

# PAM Arbitration Rules

(2010 Edition)

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## **Article 1 - General Provisions**

- 1.1 Where any agreement, submission or reference provides for arbitration under the Rules of the Pertubuhan Akitek Malaysia ('PAM') the parties shall be taken to have agreed that the arbitration shall be conducted in accordance with the PAM Arbitration Rules (2002 Edition) (referred to as the 'Rules') or any modified, amended or substituted Rules which PAM may have adopted and which have come into effect before the commencement of that arbitration, provided that the parties may by written agreement vary, modify or substitute the Rules or any part of them.
- 1.2 The Arbitration Act 2005 of Malaysia (or any statutory modification or re-enactment thereof) for the time being in force shall apply to these Rules.
- 1.3 Whenever the Arbitrator is to be appointed by the President or Deputy President of PAM ('the Appointing Authority') and the arbitration agreement is silent as to the applicable rules of arbitration, the arbitration shall be conducted in accordance with these rules, unless the Arbitrator agrees otherwise.

## **Article 2 - Commencement of the Arbitration**

- 2.1 The arbitration shall be regarded as commenced when one party submits to the Appointing Authority an application in the form prescribed by PAM requesting him to appoint the Arbitrator accompanied by an application fee to be determined from time to time by PAM.
- 2.2 Before an application is made to the Appointment Authority to appoint an Arbitrator, the party seeking such appointment, must send a request for arbitration to the other party which shall include:-
  - 1) the names and addresses of the parties to the arbitration;
  - 2) copies of the arbitration clause or the separate arbitration agreement that is invoked;
  - 3) a brief statement describing the nature and circumstances of the dispute and specifying the relief claimed;
  - 4) any proposal which the Claimant may have with regard to the identity, qualifications or number of Arbitrators;
  - 5) if the arbitration agreement provides for each party to appoint an Arbitrator, the name and address (and telephone and fax number and e-mail address if known) of the Arbitrator appointed by the Claimant

### **Article 3 - Request for Arbitration**

- 3.1 Where application is made to the Appointing Authority by either of the parties in dispute to appoint the Arbitrator, the party must furnish the following:-
- 1) copies of the request for arbitration to the other party and any response or other related correspondence or documentation;
  - 2) particulars of any methods or criteria for selection of Arbitrators agreed between the parties.

### **Article 4 - Appointment of the Arbitrator**

- 4.1 Any reference in these Rules to the Arbitrator means and includes a sole Arbitrator or all the Arbitrators where two or more are appointed.
- 4.2 Upon receipt of the written request together with the relevant form and details stated in Article 2 and 3 together with the payment stated in Article 2.1, the Appointing Authority shall appoint the Arbitrator to hear the dispute or differences.
- 4.3 The Arbitrator shall be appointed at the sole discretion of the said Appointing Authority and no reference to or agreement of any party is necessary.
- 4.4 The appointment of the Arbitrator may be revoked at any time by the written agreement of the parties.
- 4.5 Arbitrators appointed under these Rules shall be allowed to provide to PAM, on PAM's request, a report on the status of the arbitration.

### **Article 5 - Communications between Parties and the Arbitrator**

- 5.1 Any notice or other communication that may be or is required to be given by the Arbitrator or a party under these Rules shall be in writing and sent to the addresses of the parties. The Arbitrator may, with the consent of the parties, direct communication to be made additionally by facsimile, e-mail or other means of electronic communication.
- 5.2 Any communications sent by a party to the Arbitrator shall be copied by that party to the other party or parties and marked as having being copied. Similarly, any communication sent by the Arbitrator shall be copied to all parties

- 5.3 A party's last known place of business or registered address shall be a valid address for the purpose of any notice or other communication in the absence of any written notification of a change to such address by that party to the other parties and the Arbitrator. Similarly, the parties last known facsimile and/or e-mail number shall be deemed to be a valid number in the absence of any written notification of any changes.

## **Article 6 - Arbitral Proceedings.**

- 6.1 Subject to these Rules, the Arbitrator shall
- 1) act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting his case and dealing with that of his opponent
  - 2) adopt procedures suitable to the circumstances of the particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of the matters falling to be determined.
- 6.2 If either party so requests at any stage of the proceedings, the Arbitrator shall hold hearings for the presentation of evidence by witnesses, including expert witnesses and/or for oral arguments. In the absence of such a request, the Arbitrator, after hearing the parties, shall decide whether to hold such hearings or whether the proceedings shall be conducted on the basis of documents and other materials.
- 6.3 All documents or information supplied to the Arbitrator by one party shall at the same time be communicated by that party to the other party.

