



ASIAN INTERNATIONAL ARBITRATION CENTRE
(Formerly known as KLRCA)

MEDIATION RULES

REGIONAL RESOLUTION
GLOBAL SOLUTION

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(Effective as of 9th March 2018)

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MEDIATION ACT 2012

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First Edition

Please refer to www.aiac.world for the most updated rules

MODEL MEDIATION CLAUSE

“Where, in the event of a dispute arising out of or relating to this contract, the parties wish to seek an amicable settlement of that dispute by mediation, the mediation shall take place in accordance with the AIAC Mediation Rules as at present in force.”

Recommended additions:

- *The mediation will take place at [...].*
- *The language to be used in the mediation shall be [...].*

MODEL SUBMISSION AGREEMENT

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

“The Parties here 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 or disputes involving an investor and States and/or State entities, 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 the mediation, their mediated settlement may be recorded as a consent award.

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

“The Parties further agree that any settlement reached in the course of mediation commenced under the AIAC Mediation Rules shall be referred to the arbitral tribunal appointed by the AIAC and may be made in a form of an award made by the consent of the Parties”.

MEDIATION RULES OF THE ASIAN INTERNATIONAL ARBITRATION CENTRE (MALAYSIA) (AIAC) IN FORCE AS OF 9TH MARCH 2018

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.

The English text prevails over other language versions.

Any reference to the Kuala Lumpur Regional Centre for Arbitration (KLRCA) in any written law or in any instrument, deed, title, document, bond, agreement or working arrangement shall, after 28th February 2018, be construed as a reference to the AIAC.

All approvals, directions, notices, guidelines, circulars, guidance notes, practice notes, rulings, decision, notifications, exemptions and other executive acts, howsoever called, given or made by the KLRCA before 28th February 2018 shall continue to remain in full force and effect, until amended, replaced, rescinded or revoked.

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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. Definitions used in the AIAC Mediation Rules:

“AIAC” means the Asian International Arbitration Centre (Malaysia);

“arbitral tribunal” means a sole arbitrator or a panel of arbitrators appointed by the AIAC pursuant to the AIAC Arbitration Rules, the AIAC Fast Track Arbitration Rules and the AIAC i-Arbitration Rules, or the Arbitration Act 2005 (as amended);

“a consent award” means a settlement agreement reached in the course of the mediation under the AIAC Mediation Rules recorded by the arbitral tribunal as award within the meaning of the AIAC Arbitration Rules, the AIAC Fast Track Arbitration Rules and the AIAC i-Arbitration Rules, or the Arbitration Act 2005 (as amended);

“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”;

“GST” means Goods and Services Tax as prescribed by law;

“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.

“mediation” means a voluntary process in which a mediator facilitates communication and negotiation between parties to assist the parties in reaching an agreement regarding a difference or dispute;

“mediator” means a neutral third party appointed or confirmed under the AIAC Mediation Rules to facilitate communication and negotiation between parties to assist the parties in reaching an agreement regarding a difference or a dispute;

“Party” or **“Parties”** means a party or parties to a mediation agreement or, in any case where a meditation does not involve all parties to the mediation agreement, means a party involved in or initiating the mediation;

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

Part I

AIAC MEDIATION RULES

(Effective as of 9th March 2018)

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.
 - (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 the provision of law from which the Parties cannot derogate, that provision of law prevails.

Rule 2

Commencement of the Mediation Where There is A Prior Agreement to Refer to the AIAC Mediation Rules

1. Where there is a prior agreement between the Parties to refer their dispute to mediation under the AIAC Mediation Rules, any Party or Parties 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 e-mail addresses), telephone numbers of the Parties and any legal or other representatives involved;
 - (b) a reference to any mediation clause or a copy of the separate mediation agreement, if any;

- (c) a reference to the contract, if any, treaty or other legal relationship (if any) out of or in relation to which the dispute arises;
- (d) a brief explanation of the nature of dispute, the amount involved, if any, and any specific relief or outcome sought by any Party;
- (e) a reference to any agreement as to time limits for conducting the mediation, or, in absence thereof, any proposal with respect thereto;
- (f) a reference to any agreement as to the language(s) of the mediation, or, in absence thereof, any proposal as to such language(s);
- (g) a reference to any agreement as to the location of any physical meetings, or in absence thereof, any proposal as to such location;
- (h) any joint nomination by all of the Parties of a mediator or where no joint nomination has been made, a reference to any agreement as to the attributes of a mediator to be appointed by the Director;
- (i) a confirmation that the Request for Mediation has been or is being served on all other Parties by one or more means of service to be identified in such confirmation, unless the Request for Mediation has been filed jointly by all Parties; and
- (j) a proof of payment of the non-refundable registration fee set out in accordance with the Schedule of Fees annexed hereto “**Registration Fee**”.

