

**MEDIATION RULES OF PUSAT MEDIASI COVID-19
(PMC-19 RULES)**

1. Introduction

1.1 Subsection 9(2) Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) Act 2020 [Act 829], allows the Minister charged with the responsibility for law to determine the mediation process which includes the appointment of a mediator, role of a mediator, conduct of mediation and conclusion of mediation.

1.2 The PMC-19 Rules are designed for the mediation of any dispute arising from the inability of any party or parties to perform any contractual obligation arising from any of the categories of contracts specified in the Schedule under Section 7 of the Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) Act 2020 [Act 829] 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 between the parties.

1.3 Definitions used in the PMC-19 Rules are as follow:

“Act”	means the Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) Act 2020 [Act 829];
“PMC-19”	means the Government led mediation centre under BHEUU;
“PMC-19 System”	means the online system for the application and management of the Mediation Services provided by PMC-19;
“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” or “Mediators”	means trained mediators who have been – (i) accredited by any mediation accreditation body domestic or international as agreed by the Government; and (ii) appointed by the Minister;
“Party” or “Parties”	means party or parties to a mediation process registered and approved under PMC-19 System; and
“Rule” or “Rules”	means the PMC-19 Rules.

2. Commencement of Mediation in PMC-19

2.1 Application can only be made for matters arising from –

- (i) any of the categories of contracts specified in the Schedule under Section 7 of Act 829 where the dispute amount must not be more than RM500,000.00; and
- (ii) 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.

2.2 Any dispute specified in **Rule 2.1** above may be resolved through Mediation. The application for Mediation can be made through PMC-19 System at www.pmc19.gov.my.

2.3 Any application for referral to Mediation under PMC-19 requires consent of both parties to the contract.

3. Agreement to Mediate

3.1 If both contractual parties agree to refer a matter for Mediation under PMC-19, both parties shall sign and submit **Form A** (Agreement to Mediate) through the PMC-19 System.

3.2 Upon submission, the parties shall be deemed to have accepted and be bound by the PMC-19 Rules.

4. Appointment and Termination of Mediators

4.1 The Minister shall appoint a list of Mediators who will be assigned by the Case Manager to assist the Parties to reach a satisfactory resolution of the dispute and suggest options for the settlement of the dispute.

4.2 The appointed Mediator before commencing the Mediation, shall disclose any facts or circumstances that might call into question of his or her independence or impartiality in the eyes of the Parties. The Mediator shall submit a Declaration of Independence and Impartiality confirming independence and impartiality. This may include any financial or personal interest or any conflict arising due to the outcome of Mediation.

4.3 The Minister has the power to terminate the service of a Mediator if the Mediator appointed under this Rules –

- (a) no longer possess the relevant qualifications and knowledge in Mediation;
- (b) is found to have any financial or personal interest in the dispute; or
- (c) is found to have obtained the appointment by way of fraud.

5. Mediation Date, Time, Venue and Language(s)

5.1 The Case Manager shall determine the suitable date, time and venue for Mediation.

5.2 However, the Parties are allowed to change the date and time by communicating with the Case Manager.

5.3 The application to change date and time of the Mediation by the Parties is only allowed once and shall be notified to PMC-19 not less than seven (7) days from the scheduled Mediation.

5.4 The language used in Mediation shall be in Malay or English.

6. Role of Mediator

6.1 The Mediator shall facilitate the Mediation.

6.2 The Mediator shall determine the manner in which the Mediation is to be conducted.

6.3 The Mediator may assist the Parties to reach a satisfactory resolution of the dispute and suggest options for the settlement of the dispute.

6.4 The Mediator shall remain at all times independent and impartial.

6.5 The Mediator shall fill in the required information relating to the Mediation in the PMC-19 System.

6.6 The Mediator shall prepare a settlement agreement once the Parties have agreed to a settlement.

6.7 The Mediator shall update the outcome of the Mediation whether it is successful or unsuccessful by using the Mediation Completion Form (**Form E**) in the PMC-19 System.

6.8 The Mediator shall ensure the Mediation is carried out based on this Rules.

7. Responsibility of Parties

7.1 The Parties (individuals) shall attend the Mediation in person unless provided otherwise under this Rules. In the case of corporate entities, the Parties may be represented by their authorised officer to act for them at the Mediation. The Parties shall confer upon their authorised officer the necessary authority to settle the dispute.

7.2 The Parties shall comply with the date, time and venue of the Mediation as determined by the Case Manager.

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

7.4 The Parties shall participate in the Mediation in good faith to resolve their differences or disputes.

8. Mediation Proceedings

8.1 The Mediator shall ensure that the Mediation is conducted in private and the Mediator may meet with the Parties together or with each party separately.

8.2 There shall be no transcript, formal record and audio-visual recording of the Mediation.

8.3 The Mediator may request any party to submit or produce any additional information or document as the Mediator may deem appropriate.

8.4 All communications made in the Mediation, including information disclosed and views expressed, are made on a strictly 'without prejudice' basis and shall not be used in any proceeding.

8.5 The Mediator may seek for expert advice on any technical issue related to the dispute subject to the consent of the Parties. However, any cost incurred in obtaining expert advice shall be borne by the Parties.

8.6 Any Party to a Mediation may be represented by a lawyer. However, the lawyer shall be subject to the same obligations on privacy and confidentiality.

8.7 The Parties may bring two (2) representatives inclusive of the lawyers.

8.8 The Mediator may end the Mediation if, in the Mediator's opinion, further efforts at the Mediation would not contribute to a satisfactory resolution of the dispute between the Parties.

