

Rules on Mediation

THE DANISH INSTITUTE OF ARBITRATION

The Danish Institute of Arbitration recommends the following mediation clause:

”Any dispute arising out of or in connection with this contract, including any disputes regarding the existence, validity or termination thereof, shall be settled by mediation administrated by The Danish Institute of Arbitration in accordance with the rules on mediation adopted by The Danish Institute of Arbitration and in force at the time when such proceedings are commenced.

If the mediation proceedings are terminated without a settlement, the dispute shall be settled by arbitration administrated by The Danish Institute of Arbitration in accordance with the rules of arbitration procedure adopted by The Danish Institute of Arbitration and in force at the time when such proceedings are commenced.”

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Adopted by the Board of the Danish Institute of Arbitration and in force as from 1 June 2015

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Introductory Provisions

Organisation

Article 1

(1) The Danish Institute of Arbitration (hereafter referred to as the DIA) is a non-profit and independent body providing administrative services in relation to settlement of disputes in accordance with the “Rules on Mediation” (hereafter referred to as the Rules).

(2) The Chairman’s Committee of the DIA (hereafter referred to as the Chairman’s Committee) is composed of the Chairman and the Vice-Chairman of the Board of the DIA (hereafter referred to as the Board). The Chairman’s Committee carries out the functions and makes the decisions assigned to it under the Rules. If a majority is not attained, the Chairman has the casting vote. If the Chairman or the Vice-Chairman of the Board or both have a conflict of interest or are otherwise prevented from carrying out a function or make a decision, another member of the Board, respectively two other members of the Board, shall replace the Chairman and/or the Vice-Chairman.

(3) The Secretariat of the DIA (hereafter referred to as the Secretariat) acts under the direction of a Secretary General. The Secretariat carries out the functions assigned to it under the Rules. The Secretariat or the Secretary General may also carry out functions or make decisions delegated to it by the Chairman’s Committee or the Board.

(4) The Chairman, the Vice-Chairman, the Secretary General and the members of the Secretariat cannot act as mediators in cases submitted to the DIA. Members of the Board and the DIA’s Board of Representatives cannot act as mediators in cases submitted to the DIA, unless this is done at the proposal of one or more of the parties or pursuant to any other procedure agreed upon by the parties.

The Mediation Agreement

Article 2

(1) Where the parties have agreed to submit to mediation under the Rules, they shall be deemed to have submitted ipso facto to the Rules in effect on the date of commencement of mediation, unless they have agreed otherwise.

Commencing the Mediation

Request for Mediation following the Parties’ Agreement

Article 3

(1) A Request for Mediation is submitted to the DIA by a party or by the parties jointly.

(2) The Request for Mediation shall contain the following information:

1. The names, addresses, telephone numbers and e-mail addresses of the parties as well as any VAT and company registration numbers.
2. Information about any legal counsel or other advisors of the parties, including the names and addresses, telephone numbers and e-mail addresses.
3. A short statement about the dispute including, if possible, an indication of the amount in dispute.
4. Any comments regarding the number of mediators and who is suggested for appointment with names, telephone numbers and e-mail addresses.

(3) Any documents referred to in the Request for Mediation, including the mediation clause or agreement, shall be enclosed in original or as a copy. The Request for Mediation shall be accompanied by copies of the Request as well as by copies of any documents referred to in the Request in a number sufficient to ensure that a copy is available for the Institute and the Mediator.

(4) The Request for Mediation and the documents referred to herein shall be sent to each of the other parties in the case, unless the Request for Mediation is submitted by the parties jointly.

(5) If the Request for Mediation does not comply with the provisions set out in par. 2 and 3 above, the Secretariat may declare the case terminated without prejudice to the possibility of submitting a new Request for Mediation at a later stage on the same issue.

(6) The Request for Mediation must be accompanied by the payment of a registration fee of EUR 1,300.00 or the equivalent amount in Danish Kroner (DKK). The registration fee is non-refundable, except for the cases mentioned in Article 4, where the case is closed because the parties do not conclude a mediation agreement. If the amount stated in the first sentence of this paragraph has not been received by the time the Request for Mediation is submitted at the latest, the Secretariat shall fix a deadline for the payment of said amount. Failure to effect payment of the amount before the deadline may cause the DIA to terminate the case without prejudice to the possibility of submitting a new Request for Mediation at a later stage on the same issue.

(7) The Secretariat shall immediately inform the parties of the receipt of the Request and the date it was received. The Secretariat also sends the parties a copy of the Rules. The date on which the DIA receives the Request for Mediation shall in all respects be considered the date on which the case commenced.

(8) Failure by the other party to notify the Secretariat in writing within a deadline fixed by the Secretariat of its acceptance of the Request for Mediation in accordance with the Rules shall cause the Secretariat to terminate the case without prejudice to the possibility of submitting a new Request for Mediation at a later stage on the same issue.

Request for Mediation without Prior Agreement

Article 4

(1) A party may submit a Request for Mediation in accordance with the Rules even if there is no prior agreement on this between the parties. Such a request shall be in accordance with Article 3 with the necessary changes.

