

MEDIATION RULES



Mediation is: "The process by which the participants together with the assistance of a neutral person or persons, systematically isolate disputed issues in order to develop options, consider alternatives and reach a consensual agreement that will accommodate their needs."

Folberg & Taylor

Functions of the Mediator

1. The Mediator will assist the parties to explore options for and, if possible, to achieve the expeditious resolution of their dispute ("the Dispute") by agreement between them.
2. The Mediator will not make decisions for a party or impose a solution on the parties.
3. The Mediator will not, unless the parties agree in writing to the contrary, obtain from any independent person advice or an opinion as to any aspect of the Dispute and then only from such person or persons and upon such terms as are agreed by the parties.

Conflicts of Interest

4. The Mediator must disclose to the parties to the best of the Mediator's knowledge any prior dealings the Mediator has had with either of them and any interest the Mediator has in the Disputes.
5. If in the course of the mediation the Mediator becomes aware of any circumstances that might reasonably be considered to affect the Mediator's capacity to act impartially the Mediator will immediately inform the parties of those circumstances. The parties will then confer and if agreed continue with the mediation before the Mediator.

Participation

6. The parties must participate with the Mediator and each other during the mediation.
7. Each party must use its best endeavours to comply with reasonable requests made by the Mediator to promote the efficient and expeditious resolution of the Dispute.

Authority & Representation

8. If a party is a natural person, the party must attend the mediation conference. If a party is not a natural person it must be represented at the mediation conference by a person with full authority to make agreements binding on it settling the Dispute.
9. Each party may also appoint one or more other persons including legally qualified persons to assist and advise the party in the mediation and to perform such roles in the mediation as the party requires.

Conduct of the Mediation

10. Subject to Rule 21, the mediation, including all preliminary steps, will be conducted in such manner as the Mediator considers appropriate having due regard to the nature and circumstances of the Dispute, the agreed goal of an efficient and expeditious resolution of the Dispute and the view of each party as to the conduct of the mediation.
11. The mediation conference shall be held within fourteen (14) days of the selection of the mediator or within such other period as the parties may agree.
12. Without limiting the Mediator's powers under Rule 10 the Mediator may give directions as to:
 - 12.1 Preliminary conferences prior to the mediation conference.

- 12.2 The exchange of experts' reports, the meeting of experts and the subsequent preparation of a joint experts' report with a view to identifying areas of agreement, narrowing the area of disagreement and clarifying briefly the reasons for disagreement.
- 12.3 The exchange of brief written outlines of the issues involved.
- 12.4 Service on the Mediator prior to the mediation conference of any such reports and outlines.

Communication between the Mediator and a Party

13. The Mediator may meet as frequently as the Mediator deems appropriate with the parties together or with a party alone and in the latter case the Mediator need not disclose the meeting to the other party.
14. The Mediator may communicate with any party orally and/or in writing.
15. Subject to Rule 16, any document relied upon by a party and provided to the Mediator must immediately be served by the party on the other party.
16. Information, whether oral or written, disclosed to the Mediator by a party in the absence of the other party may not be disclosed by the Mediator to the other party unless the disclosing party permits the Mediator to do so.

Confidential Information

17. A party may prove objective facts, whether or not confidential, by direct evidence in any proceedings in respect of the Dispute. Subject to that, all confidential information disclosed during the mediation, including preliminary steps:
 - 17.1 may not be disclosed except to a party or a representative of that party participating in the mediation or if compelled by law to do so; and
 - 17.2 may not be used for a purpose other than the mediation.

Privilege

18. Subject to Rule 25, the following will be privileged and will not be disclosed in or relied upon or be the subject of a subpoena to give evidence or to produce documents in any arbitral or judicial proceedings in respect of the Dispute:
 - 18.1 Any settlement proposal, whether made by a party or the Mediator.
 - 18.2 The willingness of a party to consider any such proposal.
 - 18.3 Any admission or concession or other statement or document made by a party.
 - 18.4 Any statement or document made by the Mediator.

Subsequent Proceedings

19. The Mediator will not accept appointment as an arbitrator in or act as an advocate in or provide advice to a party to any arbitral or judicial proceeding relating to the the Dispute.

20. Neither party will take action to cause the Mediator to breach Rule 19.

Termination

21. A party may terminate the mediation immediately by giving written notice to each other party and to the Mediator at any time during or after the mediation conference.
22. If, after consultation with the parties, the Mediator forms the view that the Mediator will be unable to assist the parties to achieve resolution of the Dispute the Mediator may immediately terminate the engagement as Mediator by giving written notice to the parties of that termination. The mediation will be terminated in that event only if a party gives notice to that effect to each other party. If no such notice is given the parties must appoint another Mediator.
23. The mediation will be terminated automatically upon execution of a settlement agreement in respect of the Dispute.

Settlement

24. If settlement is reached at the mediation conference, the terms of the settlement must be written down and signed by the parties and the Mediator before any of the participants leave the mediation conference.

Enforcement

25. In the event that part or all of the Dispute is settled either party will be a liberty:
- 25.1 To enforce the terms of the settlement by judicial proceedings.
- 25.2 In such proceedings to adduce evidence of and incidental to the settlement agreement including from the Mediator and any other person engaged in the mediation.

Exclusion of Liability and Indemnity

26. The Mediator will not be liable to a party except in the case of fraud by the Mediator for any act or omission by the Mediator in the performance or purported performance of the Mediator's obligations in the mediation.
27. The parties shall jointly and severally indemnify the Mediator against all claims, except in the case of fraud by the Mediator, arising out of or in any way referable to any act or omission by the Mediator in the performance or purported performance of the Mediator's obligations in the mediation.

Costs

28. The parties will share equally and will be jointly and severally liable to the Mediator for the Mediator's fees for the mediation. The Mediator may, at any time and from time to time, require each party to deposit with the Mediator such sum as the Mediator considers appropriate to meet the Mediator's anticipated fees and disbursements. The Mediator may decline to embark upon or continue the mediation until all such deposits are made.
29. If the mediation does not result in an agreement to resolve the Dispute, the costs of the mediation will be costs in the cause.