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## **CIDB ADJUDICATION PROCEDURE**

**(March 2004)**  
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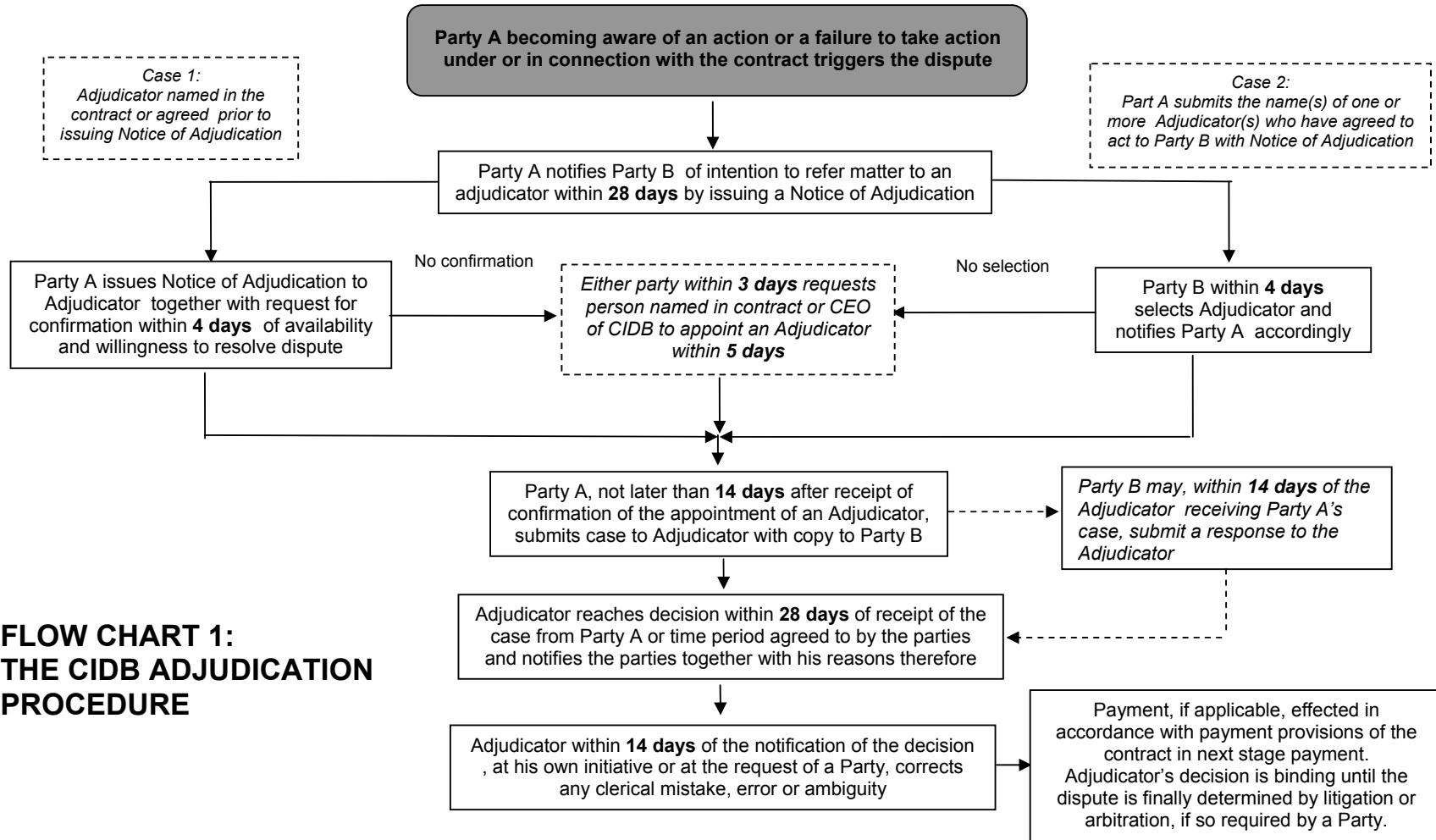
## **Acknowledgement**

This procedure is based on a procedure that is copyright of the Institution of Civil Engineers (ICE) and is used with permission. Minor changes have been made to suit South African requirements and to remove inapplicable references to the UK's Housing Grants, Construction and Regeneration Act 1996, and the ICE.

The full title of the ICE document is "The Institution of Civil Engineers Adjudication Procedure, 1997".