## **Article 7 - Place of Arbitration**

- 7.1 The place of arbitration shall be at the PAM Arbitration Centre, but where the parties in viewing all the circumstances of the case are of the opinion that another place is more appropriate, then they may choose the place of arbitration that is the most convenient and failing agreement, the arbitrator shall decide on the place of arbitration.

## **Article 8 - Language**

- 8.1 The language of the arbitration shall be English, unless the parties and the Arbitrator otherwise agree.

- 8.2 The Arbitrator may direct any party to provide translations of any document or any witness's statement from another language into the English Language to the Arbitrator and to the other party or parties.

## **Article 9 - Meetings**

- 9.1 As soon as possible after accepting the appointment, the Arbitrator shall convene such meetings for the purpose of giving directions for the conduct of the arbitration.
- 9.2 The Arbitrator may direct the parties from time to time to attend such other meetings or hearings as he thinks fit for the purpose of the arbitration.

## **Article 10 – Statement of Case and Statement of Defence**

- 10.1 The Claimant who is the party initiating the arbitration, shall within six (6) weeks of the meeting held pursuant to Article 9 hereof or such other times as the Arbitrator may direct, serve a Statement of Case which shall include the following:

- (i) the names and addresses of the parties;
- (ii) a statement of the facts supporting the claim;
- (iii) the relief or remedy claimed;
- (iv) any contention of law on which it relies;
- (v) the statement should contain sufficient particulars to enable the other party to answer each allegation without recourse to general denials;

and which may include

- (vi) any documents which the Claimant considers relevant to establish the facts in the Statement of Case.
- 10.2 Within six (6) weeks of receipt of the Statement of Case, or such other times as the Arbitrator may direct, the Respondent shall serve its Defence and Counterclaim, if any. The provision of Article 10.1 hereof shall apply similarly to the Defence and Counterclaim.
- 10.3 Within four (4) weeks of receipt of the Counterclaim, if any, or such other times as the Arbitrator may direct, the Claimant shall serve its Defence to the Counterclaim, which shall include the matters contemplated by Article 10.1.

10.4 The Arbitrator shall decide which further written statements, in addition to the Statement of Case and the Statement of Defence, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements.

## **Article 11 - Amendment to Statement of Claim and Defence**

11.1 During the course of the proceedings, either party may amend or supplement his case or defence unless the Arbitrator on the application of the other party considers it inappropriate to allow such amendment having regard to the delay in making it or prejudice to the other party or any other circumstances. Provided, however that a case may not be amended in such a manner that the amended case falls outside the scope of the arbitration agreement.

## **Article 12 - Jurisdiction of the Arbitrator**

12.1 The Arbitrator shall have the power to rule on any objection taken to his jurisdiction, including any objection with respect to the existence or validity of the arbitration clause or of the separate arbitration agreement.

12.2 The Arbitrator shall have the power to determine the existence or the validity of the contract of which an arbitration clause forms a part. For the purpose of this clause, an arbitration clause which forms part of a contract and which provides for arbitration under these Rules shall be treated as an agreement independent of the other terms of the contract. A decision by the Arbitrator that the contract is null and void shall not affect the validity of the arbitration clause.

12.3 A plea that the Arbitrator does not have jurisdiction shall be raised not later than in the Statement of Defence or, with respect to a Counterclaim, in reply to the Counterclaim.

12.4 In general, the Arbitrator shall rule on a plea concerning its jurisdiction as a preliminary question. However, the Arbitrator may proceed with the arbitration and rule on such a plea in the final award.

12.5 The Arbitrator shall, without prejudice to the generality of his power, have power:

- 1) to rectify the Contract so that it accurately reflects the true agreement made by the parties;

- 2) to direct such measurements and/or valuations as may in his opinion be desirable in order to determine the rights of the parties;
- 3) to ascertain and award any sum which ought to have been the subject of or included in any certificate;
- 4) to open up, review and revise any certificate, opinion, decision, requirement, or notice;
- 5) to determine all matters in dispute submitted to him in the same manner as if no such certificate, opinion, decision, requirements or notice had been given;
- 6) to award interest from such dates at such rates and with such rests as he thinks fit:
  - (i) on the whole or part of any amount awarded by him in respect of any period up to the date of the award;
  - (ii) on the whole or part of any amount claimed in the arbitration and outstanding at the commencement of the arbitral proceedings but paid before the award was made, in respect of any period up to the date of payment; and
- 7) to award interest from the date of the award (or any later date) until payment, at such rates and with such rests as he thinks fit on the outstanding amount of any award.

