

**ICAMEK** | International Centre  
for Arbitration and  
Mediation in Kampala

# **MEDIATION RULES**

**2018**

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# ICAMEK (MEDIATION) RULES 2018

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## CITATION

These Rules will be cited as the **International Centre for Arbitration & Mediation in Kampala (Mediation) Rules 2018**.

### **RULE 1: Scope of application**

The Rules apply to any dispute where parties have agreed that disputes or differences between them shall be referred to mediation under the International Centre for Arbitration & Mediation in Kampala (Mediation) Rules 2018.

- (a) Such disputes or differences shall be settled in accordance with these Rules subject to such modification as the parties may agree.
- (b) Where the parties have agreed to submit their disputes to mediation under the Rules, they shall be deemed to have submitted them to the Rules in effect on the date when the Secretariat received the request.

### **RULE 2: Interpretation**

**“Centre”** means the International Centre for Arbitration & Mediation in Kampala “ICAMEK”;

**“Domestic Mediation”** Mediation is domestic if the Mediation agreement provides expressly or by implication for Mediation in Uganda, and at the time when proceedings are commenced or the Mediation is entered into—

- (a) where the Mediation is between individuals, the parties are nationals of Uganda or are habitually resident in Uganda;
- (b) where the Mediation is between bodies corporate, the parties are incorporated in Uganda or their central management and control are exercised in Uganda;
- (c) where the Mediation is between an individual and a body corporate—

- (i) the party who is an individual is a national of Uganda or is habitually resident in Uganda; and
  - (ii) the party that is a body corporate is incorporated in Uganda or its central management and control are exercised in Uganda; or
- (d) the place where a substantial part of the obligations of the commercial relationship is to be performed, or the place with which the subject matter of the dispute is most closely connected, is Uganda.

**“International Mediation”** a Mediation is international if—

- (a) the parties to a Mediation agreement have, at the time of the conclusion of that agreement, their places of business in countries other than Uganda; or
- (b) one of the parties to the Mediation has its place of business in a country other than Uganda;
- (c) a place where a substantial part of commercial obligation or other relationship is to be performed, or the place where the subject matter of the dispute is closely connected, is in a country other than Uganda; or
- (d) the parties have expressly agreed that the subject-matter of the Mediation agreement relates to more than one state.

**“Mediation”** means an alternative method of dispute resolution whereby two or more parties ask a neutral third party, the Mediator, to assist them in settling a dispute or in avoiding future conflicts

**“Mediator”** means a neutral third party who facilitates the exchange of opinions between the parties and encourages them to explore solutions that are acceptable to all the participants.

**“Secretariat”** means the International Centre for Arbitration & Mediation in Kampala (ICAMEK) Secretariat.

### **RULE 3: Commencement of the Mediation Proceedings.**

- (1) Where there is a prior agreement to refer to these Rules, any party or parties wishing to commence mediation proceedings shall submit a written request for mediation to the Registrar in Form A set out in part B of the First Schedule.
- (2) Where there is no prior agreement to mediate or a contract providing for mediation:
  - (a) A party may file a request to the Centre to invite any respondent to agree to participate in a mediation process.
  - (b) The respondent shall reply to the request for mediation under paragraph 2(a) through a written notice to the registrar indicating whether the party accepts or rejects the request for mediation.
  - (c) The mediation process shall commence within fifteen (15) days from the date on which the respondent communicates acceptance to the invitation to mediate or within such other period of time as agreed between the parties and the Centre.
  - (d) If the respondent to a dispute rejects the invitation to mediate or if the Centre does not receive a reply within the period specified in this Rule; the Centre shall inform the party initiating the invitation to mediate of this fact.

#### **RULE 4: Request for Mediation**

- (1) The request for mediation shall include the following:
  - (a) The names, address, emails and the telephone contact details of the parties and their respective representatives;
  - (b) Identification of the mediation agreement /clause that is invoked, unless there is no prior agreement to mediate;
  - (c) A reference to the contract or other legal instrument out of, or in relation to which the dispute arises or, in the absence of such contract or instrument, a brief description of the relevant relationship;
  - (d) A brief description/explanation of the nature of the claim and an indication of the amount involved, if any, and the specific relief sought by a party.
- (2) The request for mediation may include a suggestion as to the Mediator's qualifications.
- (3) The Request and the enclosed documents shall be submitted in as many copies as there are parties, as well as one copy per Mediator and one copy for the Secretariat.
- (4) The request for mediation shall be accompanied by the registration fees set out in the Second Schedule.

