



DELHI
ARBITRATION
CENTRE

**DAC
CONCILIATION
RULES**

FOREWORD

DAC Conciliation is based on the Conciliation Rules published by the Delhi Arbitration Centre (DAC), which is intended to help parties and Conciliators to take maximum advantage of the flexible procedures available in Conciliation for the resolution of disputes quickly and economically. DAC Conciliation Rules shall apply to the Conciliation of present or future disputes where the parties seek amicable settlement of such disputes and where, either by stipulation in their contract or by an agreement to Conciliate, they have agreed that the DAC Rules shall apply.

The Rules allow the procedure to be as short and as inexpensive as practicable. The costs and expenses of Conciliation will be governed by the Fee Schedule of the DAC Conciliation Rules.

DAC Conciliators' Code of Professional Conduct and DAC Conciliators' Conduct Assessment Process, which are adopted based on IMI guidelines (International Conciliation Institute, The Hague) are also part of this Rule Book.

Recommended clauses for Conciliation, forms to be used and the guide to the Rules are also given.

Further information about DAC services, rules and procedures can be found in the DAC website.

www.delhiarbitrationcentre.com
admin@delhiarbitrationcentre.com



DELHI
ARBITRATION
— CENTRE —

DAC CONCILIATION RULES

(Revised in 2017)

(INCLUDING DAC CONCILIATORS' CODE OF PROFESSIONAL
CONDUCT AND DAC CONCILIATORS' CONDUCT ASSESSMENT
PROCESS ADOPTED BASED ON IMI GUIDELINES)

DAC CONCILIATION RULES, 2017

TABLE OF CONTENTS

PART-I: DAC CONCILIATION RULES

Rule 1 – Introduction; Scope	1
Rule 2 – Initiation of Conciliation Process	2
Rule 3 – Appointment of Conciliator	3
Rule 4 – Conciliation Process	3
Rule 5 – Role of Conciliator	5
Rule 6 – Role of Parties	6
Rule 7 – Role of IIAM	6
Rule 8 – Representation	6
Rule 9 – Confidentiality	7
Rule 10 – Settlement	8
Rule 11 – Termination of Conciliation	9
Rule 12 – Costs	9
Rule 13 – Feedback	10
Rule 14 – Conciliator’s Role in Subsequent Proceedings	11
Rule 15 – Not Legal Counsel or Expert	11
Rule 16 – Exclusion of Liability	11
Rule 17 – Action against the Conciliator	12
Rule 18 – General Provisions	12

PART-II: DAC CONCILIATORS’ CODE OF PROFESSIONAL CONDUCT

1 – Conciliator Appointment	13
2 – Diligence, Independence, Neutrality, Impartiality	14
3 – Conciliation Process	16
4 – Confidentiality	17
5 – Professional Conduct Issues and Complaints	18

PART-III: DAC CONCILIATORS’ CONDUCT ASSESSMENT PROCESS

1 – Discussion Step	20
2 – Professional Conduct Assessment Process	21
3 – Composition of the Disciplinary Committee and appointment of Assessors	22
4 – Confidentiality	22
5 – Publication	22

PART-IV: SCHEDULES

Schedule-1 – Model Agreement to Conciliate	23
Schedule-2 – DAC Feedback Request Form	23
Schedule-3 – DAC Conciliator Evaluation Form	23
Schedule-4 – DAC Conciliation Fee Schedule	23
Schedule-5 – Recommended Clauses	23

PART-V: GUIDE TO DAC CONCILIATION RULES	25
--	-----------



PART-I

DAC CONCILIATION RULES

(As revised in 2017)

Rule 1

Introduction; Scope

- A. Where any agreement, submission or reference provides for Conciliation or conciliation by Delhi Arbitration Centre (DAC) or under the Conciliation Rules of the Delhi Arbitration Centre (DAC Conciliation Rules), the parties shall be taken to have agreed that the Conciliation or conciliation shall be conducted in accordance with the following Rules, or such amended Rules as DAC may have adopted to take effect before the commencement of Conciliation. The Rules are subject to such modifications as the parties may agree in writing at any time.
- B. These Rules shall also apply to the Conciliation of present or future disputes where the parties seek amicable settlement of such disputes and where, either by stipulation in their contract or by an agreement to Conciliate, they have agreed that these Rules shall apply. The parties may agree to vary these Rules at any time.
- C. These Rules shall also apply to Conciliation initiated under the Arb-Med-Arb procedure, where Conciliation is commenced on a referral by an arbitral tribunal.
- D. Conciliation under these Rules is a confidential, voluntary and private dispute resolution process in which a neutral person or persons (the Conciliator(s)) helps the parties to reach a negotiated settlement.

