

MEDIATION RULES

*of Vietnam Mediation Centre – a division of Vietnam International Arbitration Centre
in force as from 1 July 2018*

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MEDIATION RULES

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Article 1: Application

1. The Mediation Rules of the Vietnam Mediation Centre - a division of the Vietnam International Arbitration Centre (hereinafter referred to as “the Rules”) shall apply to resolve disputes through mediation at the Vietnam Mediation Centre.
2. Parties may jointly agree to exclude, modify or supplement any provision of the Rules, with the written consent of the Vietnam Mediation Centre and the mediator, provided that such exclusion, modification and supplement are not in contrary to mandatory provisions of laws.
3. If any provision of the Rules is not in compliance with a mandatory provision of laws, the provision of laws shall prevail.

Article 2: Definition

In the Rules:

1. “*The Centre*” means the Vietnam Mediation Centre, a division of the Vietnam International Arbitration Centre.
2. “*List of Mediators*” means the Centre’s list of mediators.
3. “*Mediation agreement*” means a written agreement, in form of a contract clause or a separate mediation agreement, by which parties agree to resolve their potential or existing disputes through mediation at the Centre in accordance with the Rules.
4. “*Mediated Settlement Agreement*” is the outcome of the mediation, by which the parties agree on the solutions for settlement their dispute in whole or in part.

Article 3: Commencement of mediation where there is a mediation agreement

1. Any party wishing to commence mediation shall send a Request for Mediation together with the mediation agreement to the Centre.

2. The Request for Mediation may contain following information:
 - a. Date, month, year on which the Request for Mediation is made;
 - b. Names and addresses of the parties in dispute;
 - c. Brief description of the dispute;
 - d. Request(s) on solutions of mediation; including monetary valued request(s) and other request(s) (if any);
 - dd. The name(s) of the person(s) nominated to be the mediator(s) or suggestion on appointment method or on criteria of the mediator(s);
 - e. The signature of legal representative or authorized representative where the requesting party is a legal entity; the signature of the individual or authorized representative where the requesting party is an individual.
3. Within 05 working days since the date of receipt of the Request for Mediation and mediation fees in accordance with Article 14 of the Rules, the Centre shall send a Notice and the Request for Mediation to the other party(ies). Within 10 days since the date of its receipt of such Notice, that party shall send the Statement of Reply to the Centre.
4. The mediation process shall commence on the date that the Centre receives the Request for Mediation and the registration fee. If such another party refuses to mediate or fails to send the Statement of Reply, the mediation process shall terminate in accordance with Article 13 of the Rules.

Article 4: Commencement of mediation where there is no prior mediation agreement

1. In the absence of a mediation agreement, any party that wishes to commence mediation shall send to the Centre a Request containing an offer to another party to resolve their dispute(s) through mediation at the Centre in accordance with the Rules.
2. Within 05 working days since the Centre receives the Request, the Centre shall transfer the Request to another party for its consideration. Within 10 days since the date of receipt of the Request, that party shall send a Response to the Centre on whether it accepts to mediate or refuses to do so. The Centre may, at its best effort, assist the parties to reach a mediation agreement.
3. If such another party accepts the offer to mediate, the Centre shall instruct the parties following the steps as stipulated in Article 3 of the Rules.

4. In case of refusal or failure of such another party in sending a Response to the Centre, the mediation under the Rules shall not be conducted.

Article 5: Appointment of mediator

1. The parties shall mutually agree on the mediator and notify the Centre of that mediator. If the mediator is not listed in the List of Mediators, the parties must provide evidence proving that he or she is a mediator pursuant to the provisions of law. In case of parties' failure to agree on the mediator or in the absence of an agreed appointment method, the Centre's Director shall appoint a mediator on behalf of the parties.
2. When appointing a mediator, the Centre's Director shall diligently consider the agreement of parties on criteria of the mediator (if any), and may consider other attributes of the prospective mediator, consisting of nationality, language skills, training and experience, and the prospective mediator's availability and ability to conduct the mediation in accordance with the Rules in order to appoint an appropriate mediator. The appointed mediator may not be necessary in the List of Mediators.
3. Before accepting the appointment, the prospective mediator shall promptly disclose in writing to the Centre any facts or circumstances that might cause any doubt about his or her independence, impartiality, objectivity and honesty or any failure to meet the parties' requirements of the mediator (if any). The Centre shall notify the parties of such disclosure and instruct the parties to agree on or to request the Centre to appoint another mediator, unless the parties still agree expressly on that mediator to conduct the mediation. The selection and appointment of another mediator shall proceed pursuant to paragraph 1 and paragraph 2 of this Article.

