



Mediation Rules

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Definitions

Article 1

In these Rules:

‘Mediation Act’ means the Mediation Act, Chapter 5:32

‘mediation’ means a process in which a mediator facilitates and encourages communication and negotiation between the mediation parties, and seeks to assist the mediation parties in arriving at a voluntary agreement

‘virtual mediation’, also referred to as ‘on-line dispute resolution’ or ‘remote mediation’ means the conduct of a mediation by means of video and/or audio conferencing

‘mediation agreement’ means an agreement by the parties to submit to mediation all or certain disputes which have arisen or which may arise between them; a mediation agreement may be in the form of a mediation clause in a contract or in the form of a separate contract

‘mediation party’ means a person who participates in mediation and whose consent is necessary to resolve the dispute

‘mediation process’ includes the mediation session together with all administrative processes and procedures leading to and necessary for the conduct of such mediation session and all processes and procedures after the completion of the mediation session ending with the signing of the mediation agreement or if there is no agreement, when the mediation session is otherwise terminated

‘mediator’ means a neutral third party who conducts mediation and includes a sole mediator or all the mediators where more than one is appointed

‘mediation session’ means a meeting between persons in dispute and a certified mediator for the purpose of resolving the dispute by mediation, and includes anything done for the purpose of: (a) arranging the meeting; or (b) following up anything raised in the meeting

‘non-party participant’ means a person, other than a mediation party or mediator, who is present at a mediation session or otherwise participates in a mediation process, including independent experts, representatives and advisors to the mediation parties and any other persons present during the mediation process

‘Centre’ means the Dialogue Solutions Centre whose principle office is at 15 Wainwright Street, St. Clair, Port of Spain, Trinidad, West Indies

Words used in the singular include the plural and vice versa, as the context may require.

Scope of Application of Rules

Article 2

Where a Mediation Agreement provides for mediation under the Centre's Mediation Rules, these Rules shall be deemed to form part of that Mediation Agreement. Unless the parties have agreed otherwise, these Rules as in effect on the date of the commencement of the mediation shall apply.

Commencement of the Mediation

Article 3

1. A party to a Mediation Agreement that wishes to commence a mediation shall submit a Request for Mediation in writing to the Centre. It shall at the same time send a copy of the Request for Mediation to the other party.
2. The Request for Mediation shall be made by either filing online or by filing at the Centre a Mediation Request Form (Annex 1)
3. The Request for Mediation shall contain or be accompanied by:
 - a) the names, addresses and telephone, e-mail or other communication references of the parties to the dispute and of the representative of the party filing the Request for Mediation;
 - b) a copy of the Mediation Agreement;
 - c) a brief statement of the nature of the dispute (parties are encouraged to provide descriptions of the disputes in sufficient detail to make the circumstances of the dispute clear to the mediator); and
 - d) a statement on preference for in-person or virtual mediation.

Article 4

1. In the absence of a Mediation Agreement, a party that wishes to propose submitting a dispute to mediation shall submit a request for mediation in writing to the Centre. It shall at the same time send a copy of the Request for Mediation to the other party. The Request for Mediation shall include the particulars set out in Article 3(3). The Centre may assist the parties in considering the Request for Mediation.
2. Upon request by a party, the Centre may appoint an external neutral to assist the parties in considering the Request for Mediation. The external neutral may act as mediator in the dispute provided all parties agree. Articles 15 to 18 shall apply *mutatis mutandis*.

Article 5

The date of the commencement of the mediation shall be the date on which the Request for Mediation is received by the Centre.

Article 6

The Centre shall forthwith inform the parties in writing of the receipt by it of the Request for Mediation and of the date of the commencement of the mediation.

