



DELHI  
ARBITRATION  
CENTRE

**DAC  
MEDIATION  
RULES**

## FOREWORD

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DAC Mediation / Conciliation is based on the Mediation Rules published by the Delhi Arbitration Centre (DAC), which is intended to help parties and mediators to take maximum advantage of the flexible procedures available in mediation for the resolution of disputes quickly and economically. DAC Mediation Rules shall apply to the mediation 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 mediate, 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 mediation will be governed by the Fee Schedule of the DAC Mediation Rules.

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

Recommended clauses for mediation, 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.

Delhi Arbitration Centre  
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DELHI  
ARBITRATION  
—CENTRE—

**DAC MEDIATION RULES**

(Revised in 2017)

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

## DAC MEDIATION RULES, 2017

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## PART-I

### DAC MEDIATION RULES

(As revised in 2017)

#### Rule 1

##### Introduction; Scope

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- A. Where any agreement, submission or reference provides for mediation or conciliation by Delhi Arbitration Centre (DAC) or under the Mediation Rules of the Delhi Arbitration Centre (DAC Mediation Rules), the parties shall be taken to have agreed that the mediation 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 mediation. 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 mediation 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 mediate, 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 mediation initiated under the Arb-Med-Arb procedure, where mediation is commenced on a referral by an arbitral tribunal.
- D. Mediation under these Rules is a confidential, voluntary and private dispute resolution process in which a neutral person or persons (the mediator(s)) helps the parties to reach a negotiated settlement.

## Rule 2

### Initiation of Mediation Process

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- A. If a dispute arises, a party may request the initiation of mediation by delivering a written request for mediation to the other party or parties with copies to DAC. Such request for mediation 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 mediator or mediators thought suitable.
- B. A party or parties who receive a request for mediation shall notify any other party and DAC within 15 days after receipt of the request whether they are willing for mediation and whether any mediator nominated is acceptable. Failure by any party to reply within 15 days shall be treated as a refusal to mediate.
- C. Notwithstanding anything contained in Rule 2A, a party to a dispute or all parties to the dispute may request the initiation of mediation by submitting a Mediation Submission Form to DAC.
- D. On receipt of Mediation Submission Form by a party to a dispute, DAC shall send an invitation to mediate, nominating a Mediator or Mediators as the case may be and scheduling the date, time and venue of the 1<sup>st</sup> session of mediation. The party who receive the invitation for mediation can either attend the mediation session as per the invitation before the mediator, or can notify his inability to attend on the scheduled date or express his objection to the nominated mediator, so that DAC can nominate another mediator or reschedule the 1<sup>st</sup> session based on the convenience of the parties and the mediator. 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 mediate.
- E. In case the mediation is initiated based on Arb-Med-Arb procedure, DAC shall send an invitation to the Parties to attend the first session of mediation, mentioning the name of the Mediator or Mediators as the case may be and the date, time and venue of the 1<sup>st</sup> session. The parties can either attend the mediation session as per the invitation before the mediator, or can notify his/their inability to attend on the scheduled date or express his/their objection to the nominated mediator, so that DAC can nominate another mediator or reschedule the 1<sup>st</sup> session based on the convenience of the parties and the mediator. 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 mediate.

## Rule 3

### Appointment of Mediator

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- A. Where the parties agree on mediation and agree on a mediator and the proposed mediator is willing to serve, they will notify DAC. The mediation shall then proceed in accordance with these Rules.
- B. If the parties fail to agree on the appointment of a mediator, DAC will appoint a single mediator who is prepared to serve.
- C. There shall be one mediator, unless the parties agree that there shall be three mediators. In case of three mediators, each party shall appoint one mediator and the parties may agree on a name of the third mediator, who shall act as the Presiding Mediator. If the parties fail to agree on the third mediator, DAC shall appoint the third mediator.
- 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 mediator and failing unanimity in that behalf, DAC shall appoint a sole mediator.
- E. The appointment of mediator 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 mediator in any dispute in which that person has any financial or personal interest in the result of the mediation except by consent of the parties. Before accepting an appointment, the proposed mediator 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 immediately communicate the information to the parties for their comments. If any party takes objection to the proposed mediator within 3 days he shall not be appointed. The replacement mediator will be appointed in the same manner as the mediator, who is replaced.

