

THE MALAYSIAN INSTITUTE OF ARBITRATORS



**INSTITUT PENIMBANGTARA
MALAYSIA**

MEDIATION RULES

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MALAYSIAN INSTITUTE OF ARBITRATION

Mediation Rules

1. Scope of Application

- 1.1 Where any agreement, submission or reference provides for mediation under or in accordance with the Mediation Rules of the Malaysian Institute of Arbitrators ("the Institute"), the mediation shall be conducted in accordance with these Rules or such amended Rules as the Institute may have adopted to take effect on or before the commencement of the mediation.
- 1.2 Where application is made to the Institute or its President for the nomination or appointment of all the mediators or the sole mediator for handling the mediation, the parties shall be deemed to agree to the conduct of the mediation under these Rules, unless the parties mutually agree to the contrary.
- 1.3 The parties may, by written agreement, modify or alter the extent of applicability of these Rules to their mediation.

2. Initiation of Mediation

- 2.1 Mediation may be initiated either by all the parties to a dispute by filing a Joint Reference to Mediation or by any party to a dispute by filing a Request for Mediation pursuant to these Rules.
- 2.2 The Joint Reference to Mediation or the Request for Mediation, as the case may be, is to be filed with the Secretariat of the Institute together with a non – refundable processing fee of RM100.00 and an initial deposit of RM1,000.00 as security towards the Mediator's fees.
- 2.3 The Joint Reference to Mediation or the Request for Mediation, as the case maybe, shall contain a brief summary of the dispute, the names, addresses and contact numbers of all the parties to the dispute and the parties representatives (if any) in the mediation.
- 2.4 The initiating party shall file two (2) copies of the Joint Reference to Mediation or the Request for Mediation (as the case maybe) with the Institute and serve a copy thereof on every other party to the dispute.
- 2.5 Where the mediation is initiated by a party who files a Request for Mediation, the Institute is to write to the other party(s) to the dispute for confirmation as to whether or not such other party(s) agree to submit to mediation. If such other party(s) agree to submit to mediation, the Institute shall appoint a mediator for the dispute. If any of such other party(s) refuses to submit

to mediation, the Institute shall not appoint a mediator for the dispute (in which event the Institute shall issue a written statement to the effect that mediation cannot be commenced due to such other party's refusal to submit to mediation) except where (a) mediation for the dispute in question is compulsory under the law or under a court order, or (b) mediation for the dispute in question is obligatory under the contract between the parties, or (c) mediation for the dispute in question is a prerequisite procedure or a condition precedent to commencement of arbitration or legal proceedings in connection with the dispute. In the event of a dispute within any of the exceptions (a), (b) or (c) as aforesaid, the Institute shall proceed to appoint a mediator for the dispute irrespective of whether or not any party thereto objects to mediation or refuses to submit to mediation.

3. Appointment of Mediator

- 3.1 Unless the parties agree otherwise, mediation under these Rules shall be conducted before a sole mediator.
- 3.2 The institute is to forward a list of mediators on its panel for the parties' consideration. In the event the parties do not reach an agreement on the choice of mediator within seven (7) working days from the date of supply of the list of mediators, the President of the Institute shall appoint a person on the Institute's panel to act as the Mediator.
- 3.3 The Mediator is not a servant or agent of the Institute or of any of the parties.

4. Disclosure and Change of Mediator

- 4.1 A prospective mediator should disclose to those who approach him in connection with his possible appointment any circumstances which he considers to be likely to give rise to justifiable doubts as to his impartiality or independence or conflict of interest. A mediator, as soon as practicable after being appointed or chosen, should disclose such circumstances to the parties unless the parties have already been informed by him of these circumstances.
- 4.2 A party who intends to object to the choice of the Mediator based on the circumstances referred to in Rule 4.1, shall send written notice of his objection within seven (7) working days after appointment of that mediator has been notified to the challenging party or the relevant circumstances which became known to the challenging party, whichever is later. If there is no written objection before the expiry of the said seven (7) working days the party concerned shall be deemed to have accepted the Mediator without any challenge.
- 4.3 The Institute may, after receipt of any party's objection to the choice of the Mediator under Rule 4.2, replace the Mediator with another Mediator.
- 4.4 In the event of death, disability, resignation or withdrawal of a mediator, another mediator shall be appointed or chosen pursuant to the procedure provided for in Article 3.

