



# MEDIATION RULES 2023



ASIAN INTERNATIONAL ARBITRATION CENTRE



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## DIRECTOR'S MESSAGE

The Asian International Arbitration Centre (“**AIAC**”) stands resolute in delivering dispute resolution services with a pragmatic and cost-efficient framework. It is a legacy that we upheld for more than 45 years. This is in line with our commitment to meet the growing expectations of the ADR community.

It is my pleasure to present the latest edition of our ADR rules: **AIAC Arbitration Rules 2023, AIAC i-Arbitration 2023, and AIAC Mediation Rules 2023** (“**Rules**”). The rationale behind the inception of our Rules is as follows:

First, our strong collaboration with the United Nations Commission on International Trade Law (“**UNCITRAL**”) plays a key role. UNCITRAL has developed the most widely used set of arbitration rules through in-depth negotiations amongst State representatives and observing organisations. In line with the above, our Rules are rooted in UNCITRAL’s Arbitration Rules and UNCITRAL’s Mediation Rules which are time-tested mechanisms.

Second, the AIAC Rules offer clear guidance for arbitrators, lawyers, and disputing parties, in order to reduce confusion. While we prioritise precision, adopt a hands-off approach that allows for customisation and flexibility, allowing customisation for various disputes.

Third, we sought to streamline the process in order to provide efficiency and minimise the duration or the costs associated with lengthy legal proceedings.

Fourth, selected experts from the four corners of the globe gave their opinion on the application of these Rules. This is in line with our endeavour to have a stronger international presence and to cater for the needs of different users from around the world.

Fifth, the AIAC's credentials in terms of fairness and impartiality are self-evident. In this regard, the Centre is accorded immunity and privileges under the Host Country Agreement and the International Organization (Privileges and Immunities) Act 1992.

The ADR community can be assured that the AIAC and its Rules ensure fair and impartial grounds for the parties wishing to bring their dispute before it.

The AIAC presents to you these Rules embodying innovation, quality, and UNCITRAL's ADR expertise.

Thank you.

Yours sincerely,



**Datuk Sundra Rajoo**

Director

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## Model Mediation Clause

*“Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination, or invalidity thereof, shall be submitted to mediation in accordance with the AIAC Mediation Rules.”*

The parties should consider adding:

- (a) The parties agree that there will be one mediator, appointed by agreement of the parties within 30 days of the mediation agreement, and if the parties cannot agree, the mediator shall be selected by the Director of the AIAC;*
- (b) The language of the mediation shall be ...;*
- (c) The location of mediation shall be...*

## Model Submission Agreement

Parties wishing to substitute the existing mediation clause for one referring the dispute to mediation under the Asian International Arbitration Centre (AIAC) Mediation Rules may adopt the following form of an agreement:

*“The parties agree that the dispute arising out of... shall be settled by mediation under the AIAC Mediation Rules”.*

This form may also be used where a contract does not contain a mediation clause and/or in case of the mediation of investment-related differences, whether or not such differences or disputes arise out of a contract between the parties.

## Med-Arb Procedure

Med-Arb procedure is a process where a dispute is referred to mediation and if the parties are able to settle their dispute through mediation, their mediated settlement may be recorded as a consent award.

Parties wishing to take advantage of this tiered dispute resolution mechanism may consider incorporating the following clause in their contracts or submission agreement:

*If the dispute, or any part thereof, is not settled within 60 days of the request to mediate under these Rules, the parties agree to resolve any remaining matters by arbitration in accordance with the AIAC Arbitration Rules.*

- (a) The number of arbitrators shall be (one or three);*
- (b) The seat of arbitration shall be (town and country);*
- (c) The language of the arbitration shall be...*

## Preamble

The Asian International Arbitration Centre (the “AIAC”) Mediation Rules 2023 (the “AIAC Mediation Rules”) take effect from 24<sup>th</sup> August 2023.

Upon the coming into effect of the AIAC Mediation Rules, all previous editions of the AIAC Mediation Rules shall no longer be applicable to mediation proceedings commenced after this date unless otherwise agreed to by the parties.

Under any mediation agreement referring to the AIAC Mediation Rules, the parties shall be deemed to have agreed that the following rules, or such amended rules, in force on the date of the commencement of mediation, shall be applied unless otherwise agreed by the parties.

All approvals, directions, notices, guidelines, circulars, guidance notes, practice notes, rulings, decisions, notifications, exemptions and other executive acts, howsoever called, given or made by AIAC through their website on or before 24<sup>th</sup> August 2023 shall continue to remain in full force and effect, until amended, replaced, rescinded or revoked.

This preamble shall constitute an integral part of the AIAC Mediation Rules.