2. The AIAC shall acknowledge receipt of the Request for Mediation and of the Registration Fee in writing to the Parties.
3. Where there is a prior agreement to refer to the AIAC Mediation Rules, the date on which the Director has received the Request for Mediation with all accompanying documentation 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.
4. Where the Parties have agreed 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

Commencement of the Mediation Where There is No Prior Agreement to Refer to the AIAC Mediation Rules

1. In the absence of an agreement of the Parties to refer their dispute to mediation under the AIAC Mediation Rules, any Party that wishes to propose referring the dispute to the AIAC Mediation Rules to another Party may do so by submitting the Request for Mediation to the Director containing information and/or documentation specified in Rule 2(1), subparagraphs (a), (c), (h) and (j) above.
2. Upon receipt of the Request for Mediation under Rule 3(1), the AIAC shall send a copy of the Request for Mediation to the other Party or Parties named.
3. Where there is no prior agreement to refer to the AIAC Mediation Rules, the mediation shall be deemed to have commenced when the AIAC receives a written notice of the other Party's or Parties' acceptance of the Request for Mediation. The AIAC will notify the Parties of the date of commencement of the mediation.

4. 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 3(2), the AIAC shall treat this as a rejection of the Request for Mediation, and inform the Party or Parties initiating the mediation accordingly.
5. Where the Parties have agreed 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 4

Place and Language(s) of the Mediation

1. Unless the Parties have agreed otherwise, the mediation proceedings shall be held in the AIAC premises.
2. In the absence of an agreement of the Parties, the Director may determine the language(s) in which the mediation shall be conducted or may invite a mediator to do so after the mediator has been confirmed or appointed.

Rule 5

Appointment and Confirmation of the Mediator

1. Where all Parties have agreed upon a proposed mediator, who is willing to serve and is not disqualified under Rule 6, the Parties will jointly nominate that person as the mediator for the Director's confirmation.

2. If, within 30 days of the Request for Mediation under Rule 2 or Rule 3, all Parties have not agreed upon a proposed mediator willing to serve and not disqualified under Rule 6, then the Director shall, after consulting the Parties, either appoint a mediator or propose a list of mediators to the Parties. All of the Parties may jointly nominate a mediator from the said list for confirmation by the Director, failing which the Director shall appoint a mediator.
3. When appointing a mediator, the Director shall consider the Parties' agreement as to the attributes of a mediator or in absence of such agreement, any other attributes as the Director deems appropriate.
4. If any Party objects to the mediator appointed by the Director and notifies the Director and all other Parties in writing, stating the reasons for such objection, within 15 days of receipt of notification of the appointment, the Director shall appoint another mediator.
5. There shall be one mediator unless the Parties have agreed otherwise. Upon agreement of the Parties, the Parties may nominate more than one mediator or request the Director to appoint more than one mediator, in accordance with the provisions of the AIAC Mediation Rules. The Director may propose to the Parties that there be more than one mediator, considering the circumstances of the case.

Rule 6

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 independence and availability to the Parties and the Director.

3. In the statement of independence and availability, the mediator shall: -
 - (a) disclose any facts or circumstances that might call into question his or her independence or impartiality in the eyes of the Parties;
 - (b) state his or her availability and willingness to conduct the mediation expeditiously and efficiently within the time limit agreed by the Parties or, in the absence of such an agreement, within a reasonable time limit following his or her appointment as the mediator.
4. No person may act as a mediator in any dispute in which that person has any financial or personal interest or any conflict of interest likely to affect or which might reasonably be perceived to affect the mediator's independence or ability to act impartially at all times, 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 7

Replacement, Disqualification and Resignation of the Mediator

1. The Parties may by written consent agree to replace the mediator and/or co-mediator at any time.
2. If the Parties fail to jointly nominate a new mediator and/or co-mediator willing to serve and not disqualified under Rule 6 within 30 days following resignation of the mediator and/or co-mediator whose replacement is sought, the procedure set out in Rule 5(3) shall apply.

