
Chapter 4: Access Request Procedures

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4.1 Application for Access to Services

4.1.1 An Access Seeker shall request CT Sabah to supply Facilities or Services listed in the Access List Determination to it by serving an Access Request on CT Sabah.

4.1.2 The purpose of such Access Request is to provide CT Sabah with sufficient information to assess the Access Seeker's request for the supply of Facilities or Services listed in the Access List Determination under CT Sabah's ARD.

4.1.3 The Access Request must:-

- (a) contain the name and contact details of the Access Seeker,
- (b) specify the Facilities or Services listed in Access List Determination in respect of which access is sought;
- (c) indicate whether the Access Seeker wishes to accept CT Sabah's ARD or negotiate an Access Agreement;
- (d) contain the information (if any) as set out in Section 5.3.6 of the MSA Determination that the Access Seeker reasonably requires CT Sabah to provide for the purposes of the access negotiations;
- (e) contain two (2) copies of Confidentiality agreement properly executed by the Access Seeker in the form prescribed by CT Sabah;
- (f) specify forecasts of the capacity which the Access Seeker reasonably requires, having regards to CT Sabah's disclosed provisioning cycle and forecasting as described in Schedule A of the Access Agreement Template;
- (g) provide the relevant information relating to the Access Seeker's Network and the functionality of its Services, to the extent that the Access Seeker is aware that such information may affect CT Sabah's Network;
- (h) contain confirmation that the Access Seeker is not currently being supplied with the requested Facility or Service listed in the Access List Determination or if so, the reasons for the additional request for the said Facility or Service;
- (i) specify the type of communications licences held by the Access seeker and a copy of the licence where a copy had not been previously provided;
- (j) contain Creditworthiness Information as set out in Section 4.2;
- (k) be accompanied by a Security Sum as set out in Section 4.3;
- (l) contain Insurance Information as set out in Section 4.4;
- (m) contain relevant technical information relating to the interface standards of the Access Seeker; and
- (n) such other information that CT Sabah may reasonably request.

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4.2 Creditworthiness Information

4.2.1 The Creditworthiness Information that is required to accompany an Access Request include but shall not be limited to:-

- (a) a letter, signed by the company secretary or duly authorized officer of the Access Seeker, stating that the Access Seeker is not insolvent and is not under any external administration or under similar form of administration under any laws applicable to it in any jurisdiction; and
- (b) a copy of the Access Seeker's most recently published audited balance sheet and audited profit and loss statement.

4.2.2 The Creditworthiness information shall commensurate with an estimated value of the access to the Facilities or Services to be provided by CT Sabah to the Access Seeker over a ninety (90) day period.

4.3 Security Sum

4.3.1 An Access Request shall be accompanied by a Security Sum. The type of security that may be given by the Access Seeker are:-

- (a) Bank Guarantee;
- (b) Cash sum;

4.3.2 CT Sabah is not obliged to consider entering into an Access Agreement with the Access Seeker pursuant to CT Sabah's ARD until the Access Seeker has amongst other things, provided (at the Access Seeker's costs) to CT Sabah such Security Sum on terms and conditions reasonably acceptable to CT Sabah.

4.3.3 If the Access Seeker fails to fulfill any conditions or commits a breach of its obligations under this ARD or the Access Agreement, CT Sabah at its sole discretion has the right from time to time to call in all or part of the amount represented by the Security Sum.

4.4 Insurance Information

4.4.1 Subject to Section 4.4.2, An Access Request shall be accompanied by the following insurances:-

- (a) Worker's Compensation and/or Social Security Insurance and/or Employer's Liability Insurance and/or other insurance with statutory limits as required by the laws of Malaysia to provide for payment to its

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- employees or in connection with the work covered by the Access Agreement that may be entered and/or their dependants; and
- (b) Comprehensive general Liability Insurance of an amount which is not in excess of Ringgit Malaysia Twenty Million (RM20, 000,000) for any one claim or series of claims arising out of an accident for occurrence in connection with the Access Agreement that may be entered into resulting in bodily injury and/or personal injury including death and property damage of an Operator which shall arise out of or in consequence of any acts of omissions of the Other Operator. Such policy shall include contractual liability.

4.4.2 For the purpose of clarification, the insurance provided by the Access Seeker pursuant to section 4.4.1 shall commensurate with the reasonable sum, which is to be agreed by CT Sabah.

