

FICA MEDIATION RULES

- Article 1: Application of the rules
- Article 2: Commencement of mediation proceedings
- Article 3: Number of mediators
- Article 4: Appointment of mediators
- Article 5: Submission of statements to mediator
- Article 6: Representation and assistance
- Article 7: Role of mediator
- Article 8: Administrative assistance
- Article 9: Communication between mediator and parties
- Article 10: Disclosure of information
- Article 11: Co-operation of parties with mediator
- Article 12: Suggestions by parties for settlement of dispute
- Article 13: Settlement agreement
- Article 14: Confidentiality
- Article 15: Termination of mediation proceedings
- Article 16: Resort to arbitral or judicial proceedings
- Article 17: Costs
- Article 18: Deposits
- Article 19: Role of mediator in other proceedings
- Article 20: Admissibility of evidence in other proceedings
- Article 21: Exclusion of liability
- Model Clause: Model Mediation Clause

MEDIATION RULES

APPLICATION OF THE RULES

Article 1

(1) These Rules apply to the mediation of disputes arising out of or relating to a contractual or other legal relationship where the parties seeking an amicable settlement of their dispute have agreed that these Rules apply.

(2) The parties may agree to exclude or vary any of these Rules at any time.

(3) Where any of these Rules is in conflict with a provision of law from which the parties cannot opt out, that legal provision prevails.

COMMENCEMENT OF MEDIATION PROCEEDINGS

Article 2

(1) The party starting the mediation may send to the other party a written or any other form of recorded invitation to mediate under these Rules, briefly identifying the subject of the dispute and giving a period of time within which to accept or decline the invitation. Silence shall be deemed as unwillingness to accept the invitation.

NUMBER OF MEDIATORS

Article 3

There shall be one mediator unless the parties agree that there shall be two or three mediators. Where there is more than one mediator, they shall act together unless the parties agree in writing to the contrary.

APPOINTMENT OF MEDIATORS

Article 4

(1) (a) In mediation proceedings with one mediator, the parties shall endeavour to reach agreement on the name of that one mediator;

(b) In mediation proceedings with two mediators, each party appoints one mediator;

(c) In mediation proceedings with three mediators, each party appoints one mediator. The parties shall endeavour to reach agreement on the name of the third mediator. Where the parties fail to agree within 7 days then the mediators shall endeavour to reach agreement on the name of the third mediator within 7 days. Where the mediators fail to agree then the parties proceed to Article 4 (2).

(2) Parties may enlist the assistance of FICA in connection with the appointment of mediators. In particular,

(a) A party may request FICA to recommend the names of suitable individuals to act as mediator; or

(b) The parties may agree that the appointment of one or more mediators be made directly by FICA. In recommending or appointing individuals to act as mediator, FICA shall have regard to such considerations as are likely to secure the appointment of an independent and impartial mediator and, with respect to a sole or third mediator, shall take into account the advisability of appointing a mediator of a nationality other than the nationalities of the parties.

SUBMISSION OF STATEMENTS TO THE MEDIATOR

Article 5

(1) The mediator, upon his appointment, shall forthwith request every party to submit to him a brief written statement together with such supporting documents as the party thinks fit describing the general nature of the dispute and the points at issue. Every party sends a copy of his statement and supporting documents, if any, to the other parties.

(2) At any stage of the proceedings the mediator may request a party to submit to him such additional information as he deems appropriate. That information shall be released to the other parties unless the submitting party requires that the information is confidential.

REPRESENTATION AND ASSISTANCE

Article 6

The parties may be represented or assisted by persons of their choice. The names and contact details of such persons are to be communicated in writing to the other parties and to the mediator; such communication is to specify whether the appointment is made for purposes of representation or of assistance.

ROLE OF MEDIATOR

Article 7

(1) The mediator assists the parties in an independent and impartial manner in their attempt to reach an agreed settlement of their dispute.

(2) The mediator will be guided by principles of objectivity, fairness and justice, giving consideration to, where applicable, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business transactions between the parties and any other matters which the parties shall request be taken into account.

(3) The mediator may conduct the mediation proceedings in such a manner as he considers appropriate, taking into account the circumstances of the case, the wishes the parties may express, including any request by a party that the mediator hear oral statements, and the need for a speedy settlement of the dispute.

(4) The mediator may, at any stage of the mediation proceedings, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons therefor.

ADMINISTRATIVE ASSISTANCE

Article 8

In order to facilitate the conduct of the mediation, the parties, or the mediator with the consent of the parties, may arrange for administrative assistance by FICA

COMMUNICATION BETWEEN MEDIATOR AND PARTIES

Article 9

(1) The mediator may invite the parties to meet with him or may communicate with them orally or in writing. He may meet or communicate with the parties together or with each of them separately.

(2) Unless the parties have agreed upon the place where meetings with the mediator are to be held, such place will be determined by the mediator, after consultation with the parties, having regard to the circumstances of the mediation proceedings.

DISCLOSURE OF INFORMATION

Article 10

When the mediator receives information concerning the dispute from a party, he may, with the agreement of that party, disclose the substance of that information to the other parties in order that the other parties may have the opportunity to present any explanation which is considered appropriate. However, when a party gives any information to the mediator subject to a specific condition that it be kept confidential, the mediator shall not, under any circumstances, disclose that information to any other party.