## GUIDE TO THE AIAC MEDIATION RULES

1. The AIAC Mediation Rules are designed for the mediation of any differences or disputes, whether or not they arise out of a contract between the parties.
2. The English text of the AIAC Mediation Rules prevails over other language versions.
3. All references in the AIAC Mediation Rules to the singular shall include the plural where applicable and vice versa.
4. Definitions used in the AIAC Mediation Rules:

**“AIAC”** means the Asian International Arbitration Centre;

**“days”** means calendar days and includes weekends and public holidays;

**“Director”** means the Director of the AIAC;

**“domestic mediation”** means any mediation which is not an “international mediation”;

**“international mediation”** means a mediation where: –

- a) one of the parties to the mediation has its place of business in any State other than Malaysia; or
- b) any place where a substantial part of the obligations of any commercial or other relationship is to be performed or the place with which the subject matter of the dispute is most closely connected is in any state other than Malaysia; or
- c) the parties have expressly agreed that the subject matter of the mediation relates to more than one State.

**“Rule”** shall refer to the numbered provisions of the AIAC Mediation Rules.



**Part I**

**AIAC  
MEDIATION  
RULES**

## **Rule 1 - Application of the Rules**

1. These Rules apply to any mediation of any present or future dispute:-
  - a) where the parties have agreed that the AIAC Mediation Rules will apply whether before or after a difference or dispute arises; or
  - b) the parties have authorised the mediator or another person or institution to design a mediation process and that mediator, person or institution adopts the AIAC Mediation Rules in whole or in part.
2. Where any of the Rules is in conflict with a provision of law from which the parties cannot derogate, that provision of law prevails.
3. Mediation under the Rules encompasses any process, whether referred to by the term mediation, conciliation or any mechanism whereby parties request a third person to assist them in their attempt to reach an amicable settlement of their dispute.

## **Rule 2 - Commencement of mediation**

1. Any party wishing to initiate mediation pursuant to the AIAC Mediation Rules shall submit a request for mediation (the "Request for Mediation"). The Request for Mediation shall contain:
  - a) the names, addresses (including email addresses), telephone numbers of the parties and any legal or other representatives involved;
  - b) reference to any mediation clause or a copy of the separate mediation agreement, if any;
  - c) a brief explanation of the dispute; and
  - d) proof of payment of the non-refundable registration fee as prescribed in the Schedule of Fees (the "Registration Fee").
2. The date on which the Director has received the Request for Mediation with all accompanying documentation and the complete sum of the Registration Fee shall be treated as the date on which the mediation has commenced. The AIAC will notify the parties of the date of commencement of the mediation.
3. If the other party or parties reject(s) the Request for Mediation or if the AIAC does not receive a reply within 30 days from the date of the AIAC's written notice of the Request for Mediation under Rule 2(1), the AIAC shall treat this as a rejection of the Request for Mediation, and inform the party or parties initiating the mediation accordingly.

4. Where the parties have agreed to a time limit for settling the dispute pursuant to the AIAC Mediation Rules, the date on which the mediator is appointed shall be the starting point of the agreed time limit.

### **Rule 3 - Place and language(s) of the mediation**

1. Unless the parties have agreed otherwise, the mediation proceedings shall be held in the AIAC premises or any other venue proposed by the AIAC.
2. In the absence of an agreement of the parties, the mediator shall determine the language(s) in which the mediation shall be conducted.

### **Rule 4 - Appointment of the mediator**

1. Unless otherwise agreed by the parties, the case shall be referred to one mediator to be appointed by the Director. The Director shall take into consideration any proposals made by the parties, the nature and circumstances of the dispute, the applicable law, and the nationality and language of the parties.
2. If the parties jointly nominate a person to act as a mediator, the AIAC shall confirm such nomination, subject to Rule 5 of the AIAC Mediation Rules.
3. Unless otherwise agreed by the parties, where more than one mediator is to be appointed, each party shall appoint an equal number of mediators.

### **Rule 5 - Independence and impartiality of the mediator**

1. The mediators conducting mediation under the AIAC Mediation Rules shall be and remain at all times independent and impartial.
2. The mediators shall provide a signed and dated statement of acceptance, independence, impartiality and availability to the parties and the Director, disclosing any circumstances that may give rise to the mediator's impartiality or independence.
3. A mediator, from the time of appointment and throughout the mediation, shall, without delay, disclose to the parties any circumstances that may give rise to the mediator's impartiality or independence as they arise.
4. No person may act as a mediator in any dispute in which that person has any conflict of interest, save where the parties have been notified in writing of such circumstances and have subsequently expressly consented in writing to the appointment of the mediator.

