

Indo-French Mediation and Arbitration Centre

RULES OF MEDIATION

ARTICLE 1: PURPOSE OF THE MEDIATION

Mediation is an amicable process that organises the intervention of an independent and impartial third party, whose role is to help the parties to work out solutions to end the dispute between them in a fair and equitable spirit.

“Dispute” means any contestation or conflict marking a disagreement, regardless of the origin, the nature and the consequences thereof.

ARTICLE 2: IMPLEMENTATION OF THE MEDIATION

The mediation shall be implemented either further to :

1/ A mediation agreement

This is the written agreement whereby the parties agree to refer their dispute to mediation.

The mediation agreement may take the form either of a mediation clause in a contract or an independent contract.

The existence of a mediation agreement that refers to the rules of mediation of the “*Indo French Mediation and Arbitration Centre*”, implies the unreserved acceptance of said rules.

2/ A written application to refer a dispute to mediation

The parties may jointly refer said application for mediation either to the *F.A.C.T.* or *C.I.M.A.*

Failing a joint application, the party that wishes to organise a mediation shall contact the *F.A.C.T.*, or the *C.I.M.A.*

The institution that receives the application then becomes the “*referral Institution*”.

The “*referral institution*” shall immediately inform the other institution and, if there is no joint application, the other party, by requesting the latter to accept the principle of mediation.

The lack of response to the said request for acceptance within one month at most shall be deemed to constitute a refusal of the mediation.

In any event, the applications must specify the precise identity of the parties, the purpose of the dispute and the amount of interest at stake.

If there is no mediation agreement that refers to the rules of mediation of the “*Indo French Mediation and Arbitration Centre*”, these rules shall be referred to the parties who shall return them within fifteen days as from their receipt with their signatures to formalise their acceptance.

The official referral of the application for mediation shall be recorded on a written document that shall be sent to the parties by the quickest means.

Said correspondence shall include:

- The rules of mediation
- The list of mediators.

The date of commencement of the mediation shall be the date on which the request for mediation was received by the Institution.

ARTICLE 3 : APPOINTMENT & RETIREMENT OF THE MEDIATOR

Unless the parties agree that there shall be 2 mediators, there shall be only one mediator.

In mediation proceedings with one mediator, the parties shall endeavour to reach an agreement on the name of a sole mediator.

In mediation proceedings with 2 mediators, the parties each shall nominate one mediator.

In both cases (one or two mediators), the parties may each provide upto three names, in the order of preference, to facilitate appointment of the next preferred mediator in the event of a refusal by the one nominated.

The “*referral institution*” shall be responsible for informing the mediator thus chosen and for obtaining his consent to holding said office as quickly as possible. The parties shall be informed of the results of said formality and its consequences.

If a mediator appointed by the parties or the *referral institution* does not accept the assignment, the mediator ranking after him in preference shall be appointed after consultation with the parties.

Also, if the parties so require and jointly express it in writing, the mediators may be nominated and appointed by the referral institution.

The parties may at any time by mutual agreement choose a mediator not on the list but with the express approval of the *F.A.C.T.* and *C.I.M.A.*

The mediator must be impartial and independent of the parties.

Therefore, he must at all times and immediately inform each party and the “referral institution” of facts and circumstances that are liable to affect his impartiality and independence. The said facts and circumstances may be liable to cause him to withdraw from his assignment.

The persons who have attained the age of 75 years will automatically cease to be members on the panel of the Centre. In case of a member, who has been appointed as Mediator before attainment of the age of 75 years, his panel membership will continue till the settlement of the case referred to him.

ARTICLE 4: DUTY OF CONFIDENTIALITY OF F.A.C.T. AND C.I.M.A.

In general, the *F.A.C.T.* and the *C.I.M.A.* shall be bound by the utmost confidentiality and may not make the existence of a mediation or even the attempt to organise a mediation public. More specifically, the said duty of confidentiality covers, including with regard to the mediators on the list, the process of appointment and prohibits, in particular, the disclosure of the content of the choice (refusal or preference) made by the parties.

