

# PITCH DISBURSEMENT BY LAWS

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# Why Pitch Disbursement

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## Situation

- Speculative pitches are expensive and resource draining, resulting in a financial burden to Agencies already operating with sliding margins.
- Advertiser pitch briefs are increasingly more demanding, with multiple assignments and complex in their requirements.
- Some pitches are merely a 'charade' with the Agency selection already made, prior to the presentation.
- Unfortunately, exploitation of Agencies for free brand positioning, strategy and creative ideas has become an acceptable market norm.
- Status of Agencies reduced to a 'supplier' rather than a valued 'Consultant/Communications partner'
- Some Advertisers have been known to organise a pitch involving more than the 4As recommended 3 Agencies (4 if incumbent is included).

## Objectives

1. Encourage Advertisers to firstly try to make the existing Agency relationship work, rather than thinking that a move to a new Agency is necessarily the answer (Long term Advertiser - Agency relationships more often than not benefit, the health of the Advertiser's brand).
2. Promote the use of a 'Credentials/Case Studies' only pitch (Many successful Agency appointments are based on reputation, team chemistry, credentials and referrals from other Advertisers – as opposed to a full blown speculative pitch).
3. Allow Member Agencies that participate in the pitch to recover some part of the disbursement costs incurred.
  - This disbursement is NOT about recovering all the third party, staff and associated costs
  - There is NO element of profit or price fixing as Members are entitled to bid for the assignment at any price they deem competitive.
4. Encourage a professional approach on both the Advertiser and Agency
5. Deter misuse of pitches – 'fishing' for free ideas, calling for a large number of Agencies.
6. Increase the value of the ideas solicited from an Agency.
7. Help elevate the status and value of the Advertising industry.

### **NOTE**

*Payment of a Pitch Disbursement does not confer the right of the Advertiser to utilise the Agency's intellectual property directly or indirectly. Any violation can lead to the necessary legal action for copyright infringement.*

## Pitch Disbursement

The following By- Laws have been drawn up for Ordinary and Associate Members to comply with, pursuant with Rule 25.

### 1. CITATION

- (i) These By-Laws shall be cited as the Pitch Disbursement By-Laws and shall only be applicable in situations wherein the total marketing communications budget (inclusive media cost, production cost, fees and/or commissions) is above RM 100,000 (Ringgit Malaysia One Hundred Thousand)
- (ii) The Pitch Disbursement By-Laws shall not be applicable in situations where the Advertiser calls for Credentials or Case studies only presentation, which is a non-creative pitch
- (iii) Advertisers are free to invite 4As Members and non-members and the Pitch Disbursement is imposed on Members of 4As only

### 2. INTERPRETATION

In these By-Laws unless the context otherwise requires:

Business Pitch	includes a presentation where more than one Member has received the same Advertiser's brief for the same pitch exercise
Advertiser's Business	means the stated marketing communications budget of the advertiser in the pitch brief from the Advertiser to the Member
Advertiser	means any organisation whether having either its place of business or registered address inside or outside Malaysia, seeking the services of a Member
Assignment	Each Pitch may involve more than one assignment and therefore the Disbursement shall be payable for each of the assignment.

#### Examples

1. A bank's pitch for a new positioning idea/theme that can be applied across all their product/service lines is considered as 1 assignment. However if this bank additionally requires a proposal to recruit new members for their credit cards, this is considered as 2 assignments.

2. An airline requires proposals for Brand Strategy, New Visual identity and Frequent Flyer. This is considered as 3 assignments.
3. A property developer requires branding proposals for a new township and at the same time there is another requirement to launch the first phase of double storey link houses. This is considered as 2 assignments.
4. A multibrand pitch eg a proposal for Brand A fuels, Brand Blubricants and a road Safety campaign is considered 3 assignments

**Member** means an Ordinary or Associate Member of the Association of Accredited Advertising Agents Malaysia

**Pitch** includes any proposal to promote any brand, product, service, company or organization for any campaign stating the objective(s) of the campaign in Malaysia and it shall include proposals for marketing, marketing communications strategies, market/consumer analysis/creative ideas/executions and any such display of an Agency’s intellectual capital directed at communication solutions to help solve an Advertiser’s brand/product/service needs.

It shall include any form of trial projects, workshops, think piece presentation on issues facing the brand, where more than one Member has received the same Advertiser’s brief for the same pitch exercise.

**Boomerang Points** refers to 4As Members having to attain the Boomerang Membership Accreditation Programme (BMAP) points in respect of each year as set out in 5.1 of these By-Laws for purpose of continued enjoyment of the rights and privileges of 4As Membership.

