupies the dwelling. The exclusion only applies to a contract with a residential occupier, so a contract between a contractor and subcontractor or consultant in connection with a dwelling will be covered by the Act, even if the contract between the contractor and the occupier is not.
- **PPP contracts etc.**
A contract between a State authority and its partner in a public private partnership arrangement is not a construction contract.
- **Employment**
A contract of employment is not defined as a construction contract.

So does it mean I can never refer a payment dispute to adjudication if I do not fit these criteria?

If your contract does not fit the criteria for a construction contract, it is not covered by the Act. You may find, however, that your contract gives you equivalent or similar rights – this is particularly so if it is a standard form of contract such as one produced by an industry contract writing body. In that case, the right to go to adjudication arises under the contract, not under the Act.

The advice in this Guide will also be relevant to such contracts but you are advised to check the terms of your contract carefully to establish the precise provisions applicable to the adjudication procedure. Additionally, parties can agree to use adjudication to resolve their payment dispute on a one-off basis; again, this Guide may apply by analogy. In neither of these cases will the parties be bound by the adjudication provisions of the Act but they will be bound by any adjudication provisions incorporated in the contract.

Do I have a 'payment dispute'?

Only payment disputes between contracting parties, arising under the contract, can be referred to adjudication. If there is no payment dispute then an adjudicator has no jurisdiction (that is, authority) to consider the matter. When you seek to refer an issue to adjudication you must therefore be sure that the payment dispute you want to refer actually exists.

The creation of a payment dispute will usually start with the party executing the construction work making a payment claim. The payment claim notice should specify the amount claimed; the period, stage of work or activity to which the payment claim relates; the subject matter of the payment claim and the basis of the calculation of the amount claimed. However, making a payment claim under your contract is not by itself enough. A payment dispute only arises when it emerges that the payment claim is not admitted by its recipient. By 'not admitted' we mean there are sufficient grounds to infer from the facts that one party does not agree with the referring party's payment claim. This may become clear in a response to the payment claim notice. However, there does not have to be an explicit rejection of a claim by the recipient. It is enough if it can be inferred from all the facts that the claim is not admitted (for example, from discussions between the parties). There may be an express rejection of the claim but a period of silence is enough if, in the particular circumstances, it is seen as sufficiently long. The length of time you allow the recipient to consider your claim should be realistic and will depend on its size and complexity. It is advisable to put a response date in any claim document you submit to the other party which will help you establish that the payment claim has indeed been ignored.

Provided that the referring party has complied with the payment claim notice requirements set out above, the recipient who tries to argue that there is no payment dispute because the claim was not sufficiently particularised or explained, or because supporting documentation was missing, is unlikely to succeed. Even if an insufficiently particularised claim is made and it is not admitted, a payment dispute exists and the adjudicator has authority to consider the matter.

Does the payment dispute arise 'under the contract'?

Since the payment dispute must arise 'under the contract', you cannot seek adjudication upon matters arising before the contract came into existence or in the course of negotiating the contract (such as misrepresentation), or upon matters that arise outside of the contract (such as nuisance).

► 4. DO I NEED PROFESSIONAL HELP?

Adjudication is designed to be a straightforward process to enable payment disputes to be resolved quickly and inexpensively. In some cases it may be unnecessary for you to incur the cost of obtaining professional assistance from lawyers, claims consultants, or other specialists. You may be able to seek assistance from your trade association or professional body or deal with it on your own.

Adjudication is also a serious process and mistakes can be very costly. For instance, the adjudicator's ability to decide you are entitled to what you want will depend largely on the wording of the notice of intention right at the beginning. It is therefore crucial to get that document right. The proper preparation and presentation of your written case with supporting evidence to the adjudicator will invariably be a major factor in determining the success or failure of your arguments. Don't forget that the adjudicator only has a short time in which to consider the arguments put forward by both parties before reaching a decision.

Where the facts of a payment dispute are completely straightforward and the referring party wishes the adjudicator to make a decision about how much should be paid, and to whom, then preparation of the case may be possible without professional assistance. However, if you are starting the adjudication and the outcome is important to you, it would be prudent to at least have the draft referral notice reviewed by an experienced professional and to have one available to assist if required.

Certainly, where the case involves complicated technical or legal issues, you would be well-advised to seek professional help and, if this is the case, you are recommended to seek it at the earliest opportunity, preferably before you start the adjudication process.

It is also important that the responding party gives prompt consideration to the possible need for professional help. Quite apart from the speed with which a response will need to be prepared, there may well be important legal and tactical issues to consider, e.g. the desirability of introducing cross-claims into the proceedings. See section 6.

The legislation provides that each party shall bear his or her own legal and other costs incurred in connection with the adjudication. You will therefore have to bear the cost of any professional advice or support you may take, even if you win.

► 5. STARTING ADJUDICATION

I have a payment dispute under a 'construction contract': how do I start adjudication?

This brief description of how you start adjudication applies to adjudications conducted under the Construction Contracts Act only.

The steps below are simple, but it is absolutely vital to get them right. Chronologically, they are:

- notice of intention;
- appointment of adjudicator; and
- referral notice.

What is my first step in starting adjudication?

Notice of Intention

Once you are satisfied that you have a payment dispute arising under a 'construction contract' see section 3, you can start the adjudication process by sending a written Notice of Intention to the other party. The notice must be given to the other party (or where the contract is between more than two parties to every party to the contract). There is no requirement for it to be copied to those who are not parties to your contract. The notice must contain the following details:

- the name, address and contact details of each party to the construction contract;
- relevant details of the payment disputed including the amount in dispute (even if the amount is zero), the nature of the payment dispute and the site address;
- a copy of the relevant payment claim notice and any response received by you to that notice;
- relevant details to identify the construction contract, any supporting documentation to assist the Adjudicator in understanding the nature of the payment dispute and if the construction contract is in writing it must also be attached.

The notice of intention is a very important document – it defines what matters the adjudicator has to decide. The adjudicator has no jurisdiction (that is, authority) to decide any matter not covered by the notice.

Your notice of intention should contain the following elements:

- **A description of the payment dispute** – an imprecise description could result in a challenge to any decision an adjudicator makes. If, for example, in the notice of intention you simply refer to a claim for loss and/or expense as a result of an extension of time, the adjudicator will not have the jurisdiction also to order the repayment of delay damages unless the notice covers that as well. When claiming money, it is advisable to claim for the particular amount wanted and, in the alternative, what the adjudicator thinks is due.

- ***Details of how the payment dispute has arisen*** – this will be required mainly to show that you actually have a 'payment dispute' to refer to adjudication.
- ***The decision that you want the adjudicator to make and the remedy or remedies sought.***
- ***The names and addresses of the parties involved in the payment dispute.*** The full and correct name and address should be stated.

Remember to make sure that everything you want is covered in the notice. It is vital that your notice of intention is comprehensive and covers every aspect of your payment dispute and allows the adjudicator to decide all of the matters you want him or her to. For instance:

- have you included a request for interest on any money you consider being overdue?
- do you want to ask that the other party should pay the fees and expenses of the adjudicator?
- will you want an order that the other party pays any money awarded within a specified time?
- do you want the adjudicator to give reasons for his or her decision?

In addition, it may be used to inform the decision as to what experience and expertise the adjudicator should have.

Experience shows that it is better not to issue the notice until you are ready with your referral notice.

The Code of Practice Governing the Conduct of Adjudications (see Appendix B) states that the Chairperson and/or the Construction Contracts Adjudication Service may seek further information or clarifications about the nature of the payment dispute. If this arises you, as the applicant, are required to provide the information promptly and copy it to the other party or parties to the payment dispute at the same time. You are not permitted to submit any additional or other supporting information without a specific request.

What is the next step?

Appointment of adjudicator

Appointment of adjudicator by agreement of the parties

When the notice of intention is served the Act allows the parties five days to agree to appoint an adjudicator of their own choice. The five day period begins to run on the day on which the notice of intention is served.

It may be possible to agree with the other party the name of an individual who should act as adjudicator. However, sometimes parties are unwilling to agree anything once they are in any dispute, and the agreement must be made within the five day window. You may wish to consider how long you are likely to spend trying to reach agreement and how likely it is that agreement will be reached by the deadline.

Appointment of adjudicator by the Chairperson of the Panel established by the Minister

If there is no agreement between the parties, the appointment will be made by the Chairperson of the Panel appointed by the Minister.

The application to the Chairperson should not be made earlier than five days from and including the day on which the notice of intention was served.

The appointment request to the Chairperson must be in writing, must comply with the procedures set out by the Construction Contracts Adjudication Service, must be copied to the other parties at the same time and must also contain the following details:

- the name, address and contact details of each party to the construction contract;
- relevant details of the payment dispute including the amount in dispute (even if the amount is zero), the nature of the payment dispute and the site address;
- a copy of the notice of intention and any accompanying documents served on the other party or parties;
- details of the date on which the notice of intention was served and how it was done;
- relevant details to identify the construction contract, any supporting documentation to assist the adjudicator in understanding the nature of the payment dispute and if the construction contract is in writing it must also be attached.

The Construction Contracts Adjudication Service will notify you when the adjudicator has been appointed by the Chairperson. You can expect to receive this notification within seven days after the receipt of the application. The date of the letter from the Construction Contracts Adjudication Service to the parties is deemed to be the date on which the appointment is made and you have 7 days within which to send the referral notice (see the next section) to the adjudicator.

