



LAGOS CHAMBER OF COMMERCE INTERNATIONAL ARBITRATION CENTRE

MEDIATION RULES 2016



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LACIAC assists local and international businesses
by creating cost-effective and efficient dispute
management and resolution solutions

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MEDIATION RULES

1. Scope and Application

- 1.1. For the purpose of the LACIAC Mediation Rules (“Mediation Rules”), ‘mediation’ means a process, whether referred to by the expression mediation, conciliation, or an expression of similar import, whereby parties request a third person or persons (the “mediator”) to assist them in their attempt to reach an amicable settlement of their dispute arising out of or relating to a contractual or other legal relationship. The mediator does not have authority to impose upon the parties a solution to the dispute.
- 1.2. The Mediation Rules apply irrespective of the basis upon which the mediation is carried out, including agreement between the parties whether reached before or after a dispute has arisen, an obligation established by law, or a direction or suggestion of a court, arbitral tribunal or competent government entity.

2. Interpretation

- 2.1. In the interpretation of the Mediation Rules, regard is to be had to its international origin and to the need to promote uniformity in its application and the observance of good faith.
- 2.2. Questions concerning matters governed by the Mediation Rules which are not expressly provided for in it are to be settled in conformity with the general principles of the Rules.
- 2.3. Except for the provisions of article 2 and 5.3, the parties may agree to exclude or vary any of the provisions of the Mediation

Rules, subject to the right of the mediator to terminate the mediation under article 10.1(b).

3. Commencement of mediation proceedings

- 3.1. Mediation proceedings in respect of a dispute that has arisen commence on the day on which the parties engage the mediation proceedings.
- 3.2. Where an arbitral tribunal has been constituted in accordance with the Rules, the party or parties may make a request to the arbitral tribunal that the arbitral proceedings be stayed in favour of mediation (request for mediation). Should the mediation proceedings result in a successful settlement agreement, the arbitral proceedings will automatically terminate.
- 3.3. If a party that invited another party to mediate does not receive an acceptance of the request for mediation within 21 days from the day on which the invitation was sent, or within such period of time as specified in the invitation, the party may elect to treat the lack of response a rejection of the invitation to mediate.
- 3.4. Where an arbitral tribunal has not been constituted a party may initiate mediation by delivering to all other parties, in writing (which for the purposes of the Mediation Rules includes e-mail) a request for mediation, containing:

- a) A brief explanation of the nature of the dispute;
- b) The estimated value of any disputed amounts and any specific relief or outcome sought by the requesting party;
- c) The names, addresses (including e-mail addresses), and contact numbers (including telephone and facsimile where available) of all parties to the dispute and any legal or other representatives involved, so far as known to the requesting party; and
- d) The nomination or proposal for the appointment of a mediator, which may include suggested qualifications, such as language skills or mediation experience of the subject-matter.

4. Mediation Costs

- 4.1. Each request to commence mediation pursuant to the Rules must be accompanied by a non-refundable registration fee of US\$200. The registration fee is payable in advance and is necessary in order for the request to be registered.
- 4.2. A fixed administrative fee of US\$2500 is payable upon commencement of the mediation in accordance with the Rules.
- 4.3. Mediators will charge at hourly rates, which may vary according to the circumstances of the case and the qualifications of the Mediator. The rates will be advised by the Mediator and agreed with the parties prior to the appointment of the Mediator.
- 4.4. Except for the hourly fees agreed between the parties and the mediator, the

Mediation Costs may be reduced by the LACIAC Court at the request of a party.

5. Number and appointment of mediators

- 5.1. Unless otherwise agreed, there shall be one mediator, and in any case no more than three. The parties shall endeavour to reach an agreement on a mediator or mediators.
- 5.2. Should the parties not agree on the identity of the mediator or mediators within 14 days of receipt of the request for mediation, a party or parties may request that the LACIAC Court appoint a mediator or mediators.
- 5.3. Within 10 days thereafter the LACIAC Court [or Secretariat] shall provide, for the consideration of the parties, a list of the names of no less than 3 potential mediators. Should the parties within 7 days there-after not agree upon the appointment of a mediator (whether from that list or not) the LACIAC Court [or Secretariat] shall appoint a mediator.
- 5.4. The LACIAC Court shall appoint a mediator or mediators within 14 days of receipt of the request by the party or parties.
- 5.5. In recommending or appointing individuals to act as mediator, the LACIAC Court shall have regard to the overriding objectives, and such considerations as are likely to secure the appointment of a skilled, independent, and impartial mediator.
- 5.6. When a person is approached in connection with his or her possible appointment as mediator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her

impartiality or independence. A mediator, from the time of his or her appointment and throughout the mediation proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him or her.