ARTICLE 5: ORGANISATION OF THE MEDIATION

After the mediator has been appointed, each party shall provide the other party and the mediator with the names and addresses of the individuals authorised to commit it legally, and shall specify any limits to said mandate as well as the names and capacities of the individuals who represent it during the mediation.

The mediator, in consultation with the parties, may establish a time schedule for submission by each party to the mediator and the other party, of his statement of dispute and other relevant documents.

The parties shall determine, in consultation with the mediator, the venue where the mediation meetings shall be held, the language(s) used and decide, more generally, on the way of organising the mediation.

Insofar as an agreement is not possible between the parties on such or such a method, the mediator shall settle, with no recourse to appeal, the points at issue after consultation with the parties, having regard to the circumstances of the proceedings.

The mediator shall see that the mediation takes place as quickly as possible.

The parties may set a time limit on the mediation.

In the absence of an express agreement between the parties and the mediator, the mediation may not exceed four months as from the first meeting organised by the mediator.

The mediator may invite the parties to meet with him or may communicate with them orally or in writing. He may meet or communicate with the parties together or with each of them separately.

The mediator shall be free to meet the parties separately but the information provided to him at said meetings cannot be disclosed to the other party without the express authorisation of the party giving the information.

Moreover, a party may always submit information and documents that it considers to be confidential to the mediator for his exclusive information.

The parties will in good faith co-operate with the mediator and, in particular, will endeavour to comply with the requests of the mediator to submit written materials, provide evidence and attend meetings.

Each party may, on his own initiative or at the invitation of the mediator, submit to the mediator suggestions for settlement of the dispute.

ARTICLE 6: CONFIDENTIALITY OF THE MEDIATION

The mediation shall be strictly confidential.

The mediator, the parties and any individual involved in one way or another in the mediation must strictly respect said confidentiality.

To show his acceptance of said obligation, each of said individuals must formally approve these rules before becoming involved in the mediation.

As a consequence of the above, the parties undertake not to rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject matter of the mediation proceedings:

- views, suggestions and representations made by the parties during the mediation
- Admissions made by the other party in the course of the mediation proceedings
- notices and proposals submitted by the mediator,

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- documents of any kind drawn up in the scope of the mediation, except for a document recording an agreement, if its enforcement makes its publication mandatory.

The mediator shall be bound by a strict duty of confidentiality and may be released from said duty of confidentiality only with the express and joint consent of the parties.

Moreover and in accordance with the spirit of his assignment, the mediator shall not be bound to respect the adversarial principle.

Except for the joint and express agreement of the parties, the mediator undertakes not to act as arbitrator or intervene in any way in any court or arbitration proceedings relating to any dispute that was the subject of mediation.

ARTICLE 7: SETTLEMENT AGREEMENT

When it appears to the mediator that there exist elements of a settlement which would be acceptable to the parties, he may formulate the terms of a possible settlement and submit them to the parties for their observations. After receiving the observations of the parties, the mediator may reformulate the terms of a possible settlement in the light of such observations.

If the parties reach an agreement on the settlement of their dispute, they draw up and sign a written settlement agreement. If requested by the parties, the mediator may also draw up or assist the parties in drawing up the settlement agreement.

The parties by signing the settlement agreement put an end to the dispute and are bound by the agreement.

ARTICLE 8: END OF THE MEDIATION

The mediation shall end:

- 1/ by signing an agreement between the parties
- 2/ by a joint written statement by the parties made at any time specifying that they do not wish to continue the mediation
- 3/ by a written statement by a party to the mediator and the other party made at any time whereby said party intends ending the mediation
- 4/ when the mediation time has expired and the time period has not been expressly extended by the parties.