Flow chart 1 maps out the CIDB Adjudication Procedure and indicates the times allocated to each activity

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**FLOW CHART 1:**  
**THE CIDB ADJUDICATION**  
**PROCEDURE**

## **1. Definitions**

- (a) The "Adjudicator" means the person named as such in the Contract or appointed in accordance with this Procedure.
- (b) "Contract" means the contract, subcontract, or agreement between the Parties, which contains the provision for adjudication;
- (c) "Day" means calendar day;
- (d) "Party" means a Party to the Contract and references to either Party or the other Party or Parties shall include any additional Party or Parties joined in accordance with this Procedure.

## **2. General principles**

- 2.1. The adjudication shall be conducted in accordance with the edition of the CIDB Adjudication Procedure which is current at the date of issue of a notice in writing of intention to refer the dispute to adjudication (hereinafter called the Notice of Adjudication). The Adjudicator shall be appointed under the Adjudicator's Agreement.
- 2.2. The object of adjudication is to reach a fair, rapid and inexpensive determination of a dispute arising under the Contract and the Procedure shall be interpreted accordingly.
- 2.3. The Adjudicator shall be a named individual, shall act impartially and in accordance with the rules of natural justice.
- 2.4. In making a decision, the Adjudicator may take the initiative in ascertaining the facts and the law. The adjudication shall be neither an expert determination nor an arbitration but the Adjudicator may rely on his own expert knowledge and experience.
- 2.5. The Adjudicator's decision shall be binding until the dispute is finally determined by legal proceedings, by arbitration (if the Contract provides for arbitration or the Parties otherwise agree to arbitration) or by agreement.
- 2.6. The Parties shall implement the Adjudicator's decision without delay whether or not the dispute is to be referred to legal proceedings or arbitration. Payment (if applicable) shall be made in accordance with the payment provisions in the Contract, in the next stage payment which becomes due after the date of issue of the decision, unless otherwise directed by the Adjudicator.

## **3. The Notice of Adjudication**

Any Party shall give notice within 28 days of it becoming aware of the action, arising under or in connection with the Contract and giving rise to a dispute, of its intention to refer the dispute to adjudication by giving a written Notice of Adjudication to the other Party. The Notice of Adjudication shall include:

- (a) the details and date of the Contract between the Parties;
- (b) the issues which the Adjudicator is being asked to decide;
- (c) details of the nature and extent of the redress sought.

**Note:**

- 1 An action of one of the Parties or the failure to take action that gives rise to a dispute. An event does not give rise to a dispute.
- 2 The implications of failing to give notice within the stipulated 28 day period is that the adjudicator has no mandate to decide on the dispute, unless otherwise agreed by the Parties. The dispute may nevertheless be referred to arbitration or litigation for resolution.

## **4. The appointment of the Adjudicator**

- 4.1. Where an Adjudicator has either been named in the Contract or agreed to by the Parties prior to the issue of the Notice of Adjudication, the Party issuing the Notice of Adjudication shall at the same time send to the Adjudicator a copy of the Notice of Adjudication and a request for confirmation, within four days of the date of issue of the Notice of Adjudication, that the Adjudicator is able and willing to act.
- 4.2. Where an Adjudicator has not been so named or agreed the Party issuing the Notice of Adjudication may include with the Notice the names of one or more persons with their

addresses who have agreed to act, any one of whom would be acceptable to the referring Party, for selection by the other Party. The other Party shall select and notify the referring Party and the selected Adjudicator within 4 days of the date of issue of the Notice of Adjudication.

- 4.3. If confirmation is not received under paragraph 4.1, or a selection is not made under paragraph 4.2 ,or the Adjudicator does not accept or is unable to act, then either Party may within a further 3 days request the person or body named in the Contract or if none is so named the Chief Executive Officer of the Construction Industry Development Board to appoint the Adjudicator within 5 days. Such request shall be in writing on the appropriate form of application for the appointment of an adjudicator, if any, and be accompanied by a copy of the Notice of Adjudication and any applicable fee.
- 4.4. The Adjudicator shall be appointed on the terms and conditions set out in the attached Adjudicator's Agreement and Contract Data and shall be entitled to be paid a reasonable fee together with his expenses. The Parties shall sign the agreement within 7 days of being requested to do so.
- 4.5. If for any reason whatsoever the Adjudicator is unable to act, either Party may require the appointment of a replacement adjudicator in accordance with the procedure in paragraph 4.3.

## 5. **Referral**

- 5.1. The referring Party shall not later than 14 days of receipt of confirmation under 4.1, or notification of selection under 4.2, or appointment under 4.3 send to the Adjudicator, with a copy to the other Party, a full statement of his case which should include:
  - (a) a copy of the Notice of Adjudication;
  - (b) a copy of any adjudication provision in the Contract, and
  - (c) the information upon which he relies, including supporting documents.
- 5.2. The date of referral of the dispute to adjudication shall be the date upon which the Adjudicator receives the documents referred to in paragraph 4.1. The Adjudicator shall notify the Parties forthwith of the date.