#### **RULE 5: Authority and Representation**

- (1) A party to mediation may be represented by any persons chosen by the party. The names and role of such persons must be disclosed to the Centre and all parties before the commencement of the mediation proceedings.

- (2) Where a person is to act as a representative of a party, the Mediator may at any time, on his or her own initiative or at the request of any party, require proof of authority granted to the representative in such a form as the Mediator may determine.
- (3) The representative selected under paragraph (1) shall sign an undertaking to abide by the directions set by the Mediator, the Centre's Code of Conduct and Guidelines issued from time to time.

#### **RULE 6: Appointment and Replacement of the Mediator**

- (1) The parties may jointly designate a Mediator or a mechanism for appointing the Mediator.
- (2) If the parties do not agree on a Mediator or if the Mediator has not been appointed according to RULE 6, paragraph 1 within the time period agreed by the parties or, where the parties have not agreed on a time period, within 15 days from the date of the commencement of the mediation, a Mediator shall be appointed by the Centre from amongst the Centre's qualified Mediators.
- (3) There shall be a sole Mediator in a dispute unless the parties designate more than one Mediator.
- (4) The parties may agree in writing at any time to replace the Mediator.
- (5) If a Mediator resigns, is incapacitated or otherwise becomes unable to perform the Mediator's functions, a new Mediator shall be appointed pursuant to these Rules.

- (6) The Centre shall maintain a list of qualified Mediators who can undertake tasks in accordance with the Rules of the Centre.

### **RULE 7: Impartiality and Independence**

- (1) Every prospective Mediator shall immediately confirm in writing to the Centre any facts or circumstances which might affect or call into question his or her impartiality, independence or may be perceived to create a conflict of interest. The Centre shall promptly inform the parties of such disclosure.
- (2) If, during the course of the mediation, a Mediator becomes aware of any facts or circumstances that might call into question his independence or impartiality in the eyes of the parties, the Mediator shall disclose those facts or circumstances to the parties in writing without delay. If within 7 days from the disclosure, a party objects to the continued participation of the Mediator the Centre shall replace the Mediator.

### **RULE 8: Conduct of the Mediation**

- (1) As soon as the Mediator has been appointed and the parties have paid fees and made deposits as provided in RULE 16, the Mediator shall call the parties to a preliminary conference session. The Mediator, in cooperation with the parties, shall see to it that an agreement is made containing Inter alia:
- (a) The place for Mediation session;
  - (b) The dates and durations of the Mediation sessions
  - (c) Determination of the procedure to be followed prior to the Mediation Session;
  - (d) The issues in the dispute;
  - (e) Fixing of time limits



- (f) Role of the Mediator during the Mediation, and the extent to which he/she shall be bound by confidentiality towards the parties during the Mediation
  - (g) Determine the language to be used.
  - (h) An agreement on terms of engagement of the Mediator including charges for cancellation, non-attendance or adjournments of mediation session.
  - (i) Deciding on service and exchange of documentary material relevant to the mediation, including position papers by all the parties
  - (j) An option of appointing the Mediator as an arbitrator and request him or her to confirm the settlement agreement in an arbitral award.
- (2) The Mediator shall explain to the parties, as well as to their representatives and/or assistants, how the mediation is conducted and must be satisfied that they understand and consent to the process.
- (3) The Mediator shall conduct the process with fairness to all parties and will take particular care to ensure that all parties have adequate opportunities to be heard, to be involved in the process and have the opportunity to seek legal or other advice before finalising any resolution.
- (4) The Mediator shall conduct the mediation in such manner he or she deems appropriate, taking into account the circumstances of the case, the wishes of the parties and the need for a speedy settlement of the dispute. The Mediator does not have the authority to impose a settlement on the parties.