4.5 Processing of Access Request

4.5.1 Acknowledgement of Receipt of Access Request CT Sabah shall within ten (10) Business Day of receipt of the Access Request inform the Access Seeker in writing that it has received the Access Request and:-

- (a) Subject to Section 4.5.3, request additional information from the Access Seeker where there is a need for further information, prior to considering the Access Request; or
- (b) Indicate whether it is willing to provide access to Facilities or Services listed the Access List Determination in accordance with CT Sabah's ARD.

Subject to the additional information being received by CT Sabah within twenty (20) Business days from the date of request, CT Sabah shall reconsider the Access Request in accordance with this Section 4.5.1 upon receipt of such additional information.

4.5.2 Non-refundable processing fee

4.5.2.1 CT Sabah may charge a non-refundable processing fee for undertaking the necessary administrative work to process the Access Request.

4.5.2.2 The non-refundable processing fee is only applicable to requested Facilities and Services listed in the Access List Determination that can be offered and made available by CT Sabah.

4.5.2.3 The fee shall be as advised in writing by CT Sabah to the Access Request upon approval of the same.

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4.5.2.4 In the event that additional and non-routine work is required in order to process the Access Request, CT Sabah may charge a separate fee for undertaking such additional work. If the Access Seeker does not proceed with the Access Request accepted by CT Sabah, the processing fee will not be refunded to the Access Seeker.

4.5.2.5 The processing fee will be set-off against the Charges for the requested Facilities and Services upon acceptance of the Access Request by CT Sabah pursuant to Section 4.8.

4.5.3 Resources charge

In accordance with Section 5.7.28 of the MSA Determination CT Sabah may charge an Access Seeker a resources charge to be determined by reference to the costs incurred by CT Sabah for the allocation of manpower and other resources to enable the Access Seeker to test and provide new Facilities and Services for the purposes of interconnection.

4.5.4 Request for information

CT Sabah shall comply with Section 5.4.16 of the MSA Determination where it requests additional information from the Access Seeker pursuant to Section 4.5.1 (a).

4.6 Assessment of Access Request

4.6.1 Reason for Refusal

Without limiting any other grounds that may be relied upon under the Act, CT Sabah may refuse to accept an Access Request for the supply of a Facility or Service listed in the Access List Determination and accordingly may refuse to supply that Facility or Service to the Access Seeker for any of the following reasons:-

- (a) in CT Sabah's reasonable opinion, the Access Seeker's Access Request was not made in good faith and CT Sabah shall set out the basis on which the Access Request was not made in good faith;
- (b) in CT Sabah's reasonable opinion, the Access Request does not contain the information reasonably required by CT Sabah's ARD provided that CT Sabah has sought the information from the Access Seeker under Section 4.5.1 of CT Sabah's ARD and has not received that information within twenty(20) Business Days of making such a request;
- (c) CT Sabah does not currently supply or provide access to the requested Facilities or Services listed in the Access List Determination

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to itself or to any third parties, except where the Access Seeker compensates CT Sabah for the supply of access to such Facilities or Services;

- (d) It is not technically feasible to provide access to the requested Facilities or Services listed in the Access List Determination;
- (e) CT Sabah has insufficient capacity to provide the requested Facilities or Services in the Access List Determination;
- (f) there are reasonable grounds in CT Sabah's opinion to believe that the Access Seeker would fail, to make timely payment for the supply of the relevant Facility or Service listed in the Access List Determination; or
- (g) there are reasonable grounds in CT Sabah's opinion to believe that the Access Seeker would fail, to a material extent, to comply with the terms and conditions applicable to the supply of the Facilities or Services listed in the Access List Determination; or
- (h) there are reasonable grounds for CT Sabah to refuse access in the national interest.

4.6.2 Determination of technical infeasibility

For the purpose of determining technical infeasibility in Section 4.6.1(d), the Operators shall comply with Section 5.4.17 of the MSA Determination.

4.6.3 Determination of capacity constraints

For the purpose of determining capacity constraints in Section 4.6.1 (e), the Operators shall comply with Section 5.4.18 of the MSA Determination.

4.6.4 Assessment of the Access Seeker's ability to pay for supply of relevant Facilities or Services listed in the Access List Determination Example of reasonable grounds for CT Sabah's belief as mentioned in Section 4.6.1 (f) includes evidence that the Access Seeker is not in the reasonable opinion of CT Sabah creditworthy.