## **Rule 6 - Replacement of the mediator**

1. The parties may, by written consent, agree to replace the mediator at any time.
2. Where a mediator is unable to perform their duties or fails to perform their functions, or is no longer accepted by the parties, the Director shall release the mediator from appointment and appoint a new mediator in accordance with Rule 4 and Rule 5.
3. Before the Director releases a mediator, the AIAC may give the parties and the mediator an opportunity to submit comments.

## **Rule 7 - Role of the mediator**

1. The mediation may be conducted in such manner as considered appropriate by the mediator, taking into account the circumstances of the case, the wishes of the parties and the need for a speedy settlement of the dispute.
2. The mediator shall not act as a representative or counsel of a party or appear as a witness in any arbitral or judicial proceedings or give advice to any person whatsoever in respect of a dispute that is the subject of the mediation. Unless the parties have otherwise agreed in writing, the mediator shall not act as an arbitrator in any arbitral proceedings between the parties.

## **Rule 8 - Role of the parties**

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 or agreed.

## **Rule 9 - Conduct of the mediation**

1. The mediator may, in consultation with the parties and taking into account the circumstances of the dispute, utilise any technological means as considered appropriate, including to communicate with the parties and to hold meetings remotely.
2. When the mediator receives information concerning the dispute from a party, the mediator shall keep such information confidential, unless that party indicates that the information is not subject to the condition that it should be kept confidential, or expresses its consent to the disclosure of such information to another party to the mediation.
3. With the agreement of the parties and subject to Rule 12, the mediator may consult one or more experts. Any such expert shall be governed by Rule 4.

## **Rule 10 - Timetable**

The mediator shall consult with the parties to establish and/or modify a timetable and to decide on any further details regarding the procedure of the mediation.

## **Rule 11 - Authority and representation**

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

## **Rule 12 - Confidentiality**

1. Unless otherwise agreed by the parties, all information relating to the mediation, including, if relevant, the settlement agreement, shall be kept confidential by those involved in the mediation, except where disclosure is required by the law or as referred to under Rule 13.3.
2. The provisions of Rule 12 shall survive the termination of the mediation and continue in full force and effect unless provided otherwise by a signed agreement among all parties and the mediator.

## **Rule 13 - Settlement agreement**

1. Once the parties agree on the terms of a settlement to resolve all or part of the dispute through mediation, they should prepare and sign a settlement agreement. If requested by the parties and if the mediator deems it appropriate, the mediator may provide support to the parties in preparing the settlement agreement.
2. Unless otherwise agreed by the parties, the mediator or the AIAC may sign or stamp the settlement agreement or provide other evidence that the agreement resulted from mediation.
3. By signing the settlement agreement, the parties agree that the settlement agreement can be used as evidence that it results from mediation, and that it can be relied upon for seeking relief under the applicable law.

## **Rule 14 - Termination of the mediation**

1. The mediation shall be terminated:
  - a) by a settlement agreement between the parties;
  - b) by a declaration of the mediator to the parties to the effect that further efforts of mediation are unlikely to lead to the resolution of the dispute; or

- c) by a written request from a party to the mediator that the mediation shall be terminated.
2. Upon the termination of the mediation, the mediator shall notify the AIAC.
3. The AIAC and the mediator shall be entitled to payment for services rendered up to the time of termination of the mediation.

## **Rule 15 - Costs and fees**

1. Unless otherwise agreed by the parties, the costs referred to in Rule 15(3) are borne equally by the parties. All other expenses incurred by a party shall be borne by that party.
2. The mediator shall request that the AIAC finally determines the costs of the mediation. The AIAC shall finally determine the costs of the mediation in accordance with the Schedule of Fees (Part II) in force on the date of commencement of the mediation pursuant to Rule 2.
3. The costs and expenses of the mediation shall include, but are not limited to:-
  - a) the fees of the mediator;
  - b) the cost of the venue hire, including meeting rooms, breakout rooms, meals, translation fees, photocopying fees, internet access, telephone and communication expenses, administrative costs incurred under Rule 15(3)(d), and any other costs reasonably and properly incurred in respect of the conduct of the mediation;
  - c) any fees or costs set out above in respect of expert advice or expert witnesses who attend or provide such advice with the consent of the parties;
  - d) the administrative charges of the AIAC relating to the conduct of the mediation fixed in accordance with the AIAC Mediation Rules. Without limiting the foregoing, the costs of the AIAC may include:-
    - i. the registration fee; and
    - ii. any administrative costs.
4. The parties are jointly and severally liable for costs and fees set out in Rule 15(3) above.
5. The parties are required to pay the costs and fees irrespective of the outcome of the mediation.
6. If the mediator is replaced prior to the termination of the proceeding, the parties shall pay the fees and expenses that the mediator incurred prior to termination, unless the mediator decides otherwise.