Appointment of the Mediator

Article 7

1. Unless the parties have otherwise agreed themselves on the person of the mediator or on another procedure for appointing the mediator, the appointment shall take place in accordance with the following procedure:
 - a) The Centre shall prepare a preliminary list of potential mediators, referencing where possible those who may have a specialty in the subject area.
 - b) The Centre shall invite expressions of interests from each mediators on that preliminary list.
 - c) Mediators who have no conflict of interest and who are available within the required timeframe shall so indicate, among other things, setting out their rates.
 - d) The list of available mediators, accompanied by a statement of each candidate's qualifications and their respective charging rates, shall be sent to the parties.
 - e) After reviewing the list, the parties shall notify the Centre as to which mediator or mediators they mutually agree on.
 - f) The Centre shall as soon as possible thereafter notify the selected candidate or candidates of their appointment.
 - g) Where the parties are unable to agree on a candidate within 10 days of the commencement of the mediation, the Centre shall be authorized to appoint the mediator. The Centre shall similarly be authorized to do so if a person is not able or does not wish to accept the Centre's invitation to be the mediator, or if there appear to be other reasons precluding that person from being the mediator, and there does not remain on the preliminary list a person who is acceptable as mediator to both parties.
2. Notwithstanding the procedure provided in paragraph (1), the Centre shall be authorized to otherwise appoint the mediator if it determines in its discretion that the procedure described therein is not appropriate for the case.
3. The prospective mediator shall, by accepting appointment, be deemed to have undertaken to make available sufficient time to enable the mediation to be conducted expeditiously.

Article 8

The mediator shall be neutral, impartial and independent.

Representation of Parties and Participation in Mediation Process

Article 9

1. The parties may be represented or assisted throughout the mediation process, as well as in their meetings with the mediator.
2. Immediately after the appointment of the mediator, the names and addresses of persons authorized to represent a party, and the names and positions of the persons who will be attending the mediation sessions on behalf of that party, shall be communicated by that party to the other party, the mediator and the Centre.

Conduct of the Mediation

Article 10

The mediation shall be conducted in the manner agreed by the mediation parties. If, and to the extent that, the mediation parties have not made such agreement, the mediator shall, in accordance with these Rules, determine the manner in which the mediation shall be conducted.

Article 11

Virtual mediation and remote conferencing must be conducted according to the [Guidelines set CI Arb Guidance Note on Remote Dispute Resolution Proceedings](#) and, as far as technically possible, the [Seoul Protocol on Video Conference in International Arbitration](#). The technical platform for virtual mediation will ensure that the principle of confidentiality is protected.

Article 12

The mediation parties shall cooperate in good faith with the mediator to advance the mediation as expeditiously as possible.

Article 13

The mediator shall be free to meet and to communicate separately with a mediation party and non-party participants on the clear understanding that information given at such meetings and in such communications shall not be disclosed to the other party without the express authorization of the party giving the information.

Article 14

1. As soon as possible after being appointed, the mediator shall,
 - (a) Invite the mediation parties to a pre-mediation meeting, which may take place virtually facilitated by Dialogue Solutions, or in-person in the offices of Dialogue Solutions
 - (b) in consultation with the mediation parties, establish a timetable for the submission by each party to the mediator and to the other party of a statement summarizing the background of the dispute, the party's interests and contentions in relation to the dispute and the present status of the dispute, together with such other information and materials as the party considers necessary for the purposes of the mediation and, in particular, to enable the issues in dispute to be identified
 - (c) reach agreement with the mediation parties on the overall cost, the cost sharing ratio and payment schedule of the mediation, including, but not limited to, the institutional and administrative costs and the mediator's fees
 - (d) prepare terms of reference setting out the agreed procedure for the conduct of the mediation.
2. The mediator may at any time during the mediation suggest that a party provide such additional information or materials as the mediator deems useful.
3. Any party may at any time submit to the mediator, for consideration by the mediator only, written information or materials which it considers to be confidential. The mediator shall not,

without the written authorization of that party, disclose such information or materials to the other party.