Appointment of adjudicator from an alternative panel of adjudicators

As an alternative to the panel of adjudicators established by the Minister, a number of professional bodies have established their own panels and procedures to nominate adjudicators. There is nothing to prevent any organisation doing this and there are no external controls. If your contract specifies a particular adjudicator or the nomination of an adjudicator from a panel established by one of the professional institutions the generally accepted principle of freedom of contract suggests that you must comply with that agreement.

However, in respect of adjudication under the Construction Contracts Act 2013, the position is unclear. Whereas the Code of Practice suggests that an Adjudicator can be appointed through the Contract, the Act itself does not provide for this. The Act only provides that the Adjudicator is either appointed by agreement within the five day window pursuant to Section 6 (3) or the Adjudicator is appointed by the Chairperson. Whether or not a Contract can specify an organisation other than the Construction Contracts Adjudication Service for the purpose of making an appointment is also unclear.

Regardless of how you proceed, it is recommended that any choice the parties make is based on the skills you envisage the adjudicator should possess to decide your payment dispute.

And then?

Referral notice

The next step for you is to send a referral notice to both the adjudicator and the other party (all documents must be copied to the other party as well as to the adjudicator). The 28 day period for the decision starts on the date when the adjudicator receives your referral notice.

The Code of Practice requires that much of the information contained in the earlier notice of intention and request to the Chairperson of the Panel to appoint the adjudicator must be repeated in the referral notice as follows:

- the name, address and contact details of each party to the construction contract;
- relevant details of the payment dispute including the amount in dispute (even if the amount is zero), the nature of the payment dispute and the site address;
- a copy of the notice of intention and any accompanying documents served on the other party or parties;
- details of the date on which the notice of intention was served and how it was done;
- relevant details to identify the construction contract, any supporting documentation to assist the adjudicator in understanding the nature of the payment dispute and if the construction contract is in writing it must also be attached.

The referral notice is the document which contains all the information that you wish the adjudicator to consider. It should:

- be consistent with the notice of intention;
- explain the nature of the payment dispute and how it arose;
- detail the facts that you rely upon;
- provide the documentary evidence to support those facts;
- provide sufficient details of the contract to show that you have a contractual right to the remedy which you seek;
- list the decisions that you require the adjudicator to make.

It is not necessary to obtain expert advice on the drafting of your referral notice, but it may be advisable to do so if the matters in the payment dispute are both complex and/or involve a lot of money.

When you begin to draw up your referral notice you should remember that the adjudicator knows nothing about either the contract or your payment dispute. The notice should therefore be a clear statement of your case. It is unwise to rely solely on providing the adjudicator with correspondence about your payment dispute, since, for example, site or other correspondence will normally assume many of the facts relating to the payment dispute because they are well known to both writer and receiver, while the facts will be unknown to the adjudicator.

The referral notice is therefore usually written as a narrative, detailing in chronological order the events as they occurred starting with the formation of the contract, the parties, its aim and how it came into being. This should be followed by a description of the events leading to the payment dispute, cross-referenced to documentary evidence attached in appropriate appendices.

The differences and arguments between you and the other party should be explained, again in chronological order, and you should endeavour to address the arguments of your opponent and explain why you consider that they are wrong. You may not have another opportunity to do so.

It is best to keep it simple so that the adjudicator can quickly grasp the essential points of your arguments. This is vital because of the short time scale of adjudication. Because of the strict time limit for the process, many adjudicators will begin to consider documents as soon as they are presented. You may therefore have little opportunity to persuade the adjudicator to accept your arguments at a later stage.

To assist adjudicators in making the best use of the limited time, it is suggested that you submit a neat and short summary of your points in argument cross-referenced to the referral notice and accompanying documents, together with any back up information to support your arguments. It is also recommended that you offer to support your argument with further documents should the adjudicator require them.

The referral notice should be neatly and clearly laid out and it is advisable to have numbered pages and paragraphs for ease of reference and all accompanying documents should be clearly identified and collated both by category and in chronological order. The adjudicator must be able to find the documents to which you refer.

You should not include or refer to any statements made or documents which have been exchanged in confidential settlement negotiations or on a "without prejudice" basis.

You will need evidence to support your case. Generally, any assertions by the referring party which are not evidenced, and are challenged by the responding party, are unlikely to be successful. You have to prove that on the balance of probabilities, what you assert is correct. Evidence generally consists of documents or otherwise (e.g. samples, telephone recordings). The comments or opinions of others are of little value unless they are acting as professional expert although witness statements, setting out the facts, can be helpful.

Once you have told the story, and explained what you want the adjudicator to decide, you might need to check that you have included one or two incidental matters, such as for example:

- have you included a request for interest on any money you consider being overdue?
- do you want to ask that the other party should pay the fees and expenses of the adjudicator?
- will you want an order that the other party pays any money awarded within a specified time?
- do you want the adjudicator to give reasons for his or her decision?

While it is important to send all relevant information to the adjudicator, you should not send anything that you do not refer to in the referral notice. This may add unnecessarily to time spent by the adjudicator in reaching the decision resulting in additional fees, costs and expenses that you might eventually have to pay.

The referral notice and all the attachments should be sent to both the adjudicator and the other party simultaneously and by the quickest means. You will not help your case if the adjudicator gets a copy in advance of the other party.

How long does the process take?

You have to refer your payment dispute to the adjudicator within seven days of the adjudicator being appointed; the adjudicator then has 28 days from the date of your referral notice to make his decision. The adjudicator can extend this by up to 14 days with your consent. Sometimes a party may be tempted to refuse an adjudicator's request for more time but this can affect the quality of the decision the adjudicator is able to make.

► 6. REPLYING TO A NOTICE OF INTENTION

Being on the receiving end

You may of course be on the receiving end of the adjudication process. For example, if you are in payment dispute with the other party to your contract or even if you consider that there is no payment dispute, you may suddenly find that you receive a notice of intention. Given the quick timetable, you will need to make a number of rapid decisions about what you should do.

How should I respond if I receive a Notice of Intention against me?

When you receive a notice of intention you should consider the following:

- do you have a dispute?;
- is it a payment dispute?;
- is the contract a 'construction contract' as defined by the Act?;
- does the payment dispute arise under the contract, and not "out of" or "in connection with" the contract?;
- has the referring party provided you with a sufficient opportunity to consider its claim before sending the notice? If not, you should argue that no payment dispute had arisen prior to the notice of intention and make the adjudicator aware of this as soon as they are appointed. See section 3.

If your contract is a 'construction contract' and you are satisfied (perhaps following legal advice) that a payment dispute exists "under" the contract, but you do not agree with the case being made against you, then you should take the following steps:

- consider whether the adjudicator has jurisdiction to be appointed and if in doubt, seek legal advice; and
- decide whether you require the assistance of legal and/or professional advisers anyway (if you do decide to instruct legal/professional advisers, now is the time to do so, to give them as much time as possible to assist in the preparation of your response); and
- consider what staff you have and who are best able to assist you; and
- begin preparing your response to the claim as soon as possible (identify documents referred to in the notice of intention such as contracts, correspondence or certificates, and any other documents you think will help the adjudicator decide the payment dispute).

Once the adjudicator has been appointed, the referring party must formally refer the payment dispute to the adjudicator by a referral notice within 7 days. The adjudicator will likely ask you to respond in writing to the points raised in the referral notice, usually within 14 days from the date of the referral notice, although sometimes they may give you less time than this.

It is important to take care in writing your response. For example, you should ensure that you deal with each of the points raised by the other party or deny that they are correct; if you do not, you may find that the adjudicator will decide against you on the apparently undisputed points.

Adjudicators will vary in their approach to adjudication and they have a wide discretion regarding the conduct of the process. See section 7.

However, as explained above, because of the short time scale, most adjudicators will start to consider the documents once the written statements of the cases and any other relevant documents that they have called for have been presented. You may therefore have little opportunity to persuade the adjudicator to accept your arguments after this stage. Again, adjudicators can – and some do – limit the amount of paperwork that they will consider. To assist adjudicators in making the best use of their limited time, it is suggested that you submit a neat and short summary of your points in argument, cross-referenced to the referral notice and accompanying documents, together with any back up to support your arguments. It is also recommended that you offer to support your arguments with further documents should the adjudicator require them.

Cross-claims

Generally speaking, you will be able to rely, as part of your defence, on any claim that you may have arising under the same contract. Clearly, that will almost certainly include any claim relating to the same project but it might extend to other projects where they fall under the same contract or are very closely connected. This is called a “cross-claim” and is the type of claim that a responding party can introduce into adjudication proceedings as a defence to set off against the claims brought against him.

Importantly, where cross-claims are introduced in this way, the adjudicator will only have jurisdiction to determine them up to the amount of the claims brought by the claimant and not beyond. If the responding party is seeking a positive award, meaning for these purposes an award in excess of the claims advanced by the referring party, it is necessary to issue separate proceedings.

If you consider you may have possible cross-claims you should obtain legal and/or professional advice about whether you may be able to rely upon them as defences to claims brought against you and/or whether you need to start a separate adjudication against the referring party dealing with the cross-claim.

The word “counterclaim” is often used instead of cross-claim. Although it is an equivalent to “counterclaim”, it is a misleading description because the word “counterclaim” is actually a technical concept unique to Court proceedings. The expression “cross-claim” is both more appropriate and accurate in adjudications.

