

**TEMPORARY MEASURES FOR REDUCING THE IMPACT OF CORONAVIRUS
DISEASE 2019 (COVID-19) ACT 2020 MEDIATION RULES 2022**

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THE Rules to determine the mediation process which includes the appointment of a mediator, role of a mediator, conduct of mediation and conclusion of mediation pursuant to subsection 9(2) Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) Act 2020 [Act 829],

DETERMINED by the Minister charged with the responsibility for law.

PART I

PRELIMINARY

1. Short title and commencement

- 1.1 These Rules may be cited as the Mediation Rules 2022.
- 1.2 These Rules come into operation on 1 January 2022.

2. Application

2.1 These Rules shall apply to any dispute in respect of any inability of any party or parties to perform any contractual obligation arising from any contract due to the measures prescribed, made or taken under the Prevention and Control of Infectious Diseases Act 1988 [Act 342] to control or prevent the spread of COVID-19.

3. Interpretation

3.1 In these Rules, unless the context otherwise requires--

“Act” means the Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) Act 2020 [Act 829];

“PMC-19” means a mediation institution established by the Government as mediation centre under Bahagian Hal Ehwal Undang-Undang, Jabatan Perdana Menteri, and the Mediation Rules are adopted;

“PMC-19 System” means an online system provided by PMC-19 for the application and management of mediation service;

“Minister” means the Minister charged with the responsibility for law;

“mediation”	means a voluntary process in which a mediator facilitates communication and negotiation between parties to assist the parties in reaching an agreement regarding a dispute;
“mediator”	means a well-trained mediator who has been – <ul style="list-style-type: none"> (i) accredited by any, domestic or international, mediation accreditation body as agreed by the Government; and (ii) appointed by the Minister;
“party”	means party or parties to a mediation process registered and approved under PMC-19 System;
“rules”	means the Mediation Rules 2022; or Mediation Rules 2022 that adopted by PMC-19;
“Government”	means the Government of Malaysia;
“case manager”	means the case manager appointed by the Malaysian Bar, Sabah Law Society or The Advocates Association of Sarawak as it thinks fit and proper;
“mediation communication”	means an oral or written statement made- <ul style="list-style-type: none"> (a) during a mediation; (b) in relation to a mediation; or (c) for the purposes of considering, conducting, participating in, commencing, continuing,

reconvening or concluding a mediation or retaining a mediator;

“non-party” means a person who participates in a mediation, other than a party or mediator, and includes counsels of each party, experts in the subject matter of a dispute and witness;

“PMC-19 Scheme” means an arrangement between the Government and The Malaysian Bar, Government and The Advocates Association of Sarawak or Government and Sabah Law Society whereby The Malaysian Bar, The Advocates Association of Sarawak or Sabah Law Society is to provide mediation service through PMC-19.

PART II

COMMENCEMENT OF MEDIATION

4. Commencement of mediation

4.1 An application for the mediation service in relation to PMC-19 scheme may only be made for matters arising from –

- (a) any dispute which the sum of contract amount shall not be more than RM500,000.00 except for a construction work contract or construction consultancy contract and any other contract related to the supply of construction material, equipment or workers in connection with a construction contract; and

- (b) any dispute relating to the inability of any party or parties to perform any contractual obligation due to the measures prescribed, made or taken under Act 342 to control or prevent the spread of COVID-19.
- 4.2 Any dispute determined in subrule 4.1 above may be resolved through mediation and an application for mediation may be made through PMC-19 System at www.pmc19.gov.my.
- 4.3 Any application for mediation service under PMC-19 requires the consent of both disputed parties in relation to a contract.

5. Mediation agreement

- 5.1 If both contractual parties agree to refer a dispute to PMC-19 for mediation service, such parties shall enter into a mediation agreement in **FORM A**.
- 5.2 The mediation agreement shall be in writing and signed by the parties.
- 5.3 Upon submission of **Form A** through PMC-19 System, the parties shall be deemed to have been accepted, and be bound by the rules.