Role of the Mediator

Article 15

1. The mediator shall promote the settlement of the issues in dispute between the parties in any manner that the mediator believes to be appropriate but shall have no authority to impose a settlement on the parties.
2. Where the mediator believes that any issues in dispute between the parties are not susceptible to resolution through mediation, the mediator may propose, for the consideration of the parties, procedures or means for resolving those issues which the mediator considers are most likely, having regard to the circumstances of the dispute and any business relationship between the parties, to lead to the most efficient, least costly and most productive settlement of those issues.

In particular, the mediator may so propose:

- a) an expert determination of one or more particular issues;
 - b) arbitration;
 - c) the submission of last offers of settlement by each party and, in the absence of a settlement through mediation, arbitration conducted on the basis of those last offers pursuant to an arbitral procedure in which the mission of the arbitral tribunal is confined to determining which of the last offers shall prevail.
3. The mediator can, if the parties so desire, give a neutral evaluation on the merits of their respective positions; once this is agreed in writing.

Confidentiality

Article 16

1. No recording of any kind shall be made of any meetings of the parties with the mediator. In the case of virtual mediations and remote conferencing all recording technology must remain with the mediator and disabled.
2. Consistent with the Mediation Act, the exchange of communications and the disclosure of information and documents in the mediation process shall be strictly confidential and are generally inadmissible in court. Unless expressly agreed all negotiations with a view to settlement of the differences or dispute between the mediation parties shall be on a without prejudice basis
3. Subject to the exceptions in the Mediation Act, the mediator and other persons involved in the mediation process are not compellable as witnesses to give evidence of any matter which occurred during the mediation or any confidential information which came to his or her knowledge during the mediation process.

Article 17

Consistent with the Mediation Act, each person involved in the mediation (whether mediator, mediation party or non-party participant) shall respect the confidentiality of the mediation and may not, unless otherwise agreed by the parties and the mediator, use or disclose to any outside party any information concerning, or obtained in the course of, the mediation.

Article 18

Unless otherwise agreed by the mediation parties, each person involved in the mediation shall, on the termination of the mediation, return, to the party providing it, any brief, document or other materials supplied by a party, without retaining any copy thereof. Any notes taken by a person concerning the meetings of the parties with the mediator shall be destroyed on the termination of the mediation.

Article 19

1. Unless otherwise agreed by the mediation parties, the mediator and the parties shall not introduce as evidence or in any manner whatsoever in any judicial or arbitration proceeding:
 - a) any views expressed or suggestions made by a party with respect to a possible settlement of the dispute;
 - b) any admissions made by a party in the course of the mediation;
 - c) any proposals made or views expressed by the mediator;
 - d) the fact that a party had or had not indicated willingness to accept any proposal for settlement made by the mediator or by the other party;
 - e) any settlement agreement between the parties, except to the extent necessary in connection with an action for enforcement of such agreement or as otherwise required by law.
2. Oral or written communications made in the mediation process, including any information prepared for the mediation; any statements made by a party or the mediator; any settlement proposals whether made by a party or the mediator; and any memoranda, notes or work product of the mediator, the parties, or non-party participants shall not be disclosed and will be inadmissible in any legal proceedings.
3. If a party produces a document for the purposes of the mediation that is or otherwise would be privileged from production or admission into evidence, that party will not be taken to have waived that privilege by producing the document.
4. Only a mediated agreement, that is to say the settlement agreement, signed by all the parties may be admissible in any legal proceedings.

Termination of the Mediation

Article 20

The mediation shall be terminated:

- a) by the signing of a settlement agreement by the parties covering any or all of the issues in dispute between the mediation parties;
- b) by the decision of the mediator if, in the mediator's judgment, further efforts at mediation are unlikely to lead to a resolution of the dispute; or
- c) by a written declaration of a party at any time.