4.5 In the event that the mediator fails to act promptly or in the event of impossibility on the part of the mediator to perform his functions, the President of the Institute is authorised to appoint another person as replacement Mediator.

4.6 The question whether or not the Mediator fails to act or disability or impossibility on the part of the Mediator to perform his functions shall be determined by mutual agreement in writing between the parties, or failing such agreement, shall be decided by the President of the Institute.

5. Representation

5.1 Individual parties should attend the mediation in person. Companies, bodies corporate and other similar legal entities shall appoint representatives who have the necessary authority to discuss, negotiate, agree to and settle the dispute.

5.2 The parties are to supply the Institute and the Mediator with the names of their authorised representatives.

6. Mediation Agreement

6.1 As soon as possible after the Mediator's appointment but before the mediation is carried out, the parties shall enter into an agreement ("Mediation Agreement") with the Mediator to set out the terms of appointment of the Mediator.

6.2 Unless the Mediator and the parties otherwise agree in writing, the Mediation Agreement shall be on terms and conditions of the Standard MI Arb Mediation Agreement prevailing at the time of signing the agreement.

7. Roles and Functions of Mediator

7.1 The Mediator's role is to help the parties in their attempt or endeavour to reach a negotiated settlement by mutual consensus.

7.2 The Mediator is to facilitate the negotiations between the parties with a view towards a mutually agreeable settlement.

7.3 The Mediator does not have any authority to impose settlement on the parties.

7.4 The Mediator shall not make a decision or recommendation as to how the substantive issues in dispute should be resolved between the parties, nor shall he advise the parties as to how a court of law or tribunal will or is likely to decide on the substantive issues in dispute.

- 8.3 The parties shall maintain the confidentiality of the mediation and shall not rely on or adduce as evidence in any arbitral, judicial or other legal proceedings any of the information, matters and documents referred to in Rule 8.2 above.
- 8.4 The Mediator, the Institute or any of their officer, employee or representative shall not be in any manner compelled to divulge any information, matter or document referred to in Rule 8.2 above and neither shall any of them be called as a witness or expert in any arbitral, judicial or other legal proceedings in relation to or in connection with the dispute which forms the subject-matter of the mediation.
- 8.5 In pursuance of the confidentiality of mediation, mediation sessions, meetings and proceedings shall not be recorded in any manner, (be it stenographic record, transcript, formal record or audio-visual recording). Only the Mediator is permitted to write, in his/her own handwriting, brief notes for purposes of monitoring the progress and facilitating the continuing mediation. The Mediator's notes shall be confidential and privileged, and shall not be produced or adduced as evidence whatsoever in any arbitral, judicial or other legal proceedings.

9. Termination of Mediation

The mediation is ended or terminated upon occurrence of any of the following events:

- (a) the execution of a written settlement agreement by all the parties;
- (b) the issuance of a written declaration of the Mediator to the effect that further efforts on mediation are no longer worthwhile; or
- (c) issuance of a written declaration of party or parties to the effect that the mediation proceedings are terminated.

10. Exclusion of Liability

- 10.1 The Institute, the President of the Institute and the Mediator shall not be liable to any party for any act or omission in respect of or in connection with any mediation or any proceeding under any mediation conducted under these rules or in respect of any mediation conducted by any mediator appointed by the President of the Institute.
- 10.2 The parties to the arbitration shall not make any claim or proceeding against the Institute, the President of the Institute or any officer or member of the Institute in respect of any matter in connection with any mediation referred to in Rule 10.1 above.