*CO-OPERATION OF PARTIES WITH MEDIATOR***Article 11**

The parties will in good faith co-operate with the mediator and, in particular, will endeavour to comply with requests by the mediator to submit written materials, provide evidence and attend meetings.

*SUGGESTIONS BY PARTIES FOR SETTLEMENT OF DISPUTE***Article 12**

Each party may, on his own initiative or at the invitation of the mediator, submit to the mediator suggestions for the settlement of the dispute.

*SETTLEMENT AGREEMENT***Article 13**

(1) Whenever it appears to the mediator that there exist elements of a settlement which would be acceptable to the parties, he should formulate the terms of a possible settlement, or partial settlement, and submit them to the parties for their observations. After receiving the observations of the parties, the mediator may reformulate the terms of a possible settlement in the light of such observations.

(2) If the parties reach agreement on a settlement of the dispute, they then draw up and sign a written settlement agreement which may be prepared by the mediator or the parties. Unless the agreement is accepted in a form of writing, which includes email, it will not be binding upon the parties.

(3) The parties by signing the settlement agreement put an end to the dispute and are bound by the agreement. The parties may place the agreement in the form of an arbitration award to emphasise enforceability. The parties may wish to consider including in the settlement agreement a clause that any dispute arising out of or relating to the settlement agreement shall be submitted to arbitration.

*CONFIDENTIALITY***Article 14**

The mediator and the parties must keep confidential all matters relating to the mediation proceedings. Confidentiality extends also to the contents of the settlement agreement, except where its disclosure is necessary for purposes of implementation and enforcement. Confidentiality extends also to any court proceedings and the mediator shall on no account reveal any matter whatsoever disclosed to him during the mediation without the written consent of all parties.

TERMINATION OF PROCEEDINGS

Article 15

The proceedings are terminated:

- (a) By the signing of the settlement agreement by the parties, on the date of the agreement; or
- (b) By a written declaration of the mediator, after consultation with the parties, to the effect that further efforts at mediation are no longer justified, on the date of the declaration; or
- (c) By a written declaration of the parties addressed to the mediator to the effect that the proceedings are terminated, on the date of the declaration; or
- (d) By a written declaration of a party to the other parties and the mediator, to the effect that the proceedings are terminated, on the date of the declaration.

RESORT TO ARBITRAL OR JUDICIAL PROCEEDINGS

Article 16

The parties undertake not to initiate or continue with, during the proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject of the proceedings, except that a party may initiate arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights.

COSTS

Article 17

(1) Upon commencement of the mediation the mediator shall give to all parties a schedule of his hourly rates together with any minimum charge and such other expenses as he considers necessary in conjunction to the proceedings. Upon termination of the proceedings, the mediator fixes the costs of the mediation and gives written notice thereof to the parties. The term "costs" includes only:

- (a) The fee of the mediator which shall be reasonable in amount and shall include reading-in or preparation time where appropriate;
- (b) The travel and other expenses of the mediator;
- (c) The travel and other expenses of witnesses requested by the mediator with the prior consent of the parties;

(d) The cost of any expert advice requested by the mediator with the prior consent of the parties;

(e) The cost of any assistance provided pursuant to articles 4, paragraph (2), and 8 of these Rules.

(2) The costs, as defined above, are borne equally by the parties unless the settlement agreement provides for a different apportionment. All other expenses incurred by a party are borne by that party.

DEPOSITS

Article 18

(1) FICA may, at the time of the appointment of the mediator, require each party to deposit an equal amount as an advance for the costs of the mediation, including, in particular, the estimated fees of the mediator and the other expenses of the mediation. The amount of the deposit shall be determined by the FICA.

(2) During the course of the proceedings FICA may request supplementary deposits in an equal amount from each party.

(3) If the required deposits under paragraphs (1) and (2) of this article are not paid in full within seven working days, FICA may suspend the proceedings or may make a written declaration of termination to the parties, effective on the date of that declaration.

(4) Upon termination of the proceedings, FICA renders an account to the parties of the deposits received and returns any unexpended balance to the parties.

ROLE OF MEDIATOR IN OTHER PROCEEDINGS

Article 19

The parties and the mediator undertake that the mediator will not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceedings in respect of a dispute that is the subject of these proceedings. The parties also undertake that they will not subpoena the mediator to be a witness in any such proceedings. In any event the mediator will not disclose any of the matters received during or arising from those proceedings.

ADMISSIBILITY OF EVIDENCE IN OTHER PROCEEDINGS

Article 20

The parties undertake not to rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of these proceedings;

(a) Views expressed or suggestions made by any other party or the mediator in respect of a possible settlement of the dispute;

(b) Admissions made by any other party in the course of the proceedings;

- (c) Proposals made by the mediator;
- (d) The fact that any other party had indicated his willingness to accept a proposal for settlement made by the mediator.

Exclusion of Liability

Article 21

The mediator or FICA shall not be liable to any party for any act or omission in connection with any mediation conducted under these Rules, except in respect of deliberate wrongdoing,

MODEL MEDIATION CLAUSE

Where, in the event of a dispute arising out of or relating to this agreement, the parties wish to seek an amicable settlement of that dispute by mediation, the mediation shall take place in accordance with the FICA Mediation Rules as at present in force.