

Mediation Rules

Hong Kong International Arbitration Centre Mediation Rules

Effective from 1 August 1999

INTRODUCTION

Mediation Rules

These Rules are published by the Hong Kong International Arbitration Centre (HKIAC) in consultation with the Hong Kong Mediation Council (HKMC) and are similar to the Government of the Hong Kong SAR's Mediation Rules which are also administered by HKIAC. These Rules replace the previous version of the HKIAC Mediation Rules, which are commonly incorporated by reference in contracts.

Hong Kong International Arbitration Centre and Hong Kong Mediation Council

HKIAC was established in 1985 to assist disputing parties to solve their disputes by arbitration, by ADR and by mediation. HKIAC is a non-profit making company limited by guarantee. It was established by a group of leading business and professional people in Hong Kong to be the focus in Asia for dispute resolution. It has been generously funded by the business community and by the Hong Kong Government but it is totally independent of both. The HKIAC accredits suitably qualified persons as mediators. The HKMC is a division of the HKIAC dealing with mediation. The HKMC arranges for the training of mediators, and the promotion of mediation as a method of dispute resolution.

Suggested Mediation Clause

“Any dispute or difference arising out of or in connection with this contract shall first be referred to mediation at Hong Kong International Arbitration Centre (HKIAC) and in accordance with its then current Mediation Rules. If the mediation is abandoned by the mediator or is otherwise concluded without the dispute or difference being resolved, then such dispute or difference shall be referred to and determined by arbitration at HKIAC and in accordance with its Domestic Arbitration Rules”.

Mediation Rules (the “Rules”)

Mediation

1. Mediation under these Rules is a confidential, voluntary, non-binding and private dispute resolution process in which a neutral person (the mediator) helps the parties to reach a negotiated settlement.

Application of Rules

2. These Rules apply to the mediation of present or future disputes where the parties seek amicable settlement of such disputes and where, either by stipulation in their contract or by agreement, they have agreed that these Rules shall apply. The parties may agree to vary these Rules at any time.

Initiation of the Mediation Process

3. (a) If a dispute arises, a party may request the initiation of mediation by delivering a written request for mediation to the other party or parties with copies to HKIAC. Such request for mediation shall contain a brief self-explanatory statement of the nature of the dispute, the quantum in dispute (if any), the relief or remedy sought and nominating a mediator or mediators thought suitable.

(b) The names, addresses, phone and fax numbers of all parties to the dispute, and those who will represent them, should be exchanged between the parties and also furnished to the HKIAC.

Response to Request for Mediation

4. A party or parties who receive a request for mediation shall notify any other party and HKIAC within 14 days after receipt of the request whether any mediator nominated is acceptable.

Failure by any party to reply within 14 days shall be treated as a refusal to mediate.

Appointment of the Mediator

5. Where the parties agree on a mediator and the proposed mediator is willing to serve, they will notify HKIAC. The mediation shall then proceed in accordance with these Rules. If the parties fail to agree within the time stipulated in Rule 4 they will notify HKIAC who shall appoint a single accredited mediator who is prepared to serve and is not disqualified under Rule 6.

Disqualification of Mediator

6. No person shall act as mediator in any dispute in which that person has any financial or personal interest in the result of the mediation except by consent of the parties. Before accepting an appointment, the proposed mediator shall disclose to the parties (and to the HKIAC if the HKIAC has made the appointment under Rule 5) any circumstances likely to create a presumption of bias or prevent a prompt resolution of the dispute. Upon receipt of the information HKIAC shall immediately communicate the information to the parties for their

comments. If any party takes objection to the proposed mediator within 7 days he shall not be appointed. In such case the HKIAC shall nominate another suitable accredited mediator.

The Mediation Process

7. The mediator shall commence the mediation as soon as possible after his appointment and shall use his best endeavours to conclude the mediation within 42 days of his appointment. His appointment shall not extend beyond a period of three months without the written consent of all parties.

Role of the Mediator

8. The mediator may conduct the mediation in such manner, as he considers appropriate, taking into account the circumstances of the case, the wishes of the parties and the need for a speedy settlement of the dispute.

Role of the Parties

9. The mediator may communicate with the parties together or with any party separately, including private meetings and each party shall co-operate with the mediator. A party may request a private meeting with the mediator at any time. The parties shall give full assistance to enable the mediation to proceed and be concluded within the time stipulated.

Representation

10. The parties may be represented or assisted by persons of their choice. Each party shall notify in advance the names and the role of such persons to the mediator and the other party. Each party shall have full authority to settle or be accompanied by a person with such authority.

Termination of the Mediation

11. The mediation process shall come to end:-

- (a) Upon the signing of a settlement agreement by the parties or;
- (b) Upon the written advice of the mediator after consultation with the parties that in his opinion further attempts at mediation are no longer justified or;
- (c) Upon written notification by any party at any time to the mediator and the other parties that the mediation is terminated.

Confidentiality

12. (i) Mediation is a private and confidential process. Every document, communication or information disclosed, made or produced by any party for the purpose of or related to the mediation process shall be disclosed on a privileged and without prejudice basis and no

privilege or confidentiality shall be waived by such disclosure. Confidentiality also extends to the settlement agreement except where its disclosure is necessary for implementation or enforcement.

(ii) Nothing that transpires during the course of the mediation is intended to or shall in any way affect the rights or prejudice the position of the parties to the dispute in any subsequent arbitration, adjudication or litigation.

Costs

13. (i) Unless otherwise agreed, each party shall bear its own costs regardless of the outcome of the mediation or of any subsequent arbitral or judicial proceedings. All other costs and expenses shall be borne equally by the parties and the parties shall be jointly and severally liable to pay to the mediator such costs, including:-

(a) the mediator's fees and expenses;

(b) expenses for any witness or expert advice or opinion requested by the mediator with the consent of the parties; and

(c) any administrative costs in support of the mediation including HKIAC's costs.

(ii) The sum designated in HKIAC's Schedule of Initial Deposits shall be deposited by each of the parties with HKIAC before the mediator enters upon the mediation, as a contribution to the cost and proper expenses of the mediation including the mediator's fees and expenses.

(iii) The mediator may at any time during the mediation require the parties to make further deposits to cover any additional anticipated fees and expenses and suspend the process until such deposit is made.

(iv) Any surplus funds deposited shall be returned to the parties at the conclusion of the mediation.

Mediator's Role in Subsequent Proceedings

14. The parties undertake that the mediator shall not be appointed as adjudicator, arbitrator or representative, counsel or expert witness of any party in any subsequent adjudication, arbitration or judicial proceedings whether arising out of the mediation or any other dispute in connection with the same contract. No party shall be entitled to call the mediator as a witness in any subsequent adjudication, arbitration or judicial proceedings arising out of the same contract.

Exclusion of Liability

15. The parties jointly and severally release, discharge and indemnify the mediator and the HKIAC in respect of all liability whatsoever, whether involving negligence or not, from any act or

omission in connection with or arising out of or relating in any way to any mediation conducted under these Rules, save for the consequences of fraud or dishonesty.