



MBAM

MBAM Mediation Services



Master Builders Association Malaysia

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MBAM MEDIATION PROCESS

1. Parties sign Agreement to Mediate.
2. Any party submits Agreement to Mediate to MBAM Secretariat together with processing fees:
 - i) If nominated mediator is on MBAM panel, Secretariat contacts nominated Mediator for consent to act;
 - ii) If no nominated mediator is named, Secretariat contacts any Mediator on MBAM panel for consent to act;
 - iii) If nominated mediator is not on MBAM panel, Secretariat refers to Mediation Special-Committee
 - a) **Special-Committee agrees to appoint nominated mediator on ad hoc basis**
Secretariat contacts nominated mediator for consent to act, and agreement to be subject to MBAM Mediation Rules and Schedule of Fees:
 - » Nominated mediator agrees- will be nominated on ad hoc basis;
 - » Nominated mediator disagrees- Secretariat proposes alternative Mediator from MBAM panel for parties to consent;
 - b) **Special Committee disagrees to appoint nominated mediator on ad hoc basis**
Secretariat proposes alternative Mediator from MBAM panel for parties to consent.
3. Mediator submits declaration to MBAM and parties:
 - i) No personal or financial interest;
 - ii) Disclosure of all past dealings;
 - iii) Disclosure of all personal, financial or business relationships;
 - iv) Undertaking to devote time and attention to mediate diligently and promptly.
4. Parties:
 - i) Agree with mediator appointed, mediation will proceed;
 - ii) Disagree with mediator appointed:
 - a) **Request MBAM Secretariat to propose alternative Mediator**
5. Mediator requires parties to submit:
 - i) Summary of case;
 - ii) Relevant documents or excerpts;
 - iii) Pay deposit to cover 100% fees and MBAM administrative charges according to Schedule of Fees.
6. Mediator proceeds with mediation.
7. Mediation:
 - i) If successful or partially successful: settlement or partial settlement;
 - ii) If not successful: terminated by Mediator or either party.
8. Mediator reports outcome to MBAM.
9. Release of fees by MBAM to Mediator.

MBAM MEDIATION RULES

1. These rules govern all mediation conducted by the Master Builders Association of Malaysia (MBAM).
2. Before commencing mediation, all parties shall first and foremost sign an Agreement to Mediate which shall substantially be in the form as set out in Appendix A hereto.
3. Any party may submit the duly completed Agreement to Mediate to the MBAM secretariat together with the then-current processing fees as determined by MBAM from time to time.
4. Upon receipt of the Agreement to Mediate:
 - i) Where the parties have indicated a choice of mediator who is on the MBAM Panel of Mediators (the MBAM Panel), the MBAM Secretariat shall contact the nominated Mediator to obtain his/her consent to act;
 - ii) Where the parties have not indicated a choice of mediator, the MBAM Secretariat shall propose a Mediator from the MBAM Panel to the parties for their consent;
 - iii) Where the parties have indicated a choice of mediator who is not on the MBAM Panel, the MBAM Secretariat shall refer the matter to the MBAM Mediation Special-Committee who will either:
 - a) Approve the said person as an ad hoc mediator for purposes of the particular mediation subject to the said person agreeing to adhere to these Rules and the Schedule of Fees stipulated by MBAM; or
 - b) Require the MBAM Secretariat to propose an alternative Mediator from the MBAM Panel to the parties for their consent.
5. Before commencing mediation, all appointed Mediators shall be required to:
 - i) Submit a declaration that he/she has no personal or financial interest in the results of the mediation;
 - ii) Disclose any and all past dealings with the parties in the last two (2) years;
 - iii) Disclose any personal, financial or business relationships that he/she may have with the parties and/or their principal officers;
 - iv) Undertake to devote adequate time and attention to the mediation and to proceed with the mediation diligently and promptly.
6. If any party is unwilling to proceed with the appointed Mediator after he/she submits the requisite declaration and makes the required disclosures, such party may request the MBAM Secretariat to propose an alternative Mediator in his/her stead.
7. Prior to commencing mediation, the Mediator shall require all parties to:
 - i) Submit a summary stating its case;
 - ii) If necessary, submit relevant documents or excerpts thereof which may be referred to during the mediation.
8. Parties shall pay an equal amount of deposit to collectively cover 100% of the Mediator's fees and MBAM administrative charges as determined by MBAM from time to time in accordance with its then-current Schedule of Fees prior to the commencement of mediation.