- (5) The parties shall cooperate with the Mediator in good faith to advance the mediation as expeditiously as possible.
- (6) The Mediator is authorised to conduct joint or separate meetings with the parties and/or their representatives during the mediation process.
- (7) The Mediator may request the parties to submit documents, case summaries and memoranda.
- (8) In the event that a settlement of all or part of the dispute was not reached by the parties, the parties may jointly invite the Mediator to make oral or written recommendations concerning an appropriate resolution of the dispute. The parties are not bound to accept such recommendations and the Mediator is free to decline to make any such recommendations without being required to provide reasons.
- (9) Meetings between the parties and the Mediator may take place on one day or over a series of days, as agreed between the Mediator and the parties.
- (10) The Mediator shall interpret and apply these Rules insofar as they relate to his or her duties and responsibilities.

## **RULE 9: Conclusion of the Mediation**

- (1) The mediation shall terminate when:
  - a) A party withdraws from the mediation;
  - b) The Mediator determines that a settlement cannot be reached; or
  - c) A written settlement agreement is concluded.

- (2) The Mediator may adjourn the mediation in order to allow the parties to consider specific proposals, get further information or for any other reason that the Mediator deems useful in furthering the mediation process. The mediation will then reconvene with the agreement of the parties.

#### **RULE 10: Binding settlement**

Any settlement reached in the mediation will not be legally binding until it has been entered into a written settlement agreement signed by, or on behalf of the parties.

#### **RULE 11: Mediation during the course of arbitral proceedings**

- (1) In all arbitral proceedings, before the Centre where mediation appears to be worth trying, whether in whole or in part, the Centre or the arbitrator(s) may suggest to the parties to amicably resolve their dispute, or a certain part of it, by having recourse to mediation.
- (2) If the parties agree to accept mediation under these Rules, the Centre shall, upon receipt of a request for mediation filed in accordance with Rule 3 of these Rules proceed with selection of the Mediator.

#### **RULE 12: Confidentiality**

- (1) All matters relating to the mediation and the result thereof shall be held in confidence by the parties, the Mediator, and the Centre unless otherwise agreed, save and to the extent that a disclosure may be required of a party according to a legal duty or to enforce the settlement agreement.
- (2) Every person involved in the mediation, including the parties (including their representatives), the Mediator and the Centre, acknowledge that any information, materials and settlement terms passing between the

parties, Mediator and/or the Centre, however communicated, are produced solely for the purposes of a specific mediation and may not be produced as evidence or disclosed in a court of law, Mediation or any other formal or informal processes, except as otherwise required by law.

- (3) If a party discloses any information to the Mediator in confidence during the mediation, the Mediator shall not disclose this information to any other party or person without the specific consent of the party that disclosed it, unless disclosure is required by law.

### **RULE 13: Non-use of mediation information**

The parties (including their representatives) shall not call, or cause to be called, the Mediator, any employee of the Centre or any person appointed in the mediation as a witness, nor require them to produce in evidence any information, materials or settlement terms relating to the mediation, in any court of law, mediation or other formal or informal processes; nor will the Mediator, any employee of the Centre or any person appointed in the mediation act or agree to act as a witness, expert, Mediator, arbitrator or consultant in any such process.

### **RULE 14: Exclusion of Liability**

- (1) A Mediator shall not be liable for acts or omissions done in good faith in the discharge of his functions as a Mediator or arising out of a settlement reached in a mediation conducted under these Rules.
- (2) Subject to paragraph (1), a servant or agent of a Mediator shall not be liable for an act or omission done, in good faith and with due authority, in the discharge of the functions of the Mediator.



- (3) Nothing in this rule shall affect a liability incurred by a Mediator by reason of his resignation or withdrawal.
- (4) The Centre and the Registrar shall not be liable for acts or omissions done in good faith in the appointment or proposal of a Mediator or for any other purpose, in the discharge of the functions of the Centre or the Registrar in these Rules.
- (5) Subject to paragraph (4), a servant or agent of a Centre shall not be liable for an act or omission done in good faith and with authority, in the discharge of the functions of the Centre or the Registrar to appoint or propose a Mediator or for any other purpose in these Rules.
- (6) A statement, whether written or oral, made in the course of the mediation shall not be relied upon by any party to institute or maintain an action for defamation or any other related complaint.
- (7) The Mediator(s), the Centre, its employees, or any person appointed in the mediation shall not bear any liability based on any act or omission in connection with the mediation.