Challenging the adjudicator’s appointment

There may be circumstances when you feel that the adjudicator has no jurisdiction (authority) because, for example, the referring party has sought to appoint an adjudicator in contravention to a procedure set out in your contract; you do not think that the contract is a construction contract within the meaning of the Act, or you do not think that there is a payment dispute. See section 3.

If you are in any doubt about the adjudicator’s authority to act, it is suggested that legal and/or professional advice be sought. Again, this should be done at an early stage, before taking any other steps.

After taking advice, if you feel it is appropriate, you should write to the adjudicator, with a copy to the other party, setting out your reasons clearly for saying that the adjudicator does not have jurisdiction in relation to the payment dispute. It is possible that the adjudicator will agree with you.

What should I do if the adjudicator refuses to agree with me over jurisdiction?

It is usually fruitless to continue to bombard the adjudicator with objections to the appointment. If you do believe that the adjudicator has no authority to act, then you have three possible courses of action:

- refuse to take part in the adjudication process itself; or
- take part but reserve your position on jurisdiction; or
- agree to waive the adjudicator's lack of jurisdiction and consent to the adjudicator proceeding.

Additionally, you can go to court and ask for the adjudication to be stopped by seeking a stay of proceedings.

If you decide to contest the payment dispute you will have to act quickly to ensure that you have gathered together all relevant documents.

Even where you contest jurisdiction it is open to the adjudicator to proceed and to reach a decision on the matters that have been referred to them. This means, in the case of the first option, that the adjudicator may proceed without your involvement at all, and you run the risk that the adjudication decision goes against you. For this reason, the first option should only be considered after taking legal and/or professional advice. The safest option is the second: you may succeed in the adjudication and in any case you will be able to contest jurisdiction at a later stage through enforcement proceedings.

▶ 7. WHAT HAPPENS NEXT?

What does the adjudicator do next?

The adjudicator has to carry out his or her duties in accordance with the terms of the contract and the Act and make a decision in accordance with the law applicable to the contract. The adjudicator has to act impartially see section 5 and avoid incurring unnecessary expense see section 9. But subject to these considerations and the provisions of the adjudication procedure, the adjudicator has a very free hand as to how the adjudication is run.

What will actually happen?

Under the Act the adjudicator has the power to take the initiative in ascertaining the facts, matters and the law necessary to reach a decision, and it is up to the adjudicator to decide on the procedure to be followed. In particular, the Act provides that the adjudicator comply with the Code of Practice, whether or not the adjudicator is a member of the Minister's panel of adjudicators. The Code of Practice requires the adjudicator to observe the principles of procedural fairness allowing each party a reasonable opportunity to put their case and respond to the other party's case. The Code of Practice also allows the adjudicator to:

- request any party to supply any reasonable supporting or supplementing documents pertaining to the payment dispute;
- use his/her own specialist knowledge if it is appropriate to do so. If the Adjudicator does use any specialist knowledge, he/she shall disclose this to the parties;
- appoint experts, assessors or legal advisors, provided that the parties have been notified of their identity and their terms of reference;
- decide whether to make site visits and inspections, subject to prior notification to the parties and obtaining any necessary consent from third parties;
- invite written submissions/representations and evidence from the parties, if appropriate;
- meet jointly with the parties and their representatives, to enable further investigation;
- hold a teleconference with the parties, with the consent of the parties;
- hold an oral hearing, where appropriate;
- issue other directions for the conduct of the adjudication, including the timetable, deadlines, and limits on the length of written documents or any other matter.

Will there be a formal hearing?

It is up to the adjudicator to decide whether to hold an oral hearing or not (this will depend on what the adjudicator feels is necessary in your case). The Code of Practice provides that the adjudicator ensures that the procedure adopted is commensurate with the nature and value of the payment dispute. The adjudicator should be mindful of whether or not an oral hearing is required having regard to matters such as whether or not there is a conflict of fact or other relevant matter that requires such a hearing. If there is an oral hearing, the adjudicator will also decide how formal it is and any procedure to be followed.

What happens where a party fails to comply with the adjudicator's directions?

The Code of Practice provides that where a party fails to attend a meeting, comply with any directions of the adjudicator, disclose any information indicating a potential conflict of interest, or produce any document or written statement requested by the adjudicator then the adjudicator may take certain actions and/or interpret such failure

accordingly. The adjudicator only has a limited amount of time to make a decision and the time given to the parties is linked to that. If a party does not comply and cannot show sufficient cause (that is, a good reason) why not, then the adjudicator may continue with the adjudication in the absence of the documents or party, draw such inferences from the failure as may be justified and make a decision on the basis of the information before them. If a document or statement is submitted after a deadline, the adjudicator may legitimately decide to ignore it or to attach less importance to it than otherwise. In addition, the adjudicator may make a decision apportioning the adjudicator's fees, costs and expenses, as appropriate taking into account a party's particular failure to comply with the adjudicator's directions.

► 8. THE ADJUDICATOR'S DECISION

What can I expect from an adjudicator's decision?

The adjudicator's decision will generally include an order for the payment of money from one party to another arising from the payment dispute referred. An adjudicator has wide powers to open up, revise and review any decision taken or any certificate given by any person referred to in your contract (unless the contract provides that the decision or certificate is final and conclusive). The adjudicator may also decide that any of the parties to the dispute is liable to make a payment under the contract and decide when that payment is due and the final date for payment. Under the Act, there is no power to award interest, but if provided for in the contract and if referred as part of the dispute, the adjudicator also has power to award interest in accordance with the contract on outstanding payments.

Adjudicators have power to consider 'payment disputes' only, defined in the Act as 'any dispute relating to payment arising under the construction contract', but whether a broad interpretation will be applied to this is still uncertain. However, adjudicators are not allowed to decide issues that have not been referred (that is, adjudicators are restricted to the dispute referred to in the notice of intention) and may only make the decision sought in the referral notice. For instance, if the referral notice only asks the adjudicator to decide what a party's entitlement under the contract is, the adjudicator cannot order payment of money. The adjudicator can only do this if the referral notice specifically asks for an order for payment of the money to which the referring party is entitled. Under the Act, an adjudicator may deal at the same time with several payment disputes arising under the same construction contract or "related construction contract", although what is intended by this term is unclear.

Will the adjudicator provide written reasons?

The Act is silent as to whether reasons are to be included in the decision, but the Code of Practice (with which all adjudicators must comply) provides that the decision is to be in writing and shall include the reasons for the decision, unless the parties otherwise agree. The default position will be, therefore, that there will be reasons included. Reasons help the parties understand the decision and may assist in determining a future course of action.

► 9. THE COST AND WHO PAYS

Although adjudication is generally inexpensive in comparison with arbitration or litigation, the process is not free and there are inevitably some costs that have to be paid. There are two elements to these costs: the fees and expenses of the adjudicator (together with those for any advice and assistance obtained by them) and the costs that you and the other party, as participants in the process, spend on your own legal, expert or commercial advice.

Who pays the adjudicator's costs?

The Act provides that the adjudicator is entitled to decide how much of the adjudicator's costs, fees and expenses each party should pay, as part of the decision. Often, the adjudicator will decide that the party 'losing' overall must pay their costs. However, this is not always the case and the adjudicator may take into account matters such as how each party has behaved, and whether each party has won on some issues. On the other hand, whatever the outcome of the decision, the adjudicator may simply apportion the fees equally between you and the other party.

However, this is not the end of the matter since both parties are jointly and severally responsible to the adjudicator for their fees. This means that if the other party does not pay, you will have to: if one of you defaults on payment, or becomes insolvent, the adjudicator can legally demand those fees from the other, leaving that other party to recover from the defaulter.

It is also worth remembering that the adjudicator is under a duty to ensure that the fees, costs and expense are reasonable, having regard to the amount in dispute, the complexity of the dispute, and time spent and 'other relevant circumstances'. Further, an adjudicator must use reasonable endeavours to process the payment dispute in the shortest time and at the lowest cost and should have notified the parties promptly of any matter likely to increase the costs of reaching at a decision.

The adjudicator obtained expert advice – do I have to pay for this too?

Provided that they have notified the parties first, and have provided details of their terms of reference, the adjudicator is entitled to appoint experts, assessors or legal advisers as required. Within the general requirement to avoid unnecessary costs and ensure the costs and expenses are reasonable, the costs of any such external advice will form part of the adjudicator's costs. Similarly, the adjudicator may require tests to be carried out and the costs of these will also form part of the adjudicator's charges.

What will the adjudicator charge?

There is no set rate for an adjudicator; a range of hourly rates are likely to be charged. The total amount will depend upon the complexity of the issues and the length of time the adjudication takes (taking account also of the amount in dispute). At the time of being approached to act as an adjudicator, whether as agreed by the parties or appointed by the Chairperson of the Ministerial Panel, the adjudicator is required, together with disclosure of any conflict or potential conflict of interest, to provide the parties with his/her conditions of appointment, including the basis of the fees, costs and expenses that will be charged. Save where the appointment is by agreement (and the parties each agree), where there is no agreement on the hourly rate, the adjudicator must set a reasonable rate. It is up to the adjudicator to record and determine how many hours have been spent on the adjudication.

Does the adjudicator have a written agreement or terms of appointment?