PART III MEDIATOR

6. Appointment of Mediators

- 6.1 The Minister shall appoint a number of mediator who will be assigned by the case manager to assist the Parties in the mediation.

- 6.2 The mediator appointed under this Part shall –
- (a) possess the relevant qualification, special knowledge or experience in mediation through training or formal tertiary education; or
 - (b) satisfy the requirement of PMC-19 in relation to a mediator.
- 6.3 The mediator appointed under this Part shall disclose, before commencement of mediation, any known fact that a reasonable man would consider likely to affect his impartially as mediator, including a financial or personal interest in the outcome of mediation through a written declaration.

7. Termination of mediators

- 7.1 The Minister may terminate the appointment of a mediator if the mediator appointed under this Part –
- (a) no longer possess the relevant qualifications or special knowledge or experience in mediation;
 - (b) no longer satisfies the requirement of PMC-19 in relation to a mediator;
 - (c) is found to have financial or personal interest in the dispute; or
 - (d) is found to have obtained the appointment by way of fraud or misrepresentation.
- 7.2 Notwithstanding subrule 7.1, the parties may terminate the appointment of a mediator for any reason and shall inform the Minister and the mediator the reason for termination subject to the approval of the Minister.

PART IV
MEDIATION PROCESS

8. Mediation date, time, venue and language of mediation

- 8.1 A case manager shall determine a suitable date, time and venue for Mediation.
- 8.2 Parties shall comply with the date, time and venue of the mediation as directed by the case manager
- 8.3 However, the Parties are allowed to change the date and time by submission of a notice to the case manager.
- 8.4 An application to change the date and time of mediation by the parties is allowed once if PMC-19 has been notified with not less than seven (7) days from the scheduled mediation.
- 8.5 The language used in mediation shall be in Malay or English except the Minister direct otherwise.

9. Role of mediators

- 9.1 A mediator shall facilitate mediation and determine the manner in which the mediation is to be conducted.
- 9.2 The mediator may assist the parties to reach a satisfactory resolution of the dispute and suggest options for the settlement of the dispute.
- 9.3 The mediator shall ensure the mediation is carried out in compliance with these rules.

9.4 For the purpose of subrule 9.1, the mediator shall act independently and impartially.

9.5 The mediator shall furnish the information as required by PMC-19 in relation to mediation through PMC-19 System.

10. Submission of statements to mediators

10.1 A mediator may request each party to submit a statement setting out the brief facts of the dispute, supplemented by any document the party deem appropriate to submit.

10.2 At any stage of a mediation, a mediator may request any party to submit any additional information or the document as the mediator deems appropriate.

11. Conduct of mediation

11.1 A mediator shall ensure that the mediation is privately conducted and he may meet with the parties together or with each party separately.

11.2 The party shall attend the mediation session in person and unrepresented by any person.

11.3 In the case of body of corporate, the party may be represented by their authorised officer to act for him in mediation, and the authorised document shall be provided to the mediator before the mediation session commences.

11.4 Notwithstanding subrule 11.1 —

- (a) a non-party of any party's choice may participate in mediation to assist the party, subject to the consent of the mediator and the case manager;
- (b) a non-party of a mediator's choice may participate in mediation to assist the mediator during the mediation, subject to the consent of parties and the case manager; and

without additional cost to the parties and the Government.