Rule 2

Initiation of Conciliation Process

- A. If a dispute arises, a party may request the initiation of Conciliation by delivering a written request for Conciliation to the other party or parties with copies to DAC. Such request for Conciliation shall contain a brief self-explanatory statement of the nature of the dispute, the quantum in dispute (if any), the relief or remedy sought and nominating a Conciliator or Conciliators thought suitable.
- B. A party or parties who receive a request for Conciliation shall notify any other party and DAC within 7 days after receipt of the request whether they are willing for Conciliation and whether any Conciliator nominated is acceptable. Failure by any party to reply within 15 days shall be treated as a refusal to Conciliate.
- C. Notwithstanding anything contained in Rule 2A, a party to a dispute or all parties to the dispute may request the initiation of Conciliation by submitting a Conciliation Submission Form to DAC.
- D. On receipt of Conciliation Submission Form by a party to a dispute, DAC shall send an invitation to Conciliate, nominating a Conciliator or Conciliators as the case may be and scheduling the date, time and venue of the 1st session of Conciliation. The party who receive the invitation for Conciliation can either attend the Conciliation session as per the invitation before the Conciliator, or can notify his inability to attend on the scheduled date or express his objection to the nominated Conciliator, so that DAC can nominate another Conciliator or reschedule the 1st session based on the convenience of the parties and the Conciliator. If there is no response from the opposite party or if he fails to appear on the scheduled date, it shall be treated as a refusal to Conciliate.
- E. In case the Conciliation is initiated based on Arb-Med-Arb procedure, DAC shall send an invitation to the Parties to attend the first session of Conciliation, mentioning the name of the Conciliator or Conciliators as the case may be and the date, time and venue of the 1st session. The parties can either attend the Conciliation session as per the invitation before the Conciliator, or can notify his/ their inability to attend on the scheduled date or express his/their objection to the nominated Conciliator, so that DAC can nominate another Conciliator or reschedule the 1st session based on the convenience of the parties and the Conciliator. If there is no response from the parties or if one or all the parties fail to appear on the scheduled date, it shall be treated as a refusal to Conciliate.

Rule 3

Appointment of Conciliator

- A. Where the parties agree on Conciliation and agree on a Conciliator and the proposed Conciliator is willing to serve, they will notify DAC. The Conciliation shall then proceed in accordance with these Rules.
- B. If the parties fail to agree on the appointment of a Conciliator, DAC will appoint a single Conciliator who is prepared to serve.
- C. There shall be one Conciliator, unless the parties agree that there shall be three Conciliators. In case of three Conciliators, each party shall appoint one Conciliator and the parties may agree on a name of the third Conciliator, who shall act as the Presiding Conciliator. If the parties fail to agree on the third Conciliator, DAC shall appoint the third Conciliator.
- D. Where there are more than two sets of parties having diverse interests, each set shall nominate a person on its behalf and the said nominees shall select the sole Conciliator and failing unanimity in that behalf, DAC shall appoint a sole Conciliator.
- E. The appointment of Conciliator by DAC under this Rule is deemed to be made on the agreement of parties as per Sec. 64 (2) of the Arbitration & Conciliation Act, 1996.
- F. No person shall act as Conciliator in any dispute in which that person has any financial or personal interest in the result of the Conciliation except by consent of the parties. Before accepting an appointment, the proposed Conciliator shall disclose to the parties and to DAC if DAC has made the appointment, any circumstances likely to create a presumption of bias or prevent a prompt resolution of the dispute. If any disclosure is made, DAC shall imConciliately communicate the information to the parties for their comments. If any party takes objection to the proposed Conciliator within 3 days he shall not be appointed. The replacement Conciliator will be appointed in the same manner as the Conciliator, who is replaced.

Rule 4

Conciliation Process

- A. Upon appointment of Conciliator, DAC will work with the parties to establish the time and location of each Conciliation session.
- B. The parties may agree on the procedure to be followed by the Conciliator in the conduct of the Conciliation proceedings.
- C. Where the parties do not agree on any particular procedure to be followed by the Conciliator, the Conciliator shall follow the procedure hereinafter mentioned, namely:
 - i. He shall fix, in consultation with the parties, a time schedule, the dates and the time of each Conciliation session, where all parties have to be present;
 - ii. He shall hold the Conciliation at DAC ADR Centre, DAC Conciliation Clinics or any convenient location agreeable to him and the parties, as he may determine;
 - iii. He may conduct joint or separate meetings with the parties;
 - iv. The party/ies or their lawyers shall, if so required, before the commencement of Conciliation, provide to the Conciliator and DAC, a pre- Conciliation submission (Position Statement or Briefing Paper) setting forth the issues, which according to it, need to be resolved, and its position in respect to those issues and all information reasonably required for the Conciliator to understand the issue; such memoranda shall also be mutually exchanged between the parties;
 - v. Before the commencement of Conciliation, based on the request of the lawyers of the parties or by the Conciliator, DAC shall convene a pre- Conciliation conference with the Conciliator and lawyers, so as to have a preliminary meeting to discuss the process and procedure of Conciliation.
 - vi. Each party shall furnish to the Conciliator such other information as may be required by him in connection with the issues to be resolved.
- D. Once the parties agree to proceed with Conciliation, they shall sign an agreement to Conciliate.

- E. The Conciliator shall use his best endeavors to conclude the Conciliation within 60 days of his appointment. His appointment shall not extend beyond a period of three months without the written consent of all parties.
- F. The Conciliator is not bound by the law of procedure or Evidence Act.

Rule 5

Role of Conciliator

- A. The Conciliator may conduct the Conciliation in such manner, as he considers appropriate, taking into account the circumstances of the case, the wishes of the parties and the need for a speedy settlement of the dispute.
- B. The Conciliator shall be guided by the principles of fairness and justice, have regard to the rights and obligations of the parties, usages of trade, if any, and the circumstances of the dispute. The Conciliator is bound by the DAC Conciliators' Professional Code of Conduct.
- C. The Conciliator may obtain expert advice in technical matters with the consent of the parties, who shall bear the expenses incurred.
- D. The Conciliator shall disclose the substance of all information concerning the dispute which he receives from one party, to the other party and the other party shall be given opportunity to present explanations.

Provided that, when a party gives information to the Conciliator subject to a specific condition that it be kept confidential, the Conciliator shall not disclose that information to the other party.