3. If, during the course of the mediation, any Party objects for any reason to a mediator and/or co-mediator continuing to act, then that Party shall notify the mediator and/or co-mediator, the other Party and the Director. The notification should state the reasons for the objection.
4. Upon consideration of the objection and any comments on it, the mediator and/or co-mediator, whose replacement is sought, shall resign.
5. If, following appointment, a mediator and/or co-mediator becomes aware of any circumstances that may create a reasonable perception of bias, partiality or lack of neutrality, the mediator and/or co-mediator shall immediately so inform the Parties and the Director. If any Party objects to the continued service of the the mediator and/or co-mediator, the mediator and/or co-mediator shall be disqualified. In this event, the Parties will have a further 30 days from disqualification of the mediator and/or co-mediator to jointly nominate a new mediator and/or co-mediator. If the Parties fail to jointly nominate a new mediator and/or co-mediator willing to serve and not disqualified under Rule 6 within 30 days following the disqualification of the mediator and/or co-mediator, the procedure set out in Rule 5(3) shall apply.

Rule 8

Role of the Mediator

1. The mediator and/or co-mediator shall be guided by principles of fairness, objectivity, independence and impartiality.
2. The mediator and/or co-mediator shall assist the Parties in an independent and impartial manner to resolve their differences or disputes amicably and/or to reach a settlement agreement. The mediator and/or co-mediators shall not have the authority to make any findings of fact nor to impose on the Parties any partial or complete settlement of the differences or disputes.

3. 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 and/or co-mediator shall not act as an arbitrator in any arbitral proceedings between the Parties.
4. The Parties and the mediator and/or co-mediator agree that they will not present the mediator and/or co-mediator as a witness in any arbitral or judicial proceedings, nor will they subpoena or endeavour to compel the mediator and/or co-mediator to give evidence or to produce documents in any such proceedings.

Rule 9

Role of the Parties

Each Party has a duty to participate in good faith in the mediation. Each Party and their representatives will use their best endeavours to co-operate with each other and with the mediator and/or co-mediator to resolve their differences or disputes amicably and/or to reach a settlement agreement.

Rule 10

Conduct of the Mediation

1. The mediator and/or co-mediator may conduct the mediation in such manner as the mediator and/or co-mediator considers appropriate, having regard to the circumstances of the dispute, the wishes of the Parties and any practical considerations which might be relevant for the satisfactory and prompt resolution and/or settlement of the differences or disputes.
2. Unless the Parties have agreed otherwise, prior to or during the mediation, the mediator and/or co-mediator may communicate with the Parties together, or with any Party separately, with or without its representatives, either in person, by telephone, videoconference or electronically as the mediator and/or co-mediator sees fit.
3. No information provided orally by a Party to the mediator and/or co-mediator during a separate meeting may be disclosed to any other Party by the mediator and/or co-mediator, unless the Party explicitly so authorises the mediator and/or co-mediator. Any written material that one Party provides the mediator and/or co-mediator and with the intention that it not be shared with the other Party or Parties shall be clearly labeled as “Confidential - For Mediator’s Use Only” or words to similar effect.
4. In a co-mediation, the co-mediators shall coordinate their efforts and jointly conduct the mediation. In particular, each co-mediator shall share with the other co-mediator all written or oral communications received from a Party or Parties. With the agreement of the Parties and subject to Rule 13, the mediator and/or co-mediator may consult one or more experts. Any such expert shall be governed, *mutatis mutandis*, by Rule 6.

Rule 11

Preliminary Conference

1. The Parties may be required by the mediator and/or co-mediator to participate in a preliminary conference. The purpose of the preliminary conference is to enable the Parties, with the assistance of the mediator and/or co-mediator, to:-
 - (a) discuss and agree upon issues in dispute or formulate a process by which those issues are to be clarified and agreed;
 - (b) make provision for the service and exchange of documentary material relevant to the mediation including position papers by all Parties;
 - (c) discuss any legal disclosure obligation;
 - (d) agree on whether the Parties wish to agree in writing not to commence or not to continue or stay any arbitral or judicial proceedings relating to the differences or disputes that are subject of the mediation during the mediation;
 - (e) discuss, whether special arrangements for the approval of a settlement agreement need to be made; and
 - (f) make provision for such other planning and administrative arrangements as are necessary and appropriate to enable the mediation to proceed.