This is not required under the Act, but the Code of Practice requires that the conditions of appointment be provided prior to formal appointment.

I have spent a lot of money on legal advice: can I ask the adjudicator to award me my costs?

The Act provides that each party will bear his or her own legal costs and other costs and expenses incurred in connection with the adjudication. It is unclear whether parties can agree to give the adjudicator the power to award the parties' costs (as opposed to the adjudicator's own costs) but parties should take care not to inadvertently give the adjudicator jurisdiction to deal with the parties' costs as part of the decision, if this is not what they want.

► 10. WHAT DO I DO NOW?

I have an adjudication decision in my favour, but the other party is refusing to comply: what should I do now?

If a party does not comply with an adjudicator's decision, the other party can enforce that decision by going to court. Proceedings are brought in the High Court. The Rules of the Superior Courts have been amended so as to provide for a relatively swift procedure. You will generally need to obtain legal advice and representation to do this. The application to the Court to enter judgment is made by way of Notice of Motion grounded upon a relatively simple Affidavit.

Right to suspend work for failure to comply with the adjudicator's decision

Where any amount decided by the adjudicator is not paid in full before the end of the period of 7 days beginning with that on which the decision is made, the party executing the work may suspend work under the construction contract by giving notice in writing. Work may not be suspended after the decision of the adjudicator is referred to arbitration or proceedings are otherwise initiated in relation to the decision.

The adjudication decision has an error in it: what should I do?

If the adjudication was carried out under a contractual procedure, as opposed to the terms of the Construction Contracts Act 2013, you should check that procedure to see if there is a specific provision regarding errors. Subject to that, if there is an error or omission in the decision that appears to be a clerical or mathematical mistake, you should contact the adjudicator immediately. At the same time you should also notify the other party. You must do this as soon as you receive the decision. If the adjudicator agrees that there is an accidental error or omission, they may agree to amend the decision (but they do not have to). What the adjudicator may not do is to change their mind on the substantive issues. The adjudicator may ask for submissions from both parties before considering making any amendment.

The adjudicator has refused to amend the error: what should I do?

It is up to the adjudicator to decide whether an error has been made or not. If the adjudicator concludes that there is no error, then there is little that you can do with regard to the adjudication decision itself, although you can take the payment dispute to arbitration or litigation.

I do not agree with the adjudicator's decision: what should I do?

It is anticipated that the High Court will, generally, enforce adjudicators' decisions without enquiring as to their correctness.

The exceptions are as follows:

- **Jurisdiction:** That is, where the adjudicator has acted without having the authority to act or to make the decision that has been made. Examples are where the adjudicator decides something that he or she was not asked to decide, or has not done what was asked of him or her; where the contract is not one for construction operations; where the adjudicator has been appointed wrongly; and where there was no payment dispute in the first place.
- **Natural justice:** That is, where the adjudicator has not acted in accordance with procedural fairness in the conduct of the adjudication. There are two limbs to natural justice: the adjudicator must be impartial and must allow each party the opportunity to make its case.
- **Constitutional Justice:** That is, where the adjudicator's decision is in conflict with a party's constitutional rights. Constitutional justice is closely aligned to natural justice but there are differences which may come into play.

You should seek professional advice if you wish to challenge the decision on any of these grounds.

The decision is plainly wrong: is there anything I can do at all? The decision has gone against me: is that it?

Adjudication decisions are binding temporarily, that is, unless and until the payment dispute is decided by litigation or arbitration (which will depend on your contract) or by agreement. Even if the adjudicator's decision is enforced in court, it is always possible to take your payment dispute to court or to arbitration, whichever applies under your contract; this is not an appeal from the adjudicator's decision, but a completely new hearing starting afresh.

As previously indicated see section 2, it is anticipated that the majority of adjudication decisions will be accepted as the final resolution of the payment dispute. This may be as a result of an agreement between the parties at the time of the adjudication or by default, because the payment dispute is simply not re-opened and the decision is complied with. There may also be a term in the contract that provides for adjudication decisions to become final if they are not challenged within a certain period of time.

Can I sue the adjudicator for negligence?

Not unless the adjudicator has made an act or omission in bad faith. This exemption from liability extends to employees and agents of the adjudicator.

▶ 11. WHERE DO I GO FOR FURTHER INFORMATION OR ASSISTANCE?

If you belong to a trade association or professional institute they may well have published information. Specialist contract advisers and specialist law firms will also be able to advise you. The Construction Contracts Adjudication Service is a section of the Department of Jobs, Enterprise and Innovation responsible for matters in relation to the implementation of the Construction Contracts Act 2013. Their website (www.djei.ie) either directly or through links contains:-

- [The Construction Contracts Act 2013](#)
- [An information booklet](#)
- [The Code of Practice Governing the Conduct of Adjudications](#)
- [The Construction Contracts Adjudication Panel](#)
- [The Rules of the Superior Courts \(Statutory Instrument No 450 of 2016\)](#)
- [Template forms.](#)

▶ **APPENDIX A**

The Construction Contract Act 2013



Number 34 of 2013

CONSTRUCTION CONTRACTS ACT 2013

ARRANGEMENT OF SECTIONS

Section

1. Interpretation.
2. Construction contracts: exceptions, etc.
3. Payments under construction contracts.
4. Payment claim notices.
5. Right to suspend work for non-payment.
6. Right to refer payment disputes to adjudication.
7. Right to suspend work for failure to comply with adjudicator's decision.
8. Selection of panel of adjudicators.
9. Code of practice for adjudication.
10. Delivery of notices, etc.
11. Expenses.
12. Short title and commencement.

SCHEDULE

PROVISIONS TO APPLY TO MATTERS REGARDING PAYMENTS

[No. 34.] *Construction Contracts Act 2013.* [2013.]

ACTS REFERRED TO

Bankruptcy Act 1988	1988, No. 27
Building Control Act 2007	2007, No. 21
Companies Act 1963	1963, No. 33
Companies (Amendment) Act 1990	1990, No. 27
Organisation of Working Time Act 1997	1997, No. 20
State Authorities (Public Private Partnership Arrangements) Act 2002	2002, No. 1



Number 34 of 2013

CONSTRUCTION CONTRACTS ACT 2013

AN ACT TO REGULATE PAYMENTS UNDER CONSTRUCTION CONTRACTS AND TO PROVIDE FOR RELATED MATTERS.

[29th July, 2013]

BE IT ENACTED BY THE OIREACHTAS AS FOLLOWS:

1.—(1) In this Act—

Interpretation.

“construction contract” means (subject to *subsection (2)* and *section 2*) an agreement (whether or not in writing) between an executing party and another party, where the executing party is engaged for any one or more of the following activities:

- (a) carrying out construction operations by the executing party;
- (b) arranging for the carrying out of construction operations by one or more other persons, whether under subcontract to the executing party or otherwise;
- (c) providing the executing party’s own labour, or the labour of others, for the carrying out of construction operations;

“construction operations” means, subject to *subsections (3)* and *(4)*, any activity associated with construction, including operations of any one or more of the following descriptions:

- (a) construction, alteration, repair, maintenance, extension, demolition or dismantling of buildings, or structures forming, or to form, part of the land (whether permanent or not);
- (b) construction, alteration, repair, maintenance, extension, demolition or dismantling of works forming, or to form, part of the land, including (without prejudice to the foregoing) walls, roadworks, power-lines, telecommunications apparatus, aircraft runways, docks and harbours, railways, inland waterways, pipe-lines, reservoirs, water-mains, wells, sewers, industrial plant and installations for purposes of land drainage, coast protection or defence;

- (c) installation in any building or structure of fittings forming part of the land, including (without prejudice to the foregoing) systems of heating, lighting, air-conditioning, thermal insulation, ventilation, power supply, drainage, sanitation, water supply or fire protection, or security or communications systems;
- (d) external or internal cleaning of buildings and structures, so far as carried out in the course of their construction, alteration, repair, extension or restoration;
- (e) operations which form an integral part of, or are preparatory to, or are for rendering complete, such operations as are previously described in this subsection, including site clearance, earth-moving, excavation, tunnelling and boring, laying of foundations, erection, maintenance or dismantling of scaffolding, site restoration, landscaping and the provision of roadways and other access works and traffic management;
- (f) painting or decorating the internal or external surfaces of any building or structure;
- (g) making, installing or repairing sculptures, murals and other artistic works that are attached to real property;

“executing party”, in relation to a construction contract, means—

- (a) where the parties to the construction contract are a contractor and the person for whom the contractor is doing work under the contract, the contractor, or
- (b) where the parties to the construction contract are a contractor and a subcontractor or are 2 subcontractors, the subcontractor or whichever of the subcontractors agrees to execute work under the contract;

“main contract” means a construction contract such as is referred to in *paragraph (a)* of the definition of “executing party”;

“Minister” means the Minister for Public Expenditure and Reform;

“other party”, in relation to a construction contract, means the party to the construction contract who is not the executing party;

“payment claim” means a claim to be paid an amount under a construction contract;

“payment claim date”, in relation to a construction contract, means the date when a payment claim in relation to an amount due under the construction contract is required to be made;

“payment claim notice” has the meaning assigned to it by *section 4*;

“payment dispute” has the meaning assigned to it by *section 6*;

“subcontract” means a construction contract such as is referred to in *paragraph (b)* of the definition of “executing party”;

“subcontractor” means a person to whom the execution of work under a construction contract is subcontracted by the contractor or another subcontractor;

“work”, in relation to a construction contract, means any act done in furtherance of the construction contract under the terms of the construction contract.