#### **RULE 15: Mediation Costs.**

- (1) Each party to a mediation shall bear his own costs of the mediation.
- (2) The costs of the mediation shall include—
  - (a) the professional fees of the Mediator;
  - (b) the cost of hiring the venue for the mediation including meeting rooms or breakout rooms;
  - (c) the administrative costs, including fees for photocopying, internet access, and communication expenses;

- (d) fees for translation, or in respect of an expert witness who attends the mediation with the consent of the parties; or
  - (e) Any other costs reasonably incurred in respect of the organization or conduct of the mediation.
- (3) The costs of the Centre may include—
  - (a) Registration fees payable on the lodging of a request;
  - (b) Appointment fee if a Mediator is appointed; and
  - (c) Any administrative costs as specified under Rule 15 (2).
- (4) The parties shall be jointly and severally liable for costs and expenses set out in paragraphs (2) and (3).

#### **RULE 16: Administrative assistance.**

The Registrar may, on the request of the Mediator or the parties, arrange for translators, administrative assistance or other facilities in order to facilitate the mediation.

#### **RULE 17 Fees.**

- (1) The fees for international mediation or domestic mediations shall be as set out in the Second Schedule.
- (2) Unless otherwise agreed by the parties and the Mediator, the Mediator may charge a per centum rate of the fee for cancellation, non-attendance or adjournment of the mediation, which fee shall be specified in the terms of engagement of the Mediator.
- (3) Prior to the commencement of the mediation, each party shall pay the registration fees, appointment fees, if any, and deposit the Mediator's

fees and administration costs with the Centre in accordance with the Schedule of fees set out in the Second Schedule.

- (4) During the mediation, the Registrar may require additional deposits to be paid by the parties for the costs referred to in Rule 15.
- (5) Any additional monies requested by the Registrar for the costs referred to in Rule 15 shall be payable fifteen days after the receipt of the request for additional deposits.
- (6) Where the monies under paragraph (5) of this Rule are not paid by the parties within the specified period–
  - (a) the Registrar shall inform the parties so that either of the parties may make the required payment; or
  - (b) the Mediator may, after consultation with the Registrar, order the suspension or termination of the mediation.
- (7) The Registrar may use the deposit to pay the fees and disbursements incurred by the Centre and the Mediator for the mediation.
- (8) Upon termination of the mediation, the Registrar shall provide a statement of the deposits to the parties and shall specify in the statement the amount received, expended and in case of a surplus he shall return any unexpended balance to the parties.

#### **RULE 18 Amendment.**

- (1) These Rules may be amended by the Centre from time to time.

- (2) The Rules applicable to the mediation shall be those in force at the time of commencement of the mediation, unless the parties have agreed otherwise.

### **RULE 19 Commencement**

These Rules shall enter into force on the 1<sup>st</sup> November 2018.



# FIRST SCHEDULE

## Part A

### Model Mediation Clauses

The following are some variation of clauses that can be inserted into contracts referring disputes to the Centre for mediation.

- **Mediation clause only**

“If any dispute arises in connection with this agreement, the parties will attempt to settle it by mediation in accordance with the Rules of Mediation of the International Centre for Arbitration & Mediation in Kampala (Mediation) Rules 2018. Unless otherwise agreed by the parties, the Mediator will be nominated by the Centre.”

- **Mediation followed by Arbitration**

“If any dispute arises in connection with this agreement, directors or other senior representatives of the parties with authority to settle the dispute will, within 15 days of a written request from one party to the other, meet in good faith to resolve the dispute.

If the dispute is not resolved at that meeting, the parties will attempt to settle it by mediation in accordance with the International Centre for Arbitration & Mediation in Kampala (Mediation) Rules 2018. Unless otherwise agreed between the parties, the Mediator will be nominated by the Centre.

No party may commence any court or Mediation proceedings in relation to any dispute arising out of this agreement until it has attempted to settle the dispute by mediation, provided that the right to issue proceedings is not prejudiced by a delay.

In case of failure of the mediation process, the parties agree to refer the matter to Arbitration in accordance with the International Centre for Arbitration & Mediation in Kampala (Arbitration) Rules 2018.”

## SECOND SCHEDULE

### DOMESTIC MEDIATION

(a) Registration Fee:

A non-refundable registration fee to be advised by the Centre at the time of filing the request with a maximum of Uganda Shillings (UGX) 300,000/= is payable by the party initiating mediation pursuant to Rule 4 (4) of the Rules.