Rule 12

Authority and Representation

1. Each Party to the mediation may be assisted or represented by any person it chooses (including legal advisers). The identity, contact details and roles of any such persons must be disclosed to all Parties, to the mediator and/or co-mediator and the Director in advance of the mediation hearing or the preliminary conference.
2. Each Party to the mediation must have authority to settle a dispute or be represented by a person or persons having full authority to settle the dispute. In the event that any such authority is limited or is subject to further approval, the limits of authority must be disclosed to all Parties, to the mediator and/or co-mediator and the Director.
3. Where a person is to act as a representative of a Party or Parties, the mediator and/or co-mediator, on its own initiative or at the request of any Party, may at any time require a proof of authority granted to the representative in such a form as the mediator and/or co-mediator may determine.

Rule 13

Privacy and Confidentiality

1. All mediation proceedings shall be private and confidential. All Parties and participants in the mediation shall execute a written undertaking give effect to this requirement. Unless the Parties and the mediator and/or co-mediator otherwise agree, no person other than the mediator and/or co-mediator; the Parties and their representatives shall be permitted to attend, hear or view any part of the mediation or any communications relating to the mediation.

2. Any information given to the mediator and/or co-mediator by a Party in caucus or private session shall be kept confidential as between the Party furnishing the information and the mediator and/or co-mediator unless the Party providing the information consents to its disclosure to any other Party to the mediation.
3. There shall be no recording or transcript of the mediation, unless the Parties and the mediator and/or co-mediator agree otherwise in writing.
4. The mediator and/or co-mediator, all Parties, and participants in the mediation, must keep all matters relating to or arising out of the mediation private and confidential except:-
 - (a) the fact that the Parties have agreed to mediate, or a settlement resulted from the mediation, unless the Parties otherwise agree in writing;
 - (b) the terms of a settlement or partial settlement, unless and to extent that the Parties otherwise agree in writing;
 - (c) the disclosure of documents or information: -
 - (i) prepared by the disclosing Party in connection with the mediation, if they contain no information provided by any other Party or mediator and/or co-mediator and do not refer to the mediation;
 - (ii) as evidence that a settlement agreement was reached when any other Party disputes it;
 - (iii) for the purpose of enforcing a settlement agreement, subject to any requirement provided in the agreement;

- (iv) where a disclosure is compelled by law and such legal disclosure obligation was made known to the other Parties in the agreement to mediate or at the preliminary conference, provided that the disclosure shall be as limited as permissible;
 - (v) to comply with a court order or similar instrument requiring disclosure, provided that the disclosure shall be as limited as permissible and shall be made only after written notice to the other Party or Parties and the mediator and/or co-mediator;
 - (vi) required to prevent a serious crime or eminent threat to public safety, provided that the disclosure shall be as limited as is reasonable in all circumstances; and
 - (vii) that, at the time of disclosure, has demonstrably entered into the public domain through no direct or indirect breach of the confidentiality obligations set forth above.
5. The provisions of Rule 13 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 and/or co-mediator.

Rule 14

Termination of the Mediation

1. The mediator and/or co-mediator may suspend or terminate the mediation or resign as mediator and/or co-mediator without providing reasons for such resignation when he or she reasonably believes the circumstances require it, including, but not limited to situations, when he or she has reasonable grounds to suspect that:-

- (a) the Parties and/or their representatives are unable to participate meaningfully and reasonably in mediation; or
 - (b) continuation of the mediation process would cause significant harm to any Party or a third party.
- 2. When the mediator and/or co-mediator determines that it is necessary to suspend or terminate the mediation or to resign, the mediator and/or co-mediator must do so without violating the obligation of confidentiality.
- 3. The mediator and/or co-mediator shall promptly inform the Director of the termination or resignation.
- 4. In addition to termination occurring under Rule 14(1), the mediation shall be deemed to be terminated upon:-
 - (a) the signing by the Parties of a joint written statement of termination or a written settlement agreement;
 - (b) a written declaration of the mediator and/or co-mediator, after consultation with the Parties, to the effect that further attempts at mediation are no longer justified;
 - (c) expiry of 3 months from the date when the mediator and/or co-mediator was appointed, unless any of the Parties requests the mediator and/or co-mediator to continue the mediation; or
 - (d) by order of the Director in the event that any monies properly payable under Rule 18 are not paid as required by the AIAC Mediation Rules.

