

LCIA India Mediation Rules

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LCIA India Mediation Rules

adopted to take effect for mediations
commencing on or after 17 April 2010

Where any agreement provides for mediation of existing or future disputes under the rules of LCIA India, the parties shall be taken to have agreed that the mediation shall be conducted in accordance with the following rules (the Rules) or such amended rules as LCIA India and the Court of the LCIA (the LCIA Court) may have adopted hereafter to take effect before the commencement of the mediation. The Rules include the Schedule of Mediation Costs (the Schedule) in effect at the commencement of the mediation, as separately amended from time to time by LCIA India and the LCIA Court.

Article 1 Commencing Mediation - Prior existing agreements to mediate

1.1 Where there is a prior existing agreement to mediate under the Rules (a Prior Agreement), any party or parties wishing to commence a mediation shall send to the Registrar of LCIA India (the Registrar) a written request for mediation (the Request for Mediation), which shall briefly state the nature of the dispute and the value of the claim, and should include, or be accompanied by a copy of the Prior Agreement, the names, addresses, telephone, facsimile, telex numbers and e-mail addresses (if known) of the parties to the mediation, and of their legal representatives (if known) and of the mediator proposed (if any) by the party or parties requesting mediation.

1.2 If the Request for Mediation is not made jointly by
all parties to ^{PAGE 2} the Prior

Agreement, the party commencing the mediation shall, at the same time, send a copy of the Request for Mediation to the other party or parties.

- 1.3 The Request for Mediation shall be accompanied by the registration fee prescribed in the Schedule.

- 1.4 The LCIA Court shall appoint a mediator as soon as practicable after receipt by the Registrar of the Request for Mediation, with due regard for any nomination, or method or criteria of selection agreed in writing by the parties, and subject always to Article 8 of the Rules.
- 1.5 Where there is a Prior Agreement, the date of commencement of the mediation shall be the date of receipt by the Registrar of the Request for Mediation.

Article 2 Commencing Mediation – no Prior Agreement

- 2.1 Where there is no Prior Agreement, any party or parties wishing to commence a mediation under the Rules shall send to the Registrar a Request for Mediation, which shall briefly state the nature of the dispute and the value of the claim, and should include, or be accompanied by, the names, addresses, telephone, facsimile, telex numbers and e-mail addresses (if known) of the parties to the mediation, and of their legal representatives (if known) and of the mediator proposed (if any) by the party or parties requesting mediation.
- 2.2 The Request for Mediation shall be accompanied by the registration fee prescribed in the Schedule.
- 2.3 If the Request for Mediation is not made jointly by all parties to the dispute,
- a) the party wishing to commence the mediation shall, at the same time, send a copy of the Request for Mediation to the other party or parties; and
 - b) the other party or parties shall, within 14 days of receiving the Request for Mediation, advise the Registrar in writing whether or not

they agree to the mediation of the dispute.

- 2.4 In the event that the other party or parties either declines mediation, or fails to agree to mediation within the 14 days referred to at Article 2.3(b), there shall be no mediation under the Rules and the Registrar shall so advise the parties, in writing.
- 2.5 The LCIA Court shall appoint a mediator as soon as practicable after agreement to mediate has been reached between the parties, with due regard for any nomination, or method or criteria of selection

agreed in writing by the parties, and subject always to Article 8 of the Rules.

- 2.6 Where there is no Prior Agreement, the date of commencement of the mediation shall be the date that agreement to mediate is reached in accordance with Article 2.3(b).

Article 3 Appointment of Mediator

- 3.1 Before appointment by the LCIA Court, pursuant to

Article 1.4 or Article 2.5, the mediator shall furnish the Registrar with a written résumé of his or her past and present professional positions; and he or she shall sign a declaration to the effect that there are no circumstances known to him or her likely to give rise to any justified doubts as to his or her impartiality or independence, other than any circumstances disclosed by him or her in the declaration. A copy of the mediator's résumé and declaration shall be provided to the parties.