Article 6: Representation and assistance

1. The parties may have representatives or assistants in mediation by their own choice. The names and addresses of such representatives and assistants must be communicated in writing to the mediator and another party. Such notification shall specify the capacity of each person as representative or assistant of a party.
2. The parties will confer the necessary authority and mandate upon their representatives to settle the dispute.

Article 7: Roles and duties of mediator

1. The Mediator shall always be independent, impartial, objective and honest in assisting the parties to reach solutions for their disputes. The mediator has the disclosure obligation as stipulated in paragraph 3 of Article 5 above throughout the mediation process.
2. The mediator shall conduct the mediation in such a manner as he or she considers appropriate with the consent of the parties, taking into account the circumstances of the case, the wishes of the parties and the need for a speedy settlement of the dispute.
3. The mediator may, at any stage of the mediation, make proposals for solutions to settle the dispute but must not impose a settlement on parties. Such proposals need not to be accompanied by a statement of the reasons thereof.
4. The mediator shall not be a representative or counsel of a party and shall not be an adjudicator or arbitrator in the dispute he or she is mediating or has mediated, unless the parties agreed otherwise.

Article 8: Conduct of mediation

1. The Centre shall organize administrative matters of the mediation, in consultation with the parties, including the followings:
 - a. Arranging meeting room(s) and fixing date(s) for mediation sessions at the Centre or other venues as agreed by the parties;
 - b. Organizing the exchange of any information and documents among the parties and the mediators;
 - c. Providing general administrative support.
2. When conducting mediation, the mediator may request the parties to submit statements on matters in dispute.
3. The mediator may hold joint mediation sessions with the parties or private mediation sessions with each party. Any party may request for a private mediation session with the mediator at any stage of the mediation. Mediation sessions may be held via teleconference, video conference or any other appropriate means.
4. Prior to or after the scheduled mediation sessions mentioned in paragraph 3 herein above, the mediator may communicate with a party or the parties, in an effort to assist the parties to reach a full settlement of dispute.

5. Mediation sessions are conducted in confidence, unless the parties agreed otherwise. Prior to the beginning of a mediation session, the mediator and the parties must be promptly informed of the participation of any third party in that mediation session. Such participation must be subject to the consent of the mediator and the parties.
6. Each party may, at its own discretion or as suggested by the mediator, disclose its proposals on solutions to settle the dispute to the mediator.
7. The mediation process shall be conducted in the language(s) agreed by the parties. In the absence of such an agreement, the mediator shall determine the language of mediation. Where translation is required, the party requesting the translation shall be responsible for the quality of the translation.
8. The Centre may arrange the translation services upon the request of a party at the expense of the requesting party.

Article 9: Circulation of notices and documents

1. The notices and documents in mediation communicated among the parties and the mediators shall be circulated through the Centre, unless such notices and documents are submitted directly to the mediator in private mediation sessions with clear instruction that such notices or documents must be kept confidential and not be disclosed to another party.
2. Notices and documents shall be sent by the Centre to the parties' addresses provided by the parties and can be sent by delivery against receipt, registered mail, facsimile, email or any other means of communication that provides a record of the sending thereof.

Article 10: Duties of the parties in mediation

1. The parties are to participate in mediation in good faith, including cooperating with each other and with the mediator for the mediation to proceed and to conclude promptly with positive outcomes, presenting accurately the details of the dispute, and providing the information and documents related to the dispute at the request of the mediator.
2. The parties shall also comply with other duties as specified in the provisions of laws.