- E. The Conciliator shall attempt to facilitate voluntary resolution of the dispute by the parties, and communicate the view of each party to the other, assist them in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and generating options in an attempt to solve the dispute, emphasizing that it is the responsibility of the parties to take decision which effect them; he shall not impose any terms of settlement on the parties.
- F. After each session of Conciliation, the Conciliator shall submit a Conciliation Record Form, indicating the duration of the Conciliation session and result of the session to DAC. This shall be signed by the Conciliator and DAC in case of institutional Conciliation and by the Conciliator and the parties in case of ad-hoc Conciliation.

Rule 6

Role of Parties

- A. The Conciliator may communicate with the parties together or with any party separately, including private meetings and each party shall co-operate with the Conciliator. The parties shall give full assistance to enable the Conciliation to proceed and be concluded within the time stipulated.
- B. Each party may at its own initiative or at the invitation of the Conciliator, give suggestions for settlement of the dispute.
- C. The parties must understand that the Conciliator only facilitates in arriving at a decision to resolve disputes and that he will not and cannot impose any settlement nor does the Conciliator give any warranty that the Conciliation will result in a settlement. The Conciliator shall not impose any decision on the parties.
- D. While no one can be compelled to commit to settle his case in advance of Conciliation, all parties shall commit to participate in the proceedings in good faith with the intention to settle the disputes.

Rule 7

Role of DAC

- A. DAC will make the necessary arrangements for the Conciliation, including –
 - i. Appointing the Conciliator;
 - ii. Organizing a venue and assigning a date for the Conciliation;
 - iii. Organizing an exchange of summaries of cases and documents; and
 - iv. Providing general administrative support.
- B. DAC, together with the Conciliator, will assist in drawing up the Conciliation agreement, if necessary.

Rule 8

Representation

- A. 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 DAC and the other party. Each party shall have full authority to settle the matter

before the Conciliator. The parties will confer upon their representatives the necessary authority to settle the dispute.

- B. If any of the parties are not able to be present personally, he/they can be represented through their counsel or power of attorney holders. But such counsel or power attorney holder shall have the power to enter into any settlement.
- C. If any of the party is assisted by a legal counsel, the other party shall also be entitled to such assistance by a legal counsel.
- D. The names, addresses, phone and fax numbers of all parties to the dispute, and those who will represent them, should be exchanged between the parties and also furnished to DAC.

Rule 9

Confidentiality

- A. Conciliation is a private and confidential process. Every document, communication or information disclosed, made or produced by any party for the purpose of or related to the Conciliation process shall be disclosed on a privileged and without prejudice basis and no privilege or confidentiality shall be waived by such disclosure. Confidentiality also extends to the settlement agreement except where its disclosure is necessary for implementation or enforcement.
- B. Conciliation proceedings are settlement negotiations, and all offers, promises, conduct and statements, whether written or oral, made in the course of the proceedings, are inadmissible in any litigation or arbitration of the dispute. However, evidence that is otherwise admissible shall not be rendered inadmissible as a result of its use in the Conciliation session.
- C. The Conciliation will be conducted in confidence, and no transcript or formal record will be made. No audio-visual recording will be made of the proceedings. Only the Conciliator, the parties and/or their representatives and advisers and DAC staff as required will be permitted to be present during the Conciliation.
- D. Nothing that transpires during the course of the Conciliation is intended to or shall in any way affect the rights or prejudice the position of the parties to the dispute in any subsequent arbitration, adjudication or litigation.

- E. Parties shall maintain confidentiality in respect of events that transpired during Conciliation and shall not rely on or introduce the said information in any other proceedings as to:
- i. Views expressed by a party in the course of the Conciliation proceedings;
 - ii. Documents obtained during the Conciliation which were expressly required to be treated as confidential or other notes, drafts or information given by parties or Conciliators;
 - iii. Proposals made or views expressed by the Conciliator;
 - iv. Admission made by a party in the course of Conciliation proceedings;
 - v. The fact that a party had or had not indicated willingness to accept a proposal.

Rule 10

Settlement

- A. When the Conciliator finds that there exist elements of settlement, he shall formulate the terms of a possible settlement and submit to the parties for their observations. After receiving their observations, the terms may be reformulated by the Conciliator.
- B. If the parties reach agreement on the settlement terms, the Conciliator with the assistance of DAC, may draw up a settlement agreement on the terms agreed by the parties and the parties may sign the settlement agreement. The Conciliator shall authenticate the agreement and furnish a copy to each party.
- C. When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them. The settlement agreement shall have the same status as that of an arbitral award and can be executed and enforced as a decree of a court.
- D. In the case of Arb-Med-Arb procedure, where a dispute is fully or partially resolved, the same shall be reduced to writing and signed by the parties or their power of attorney holder, which shall be submitted to DAC and DAC shall forward the same to the Arbitral Tribunal along with the Conciliation Status Report.

- E. In the case of court-referred Conciliation, where an agreement is reached between the parties in regard to all the issues in the suit or some of the issues, the same shall be reduced to writing and signed by the parties or their power of attorney holder. If any counsels have represented the parties, they shall attest the signature of their respective clients. The agreement of the parties so signed and attested shall be submitted to the Conciliator who shall, with a covering letter signed by him, forward the same to the Court in which the suit is pending. Where no agreement is arrived at between the parties, before the prescribed time limit or where, the Conciliator is of the view that no settlement is possible, he shall report the same to the said Court in writing.

Rule 11

Termination of Conciliation

- A. The Conciliation process shall come to end: -
- i. Upon the signing of a settlement agreement by the parties or;
 - ii. Upon the written advice of the Conciliator after consultation with the parties that in his opinion further attempts at Conciliation are no longer justified or;
 - iii. Upon written notification by any party at any time to the Conciliator and the other parties that the Conciliation is terminated.
- B. On completion of Conciliation, the Conciliator(s) shall submit a Completion Report to DAC.
- C. After receipt of Completion Report, DAC shall issue a Conciliation Status Report to the parties, if they so request, intimating the final status of the process.
- D. In case of Conciliation under the Arb-Med-Arb procedure, DAC shall send the Conciliation Status Report to the Arbitral Tribunal. If the parties have fully or partially resolved the dispute, a copy of the settlement agreement shall also be forwarded to the Arbitral Tribunal.

