

APPLICATION FOR STAY OF PROCEEDINGS AND
UNCONDITIONAL APPEARANCE.

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**APPLICATION FOR STAY OF PROCEEDINGS AND
UNCONDITIONAL APPEARANCE**

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DEDICATION

To my beloved wife and families who have given full support to me.

Thanks for everything.

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ABSTRACT

Dispute in the construction industry is the most common and sometimes cannot be avoided. Arbitration is a popular method in resolving dispute in the construction industry. The law relating to arbitration in Malaysia is governed the Arbitration Act 2005. All standard forms of contract in Malaysia provide arbitration as the major method of dispute resolution. However, sometime a party may bring a dispute direct to litigation. The section 10 of the Act allows the other party to apply to the court for stay of the court proceedings provided that he has not taken any other steps in the proceedings. Entering appearance is one of the steps in any court's proceedings. The entering of appearance may be conditional or unconditional. The courts seemed to have given inconsistent judgments whether or not entering of unconditional appearance as having taken steps in the proceedings. The objective of this research is to determine whether or not the entering of unconditional appearance a step in the proceedings. The methodology for this research is law case study method. The relevant law cases are extracted from the Malayan Law Journal. The examination of the law cases revealed that entering of unconditional appearance is not a step in the proceedings. Therefore, a party that intents to apply for a stay of court proceedings in order to resolve the dispute by arbitration need not be so much concern whether or not the entering of appearance is conditional or unconditional.

ABSTRAK

Pertikaian dalam industri pembinaan adalah suatu perkara yang normal berlaku dan kadangkala tidak dapat dielakkan. Timbang tara adalah suatu kaedah penyelesaian yang mashur dalam pertikaian. Timbang tara ditadbir oleh Akta Timbang Tara 2005. Kebanyakan Borang Kontrak di Malaysia mengesyorkan timbang tara sebagai kaedah alternatif untuk menyelesaikan pertikaian. Walaubagaimanapun, adakalanya pertikaian yang timbul dirujuk terus kepada pihak mahkamah. Seksyen 10 Akta Timbang Tara membenarkan pihak yang menentang proses mahkamah untuk memohon perintah penangguhan dengan syarat, tiada langkah diambil dalam proses mahkamah tersebut. Kemasukan kehadiran merupakan satu langkah dalam proses mahkamah. Kemasukan kehadiran tersebut adalah dalam bentuk bersyarat atau tanpa syarat. Penghakiman dari pihak mahkamah menunjukkan tiada konsistensi samada kemasukan kehadiran tanpa syarat merupakan satu langkah dalam proses mahkamah. Objektif kajian ini adalah untuk menentukan samada kemasukan kehadiran tanpa syarat merupakan langkah dalam proses mahkamah. Kaedah yang digunakan untuk kajian ini adalah kaedah kajian kes. Kes-kes yang berkaitan dikeluarkan untuk mendapatkan data, daripada *Malayan Law Journal*. Daripada pemerhatian, dapat disimpulkan bahawa kemasukan kehadiran tanpa syarat bukanlah suatu langkah dalam proses mahkamah. Oleh yang demikian, pihak yang berniat menyelesaikan pertikaian melalui timbang tara perlu membuat permohonan penginapan dan tidak perlu kuatir samada kemasukan kehadiran yang diperlukan adalah bersyarat atau tanpa syarat.