(2) In this Act references to a construction contract include an agreement, in relation to construction operations, to do work or provide services ancillary to the construction contract such as—

- (a) architectural, design, archaeological or surveying work,
- (b) engineering or project management services, or
- (c) advice on building, engineering, interior or exterior decoration or on the laying-out of landscape.

(3) Subject to *subsection (4)* references in this Act to construction operations do not include the manufacture or delivery to a construction site of—

- (a) building or engineering components or equipment,
- (b) materials, plant or machinery, or
- (c) components for systems of heating, lighting, air-conditioning, ventilation, power supply, drainage, sanitation, water supply or fire protection, or for security or communications systems.

(4) In this Act references to construction operations do include a case where the things referred to in *subsection (3)* are supplied under a contract which also provides for their installation.

2.—(1) A contract is not a construction contract—

- (a) if the value of the contract is not more than €10,000, or
- (b) if—
 - (i) the contract relates only to a dwelling, and
 - (ii) the dwelling has a floor area not greater than 200 square metres, and
 - (iii) one of the parties to the contract is a person who occupies, or intends to occupy, the dwelling as his or her residence.

Construction contracts: exceptions, etc.

(2) A contract of employment (within the meaning of the Organisation of Working Time Act 1997) is not a construction contract.

(3) A contract between a State authority and its partner in a public private partnership arrangement, as those terms are defined in the State Authorities (Public Private Partnership Arrangements) Act 2002, is not a construction contract.

(4) Where a contract contains provisions in relation to activities other than those referred to in the definition of a construction contract and *section 1(2)*, it is a construction contract only so far as it relates to those activities.

(5) This Act applies to a construction contract whether or not—

- (a) the law of the State is otherwise the applicable law in relation to the construction contract, or
- (b) the parties to the construction contract purport to limit or exclude its application.

Payments under construction contracts.

3.—(1) A construction contract shall provide for—

- (a) the amount of each interim payment to be made under the construction contract, and
- (b) the amount of the final payment to be made under the construction contract,

or for an adequate mechanism for determining those amounts.

(2) A construction contract shall provide for—

- (a) the payment claim date, or an adequate mechanism for determining the payment claim date, for each amount due under the construction contract, and
- (b) the period between the payment claim date for each such amount and the date on which the amount is so due.

(3) The *Schedule* shall apply to a main contract if and to the extent that it does not make provision for the matters specified in *subsections (1) and (2)*.

(4) The *Schedule* shall apply to a subcontract except to the extent that it makes provision which is more favourable to the executing party than that which would otherwise be made by the *Schedule*.

(5) Except after the occurrence of the circumstances specified in *subsection (6)*, a provision in a construction contract is ineffective to the extent that it provides that payment of an amount due under the construction contract, or the timing of such a payment, is conditional on the making of a payment by a person who is not a party to the construction contract.

(6) The circumstances referred to in *subsection (5)* are:

- (a) where the other person is a company other than an unregistered company—
 - (i) the commencement of its winding up pursuant to section 251 of the Companies Act 1963 where no declaration of solvency has been made under section 256 of the Companies Act 1963,
 - (ii) the presentation of a petition to wind it up pursuant to section 213 of the Companies Act 1963,
 - (iii) the appointment of a receiver in respect of any of its property or assets, or
 - (iv) the presentation of a petition for the appointment of an examiner under the Companies (Amendment) Act 1990 in relation to it;

- (b) where the other person is an unregistered company, the commencement of its winding up pursuant to section 345 of the Companies Act 1963;
- (c) where the other person is an individual or partnership, the making of an application for adjudication under the Bankruptcy Act 1988 in relation to it;
- (d) the making of a winding up or similar order by a court in relation to the other person;
- (e) the occurrence of any event corresponding to those specified in this subsection under the law of any state to which Council Regulation (EC) No. 1346/2000 of 29 May 2000¹ on insolvency proceedings applies.

4.—(1) This section applies where, not later than 5 days after the payment claim date, an executing party to a construction contract delivers a payment claim notice relating to a payment claim to the other party or another person specified under the construction contract. Payment claim notices.

(2) A payment claim notice is a notice specifying—

- (a) the amount claimed (even if the amount is zero),
- (b) the period, stage of work or activity to which the payment claim relates,
- (c) the subject matter of the payment claim, and
- (d) the basis of the calculation of the amount claimed.

(3) If the other party or specified person referred to in *subsection (1)* contests that the amount is due and payable, then the other party or specified person—

- (a) shall deliver a response to the payment claim notice to the executing party, not later than 21 days after the payment claim date, specifying—
 - (i) the amount proposed to be paid,
 - (ii) the reason or reasons for the difference between the amount in the payment claim notice and the amount referred to in *subparagraph (i)*, and
 - (iii) the basis on which the amount referred to in *subparagraph (i)* is calculated,

and

- (b) if the matter has not been settled by the day on which the amount is due, shall pay the amount referred to in *paragraph (a)* to the executing party not later than on that day.

(4) Where a reason for the different amount in the response is attributable to a claim for loss or damage arising from an alleged breach of any contractual or other obligation of the executing party (under the construction contract or otherwise), or any other claim

¹OJ No. L160, 30 June 2000, p.1.

that the other person alleges against the executing party, the response shall also specify—

- (a) when the loss was incurred or the damage occurred, or how the other claim arose,
- (b) the particulars of the loss, damage or claim, and
- (c) the portion of the difference that is attributable to each such particular.

(5) The rights and obligations conferred or imposed by this section are additional to any conferred or imposed by the terms of the construction contract.

Right to suspend work for non-payment.

5.—(1) Where any amount due under a construction contract is not paid in full by the day on which the amount is due, the executing party may suspend work under the construction contract by giving notice in writing under *subsection (2)*.

(2) Notice under this subsection shall specify the grounds on which it is intended to suspend work and shall be delivered to the other party—

- (a) not earlier than the day after the day on which the amount concerned is due, and
- (b) at least 7 days before the proposed suspension is to begin.

(3) Work may not be suspended under *subsection (1)*—

- (a) after payment by the other party of the amount due, or
- (b) after notice has been served by a party to the construction contract under *section 6(2)* in relation to a dispute relating to payment of the amount concerned.

(4) Where work is suspended under *subsection (1)* and the ability of the executing party to complete work within a contractual time limit is affected by the suspension of work, the period of suspension shall be disregarded for the purpose of computing the contractual time limit unless the suspension of work is unjustified in the circumstances.

(5) Where work is suspended under *subsection (1)* and the ability of a subcontractor to complete work within a contractual time limit is affected by the suspension of work, the period of suspension shall be disregarded for the purpose of computing the contractual time limit.

(6) A period of suspension of work under *subsection (1)* shall also be disregarded for the purpose of computing the time taken to complete the work under another construction contract where—

- (a) the construction contract the work under which is suspended is a subcontract,
- (b) the other construction contract is also a subcontract and the other party to that other subcontract is the same as the other party to the subcontract the work under which is suspended, and

- (c) the ability of the executing party under that other subcontract to complete work within a contractual time limit is affected by the suspension of work.

(7) This section is without prejudice to the right of the other party to the construction contract under which work is suspended to claim for compensation or damages for any loss due to a suspension of work that is unjustified in the circumstances.

6.—(1) A party to a construction contract has the right to refer for adjudication in accordance with this section any dispute relating to payment arising under the construction contract (in this Act referred to as a “payment dispute”).

Right to refer payment disputes to adjudication.

(2) The party may exercise the right by serving on the other person who is party to the construction contract at any time notice of intention to refer the payment dispute for adjudication.

(3) The parties may, within 5 days beginning with the day on which notice under *subsection (2)* is served, agree to appoint an adjudicator of their own choice or from the panel appointed by the Minister under *section 8*.

(4) Failing agreement between the parties under *subsection (3)*, the adjudicator shall be appointed by the chair of the panel selected by the Minister under *section 8*.

(5) The party by whom the notice under *subsection (2)* was served—

- (a) shall refer the payment dispute to the adjudicator within 7 days beginning with the day on which the appointment is made, and
- (b) shall at the same time provide a copy of the referral and all accompanying documents to the person who is party to the construction contract.

(6) The adjudicator shall reach a decision within 28 days beginning with the day on which the referral is made or such longer period as is agreed by the parties after the payment dispute has been referred.

(7) The adjudicator may extend the period of 28 days by up to 14 days, with the consent of the party by whom the payment dispute was referred.

(8) The adjudicator shall act impartially in the conduct of the adjudication and shall comply with the code of practice published by the Minister under *section 9*, whether or not the adjudicator is a person who is a member of the panel selected by the Minister under *section 8*.

(9) The adjudicator may take the initiative in ascertaining the facts and the law in relation to the payment dispute and may deal at the same time with several payment disputes arising under the same construction contract or related construction contracts.

(10) The decision of the adjudicator shall be binding until the payment dispute is finally settled by the parties or a different decision is reached on the reference of the payment dispute to arbitration or

in proceedings initiated in a court in relation to the adjudicator's decision.

(11) The decision of the adjudicator, if binding, shall be enforceable either by action or, by leave of the High Court, in the same manner as a judgment or order of that Court with the same effect and, where leave is given, judgment may be entered in the terms of the decision.