Article 11: Confidentiality

1. Unless otherwise agreed by the parties in writing, all information produced in or collected from the mediation must be kept confidential by the mediator, the parties and any third party participating in the mediation.
2. The whole content of the Mediated Settlement Agreement is also kept confidential, unless the disclosure is necessary for the enforcement and implementation of such Mediated Settlement Agreement.
3. Any information exchanged between a party and the mediator in a private mediation session shall be kept strictly confidential and not be disclosed to any other parties, unless being consented in advance by the party that provides such information.
4. No audio-visual recording, no transcript or formal record will be made of any part of the mediation process, except the note-taking by the mediator for the sole purpose of conducting the mediation.
5. Any documents or information could be only obtained through mediation shall not be used as evidence in subsequent judicial, arbitral or other proceedings. The parties shall not call the mediator as a witness in any subsequent proceedings, whether in relation to the dispute that has been mediated or any other disputes in connection with the same transaction.

Article 12: Mediated Settlement Agreement

1. The Mediated Settlement Agreement shall be made in writing and contain the following contents:
 - a. Basis of the conduct of mediation;
 - b. General information of the parties;
 - c. Brief description of the dispute;
 - d. Settlement agreements and solutions;
 - dd. Other contents agreed by the parties in accordance with provisions of laws;
 - e. Signatures of the mediator and the parties.
2. The Mediated Settlement Agreement is binding on the parties and enforceable as under the regulations of civil laws.

Article 13: Termination of mediation process

1. The mediation process shall be terminated in the following circumstances:
 - a. Where the parties conclude a mediated settlement agreement;
 - b. Where the mediator, after consulting with the parties, announces in writing that from his or her assessment, the continuing of the mediation process will not promise any possibilities of positive outcomes;
 - c. Where a party or the parties send a written notice to the mediator stating that such party or the parties wish to terminate the ongoing mediation process;
 - d. Where the party receiving a Request for Mediation refuses to mediate; or fails to send the Statement of Reply to the Centre within the period of time fixed by the Centre;
 - dd. Where the period of time for payment of mediation fees fixed by the Centre has expired and there is no appropriate action taken.
2. The Centre shall notify the mediator and the parties of the termination of the mediation process by an official notice.

Article 14: Mediation costs and arising expenses

1. The mediation costs are calculated in accordance with the Schedule of the Mediation Costs of the Centre and consists of:
 - a. Registration fee;
 - b. Remuneration of mediator(s);
 - c. Administrative fees for the Centre.
2. Arising expenses are charged on the basis of actual expenses, including:
 - a. Expenses for travelling, accommodation and other expenses of the mediator;
 - b. Arising expenses for other requests of parties.
3. Unless the parties agreed otherwise, the fees and expenses mentioned in paragraphs 1(b), 1(c) and 2(a) shall be equally allocated between/among the parties; the expenses in paragraph 2(b) shall be borne by the requesting party or parties. A party may pay on behalf of another party for any outstanding portion of fees and expenses mentioned above.
4. The payment of mediation costs shall be made pursuant to the Schedule of Mediation Costs and specific instructions of the Centre. The Center may request a party or the

parties to advance against expenses arising during the mediation. If such advance payment is not made in full, the Centre is entitled to decline to provide the services requested by a party or to request the mediator to suspend the mediation process.

5. Upon the termination of the mediation process, the Centre shall calculate the actual expenses mentioned in paragraph 2. If the advance exceeds the actual expenses, the Centre shall refund the excess amount; if the actual expenses exceed the advance, the parties shall pay the Centre the outstanding amount.

Article 15: General provisions

1. The mediator, the Vietnam International Arbitration Centre and the Centre's employees shall not be liable to any party for any act or omission in connection with the conduct of mediation by the mediator in the mediation process, unless such act or omission is a violation of prohibitions under the laws.
2. In all matters not expressly provided for in the Rules, the Centre and the mediator shall act in the spirit of the Rules and make all efforts for the dispute to be resolved in a fair and efficient manner.

Model Mediation Clause

"All disputes arising out of or in connection with this contract shall be resolved through mediation at the Vietnam Mediation Centre (VMC), a division of Vietnam International Arbitration Centre, in accordance with its Mediation Rules."