Rule 12

Costs

- A. Unless otherwise agreed, each party shall bear its own costs regardless of the outcome of the Conciliation or of any subsequent arbitral or judicial proceedings. All other costs and expenses shall be borne equally by the parties and the parties shall be jointly and severally liable to pay to the Conciliator such costs, including:
- i. The Conciliator's fees and expenses;
 - ii. Expenses for any witness or expert advice or opinion requested by the Conciliator with the consent of the parties; and
 - iii. The DAC administrative costs in support of the Conciliation.
- B. The Conciliator fee shall be fixed by DAC in accordance with the DAC Conciliation Fee Schedule, unless the Conciliator and the parties have agreed on a different engagement term at the time of appointment.
- C. The administrative costs of Conciliation shall be fixed by DAC in accordance with the DAC Conciliation Fee Schedule.
- D. The sum designated in the DAC Conciliation Fee Schedule of Initial Deposits shall be deposited by each of the parties with DAC before the Conciliator enters upon the Conciliation, as a contribution to the cost and proper expenses of the Conciliation including the Conciliator's fees and expenses.
- E. The Conciliator or DAC may at any time during the Conciliation require the parties to make further deposits to cover any additional anticipated fees and expenses and suspend the process until such deposit is made.
- F. Any surplus funds deposited shall be returned to the parties at the conclusion of the Conciliation.

Rule 13

Feedback

Unless inappropriate in the circumstances, Conciliators will, at the conclusion of a Conciliation, invite the parties and advisers and any co-Conciliators or assistant Conciliators, to complete a Feedback Request Form, given in Schedule-1 and/or Conciliator Evaluation Form, given in Schedule-2 and deposit it in the Box kept for the purpose in the Conciliation Centre or send the same to DAC.

Rule 14

Conciliator's Role in Subsequent Proceedings

The parties undertake that the Conciliator shall not be appointed as adjudicator, arbitrator or representative, counsel or expert witness of any party in any subsequent adjudication, arbitration or judicial proceedings whether arising out of the Conciliation or any other dispute in connection with the same contract. No party shall be entitled to call the Conciliator as a witness in any subsequent adjudication, arbitration or judicial proceedings arising out of the same contract.

Rule 15

Not Legal Counsel or Expert

- A. All parties recognize that at the Conciliation session(s) and at every other point of the proceedings:
- i. Neither DAC nor the Conciliator will be acting as a legal adviser or legal representative for any of the parties;
 - ii. Neither DAC nor the Conciliator has a duty to assert, analyze or protect any party's legal rights or obligations, including lien rights, statutes of limitation, or any other time limit or claim requirement;
 - iii. Neither DAC nor the Conciliator has a duty to make an independent expert analysis of the situation, raise issues not raised by the parties or determine that additional necessary parties should participate in the Conciliation;
 - iv. Neither DAC nor any Conciliator can guarantee that a Conciliation session will result in a settlement.
- B. Parties may be represented by a counsel at any stage of the Conciliation process, and are encouraged to consult legal counsel concerning the proceedings or any proposed settlement agreements.

Rule 16

Exclusion of Liability

- A. The parties jointly and severally release, discharge and indemnify the Conciliator and DAC in respect of all liability whatsoever, whether involving negligence or not, from any act or omission in connection with or arising out of or relating in any way to any Conciliation conducted under these Rules, save for the consequences of fraud, dishonesty or violation of DAC Conciliators' Professional Code of Conduct.

- B. No Conciliator shall be summoned by any party to appear in a Court of law to testify in regard to information received by him or action taken by him or in respect of drafts or records prepared by him or shown to him during the Conciliation proceedings.

Rule 17

Action against the Conciliator

If any of the parties feel that the Conciliator is guilty of violation of the DAC Conciliators' Professional Code of Conduct, they shall within a period of one month, initiate the DAC Conciliators' Conduct Assessment Process.

Rule 18

General Provisions

- A. Under these Rules a decision to be taken by DAC, shall be taken by the Administrator. The Administrator may, if required delegate such of its duties and functions to a Registrar and the Registrar may decide such issues so specifically authorized by the Administrator.
- B. The interpretation of any provision in these Rules shall be made by DAC.
- C. The Fee structure under the Rules shall be fee published by DAC in the DAC Conciliation Fee Schedule as on the date of submission of Conciliation. The current fee schedule of DAC, mentioned in Schedule-3, shall be notified by DAC from time to time or published in its official web site.
- D. Any of the above procedures may be altered by the Administrator, in his sole discretion, to fit the circumstances of a particular case. Any matter not specifically addressed by these rules, or any conflict or ambiguity in these rules, will be decided by the Administrator. The Administrator, in his sole discretion, has authority to prepare forms, resolve procedural disputes, impose time limits on the parties, and otherwise require a party to take action or refrain from taking action.
- E. DAC shall have the power and authority to effectuate the purposes of these Rules, including establishing appropriate rules and procedures governing Conciliation and altering, amending or modifying these Rules in accord with the law.

PART-II

DAC CONCILIATORS' CODE OF PROFESSIONAL CONDUCT

(As adopted based on IMI Code of Professional Conduct)

Trust underpins the Conciliation process. If the parties do not trust a Conciliator's integrity in terms of competence diligence, neutrality, independence, impartiality, fairness and the ability to respect confidences, Conciliation is unlikely to succeed.