### **Article 13 - Further Written Statements**

- 13.1 The Arbitrator shall decide which further written statements, in addition to the Statement of Case and the Statement of Defence, shall be required from the parties or may be presented by them and shall fix the periods of time for communicating such statements.

### **Article 14 - Evidence**

- 14.1 Each party shall have the burden of proving the facts relied on to support his claim or defence, unless otherwise required by law or stipulated by statute.
- 14.2 The Arbitrator may, if it considers it appropriate require a party to deliver to the Arbitrator and to the other party, within such a period of time as the Arbitrator shall decide, a summary of the documents and other evidence, which that party intends to present in support of the facts in issue set out in his Statement of Case or Statement of Defence.

- 14.3 At any time during the arbitral proceedings, the Arbitrator may require the parties to produce documents, exhibits or other evidence within such a period of time as the Arbitrator shall determine.

## **Article 15 - Hearings**

- 15.1 Any party which expresses a desire to that effect has the right to be heard orally before the Arbitrator on the merits of the dispute, unless the parties have agreed in writing on documents only arbitration.
- 15.2 The Arbitrator shall fix the date and time of any meetings and hearings in the arbitration, and shall give the parties reasonable notice thereof.
- 15.3 All meetings and hearings shall be in private and remain confidential unless the parties otherwise agree in writing.
- 15.4 The Arbitrator shall have the authority to establish time limits for meetings and hearings, or for any part thereof.

## **Article 16 - Witness**

- 16.1 Before the commencement of or during any hearing, the Arbitrator may require any party to give notice of the identity of each witness that the party wishes to call as well as the subject matter of that witness's testimony, its content and its relevance to the issues in the arbitration.
- 16.2 The Arbitrator may also determine the time, manner and form in which such materials should be exchanged between the parties and presented to the Arbitrator.
- 16.3 The testimony of a witness may be presented by a party in a written form, either as a signed statement or a sworn affidavit.
- 16.4 Any party may request that a witness, on whose testimony another party seeks to rely, should attend for oral questioning at a hearing before the Arbitrator. If the Arbitrator orders that other party to produce the witness and the witness fails to attend the oral hearing without good cause, the Arbitrator may place such minimal weight on the written testimony (or exclude the same altogether) as he considers appropriate in the circumstances of the case.

## **Article 17 – Experts Appointed by the Arbitrator**

17.1 By consent of the parties, the Arbitrator:

- 1) may appoint one or more experts to report to the Arbitrator on specific issues;
- 2) may require a party to give any such expert(s) any relevant information or to produce, or to provide access to any relevant documents, goods or property for inspection by the expert(s).

Unless otherwise agreed by the parties, if a party so requests or if the Arbitrator considers it necessary, any expert shall, after delivery of his written or oral report, participate in a hearing at which the parties shall have the opportunity to question him, and to present expert witnesses in order to testify on the points at issue.

17.2 The fees and expenses of any experts appointed by the Arbitrator for which the Arbitrator is liable are expenses forming part of the Costs of the Arbitration.

## **Article 18 - Default Powers**

18.1 If the Arbitrator is satisfied that there has been inordinate and inexcusable delay on the part of the claimant in pursuing his claim or the respondent in pursuing any counterclaim in that the delay:

- 1) gives rise, or is likely to give rise, to a substantial risk that it is not possible to have a fair resolution of the issues in that claim, or
- 2) has caused, or is likely to cause serious prejudice to the respondent

the Arbitrator may issue an order to strike out the Claim or Counterclaim, as the case may be, and/or to terminate the proceedings and make an award as to the costs thereof

18.2 If without showing sufficient cause a party:

- 1) fails to attend or be represented at an oral hearing of which due notice was given, or
- 2) where matters are to be dealt with in writing, fails after due notice to submit written evidence or make written submission,

the Arbitrator may continue the proceedings in the absence of that party or, as the case may be, without any written evidence or submission on his behalf, and make an award on the basis of the evidence before it.