(12) The decision of the adjudicator, if binding, shall, unless otherwise agreed by the parties, be treated as binding on them for all purposes and may accordingly be relied on by any of them, by way of defence, set-off or otherwise, in any legal proceedings.

(13) The adjudicator may correct his or her decision so as to remove a clerical or typographical error arising by accident or omission but may not reconsider or re-open any aspect of the decision.

(14) The adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his or her functions as adjudicator unless the act or omission is in bad faith, and any employee or agent of the adjudicator is similarly protected from liability.

(15) Each party shall bear his or her own legal and other costs incurred in connection with the adjudication.

(16) The parties shall pay the amount of the fees, costs and expenses of the adjudicator in accordance with the decision of the adjudicator.

(17) An adjudicator may resign at any time on giving notice in writing to the parties to the dispute and the parties shall be jointly and severally liable for the payment of the reasonable fees, costs and expenses incurred by the adjudicator up to the date of resignation.

(18) The parties to a dispute may at any time agree to revoke the appointment of the adjudicator and the parties shall be jointly and severally liable for the payment of the reasonable fees, costs and expenses incurred by the adjudicator up to the date of the revocation.

Right to suspend work for failure to comply with adjudicator's decision.

7.—(1) Where any amount due pursuant to the decision of the adjudicator is not paid in full before the end of the period of 7 days beginning with that on which the decision is made, the executing party may suspend work under the construction contract by giving notice in writing under *subsection (2)*.

(2) Notice under this subsection shall specify the grounds on which it is intended to suspend work and shall be delivered to the other party not later than 7 days before the proposed suspension is to begin.

(3) Work may not be suspended under *subsection (1)*—

(a) after payment by the other party of the amount due, or

(b) after the decision of the adjudicator is referred to arbitration or proceedings are otherwise initiated in relation to the decision.

(4) Where work is suspended under *subsection (1)* and the ability of the executing party or a subcontractor to complete work within a contractual time limit is affected by the suspension of work, the period of suspension shall be disregarded for the purpose of computing the contractual time limit.

(5) A period of suspension of work under *subsection (1)* shall also be disregarded for the purpose of computing the time taken to complete the work under another construction contract where—

- (a) the construction contract, the work under which is suspended, is a subcontract,
- (b) the other construction contract is also a subcontract and the other party to that other subcontract is the same as the other party to the subcontract the work under which is suspended, and
- (c) the ability of the executing party under that other subcontract to complete work within a contractual time limit is affected by the suspension of work.

8.—(1) The Minister shall from time to time select persons to be members of a panel (in this section referred to as the “panel”) to act as adjudicators in relation to payment disputes and shall select one of those persons to chair the panel.

Selection of panel of adjudicators.

(2) Persons selected under *subsection (1)* shall be members of the panel for a period of 5 years commencing on the date of selection and shall be eligible for reselection at the end of the period of 5 years.

(3) The Minister may, for good and sufficient reason, remove a member of the panel.

(4) A member of the panel may at any time resign by giving notice in writing to the Minister.

(5) In selecting persons to be members of the panel, the Minister shall have regard to their experience and expertise in dispute resolution procedures under construction contracts; and a person may not be selected to be a member of the panel unless the person is a person of any of the descriptions specified in *subsection (6)*.

(6) The descriptions of persons referred to in *subsection (5)* are as follows:

- (a) a registered professional as defined in section 2 of the Building Control Act 2007;
- (b) a chartered member of the Institution of Engineers of Ireland;
- (c) a barrister;
- (d) a solicitor;
- (e) a fellow of the Chartered Institute of Arbitrators;
- (f) a person with a qualification equivalent to any of those specified in *paragraphs (a) to (e)* duly obtained in any other Member State of the European Union.

Code of practice for adjudication. **9.**—The Minister may prepare and publish a code of practice governing the conduct of adjudications under *section 6*.

Delivery of notices, etc. **10.**—(1) The parties to a construction contract may agree on the manner by which notices under this Act shall be delivered.

(2) If or to the extent that there is no such agreement, a notice may be delivered by post or by any other effective means.

(3) Where under this Act a notice is required to be delivered not later than a specified number of days after a particular date and the last of those days is a day which is a Saturday or Sunday or a public holiday (within the meaning of the Organisation of Working Time Act 1997), the notice shall be taken to be validly delivered if delivered on the next day which is not such a day.

Expenses. **11.**—The expenses incurred by the Minister in the administration of this Act shall be paid out of moneys provided by the Oireachtas.

Short title and commencement. **12.**—(1) This Act may be cited as the Construction Contracts Act 2013.

(2) This Act applies in relation to construction contracts entered into after such day as the Minister may by order appoint.

SCHEDULE

Section 3.

PROVISIONS TO APPLY TO MATTERS REGARDING PAYMENTS

1. The payment claim dates under a construction contract shall (subject to *paragraph 2*) be as follows:

- (a) 30 days after the commencement date of the construction contract;
- (b) 30 days after the date referred to in *clause (a)* and every 30 days thereafter up to the date of substantial completion;
- (c) 30 days after the date of final completion.

2. Where a construction contract provides, or the parties to a construction contract otherwise agree, that the duration of the work under the construction contract is or is estimated to be less than 45 consecutive days, the payment claim date shall be 14 days following completion of the work under the construction contract.

3. The date on which payment is due in relation to an amount claimed under a construction contract shall be no later than 30 days after the payment claim date.

4. The amount of an interim payment under a construction contract shall (subject to *paragraph 5*) be the difference between—

- (a) the aggregate of the gross value (determined in accordance with the construction contract) of the work done under the construction contract at the payment claim date concerned together with any additional amounts in the interim payment under the construction contract, less any deductions from payment provided for by the construction contract, and
- (b) the aggregate amount of interim payments that have already been made at that payment claim date.

5. The aggregate of payments made under a construction contract shall not exceed—

- (a) the amount provided for in the construction contract as originally concluded, and
- (b) amounts provided for by any amendments to that contract agreed between the parties.

▶ **APPENDIX B**

The Code of Practice Governing the Conduct of Adjudications



Construction Contracts Act, 2013

Code of Practice Governing the Conduct of Adjudications



An Roinn Post, Fiontar agus Nuálaíochta
Department of Jobs, Enterprise and Innovation

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Code of Practice Governing the Conduct of Adjudications under Section 6 of the Construction Contracts Act 2013

This Code of Practice is made pursuant to section 9 of the Construction Contracts Act, 2013 and should be read in conjunction with that Act.

Definitions

1. A reference in this Code of Practice to:
 - a) “the Act” means the Construction Contracts Act, 2013;
 - b) “Adjudicator” means an Adjudicator who is appointed to a payment dispute in accordance with section 6 of the Act;
 - c) “Chairperson” means the Chairperson of the Construction Contracts Adjudication Panel who is appointed by the Minister under section 8(1) of the Act;
 - d) "Construction Contracts Adjudication Service" means the section of the Department of Jobs, Enterprise and Innovation responsible for, inter alia, processing applications to the Chairperson under section 6(4) of the Act and contact details are available at www.djei.ie;
 - e) "Minister" means the Minister or Minister of State with responsibility for the Construction Contracts Act, 2013;
 - f) "Notice of Intention" means the notice of intention to refer a payment dispute for adjudication, referred to in section 6(2) of the Act;
 - g) “Panel” means the panel of Adjudicators referred to in section 8(1) of the Act, the members of which are appointed by the Minister; and
 - h) “Payment dispute” has the meaning assigned to it by section 6 of the Act.

General

2. The procedures set out in this Code of Practice shall apply to each individual payment dispute arising under the Act. In accordance with section 6(9) of the Act, an Adjudicator may deal at the same time with several payment disputes arising under the same construction contract or related construction contracts.
3. No liability whatsoever shall extend to the Minister, Chairperson or to the Department of Jobs, Enterprise and Innovation in respect of this Code of Practice or for any loss that arises from the operation of this Code of Practice. The Minister reserves the right to make changes to this Code of Practice.

Preliminary

4. A party to the construction contract (known as “the Referring Party”) commences adjudication pursuant to section 6(2) of the Act by serving a written Notice of Intention on the other party or parties to the construction contract (known as the “Responding Party/Parties”) under which an individual payment dispute arises.
5. A Notice of Intention shall include:
 - (i) the name, address and contact details of each party to the construction contract;
 - (ii) relevant details of the payment dispute to include the amount in dispute (even if the amount is zero), the nature of the payment dispute, and the site address;
 - (iii) a copy of the relevant payment claim notice, and any response to that payment claim notice as provided for in section 4 of the Act; and
 - (iv) relevant details to identify the construction contract and any supporting information that may assist an Adjudicator in understanding the nature of the payment dispute. Where a written construction contract exists, this must be attached.

Prospective Adjudicator responsibilities to the parties to a payment dispute

6. A prospective Adjudicator should only accept an appointment to a payment dispute under the Act if he/she:
 - (i) is able to give the adjudication the time and attention which the parties to the payment dispute are reasonably entitled to expect;
 - (ii) believes that he/she is competent to determine the issues in dispute; and
 - (iii) is satisfied that no conflict of interest exists between him/her and the parties subject to paragraphs 11 and 20 of this Code of Practice.
7. A prospective Adjudicator shall not contact any party to a payment dispute under the Act in order to solicit appointment as an Adjudicator to that dispute.