## Rule 4

### Mediation Process

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- A. Upon appointment of mediator, DAC will work with the parties to establish the time and location of each mediation session.
- B. The parties may agree on the procedure to be followed by the mediator in the conduct of the mediation proceedings.
- C. Where the parties do not agree on any particular procedure to be followed by the mediator, the mediator 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 mediation session, where all parties have to be present;
  - ii. He shall hold the mediation at DAC ADR Centre, DAC Mediation 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 mediation, provide to the mediator and DAC, a pre-mediation 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 mediator to understand the issue; such memoranda shall also be mutually exchanged between the parties;
  - v. Before the commencement of mediation, based on the request of the lawyers of the parties or by the mediator, DAC shall convene a pre-mediation conference with the mediator and lawyers, so as to have a preliminary meeting to discuss the process and procedure of mediation.
  - vi. Each party shall furnish to the mediator 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 mediation, they shall sign an agreement to mediate.

- E. The mediator shall use his best endeavors to conclude the mediation 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 mediator is not bound by the law of procedure or Evidence Act.

## Rule 5

### Role of Mediator

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- A. The mediator may conduct the mediation 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 mediator 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 mediator is bound by the DAC Mediators' Professional Code of Conduct.
- C. The mediator may obtain expert advice in technical matters with the consent of the parties, who shall bear the expenses incurred.
- D. The mediator 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 mediator subject to a specific condition that it be kept confidential, the mediator shall not disclose that information to the other party.

- E. The mediator 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 mediation, the Mediator shall submit a Mediation Record Form, indicating the duration of the mediation session and result of the session to DAC. This shall be signed by the mediator and DAC in case of institutional mediation and by the mediator and the parties in case of ad-hoc mediation.

## Rule 6

### Role of Parties

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

## Rule 7

### Role of DAC

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

## Rule 8

### Representation

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- 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 mediator. 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**

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- A. Mediation 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 mediation 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. Mediation 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 mediation session.
- C. The Mediation 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 Mediator, the parties and/or their representatives and advisers and DAC staff as required will be permitted to be present during the mediation.
- D. Nothing that transpires during the course of the mediation 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 mediation 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 mediation proceedings;
  - ii. Documents obtained during the mediation which were expressly required to be treated as confidential or other notes, drafts or information given by parties or mediators;
  - iii. Proposals made or views expressed by the mediator;
  - iv. Admission made by a party in the course of mediation proceedings;
  - v. The fact that a party had or had not indicated willingness to accept a proposal.

## **Rule 10**

### **Settlement**

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- A. When the mediator 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 mediator.
- B. If the parties reach agreement on the settlement terms, the mediator 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 mediator 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 Mediation Status Report.

- E. In the case of court-referred mediation, 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 mediator 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 mediator is of the view that no settlement is possible, he shall report the same to the said Court in writing.

## **Rule 11**

### **Termination of Mediation**

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

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- A. Unless otherwise agreed, each party shall bear its own costs regardless of the outcome of the mediation 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 mediator such costs, including:
- i. The mediator's fees and expenses;
  - ii. Expenses for any witness or expert advice or opinion requested by the mediator with the consent of the parties; and
  - iii. The DAC administrative costs in support of the mediation.
- B. The Mediator fee shall be fixed by DAC in accordance with the DAC Mediation Fee Schedule, unless the mediator and the parties have agreed on a different engagement term at the time of appointment.
- C. The administrative costs of mediation shall be fixed by DAC in accordance with the DAC Mediation Fee Schedule.
- D. The sum designated in the DAC Mediation Fee Schedule of Initial Deposits shall be deposited by each of the parties with DAC before the mediator enters upon the mediation, as a contribution to the cost and proper expenses of the mediation including the mediator's fees and expenses.
- E. The mediator or DAC may at any time during the mediation 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 mediation.

