

## **RULES ON MEDIATION of the Danish Institute of Arbitration**

### **Article 1**

The present rules on mediation shall apply whenever the parties have agreed for the mediation to be conducted in accordance with the Rules on Mediation of the Danish Institute of Arbitration (in the following referred to as ‘the Institute’). It follows from these rules that the Mediator shall neither decide the outcome of the dispute between the parties nor produce any draft settlements or other opinions in relation to the resolution of the dispute, unless the parties agree otherwise and the Mediator does not object to this, see par. 5-7 of Article 11.

### **Request for Mediation**

### **Article 2**

A Request for Mediation shall be submitted to the Institute by one of the parties or by the parties in unison.

*Par. 2:* The Request for Mediation shall contain

1. The full names and addresses of the parties to the dispute
2. The phone numbers, fax numbers and e-mail addresses of each party to the dispute
3. The names and addresses of any legal counsel or other advisors representing or assisting the parties to the dispute
4. A brief statement of the nature of the dispute
5. Any remarks concerning the number of mediators as well as the full name and address of the person nominated as mediator.

*Par. 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, the Mediator and each party to the dispute.

*Par. 4:* If the Request for Mediation does not comply with the provisions set out in par. 2 and 3 above, the Institute may declare the case terminated without prejudice to the possibility of the parties to submit a new Request for Mediation at a later stage on the same issue.

*Par. 5:* The Request for Mediation must be accompanied by the payment of a registration charge of DKK 5,000. The registration charge is non-refundable. 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 Institute shall set a deadline for the payment of said amount. Failure to effect payment of the amount before the deadline may cause the Institute to terminate the case without prejudice to the possibility of the parties to submit a new Request for Mediation at a later stage on the same issue.

*Par. 6:* The Institute shall immediately inform the parties of its receipt of the Request for Mediation and the date of such receipt. The Institute shall send a copy of the Request for Mediation and of any documents referred to in the Request to the other party. The Institute shall also send the parties a copy of the Rules on Mediation of the Danish Institute of Arbitration.

*Par. 7:* Failure by the other party to notify the Institute in writing within a period of 2 weeks of receipt of the communication stated in par. 6 above of its acceptance of the Request for Mediation in accordance with the present rules shall cause the Institute to terminate the case without prejudice to the possibility of the parties to submit a new Request for Mediation at a later stage on the same issue.

## **Appointment of Mediator**

### **Article 3**

Any person appointed to the office of mediator shall be and remain independent and impartial.

*Par. 2:* Unless otherwise agreed by the parties, the Institute shall appoint a Mediator after having heard the parties. Unless otherwise agreed by the parties only one Mediator shall be appointed. If the parties have agreed on the appointment of two or more Mediators, the appointment of Mediators shall follow the procedure set out in the first sentence of this paragraph, unless otherwise agreed by the parties.

*Par. 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.

*Par. 4:* If not all the parties to the dispute are domiciled in the same country, the person appointed Mediator shall be domiciled in a country other than those in which the parties reside, unless otherwise agreed by the parties.

*Par. 5:* Before being appointed by the Institute, the Mediator shall sign a statement of independence and impartiality in which are stated any circumstances which may give rise to justifiable doubt as to the Mediator's impartiality or independence. The Institute shall submit the statement to the parties stating a deadline for any comments.

*Par. 6:* A person appointed Mediator shall immediately inform the parties as well as the Institute of any and all circumstances that should have been included in the statement mentioned in par. 5 above had they existed at the time.

*Par. 7:* The Chairmanship of the Institute shall decide whether a person nominated as Mediator shall be disqualified on the grounds of conflict of interest, or whether a person appointed Mediator shall have to resign on those grounds. If one member, respectively both members, of the Chairmanship of the Institute has a conflict of interest or is otherwise prevented from participating in this decision, another Council member, respectively two other Council members, shall participate.