- 18.3 If without showing sufficient cause a party fails to comply with any orders or directions of the Arbitrator, the Arbitrator may make a peremptory order specifying the consequences of the parties' failure and prescribing such time for compliance with it as the Arbitrator considers appropriate.
- 18.4 If a party fails to comply with a peremptory order, then the Arbitrator may do any of the following:
- 1) direct that the party in default shall not be entitled to rely upon any allegation or materials which was the subject matter of the order;
  - 2) draw such adverse inferences from the act of non-compliance as the circumstances justify;
  - 3) proceed to an award on the basis of such materials as have been properly provided to it;
  - 4) make such an order as the Arbitrator thinks fit as to the payment of Costs of the Arbitration incurred in consequences of the non-compliance.

### **Article 19 - Closure of Hearings**

- 19.1 The Arbitrator may inquire of the parties if they have any further proof to offer or witnesses to be heard or submission to make and, if there are none, it may declare the hearings closed.
- 19.2 The Arbitrator may, if he considers it necessary owing to exceptional circumstances, decide, on its own motion or upon motion of a party, to reopen the hearings at any time before the award is made.

### **Article 20 - Waiver of Rules**

- 20.1 A party who knows that any provisions of, or requirement under these Rules has not been complied with and yet proceeds with the arbitration without promptly stating his objection to such non-compliance, shall be deemed to have waived his right to object.

### **Article 21 - The Award**

- 21.1 The Arbitrator has the power, either on his own motion or on the application of any party to the arbitration, to make one or more interim awards. If the parties to the arbitration jointly apply to the Arbitrator to make an interim award on specific disputes or issues, then the Arbitrator shall proceed to conduct hearings on those disputes and issues expeditiously and proceed to make interim awards as requested jointly by the parties.

- 21.2 The parties are free to agree on the form of an award. If or to the extent that there is no such agreement, the following provisions apply:
- 1) the award shall be in writing signed by all Arbitrators or those assenting to the award.
  - 2) the award shall contain the reasons for the award unless it is an agreed award or the parties have agreed to dispense with reasons.
  - 3) the award shall state the seat of the arbitration and the date when the award is made.
- 21.3 The Arbitrator shall deliver his award as soon as practical but not later than three (3) months from his receipt of the last closing statement from the parties. Such time frame for delivery of the award may be extended by notifications to the parties, if the Arbitrator considers that extended time is required for the preparation of the award. The Arbitrator may exercise his lien over the award until the Cost of the Arbitration has been fully paid.
- 21.4 Subject to the Arbitration Act and the law for the time being in force, all awards shall be final and binding on the parties.

## **Article 22 - Interpretation of the Award**

- 22.1 Within twenty eight (28) days of the receipt of an award, any party upon written notice to the other parties may request the Arbitrator to interpret his award.
- 22.2 The interpretation shall be given in writing within twenty eight (28) days of the receipt by the Arbitrator of the request. The interpretation shall then form part of the award.

## **Article 23 - Correction of the Award**

- 23.1 Within twenty eight (28) days of the receipt of an award, any party upon written notice to the other parties may request the Arbitrator to correct in the award any errors of computation, any clerical or typographical errors or errors of a similar nature. The Arbitrator may within fourteen (14) days after the receipt of such request, correct such errors
- 23.2 The Arbitrator may within twenty eight (28) days of the receipt of an award by all of the parties, of his own motion, make corrections of any error of computation, any clerical or typographical errors or errors of a similar nature in his award.

- 23.3 All such corrections shall be in writing and shall form part of the award

#### **Article 24 - Additional Award**

- 24.1 Within twenty-eight (28) days of the receipt of an award, any party upon written notice to the other parties may request the Arbitrator to make an additional award as to the matters within the Arbitrator's terms of reference in the arbitral proceedings but omitted from the award.
- 24.2 If the request is a joint request of the parties the Arbitrator shall comply with the request. Otherwise the Arbitrator shall make such additional award only if he considers it to be justified and considers that the omission can be rectified without any further hearings or evidence. Such additional award shall be made within twenty eight (28) days of the request and shall form part of the award.

#### **Article 25 - Cost of the Arbitration and Party Cost**

- 25.1 The Cost of the Arbitration shall include the reasonable fees and expenses of the Arbitrators and the PAM's administrative costs in accordance with the scale in force at the time of the commencement of the arbitral proceedings, as well as the fees and expenses of any experts appointed by the Arbitrator. Unless the parties agree otherwise, the Arbitrator must in its award determine the proportion in which the parties are to bear the Cost of the Arbitration. If any part of the Cost of the Arbitration has been paid by the other party, the latter has the right to reimbursement or recovery from the former.
- 25.2 Party Cost means the legal and other costs incurred by a party for, in connection with, and incidental to, the arbitration. Unless the parties agree otherwise, the Arbitrator shall in the final Award decide which of the parties shall bear the Party Costs or in what proportion they shall be borne by the parties.

