

AIAC CODE OF CONDUCT FOR MEDIATORS

1. General

- 1.1 This Code of Conduct is applicable for mediations administered by the AIAC under the AIAC Mediation Rules.
- 1.2 For the purpose of this Code of Conduct, the term 'Mediator' means a Sole Mediator or co-Mediator(s), as the case may be.
- 1.3 Further, the term 'private caucus(es)' means a confidential meeting between a Mediator and one Party to the mediation, and is to be distinguished from a 'mediation session' which is a meeting between a Mediator and all Parties to the mediation.
- 1.4 Compliance to this Code of Conduct shall be expected of a Mediator at all material times.

2. Appointment

- 2.1 When approached with an appointment, a Mediator shall conduct reasonable enquiries with regard to potential conflicts of interest that may arise from his or her appointment for that particular matter that may affect his or her impartiality and independence. The International Bar Association's (IBA) Guidelines on Conflict of Interest in International Arbitration will be a point of reference in determining the disclosure requirements and whether a Mediator is conflicted.
- 2.2 A Mediator shall only accept an appointment if he or she is fully satisfied that he or she is independent of the Parties at the time of the appointment and is able to remain so throughout the proceedings, as well as able to discharge his or her duties without bias and to give to the proceedings the time and attention which Parties are reasonably entitled to expect, has adequate knowledge of the language of the proceedings experience and ability for the case at hand.

3. Disclosure

- 3.1 A prospective Mediator shall disclose to the AIAC, the Parties, and/or co-Mediators (if any), all facts and/or circumstances that may give rise to

justifiable doubts as to his or her impartiality or independence as soon as the information becomes available.

- 3.2 Before accepting an appointment, a prospective Mediator must disclose:
 - 3.2.1 any past or present close personal relationship or business relationship, whether direct or indirect, with any Party to the dispute, any representative of a Party, or any person known to be a potentially important witness to the mediation; and
 - 3.2.2 the extent of any prior knowledge he or she may have of the dispute.
- 3.3 Following such disclosure, the Director of the AIAC shall re-assess the suitability of the Mediator for the matter in which the Mediator was appointed and make such determination as may be appropriate including termination of the Mediator in the said matter.
- 3.4 This duty of disclosure shall continue throughout the mediation with regard to any new facts and circumstances that may arise.
- 3.5 Failure to disclose any prior and/or new facts and circumstances will be noted by the AIAC and taken into account in future nominations and/or appointments. Such failure to disclose may also serve as a ground for removal of the Mediator from the AIAC Panel of Mediators even if the non-disclosed facts or circumstances did not justify replacement or disqualification of the Mediator.

4. Communications

- 4.1 All communications, other than meetings held in mediation sessions and/or private caucuses, should be in writing, which includes but is not limited to, communications via email or other electronic means.
- 4.2 Before accepting an appointment, a Mediator may only enquire as to the general nature of the dispute, the names of the Parties, the amount in dispute and the expected time period required for the proceeding.

- 4.3 No Mediator shall confer with any of the Parties or their Representatives until after the AIAC communicates the appointment to the Parties and/or the Parties' Representatives.
- 4.4 With the exception of meetings held in private caucuses, a Mediator shall avoid any ex-parte or unilateral communications regarding the case with any Party or its Representatives throughout the mediation proceedings. If such communication occurs, the Mediator shall inform the other Party(ies) and co-Mediators, if any, of its substance.
- 4.5 Any correspondence between a Mediator and Parties shall remain private and confidential and shall not be copied to anyone other than the Parties to the dispute, their Representatives (if any) and the AIAC, unless the Parties agree otherwise.

5. Termination

5.1 Savings

Should, for whatever reason, this Code of Conduct no longer applies, Clause 5 and its provisions shall remain in force.

5.2 Corruption, Unlawful or Illegal Activities

Without prejudice to any other rights of the AIAC, if a Mediator is charged in, or convicted by any court of law for corruption or any other unlawful or illegal activities, regardless of whether such is in relation to this Code of Conduct or any other agreement that the Mediator may have with the AIAC, or in an unrelated matter,

- 5.2.1 the Director of the AIAC shall re-assess the suitability of the Mediator in any ongoing mediation proceedings where the Mediator has been appointed and make such determination as may be appropriate including termination of the Mediator in the said matter; and
- 5.2.2 the AIAC shall, under all circumstances, be entitled to remove the Mediator from the AIAC's Panel of Mediators.

5.3 Consequences of Termination

In the event that a determination is made by the Director of the AIAC pursuant to Clauses 3.3 or 5.2 of this Code of Conduct or otherwise, to terminate the services of the Mediator in any ongoing mediation proceedings where the Mediator has been appointed,

- 5.2.1 notwithstanding such termination, the Mediator shall remain bound by the applicable confidentiality provisions governing the mediation including the provisions under Clause 8 of this Code of Conduct which shall continue to subsist;
- 5.2.2 the Mediator shall not be entitled to any compensation or any other form of losses including any loss of profit, damages or claims whatsoever, other than payment for work done in accordance with Clause 7 only where so determined by the Director of the AIAC after consultation with the Parties and any co-Mediator(s); and
- 5.2.3 where any interim release of fees has been paid to the Mediator pursuant to Clause 7 prior to the Mediator's termination, such payments shall constitute full and final settlement of fees between the Mediator and the Parties.

6. Conduct During Mediation Proceedings

- 6.1 A Mediator shall at all times keep the AIAC informed on the status of the mediation proceedings.
- 6.2 Before convening and/or proceeding with meetings held in mediation sessions and/or private caucuses, a Mediator shall verify the status of the deposits made by the Parties, or Party, with the AIAC
- 6.3 Once the mediation proceedings commence, a Mediator shall acquaint himself or herself with all information related to the proceedings so that he or she may properly understand the dispute.
- 6.4 A Mediator shall assist the Parties to reach an amicable agreement or settlement between Parties regarding any difference or dispute by facilitating

the same, after careful consideration and exercise of his or her own impartial judgment and shall not permit outside pressure, fear or criticism or any form of self-interest to affect his or her decisions.

7. Fees

- 7.1 The Parties and Mediator(s) are at liberty to agree on the fees and expenses of the Mediator. Notwithstanding this, all deposits towards the costs of the mediation, including the fees and expenses of the Mediator(s) shall be remitted to and held in an account of the AIAC, and any interest accrued thereon shall be retained by the AIAC.
- 7.2 Unless otherwise agreed by the Mediator(s) and the Parties, the Schedule of Fees under the AIAC Mediation Rules shall apply. In the event that the Mediator and the Parties agree that the Schedule of Fees of the AIAC Mediation Rules shall not apply, the Mediator must then disclose and set out the basis and calculation of his or her fees and expenses to the Parties on or before the first mediation session or private caucus, as the case may be.
- 7.3 Immediately after the first mediation session or private caucus, as the case may be, the Mediator shall notify the AIAC, in writing, of the agreed fees and expenses. Thereafter, the Mediator shall keep the AIAC informed, in writing, of any changes to the fees and expenses of the Mediator during the proceedings.

8. Confidentiality

- 8.1 At all times, the mediation proceedings shall remain confidential. A Mediator is in a relationship of trust to the Parties and shall not, at any time, use confidential information acquired during the course of the proceedings to gain a personal advantage for him, herself or others or to affect adversely the interest of another.
- 8.2 The Code of Conduct is not intended to provide grounds for the setting aside of any settlement reached and/or agreement made in the course of mediation proceedings.