

Introductory Note to [IDI] Model Mediation Rules 2016

The IMI has promulgated the following set of mediation rules as a model which interested parties may adapt to suit their specific desires. The model is not intended to be adopted without revision by the parties. For example, if the parties wish to name an Appointing Authority to assist them in the selection and appointment of a mediator, the institution or individual to serve as the Appointing Authority must be designated in Article 1.a. The IMI does not wish to perform the function of Appointing Authority. In order to assist parties to jointly identify a suitable mediator, however, the IMI website provides detailed information on IMI Certified Mediators around the world, including each Mediator's mediation style, language, location and experience. In addition, various mediation institutions around the world are also available to assist the parties and/or act as Appointing Authority.

The Model is designed to be universally applicable to any mediation style, such as facilitative, evaluative, or transformative. In this regard the Model refers to "Issue", rather than "dispute" so that the Model can be applicable to transactional mediations in which the mediator assists the party in concluding (for example a joint venture) agreement.

An underlying principle of the Model is party autonomy. The parties are free to deviate from the model on any matter they wish. Thus, should the parties wish to employ co-mediators (Article 2), restrict or expand the scope of confidentiality (Article 7), or allow the commencement of legal proceedings during the mediation (Article 9), they can reflect these choices in their modification of the Model.

Parties are encouraged to maintain clarity as to the moment the mediation commences (Article 3) as well as its end (Article 8) to avoid confusion as to when the confidentiality provisions begin and the activities of the mediator halt. This may also be relevant to tolling of prescriptive (statute of limitations) periods in some jurisdictions.

[IDI] MODEL MEDIATION RULES 2016

Article 1 - Definitions

In these Rules, the following terms shall have the following meanings:

- a. Appointing Authority means [fill in name of institution or person]
- b. IMI: the Foundation “Stichting International Mediation Institute”, having its registered office in The Hague.
- c. Issue: the issue described in the Mediation Agreement.
- d. Mediation: procedure in which the Parties make an effort to resolve their Issue under the supervision of a Mediator in accordance with the Rules.
- e. Mediation Agreement: the written agreement in which the Parties agree to endeavor to resolve the Issue through Mediation, and instruct the Mediator to act as Mediator in respect of the Issue and the Mediator accepts this instruction.
- f. Mediator: the person who conducts the Mediation and who is certified as an IMI Certified Mediator.
- g. Party/Parties: the parties who wish to resolve the Issue through Mediation.
- i. Rules: these Rules.

Article 2 – Appointment of the Mediator

2.1. The Parties shall themselves appoint a mediator.

2.2. If the Parties wish to be assisted by the Appointing Authority selecting a Mediator, they must file a written request thereto with the Appointing Authority. This request must contain the names, (e-mail) addresses, telephone and fax numbers of the Parties and their representatives, if any, as

well as a general description of the Issue.

2.3. Upon receipt of the request, the Appointing Authority will send to the Parties:

- a. a list with the names of the Mediators who, on the basis of the description of the Issue and/or the relevant criteria stated by the Parties, are considered eligible;
- b. a copy of the Rules and a copy of the Code of Conduct for IMI Certified Mediators;
- c. an invoice for administrative charges.

2.4. The Parties will together select a Mediator from the aforementioned list. The Parties may then contact the Mediator directly. If the Parties do not wish to contact the Mediator directly, they must inform the Appointing Authority in writing which Mediator they have selected. Upon receipt of this letter the Appointing Authority will inform the Mediator concerned of the request and of his/her having been selected, so that the Mediator may then contact the Parties.

2.5. If the Parties fail to jointly agree on the selection of a Mediator, they (or either one of them) may request the Appointing Authority to make a written proposal for a Mediator who may be appointed by the Parties.

2.6. On acceptance of the appointment, the Mediator shall prepare a draft Mediation Agreement. The Parties and the Mediator will then sign the Mediation Agreement.

2.7. In the event the Parties are unable to agree on the place (seat of) the Mediation and/or the language(s) of the Arbitration, the Mediator shall determine these. The procedural law of the seat of the mediation shall apply to the arbitration.

Article 3 – Commencement of Mediation

The Mediation will commence as soon as the Mediation Agreement has been signed by the Parties and the Mediator, unless a different time is agreed in the Mediation Agreement.

Article 4 – Activities of the Mediator and process supervision

4.1. The activities of the Mediator encompass the Mediation sessions, but may also comprise other activities such as reporting, contacts with the Parties (either electronically, in writing or by telephone), studying papers, contacts with third parties, and drafting up agreements, all this from the commencement of the Mediation onwards.

4.2. The Mediator shall decide, after having consulted the Parties, on the manner in which the Mediation will be conducted.

4.3. The Mediator may communicate with the Parties separately and confidentially.

4.4. The Parties and the Mediator shall do their best to ensure that the Mediation proceeds in an expeditious manner.

Article 5 - Voluntariness

5.1. The Mediation shall take place on the basis of voluntariness of the Parties. Each Party, as well as the Mediator, may put an end to the Mediation at any time.

5.2. Any agreements made in the interim shall bind the Parties only insofar as the Parties confirm in writing the binding nature of these agreements in a signed agreement. They shall not be bound by the positions adopted or proposals made by them or by the Mediator during the Mediation. The Parties shall be bound only by that stated in the agreement referred to in Article 10.1 signed by the Parties.

Article 6 – Privacy

6.1. No person shall be present at Mediation sessions other than the Mediator and the Parties, or their representatives and/or advisers, if any. For the involvement of other persons in the Mediation, the consent of the Parties shall be required.

