

CIArb MEDIATION RULES

JANUARY 2018

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The Mediation Subcommittee worked with David Richbell who assisted with preparing a first draft of the Mediation Rules.

Article 1 – Scope of application

1.1. Where parties have agreed that any disputes between them, whether contractual or not, shall be referred to mediation under the CI Arb Mediation Rules (‘The Rules’) then such disputes shall be mediated in accordance with these Rules, or such amended rules as the CI Arb may have adopted as of the date of filing a request for mediation, subject to such modification as the parties may agree.

1.2. These Rules shall come into force on 1 January 2018.

1.3. The parties may at any time agree in writing, as between them, to modify the provisions of the Rules. Any agreement to modify the provisions made after a mediator is appointed shall be subject to the approval of the mediator also in writing.

1.4. All communications with and applications to the CI Arb under these Rules shall be in English. The CI Arb may request from the parties a translation of any document written in a language other than English, where such a document is required for the CI Arb to fulfil its mandate under these Rules.

1.5. In these Rules:

- a) ‘mediation’ refers to the entire process from the initiation of a mediation in accordance with Article 2 or 3 of these Rules as appropriate until it is terminated in accordance with Article 9 of these Rules;
- b) ‘CI Arb’ means the ‘Chartered Institute of Arbitrators’. The functions of the CI Arb shall be performed in its name by the President or Deputy President of the CI Arb;
- c) ‘DAS’ means the ‘Dispute Appointment Service’ of the CI Arb;
- d) ‘representative’ includes any adviser or other authorized representative of a party;
- e) words used in the singular shall be construed to include the plural and *vice versa*, as the context may require.

1.6. For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is received. If the last day of such period is an official holiday or non-business day at the residence or place of business of the addressees, the period is extended until the first business day that follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.

Article 2 – Initiating mediation: prior agreement to mediate under the Rules

2.1. Where there is a prior agreement to mediate under these Rules, any party may

initiate mediation by communicating to all other parties to the dispute, in writing (which includes e-mail) a request for mediation, containing:

- a) the date on which the request was communicated to the other parties;
- b) the names, addresses (including e-mail addresses), and contact numbers (including telephone and facsimile) of all parties to the dispute and any legal or other representatives involved, so far as known to the requesting party;
- c) a brief description of the nature of the dispute and, if possible, its estimated value;
- d) a name or names of mediators that the party proposes be appointed; and/or
- e) a proposal for criteria required of a prospective mediator, such as language skills, mediation experience or subject-matter expertise; and
- f) a proposal for dates when the parties and the mediator could meet, if a meeting is required.
- g) a copy of the prior agreement to mediate.

2.2. Within 21 days from the date on which a request for mediation was received by all of the other parties, each recipient shall respond to the requesting party in writing, with a copy to all other parties, stating whether they accept the request to mediate and whether they accept any of the proposed name(s) or criteria suggested by the requesting party and making any additional suggestions the recipient may have regarding name(s) or criteria for the appointment of a mediator.

2.3. Mediation shall be deemed initiated on the date when a written acceptance of the request to mediate has been received by the requesting party from all of the other parties.

2.4. In the event that some of the other parties accept the request to initiate mediation under these Rules within 21 days then mediation shall be deemed initiated between them and the requesting party from the date of the last acceptance.

2.5. In the event that none of the other parties accept the request to initiate mediation under these Rules within 21 days from the date on which the request was communicated to them there shall be no mediation under these Rules.

Article 3 – Initiating mediation: no prior agreement to mediate under the Rules

3.1. Where there is no prior agreement between the parties to refer a dispute to mediation under these Rules, any party wishing to initiate mediation under these Rules may offer to do so by communicating a written request inviting all other parties to reply within 21 days in writing (which includes e-mail) whether or not they accept the offer. The written request shall contain the information specified in Article 2.1 (a)-(f).

3.2. Mediation shall be deemed initiated on the date when a written acceptance of the offer to mediate has been received by the requesting party from all of the other parties.

3.3. In the event that some of the other parties accept the offer to initiate mediation under these Rules within 21 days then mediation shall be deemed initiated between them and the requesting party from the date of the last acceptance.

3.4. In the event that none of the other parties accept the offer to initiate mediation under these Rules within 21 days from the date on which the offer was communicated to them there shall be no mediation under these Rules.

Article 4 – Mediator Appointment

4.1. Where all parties have agreed who they wish to appoint as mediator they shall jointly appoint the mediator to mediate the matters in dispute in accordance with these Rules.