- 3.2 Where the mediator has made a disclosure, pursuant to Article 3.1, or where a party independently knows of circumstances likely to give rise to justified doubts as to his or her impartiality or independence, a party shall be at liberty to object to his or her appointment; in which case the LCIA Court shall appoint another mediator.

Article 4 Statements by the Parties

- 4.1 The parties are free to agree how, and in what form, they will inform the mediator of their respective cases, provided that, unless they have agreed otherwise, each party shall submit to the mediator, no later than 7 days before the date agreed between the

mediator and the parties for the first scheduled mediation session, a brief written statement summarising his case; the background to the dispute; and the issues to be resolved.

- 4.2 Each written statement should be accompanied by copies of any documents to which it refers.
- 4.3 Each party shall, at the same time, submit a copy of his written statement and supporting documents to the other party or parties.

Article 5 Conduct of the Mediation

- 5.1 The mediator may conduct the mediation in such manner as he or she sees fit, having in mind at all times the circumstances of the case and the wishes of the parties.
- 5.2 The mediator may communicate with the parties orally or in writing, together, or individually, and may convene a meeting or meetings at a venue to be determined by the mediator after consultations with the parties.
- 5.3 Nothing which is communicated to the mediator in private during the course of the mediation shall be repeated to the other party or parties, without the express consent of the party making the communication.
- 5.4 Each party shall notify the other party and the mediator of the number and identity of those persons who will attend any meeting convened by the mediator.
- 5.5 Each party shall identify a representative of that party who is authorised to settle the dispute on behalf of that party, and shall confirm that authority in writing.
- 5.6 Unless otherwise agreed by the parties, the mediator will decide the language(s) in which the mediation will be conducted.

Article 6 Conclusion of the Mediation

The mediation will be at an end when, either:

- (a) a settlement agreement is signed by the parties; or
- (b) the parties advise the mediator that it is their view that a settlement

cannot be reached and that it is their wish to terminate the mediation; or

- (c) the mediator advises the parties that, in his or her judgement, the mediation process will not resolve the issues in dispute; or
- (d) the time limit for mediation provided in a Prior Agreement has expired and the parties have not agreed to extend that time limit.

Article 7 Settlement Agreement

- 7.1 If terms are agreed in settlement of the dispute, the parties, with the assistance of the mediator if the parties so request, shall draw up and sign a settlement agreement, setting out such terms.
- 7.2 By signing the settlement agreement, the parties agree to be bound by its terms.

Article 8 Costs

- 8.1 The costs of the mediation (the Costs) shall include the fees and expenses of the mediator and the administrative charges of LCIA India, as set out in the Schedule.
- 8.2 The Costs shall be borne equally by the parties (or in such other proportions as they have agreed in writing).
- 8.3 As soon as practicable after receipt of the Request for Mediation, pursuant to Article 1 of the Rules, or after the parties have agreed to mediate, pursuant to Article 2 of the Rules, LCIA India will request the parties to file a deposit to be held on account of the Costs (the Deposit). The Deposit shall be paid by the parties in equal shares (or in such other proportions as they have agreed) prior to the appointment of the mediator.
- 8.4 A mediator shall not be appointed and the mediation shall not proceed until and unless the Deposit has been paid in full.
- 8.5 At the conclusion of the mediation, LCIA India, in consultation with the mediator will fix the Costs of the mediation.
- 8.6 If the Deposit exceeds the Costs, the excess will be reimbursed to the parties in the proportions in which they paid the deposit. If the Costs exceed

the Deposit, the shortfall will be invoiced to the parties for immediate payment in equal shares (or in such other proportions as they have agreed).

- 8.7 Any other costs incurred by the parties, whether in regard to legal fees, experts' fees or expenses of any other nature will not be part of the Costs for the purposes of the Rules.