Article 21

1. Upon the termination of the mediation, the mediator shall promptly send to the Centre a notice in writing that the mediation is terminated and shall indicate the date on which it terminated, whether or not the mediation resulted in a settlement of the dispute and, if so, whether the settlement was full or partial. The mediator shall send to the mediation parties a copy of the notice so addressed to the Centre.
2. The Centre shall keep the notice of the mediator confidential and shall not, except to the extent necessary in connection with an action for enforcement of a settlement agreement or as otherwise required by law, disclose either the existence or the result of the mediation to any person without the written authorization of the parties.
3. The Centre may, however, include information concerning the mediation in any aggregate statistical data that it publishes concerning its activities, provided that such information does not reveal the identity of the parties or enable the particular circumstances of the dispute to be identified.

Article 22

Unless required by a court of law or authorized in writing by the parties, the mediator shall not act in any capacity whatsoever, otherwise than as a mediator, in any pending or future proceedings, whether judicial, arbitral or otherwise, relating to the subject matter of the dispute.

Administration Fee

Article 23

1. The Request for Mediation shall be subject to the payment to the Centre of an administration fee, the amount of which shall be fixed in accordance with the Schedule of Fees (Annex 3) applicable on the date of the Request for Mediation.
2. The administration fee shall not be refundable.
3. No action shall be taken by the Centre on a Request for Mediation until the administration fee has been paid.
4. If a party who has filed a Request for Mediation fails, within 15 days after a reminder in writing from the Centre, to pay the administration fee, it shall be deemed to have withdrawn its Request for Mediation.

Fees of the Mediator

Article 24

1. The amount and currency of the fees of the mediator and the modalities and timing of their payment shall be fixed by the Centre, after consultation with the mediator and the parties.
2. The amount of the fees shall, unless the parties and the mediator agree otherwise, be calculated on the basis of the hourly or, if applicable, daily indicative rates set out in the Schedule of Fees

(Annex 3) applicable on the date of the Request for Mediation, taking into account the amount in dispute, the complexity of the subject matter of the dispute and any other relevant circumstances of the case.

Deposits

Article 25

1. The Centre may, following the pre-mediation meeting, require each mediation party to deposit an equal amount as an advance for the costs of the mediation, including, in particular, the estimated fees of the mediator and the other expenses of the mediation as set out in the agreed terms of reference as provided for in Article 14.1 (d) above. The amount of the deposit shall be determined by the Centre.
2. The Centre may require the mediation parties to make supplementary deposits.
3. If a mediation party fails, within 15 days after a reminder in writing from the Centre, to pay the required deposit, the mediation shall be deemed to be terminated. The Centre shall, by notice in writing, inform the parties and the mediator accordingly and indicate the date of termination.
4. After the termination of the mediation, the Centre shall render an accounting to the mediation parties of any deposits made and return any unexpended balance to the parties or require the payment of any amount owing from the parties.

Costs

Article 26

Unless the mediation parties agree otherwise during the pre-mediation meeting and so reflected in the said terms of reference, the administration fee, the fees of the mediator and all other expenses of the mediation, including, in particular, the required travel expenses of the mediator and any expenses associated with obtaining expert advice, shall be borne in equal shares by the mediation parties.

Exclusion of Liability

Article 27

Except in respect of deliberate wrongdoing, the mediator and the Centre shall not be liable to any party for any act or omission in connection with any mediation conducted under these Rules.

Waiver of Defamation

Article 28

The parties and, by accepting appointment, the mediator, agree that any statements or comments, whether written or oral, made or used by them or their representatives in preparation for or in the course of the mediation shall not be relied upon to found or maintain any action for defamation, libel, slander or any related complaint, and this Article may be pleaded as a bar to any such action.

Suspension of Running of Limitation Period under the Statute of Limitations

Article 29

The mediation parties agree that, to the extent permitted by the applicable law, the running of the limitation period under any applicable statute of limitations or an equivalent rule shall be suspended in relation to the dispute that is the subject of the mediation from the date of the commencement of the mediation until the date of the termination of the mediation.