The DAC Conciliators' Code of Professional Conduct ("the Code") provides users of Conciliation services with a concise statement of the ethical standards they can expect from Conciliators who choose to adopt its terms and sets standards that they can be expected to meet.

Users who believe the standards established in this Code have not been met may prefer a complaint to DAC on the Conciliators' conduct Assessment.

The Conciliators under the DAC Panel, DAC Community Conciliation Service or under DAC Accredited Conciliation Providers are required to make known to users that the Code governs their professional Conciliation practice.

For the purposes of this Code, Conciliation/Conciliation is defined as a process where two or more parties appoint a third-party neutral ("Conciliator") to help them in a non-binding dialog to resolve a dispute and/or to conclude the terms of an agreement.

1. CONCILIATOR APPOINTMENT

A. Promotion of Conciliators' Services

Subject to applicable laws and to regulations governing professional practice, Conciliators will present and promote their practice in a truthful way. They may quote freely from, and link to, their Profile on the DAC website and they are free to replicate that Profile, or extracts from it, for their own professional purposes.

B. Appointment

Before the Conciliation begins, Conciliators will advise the parties (eg. by way of directing them to the Conciliator's Profile on the DAC website, or in the Conciliation agreement):

- i. About their relevant background and experience
- ii. About the code of conduct the Conciliator will observe
- iii. About the process that will apply in the unlikely event of a party believing the Conciliator has not met the standards of the stated code of conduct, and
- iv. That at the end of the process they will be invited to offer written feedback on the process and on the Conciliator's role

2. DILIGENCE, INDEPENDENCE, NEUTRALITY, IMPARTIALITY

A. Diligence

Conciliators may accept an assignment to act as Conciliator in any situation where they feel competent to serve in that capacity.

B. Independence, Neutrality and Impartiality

- i. Conciliators will not accept an appointment without first disclosing anything within their knowledge that may, or may be seen to, materially affect their independence neutrality or impartiality. This duty to disclose is a continuing obligation throughout the Conciliation process.
- ii. The existence of circumstances potentially affecting, or appearing to affect, a Conciliator's independence, neutrality or impartiality will not automatically imply unfitness to act as a Conciliator provided these circumstances have been fully disclosed and addressed to the satisfaction of the parties and the Conciliator.

- iii. Conciliators will always act in an independent, neutral and impartial way. They shall act in an unbiased manner, treating all parties with fairness, quality and respect. If at any time a Conciliator feels unable to conduct the process in an independent, neutral and impartial manner, (s)he will express that concern and will offer to withdraw from the Conciliation. Such circumstances include:
- Financial or personal interests in the outcome of the Conciliation
 - Existing past or future financial, business or professional relationship with any of the parties or their representatives about which the Conciliator is aware.
 - Other potential source of bias or prejudice concerning a person or institution which may affect that Conciliator's independence, neutrality or impartiality or reasonably create an appearance of partiality or bias.

C. Conflicts of Interest

- i. Conciliators will conduct reasonable inquiries to determine if any interests, conflicts of interests or potential biases may exist. They will have a continuing duty to disclose any interests, conflicts of interests or potential biases that may become apparent during the Conciliation process.
- ii. Following any such disclosures, a Conciliator will decline to participate as a Conciliator in a particular case if any of the parties raises an objection, unless a contract or applicable law or Court order nevertheless requires the Conciliator's participation. Even then, if a Conciliator personally believes that the matters disclosed would inhibit their actual impartiality, the Conciliator should withdraw as the Conciliator.
- iii. After accepting appointment, and until the Conciliation process ends, Conciliators will not enter into financial, business, professional, family or social relationships or acquire financial or personal interests that are likely to affect or might reasonably create the appearance of conflict of interest, partiality or bias, without making a prior disclosure to all the parties and gaining their consent.

- iv. Within 12 months following the end of a Conciliation, Conciliators will not represent in an advisory capacity any party to a Conciliation in the same or a substantially related matter, unless all parties to the Conciliation expressly consent to that representation after full disclosure. Acting as a neutral in other dispute resolution proceedings (eg. as a Conciliator or arbitrator) that may involve some or all of the parties will not be considered a representation in an advisory capacity for the purposes of this clause.
- v. At no time following the end of a Conciliation will Conciliators adduce evidence or testify on behalf of one of the parties in making or defending a claim against another party to the same Conciliation where they have acquired confidential information from the other party, unless all that information is no longer confidential or unless the party protected by the confidentiality gives consent.

3. CONCILIATION PROCESS

A. Procedure

Conciliators will satisfy themselves that the parties to the Conciliation and their advisers understand the characteristics of the Conciliation process, their roles as parties and advisers, and the role of a Conciliator. The Conciliator will ensure that before the Conciliation begins, the parties have understood and agreed the terms and conditions which will govern the Conciliation including those relating to obligations of confidentiality on the Conciliator and on the parties. It is best practice for those terms to be contained in a written Conciliation Agreement unless the parties or the circumstances dictate otherwise.

B. Fairness and Integrity of the Process

- i. Conciliators will explain the Conciliation process to the parties and their advisers, and be satisfied that that they consent to the process being used and to the Conciliator selected (unless applicable law, court rules or contract require use of a particular process and/or Conciliator). Conciliators will ensure that, if there are to be any pre-Conciliation private communications with the Conciliator, all parties are aware they will have equal opportunity to raise issues.
- ii. Conciliators will conduct the process with fairness to all parties and will take particular care to ensure that all parties have adequate opportunities

to be heard, to be involved in the process and to have the opportunity to seek and obtain legal or other counsel before finalizing any resolution.