6.2. If the Mediator wishes, he/she may cause himself to be assisted clerically at the Mediation

by a person designated by him for that purpose. In such event the Mediator shall ensure that such person sign a declaration of confidentiality.

6.3. If either Party causes himself to be represented during the Mediation, its representative must be authorized to perform all (legal) acts that are necessary for the Mediation, including the entering into an agreement as referred to in Article 10.1. If the Mediator so requests, a written power of attorney must be produced confirming that authority of the representative.

Article 7 - Confidentiality

7.1. The entire Mediation process shall be strictly confidential and remain so after the Mediation has ended. The Parties undertake not to disclose, directly or indirectly, to any third party – including courts and arbitrators – any information concerning the Mediation, the positions adopted, proposals made or the information supplied within the Mediation, either orally or in writing.

7.2. The Parties undertake not to reveal, quote from, refer to, paraphrase or in any other way invoke any documents that have been revealed, shown or otherwise disclosed during the Mediation by any other person involved in the Mediation. This obligation shall not apply if and insofar the Party already had or could have had this information at his/her disposal independently of the Mediation. Such documents that are otherwise admissible in an arbitral or judicial proceeding will not be rendered inadmissible by reason of their use in a Mediation. By documents as referred to in this Article includes the Mediation Agreement, notes or minutes drawn up by the Parties or by the Mediator within the framework of the Mediation, the agreement referred to in Article 10.1 insofar as the Parties have agreed in accordance with Article 10.3 that it shall remain confidential, as well as other data carriers, such as audiotapes, videotapes, photographs and digital files in whatever form.

7.3. The provisions of Articles 7.1 and 7.2 also apply to the Mediator.

7.4. The Parties herewith waive the right to, at law or otherwise, use anything that has transpired during the Mediation in evidence against each other and/or against the IMI, (former) board members of the IMI or persons employed with or otherwise involved with the IMI, examine or cause each other, the Mediator or other persons involved in the Mediation to be examined as a witness or otherwise regarding information supplied and/or recorded during or in connection with the Mediation, or regarding the contents of the agreement as referred to in Article 10.1, all this to be construed in the widest sense possible.

7.5. All information supplied to the Mediator by either Party in the absence of the other Party, shall be treated by the Mediator as confidential, unless and insofar as the Party in question has explicitly given its consent to the disclosure of that information during the Mediation.

7.6. The provisions of Articles 7.1 to 7.5 shall not apply in the case of:

- a. information concerning criminal acts in respect of which there exists a statutory obligation to report or a statutory right to report,
- b. information concerning the threat of a criminal act, and
- c. complaints, disciplinary or liability proceedings against the Mediator. In such event the Mediator shall be released from his/her obligation to observe confidentiality insofar as may be necessary in order to defend himself against the claims and/or make a claim under his/her professional liability insurance.

Article 8 – End of the Mediation

8.1. The Mediation shall end:

- a. by the signing by the Parties of the agreement referred to in Article 10.1;
- b. by a written statement from the Mediator to the Parties stating that the Mediation has ended;
- c. by a written statement from either Party to the other Party or Parties and to the Mediator

stating that it withdraws from the Mediation.

8.2. Termination of the Mediation shall leave the obligations of confidentiality and payment of the Parties under the Mediation Agreement intact.

Article 9 – Other proceedings

9.1. Any legal or similar proceedings already pending on commencement of the Mediation regarding the Issue or parts thereof – with the exception of steps to safeguard rights – shall be stayed by the Parties for the duration of the Mediation.

9.2. The Parties undertake for the duration of the Mediation not to institute any proceedings as referred to in Article 9.1 against each other, with the exception of steps to safeguard rights.

9.3. If a Party takes steps to safeguard rights, or institutes proceedings other than those referred to in Article 9.1, that Party shall be obliged to notify this to the Mediator and to the other Party or Parties within 24 hours after having taken such steps or after having instituted such proceedings.

Article 10 - Recording the outcome of the Mediation

10.1. The Mediator shall see to it that the agreements made by the Parties are properly recorded in an agreement. The Parties shall be responsible for the contents of the agreement. The Parties shall have the right to call in the advice of an external expert.

10.2. The Mediator shall not be liable for the contents of the agreement concluded by the Parties nor for any damage that may arise from the same.

10.3. The Parties shall jointly decide and record in writing to what extent the contents of the agreement concluded shall remain confidential. The contents of the concluded agreement may in any case be submitted to a court if necessary in order to enforce the agreement.

Article 11 – Limitation of liability

Any liability of the Mediator in case of damage caused by any act or omission of the Mediator in the Mediation, shall be limited to at most the amount of any proceeds paid out by his/her professional liability insurer. Except for intentional act or gross negligence on the part of the Mediator, the Parties undertake to hold the Mediator harmless and indemnify him/her in respect of all claims that a third party may institute as against the Mediator at any time and which are related to acts or omissions of the Mediator during the Mediation.

Article 12 – Rules of conduct and complaints

Unless the Mediation Agreement indicates a different set of Rules, the Mediator shall be bound by the Rules of Conduct for IMI Certified Mediators and shall be subject to the IMI complaints scheme and disciplinary rules. A Party may lodge a complaint with the IMI within twelve months from the termination of the Mediation in accordance with the IMI Complaints Scheme at that time in force.

Article 13 – Matters not addressed

The Mediator shall decide all matters not provided for by these Rules,. In doing so, the Mediator shall act in accordance with the spirit of these Rules.

Article 14 – Applicable law

These Rules shall be governed by the law of the place of residence of the Mediator.

The above said rules are in connivance with the in conformity with the international standard practice and procedures i.e IMI rules