## **Rule 13**

### **Feedback**

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

## **Rule 14**

### **Mediator's Role in Subsequent Proceedings**

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The parties undertake that the mediator 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 mediation or any other dispute in connection with the same contract. No party shall be entitled to call the mediator as a witness in any subsequent adjudication, arbitration or judicial proceedings arising out of the same contract.

## **Rule 15**

### **Not Legal Counsel or Expert**

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- A. All parties recognize that at the mediation session(s) and at every other point of the proceedings:
- i. Neither DAC nor the mediator will be acting as a legal adviser or legal representative for any of the parties;
  - ii. Neither DAC nor the mediator 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 mediator 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 mediation;
  - iv. Neither DAC nor any mediator can guarantee that a mediation session will result in a settlement.
- B. Parties may be represented by a counsel at any stage of the mediation process, and are encouraged to consult legal counsel concerning the proceedings or any proposed settlement agreements.

## **Rule 16**

### **Exclusion of Liability**

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- A. The parties jointly and severally release, discharge and indemnify the mediator 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 mediation conducted under these Rules, save for the consequences of fraud, dishonesty or violation of DAC Mediators' Professional Code of Conduct.



- B. No mediator 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 mediation proceedings.

## **Rule 17**

### **Action against the Mediator**

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

## **Rule 18**

### **General Provisions**

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- 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 Mediation Fee Schedule as on the date of submission of mediation. 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 mediation and altering, amending or modifying these Rules in accord with the law.

## PART-II

### **DAC MEDIATORS' CODE OF PROFESSIONAL CONDUCT**

(As adopted based on IMI Code of Professional Conduct)

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

The DAC Mediators' Code of Professional Conduct ("the Code") provides users of mediation services with a concise statement of the ethical standards they can expect from Mediators 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 Mediators' conduct Assessment.

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

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

#### **1. MEDIATOR APPOINTMENT**

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##### **A. Promotion of Mediators' Services**

Subject to applicable laws and to regulations governing professional practice, Mediators 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 mediation begins, Mediators will advise the parties (eg. by way of directing them to the Mediator's Profile on the DAC website, or in the mediation agreement):

- i. About their relevant background and experience
- ii. About the code of conduct the Mediator will observe
- iii. About the process that will apply in the unlikely event of a party believing the Mediator 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 Mediator's role

## 2. DILIGENCE, INDEPENDENCE, NEUTRALITY, IMPARTIALITY

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### A. Diligence

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

### B. Independence, Neutrality and Impartiality

- i. Mediators 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 mediation process.
- ii. The existence of circumstances potentially affecting, or appearing to affect, a Mediator's independence, neutrality or impartiality will not automatically imply unfitness to act as a mediator provided these circumstances have been fully disclosed and addressed to the satisfaction of the parties and the Mediator.

- iii. Mediators 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 Mediator 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 mediation. Such circumstances include:
- Financial or personal interests in the outcome of the mediation
  - Existing past or future financial, business or professional relationship with any of the parties or their representatives about which the Mediator is aware.
  - Other potential source of bias or prejudice concerning a person or institution which may affect that Mediator's independence, neutrality or impartiality or reasonably create an appearance of partiality or bias.