5.7. If, following appointment, a mediator becomes aware of any circumstances that may create a reasonable perception of bias, partiality or lack of neutrality, the mediator shall immediately so inform the parties and, where the mediator was appointed by the LACIAC Court, shall also immediately so inform the LACIAC Court. If any party objects to the continued services of the mediator, the mediator shall be disqualified.

5.8. Within 7 days following any disqualification, a replacement mediator shall be appointed by agreement of all parties, failing which, within 10 days of being notified by a party of such failure, and without the need to consult the parties, the LACIAC Court shall appoint a suitable replacement mediator.

6. Conduct of mediation

6.1. The mediator may conduct the mediation proceedings in such a manner as the mediator considers appropriate, taking into account the circumstances of the case, any wishes that the parties may express and the need for a swift and effective settlement of the dispute.

6.2. In any case, in conducting the proceedings, the mediator shall seek to maintain fair treatment of the parties and, in so doing, shall take into account the circumstances of the case.

6.3. The mediator may, at any stage of the mediation proceedings, make proposals for a settlement of the dispute.

6.4. The parties and their representatives shall use their best endeavours to cooperate with each other and with the mediator to settle their differences and enable the mediation to proceed expeditiously.

7. Communication between mediator and parties

The mediator may meet or communicate with the parties together or with each of them separately

8. Disclosure of information

When the mediator receives information concerning the dispute from a party, the mediator may disclose the substance of that information to any other party to the mediation. However, when a party gives any information to the mediator, subject to a specific condition that it be kept confidential, that information shall not be disclosed to any other party to the mediation.

9. Confidentiality

Unless otherwise agreed by the parties, all information relating to the mediation proceedings shall be kept confidential, except where disclosure is required under the law or for the purposes of implementation or enforcement of the settlement agreement.

10. Admissibility of evidence in other proceedings

10.1. A party to the mediation proceedings, the mediator and any third person, including party representatives and those involved in the administration of the mediation proceedings, shall not in arbitral, judicial or similar proceedings rely on, introduce as evidence or give testimony or evidence regarding any of the following:

- a) An invitation by a party to engage in mediation proceedings or the fact that a party was willing to participate in mediation proceedings;
- b) Views expressed or suggestions made by a party in the mediation in respect of a possible settlement of the dispute;
- c) Statements or admissions made by a party in the course of the mediation proceedings;
- d) Proposals made by the mediator;
- e) The fact that a party had indicated its willingness to accept a proposal for settlement made by the mediator;
- f) Documents prepared solely for purposes of the mediation proceedings.

10.2. Article 10.1 shall apply irrespective of the form of the information or evidence therein.

10.3. The disclosure of the information referred to in article 10.1 shall not be ordered by an arbitral tribunal, court, or other competent authority and, if such information is offered as evidence in contravention of article 10.1, that evidence shall be treated as

inadmissible. Nevertheless, such information may be disclosed or admitted as evidence to the extent required under the law or for the purpose of implementation or enforcement of a settlement agreement.

10.4. The provisions of article 10.1, 10.2 and 10.3 apply whether or not the arbitral, judicial or similar proceedings relate to the dispute that is or was the subject of the mediation proceedings.

10.5. Subject to the limitations of article 10.1, evidence that is otherwise admissible in arbitral or judicial or similar proceedings does not become inadmissible as a consequence of having been used in mediation.

11. Termination of mediation proceedings

11.1. The mediation proceedings are terminated:

- a) By the conclusion of a settlement agreement by the parties, on the date of the agreement;
- b) By a declaration of the mediator, after consultation with the parties, to the effect that the mediation proceedings are terminated, on the date of the declaration;
- c) By a declaration of the parties addressed to the mediator to the effect that the mediation proceedings are terminated, on the date of the declaration; or
- d) By a declaration of a party to the other party or parties and the mediator, if appointed, to the effect that the mediation proceedings are

terminated, on the date of the declaration.