## **Article 26 - Deposit Towards the Cost of the Arbitration**

- 26.1 The party requesting the Appointment Authority for the appointment of an Arbitrator shall be required to provide an initial deposit towards the Cost of the Arbitration. The amount of the initial deposit will be as prescribed from time to time by PAM. Such initial deposit is a prerequisite before the Appointment Authority will appoint an Arbitrator.
- 26.2 Within two (2) weeks from the appointment of an Arbitrator, the other party shall also provide a similar deposit towards the Cost of the Arbitration. If the other party fails or neglects to provide the further deposit, the party requesting for the appointment shall provide the further deposit to PAM.
- 26.3 Payments of the deposit towards the Cost of the Arbitration shall be by cheque made payable to PAM and crossed A/C Payee only or such other mode of payment as PAM may notify in writing. The parties are jointly and severally liable to pay the Cost of the Arbitration as are appropriate in the circumstances. PAM merely acts as agent of the Arbitrator in the collection of deposits towards the Cost of the Arbitration, and is not liable except to account for the deposit so collected or payments so made. Any interest earned from deposits under these Rules is retained by PAM.
- 26.4 During the progress of the arbitration, the Arbitrator may require the parties, from time to time, to provide supplementary deposit towards the Cost of the Arbitration, and the parties shall, within twenty-eight (28) days pay the supplementary deposit direct to PAM. If any party fails or refuses to pay his portion of the supplementary deposit, the Arbitrator shall so inform the parties in order that one or another of them may make the required payment. If such payment is not made, the Arbitrator may at his exclusive discretion either:
- 1) proceed with the arbitration and hearings, and may exercise his lien over the award until all payments towards the Cost of the Arbitration has been paid by both parties or by either of them; or
  - 2) suspend the further arbitration proceedings and/or hearings until and unless all deposit towards the Cost of the Arbitration has been paid by both the parties or by either of them.

- 26.5 During the course of the arbitration, the Arbitrator shall, from time to time be entitled to advance payments towards the Cost of the Arbitration, from the amount deposited by the parties with PAM. The Arbitrator shall notify the parties of the amount of advance payments drawn-down, provided always that the amount of the draw-down shall not exceed the Cost of the Arbitration at that point in time.
- 26.6 When the award has been made the Arbitrator shall render a detailed account of the Cost of the Arbitration to the parties, taking into consideration the total advance payments withdrawn by the Arbitrator against the total amount deposited by the parties with PAM for the Costs of the Arbitration.
- 26.7 If the deposit towards the Cost of the Arbitration is not sufficient to pay for the cost of the Arbitration, then the party who takes up the award shall pay the difference before taking up the award.
- 26.8 If the deposit towards the Cost of the Arbitration exceeds the cost, then PAM shall refund the excess deposit free of interest to the party or parties in accordance with the Arbitrator's award or direction.
- 26.9 In the event of a mutual settlement of issues or disputes by agreement between the parties before the award is made, the parties shall be jointly and severally responsible to settle the Cost of the Arbitration within twenty-eight (28) days of the date of mutual settlement, if the deposit with PAM towards the Cost of the Arbitration is insufficient to defray the costs incurred to date. This will apply irrespective of whether or not a consent award is required to be made or published.

## **Article 27 - Power to Limit Recoverable Costs**

- 27.1 By the consent of the parties, the Arbitrator may direct that the Party Cost of the arbitration, or any part of the arbitral proceedings, shall be limited to a specified amount.

27.2 Any direction may be made or varied at any stage, but this shall be done sufficiently in advance of the incurring of costs to which it relates, or the taking of any steps in the proceedings which may be affected by it, for the limit to be taken into account.

## **Article 28 - Exclusion of liability**

28.1 The Appointment Authority, PAM, the Arbitrator appointed and any experts appointed by the Arbitrator, shall not be liable to any party in the arbitration, for any act or omission in the discharge or purported discharge of that function unless the act or omission is fraudulent.

28.2 The parties and the Arbitrator agree that statements or comments whether written or oral made in the course of the arbitration proceedings shall not be relied upon to found or maintain any action for defamation, libel, slander or other related complaint.