The Appointment of an Adjudicator – by agreement of the parties

8. The parties to the construction contract may, within five days beginning with the day on which Notice of Intention is served, agree to appoint an Adjudicator of their own choice and he/she may be a person referred to in the construction contract to perform that role, a person from the Panel or he/she may be another suitably qualified person.
9. A person who is requested to accept an appointment as Adjudicator following an agreement by the parties to the construction contract in accordance with section 6(3) of the Act shall, within two days of such a request and prior to accepting the appointment, write to the parties to ask them to disclose any information indicating any potential conflict of interest that may arise from the person's appointment as Adjudicator. He/she shall draw the attention of the parties to the provisions of paragraph 32 of this Code of Practice. The prospective Adjudicator shall, at the same time provide the parties with his/her proposed terms and conditions of appointment, including the basis for his/her fees, costs and expenses.
10. Each party shall within three days of the communication from the prospective Adjudicator decide if the appointment of the prospective Adjudicator is to proceed and inform the prospective Adjudicator in writing of their decision.
11. If a potential conflict of interest is disclosed by any party, the prospective Adjudicator may subject to the consent of all the parties, and on satisfying any professional and/or ethical concerns he/she may have, accept the appointment.
12. If the appointment of the prospective Adjudicator is to proceed, the prospective Adjudicator shall write to each party to accept the appointment and the date of the letter of acceptance sent to the parties shall be deemed to be the date on which the appointment of the Adjudicator is made for the purposes of section 6(5)(a) of the Act. Such acceptance, anonymised in terms of the details of the parties to the dispute, shall be notified by the Adjudicator to the Construction Contracts Adjudication Service of the Department of Jobs, Enterprise and Innovation for the purpose of compiling statistical information relating to the Act.

The Appointment of an Adjudicator – by the Chairperson

13. Failing agreement by the parties to select an Adjudicator in accordance with section 6(3) of the Act, a party to the construction contract may apply to the Chairperson to seek the appointment of an Adjudicator from the Panel in accordance with section 6(4) of the Act. Relevant contact details are available on the website of the Department of Jobs, Enterprise and Innovation at www.djei.ie.
14. If an application is to be made under section 6(4) of the Act to the Chairperson, it shall be made not earlier than five days from and including the day on which the Notice of Intention was served.
15. An application to the Chairperson to appoint an Adjudicator from the Panel to a payment dispute shall be in writing and submitted to the Chairperson in accordance with the application procedures set out by the Construction Contracts Adjudication Service of the Department of Jobs Enterprise and Innovation from time to time. Such application, shall be copied by the applicant to the other party/parties to the payment dispute at the same time and shall include:
 - (i) the name, address and contact details of each party to the construction contract;
 - (ii) relevant details of the payment dispute to include the amount in dispute (even if the amount is zero), the nature of the payment dispute, and the site address;
 - (iii) a copy of the Notice of Intention including any accompanying documents attached to that Notice;
 - (iv) the date as to when the Notice of Intention was served on the Responding Party/Parties and how this was done; and
 - (v) relevant details to identify the construction contract and any supporting information that may assist an Adjudicator in understanding the nature of the payment dispute. Where a written construction contract exists, this must be attached.
16. The Chairperson and/or the Construction Contracts Adjudication Service of the Department of Jobs, Enterprise and Innovation may seek further information or clarification(s) from the applicant relevant to the nature of the dispute and such information or clarification(s) should be provided promptly by the applicant and copied to the other party/parties to the payment dispute at the same time. No additional or other supporting information should be submitted by the applicant without a specific request for such information from the above-mentioned in this paragraph.

17. The Chairperson shall, following receipt of a completed application from a party to the construction contract made in accordance with paragraph 15 of this Code of Practice and subject to paragraph 16 of this Code of Practice, appoint an Adjudicator from the Panel.
18. The appointment of an Adjudicator from the Panel shall be made by the Chairperson and notified in writing by the Construction Contracts Adjudication Service of the Department of Jobs, Enterprise and Innovation to the parties, normally within seven days after the receipt of the application to the Chairperson, subject to paragraph 16 of this Code of Practice. The date of the letter from the Construction Contracts Adjudication Service to the parties shall be deemed to be the date on which the appointment of the Adjudicator is made for the purposes of section 6(5) (a) of the Act.
19. An Adjudicator appointed by the Chairperson to a payment dispute shall, within two days of such appointment, request of the parties in writing to disclose any information indicating any potential conflict of interest that may arise from the person's appointment as Adjudicator. He/she shall draw the attention of the parties to the provisions of paragraph 32 of this Code of Practice. The Adjudicator shall at the same time provide the parties with his/her terms and conditions of appointment, including the basis for his/her fees, costs and expenses.
20. If the information disclosed indicates a potential conflict of interest, the Adjudicator may only proceed with the adjudication where he/she is satisfied that the disclosures are frivolous or vexatious; that no professional or ethical concerns arise; and that no actual conflict of interest exists.

Referral of a payment dispute to an Adjudicator

21. Following the appointment of an Adjudicator, the Referring Party shall in accordance with section 6(5) of the Act refer the payment dispute to the Adjudicator in writing within seven days of the Adjudicator's appointment, and the Referring Party shall provide a copy of all such documentation to the Responding Party/Parties at the same time.
22. The referral of the payment dispute to the Adjudicator shall include:
- (i) the name, address and contact details of each party to the construction contract;
 - (ii) relevant details of the payment dispute to include the amount in dispute (even if the amount is zero), the nature of the payment dispute, and the site address;
 - (iii) a copy of the Notice of Intention including any accompanying documents attached to that Notice;
 - (iv) the date when the Notice of Intention was served on the Responding Party/Parties and how this was done;
 - (v) the contentions on which the Referring Party intends to rely upon to support their case; and
 - (vi) relevant details to identify the construction contract and any supporting information that may assist an Adjudicator in understanding the nature of the payment dispute. Where a written construction contract exists, this must be attached.

Adjudication of a payment dispute – Procedures and Decision

23. The Adjudicator in any payment dispute under the Act shall be impartial, independent and only adjudicate where satisfied that no actual conflict of interest exists. He/she shall observe the principles of procedural fairness, which shall include giving each party a reasonable opportunity to put their case and to respond to the other party's case.
24. For the purposes of the adjudication proceedings, the Adjudicator may:
- (i) request any reasonable supporting or supplementing documents pertaining to the payment dispute detailed in the Notice of Intention and/or in the referral of the payment dispute to the Adjudicator;
 - (ii) take the initiative in ascertaining the facts and matters required for a decision and make use of his/her own specialist knowledge, if it is appropriate to do so. If the Adjudicator uses any such specialist knowledge he/ she shall disclose this to the parties as appropriate;

- (iii) appoint experts, assessors or legal advisers, provided that the parties have been notified of their identity and their terms of reference;
 - (iv) make site visits and inspections or carry out tests, subject to prior notification to the parties and obtaining any necessary consent from a third party or parties;
 - (v) invite written submissions/representations and evidence from the parties, if appropriate;
 - (vi) meet jointly with the parties and their representatives, if any, to enable further investigation;
 - (vii) hold a teleconference with the parties, with the consent of the parties; and
 - (viii) hold an oral hearing, where appropriate.
25. The Adjudicator shall upon receipt of the referral of a payment dispute from the Referring Party, inform the parties in writing of the date on which it was received by the Adjudicator. This date of receipt shall be regarded as the date on which the referral of the payment dispute to the Adjudicator has been made for the purposes of section 6(6) of the Act.
26. The Adjudicator shall, at the same time, also inform the parties of the procedures that he/she intends to apply during the adjudication process. This shall include directions as to the timetable for the adjudication and any deadlines to be adhered to by the parties and/or limits as to the length of written documents. The Adjudicator shall draw the attention of the parties to the provisions of paragraph 32 of this Code of Practice. The Adjudicator may revise his/her guidance to the parties on the above mentioned matters in circumstances where he/she considers it necessary to do so and he/she shall inform the parties of any such change as appropriate.
27. The Adjudicator shall ensure that the procedure adopted is commensurate with the nature and value of the payment dispute and he/she shall be mindful of whether or not an oral hearing is required having regard to matters such as to whether or not there is a conflict of fact or other relevant matter that requires such a hearing.
28. The Adjudicator shall use reasonable endeavours to process the payment dispute between the parties in the shortest time and at the lowest cost. He/she shall promptly notify the parties of any matter that will slow down or increase the cost of making a determination.
29. The parties may agree to revoke the appointment of the Adjudicator in accordance with section 6(18) of the Act and shall be jointly and severally liable for the payment of the reasonable fees, costs and expenses incurred by the Adjudicator up to the date of the revocation.