- iii. Conciliators will take reasonable steps to prevent any misconduct that might invalidate an agreement reached at Conciliation or create or aggravate a hostile environment. Conciliators will also be satisfied that the parties have reached agreement of their own volition and knowingly consent to any resolution.

C. Termination of the Process

- i. The Conciliator will ensure the parties understand that they may withdraw from the Conciliation at any time by informing the Conciliator and all other parties without being required to give any justification for doing so.
- ii. Conciliators may withdraw from a Conciliation if a negotiation among the parties assumes a character that to the Conciliator appears unconscionable or illegal.

D. Feedback

Unless inappropriate in the circumstances, Conciliators will, at the conclusion of a Conciliation, invite the parties and advisers and any co-Conciliators or assistant Conciliators, to complete a Feedback Request Form and deposit it in the Box kept for the purpose in the Conciliation Centre or send the same to DAC.

E. Fees

- i. Conciliators will, before accepting appointment, agree with the parties how their fees and expenses will be calculated, and how they will be paid by the parties (and if shared between the parties, in what proportions). Conciliators who withdraw from a case will return to the parties any fees already paid relating to the period following withdrawal.
- ii. Conciliators will not suggest to the parties that their remuneration should be based on or related to the outcome of the Conciliation.

4. CONFIDENTIALITY

- A. Conciliators will keep confidential all information acquired in the course of serving as a Conciliator in a Conciliation unless:
- i. Compelled to make a disclosure by law, by a Court of Law or by some governmental agency having appropriate authority and jurisdiction or
 - ii. Required under paragraph 5B, in which event the recipients of the confidential information shall themselves be bound to maintain the confidentiality, or
 - iii. The specific information comes into the public domain (otherwise than as a result of a disclosure by the Conciliator), or
 - iv. The parties release the Conciliator from the confidentiality restriction, or
 - v. Necessary to defend the Conciliator from any proceedings or charges for which (s)he risks incurring any liability.
- B. The Conciliator may, however, disclose having previously served as a Conciliator in a Conciliation involving one or more of the parties, provided none of the details of that case are disclosed.
- C. Conciliators will discuss confidentiality with the parties before or at the beginning of the Conciliation and obtain their consent to any communication or practice by the Conciliator that involves the disclosure of confidential information.
- D. Conciliators may use or disclose confidential information obtained during a Conciliation when, and to the extent that, they believe it to be necessary to prevent death or serious physical harm or damage from arising or believe an illegal act may realistically arise. Before using or disclosing such information, if not otherwise required to be disclosed by law, Conciliators must, if they consider it appropriate, make a good faith effort to persuade the party and/or the party's counsel or other advisers, to act in such a way that would remedy the situation.

5. PROFESSIONAL CONDUCT ISSUES AND COMPLAINTS

- A. The Conciliator shall follow and observe the Code strictly and with due diligence and shall not carry on any activity or conduct which could reasonably be considered as conduct unbecoming of a Conciliator.

- A. The Conciliator shall follow and observe the Code strictly and with due diligence and shall not carry on any activity or conduct which could reasonably be considered as conduct unbecoming of a Conciliator.
- B. The Conciliator may consult the institution or DAC about any professional or ethical dilemmas.
- C. Where the Conciliator is subject to the Code, a party to a Conciliation who believes there has been a lack of compliance with this Code may submit a complaint to this effect to DAC on the Conciliators' conduct Assessment.

Adherence to this Code does not replace or qualify any legislation or rules regulating individual professions or any more extensive rules of conduct which may apply in specific circumstances.



PART-III

DAC CONCILIATORS' CONDUCT ASSESSMENT PROCESS

(As adopted based on IMI Professional Conduct Assessment Process)

The principles of diligence, independence, neutrality, impartiality, fairness and integrity are vital to the Conciliation process, and are set out in DAC Conciliators' Code of Professional Conduct. Users of Conciliation services are entitled to trust that DAC empanelled Conciliators adhere rigorously to these basic principles. In the unlikely event of a failure by an DAC Conciliator to observe the DAC Code, a Party to the Conciliation conducted by an DAC Conciliator can apply to have the Conciliator's conduct independently assessed under this process.

The DAC Conciliators' Conduct Assessment Process operates as a fast, cost-effective process for considering and resolving complaints against DAC Accredited Conciliators and, in appropriate circumstances, applying sanctions.

All complaints regarding an DAC Conciliator's non-compliance with the DAC Code must first be discussed with the Conciliator. If this does not resolve the complaint, the Party may file a formal request for a Professional Conduct Assessment.

1. Discussion Step:

A Party in a Conciliation who believes that an DAC Conciliator has not complied with the Conciliator's code of conduct, and who wishes to file a complaint, must first raise the matter with the Conciliator in person within one month of becoming aware of the alleged breach of the Code. This Discussion Step will take place in confidence, and all parties will be bound to treat all non-public information as confidential.