- 11.5 There shall be no transcript, formal record and audio-visual recording of the mediation.
- 11.6 The mediator may seek for expert advice on any technical issue in relation to a dispute subject to consent of the Parties and such costs shall be borne by the Parties.
- 11.7 The mediator may end the mediation if, in his opinion, further effort at mediation would not contribute to a satisfactory resolution of the dispute between the parties.
- 11.8 Notwithstanding subrule 11.7, the mediator shall call off the mediation assigned to him on the grounds of illegality, criminality or tax evasion purpose.
- 11.9 The mediator shall not postpone the mediation assigned to him except for the legitimate reason and with a prior written approval from PMC-19.
- 11.10 The mediator may apply to the case manager for online mediation subject to the following:

- (a) any severe COVID-19 outbreak or the need for a cross border mediation within Malaysia;
- (b) the willingness of the parties to agree for usage of an online mediation application;
- (c) the mediator has acquired knowledge to run an online mediation platform;
- (d) the mediator is ready with the secure and reliable online mediation platform;
- (e) the mediator is ready with a secure and reliable internet connection, and the transmission of data without any delay;
- (f) the parties having the online mediation conducted in the States of Malaya and Federal Territories shall be accompanied by the counsels;
- (g) the parties having the online mediation conducted in Borneo States may be accompanied by the counsels.

11.11 Parties shall participate in mediation in good faith to resolve their differences or disputes.

11.12 Parties shall ensure that all information submitted via PMC-19 System is accurate and precise.

PART V

CONCLUSION OF MEDIATION

12. Conclusion of mediation

12.1 A mediation shall conclude –

- (a) upon the signing of a settlement agreement by the parties under rule 13;
- (b) upon the issuance of a written declaration by a mediator to the parties stating that a further effort at mediation would not contribute to a satisfactory resolution of the dispute;
- (c) upon the issuance of a written declaration by the parties to the mediator stating that the mediation is terminated; or
- (d) Unless otherwise provided by mediation agreement referred to in rule 5---
 - (i) upon the issuance of a written declaration by a party to another party and the mediator stating that the mediation is terminated;
 - (ii) upon the withdrawal from mediation by any party; or
 - (iii) upon the death of any party or incapacity of any party.

13. Settlement agreement

13.1 Upon the conclusion of mediation and the reaching of an agreement by the parties regarding a dispute, the parties shall enter into a settlement agreement.

- (i) The settlement agreement shall be prepared; and shall be produced by a mediator within the allocated session.

- (ii) The mediator may consult his counsels for the preparation of the settlement agreement and such consultation cost shall be borne by the mediator.
- (iii) The mediator shall authenticate the settlement agreement and furnish a copy of the agreement to the parties by hand or registered post.

14. Effect of settlement agreement

14.1 A settlement agreement shall be binding on the parties.

PART VI

CONFIDENTIALITY AND PRIVILEGE

15. Confidentiality

15.1 No person shall disclose any mediation communication.

15.2 No mediation communication shall be used by any person who involved in mediation for any collateral or ulterior purpose, and he shall undertake to keep it confidential and not to use it, the following:

- (a) the facts that the mediation is to be taken place or has taken place;
- (b) any view expressed, suggestion or proposal for a settlement made by any party in the course of the mediation;
- (c) any proposal, suggestion or view expressed by the mediator;

- (d) the facts that a proposal for the settlement made by the mediator is accepted or otherwise by the other party;
- (e) all information, whether in oral or writing, which is produced for or raised in relation to the mediation, including any settlement agreement provided that the information is required or necessary to implement and enforce the settlement agreement; and
- (f) any trade secret or process.

15.3 Notwithstanding subrule 15.1 or 15.2, mediation communication may be disclosed or used if-

- (a) the disclose or use is made with the consent of the parties;
- (b) the disclose or use is made with the consent of the person who gives the mediation communication;
- (c) the disclose or use is required under this rule or for the purpose of any civil proceeding or criminal proceeding under any written law; or
- (d) the disclosure or use is under any written law for the purpose of implementation of the settlement agreement.

16. Privilege

16.1 Any mediation communication is privileged and shall not subject to discovery or be admissible in evidence in any proceeding.