Article 9 Judicial or Arbitral Proceedings

Unless they have agreed otherwise, and notwithstanding the mediation, the parties may initiate or continue any arbitration or judicial proceedings in respect of the dispute which is the subject of the mediation.

Article 10 Confidentiality and Privacy

10.1 All mediation sessions shall be private, and shall be attended only by the mediator, the parties and those individuals identified pursuant to Article 5.4.

10.2 The mediation process and all negotiations, and statements and documents prepared for the purposes of the mediation, shall be confidential and covered by “without prejudice” or negotiation privilege.

10.3 The mediation shall be confidential. Unless agreed among the parties, or required by law, neither the mediator nor the parties may disclose to any person any information regarding the mediation or any settlement terms, or the outcome of the mediation.

10.4 All documents or other information produced for or arising in relation to the mediation will be privileged and will not be admissible in evidence or otherwise discoverable in any litigation or arbitration in connection with the dispute referred to mediation, except for any documents or other information which would in any event be admissible or discoverable in any such litigation or arbitration.

10.5 There shall be no formal record or transcript of the mediation.

10.6 The parties shall not rely upon, or introduce as evidence in any arbitral or judicial proceedings, any admissions, proposals or views expressed by the parties or by the mediator during the course of the mediation.

Article 11 Exclusion of Liability

11.1 None of the LCIA, LCIA India, the LCIA Court (or any of their respective officers, members or directors), the Registrar, any Deputy Registrar, and any mediator shall be liable to any party howsoever for

any act or omission in connection with any mediation conducted by reference to the Rules, save where the act or omission is shown by that party to constitute conscious and deliberate wrongdoing committed by the body or person alleged to be liable to that party.

- 11.2 None of the LCIA, LCIA India, the LCIA Court (or any of their respective officers, members or directors), the Registrar, any Deputy Registrar, or the Mediator shall be under any legal obligation to make any statement to any person about any matter concerning the mediation, nor shall any party seek to make any of these persons a witness in any legal or other proceedings arising out of the mediation.

Recommended Clauses

FUTURE DISPUTES

For contracting parties who wish to have future disputes referred to mediation and/or arbitration under the auspices of LCIA India, the following clauses are recommended. Words/blanks in square brackets should be deleted/completed as appropriate.

Mediation only

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

Arbitration only

“Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the LCIA India Arbitration Rules, which Rules are deemed to be incorporated by reference into this clause.

The number of arbitrators shall be [one/three].

The seat, or legal place, of arbitration shall be [City and/or Country].

The language to be used in the arbitration shall be [].

The governing law of the contract shall be the substantive law of [].”

Mediation and Arbitration

“In the event of a dispute arising out of or relating to this contract, including my question regarding its existence, validity or termination, the parties shall first seek settlement of that dispute by mediation in accordance with the LCIA India Mediation Rules, which Rules are deemed to be incorporated by reference into this clause.

If the dispute is not settled by mediation within [] days of the appointment of the mediator, or such further period as the parties shall agree in writing, the dispute shall be referred to and finally resolved by arbitration under the LCIA India Arbitration Rules, which Rules are deemed to be incorporated by reference into this clause.

The language to be used in the mediation and in the arbitration shall be [].

The governing law of the contract shall be the substantive law of [].

In any arbitration commenced pursuant to this clause,

- (i) the number of arbitrators shall be [one/three]; and
- (ii) the seat, or legal place, of the arbitration shall be [City and/or Country].”

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 LCIA India Secretariat if recommended wording is required.

Modification to Recommended Clauses

The LCIA India Secretariat will be pleased to discuss any modifications to these standard clauses. For example, to provide for party nomination of arbitrators or for expedited procedures.

Expert Determination, Adjudication and other forms of ADR

Recommended clauses and procedures for Expert Determination, for Adjudication and for other forms of ADR, to be administered by LCIA India, or in which LCIA India is to act as appointing authority, are available on request from the LCIA India Secretariat.

Notes