2. Professional Conduct Assessment Process:

- A. The Professional Conduct Assessment Process may be activated by a Party in a Conciliation to seek redress for an alleged code of conduct breach if the Discussion Step has not resolved the issue, within a period of one month. To activate the Assessment Process, the Party shall file a formal complaint to the Director DAC by filing the Conciliator Complaint Initiation Form. DAC will promptly acknowledge receipt and send a copy to the Conciliator whose conduct is the subject of the Complaint.
- B. If the complaint is seen prima-facie to be frivolous, the same will be dismissed by the Director DAC and intimated to the Party.
- C. After having received an admissible Application, DAC will promptly appoint a Professional Conduct Assessor being a member of the DAC Conciliator Disciplinary Committee, to hear the complaint and the Conciliator's case and decide upon the resolution.
- D. The Assessor will decide the appropriate process in each case, which may involve one or more hearings in person, be conducted by written, electronic, video or telephonic communications, or any suitable combination. The Assessor will in all cases strive to understand all relevant facts, and allow the Party and the Conciliator full opportunity to present their respective cases and to rebut the other side's arguments. The Assessment sessions will be private.
- E. The Assessment Process will last no more than three months following appointment of the Assessor by DAC. At the end of the Assessment Process, the Assessor will issue a decision having one or more of the following outcomes:
- (i) Reject all or part of the Complaint
 - (ii) Uphold all or part of the Complaint, but without issuing any sanction
 - (iii) Issue a written warning or reprimand
 - (iv) Suspend the DAC Conciliator for up to one year
 - (v) Permanently withdraw the Conciliator from DAC Panel
 - (vi) Make an order as to costs of the Assessment Process if the parties do not agree to share the costs of the Assessment Process equally.
- F. The decision of the Assessor will be accompanied by its reasons. The decision will become effective as an arbitral award.
- G. When imposing the sanction of suspension or permanent withdrawal of the DAC Conciliator, the Assessor may determine that this sanction will be suspended unless on a subsequent occasion the Conciliator is in further breach of the Code of Professional Conduct within a certain period.

- H. The Assessor will immediately send a copy of their decision to the:
- Party
 - Conciliator against whom the complaint is directed
 - DAC
- I. Subject to section E(vi), the costs of the Assessment Process will be shared equally by the Party and the Conciliator.

3. **Composition of the Disciplinary Committee and appointment of Assessors:**

- A. Members of the DAC Conciliator Disciplinary Committee shall be appointed from time to time by the Governing Council of DAC. The members shall be selected from the DAC Reviewers. The members shall be appointed for a term of four years and shall be eligible for reappointment.
- B. When a Complaint is received against a Conciliator, DAC will appoint a Professional Conduct Assessor from among the members of the DAC Conciliator Disciplinary Committee, who are reasonably local to the Parties and the Conciliator in each case in order to contain costs.
- C. An estimate of costs will be provided to the parties promptly after the Assessor is appointed.
- D. The Assessor may be challenged by the Party or by the Conciliator, in the event of actual or potential conflict of interest or for any other valid reason which could compromise impartiality. Decisions on challenges will be made by the Director DAC.
- E. Any challenge by the Party or Conciliator must be presented to DAC no later than 7 days after notification of the identity of the Assessor and be fully supported by reasons.

4. **Confidentiality**

Assessors as well as all parties and DAC are under an obligation to maintain confidentiality of all information to which they become exposed during the Assessment Process, except to the extent that publication of a final and binding decision may be ordered.

5. **Publication**

DAC will have the power to publish the decisions of the Assessor in such manner(s) as it may deem appropriate, but will not publish any details which may enable the identification of the parties or disclose any confidential information.

PART-IV

SCHEDULES

SCHEDULE-1 MODEL AGREEMENT TO CONCILIATE

Can be downloaded from DAC website:
www.delhiarbitrationcentre.com

SCHEDULE-2 DAC FEEDBACK REQUEST FORM

Can be downloaded from DAC website:
www.delhiarbitrationcentre.com

SCHEDULE-3 DAC CONCILIATOR EVALUATION FORM

Can be downloaded from DAC website:
www.delhiarbitrationcentre.com

SCHEDULE-4 DAC CONCILIATION FEE SCHEDULE

Can be downloaded from DAC website:
www.delhiarbitrationcentre.com

SCHEDULE-5 RECOMMENDED CLAUSES

Future Disputes:

Parties to a contract who wish to have any future disputes referred to Conciliation under the DAC Conciliation Rules may insert in the contract a clause in the following form:

Suggested Conciliation Clause:

“In the event of any dispute arising out of or in relation to this contract, including any question regarding to its existence, validity or termination, the parties shall seek settlement of that dispute by conciliation in accordance with the DAC Conciliation Rules”

Suggested Med-Arb Clause:

“Any dispute or difference arising out of or in connection with this contract shall first be referred to Mediation at the Delhi Arbitration Centre (DAC) and in accordance with its then current Mediation Rules and as per the Arbitration & Conciliation Act, 1996*. If the Mediation is abandoned by the Mediator or is otherwise concluded without the dispute or difference being resolved, then such dispute or difference shall be referred to and determined by arbitration as per the Arbitration & Conciliation Act, 1996* by DAC in accordance with its Arbitration Rules”.

Suggested Arb-Med-Arb Clause

“Any dispute, difference or controversy arising out of or in connection with this contract, including any question regarding its existence, operation, termination, validity or breach thereof shall be referred to and finally resolved by arbitration as per the Arbitration & Conciliation Act, 1996* and shall be conducted by the Indian Institute of Arbitration & Conciliation, in accordance with their Arbitration Rules (“DAC Arbitration Rules”) for the time being in force.

It is further agreed that following the commencement of arbitration, the parties will attempt in good faith to resolve such dispute, difference or controversy through Conciliation, as per the DAC Arb-Med-Arb Procedure for the time being in force. Any settlement reached in the course of Mediation shall be referred to the arbitral tribunal appointed by DAC and may be made a consent award on agreed terms.”

* In the case of domestic arbitration in India. For international arbitration, the parties may specify the law applicable as per the seat of arbitration.

Existing Disputes:

Parties who wish to Conciliate an existing dispute, but there is no agreement between the parties for Conciliation, can either enter into an DAC Conciliation agreement or can initiate Conciliation without any agreement.