Rule 15

Costs and Fees

1. Unless otherwise agreed or ordered by a court or arbitral tribunal, each Party shall bear its own costs of the mediation.
2. The costs and expenses of the mediation shall include, but are not limited to:-
 - (a) the fees of the mediator and/or co-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(d), and any other costs reasonably and properly incurred in respect of the organisation or 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.
3. The Parties are jointly and severally liable for costs and fees set out in Rule 15(2) above.
4. The Parties are required to pay the costs and fees irrespective of the outcome of the mediation.

5. If the mediator and/or co-mediator resigns prior to the termination of the proceeding, the Parties shall pay the fees and expenses that the mediator and/or co-mediator incurred prior to termination, unless the mediator and/or co-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 co-mediator and/or the Parties.

Rule 17

Exclusion of Liability

1. Neither the AIAC nor the mediator and/or co-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 conducted under the AIAC Mediation Rules or in respect of or arising out of any settlement reached in any mediation conducted under the AIAC Mediation Rules.
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 and/or co-mediator on the mediator's and/or co-mediator's fees. Unless otherwise agreed by the Parties and mediator and/or co-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 or Rule 3, 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 15 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 and/or co-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 and/or co-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.

Part II

SCHEDULES

SCHEDULE 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) RM5000.00 per day; and

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

4. The fees payable to the mediator and co-mediator do not include any possible taxes such as service tax, withholding tax, GST (where applicable) 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 co-mediator and the Parties.

5. The AIAC's administrative costs payable include any possible taxes such as service tax, withholding tax, GST and other taxes or charges applicable to the AIAC's administrative costs. 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 MEDIATION¹

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) USD6000.00² per day; and

(ii) USD750.00³ per hour for review of documents and related works.

4. The fees payable to the mediator and co-mediator do not include any possible taxes such as service tax, withholding tax, GST (where applicable) 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 co-mediator and the Parties.

5. The AIAC's administrative costs payable include any possible taxes such as service tax, withholding tax, GST 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.

1. 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.

2. The amounts are inclusive of 6% GST.

3. The amounts are inclusive of 6% GST.

Part III

MEDIATION ACT 2012

LAWS OF MALAYSIA

LAW 749

Mediation Act 2012

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LAWS OF MALAYSIA

LAW 749

Mediation Act 2012

An Act to promote and encourage mediation as a method of alternative dispute resolution by providing for the process of mediation, thereby facilitating the parties in disputes to settle disputes in a fair, speedy and cost-effective manner and to provide for related matters.

ENACTED by the Parliament of Malaysia as follows:

Part I Preliminary

1. Short Title and Commencement

- 1) This Act may be cited as the Mediation Act 2012.
- 2) This Act comes into operation on a date to be appointed by the Minister by notification in the Gazette.

2. Non-application

- 1) This Act shall not apply to—
 - a) any dispute regarding matters specified in the Schedule;
 - b) any mediation conducted by a judge, magistrate or officer of the court pursuant to any civil action that has been filed in court; and
 - c) any mediation conducted by the Legal Aid Department.

3. Interpretation

In this Act, unless the context otherwise requires—

“non-party” means a person who participates in a mediation, other than a party or mediator, and includes counsels of each party, experts in the subject matter of a dispute and witnesses;

“institution” means a body or organization that provides mediation services;

“mediation communication” means an oral or written statement made—

- a) during a mediation;
- b) in relation to a mediation; or
- c) for the purposes of considering, conducting, participating in, commencing, continuing, reconvening or concluding a mediation or retaining a mediator;

“Minister” means the Minister charged with the responsibility for legal affairs;

“mediator” means a mediator appointed by the parties under section 7;

“mediation” means a voluntary process in which a mediator facilitates communication and negotiation between parties to assist the parties in reaching an agreement regarding a dispute;

“mediation agreement” means the agreement referred to in section 6;

“settlement agreement” means the agreement referred to in section 13;

“party” means a party to a mediation agreement and includes the Federal Government and a State Government;

“proceedings” means any proceedings of a civil nature and includes an application at any stage of proceedings.