(2) The DIA immediately informs the parties of the receipt of the Request for Mediation and will also be available to assist the parties with general guidance and information about the process and the different steps herein, about the Rules in general, about the mediation costs, how the mediator is appointed, the length of the process, etc. in order to create a clearer foundation for the parties to conclude an agreement to mediate.

(3) If the parties reach an agreement on mediation in accordance with the Rules, the date on which the Secretariat receives notice thereof shall in all respects be considered the date on which the case commenced.

Appointment and confirmation of mediator

Number of Mediators, etc.

Article 5

(1) The parties may jointly appoint a mediator. Only one mediator shall be appointed, unless the parties have agreed otherwise. All appointments are subject to confirmation by the Chairman's Committee.

(2) If the parties have not jointly appointed a mediator, the mediator is appointed by the Chairman's Committee after giving the parties the opportunity to comment. The DIA can, after prior consultation with the parties, send a list of potential candidates to the parties in order for the parties to seek to jointly appoint a mediator from the list.

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(3) The appointment shall be made with due regard to any qualifications required from the mediator in pursuance of the agreement between the parties, to the needs of the parties for a speedy processing of the case, to any geographical considerations and to circumstances securing the appointment of an independent and impartial mediator.

(4) The mediator may have the same nationality and be domiciled in the same country as one of the parties, unless a party request that the mediator be of a different nationality and be domiciled in a country other than those of the parties.

(5) Before being confirmed, an appointed mediator shall sign a Declaration of Acceptance and of Impartiality and Independence. At the same time, the mediator shall disclose in writing any circumstances which might give rise to reasonable doubts as to the mediator's impartiality or independence. The mediator shall also produce information on his or her professional and educational background, etc. (CV/résumé). The Secretariat shall forward the declaration and the CV/résumé to the parties and fix a deadline for any comments.

(6) An appointed mediator shall immediately inform the parties and the Secretariat of any circumstances that should have been disclosed according to (5), had they existed at the time.

(7) The Chairman's Committee shall decide whether an appointed mediator shall be disqualified on the grounds of conflict of interest, or whether a confirmed mediator shall be revoked on those grounds.

Replacement of Mediator

Article 6

(1) If an appointed mediator cannot be confirmed or if, after having been confirmed, a mediator dies, wishes to resign or if the mediator's confirmation is revoked by the Chairman's Committee, a new mediator shall be appointed according to the same rules as those that applied to the mediator that resigned, etc. unless the Chairman's Committee decides otherwise in view of the delay this may cause.

Financial Deposit

Financial Deposit at the Commencement of Mediation, etc.

Article 7

(1) In addition to the registration fee mentioned in Article 3 (6), the parties shall pay a cash deposit as security for the estimated costs of the mediation, including but not limited to the mediator's fee, etc.

(2) The Secretariat shall fix the amount of the financial deposit in accordance with the scale adopted by the Board (Appendix 1), which shall be paid by the parties within a deadline fixed by the Secretariat. The parties will usually be asked to pay identical amounts. In the event that a party does not pay its share, the Secretariat shall require the other party to pay the full financial deposit in order for the mediation to be processed.

(3) The Secretariat may, at any time, demand that the financial deposit be adjusted and that any additional deposit be paid before the case continues. The mediator shall at all time, keep in contact with the Secretariat about the developments in the case, to ensure that the deposit is adequate at any point in time.

Conduct of the mediation

Referral of the Case to the Mediator

Article 8

(1) When the appointment of the mediator has been confirmed and when the financial deposit is paid, the Secretariat shall refer the documents of the case and a copy of the correspondence to the mediator.

Preparatory Meeting, Fundamental Principles, etc.

Article 9

(1) The mediator shall, as soon as possible, convene the parties for a preparatory meeting, where the further course of the mediation shall be agreed upon. The mediator shall, immediately after the meeting, send the minutes of the meeting, containing what has been agreed on the meeting, to the parties and the Secretariat.

(2) The mediation shall be conducted in accordance with the Rules. In the event that an issue arises which is not covered by the Rules, it shall be decided in accordance with the provisions of the mediation clause or agreement between the parties or, in the absence of such clause or agreement, by the mediator.

(3) The mediator shall ensure that the parties are treated with equality, and that each party is given opportunity to present its case.

(4) Endeavors shall be made to conclude the mediation as soon as possible and latest within 45 days after the case has been referred to the mediator, cf. Article 8.

Termination of the Mediation

Termination of the Mediation

Article 10

The mediation shall be deemed to be terminated when:

1. the parties inform the mediator that they have resolved their dispute,
2. the mediator informs the parties that the mediation is terminated,
3. a party informs the mediator that the mediation proceedings are to be considered terminated, or
4. 45 days have passed since the referral of the case to the mediator, cf. Article 8, and the parties have not agreed otherwise.

(2) The mediator shall confirm in writing to the parties, and with a copy to the Secretariat, that the mediation has been terminated.

Settlement as Arbitral Award on Agreed Terms

Article 11

(1) If the parties succeed in settling their dispute, and if they so agree, the DIA may, at the request of the parties, appoint an arbitral tribunal for the purpose of having the settlement achieved by them affirmed by the arbitral tribunal in the form of a final arbitral award on agreed terms, cf. the DIA's Rules of Arbitration Procedure.