11. Costs

11.1 Mediator's costs and expenses

- (1) The Mediators' fees shall be in accordance with the Institute's prevailing scale of mediators' fees published by the Institute from time to time.
- (2) Where the Institute's scale of fees allows a range within which the fees may be charged by the mediator, the specific rate of fee for a particular mediator within the range shall be fixed by the President as soon as possible at an early stage of the mediation proceedings, preferably not later than the first meeting. If the mediator or any part to the arbitration disagrees with the rate of mediator's fees fixed by the President then that party shall apply in writing to the President of the Institute to revise the rate of mediator's fee.
- (3) If time cost is used as the basis of mediator's fees, then the mediator's fees shall be computed on the basis of actual time spent by the mediator in conducting the mediation.
- (4) The Institute imposes an administration and coordination levy on the mediator's fees in respect of mediator's appointed by the President of the Institute and this levy is fixed at five (5) percent of the mediators fees. This levy shall not be added to the cost of the mediation.
- (5) In addition to the mediator's fees, all out-of-pocket expenses incurred by the mediator are reimbursable by the parties. Out-of-pocket expenses include but are not limited to hiring of the venue, refreshments, telephone and facsimile costs, postage and courier, typing costs, mediator's traveling expenses, etc.
- (6) The parties to the dispute shall be jointly and severally responsible for the mediator's fees, costs and expenses.
- (7) The mediator is entitled to tax and assess his fees, costs and expenses. The mediator shall give a brief statement or breakdown showing his computation of his taxed fees, costs and expenses.
- (8) In the event of a mutual settlement of issues or disputes by agreement between the parties, the fees and expenses payable to the mediator shall be paid to the Institute by the party or parties responsible for so doing under terms of the settlement within 14 days after notification of the amount. If the terms of the settlement agreement is silent as to which party is responsible for paying the mediator's fee's expenses, the parties for the dispute shall be jointly and severally responsible for paying the mediator's fees and expenses.

11.2 Party-To-Party Costs

- (1) Unless the parties mutually agree to the contrary in the settlement agreement or in another written agreement, each party shall bear its own costs and expenses of mediation.
- (2) Where the parties mutually agree as to who should bear the party-to-party costs but the mutual agreement does not state the amount of such costs, then the total amount of the party-to-party costs shall not exceed the total amount of the mediator's costs and expenses assessed under Rule 11.1 hereof.

11.3 Security For Costs

- (1) The Mediator may require the parties to provide in equal proportions security deposit for half of the total computed or estimated fees and disbursements before convening the mediation meeting.
- (2) During the course of the mediation proceedings, the mediator may require the parties to provide additional security towards mediator's costs, and thereupon the parties shall pay additional security in equal proportion. If a party fails or refuses to pay his portion of the additional security towards costs, the mediator at his exclusive discretion may either:-
 - (a) proceed with the mediation proceedings, and may claim for his costs later; or
 - (b) suspend the further mediation proceedings until and unless the full security towards costs as requested has been paid by both the parties or either of them.
- (3) Payments of security towards costs shall be by cheques made payable to the Institute and crossed A/C Payee only or such other mode of payment as the Institute may notify in writing.
- (4) The security towards costs may be utilized to set off the costs of the mediation.

12. Interpretation

12.1 Unless the context otherwise requires, words and expressions below shall bear the meanings and/or definitions ascribed thereto respectively below:

"the Institute" means The Malaysian Institute of Arbitrators;

"the President" means the President of the Institute, and in the event the President is unable or incapable of acting by any reason whatsoever, refers to the Deputy President of the Institute;

"these Rules" means the Rules of Mediation of the Malaysian Institute of Arbitrators.

12.2 The headings and sub-headings in these Rules are inserted for ease of reference only, and shall not affect the meaning or interpretation of these Rules.

12.3 Any word or expression in these Rules which refers to male gender shall also include the female gender.