4. Mediation does not Prevent Court Action, Arbitration, etc.

- 1) Subject to section 2, any person may, before commencing any civil action in court or arbitration, initiate mediation.
- 2) A mediation under this Act shall not prevent the commencement of any civil action in court or arbitration nor shall it act as a stay of, or extension of any proceedings, if the proceedings have been commenced.

Part II

Commencement of Mediation

5. Commencement of Mediation

- 1) A person may initiate mediation by sending to the person with whom he has a dispute, a written invitation regarding the mediation.
- 2) The written invitation referred to in subsection (1) shall briefly specify the matters in dispute.
- 3) Upon receipt of a written invitation sent by the person initiating the mediation under subsection (1), the person with whom he has a dispute may, in writing, accept the written invitation.
- 4) A mediation shall be deemed to have been commenced upon the person initiating the mediation receiving the acceptance of the written invitation from the person with whom he has a dispute under subsection (3).
- 5) An invitation regarding a mediation under subsection (1) shall be deemed to have been rejected if the person initiating the mediation does not receive a reply from the person with whom he has a dispute, within fourteen days from the date he sends the person the written invitation or within such other period of time specified in the written invitation.

6. Mediation Agreement

- 1) Upon the commencement of a mediation as specified under subsection 5(4), the parties shall enter into a mediation agreement.

- 2) A mediation agreement shall be in writing and signed by the parties.
- 3) A mediation agreement shall contain an agreement by the parties to submit to mediation disputes which have arisen or which may arise between them, the appointment of a mediator, the costs to be borne by the parties

Part III Mediator

7. Appointment of Mediator

- 1) The parties shall appoint a mediator to assist them in the mediation.
- 2) A mediator appointed under this Part shall-
 - a) possess the relevant qualifications, special knowledge or experience in mediation through training or formal tertiary education; or
 - b) satisfy the requirements of an institution in relation to a mediator.
- 3) The parties may request for assistance from the institution to appoint a mediator or mediators on their behalf.
- 4) The appointment of a mediator under subsection (1) shall be made by way of a mediation agreement under section 6 and there shall be one mediator for a mediation unless the parties agree otherwise.
- 5) If there is more than one mediator, the mediators shall act jointly in the mediation.
- 6) No appointment of any mediator shall be valid except with the prior written consent of the mediator.

- 7) A mediator appointed under this Part shall disclose, before accepting the appointment, any known facts that a reasonable person would consider likely to affect his impartiality as mediator, including a financial or personal interest in the outcome of the mediation.
- 8) The mediator may be paid a fee or given any other consideration as agreed between the parties.

8. Termination of Appointment of Mediator

- 1) If a mediator appointed under this Part: -
 - a) no longer possesses the relevant qualifications, special knowledge or experience in mediation as required under paragraph 7(2)(a);
 - b) no longer satisfies the requirement of an institution in relation to a mediator as required under paragraph 7(2)(b);
 - c) is found to have financial or personal interest in the dispute;
 - d) is found to have obtained his appointment by way of fraud; or
 - e) is unable to serve as a mediator for the mediation, the parties may terminate the appointment of the mediator and appoint another mediator for the mediation or request the institution to appoint another mediator.
- 2) Notwithstanding subsection (1), the parties may terminate the appointment of a mediator for any reason and shall inform the mediator the reason for the termination.

Part IV Mediation Process

9. Role of Mediator

- 1) A mediator shall facilitate a mediation and determine the manner in which the mediation is to be conducted.
- 2) A mediator may assist the parties to reach a satisfactory resolution of the dispute and suggest options for the settlement of the dispute.
- 3) For the purposes of subsection (1), the mediator shall act independently and impartially.

10. Submission of Statements to Mediator

- 1) A mediator may request each party to submit a statement setting out the brief facts of the dispute, supplemented by any documents that the party deems appropriate to submit.
- 2) At any stage of a mediation, a mediator may request any party to submit any additional information or document as the mediator deems appropriate.

11. Conduct of Mediation

- 1) A mediator shall ensure that a mediation is privately conducted and he may meet with the parties together or with each party separately.
- 2) Notwithstanding subsection (1): -
 - a) a non-party of any party's choice may participate in a mediation to assist the party, subject to the consent of the mediator; and

- b) a non-party of a mediator's choice may participate in a mediation to assist the mediator during the mediation, subject to the consent of the parties.
- 3) A mediator may end the mediation if, in his opinion, further efforts at mediation would not contribute to a satisfactory resolution of the dispute between the parties.