## 6. **Conduct of the adjudication**

- 6.1. The Adjudicator shall reach his decision within 28 days, or such longer period as is agreed by the Parties in writing, after the dispute has been referred to him for adjudication. The period of 28 days may be extended by up to 14 days with the consent of the referring Party.
- 6.2. The Adjudicator shall determine the matters set out in the Notice of Adjudication, together with any other matters which the Parties and the Adjudicator agree should be within the scope of the adjudication.
- 6.3. The Adjudicator may open up review and revise any decision, (other than that of an adjudicator unless agreed by the Parties), opinion, instruction, direction, certificate or valuation made under or in connection with the Contract and which is relevant to the dispute. He may order the payment of a sum of money, or other redress but no decision of the Adjudicator shall affect the freedom of the Parties to vary the terms of the Contract or the Engineer or the Principal Agent or other authorised person to vary the Works in accordance with the Contract.
- 6.4. The other Party may submit a response to the statement under paragraph 5.1 within 14 days of referral. The period for response may be extended by agreement between the Parties and the Adjudicator.
- 6.5. The Adjudicator shall have complete discretion as to how to conduct the adjudication, and shall establish the procedure and timetable, subject to any limitation that there may be in the Contract. He shall not be required to observe any rule of evidence, procedure or otherwise, of any court, except the rules of natural justice. Without prejudice to the generality of these powers, he may:
  - (a). ask for further written information;
  - (b). meet and question the Parties and their representatives;
  - (c). visit the site;

- (d). request the production of documents or the attendance of people whom he considers could assist;
- (e). set times for (a) - (d) and similar activities;
- (f). proceed with the adjudication and reach a decision even if a Party fails:
  - (i). to provide information;
  - (ii). to attend a meeting;
  - (iii). to take any other action requested by the Adjudicator;
- (g). issue such further directions as he considers to be appropriate.

6.6. The Adjudicator may obtain legal or technical advice having first notified the Parties of his intention.

6.7. Wherever possible, the Adjudicator shall reach his decision without the process of a formal hearing.

6.8. Any Party may at any time ask that additional Parties shall be joined in the adjudication. Joinder of additional Parties shall be subject to the agreement of the Adjudicator and the existing and additional Parties. An additional Party shall have the same rights and obligations as the other Parties, unless otherwise agreed by the Adjudicator and the Parties.

## 7. The Decision

- 7.1. The Adjudicator shall reach his decision and so notify the Parties together with his reasons within the time limits in paragraph 6.1 and may reach a decision on different aspects of the dispute at different times.
- 7.2. The Adjudicator may in any decision direct the payment of such simple or compound interest at such rate and between such dates or events as he considers appropriate.
- 7.3. Should the Adjudicator fail to reach his decision and notify the Parties in the due time either Party may give 7 days notice of its intention to refer the dispute to a replacement adjudicator appointed in accordance with the procedures in paragraph 4.3.
- 7.4. If the Adjudicator fails to reach and notify his decision in due time but does so before the dispute has been referred to a replacement adjudicator under paragraph 7.3 his decision shall still be effective. If the Parties are not so notified then the decision shall be of no effect and the Adjudicator shall not be entitled to any fees or expenses but the Parties shall be responsible for the fees and expenses of any legal or technical adviser appointed under paragraph 6.6 subject to the Parties having received such advice.
- 7.5. The Parties shall bear their own costs and expenses incurred in the adjudication. The Parties shall be jointly and severally responsible for the Adjudicator's fees and expenses, including those of any legal or technical adviser appointed under paragraph 6.6, but in his decision the Adjudicator may direct a Party to pay all or part of his fees and expenses. If he makes no such direction the Parties shall pay them in equal shares.
- 7.6. At any time until 7 days before the Adjudicator is due to reach his decision, he may give notice to the Parties that he will deliver it only on full payment of his fees and expenses. Any Party may then pay these costs in order to obtain the decision and recover the other Party's share of the costs in accordance with paragraph 7.5 as a debt due.
- 7.7. The Parties shall be entitled to the relief and remedies set out in the decision and to seek summary enforcement thereof, regardless of whether the dispute is to be referred to legal proceedings or arbitration. No issue decided by an adjudicator may subsequently be laid before another adjudicator unless so agreed by the Parties.
- 7.8. In the event that the dispute is referred to legal proceedings or arbitration, the Adjudicator's decision shall not inhibit the court or arbitrator from determining the Parties' rights or obligations anew.
- 7.9. The Adjudicator may on his own initiative, or at the request of either Party, correct a decision so as to remove any clerical mistake, error or ambiguity provided that the initiative is taken, or the request is made within 14 days of the notification of the decision to the Parties. The Adjudicator shall make his corrections within 7 days of any request by a Party.