12. Mediator acting as arbitrator

Unless otherwise agreed by the parties, the mediator shall not act as an arbitrator in respect of a dispute that was or is the subject of the mediation proceedings or in respect of another dispute that has arisen from the same contract or legal relationship or any related contract or legal relationship.

13. Resort to arbitral proceedings

Where the parties have agreed to mediate and have expressly undertaken not to initiate arbitration during a specified period of time or until a specified event has occurred with respect to an existing or future dispute, such an undertaking shall be given effect by the arbitral tribunal until the terms of the undertaking have been complied with, except to the extent necessary for a party, in its opinion, to preserve its rights. Initiation of such proceedings is not of itself to be regarded as a waiver of the agreement to mediate or as a termination of the mediation proceedings.

14. Authority and Representation

Throughout the mediation, each party must have authority to settle the dispute or be represented by a person or persons having authority to settle the dispute. A party may be assisted by any person(s) it chooses and must keep the mediator, the Centre, 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.

15. Enforceability of settlement agreement

15.1. If the parties conclude an agreement settling a dispute, that settlement agreement will be binding and enforceable.

15.2. No settlement agreement reached during the mediation shall be legally binding unless it is reduced to writing and signed by all parties to that settlement agreement or by their authorised representatives.

16. Costs

16.1. Unless otherwise agreed or ordered by a court or arbitrator, each party shall bear its own costs of the mediation.

16.2. Unless otherwise agreed or ordered by a court or arbitrator, each party shall bear equally the costs and expenses of the mediation including (but not limited to):

- a) LACIAC's administrative expenses;
- b) The mediator's fees and expenses;
- c) The costs of any meeting rooms, meals, translations, photocopies, internet access, communications systems, or other reasonable costs relating to the organisation and conduct of the mediation;
- d) The fees and expenses of any independent witness, expert advice or opinion requested by the mediator with the consent of the parties; and
- e) Any additional administrative costs relating to the mediation, as may be assessed by LACIAC.

16.3. The mediator may at any time during the mediation require the parties to make deposits with the mediator or LACIAC to cover any anticipated fees or expenses and may suspend the mediation until such deposit is made.

16.4. Any surplus funds deposited shall be returned pro rata to the parties at the conclusion of the mediation.

MODEL CLAUSES

A. FUTURE DISPUTES

Mediation Clause

“In the event of a dispute, controversy or claim arising out of or relating to this agreement, including any question regarding its breach, existence, validity or termination or the legal relationships established by this agreement, the parties shall seek settlement of that dispute by mediation in accordance with the LACIAC Mediation Rules, which Rules are deemed to be incorporated by reference into this clause.”

Model Multi-tiered Clause

1. “In the event of a dispute, controversy or claim arising out of or relating to this agreement, including any question regarding its breach, existence, validity or termination or the legal relationships established by this agreement, the parties shall first seek settlement of that dispute by mediation in accordance with the LACIAC Mediation Rules, which Rules are deemed to be incorporated by reference into this clause.
2. If and to the extent that, any such dispute, controversy or claim has not been settled by mediation within [state specific number of regular/business] days of the commencement of the mediation, or such further period as the parties shall agree in writing, such time not exceeding [7] days, the dispute shall be referred to and finally resolved by

arbitration under the LACIAC Arbitration Rules, which Rules are deemed to be incorporated by reference into this clause. It is agreed that:

- (i) The number of arbitrators shall be [one/three] (optional [who is/are to be a [specify any qualifications required];
- (ii) The seat, or legal place, of arbitration shall be [City and/or Country];
- (iii) The governing law of this arbitration agreement shall be the substantive law of []; and
- (iv) The language of the arbitration shall be [English].”

B. EXISTING DISPUTES

If a dispute has already arisen, but there is no agreement between the parties to mediate and/or to arbitrate, the parties may enter into an agreement for those purposes. In such cases, please contact the LACIAC Secretariat if recommended wording is required.

C. MODIFICATIONS TO RECOMMENDED CLAUSES

The LACIAC Secretariat will be pleased to discuss any modifications to these model clauses. For example, to provide for expedited procedures.