9. The appointed Mediator shall:

- i) Familiarise himself/herself with the particular facts of the matter before commencement of the mediation;
- ii) Abide at all times to the Agreement to Mediate, these Rules and the Code of Conduct governing Mediators as may be determined by MBAM from time to time;
- iii) Facilitate discussions between the parties towards an amicable resolution;
- iv) Maintain confidentiality at all times;
- v) Refrain from rendering any advice or expressing any opinion;
- vi) Subject to the payment of the advance deposit by MBAM, diligently proceed with the mediation in a timely manner until an amicable resolution is reached or until such time as the mediation has been called off by either of the parties or by the mediator himself/herself if he/she has concluded that a resolution is not attainable.

10. For avoidance of doubt, the Mediator's fees and MBAM's administrative charges are payable regardless whether an amicable resolution is reached or otherwise.

11. In the event an agreement is reached by the parties, parties shall, with the assistance of the Mediator, reduce the essential terms of the said agreement into writing, such essential terms to be signed by both parties and shall be binding.

12. All communications made during mediation are "without prejudice" and shall not be used in any arbitral or judicial proceedings. Neither the Mediator nor MBAM can be compelled to divulge any record, information, document or discussions including any admissions or proposals made during mediation.

13. There shall be no official, electronic or audio-visual records of the mediation proceedings. Notwithstanding the aforesaid, the Mediator shall upon conclusion of the mediation inform the MBAM for purposes of record:

- i) The number of mediation sessions carried out;
- ii) The approximate length of each mediation session;
- iii) Whether the mediation was successful, partially successful or unsuccessful.
- iv) Report on the mediation case undertaken.

14. Save for the advance deposit to be collectively borne by the parties in equal proportion, all other costs incurred by the parties in preparing for and attending to the mediation shall be borne by the party individually.

15. Neither the MBAM nor any Mediator shall be named as a party in any arbitral or judicial proceedings.

16. For avoidance of doubt, MBAM acts only as a secretariat and provides administrative support to assist in the appointment of Mediators for the benefit of its members and the appointed Mediator shall not at any time whatsoever be construed to be an agent of MBAM, regardless whether the Mediator has any other roles or responsibilities within MBAM or otherwise.

Mediation Fees

a) Registration Fee

A non-refundable registration fee of RM100.00 is payable by the party initiating Mediation.

b) Administrative Costs

The Administrative Costs for Mediation shall be fixed at RM500.00 per case with both parties sharing the cost.

c) Mediator's Fee

Maximum RM4,000.00 per case and both parties to deposit RM2,000.00 each before the commencement of mediation).

For further information please contact MBAM Mediation Services at 03-79848636. Alternatively, please email your enquiries to mbam01@mbam.org.my and attention it to Mr Lenny Lim, General Manager.

List of MBAM Mediators

1. Chan Kheng Hoe
2. Chua Siow Leng
3. Datuk Haji Kuthubul Zaman Bukhari
4. Ir. Harbans Singh
5. Oliver H C Wee
6. Ong Chin Siong
7. Sr Ong Hock Tek
8. Sr Dr Ong See Lian
9. Shanti Abraham
10. Tan Swee Im
11. Wong Lu Peen



AGREEMENT TO MEDIATE

Party A :	Party B :
Name:	Name:
Address:	Address:
Person in charge:	Person in charge:
Contact No:	Contact No:
E-mail:	E-mail:
Party A's solicitor or representative:	Party B's solicitor or representative:
Name:	Name:
Address:	Address:
Contact No:	Contact No:
E-mail:	E-mail:
Brief description of dispute by Party A (optional):	Brief description of dispute by Party B (optional):
<p>Note: Please keep description brief as it is intended only for purpose of appointment of Mediator. Parties can add to description later.</p>	<p>Note: Please keep description brief as it is intended only for purpose of appointment of Mediator. Parties can add to description later.</p>
Language preference, if any:	Language preference, if any:
1.	1.
2.	2.
3.	3.

We hereby consent to mediate for purpose of seeking an amicable settlement. We also agree that all disclosures, admissions, proposals and communications made during mediation are strictly "without prejudice" and shall not be used in any arbitral or judicial proceedings.

Choose one of the following:

- a. We agree to appoint the following person as the Mediator (please see attached List of Mediators on the MBAM Panel):

[Insert name]

- b. We request MBAM to propose a Mediator for our dispute.

Signed by:

Signed by:

Party A and/or its solicitors/rep

Party B and/or its solicitors/rep