## **8. Miscellaneous provisions**

- 8.1. Unless the Parties agree, the Adjudicator shall not be appointed arbitrator in any subsequent arbitration between the Parties under the Contract. No Party may call the Adjudicator as a witness in any legal proceedings or arbitration concerning the subject matter of the adjudication.
- 8.2. The Adjudicator is not liable for anything done or omitted in the discharge or purported discharge of his 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. The Parties shall save harmless and indemnify the Adjudicator and any employee or agent of the Adjudicator against all claims by third parties and in respect of this shall be jointly and severally liable.
- 8.3. Neither the CIDB nor their servants or agents shall be liable to any Party for any act omission or misconduct in connection with any appointment made or any adjudication conducted under this Procedure.
- 8.4. All notices shall be sent by recorded delivery to the address stated in the Contract for service of notices, or if none, the principal place of business or registered office (in the case of a company). Any agreement required by this Procedure shall be evidenced in writing.
- 8.5. This Procedure shall be interpreted in accordance with the law of the Contract, or if none is stated, the law applicable to the country in which the site of the Works is situated.

## ADJUDICATOR'S AGREEMENT

This agreement is made on the ..... day of ..... between:

..... (name of company /  
organisation)  
of .....

.....  
(address) and

..... (name of company /  
organisation)  
of .....

.....  
(address)

(the Parties) and

..... (name)  
of .....

.....  
(address)

(the Adjudicator).

Disputes or differences may arise/have arisen\* between the Parties under a Contract dated ..... and known as .....

.....  
and these disputes or differences shall be/have been\* referred to adjudication in accordance with the CIDB Adjudication Procedure, (hereinafter called "the Procedure") and the Adjudicator may be or has been requested to act.

\* Delete as necessary

### IT IS NOW AGREED as follows:

- 1 The rights and obligations of the Adjudicator and the Parties shall be as set out in the Procedure.
- 2 The Adjudicator hereby accepts the appointment and agrees to conduct the adjudication in accordance with the Procedure.
- 3 The Parties bind themselves jointly and severally to pay the Adjudicator's fees and expenses in accordance with the Procedure as set out in the Contract Data.
- 4 The Parties and the Adjudicator shall at all times maintain the confidentiality of the adjudication and shall endeavour to ensure that anyone acting on their behalf or through them will do likewise, save with the consent of the other Parties which consent shall not be unreasonably refused.
- 5 The Adjudicator shall inform the Parties if he intends to destroy the documents which have been sent to him in relation to the adjudication and he shall retain documents for a further period at the request of either Party.

SIGNED by: \_\_\_\_\_

Name: \_\_\_\_\_  
who warrants that he / she is  
duly authorised to sign for and  
on behalf of the first Party in  
the presence of \_\_\_\_\_

SIGNED by: \_\_\_\_\_

Name: \_\_\_\_\_  
who warrants that he / she is  
duly authorised to sign for  
and behalf of the second  
Party in the presence of \_\_\_\_\_

SIGNED by: \_\_\_\_\_

Name: \_\_\_\_\_  
the Adjudicator in the  
presence of \_\_\_\_\_

Witness: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Witness: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Witness: \_\_\_\_\_

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

### Contract Data

1	The Adjudicator shall be paid at the hourly rate of R. .... in respect of all time spent upon, or in connection with, the adjudication including time spent travelling.
2	The Adjudicator shall be reimbursed in respect of all disbursements properly made including, but not restricted to: <ul style="list-style-type: none"> <li>(a) Printing, reproduction and purchase of documents, drawings, maps, records and photographs.</li> <li>(b) Telegrams, telex, faxes, and telephone calls.</li> <li>(c) Postage and similar delivery charges.</li> <li>(d) Travelling, hotel expenses and other similar disbursements.</li> <li>(e) Room charges.</li> <li>(f) Charges for legal or technical advice obtained in accordance with the Procedure.</li> </ul>
3	The Adjudicator shall be paid an appointment fee of R. .... This fee shall become payable in equal amounts by each Party within 14 days of the appointment of the Adjudicator, subject to an Invoice being provided. This fee will be deducted from the final statement of any sums which shall become payable under item 1 and/or item 2 of the Contract Data. If the final statement is less than the appointment fee the balance shall be refunded to the Parties.
4	The Adjudicator is/is not* currently registered for VAT.
5	Where the Adjudicator is registered for VAT it shall be charged additionally in accordance with the rates current at the date of invoice.
6	All payments, other than the appointment fee (item 3) shall become due 7 days after receipt of invoice, thereafter interest shall be payable at 5% per annum above the Reserve Bank base rate for every day the amount remains outstanding.

\* Delete as necessary