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- 5/ when the rules set in article 9 are breached
 - 6/ by the physical impossibility for the mediator to continue his assignment (in this case another mediation may then be organised)
 - 7/ by the decision of the mediator to end the mediation if he considers that it cannot be reasonably concluded or if he considers that the mediation is going unfairly and/or inequitably

(In the case mentioned in paragraph 7 above, the mediator must first inform the parties, beforehand, in writing of his intention and must take a decision to end his assignment only at the end of a fifteen day period as from the date on which said information is sent to the parties).

ARTICLE 9: COSTS AND FEES OF THE MEDIATION

The administrative costs and fees of the mediation are set by reference to a scale drawn up by mutual agreement between *F.A.C.T.* and *C.I.M.A.*

A registration fee shall be paid along with the Request for Mediation. The registration fee will not be refunded under any circumstances and shall become the property of the “*referral institution*”.

The Request for Mediation shall be subject to the payment to the “referral institution” of the fixed administration fee and the Mediator's fee, 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.

The amount of the administrative fee and the advance payable on the Mediator's fee shall be fixed by the “*referral institution*” taking into account the nature of the dispute and foreseeable duration of the mediation and in accordance with the Schedule of Fees applicable on the date of the Request for Mediation. The referral institution also determines the conditions for the payment of this advance.

In any event, if one of the parties does not deposit the amount of the sums claimed within fifteen days following a reminder of the initial request, the other party, duly informed by the “*referral institution*” or the mediator, may stand in for the defaulting party for said payment, provided that both parties expressly agree to attend the mediation proceedings.

In the event the amounts claimed are not paid within thirty days as from the aforementioned date of information, the mediation shall be deemed to be abandoned and the “*referral institution*” shall immediately inform the parties, the mediator and the other institution that it has been closed in writing.

If, in relation to the progress of the mediation, it appears that the advance payments made by the parties are inadequate, the “*referral institution*” of its own initiative or on information from the mediator may determine the amount of an additional advance payments and the methods of its collection.

After the termination of the mediation, whatever be the reason, the “*referral institution*” shall render an accounting to the parties of the “administrative fees” and other fees and expenses and it will return any unexpended balance to the parties or require the payment of any amount owing from the parties.

FEE SCHEDULE: 2008

Institution	Registration	Mediator	Administrative fees
CIMA and FACT (Euro)	1000 Euros (for the Referral Institution)	300 Euros per hour (Each mediator – with a minimum of Euro 3000)	600 Euros

The parties and the mediator can, after consultation with the “*Referral Institution*”, agree to fix a different remuneration for the mediator.

The mediator's fee shall not cover the possible expenses of his travel, stay, etc. The mediator's fee shall be paid to him after the conclusion of mediation proceedings.

Travelling, stay and other miscellaneous expenses for the mediator(s) shall be refunded on production of supporting documents.

In case 2 mediators have been nominated by the parties, the cost incurred on payment of such travel and lodging expenses for each mediators shall be borne by the party who nominated the respective mediator.

Administrative Fee: 600 Euros, regardless of whether the fees of the mediator is based on the above fee schedule or is based on any other method of agreed remuneration.

Unless the parties agree otherwise, the costs and fees shall be shared equally by the parties.

The amounts mentioned above are not inclusive of tax that may be levied.

ARTICLE 10 : DIFFICULTIES OF APPLYING THE RULES

Any difficulty that could arise in the application of these rules of mediation and which do not fall within the scope of the powers of the mediator and/or the role of the mediator must be submitted by the parties or the most diligent party to the chairmen of the “*FICCI Arbitration and Conciliation Tribunal*” and “*Centre Interprofessionnel de Médiation et d'Arbitrage*” or to a person(s) nominated by the Presidents which undertake to give a suitable reply thereto as quickly as possible.

ARTICLE 11 : INDEMNITY OF MEDIATOR AND F.A.C.T. /C.I.M.A. SECRETARIAT

The mediator, F.A.C.T./C.I.M.A. secretariat shall not be liable to any party for any act or omission in connection with any mediation conducted under these Rules.