## **Article 29 – Confidentiality**

29.1 The parties and the Arbitrator must at all times treat all matters relating to the arbitration (including the existence of the arbitration) and the award confidential. A party or any Arbitrator must not, without the prior written consent of the other party or parties, as the case may be, disclose to a third party any such matter except:-

- 1) for the purpose of making an application to any competent court;
- 2) for the purpose of making an application to the courts to enforce the award;
- 3) pursuant to the order of a court of competent jurisdiction;
- 4) in compliance with the provisions of the laws which is binding on the party making the disclosures;
- 5) any reports of the arbitration provided to PAM in accordance with these Rules.

## ARBITRATOR'S FEES AND COST FOR VACATED DATES

### 1.0 Arbitrator's Fees

- 1.1. The Arbitrator's fees are charged at the rate of RM450.00 per hour for PAM Standard Forms of Building Contract, or RM600 per hour for other forms of contract, computed on the basis of time spent in studying the issues, submissions, in looking at case law and authorities cited, in conducting meetings and the hearing, on the issuance of Order for Directions, in the deliberations and the publication of the award.
- 1.2. Cost of the issuance of Orders for Directions are computed at RM450.00 per hour (or part thereof) for PAM Standard Forms of Building Contract or RM600 per hour (or part thereof) for other forms of contract, and the costs for the issuance of Orders for Directions are deemed to be inclusive of secretarial costs which may be required.
- 1.3. Cost of meetings are charged on a half-day basis (if less than 4 hours) and for hearing day/date are charged on a full-day (8-hour) basis.
- 1.4. The rates include PAM's administrative charges but excludes service tax if payable by the Arbitrator.
- 1.5. PAM's administrative charge shall be 7.5% of the Arbitrator's fees.

### 2.0 Cost – Vacating Set Dates

- 2.1. Cost for vacating set dates for meeting(s) / hearing are chargeable as follows:
  - (i) Application (to vacate) is made 7 days or less than 7 days from date to be vacated - charged at 100%
  - (ii) Application (to vacate) is made more than 7 days but less than a month from date to be vacated - charged at 50%
  - (iii) Application is made with more than a month but less than 3 months notice - charged at 25%
  - (iv) No cost thrown away is to be charged for dates vacated with more than 3 months notice to vacate - -
- 2.2. The Arbitrator shall have the absolute discretion in deciding whether or not to exercise his right under paragraph 2.1 above.

### **3.0 Other Costs – Venue / Refreshments And Reimbursable Costs, Etc.**

- 3.1. If proceedings are conducted in the Klang Valley or within town/city of Arbitrator's home/office location, no mileage claim shall be charged.
- 3.2. If proceedings are conducted away from the Klang Valley or away from the town /city of Arbitrator's home/office location, actual travelling and hotel accommodation and meals expenses as incurred are chargeable. The Arbitrator is allowed travel by airline in Business Class. Costs if any which may be incurred for the transportation /delivery of documents to the venue of the proceedings are chargeable.
- 3.3. In the event own motor vehicle is used for travelling, mileage claims (at 55 sen per kilometer) and toll charges incurred are reimbursable.
- 3.4. If proceeding are conducted away from the Klang Valley or away from the town/ city of the Arbitrator's home/office location, the Arbitrator is entitle to charge a day's cost in respect of each return trip made.
- 3.5. Cost of hiring of venue (and light refreshments, if any), telephone and facsimile charges, postage, as may be incurred in respect of the proceedings are reimbursable.

### **4.0 Security towards Arbitrator's Fees and Costs**

- 4.1. Each party is to provide an initial deposit of RM5,000.00 to Pertubuhan Akitex Malaysia (PAM) prior to the appointment of the Arbitrator. The security towards the Arbitrator's fees and costs may be increase as directed by the Arbitrator with due regard to the time and costs which may reasonably be estimated for up to the making of the Final Award.

As a rule of thumb, the security required is on the basis of twice the costs of the time put down/ set for the meetings and the hearing.

### **5.0 Arbitrator's Statement of Costs**

- 5.1. Upon the conclusion of the proceedings by the publication of the Final Award or the Consent Award or by the termination of the proceedings by consent of Parties without the publication of any award, the Arbitrator's claim for Cost of the Arbitration is to be accompanied by a Statement of Arbitrator's Cost.
- 5.2. The Statement of Arbitrator's Cost shall be an itemised statement detailing the cost charged with regards to the heads of claims as set out in these rules.

# GUIDELINES OF GOOD PRACTICE FOR ARBITRATORS

## Introduction

An arbitrator should be impartial, independent, competent, diligent and discreet. These Guidelines seek to indicate the manner in which these abstract qualities may be assessed.