## C. Conflicts of Interest

- i. Mediators 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 mediation process.
- ii. Following any such disclosures, a Mediator will decline to participate as a mediator in a particular case if any of the parties raises an objection, unless a contract or applicable law or Court order nevertheless requires the Mediator's participation. Even then, if a Mediator personally believes that the matters disclosed would inhibit their actual impartiality, the Mediator should withdraw as the mediator.
- iii. After accepting appointment, and until the mediation process ends, Mediators 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 mediation, Mediators will not represent in an advisory capacity any party to a mediation in the same or a substantially related matter, unless all parties to the mediation expressly consent to that representation after full disclosure. Acting as a neutral in other dispute resolution proceedings (eg. as a mediator 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 mediation will Mediators adduce evidence or testify on behalf of one of the parties in making or defending a claim against another party to the same mediation 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. **MEDIATION PROCESS**

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#### A. **Procedure**

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

#### B. **Fairness and Integrity of the Process**

- i. Mediators will explain the mediation process to the parties and their advisers, and be satisfied that that they consent to the process being used and to the Mediator selected (unless applicable law, court rules or contract require use of a particular process and/or mediator). Mediators will ensure that, if there are to be any pre-mediation private communications with the Mediator, all parties are aware they will have equal opportunity to raise issues.
- ii. Mediators 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. Mediators will take reasonable steps to prevent any misconduct that might invalidate an agreement reached at mediation or create or aggravate a hostile environment. Mediators 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 Mediator will ensure the parties understand that they may withdraw from the mediation at any time by informing the Mediator and all other parties without being required to give any justification for doing so.
- ii. Mediators may withdraw from a mediation if a negotiation among the parties assumes a character that to the Mediator appears unconscionable or illegal.

## D. Feedback

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

## E. Fees

- i. Mediators 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). Mediators who withdraw from a case will return to the parties any fees already paid relating to the period following withdrawal.
- ii. Mediators will not suggest to the parties that their remuneration should be based on or related to the outcome of the mediation.

## 4. CONFIDENTIALITY

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- A. Mediators will keep confidential all information acquired in the course of serving as a mediator in a mediation 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 Mediator), or
  - iv. The parties release the Mediator from the confidentiality restriction, or
  - v. Necessary to defend the Mediator from any proceedings or charges for which (s)he risks incurring any liability.
- B. The Mediator may, however, disclose having previously served as a mediator in a mediation involving one or more of the parties, provided none of the details of that case are disclosed.
- C. Mediators will discuss confidentiality with the parties before or at the beginning of the mediation and obtain their consent to any communication or practice by the Mediator that involves the disclosure of confidential information.
- D. Mediators may use or disclose confidential information obtained during a mediation 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, Mediators 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

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- A. The Mediator 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 mediator.

- A. The Mediator 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 mediator.
- B. The Mediator may consult the institution or DAC about any professional or ethical dilemmas.
- C. Where the Mediator is subject to the Code, a party to a mediation who believes there has been a lack of compliance with this Code may submit a complaint to this effect to DAC on the Mediators' 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 MEDIATORS' 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 mediation process, and are set out in DAC Mediators' Code of Professional Conduct. Users of mediation services are entitled to trust that DAC empanelled Mediators adhere rigorously to these basic principles. In the unlikely event of a failure by an DAC Mediator to observe the DAC Code, a Party to the mediation conducted by an DAC Mediator can apply to have the Mediator's conduct independently assessed under this process.

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

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

#### **1. Discussion Step:**

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A Party in a mediation who believes that an DAC Mediator has not complied with the mediator's code of conduct, and who wishes to file a complaint, must first raise the matter with the Mediator 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:

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- A. The Professional Conduct Assessment Process may be activated by a Party in a mediation 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 Mediator Complaint Initiation Form. DAC will promptly acknowledge receipt and send a copy to the Mediator 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 Mediator Disciplinary Committee, to hear the complaint and the Mediator'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 Mediator 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 Mediator for up to one year
  - (v) Permanently withdraw the mediator 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 Mediator, the Assessor may determine that this sanction will be suspended unless on a subsequent occasion the Mediator 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
  - Mediator 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 Mediator.

