



Centre de Médiation de l'Europe, de la Méditerranée et du Moyen Orient
 Mediation Centre of Europe, of the Mediterranean and of the Middle East
 Centro di Mediazione dell'Europa, del Mediterraneo e del Medio Oriente
 Centro de Mediacion de Europa, del Mediterraneo y del Medio Oriente
 Mediationszentrum für Europa, Mittelmeer und Mittelosten

INTERNATIONAL MEDIATION RULES *

**of the Mediation Centre of Europe, of the Mediterranean and of the Middle East
 of the European Centre of Arbitration and Mediation**

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PREAMBLE

These Rules (International Mediation Rules) govern mediation mediations that are not subject to mandatory provisions on different terms at the place of the mediation proceedings, including mediations between parties belonging to different jurisdictions or parties to domestic disputes.

Art. 1. APPLICATION FOR MEDIATION

- 1.1. A party to an agreement for mediation or, in the absence of such an agreement, a party which wishes to submit a dispute to mediation as governed by these International Mediation Rules, unless the applicable law contains different mandatory provisions, may submit its application to the Milan Secretariat of the Mediation Centre of Europe, the Mediterranean and the Middle East (the Mediation Centre or Centre). However, if the dispute is a domestic one, it will be submitted to the Secretariat of the National Chapter of the Mediation Centre in the country concerned, where there is such a National Chapter and, if not, to the Secretariat of the Mediation Centre. The term Secretariat shall refer to the Secretariat of the Mediation Centre or of the National Chapter which is competent for the specific mediation in issue. The term Centre shall refer to the Mediation Centre or to its National Chapter which is competent for the specific mediation in issue.
- 1.2. The Application for mediation shall not be longer than 15 pages and contain:
 - name, corporate entity and registered offices of the parties,
 - a description of the facts and the documents in support of the facts,
 - a description of the dispute,
 - a statement of the position of the applicant on the matter in dispute,
 - a certified photocopy of the mediation agreement, in case such an agreement exists
 - the proposal for a solution of the dispute requested by the applicant
 - the name of the representative of the applicant who is duly authorized to participate in the mediation and to bind the applicant, together with evidence of such authority, and the names of the other persons who will assist him,
 - the name, of the attorney at law – if any – who will represent the applicant, when this is mandatory and, if not, he is appointed
 - the names of the other persons who will attend the mediation, stating the particular matters on which they are informed,
 - the criteria proposed for the choice of the Mediator,
 - a submission putting forward – if so wished – the name of three possible Mediators,
 - evidence that the application for mediation has been forwarded by registered letter and/or fax to the other parties,
 - the mention of the amount in dispute and of the manner by which it has been established,
 - as well as the documents which are relied upon by the applicant, not to exceed 40 pages, unless previously authorised in writing, the relevant parts of them being flagged and marked.
- 1.3. The applicant must deposit its application with the competent Secretariat of the Centre by e-mail, followed by registered mail, and credit to the bank account stated in the Mediation Centre site, 15% of the sum set out in the schedule for mediation services of the Centre of the Mediator's fees and the Centre's administrative dues. The applicant shall attach to the Application for mediation a notice of payment to the Centre issued by its bank or any equivalent proof of payment. A further 35% will be filed by the applicant, if the requested party accepts such proposal to mediate the difference.
- 1.4. The Application shall be made in the language which has been used by the parties in their contractual relationships.

Art. 2. TASKS OF THE SECRETARIAT

- 2.1. The Secretariat of the Centre, or if the dispute is determined as domestic, of the National Chapter having jurisdiction on it by territory, if any, will:
 - check that the Application complies with the requirements of these International Rules, and verify that payment, as provided by the schedule, has been made,
 - record the application,
 - where necessary request any additional payments,
 - verify that the Application and documents in its support have been received by the other party/ies,

- where a valid mediation agreement does not exist, ask the other party/ies if it/they accept/s the mediation and if it /they accept/s these International Mediation Rules,
 - advise the Executive Committee of the Centre or the National Chapter as to the mediations which have been assigned to it, as soon as possible of the developments of the mediation, and deliver to the Executive Committee a copy of the Application and Reply including all documents tendered in support
 - ask the Executive Committee of the Centre to assign the management of a mediation proceedings to a National Chapter.
- 2.2. The Secretariat will effect all such formalities within seven working days commencing from the receipt by it of the Application for Mediation.

Art. 3. REFUSAL OF THE MEDIATION

- 3.1. Where there is no valid mediation agreement, the Executive Committee of the Centre (or if the dispute is domestic, of the National Chapter) or the person duly appointed by it will invite the other party, who is involved in these proceedings, to accept the mediation proceedings.
- 3.2. Where the non-requesting party does not accept the mediation proceedings the Secretariat shall return to the applicant the sum deposited, withholding a sum of € 200.- as a filing fee.
- 3.3. If a mediation agreement under these International Rules exists but notwithstanding this the non-requesting party refuses the mediation, the refusing party undertakes to reimburse to the requesting party the costs and fees which will have been paid by the requesting party for the mediation and to pay to the Mediation Centre the filing fees. Any dispute arising out of or related to a refusal to proceed with an agreed mediation, and any matter arising from it, shall be submitted to the Executive Committee of the European Court of Arbitration (or of its National Chapter, if any, in case of a domestic mediation) by an application made in accordance with its Arbitration Rules.
- 3.4. Where any of the parties to a valid mediation agreement does not engage in a mediation, the mediation may, depending on the object of the mediation, be carried out between the parties which have agreed to proceed.