### 1 Professional Standard

An Arbitrator shall proceed diligently and effectively to provide the parties with a just and effective resolution of the dispute and shall be and shall remain free from bias.

### 2 Acceptance of Appointment

A prospective Arbitrator shall not solicit appointment and accept appointment if offered only if he is fully satisfied that he is able to discharge his duties without bias or the appearance of bias; that he is competent to determine the issues in dispute that he is able to give the arbitration the time and attention which the parties are reasonably entitled to expect.

### 3 Elements of Bias

3.1 The criteria for assessing questions relating to bias are impartiality and independence. Partiality arises when an Arbitrator favours one of the parties, or where he is prejudiced in relation to the subject matter of the dispute.

Dependence arises from relationships between an Arbitrator and one of the parties, or with someone closely connected with one of the parties.

3.2 Facts which might lead a reasonable person, not knowing the Arbitrator's true state of mind, to consider that the Arbitrator is dependent or connected with a party will create an appearance of bias. The same is true if an Arbitrator has a material interest in the outcome of the dispute, or if he has already taken a position in relation to it. The appearance of bias is best overcome by full disclosure as described in Guideline 4.

3.3 Any current direct or indirect business relationship between an Arbitrator and a party, or with a person who is known to be a potentially important witness, will give rise to justifiable doubts as to a prospective Arbitrator's impartiality or independence, he should decline to accept an appointment in such circumstances unless

all the parties agree in writing that he may proceed. Examples of indirect relationship are where a member of the prospective Arbitrator's family, his firm, or any business partner has a business relationship with one of the parties.

- 3.4 Past business relationship will not operate as an absolute bar to acceptance of appointment, unless they are of such magnitude or nature as to be, or appear to be, likely to affect a prospective Arbitrator's judgement.
- 3.5 Continuous and substantial social or professional relationships between a prospective Arbitrator and a party, or with a person who is known to be a potentially important witness in the arbitration, will give rise to justifiable doubts as to the impartiality or independence of a prospective Arbitrator.

#### **4 Duty of Disclosure**

- 4.1 A prospective Arbitrator shall disclose all facts or circumstances that may give rise to justifiable doubts as to his impartiality or independence. Failure to make such disclosure creates an appearance of bias, and may of itself be a ground of disqualification even though the non-disclosed facts or circumstances would not of themselves justify disqualification.
- 4.2 A prospective Arbitrator should disclose:
  - (a) Any past or present business relationship, whether direct or indirect as stated in Article 3.3 with any party to the dispute or any representative of a party, or any person known to be a potentially important witness in the arbitration. With regard to present relationships the duty of disclosure applies irrespective of the magnitude, but with regards to past relationships, only if they were of more than a trivial nature in relation to the Arbitrator's professional or business affairs. Non-disclosure of an indirect relationship unknown to a prospective Arbitrator will not be a good ground for disqualification unless it could have been ascertained by making reasonable enquiries.
  - (b) The nature and duration of any substantial social relationship with any party or any person known to be likely to be an important witness in the arbitration.
  - (c) The extent of any prior knowledge he may have of the dispute.
  - (d) The extent of any commitments which may affect his availability to perform his duties as Arbitrator as may be reasonably anticipated.

- 4.3 The duty of disclosure continues throughout the arbitral proceedings as regards new facts or circumstances.
- 4.4 Disclosure should be made in writing and communicated to all parties.

## **5 Communication with Parties**

- 5.1 When approached with a view to appointment, a prospective Arbitrator should make sufficient enquiries in order to inform himself whether there may be any justifiable doubts regarding his impartiality or independence, whether he is competent to determine the issues in dispute and whether he is able to give the arbitration the time and attention required. He may also respond to enquiries from those approaching him, provided that such enquiries are designed to determine his suitability and availability for the appointment and provided that the merits of the case are not discussed.
- 5.2 Throughout the arbitral proceedings, an Arbitrator should avoid any unilateral communication regarding the case with any party its representatives. If such communication should occur, the Arbitrator should inform the other party or parties of its substance.
- 5.3 An arbitrator should not accept any gift or hospitality, directly or indirectly, from any party to the arbitration. An Arbitrator should be particularly meticulous in avoiding significant social or professional contacts with any party to the arbitration other than in the presence of other parties.