**Pitch Disbursement** means the amount that the Advertiser has to pay in respect of each assignment to each Member invited for the pitch

**4As** means The Association of Accredited Advertising Agents Malaysia.

### **3. APPLICATION**

3.1 These Pitch Disbursement By-Laws shall apply to Ordinary and Associate Members of the 4As.

- 3.2 Members shall require an Advertiser seeking a pitch for their company's marketing and communications business to comply with these By-Laws.

#### **4. PITCH DISBURSEMENT**

- 4.1 An Advertiser seeking the services of a member or its subsidiary company or related corporation (as defined in the Companies Act, 2016) to pitch for their marketing communications business shall pay a Pitch Disbursement in the event that the total marketing communications budget (inclusive media cost, production cost, fees and/or commissions) is in excess of RM100,000

A subsidiary company of the Member shall mean a company incorporated under the Companies Act, 2016 in which the Member has a majority ownership or management control or as well as by requiring the other entity to act in accordance with directives from a Member, provided such subsidiary or other entity is engaged in the same business as the Member.

The Pitch Disbursement payable by the Advertiser for each assignment within the Pitch shall be RM10,000, excluding Service Tax.

- 4.2 No Member or companies controlled by a Member shall enter into any pitch without first requiring the Advertiser to execute an undertaking to pay the Pitch Disbursement to the 4As.
- 4.3 Such undertaking shall be executed using the prescribed Pitch Disbursement Form and shall be submitted to the 4As at least fourteen (14) working days prior to the pitch. It will be the onus of the Member to check with the Secretariat that the undertaking has been submitted by the Advertiser before undertaking the pitch.

#### **5. ADMINISTRATION**

- 5.1 With the exception of a Credential/Case Studies only Pitch, upon receipt of an invitation to a pitch from an Advertiser, irrespective of whether the Advertiser is deemed exempted as per By-Laws 7.1, 7.2 and 7.4, and irrespective whether the Member is the only Member invited, the Member shall notify the 4As' Secretariat in writing on the prescribed Pitch Invitation Acceptance Form. If a Member fails to inform 4As of the acceptance to pitch, Boomerang Points of the Member shall be deducted from the Boomerang Membership Accreditation Programme for each and every transgression subject to the following:

The criteria for the Boomerang points deduction shall be based on the number of full time staff employed in the Agency (as per 4.3 of the BMAP Bylaws) and would be as follows:

Member	De-merit Points
Less than 15 full time staff	100
More than 15 but less than 25	150
More than 25 but less than 75	250
More than 75 staff	370

- 5.2 Upon receipt of the notification pursuant to 5.1 above, the 4As Secretariat shall forward to the Advertiser the 4As Pitch Disbursement Policy Requirements including the Terms and Conditions and the disbursement payable.
- 5.2a Such terms and conditions shall include a requirement for the Advertiser to make a decision within sixty (60) days of the pitch presentation to the Advertiser.
- Provided that the Advertiser may before the Pitch request in writing for a longer period to make a decision and the 4As Secretariat may extend the time but such extension shall not exceed a period of ninety (90) days from the date of the Pitch presentation to the Advertiser
- 5.3 If the Advertiser accepts the terms with regards to the Pitch Disbursement Policy Requirements and the disbursement payable it shall forward to the 4As Secretariat the names of the Members invited to pitch and stipulate the number of assignments in the pitch. The acceptance shall be on such conditions and in such form as is prescribed by the 4As.
- 5.4 The 4As Secretariat shall invoice the Advertiser upon acceptance of the Pitch Disbursement Policy requirements and the Advertiser shall pay the Pitch Disbursements within fourteen(14) days from the Pitch presentation date.
- 5.5 Any Member withdrawing from the Pitch after receiving the Advertiser's brief shall immediately advise the 4As Secretariat. Upon being advised the 4As Secretariat (subject to the Pitch Disbursement being already paid), shall return the applicable amount to the Advertiser forthwith.
- 5.6 Upon the results of the Pitch being announced by the Advertiser to the 4As Secretariat, the Secretariat shall within forty-five (45) days:
- (a) return 100% of the successful member's Pitch Disbursement portion to the Advertiser
  - (b) be paid 10% of the Pitch Disbursement as administrative/processing fee by the successful agency
  - (c) release 90% of the unsuccessful members portion of the Pitch Disbursement to each of the unsuccessful member. The 4As retains 10% as administrative/processing fee.
- 5.7 The 4As Secretariat shall hold the Pitch Disbursement for a period of sixty (60) days commencing from the day of the Pitch by a Member.
- 5.8 If the Advertiser does not announce the chosen Agency(ies) or make a decision within sixty (60) days ( or any such extended period allowed, for the decision to be made) from the date of the pitch presentation, the 4As Secretariat will disburse the net Pitch Disbursement in the manner provided by By Law 5.6 (c) to all the Members of the 4As invited to participate in the pitch who are now all deemed unsuccessful. This provided the Advertiser has paid the 4As the full disbursement amount.