Art. 4. THE ANSWER

- 4.1. The party or the parties which accept/s the mediation, must send its/their answer to the competent Secretariat within 15 days from the day of their receipt of a copy of the Application for Mediation. The requirements set forth in these International Rules for the Application for Mediation and for the attached documents shall relevantly apply to the Answer to the Application.

Art. 5. APPOINTMENT OF THE MEDIATOR

- 5.1. The Mediation shall be conducted by a Mediator appointed by consent of the parties or, in its absence, by the Executive Committee of the Centre, in case of international mediation, or by the Executive Committee of its National Chapter – if any – or by the person appointed by it for this purpose.
- 5.2. The choice of the Mediator shall be made taking into account the geographical location of the matter, the proposals made by the parties, the time availability of the potential Mediator, and the expertise required to mediate the dispute.
- 5.3. The appointment of the Mediator shall be made by the competent Executive Committee, or by the person appointed by it for that, expeditiously and only after being satisfied that the person to be appointed is impartial in this matter.
- 5.4. The appointment shall be communicated by the Secretariat to the parties as soon as possible and there will be included in such communication a Curriculum Vitae of the appointed Mediator.
- 5.5. The Secretariat shall also inform the appointed Mediator. The appointed Mediator shall accept by fax or telegram attaching its statement of independence and impartiality within four working days from receipt of the notice of appointment.
- 5.6. Failure by the appointed Mediator to accept within the time stated above will be taken as a refusal of the proposed appointment.

Art. 6. CHALLENGE OF THE MEDIATOR

- 6.1. Within 7 working days of receipt by a party of the notice of appointment of the Mediator a party may challenge the appointment on the grounds that the Mediator is not independent or impartial or does not possess the necessary expertise to properly and effectively carry out the mediation or has no available time in the next months.
- 6.2. The competent Executive Committee has jurisdiction to deal with such challenge and shall determine the challenge within ten working days of receipt. The Executive Committee is not bound to give reason for such determination. The determination of the Executive Committee is not open to review.
- 6.3. If the challenge to the Mediator is successful, a new Mediator will be appointed.

- 6.4. The Mediator shall be replaced by the Executive Committee of the Centre in case of international mediations, or by the Executive Committee of its National Chapter, if any, in case of domestic mediations, if he does not fulfil his duties or if he takes no action for more than 15 days or if he resigns his appointment or is temporarily or permanently prevented from fulfilling his duties for any reasons.

Art. 7. THE MEDIATION PROCEEDINGS

- 7.1. The Secretariat will transmit the Application and the Answer to the parties and to the Mediator as soon as the Mediator has accepted his appointment.
- 7.2. The Mediator:
- shall request from the parties any necessary clarification and/or complementary documents not to exceed 30 pages,
 - may request statements to be made, on their word, by the persons indicated by the parties or by persons that the Mediator may identify; such persons will state on their honour that their statement is true and that it contains all what that person knows about such matter
 - shall fix the date for the mediation hearing after having suggested to the parties three possible dates and taken into consideration the views of the parties.

Art. 8. PLACE OF THE PROCEEDINGS

- 8.1. The mediation proceedings shall be held at a place selected to minimise disadvantage to any of the parties.

Art. 9. LANGUAGE OF THE PROCEEDINGS

- 9.1. The Mediator will ensure that the language of the proceedings does not cause a disadvantage to any of the parties.
- 9.2. Unless a single common language was utilised in the relationships between the parties to the contract, the Mediator may permit a party to use one of the languages used by the parties to communicate between themselves for the purposes of the contract.
- 9.3. If the applicant undertakes to pay and advances the costs of the translation, the use of a language different from those permitted above may be allowed by the Mediator provided that simultaneous or consecutive translation occurs.

Art. 10. CONFIDENTIALITY

- 10.1. The mediation proceedings are confidential.
- 10.2. Nothing which is said or written during the proceedings by any party for the purposes of the proceedings may subsequently be produced in Court or before arbitrators, save for the application for mediation, and the record of the settlement agreement.
- 10.3. Under no circumstance shall the Mediator be subsequently appointed as an arbitrator or called to appear as a witness in the subsequent proceedings.

Art. 11. THE TASKS OF THE MEDIATOR

- 11.1. The Mediator must:
- dedicate his efforts to appreciate and understand the contending points of view of the parties,
 - obtain their trust,
 - establish a constructive dialogue between the parties,
 - understand their psychology,
 - hold joint meetings with the parties,
 - hold separate meetings with each of them, if advisable or requested by a party, mentioning to each of them privately its possible weak points
 - mention to them the risks in case of litigation, without putting them under any pressure,
 - play an active role in the resolution of the dispute, carefully listening to the comments of the parties, encouraging them to express, as appropriate, alternative solutions, attempting to reconcile the points of view expressed by the parties and unless the parties have opted out from this during the mediation, in proposing - at the end of discussions – a solution and its grounds.