16.2 Notwithstanding subrule 16.1, the Mediation communication is not privileged if –

- (a) the privilege is expressly waived in writing by the parties, the mediator and the non-party;

- (b) it is a public document by virtue of the Evidence Act 1950 [Act 56];
- (c) it is a threat to inflict bodily injury or commit a crime;
- (d) it is used or intended to be used to plan a crime, attempt to commit or commit a crime, or to conceal a crime or criminal activity or an ongoing crime or ongoing criminal activity;
- (e) it is sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator; or
- (f) it is sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a party, non-party of a party based on their conduct during any mediation session.

PART VII
MISCELLANEOUS

17. Costs

- 17.1 The Government shall pay RM2,000.00 per session comprising of four (4) hours for mediation service provided by a mediator under PMC-19 scheme.
- 17.2 The scheme is divided into two categories and the mediation service provided by the mediator may extend and up to five (5) sessions which amount to twenty (20) hours depending on the dispute amount.

17.3 The costs of mediation in which borne by the Government shall be provided as per Table 1 below:

Table 1

CATEGORY	DISPUTE AMOUNT	SESSION	HOURS	AMOUNT
A	RM1.00 to RM150,000.00	1	1 – 4 hours	RM2,000.00
B	RM150,001.00 to RM500,000.00	1 – 4	1 – 4 hours	RM2,000.00
			5 – 8 hours	RM4,000.00
			9 – 12 hours	RM6,000.00
			13 – 16 hours	RM8,000.00
C	More than RM500,000.00	1 – 5	1 – 4 hours	RM2,000.00
			5 – 8 hours	RM4,000.00
			9 – 12 hours	RM6,000.00
			13 – 16 hours	RM8,000.00

CATEGORY	DISPUTE AMOUNT	SESSION	HOURS	AMOUNT
			17 – 20 hours	RM10,000.00

***Notes for Table 1**

- I. Maximum session for Category A = one session four hours.
- II. Maximum session allowed for Category B= sixteen (16) hours.
- III. Maximum session allowed for Category C= twenty (20) hours.
- IV. Extension of mediation session
 - (i) 5 – 8 hours: such an extension to be decided by the mediator via PMC-19 System;
 - (ii) 9 – 12 hours: such an extension to be decided by PMC-19 upon an application by the mediator through an email to PMC-19 before the end of the previous mediation session;
 - (iii) 13 – 16 hours: such an extension to be decided by PMC-19 upon an application by the mediator through an email to PMC-19 before the end of the previous mediation session, by emailing; or
 - (iv) 17 – 20 hours: such an extension to be decided by PMC-19 upon an application by the mediator through an email before the end of the previous mediation session.

17.4 Subject to the subrule 17.3, the mediation costs under PMC-19 scheme is to be borne by the Government unless—

- (a) a contract in which the dispute amount is more than RM500,000 except for a construction work contract or construction consultancy contract and any other contract related to the supply of construction

material, equipment or workers in connection with a construction contract;

(b) the inability of any party or parties to perform any contractual obligation other than the measures prescribed, made or taken under the Prevention and Control of Infectious Diseases Act 1988 [Act 342] to control or prevent the spread of COVID-19; or

(c) any contract which is not subjected to law of Malaysia.

17.5 in addition to subrule 17.3, the parties shall bear their own cost if they wish to extend the mediation beyond the allocated time.

18. Liability of mediators

18.1 A Mediator shall not be liable for any act or omission in respect of anything done or omitted to be done in the discharge of his functions as a mediator unless the act or omission is proved to have been fraudulent or involves professional misconduct.

19. Protection for public officers of PMC-19

19.1 No matter or thing done by the public officer of PMC-19 shall, if the matter or thing was done with bona fide for the purpose of carrying out the provisions of these rules subject him personally to any action, liability, claim or demand whatsoever.

20. Repeal and savings

20.1 The Mediation Rules of Pusat Mediasi COVID-19 is repealed.

- 20.2 Where the mediation session was commenced before the coming into operation of these rules, the law governing the mediation process shall be the law which would have applied as if these rules had not been determined.
- 20.3 Nothing in these rules shall affect any mediation session relating to mediation which have been commenced before the coming into operation of these rules.

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