For information please contact DAC:

admin@delhiarbitrationcentre.com

PART-V

GUIDE TO DAC CONCILIATION RULES

1. What is the importance of DAC Conciliation Rules?

The DAC Conciliation Rules are a set of procedural rules covering all aspects of the institutional Conciliation process, which helps the parties and Conciliators to take maximum advantage of the flexible procedures available in Conciliation for the resolution of disputes quickly and economically. The DAC Conciliation Rules also contains the DAC Conciliators' Code of Professional Conduct and DAC Conciliators' Conduct Assessment Process, adopted based on the Code prescribed by the International Conciliation Institute, The Hague.

2. What is the advantage of Conciliation?

Unlike litigation or arbitration, where a decision is imposed by the Judge or the Arbitrator, in Conciliation resolution is made on the consent of the parties to their satisfaction through the assistance and facilitation of the Conciliator. It is a "Win-Win" for both parties. This will help the parties to put a closure to the dispute rather than wasting time on appeals against an imposed decision and concentrate on their business and future. It helps to maintain ongoing relationships and resolve the dispute amicably.

3. What type of disputes can be resolved through Conciliation?

All types of civil and commercial disputes can be resolved through Conciliation, except certain special legislations like winding up of a company.

4. Is Conciliation a compromise and if I initiate Conciliation, will it not be considered as my weakness?

There is a general misconception that in Conciliation you have to compromise. In fact Conciliation is another dispute resolution process, just like any other one. The major difference being, it is an interest-based process, where the resolution is arrived at by the parties on a collaborative method to maximize mutual gain. Therefore, globally Conciliation is also referred as “Appropriate Dispute Resolution” (ADR). It is the only process which focuses on needs and relationships and seeks not only to resolve the underlying problem, but also to add value. Here, in fact dispute is considered as an opportunity. Internationally, opting for Conciliation is also considered as an expression of best governance and social commitment. Many MNC’s have signed the “Pledge to Conciliate”, expressing their commitment to resolve dispute amicably to their potential business partners and clients.

5. What if after I initiate Conciliation, the other party does not turn up?

Conciliation is a voluntary and non-binding process and the parties are free not to attend or leave the process at any stage, if that party is not happy with the process or outcome. But as per our experience, every invitation to attend a Conciliation process is normally accepted by the other party.

But even if the other party does not turn up, it is an advantage to initiate Conciliation first, as after the completion of Conciliation and on receipt of the Conciliator’s Completion Report, DAC will prepare the Conciliation Status Report and this is given to the Parties. This is given even if the dispute is not resolved or the Conciliation could not be held due to the absence of the opposite Party. This is a valuable document when the initiating party approaches the court.

6. Can I initiate Conciliation in a matter pending before a court?

Conciliation can be initiated at any stage. It can be initiated at the beginning of a dispute or when the matter is before a court. It would always be better to initiate Conciliation at the beginning, as the parties would be less hostile. In fact even the Supreme Court of India has said in a decision that Conciliation is the best form of dispute resolution and it should be taken at the earliest opportunity to stop the negative factor from growing and widening its fangs which may not be conducive to any of the litigants. The courts also encourage the parties to resolve their disputes through Conciliation. In fact if a party initiates Conciliation and the other side does not attend, it will create an adverse impression against the party who refused to participate in Conciliation.

7. Is Conciliation legally approved in India?

Yes. Under the Arbitration & Conciliation Act, 1996, a settlement agreement made by the Conciliator after the resolution of a dispute is equivalent to an arbitral award or a decree of a civil court. If a party subsequent to the settlement fails to comply with it, the other party could get the settlement agreement executed through a court in the same manner as a court decree. Conciliation and Conciliation are terms often used interchangeably and in all practical aspects, the procedure is the same.

8. How reliable and professional are the Conciliators?

Conciliation is said to be as good as the Conciliator! DAC Accredited Conciliators are trained and accredited under the International Conciliation Institute (IMI - The Hague) norms. They are bound by the Code of Conduct and Ethical Standards prescribed by IMI. DAC is the only institution in India approved by the IMI to certify Conciliators at global standards.

9. Can we initiate Conciliation for the resolution of a dispute with a foreign party?

Yes. Conciliation is a process internationally accepted and most of the MNC's have started using Conciliation as the first option for dispute resolution. DAC maintain a panel of domestic and international Conciliators and has mutual cooperation agreement with many international ADR institutions which administers Conciliation.

In an international dispute, a settlement agreement made through the AMA Procedure can be made as an arbitral award on consent and it becomes executable as per the New York convention in 156 countries.

10. How much will it cost to Conciliate under the DAC Conciliation Rules?

DAC Conciliation is very cost-effective, especially considering the time-bound manner in which the dispute is resolved. The costs and expenses of Conciliation will be governed by the DAC Conciliation Fee Schedule. The current fee schedule of DAC, mentioned in Schedule-3, shall be notified by DAC from time to time or published in its official web site. Appendix-1, provide the fee schedule for domestic Conciliation, Appendix-2 for international Conciliation, Appendix-3 for community Conciliation and Appendix-4 for miscellaneous charges.

11. How long does the entire proceedings take?

Even though as per the DAC Conciliation Rules, the Conciliator shall use his best endeavors to conclude the Conciliation within 60 days of his appointment, normally a commercial Conciliation gets over within 4 to 8 sessions.

12. Can we bring lawyers to represent our case in Conciliation?

Yes, you can. In fact Conciliation would become more successful and credible when the parties' advocates or advisors are knowledgeable and skilled in the Conciliation process. Trained Conciliation advocates can bring value addition to the process and outcome. In fact, the changing role of a lawyer as a dispute resolution specialist, bringing in specialist representation in Conciliation has raised the standard, credibility and acceptance of Conciliation world over