30. In accordance with section 6(17) of the Act, the Adjudicator may resign for reasonable cause at any time on giving notice in writing to the parties to the payment dispute. Such resignation, anonymised in terms of the details of the parties to the dispute, shall be notified by the Adjudicator to the Construction Contracts Adjudication Service of the Department of Jobs, Enterprise and Innovation for the purpose of compiling statistical information relating to the Act.
31. Upon such resignation the adjudication is at an end subject to the payment by the parties of the reasonable fees, costs and expenses incurred by the Adjudicator up to the date of resignation. The parties shall be jointly and severally liable for the payment of the reasonable fees, costs and expenses incurred by the Adjudicator up to the date of resignation.
32. If a party to the adjudication, without showing sufficient cause, fails to:
- (i) attend a meeting; or
 - (ii) comply with any directions of the Adjudicator made in accordance with paragraph 26 of this Code of Practice; or
 - (iii) disclose any information indicating a potential conflict of interest as required to do in accordance with paragraphs 9 and 19 of this Code of Practice; or
 - (iv) produce any document or written statement requested by the Adjudicator;
- the Adjudicator may:
- a) continue the adjudication in the absence of a party;
 - b) continue the adjudication without the document or written statement requested;
 - c) draw such inferences from that failure to comply as circumstances may, in the Adjudicator's opinion, be justified;
 - d) make a decision on the basis of the material properly provided; and
 - e) make a decision apportioning the fees, costs and expenses of the Adjudicator, as appropriate.
33. The Adjudicator shall, in accordance with the Act, reach a decision within 28 days beginning with the day on which the referral is made or such longer period as is agreed by the parties after the payment dispute has been referred. The Adjudicator may extend the period of 28 days by up to 14 days, with the consent of the Referring Party.
34. The decision of the Adjudicator on a payment dispute shall be in writing and it shall be signed and dated by the Adjudicator. Unless the parties agree otherwise in writing, the decision shall include the reasons for the decision.

35. The Adjudicator's decision shall allocate such fees, costs and expenses of the Adjudicator as he/she has authority to allocate under section 6(16) of the Act and under the provisions of this Code of Practice.
36. The Adjudicator's fees, costs and expenses shall be reasonable in amount having regard to the amount in dispute, the complexity of the dispute, the time spent by the Adjudicator and other relevant circumstances.
37. Any document or information supplied for and/or disclosed in the course of the adjudication shall be kept confidential by the Adjudicator. He/she will only disclose such document or information if required to do so by law, or pursuant to an order of a court, or with the consent of all the parties to the payment dispute.
38. The parties are responsible for their own legal and other costs incurred in connection with the adjudication in accordance with section 6(15) of the Act.

Reporting on the Conduct of Adjudication Cases

39. The Chairperson may seek or, put in place arrangements to seek, details of adjudication cases from Adjudicators and which shall not include the names of the parties to a payment dispute. An Adjudicator, regardless of whether appointed to a payment dispute under section 6(3) or 6(4) of the Act, shall provide such anonymised information to the Construction Contracts Adjudication Service of the Department of Jobs, Enterprise and Innovation on each adjudication case within 21 days of the completion of the case. This will be used for the purpose of compiling statistical information relevant to adjudications conducted in accordance with the Act.

I, PAT BREEN, Minister of State at the Department of Jobs, Enterprise and Innovation, in exercise of the powers conferred on me by section 9 of the Construction Contracts Act, 2013 (No. 34 of 2013) and the Construction Contracts (Transfer of Departmental Administration and Ministerial Functions) Order 2014 (S.I. No. 476 of 2014) (amended by the Construction Contracts (Transfer of Departmental Administration and Ministerial Functions) Order 2015 (S.I. No. 173 of 2015)) and the Jobs, Enterprise and Innovation (Delegation of Ministerial Functions) Order 2016 (S.I. No. 333 of 2016) make this Code of Practice.

The Construction Contracts Act 2013 Code of Practice Governing the Conduct of Adjudications made on the 5th day of July 2016 is revoked.

PAT BREEN,
Minister of State at the Department of Jobs, Enterprise and Innovation.

Date: 25th July 2016

The images on the cover of this document are of drawings by Gabriel Hayes who was commissioned in 1941 to design and complete a range of carved stonework for the facade of the Department of Industry and Commerce building at Kildare Street.

Department of Jobs Enterprise and Innovation

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An Roinn Post, Fiontar agus Nuálaíochta
Department of Jobs, Enterprise and Innovation

▶ **APPENDIX C**

The Rules of the Superior Courts (Statutory Instrument No 450 of 2016)



STATUTORY INSTRUMENTS.

S.I. No. 450 of 2016



RULES OF THE SUPERIOR COURTS (CONSTRUCTION CONTRACTS
ACT 2013) 2016

S.I. No. 450 of 2016

RULES OF THE SUPERIOR COURTS (CONSTRUCTION CONTRACTS
ACT 2013) 2016

We, the Superior Courts Rules Committee, constituted pursuant to the provisions of the Courts of Justice Act 1936, section 67, and reconstituted pursuant to the provisions of the Courts of Justice Act 1953, section 15, by virtue of the powers conferred upon us by the Courts of Justice Act 1924, section 36, the Courts of Justice Act, 1936, section 68 (as applied by the Courts (Supplemental Provisions) Act 1961, section 48), the Courts (Supplemental Provisions) Act 1961, section 14 and of all other powers enabling us in this behalf, do hereby make the following Rules of Court.

Dated this 21st day of July, 2016.

Susan Denham

Gerard Meehan

Sean Ryan

Stuart Gilhooly

Peter Kelly

Noel Rubotham

Mary Laffoy

John Mahon

Conor Dignam

I concur in the making of the following Rules of Court.

Dated this 12th day of August, 2016.

FRANCES FITZGERALD,
Minister for Justice and Equality.

*Notice of the making of this Statutory Instrument was published in
"Iris Oifigiúil" of 16th August, 2016.*

S.I. No. 450 of 2016

RULES OF THE SUPERIOR COURTS (CONSTRUCTION CONTRACTS
ACT 2013) 2016

1. (1) These Rules, which may be cited as the Rules of the Superior Courts (Construction Contracts Act 2013) 2016, shall come into operation on the 22nd day of August 2016.

(2) These Rules shall be construed together with the Rules of the Superior Courts.

(3) The Rules of the Superior Courts as amended by these Rules may be cited as the Rules of the Superior Courts 1986 to 2016.

2. The Rules of the Superior Courts are amended:

(i) by the insertion immediately following Order 56A of the following Order:

“Order 56B

Adjudication

1. In this Order:

(1) The “2013 Act” means the Construction Contracts Act 2013;

“adjudicator” means an adjudicator appointed pursuant to the provisions of section 6 of the 2013 Act.

(2) Save where the context otherwise requires, expressions used in this Order have the same meaning as in the 2013 Act.

2. An application for the leave of the Court to enforce or to enter judgment in respect of a decision of an adjudicator pursuant to section 6(11) of the 2013 Act shall be made by originating notice of motion.

3. (1) Subject, in the case of any proceedings which have been entered in the Commercial List, to the provisions of Order 63A and of any order made or direction given by the Court under that Order, the procedures specified in this Order shall apply to proceedings by originating notice of motion in accordance with this Order.

(2) Every originating notice of motion shall be grounded upon an affidavit sworn by or on behalf of the moving party. Each such grounding affidavit shall—

- (i) identify the construction contract to which the decision relates;
- (ii) exhibit the decision of the adjudicator;
- (iii) set out the basis upon which the Court should conclude that the decision of the adjudicator is binding on the respondent;
- (iv) confirm that—
 - (a) the payment dispute has not been finally settled by the parties;
 - (b) a different decision has not been reached on a reference of the payment dispute to arbitration;
 - (c) a different decision has not been reached in proceedings initiated in a court in relation to the adjudicator's decision; and
- (iv) set out the facts relied upon to demonstrate that the respondent has failed to comply with the decision of the adjudicator.

(3) Copies of the originating notice of motion and the grounding affidavit and of any exhibits thereto shall be served upon the respondent(s) not later than 14 days before the date fixed for the hearing of the motion.

(4) The Court may, in the interests of justice, abridge the time limit identified in sub-rule (3).

(5) Any respondent may deliver a replying affidavit. Any such replying affidavit shall be filed in the Central Office and a copy served upon the applicant and upon every other respondent within seven days of the service by the applicant of the originating notice of motion and the applicant's grounding affidavit upon the respondent.

(6) Any replying affidavit shall set out precisely the grounds relied upon by the respondent to resist the applicant's claim for the reliefs set out in the originating notice of motion as against such respondent.

(7) The applicant shall be at liberty to file a further affidavit replying to any matter raised by a respondent in a replying affidavit, which further affidavit shall be filed in the Central Office and a copy delivered to each respondent within seven days after

the service upon the applicant of the respondent's replying affidavit.

(8) An affidavit giving the names and addresses of, and the place names and dates of service on, all persons who have been served with the originating notice of motion, grounding affidavit and exhibits shall be filed before the motion is heard. If any person who ought under this Order to have been served has not been served, the affidavit shall state that fact and the reason for it.

4. Save where the Court otherwise directs, every application under this Order shall be heard and determined on affidavit.

5. The Court, on the application of any of the parties or of its own motion, may make such consequential further or other orders or give such directions as the Court considers will facilitate an expeditious disposal of the proceedings commenced under this Order."

EXPLANATORY NOTE

(This note is not part of the Instrument and does not purport to be a legal interpretation)

These Rules insert a new Order 56B in the Rules of the Superior Courts to provide for the procedure to be followed in the case of applications under section 6(11) of the Construction Contracts Act 2013 for leave of the High Court to enforce or enter judgment in respect of a decision of an adjudicator appointed under that section.

BAILE ÁTHA CLIATH
ARNA FHOILSIÚ AG OIFIG AN tSOLÁTHAIR
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< **USERS' GUIDE TO ADJUDICATION: IRELAND**



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