8.9 Notwithstanding **Rule 9.8**, the Mediator shall not call off any Mediation assigned to the Mediator except on grounds of illegality, elements of crime, and/or tax evasion.

8.10 The Mediator shall not postpone any Mediation assigned to the Mediator except for legitimate reason with prior written approval from PMC-19.

8.11 Mediators may apply to the case manager for online mediation subject to:

- (a) Severe COVID-19 outbreak or the need for a cross border mediation within Malaysia;
- (b) Willingness of the parties to agree to use online mediation application;
- (c) The mediator acquired the knowledge to run an online mediation platform;
- (d) Secure and reliable internet connection (transmit without delay);
- (e) Secure and reliable online mediation platform;
- (f) Able to produce settlement agreement within the allocated session;
- (g) Parties having online mediation conducted in Peninsular Malaysia shall be accompanied by lawyer; and
- (h) In the case of online mediation conducted in Sabah and Sarawak, presence of lawyers are discretionary.

9. Conclusion of Mediation

9.1 The Mediation shall conclude –

- (a) upon the signing of a settlement agreement by the Parties;
- (b) upon the issuance of a written declaration by the Mediator to the Parties stating that further efforts 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) upon the withdrawal from a Mediation by any Party or death of any Party or incapacity of any Party.

10. Settlement Agreement

- 10.1 Upon the conclusion of Mediation and reaching of an agreement by the Parties regarding a dispute, the Parties shall enter into a settlement agreement.
- 10.2 The settlement reached in the Mediation shall be reduced in writing, signed by the Parties and authenticated by the Mediator and the Mediator shall furnish a copy of the agreement to the Parties.
- 10.3 A settlement agreement shall be binding on the Parties.

11. Privacy and Confidentiality

- 11.1 The Mediation shall be private and confidential.
- 11.2 No person other than the Mediator, the Parties and their representatives shall be permitted to attend, hear or view any part of the Mediation or any communication relating to the Mediation.
- 11.3 All persons involved in the Mediation shall undertake to keep confidential and not use for any collateral or ulterior purpose –
- (a) the fact that Mediation is to take place or has taken place;
 - (b) any views expressed, or suggestions or proposals for settlement made by another Party in the course of the Mediation;
 - (c) any and all proposals suggested or views expressed by the Mediator;
 - (d) the fact that another Party had or had not been willing to accept a proposal for settlement made by the Mediator; and
 - (e) all information (whether oral or in writing) produced for or arising in relation to the Mediation, including any settlement agreement, except as directly necessary to implement and enforce any such settlement agreement.

12. Privilege

- 12.1 All Mediation communications are privileged and are not subject to discovery or be admissible in evidence in any proceeding.
- 12.2 Notwithstanding **Rule 13.1**, the Mediation communication is not privileged if –
- (a) the privilege is expressly waived in writing by the Parties, the Mediator and the non-party which refers to the representatives as specified in **Rule 9.7**;
 - (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, or representative of a party based on their conduct during any Mediation.

13. Exclusion of Liability

- 13.1 The Mediator shall not be liable to the Parties for any act or omission in connection with the Mediation provided by the Mediator, unless the act or omission is fraudulent or involves professional misconduct.
- 13.2 PMC-19 shall not be liable to the Parties for any act or omission in connection with the Mediation provided by the Mediator.

13.3 The Parties shall not make any claim against the Mediator and/or PMC-19, its officers and the Government for any matter in connection with or in relation to:

- (a) the Mediation;
- (b) the services provided by the Mediator and/or the PMC-19; and/or
- (c) the dispute between the Parties.

14. Cost

14.1 The Government shall pay RM2,000.00 per session comprising four (4) hours to the mediation service provider appointed by the Government for Mediation under the PMC-19 scheme. The scheme is divided into two categories and may extend up to four (4) sessions (sixteen (16) hours) depending on the dispute amount.

14.2 The cost borne by the Government shall depend on the disputed amount as follows:

CATEGORY	DISPUTE AMMOUNT	SESSION	HOURS	AMOUNT
A	RM1.00 to RM150,000.00	1	1 – 4 hours	RM 2,000.00
B	RM150,001.00 to RM500,000.00	Up to 4	1 – 4 hours 5 – 8 hours 9 – 12 hours 13 – 16 hours	RM 2,000.00 RM 4,000.00 RM 6,000.00 RM 8,000.00

14.3 Parties shall bear their own cost if they wish to extend the Mediation beyond the allocated time.

14.4 The maximum session allowed for subsidy under Category A is one (1) session (4 hours).

14.5 The maximum session allowed for subsidy under Category B is sixteen (16) hours.

14.6 The determination for extension is as follows:

- (a) 5 – 8 hours: to be decided by the Mediator via PMC-19 System;
- (b) 9 – 12 hours: to be decided by PMC-19 pursuant to an application by the Mediator before the end of the first day, by emailing to PMC-19; and
- (c) 13 – 16 hours: to be decided by PMC-19 pursuant to an application by the Mediator before the end of the first day, by emailing to PMC-19.

15. Non-application

15.1 Contract which does not fall under:

- (i) any of the categories of contracts specified in the Schedule under Section 7 of the Temporary Measures for Reducing the Impact of Coronavirus Disease 2019 (COVID-19) Act 2020 [Act 829] and dispute amount must not be more than RM 500,000.00; and
- (ii) the inability of any party or parties to perform any contractual obligation 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.

15.2 Contracts which are not governed by Malaysian Law.