4.2. If, within 28 days from the initiation of a mediation the parties have not agreed upon who they wish to appoint as mediator, any party may apply to the CI Arb to propose a list of potential mediators or to appoint a mediator. The party making the application shall complete the relevant application form available on the CI Arb's website and send it to DAS with a copy to the other parties.

4.3. The request to propose a list of potential mediators or to appoint a mediator by the CI Arb pursuant to these Rules shall be accompanied by payment of the appropriate application fee specified on the CI Arb website. The CI Arb shall not proceed until the specified payment has been received. The application fee is not refundable.

4.4. On receipt of an application to appoint a mediator, the CI Arb shall make the appointment as promptly as possible, but in any event within 10 days. In making the appointment the CI Arb shall have due regard to any agreement in writing between the parties as to the criteria required of a prospective mediator, such as language skills, mediation experience or subject-matter expertise.

4.5. Mediators are usually selected from the CI Arb's Presidential Panel of Mediators. However, the CI Arb may appoint a mediator who is not on the CI Arb's Presidential Panel of Mediators if it considers, in its sole discretion, that it is appropriate to do so.

4.6. A single mediator will be appointed, unless otherwise agreed by the parties.

Article 5 – Conflict of interest

5.1. The mediator shall inform the CI Arb and all parties at the earliest possible time, whether before or during the process, of any perceived conflict of interest and shall withdraw unless the parties explicitly consent to the mediator continuing.

5.2. In the event that a mediator has to be replaced during the course of the mediation, a substitute mediator shall be selected or appointed pursuant to the procedure provided for in Article 4.

Article 6 – Confidentiality

6.1. Unless required by law or otherwise agreed between the parties to the mediation in writing:

- a) the CI Arb, including the President, the Deputy President and its employees, the parties, their representatives, and the mediator shall keep confidential all information, whether given orally, in writing or otherwise, produced for, or arising out of or in connection with the mediation, including the fact that the mediation is taking, or has taken, place;
- b) the existence and content of any settlement agreement shall be kept confidential except to the extent that disclosure is necessary for its implementation or enforcement.

6.2. Unless permitted by the party, the mediator shall keep all information given privately by that party confidential from all other parties.

Article 7 – Conduct of the mediation

7.1. The mediator shall conduct the mediation in such manner as the mediator considers appropriate, taking into account the circumstances of the case, the wishes of the parties and the need to avoid unnecessary delays.

7.2. Meetings may be held face to face, by telephone, by videoconference, or other electronic means. The mediator may communicate with the parties together or with any party separately, with or without its representatives.

7.3. A party may be assisted by any person(s) it chooses and must keep the mediator and each other party informed of the names, contact details and roles of such persons and of any changes that may occur during the mediation.

7.4. Each party will inform the mediator and all other parties to the dispute who has the ultimate authority to settle the dispute on their behalf.

7.5. Throughout the mediation the parties and their representatives shall act in good faith and shall use their best efforts to co-operate with each other and with the mediator to resolve the dispute and enable the mediation to proceed smoothly.

Article 8 – Termination of the mediation

- 8.1. The mediation shall end:
- a) upon the signing by the parties of a written settlement agreement; or
 - b) upon the mediator, after consultation with the parties, informing them that it is terminated as in the mediator's opinion further attempts at securing an agreed outcome through mediation are no longer appropriate or practically achievable; or
 - c) upon written notification by any party that the mediation is terminated. No reasons need be stated in any such notice.

Article 9 – Costs

9.1. Unless otherwise agreed by the parties, each party shall bear its own costs and expenses of the mediation.

9.2. Unless otherwise agreed by the parties, each party shall bear equally the costs and expenses of the mediation including but not limited to:

- a) the CI Arb's application fees, if applicable;
- b) the mediator's fees and expenses;
- c) the costs of any meeting rooms, meals and refreshments or other reasonable costs relating to the organisation and conduct of the mediation;
- d) the fees and expenses of any independent witness or expert who attends the mediation at the request of the mediator and with the consent of the parties.

9.3. The mediator may at any time during the mediation require the parties to make deposits to cover any anticipated fees or expenses related to the mediation and may suspend the mediation until such deposit is paid. Any surplus funds deposited shall be returned to the parties in proportion to their payments at the conclusion of the mediation.

Article 10 – Mediator’s role in subsequent proceedings

10.1. The mediator shall not be appointed as representative, counsel or expert witness for any party in any subsequent adjudication, arbitration or judicial proceedings whether arising out of or in connection with either the mediation or the subject matter of the mediation, save as may be expressly agreed in writing by all the parties and the mediator. No party shall be entitled to call the mediator as a witness in any subsequent adjudication, arbitration or judicial proceedings arising out of or in connection with the same matter.