Part V

Conclusion of Mediation

12. Conclusion of Mediation

A mediation shall conclude—

- a) upon the signing of a settlement agreement by the parties under section 13;
- b) upon the issuance of a written declaration by a mediator to the parties stating that further efforts at mediation would not contribute to a satisfactory resolution of the dispute;
- c) upon the issuance of a written declaration by the parties to a mediator stating that the mediation is terminated; or
- d) unless otherwise provided by mediation agreement referred to in section 6—
 - i) upon the issuance of a written declaration by a party to the other party and the mediator stating that the mediation is terminated;
 - ii) upon the withdrawal from a mediation by any party; or
 - iii) upon the death of any party or incapacity of any party.

13. Settlement Agreement

- 1) Upon the conclusion of a mediation and the reaching of an agreement by the parties regarding a dispute, the parties shall enter into a settlement agreement.
- 2) The settlement agreement under subsection (1) shall be in writing and signed by the parties.
- 3) The mediator shall authenticate the settlement agreement and furnish a copy of the agreement to the parties.

14. Effect of Settlement Agreement

- 1) A settlement agreement shall be binding on the parties.
- 2) If proceedings have been commenced in court, the settlement agreement may be recorded before the court as a consent judgment or judgment of the court.

Part VI Confidentiality and Privilege

15. Confidentiality

- 1) No person shall disclose communication any mediation
- 2) Notwithstanding subsection (1), mediation communication may be disclosed if—
 - a) the disclosure is made with the consent of the parties;
 - b) the disclosure is made with the consent of the person who gives the mediation communication;

- c) the disclosure is required under this Act or for the purpose of any civil or criminal proceedings under any written law; or
- d) the disclosure is required under any other written law for the purposes of implementation or enforcement of a settlement agreement.

16. Privilege

- 1) Any mediation communication is privileged and is not subject to discovery or be admissible in evidence in any proceedings.
- 2) Notwithstanding subsection (1), the mediation communication is not privileged if—
 - a) the privilege is expressly waived in writing by the parties, the mediator and the non-party;
 - b) it is a public document by virtue of the Evidence Act 1950 [Act 56];
 - c) it is a threat to inflict bodily injury or commit a crime;
 - d) it is used or intended to be used to plan a crime, attempt to commit or commit a crime, or to conceal a crime or criminal activity or an ongoing crime or ongoing criminal activity;
 - e) it is sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a mediator; or
 - f) it is sought or offered to prove or disprove a claim or complaint of professional misconduct or malpractice filed against a party, non-party, or representative of a party based on their conduct during any mediation session.

Part VII Miscellaneous

17. Costs

- 1) The costs of a mediation shall be borne equally by the parties.
- 2) Notwithstanding subsection (1), the parties may agree on the amount of costs to be borne by each party.

18. Power to Amend Schedule

The Minister may, by order published in the Gazette, amend the Schedule.

19. Liability of a Mediator

A mediator shall not be liable for any act or omission in respect of anything done or omitted to be done in the discharge of his functions as a mediator unless the act or omission is proved to have been fraudulent or involves wilful misconduct.

20. Regulations

The Minister may make regulations for the better carrying out of the objects and purposes of this Act.

Schedule

[Paragraph 2(a)]

Non-application

- 1) Proceedings involving a question which arises as to the effect of any provision of the Federal Constitution.
- 2) Suits involving prerogative writs, as set out in the Schedule to the Courts of Judicature Act 1964 [Act 91].
- 3) Proceedings involving the remedy of temporary or permanent injunctions.
- 4) Election petitions under the Election Offences Act 1954 [Act 5].
- 5) Proceedings under the Land Acquisition Act 1960 [Act 486].
- 6) Proceedings involving the exercise of the original jurisdiction of the Federal Court under Article 128 of the Federal Constitution.
- 7) Judicial review.
- 8) Appeals.
- 9) Revision.
- 10) Any proceedings before a native court.
- 11) Any criminal matter.

MEDIATION RULES

ASIAN INTERNATIONAL ARBITRATION CENTRE (AIAC)

(ESTABLISHED UNDER THE AUSPICES OF THE
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