4.6.5 Assessment of the Access Seeker's ability to comply with terms and conditions applicable to the supply of relevant Facilities or Services listed in the Access List Determination.

4.6.5.1 Example of reasonable grounds for CT Sabah's belief as mentioned in Section 4.6.1 (include repeated failures by the Access Seeker to comply with the terms and conditions on which the same or similar access to Network Facilities or Network Services have been provided (whether or not by CT Sabah).

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4.6.6 Assessment of Creditworthiness

4.6.6.1 In determining the creditworthiness of the Access Seeker, CT Sabah may have regard to, but is not limited to the matters referred to in Section 4.2.

4.6.6.2 In determining the creditworthiness of the Access Seeker, CT Sabah shall not take into account amounts outstanding for Facilities or Services previously provided by CT Sabah to the Access Seeker where, in accordance with the terms and conditions governing the provision of such Facility or Service, the Access Seeker is not required to pay such amounts to CT Sabah to the extent that there is a bona fide dispute in relation to the amounts outstanding by the Access Seeker to CT Sabah and the Access Seeker is relying on such terms and conditions as basis for its non-payment.

4.7 Notification of Rejection to the Access seeker

4.7.1 Where CT Sabah rejects the Access Request, CT Sabah shall:-

- (a) promptly notify the Access Seeker in writing within ten (10) Business Days from receipt of the Access Request or additional information requested pursuant to Section 4.5.1, as the case may be;
- (b) provide reasons for rejection under Section 4.6.1 above to the Access Seeker;
- (c) provide the basis for CT Sabah's rejection of the Access Request; and
- (d) indicate a date and time, not later seven (7) Business Days from the date of the notice of rejection, at which representatives of CT Sabah will be available to meet with representatives of the Access Seeker to discuss the rejection of the Access Request.

At this meeting, the Access Seeker may request CT Sabah to substantiate its reasons for refusal, and if access has been refused on the basis of the grounds in Section 4.6.1(e), CT Sabah must identify when additional capacity is likely to be available.

4.7.2 Where the Operators are unable to resolve their differences following the meeting held pursuant to Section 4.7(d), either Operator may request resolution of the dispute in accordance with dispute resolution procedures in Annexure A of the MSA Determination.

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4.8 Acceptance of Access Request

- 4.8.1 Where CT Sabah agrees to provide access to Facilities or Services listed in the Access List Determination to the Access Seeker in accordance with CT Sabah's ARD, CT Sabah shall within ten (10) Business Days of such response under Section 4.5.1(b), provide the Access Seeker with two copies of the executed Model Access Agreement, for execution by the Access Seeker.
- 4.8.2 Where the Access Seeker wish to negotiate an Access Agreement, the Operators shall comply with the requirements in Sections 5.4.2, 5.4.3, and 5.4.4 of the MSA Determination in negotiating and concluding an Access Agreement.
- 4.8.3 CT Sabah will not be taken to have agreed to provide, and the Access Seeker will not be taken to have agreed to acquire the requested Facility or Service listed in the Access List Determination until:-
 - (a) a Security Sum has been provided in accordance with Section 4.1 and 4.3; and
 - (b) an Access Agreement has been executed between the Operators and the Access Agreement is registered with the Commission in accordance with section 150 of the Act.

4.9 Negotiations on Access Request

- 4.9.1 CT Sabah may proceed with negotiation on the Access Request with the Access Seeker if the Access Seeker is not willing to accept CT Sabah's ARD and CT Sabah will set out in its response to the Access Seeker:-
 - (a) the names of personnel of CT Sabah's representatives in the negotiations and in respect of those personnel:-
 - i. his or her contact details;
 - ii. his or her job title; and
 - iii. details of his or her availability for the access negotiations;
 - (b) the identity of the negotiating team leader, and CT Sabah shall ensure that the negotiating team leader shall have authority to make binding representations on behalf of CT Sabah in relation to matters arising from the negotiations (subject to final approval from CT Sabah's Chief Executive Officer, if required)
 - (c) the information which is reasonably required from the Access Seeker for the purposes of negotiations;

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- (d) a date and time not later than fifteen (15) Business Days from the date of the Access Seeker's response, at which CT Sabah's representatives will be available for the initial meeting with the representatives of the Access Seeker.
- (e) One copy of the executed Confidentiality Agreement returned by the Access seeker (in accordance with Section 4.1.3 (h)) that has also been properly executed by CT Sabah.