(2) At the request of the parties and provided that the mediator does not object, the DIA may appoint the mediator as sole arbitrator in order to make an arbitral award as set out in paragraph 1 above.

Costs

Liability for Costs, Mediator's Fee, etc.

Article 12

(1) The parties shall be jointly and severally liable for all costs arising out of the mediation as well as of the possible making of an arbitral award in pursuance of Article 11 above, including, but not limited to, the fee to the mediator. Unless the parties have agreed otherwise, the costs mentioned in the first sentence shall be borne by them equally.

(2) Upon the conclusion of the mediation, the mediator shall submit a statement of the costs of the mediation to the Secretariat.

(3) The fee of the mediator shall be fixed by the Chairman's Committee on the basis of a reasoned written proposal made by the mediator. The proposal shall be in accordance with Appendix 1. The Secretariat shall make the final computation of the costs of the mediation.

(4) Any excess amount of the financial deposit shall be reimbursed without addition of interest.

Miscellaneous

Confidentiality, etc.

Article 13

(1) The mediator, the parties and the DIA shall treat all matters relating to the mediation and to the dispute subject to mediation as confidential, unless the parties agree otherwise. Confidentiality shall also be observed with regard to the settlement of the dispute reached by the parties, unless the parties agree otherwise or where disclosure is necessary for the purpose of implementing or enforcing the settlement reached by the parties or complying with statutory provisions or other public regulations to which a party may be subject.

(2) Unless the parties agree otherwise, the parties commit themselves to refrain from using what has been produced during the mediation, including documents, statements, settlement proposals, if any, in a later dispute that fully or partially concerns the mediation or the dispute to which the mediation relates. Correspondingly, the parties commit themselves to refrain from calling the mediator as witness in such a dispute.

(3) The parties cannot demand access to the mediator's notes, records and the like. At the request of either party, the notes etc. mentioned in the first sentence shall be destroyed immediately upon the termination of the mediation proceedings.

Limitation of Liability

Article 14

(1) The mediator, the DIA, members of the Board or the DIA's Board of Representatives, the Chairman's Committee, the Secretariat or the Secretary General shall not be liable for any act or omission in connection with a Request for Mediation, the processing of the mediation, the result, or an arbitral award in accordance with Article 11, except to the extent that such limitation of liability is prohibited by applicable law.

Appendix 1

Mediator's Fee, Costs, etc.

Introduction

Article 1

(1) The Board has fixed the following provisions for the registration fee, calculation of administrative charge to the DIA and mediator's fee. The scales are effective as from 1 June 2015 in respect of all mediations commenced on or after such date, irrespective of the version of the rules of the DIA applying to such mediation.

Registration Fee

Article 2

(1) The registration fee amounts to EUR 1,300.00. In cases which are not solved by mediation, and where an arbitration is commenced immediately thereafter at the DIA, the registration fee paid shall be credited as the registration fee for the arbitration proceedings.

Administrative Charge

Article 3

(1) The administrative charge shall be fixed by the Chairman's Committee.

(2) The administrative charge shall be fixed to half the rate of the scales for calculating administrative charge to the DIA in arbitration proceedings, cf. Article 2 of Appendix 1 to the DIA's Rules of Arbitration Procedure.

(3) In cases, which are not solved by mediation, and where an arbitration is commenced immediately thereafter at the DIA, the administrative charge paid shall be credited as the administrative charge for the arbitration proceedings.

(4) Where the amount in dispute cannot be determined on the basis of the claim made, the monetary value of the case shall be fixed at the discretion of the Chairman's Committee.

(5) Where a case is not completed, e.g. because a party does not accept the Request for Mediation, cf. Article 3 (8) and Article 4, the Chairman's Committee shall fix a reasonable administrative charge, taking into account the work the DIA has put into the case and any other circumstances.

Mediator's Fee and Expenses

Article 4

(1) Unless agreed otherwise between the parties and the mediator, the fee of the mediator is fixed on the basis of the time reasonably spent during the mediation. The fee shall be decided on the basis of an hourly rate decided by the Chairman's Committee in connection with the confirmation of the mediator.

(2) If the parties and the mediator agree, the Chairman's Committee can fix the mediator's fee to a fixed price. The fixed price shall be reasonable and determined on the basis of the complexity of the case, if the mediator has conducted the mediation in an efficient and cost-conscious manner, time spent and other relevant circumstances. Where a case is not completed as originally provided, the Chairman's Committee shall at its discretion fix a reasonable fee taking into consideration the work performed by the mediator and any other circumstances.

(3) The mediator's reasonable expenses related to the case are fixed by the Chairman's Committee.

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(4) Separate fee arrangements between the parties and the mediator shall be considered contrary to the Rules.

(5) Amounts payable to the mediator do not include any possible value added tax (VAT) or other taxes or charges that may be and imposts applicable to the fee. The parties have a duty to pay any such taxes or charges; however, the recovery of any such charges or taxes is a matter solely between the mediator and the parties.