#### **Article 4**

As soon as the Mediator has been appointed, the Institute shall inform the parties of the appointment as well as of the name, address, phone and fax numbers and email address of the Mediator.

#### **Article 5**

If, after having been appointed, a Mediator dies, wishes to resign, or has his appointment revoked by the Institute, or if a person nominated as Mediator is not appointed, the Institute shall appoint a new Mediator.

*Par. 2:* An appointment made pursuant to par. 1 above shall be made according to the same rules as those that applied to the Mediator that resigned, etc., unless the Institute finds the application of these rules inappropriate in view of the delay that this may cause.

### **Deposit of financial security**

#### **Article 6**

In addition to the registration charge stated in par. 5 of Article 2 above, the parties shall lodge an amount in cash as security for the estimated costs of the mediation proceedings including, but not limited to, the fee to the Mediator, etc.

*Par. 2:* The Institute shall decide the size of the amount to be lodged as security stated in paragraph 1 above, and payment thereof shall be effected within 2 weeks of the parties receiving notice of its size. Normally the two parties will be asked to lodge identical amounts. Failure by a party to lodge its share shall require the other party to lodge the full amount in order for mediation to commence.

*Par. 3:* In the event that the costs estimated to accrue from the mediation proceedings prove to exceed the amount originally anticipated, the Institute may demand that the deposit be increased and that the additional amount be lodged by the parties before mediation continues.

*Par. 4:* Failure to lodge the deposit demanded by the Institute before the deadline may cause the Institute to terminate the proceedings without prejudice to the possibility of the parties to submit a new Request for Mediation at a later stage on the same issue. Having made that decision, the Institute shall inform the parties that the proceedings have been terminated due to failure to lodge the financial security, but that this is without prejudice to their possibility of submitting a request for mediation at a later stage.

## **Article 7**

Throughout the proceedings the Mediator shall keep the Institute updated on developments in the case for the purpose of ensuring that the financial security lodged by the parties is sufficient at all times.

## **Conduct of the mediation proceedings**

### **Article 8**

Once it has appointed the Mediator and received payment of the financial security demanded by it, the Institute shall forward the documents of the case together with a copy of existing correspondence in the case to the Mediator.

### **Article 9**

The Mediator shall take over the handling of the case upon receipt of the documents, etc., described in Article 8. From that time on, all correspondence shall be directly between the Mediator and the parties. Copies of all correspondence between the Mediator and the parties shall be forwarded to the Institute so that, by means of the copies, it may follow developments in the case and, if necessary, assist the Mediator in ensuring that the settlement of the dispute is duly advanced.

*Par. 2:* Following consultation with the parties the Mediator shall determine the manner in which evidence is to be presented in the case, including oral statements by the parties and the submission of documents, etc., and shall draw up a timetable for the mediation proceedings.

*Par. 3:* The parties may be represented or assisted by legal counsel or another advisor of their choice.

*Par. 4:* Provided that the parties to the dispute, the Mediator and the involved third party all agree, persons other than the parties to the dispute may participate in the mediation proceedings by providing information, oral statements or expert opinions. Any costs arising out of the participation in the mediation case of such persons shall be covered by the parties in pursuance of Article 6 above.

*Par. 5:* Endeavours shall be made to conclude the mediation as soon as possible and within 45 days of the appointment of the Mediator.

## **Article 10**

The mediation proceedings shall be conducted in accordance with the present rules. In the event that an issue arises which is not covered by the present 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.

## **Role of the Mediator**

### **Article 11**

Following consultation with the parties, the Mediator shall decide the time(s) and place(s) of the mediation proceedings.

*Par. 2:* The Mediator shall ensure that the parties are treated with equality, and that each party is given full opportunity to present its case. The Mediator shall also make sure that the mediation process is advanced as expeditiously as possible.

*Par. 3:* The Mediator shall be free to meet and communicate orally and in writing with the parties separately or jointly.