(b) Administrative Costs:

The Administrative Costs for mediation to be advised by the Centre at the time of filing the request with a maximum of Uganda Shillings (UGX) 350,000 /= is payable by the party initiating mediation pursuant to Rule 4 (4) of the Rules.

(c) Appointment of a Mediator

(i) Where the Centre appoints the Mediators according to Rule 6, the parties shall pay to the Centre a non-refundable appointment fee of UGX 50,000/=.

(d) Mediator's Fee:

- (i) Sum of Uganda Shillings (UGX) 150,000/= for any time spent in mediation below and up to one (1) hour;
- (ii) Sum of Uganda Shillings (UGX) 550,000/= per mediation session. (a mediation session is equivalent to time spent in mediation above one hour and not exceeding three (3) hours); and
- (iii) Sum of Uganda Shillings (UGX) 35,000/= per hour for review of documents and related works.

### NOTE:

The sum to be charged on Mediator's fee for time spent in mediation above three (3) hours in a day shall be on a pro rata hourly basis at the rate of UGX 150,000/= per hour.

## **INTERNATIONAL MEDIATION**

(a) Registration Fee

A non-refundable registration fee of US Dollars (USD) 150 is payable by the party initiating mediation pursuant to Rule 4 (4) of these Rules.

(b) Administrative Costs

The administrative costs for mediation shall be fixed at US Dollars (USD) 250.

(c) Appointment of a Mediator

Where the Centre appoints the Mediators according to Rule 6, the parties shall pay to the Centre a non-refundable appointment fee of (USD) 25.

(d) Mediator's Fee

(i) Sum of US Dollar (USD) 300 for any time spent in mediation below and up to one (1) hour;

(ii) Sum of US Dollar (USD) 600 per mediation session. (a mediation session is equivalent to time spent in mediation above one hour and not exceeding to three (3) hours); and

(iii) Sum of US Dollar (USD) 300 per hour for review of documents and related works.

**NOTE:** The sum to be charged on Mediator's fee for time spent in mediation above three (3) hours in a day shall be on a pro rata hourly basis at the rate of USD 200 per hour.



## THIRD SCHEDULE

### Confidentiality Agreement and Undertaking

Parties:

.....  
.....

And

.....  
.....

And

.....  
.....

#### **("The Mediator")**

(Have entered into a mediation Agreement dated the.....day of.....in accordance with which the Mediator will conduct a mediation.)

1. The undersigned acknowledge by their signatures that they attend the mediation on the basis of their agreement to the terms of clause 2 and 3 below.
2. Each of the undersigned undertakes to the parties and the Mediator—
  - (a) to keep confidential to themselves and any persons to whom by reason of the terms of their employment or any contract of insurance they may properly communicate it, all information disclosed during the mediation including the preliminary steps ("confidential information");

- (b) not to act contrary to the undertaking in subparagraph (a) unless compelled by law to do so or with the consent of the party who disclosed the confidential information;
  - (c) not to use confidential information for a purpose other than the mediation.
- 3. Each of the undersigned undertakes to the parties and the Mediator that the following will be privileged and will not be disclosed in or relied upon or be the subject of any subpoena to give evidence or to produce documents in any arbitral or judicial proceedings between the parties to the mediation—
  - (a) any settlement proposal whether made by a party or the Mediator;
  - (b) the willingness of a party to consider any such proposal;
  - (c) any admission or concession made by a party
  - (d) any statement or document made by the Mediator.
- 4. The parties acknowledge that the Mediator may disclose information obtained during or in connection with the mediation in any one or more of the following circumstances—
  - (a) with the consent of the person from whom the information was obtained;
  - (b) in connection with the fact that an agreement or arrangement has been reached and as to the substance of the agreement or arrangement;
  - (c) if there are reasonable grounds to believe that the disclosure is necessary to prevent or minimize the danger of injury to any person or damage to any property;

- (d) if the disclosure is reasonably required for the purpose of referring any party or parties to a mediation session to any person, agency, organization, or other body and the disclosure is made with the consent of the parties to the mediation session for the purpose of aiding in the resolution of a dispute between those parties or assisting the parties in any other manner;
- (e) in accordance with a requirement imposed by or under a law of a country or a state.