Art. 12. ABANDONMENT OF THE PROCEEDINGS BY ONE OF THE PARTIES BEFORE THE MEDIATION MEETINGS

- 12.1. If one of the parties, after having accepted the mediation proceedings, decides to abandon his/her involvement in the mediation, he/she must notify the Mediator of its decision by registered letter with return receipt.

- 12.2. That party shall be liable to pay all of the costs incurred by the other party/ies. That party shall also be liable to pay the Mediator's fees and the administrative dues of the Centre.
- 12.3. A written record of the abandonment, and the fixing of the amount to be paid by the party which has abandoned the proceedings, will be made by the Mediator.
- 12.4. The parties, including the party which abandoned the proceedings, will be invited to sign it.

Art. 13. THE MEDIATION MEETINGS

- 13.1. Save in exceptional circumstances, the first joint mediation session must take place within 15 days of the expiry of the 7 working days deadline available to the parties to challenge the appointed Mediator.
- 13.2. The Mediator shall let the applicant speak first and then hear the other parties, asking them for any necessary explanations and allowing them to answer the respective arguments, and may decide whether to hear any possible witnesses.
- 13.3. The Mediator takes the initiative of holding separate meetings with each party and then if necessary further joint meetings, then if needed further separate meetings again and so on.
- 13.4. At the end the Mediator will consider the observations of the parties and their agreement or partial or total disagreement and, unless the parties have opted out, in the latter case give to the parties, immediately following their final debate or after a maximum of seven working days, his final proposal for settlement and then draw up the record of the last step of the proceedings asking the parties to sign it. The record will be completed even if one or all the parties do not sign it.
- 13.5. The record will be prepared in sufficient originals for all the parties, and an additional original for the Centre.
- 13.6. Upon being signed by the parties, the record settling the dispute will have the effects of a settlement agreement and if the applicable procedural law provides for this, may be made enforceable by the competent authority of the place where it is issued or it is to be enforced.

Art. 14. POSSIBLE DISAGREEMENT BETWEEN THE PARTIES

- 14.1. In the event of failure of the parties to settle their dispute, the written record shall indicate the last proposals of the parties and the final proposal of the Mediator.
- 14.2. The parties will be asked to sign the record. The record shall be completed even if one or all the parties do not sign it.
- 14.3. Disagreement will empower any of the parties to forthwith commence appropriate action before the competent arbitral tribunal or state court having jurisdiction.

Art. 15. COSTS AND FEES

- 15.1. The Mediator shall fix in the written record his fees and the administrative dues of the Centre, which will have been communicated to him/her by the competent Secretariat.
- 15.2. Consistent with the spirit of her mediation, each party will bear its own costs and fees, save in the case of a refusal to mediate in spite of an agreement to hold a mediation, or of abandonment of the proceedings by one party. In this event, the Centre may put the costs of the mediation proceedings wholly or in part to the charge of that party.

Art. 16. COMMUNICATION OF THE WRITTEN RECORD TO THE PARTIES

- 16.1. The Secretariat shall establish and request any additional payments that are necessary and, after receipt of them, shall deliver an original of the written record to each party.
- 16.2. The parties accept that the Centre is entitled not to deliver the written record until full payment of the amount fixed for the proceedings and until its collection of it.

Art. 17. NON-PAYMENT BY ONE OF THE PARTIES

- 17.1. Should one of the parties not pay such part of the fees and administrative dues as are owed by it, the parties accept that the proceedings will be stayed until such sum has been paid by said party or by another party. The parties will be jointly and severally liable for all such payment.

Art. 18. SCALE OF FEES

- 18.1. The fees of the Mediator will be discussed by the applicant with the competent Secretariat of the Centre, taking into account the nature and value of the dispute, the number of the parties, and the foreseeable time needed. In the absence of agreement between that Secretariat and the applicant, the Mediator's fees will be determined by the Secretariat on the basis of € 1,000, if the value of the dispute does not exceed € 100,000; € 1,600, if the value is

between € 100,000 and € 400,000; and € 2,500, if it exceeds € 400,000, per each day of work of the Mediator, including all preparation, telephone contacts and mediation meetings.

The administrative fees of the Centre will amount to 10% of such fees in addition.

All expenses of the Mediator and of the Centre for the proceedings, including travel expenses (food and lodging if necessary), rental of a mediation venue and catering if required, and other expenses will also be due.

The Mediator's fees and administrative fees of the Centre will be paid as follows: 15% together with the application and position paper, then 35% of that amount if the interested party accepts to participate to the mediation; if so, 15% by the non-requesting party upon the filing of its position paper and 35% by it upon receiving from the Mediator the notice that he is ready to contact the parties.

If the party invited to the mediation does not pay, the applicant will have to pay also that share of such costs and fees.

The proceedings will be automatically stayed in the absence of receipt by that Secretariat of the full payment of the above amounts.