*Par. 4:* Information produced to the Mediator by a party shall remain confidential and shall not be disclosed to the other party without the express permission of the party producing the information.

*Par. 5:* The Mediator shall conduct the mediation proceedings the purpose of which is to identify the interests and needs of the parties and the disputes they wish to have resolved in such a manner that the parties are assisted in having their dispute resolved.

*Par. 6:* The Mediator shall neither decide the outcome of the dispute between the parties nor produce any draft settlements or other opinions in relation to the resolution of the dispute, however see par. 7 below.

*Par. 7:* If the parties so request, and if the Mediator does not object to it, the Mediator may present a proposal for a resolution of the dispute.

## **Termination of the mediation**

### **Article 12**

The mediation shall be deemed to be terminated when:

- a) the parties agree to inform the Mediator that they have resolved their dispute,
- b) the Mediator informs the parties that he does not wish to continue the mediation,
- c) a party informs the Mediator that the mediation proceedings are to be considered terminated, or
- d) 45 days have passed since the appointment of the Mediator, and the parties have not agreed otherwise.

*Par. 2:* The Mediator shall confirm in writing to the parties, and with a copy to the Institute, that the mediation has been terminated.

### **Article 13**

If the parties succeed in settling their dispute, and if they so agree, the Institute 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, see the Rules of Arbitration Procedure of the Danish Institute of Arbitration.

*Par. 2:* At the request of the parties and provided that the Mediator does not object, the Institute may appoint the Mediator to act as sole arbitrator with a view to making an arbitral award as set out paragraph 1 above.

### **Costs**

### **Article 14**

The parties shall be jointly and severally liable for all costs arising out of the mediation proceedings as well as of the possible making of an arbitral award in pursuance of Article 13 above including, but not limited to, the fee to the Mediator. Unless the parties have agreed otherwise, the costs identified in the first sentence of this paragraph shall be borne by them in equal shares.

*Par. 2:* Upon the conclusion of the mediation proceedings the Mediator shall submit a statement of the costs of mediation to the Institute.

*Par. 3:* The Institute shall decide the fee to the Mediator on the basis of a reasoned proposal on the size of the fee from the Mediator. The Institute shall prepare the final statement of the total costs of the mediation. The fee to the Mediator shall be fixed in accordance with the schedule of fees adopted by the Institute's Council and applicable at the time the mediation was concluded.

*Par. 4:* Any unexpended balance of the deposit shall be returned on the basis of the statement drawn up by the Institute without addition of interest.

## **Confidentiality, etc.**

### **Article 15**

The mediator, the parties and the Institute shall treat the mediation and the dispute made the subject of mediation with confidentiality in all respects, 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.

*Par. 2:* The parties commit themselves not to introduce as evidence in a dispute any material prepared by the other party or the Mediator for the purpose of the mediation proceedings and not to use views, including any draft settlement proposals, expressed or produced by the other party or the Mediator in the course of the mediation proceedings.

*Par. 3:* The parties and the Mediator commit themselves to respecting that the Mediator cannot act as arbitrator or in a similar capacity in a dispute that concerns the dispute to which the mediation proceedings relate, except for the situation mentioned in Article 13 above.

*Par. 4:* The parties commit themselves to refrain from calling the Mediator as a witness in a dispute that fully or partially concerns the mediation or the dispute to which the mediation proceedings relate.

*Par. 5:* The parties cannot demand access to the Mediator's notes, records and the like. At the request of either party, the material mentioned in the first sentence of this paragraph shall be destroyed immediately upon the conclusion of the mediation proceedings.

## **Liability**

### **Article 16**

Neither the Mediator, the Institute, its Council, Board of Representatives or its employees can be held liable for any act or omission in connection with a Request for Mediation, the processing or outcome of the mediation case, or an arbitral award made in pursuance of Article 13 above.

## **Entry into force, etc.**

### **Article 17**

The present rules shall enter into force on 1 June 2010.