10.2. The mediator shall not be appointed as an adjudicator or arbitrator in the same dispute or in any other dispute arising out of or in connection with the same matter, nor shall the mediator accept such additional appointment unless, at the time of the additional appointment, the parties expressly waive in writing any objection arising out of the adjudicator or arbitrator having previously acted as mediator between the parties under these Rules, and the mediator consents to the appointment.

Article 11 – Exclusion of liability

11.1. Save for intentional wrongdoing, the parties waive, to the fullest extent permitted under the applicable law, any claim against the mediator, the CI Arb, including the President, the Deputy President and its employees, and any person appointed by the mediator based on any act or omission in connection with the mediation.

11.2. No communication made during the course of the mediation shall be relied upon to found or maintain any action for defamation, libel, slander or any related complaint.

**Appendix I: Model mediation clauses for
contracts**

Option 1 – Simple mediation contract clause

Any dispute, controversy, or claim arising out of or in connection with this contract, or the breach, termination or validity thereof, shall be referred to mediation in accordance with the Chartered Institute of Arbitrators' Mediation Rules. The initiation of the mediation will not prevent the parties commencing or continuing arbitration, court proceedings or any other form of dispute resolution.

Parties may consider the following additional provisions:

1. Language(s) of the mediation

The language(s) of the mediation shall be [choose language(s)].

2. Place of mediation and applicable law

The place of the mediation shall be [choose city and country]. The mediation shall be conducted in accordance with mediation law of the place of the mediation.

Option 2 – Multi-tiered contract clause for CI Arb mediation followed by a CI Arb arbitration

Any dispute, controversy, or claim arising out of or in connection with this contract, or the breach, termination or validity thereof, shall first be referred to mediation in accordance with the Chartered Institute of Arbitrators' Mediation Rules.

Parties may consider the following additional provisions:

1. Language(s) of the mediation

The language(s) of the mediation shall be [choose language(s)].

2. Place of mediation and applicable law

The place of the mediation shall be [choose city and country]. The mediation shall be conducted in accordance with mediation law of the place of the mediation.

3. Arbitration if mediation does not resolve the dispute

If the dispute, controversy, or claim or any part of it is not resolved by mediation within [insert number] days from the initiation of the mediation, it shall be referred to the Chartered Institute of Arbitrators (CI Arb) and settled by final and binding arbitration in accordance with the CI Arb Arbitration Rules.

The arbitral tribunal shall be composed of [one or three] arbitrator(s).

The language(s) of the arbitration proceedings shall be [choose language(s)].

The place of the arbitration shall be [choose city and country]. The proceedings shall be conducted in accordance with arbitration law of the place of the arbitration.

Option 3 – Agreement to CI Arb mediation after a dispute arises

We, the undersigned parties, hereby agree that the dispute concerning [insert a brief and accurate description of the dispute], shall, notwithstanding any other proceedings, be referred to mediation in accordance with the Chartered Institute of Arbitrators' Mediation Rules.

Parties may consider the following additional provisions:

1. Language(s) of the mediation

The language(s) of the mediation shall be [choose language(s)].

2. Place of mediation and applicable law to the mediation

The place of the mediation shall be [choose city and country]. The mediation shall be conducted in accordance with mediation law of the place of the mediation.

Option 4 – Agreement to CI Arb mediation after a dispute arises, followed by CI Arb arbitration, if the mediation does not resolve the dispute

We, the undersigned parties, hereby agree that the dispute concerning [insert a brief and accurate description of the dispute], shall, notwithstanding any other proceedings, be referred to mediation in accordance with the Chartered Institute of Arbitrators' Mediation Rules.

Parties may consider the following additional provisions:

1. Language(s) of the mediation

The language(s) of the mediation shall be [choose language(s)].

2. Place of mediation and applicable law to the mediation

The place of the mediation shall be [choose city and country]. The mediation shall be conducted in accordance with mediation law of the place of the mediation.

3. Arbitration if mediation does not resolve the dispute

If the dispute, controversy, or claim or any part of it is not resolved by mediation within [insert number] days from the initiation of the mediation, it shall be referred to the Chartered Institute of Arbitrators (CI Arb) and settled by final and binding arbitration in accordance with the CI Arb Arbitration Rules.

The arbitral tribunal shall be composed of [one or three] arbitrator(s).

The language(s) of the arbitration proceedings shall be [choose language(s)].

The place of the arbitration shall be [choose city and country]. The proceedings shall be conducted in accordance with arbitration law of the place of the arbitration.

NOTE

The Practice and Standards Committee (PSC) keeps these Rules under constant review. Any comments and suggestions for updates and improvements can be sent by email to psc@ciarb.org