## **Rule 16 - Administrative assistance**

The Director may arrange for translators, administrative assistance, and/or other facilities in order to facilitate the mediation at the request of the mediator and/or the parties.

## **Rule 17 - Exclusion of liability**

1. Neither the AIAC nor the mediator shall be liable to any party or to any other participant in the mediation for any act or omission in relation to or arising out of the mediation or in respect of or arising out of any settlement reached in any mediation conducted, unless such act or omission constitutes wilful misconduct or gross negligence.
2. All statements, whether written or oral, made in the course of the mediation shall not be relied upon to institute or maintain any action for defamation, libel, slander or any related complaint.

## **Rule 18 - Schedule of fees**

1. The parties are free to agree with the mediator on the mediator's fees. Unless otherwise agreed by the parties and mediator, the Schedule of Fees shall apply.
2. The Schedule of Fees provides the fee scales for international and domestic mediation.
3. After the mediation has commenced in accordance with Rule 2, the Director shall fix a provisional advance deposit in an amount intended to cover the mediator's fees and administrative costs. Any such provisional advance deposit shall be paid by the parties in equal shares and will be considered as a partial payment by the parties of any deposits of costs and fees fixed by the Director.
4. Such provisional advance deposit shall be payable within 14 days upon receiving the request from the AIAC.
5. At any time during the course of the mediation, the Director may require additional deposits to be paid by the parties on account of the costs and fees. Any such additional sums requested by the Director on account of the costs and fees shall be payable 14 days after the receipt of the request from the AIAC.
6. If any of the monies are not paid in full by both parties within 14 days after the receipt of the request from the AIAC, the Director shall so inform the parties in order that one or another of them may make the required payment.
7. If any such payment is not made, the mediator, after consultation with the Director and the parties, may order the suspension or termination of the mediation.

8. The AIAC may apply the deposits towards the costs and expenses incurred by the AIAC and the mediator in relation to the mediation.
9. Upon termination of the mediation, the AIAC shall render an account to the parties of the deposits received and used and return any unexpended balance to the parties.

### **Rule 19 - Vacancy of the position of Director**

In the event that the position of Director of the AIAC becomes vacant, the following officers, in order of precedence, shall assume the powers of the Director under these Rules until the appointment of a new Director:

- a) the Deputy Director;
- b) the Assistant Director; or
- c) the Head of Legal Services.



**Part II**

**SCHEDULES OF  
FEES**

## A. DOMESTIC MEDIATION

### 1. Registration fee

A non-refundable registration fee of RM150.00 is payable by the party submitting the Request for Mediation.

### 2. Administrative costs

The administrative costs for mediation shall be fixed at RM500.00 per case.

### 3. Mediator's fee

i. RM5,000.00 per day; and

ii. RM600.00 per hour for review of documents and related works.

4. The fees payable to the mediator do not include any possible taxes such as service tax, withholding tax, and other taxes or charges applicable to the mediator's fees. The parties have a duty to pay any such taxes or charges; however, the recovery of any such taxes or charges is a matter solely between the mediator and the parties.

5. The AIAC's administrative costs payable include any possible taxes such as service tax, withholding tax, and other taxes or charges applicable to the AIAC's administrative costs. The parties have a duty to pay any such taxes or charges; however, the recovery of any such taxes or charges is a matter solely between the parties.

## **B. INTERNATIONAL MEDIATION<sup>1</sup>**

### **1. Registration fee**

A non-refundable registration fee of USD150.00 is payable by the party submitting the Request for Mediation.

### **2. Administrative costs**

The administrative costs for mediation shall be fixed at USD500.00 per case.

### **3. Mediator's fee**

- i. USD6,000.00 per day; and
- ii. USD750.00 per hour for review of documents and related works.

### **4. The fees payable to the mediator do not include any services tax imposed by the government and other taxes or charges applicable to the mediator's fees. The parties have a duty to pay any such taxes or charges; however, the recovery of any such taxes or charges is a matter solely between the mediator and the parties.**

### **5. The AIAC's administrative costs payable include any possible taxes such as service tax, withholding tax, services tax imposed by the government and other taxes or charges applicable to the AIAC's administrative costs. The parties have a duty to pay any such taxes or charges; however, the recovery of any such taxes or charges is a matter solely between the parties.**

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<sup>1</sup>In an international mediation, the mediator's fees and the AIAC administrative costs can be paid in foreign currency other than USD, subject to the AIAC's approval.



# **MEDIATION RULES 2023**



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## **ASIAN INTERNATIONAL ARBITRATION CENTRE (AIAC)**

(ESTABLISHED UNDER THE AUSPICES OF THE  
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