## **6 Duty of Diligence**

An Arbitrator should devote such time and attention as the parties may reasonably require having regard to all the circumstances of the case and shall do his best to conduct the arbitration in such a manner that costs do not rise to an unreasonable proportion of the interests at stake.

## **7 Confidentiality of the Deliberations**

The deliberations of the Arbitrator and the contents of the award itself, remain confidential in perpetuity unless the parties release the Arbitrator from his obligation.

**8 Costs**

An Arbitrator should be prepared to determine on a commercial basis the costs of the reference if such cost cannot be agreed between the parties and provided that such determination is within his competence.

**9 Award**

The award should be drafted:

- (a) Using plain English
- (b) In a logical format
- (c) Setting down the reasons leading to the decisions
- (d) So that the decisions are certain (e.g. specify totals of money, not percentages where possible) and
- (e) So that the outcome is legally enforceable

**10 Procedure**

An Arbitrator should adopt a procedure in which to run the arbitration which is in accordance with the wishes of the parties. If the parties are unable to agree on a procedure, the Arbitrator should set the procedure. The procedure should be such as to resolve the dispute quickly, efficiently and economically.

**11 Vacated Charges**

Vacated charges are intended to compensate the Arbitrator for any loss likely to be suffered as result of time set aside for a hearing not being required and for the inconvenience caused by cancellations. In fixing the amount of such charges, the Arbitrator should make full allowance for the possibility of mitigating his loss.

**12 Retention of Documents**

An Arbitrator should offer the following policy:

- (a) Original documents – offer to return them to the relevant party of solicitor at the end of the period for appeal against the award plus one month.
- (b) Photocopied documents – as for original documents.
- (c) Correspondence relating to the appointment, the pleadings, directions, proofs of evidence and documents relating to the calculation of fees, should be retained for six months for a straightforward case and up to seven years for a complex case.
- (d) Notes of the arbitration and the report of any assessor – these should be retained for up to seven years.
- (e) The award - this should be retained indefinitely.

## **CODE OF CONDUCT FOR ARBITRATORS**

### **Introduction**

The word 'ethics' is defined as moral principles or rules of conduct. A code of Conduct provides a set of moral principles according to which one can conduct one's affairs.

The purpose for adopting a Code of Ethics for Arbitrators is not only to serve as a guide to the conduct of Arbitrators, but also to serve as a point of reference for users of the arbitration process and to promote public confidence in arbitration as a suitable forum for resolving disputes. The Code itself is not a rigid set of rules but is a reflection of internationally acceptable guidelines.

In some instances the ethics set down herein may be repeated in legislation governing the arbitration, case law or rules which parties adopt. In many instances, members will also be bound by other codes of practice or conduct imposed upon them by virtue of membership of primary professional organizations.

The object of arbitration is to obtain fair resolution of disputes by an impartial tribunal without unnecessary delay or expense.

### **Rule One**

An Arbitrator has an overriding obligation to act fairly and impartially as between the parties, at all stages of the proceedings.

### **Rule Two**

An Arbitrator shall be free from bias and shall disclose any interest or relationship likely to affect his impartiality or which might reasonably create an appearance of partiality or bias. This is an ongoing duty and does not cease until the arbitration has concluded. Failure to make such a disclosure itself may create an appearance of bias, and may be a ground for disqualification.

An Arbitrator shall not permit outside pressure, fear of criticism or any form of self interest to affect his decisions. An Arbitrator shall decide all the issues submitted for determination after careful deliberation and the exercise of his impartial judgement.

An Arbitrator in communicating with the parties shall avoid impropriety or the appearance of impropriety. There shall be no private communications between an Arbitrator or any party regarding substantive issues in the case. All communication, other than proceedings at a hearing, should be in writing. Any correspondence shall remain private and confidential and shall not be copied to anyone other than the parties to the dispute, without the agreement of the parties.

An Arbitrator shall not accept any gift or substantial hospitality, directly or indirectly, from any party to the arbitration, except in the presence of the other parties and/or with their consent.

**Rule Three**

An Arbitrator shall only accept an appointment if he has suitable experience and ability for the case and available time to proceed with the arbitration.

**Rule Four**

An Arbitrator shall be faithful to the relationship of trust and confidentiality inherent in that office.

**Rule Five**

An Arbitrator's fees and expenses must be reasonable taking into account all the circumstances of the case. An Arbitrator shall disclose and explain the basis of fees and expenses to the parties.

**Rule Six**

Arbitrators may publicise their expertise and experience but shall not actively solicit appointment as Arbitrators

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