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

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- A. Members of the DAC Mediator 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 Mediator, DAC will appoint a Professional Conduct Assessor from among the members of the DAC Mediator Disciplinary Committee, who are reasonably local to the Parties and the Mediator 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 Mediator, 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 Mediator 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**

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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**

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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 MEDIATE**

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Can be downloaded from DAC website:  
[www.delhiarbitrationcentre.com](http://www.delhiarbitrationcentre.com)

### **SCHEDULE-2 DAC FEEDBACK REQUEST FORM**

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Can be downloaded from DAC website:  
[www.delhiarbitrationcentre.com](http://www.delhiarbitrationcentre.com)

### **SCHEDULE-3 DAC MEDIATOR EVALUATION FORM**

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Can be downloaded from DAC website:  
[www.delhiarbitrationcentre.com](http://www.delhiarbitrationcentre.com)

### **SCHEDULE-4 DAC MEDIATION FEE SCHEDULE**

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Can be downloaded from DAC website:  
[www.delhiarbitrationcentre.com](http://www.delhiarbitrationcentre.com)

### **SCHEDULE-5 RECOMMENDED CLAUSES**

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#### **Future Disputes:**

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

## **Suggested Mediation 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 mediation/conciliation in accordance with the DAC Mediation 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 & Mediation, 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 mediation, 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 mediate an existing dispute, but there is no agreement between the parties for mediation, can either enter into an DAC Mediation agreement or can initiate mediation without any agreement.

For information please contact DAC Director: [dir@arbitrationindia.com](mailto:dir@arbitrationindia.com)

## PART-V

### GUIDE TO DAC MEDIATION RULES

#### 1. What is the importance of DAC Mediation Rules?

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

#### 2. What is the advantage of mediation?

Unlike litigation or arbitration, where a decision is imposed by the Judge or the Arbitrator, in mediation resolution is made on the consent of the parties to their satisfaction through the assistance and facilitation of the mediator. 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 mediation?

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

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

There is a general misconception that in mediation you have to compromise. In fact mediation 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 mediation 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 mediation is also considered as an expression of best governance and social commitment. Many MNC’s have signed the “Pledge to Mediate”, expressing their commitment to resolve dispute amicably to their potential business partners and clients.

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

Mediation 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 mediation process is normally accepted by the other party.

But even if the other party does not turn up, it is an advantage to initiate mediation first, as after the completion of mediation and on receipt of the Mediator’s Completion Report, DAC will prepare the Mediation Status Report and this is given to the Parties. This is given even if the dispute is not resolved or the mediation 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 mediation in a matter pending before a court?**

Mediation 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 mediation at the beginning, as the parties would be less hostile. In fact even the Supreme Court of India has said in a decision that mediation 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 mediation. In fact if a party initiates mediation and the other side does not attend, it will create an adverse impression against the party who refused to participate in mediation.

## **7. Is mediation legally approved in India?**

Yes. Under the Arbitration & Conciliation Act, 1996, a settlement agreement made by the mediator 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. Mediation and Conciliation are terms often used interchangeably and in all practical aspects, the procedure is the same.

## **8. How reliable and professional are the mediators?**

Mediation is said to be as good as the Mediator! DAC Accredited Mediators are trained and accredited under the International Mediation 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 mediators at global standards.

## **9. Can we initiate mediation for the resolution of a dispute with a foreign party?**

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

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 mediate under the DAC Mediation Rules?**

DAC Mediation is very cost-effective, especially considering the time-bound manner in which the dispute is resolved. The costs and expenses of mediation will be governed by the DAC Mediation 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 mediation, Appendix-2 for international mediation, Appendix-3 for community mediation and Appendix-4 for miscellaneous charges.



## **11. How long does the entire proceedings take?**

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

## **12. Can we bring lawyers to represent our case in mediation?**

Yes, you can. In fact mediation would become more successful and credible when the parties' advocates or advisors are knowledgeable and skilled in the mediation process. Trained mediation 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 mediation has raised the standard, credibility and acceptance of mediation world over