## **6. BREACH OF RULE**

- 6.1 A Member who pitches for an Advertiser's business shall be in breach of these By-Laws if such Member
- (a) Pitch for an Advertiser's business before such Advertiser has signed the undertaking to pay the Pitch Disbursement and returned the Pitch Disbursement Form.
  - (b) Pitch for an Advertiser's business where the pitch is not otherwise in accordance with these By-Laws.
- 6.2 If any Member of the Association shall in the opinion of the Council refuse or neglect to comply with these By-Laws, the Rules and the Standards of Practice and Ethical Conduct or the By-Laws established pursuant to Rule 25 or shall be guilty of any conduct which may be likely to injure, discredit or defeat the objects of the Association, the Council shall suspend such Member from membership of the Association for a period not exceeding two (2) years.
- 6.3 In the event of a dispute with regards to the provisions in the preceding By-Law 5 of these By-Laws the matter shall be referred to the 4As Council whose decision thereon shall be binding and final.

## **7. EXEMPTIONS**

- 7.1 When a Pitch is conducted amongst an Advertiser's panel of Agencies whereby a Member is on such panel and the Member has been actively performing it's role on such panel for more than 6 months, the requirement for a Pitch Disbursement shall not apply.
- Subject to the requirement that if non-panel Agencies are invited in addition to the Panel Agencies, the Pitch Disbursement will be payable in respect of all Member Agencies participating.
- 7.2 A Member shall be deemed to be on an Advertiser's panel of agencies when it is stated in its appointment letter and the Member has been actively doing work for the Advertiser in Malaysia for the preceding six (6) months or more prior to the Pitch.
- 7.3 A Credentials/Case Studies only pitch shall not require payment of any Pitch Disbursement.
- 7.4 Existing Advertiser's panel Agencies, Government, Federal or State Authority involving public service campaigns like anti-dengue, road safety and Government Ministry campaigns to promote national events and economic growth like Tourism, Asian or SEA Games shall be exempted from the application of these By-Laws.
- 7.5 Federal or State Authority involving commercial or economic activity or Government Linked Companies (GLCs) and Government Corporations that are profit oriented, NGO's, Associations, Societies, Charities are not exempted

## **8. PROHIBITIONS**

- 8.1 No Member shall enter into a Pitch when the Advertiser has not signed an undertaking to the 4As to pay the Pitch Disbursement.
- 8.2 No Member shall pay, or offer to pay, for any Pitch Disbursement on behalf of an Advertiser as an inducement to be invited for a Pitch.
- 8.3 No Member shall participate in any Pitch where the Advertiser requires that all or part of, the pitch proposal becomes the Advertiser's property at the pitching stage or if the pitch proposal is unsuccessful.

## **9. GENERAL**

- 9.1 Members shall endeavour to discourage Advertisers from calling for more than four (4) Members (including the incumbent Agency) to be involved in a pitch.
- 9.2 Members shall take appropriate steps to ensure that their intellectual property rights are protected.
- 9.3 Members shall endeavour to take such steps as lie within their powers to eliminate abuse to the Pitch process and enhance the general welfare of the Members vis-à-vis the Industry.
- 9.4 It shall be the responsibility of the Member to ascertain whether the Advertiser has signed the undertaking to pay the Pitch Disbursement. Upon receipt of such notice and upon the undertaking being signed, parties shall be notified as soon as possible.

FOR MORE INFORMATION

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### **About 4As**

The 4As Malaysia formed in 1971 is the Malaysian industry's foremost body that represents and promotes the “value” of Advertising Agencies in the Marketing Communications industry among Advertisers, Media, Suppliers, Government and the Public.

The organisation encompasses more than 60 home grown and International Member Agencies who are key players in the Advertising industry.

We help grow Member businesses and develop individual careers through professional development services, industry awards, advocacy and support.

### **4As Objectives**

1. Provide industry guidance and leadership
2. Raise standards and professionalism
3. Foster continuous professional development for the attraction and retention of Agency talent
4. Promote commercial creativity and its' effectiveness
5. Be the Government's principal information source and advisor on Advertising