

Mediation Rules of the European Court of Arbitration

(Corte Arbitrale Europea, Cour Européenne d'Arbitrage,
Corte Europea de Arbitraje, Europäischer Schiedsgerichtshof).

These Rules govern mediations of national or international disputes of a commercial nature.

A mandatory provision of the applicable law shall take precedence over and replace any provisions of these Rules where any conflict exists between a provision of these Rules and said mandatory provision.

Article 1 - *APPLICATION FOR MEDIATION*

- 1.1. A party to an agreement for mediation or, in the absence of such an agreement, a party which wishes to submit a dispute to mediation as governed by the Mediation Rules of the European Court of Arbitration, shall submit its application to the Secretariat of the Mediation Division of the Court in Strasbourg. If the dispute is a domestic dispute, within the meaning set out by art 2, Internal Rules of the Court, to the Secretariat of the Mediation Division of the National Delegation of the Court of the country concerned, where there is such a National Delegation (the term Secretariat shall refer to the one of them which is competent over the dispute).
- 1.2. The Application for mediation shall contain:
 - name, corporate entity and registered offices of the parties,
 - a description of the facts and the documents in support of the facts,
 - a description of the dispute,
 - a statement of the position of the applicant on the matter in dispute,
 - a certified photocopy of the mediation agreement,
 - the proposal for a solution of the dispute as desired by the applicant,
 - the name of the representative of the applicant who is duly authorized to participate in the mediation and to bind the applicant, together with the names of the other persons who will assist him;
 - the name of the attorney at law who will represent the applicant,
 - the possible experts who will be called to support the applicant's position,
 - the time period estimated by the applicant to present his point of view during the mediation hearing,
 - the names of the persons whom the applicant seeks to be heard at the mediation hearing, stating the particular matters on which they will be requested to depose,
 - the criteria proposed for the choice of the Mediator,
 - a submission putting forward the names of three possible Mediators,
 - a copy of the application for mediation as forwarded by registered letter and/or fax to the other parties,
 - the mention of the amount in dispute and of the manner by which it has been established

- 1.3. The applicant must deposit with the Mediation Division of the Court 50% of the sum set out in the schedule for mediation services of the Court and covering the Mediator's fees and the Court's administrative dues. The applicant shall attach to the Application for mediation a notice of payment issued by its bank or any equivalent proof of payment

1.4. LANGUAGE OF THE APPLICATION

The Application shall be made in the language which has been used by the parties in their contractual relationships.

Article 2 - *TASKS OF THE SECRETARIAT*

The Secretariat of the Mediation Division of the Court, or if the dispute is determined as being domestic, of the Mediation Division of the National Delegation having jurisdiction where such National Delegation exists, will:

- control that the Application complies with the form requirements of these Rules, and verify that payment as provided by the schedule has been made,
- record the application,
- where necessary request any additional payments,
- verify that the Application and documents in support have been received by the other party/ies,
- where a valid mediation agreement does not exist, request of the other party/ies if it/they accept/s the mediation and if it /they accept/s the Mediation Rules of the Court,
- advise the Executive Committee of the competent Mediation Division as soon as possible of the conduct of the matter, and deliver to the person appointed by said Executive Committee for this purpose a copy of the Application and Reply including all documents tendered in support

The Secretariat will effect all such formalities within seven working days commencing from the receipt by it of the Application for Mediation.

Article 3 - *REFUSAL OF THE MEDIATION*

Where there is no valid mediation agreement, the Executive Committee of the Mediation Division, or the person duly appointed by it, will invite the party not requesting mediation to approve the mediation procedure.

Where the non-requesting party does not approve the mediation procedure, the Secretariat shall return to the applicant the sum deposited, withholding a sum of € 700/200.- as a filing fee.

If a mediation agreement under these Rules exists but notwithstanding this the non-requesting party refuses the mediation, the refusing party undertakes to reimburse to the requesting party the costs and fees which will have been paid by the requesting party for the mediation and to pay to the Court the filing fees. Any dispute arising out of or related to a refusal to proceed with an agreed mediation or matters arising from it may be submitted to the Executive Committee of the Court by an application made in accordance with its Arbitration Rules.

In all cases where there has been refusal to engage in mediation, the Application for Mediation may be produced in a state court or before the arbitrators, who may take it into account when determining costs to be ordered against one or other of the parties in respect of the proceedings before itself.

Where all of the parties to a valid mediation agreement do not engage in a mediation, the mediation may be carried out between the parties which have agreed to proceed even though other parties have refused to be involved.

Article 4 - *ANSWER*

The party or the parties which accept/s the mediation, must send its/their answer to the Secretariat within 15 days from the day of their receipt of a copy of the Application for Mediation. The requirements set forth in these Rules for the Application for Mediation shall relevantly apply to the Answer to the Application.

Article 5 - *APPOINTMENT OF MEDIATOR*

The Mediation shall be conducted by a sole Mediator appointed by the Executive Committee of the Court, or by the person appointed by it for this purpose, or by the Executive Committee of the relevant National Delegation having jurisdiction.

The choice of the Mediator shall be made taking into account the geographic location of the matter, the proposals made by the parties, the time availability of the potential Mediator, and the expertise required to mediate the dispute.

The appointment of the Mediator by the Executive Committee or by the person appointed by it for this purpose, shall be made expeditiously and only after being satisfied that the person to be appointed is impartial in this matter.

The appointment shall be communicated by the Secretariat to the parties as soon as possible and there will be included in such communication a Curriculum Vitae of the appointed Mediator.

The Secretariat shall also inform the appointed Mediator. The appointed Mediator shall accept by fax or telegram attaching its statement of independence and impartiality within four working days from receipt of the notice of appointment.

Failure by the appointed Mediator to accept within the time stated above will be taken as a refusal of the proposed appointment.

Article 6 - *CHALLENGE OF THE MEDIATOR*

Within 7 working days of receipt by a party of the notice of appointment of the Mediator a party may challenge the appointment on the grounds that the Mediator is not independent or impartial or does not possess the necessary expertise to properly and effectively carry out the mediation.

The competent Executive Committee has jurisdiction to deal with such challenge and shall determine the challenge within ten working days of receipt. The Executive Committee is not bound to give reason for such determination. The determination of the Executive Committee

in not open to review.

If the challenge to the Mediator is successful, a new Mediator will be appointed.

The Mediator shall be replaced by the competent Executive Committee if he does not fulfil his duties or if he takes no action for more than one month or if he resigns his appointment or is temporarily or permanently prevented from fulfilling his duties for any reasons.

Article 7 - *THE MEDIATION PROCEEDINGS*

The Secretariat will transmit the Application and the Answer to the parties and to the Mediator as soon as the Mediator has accepted his appointment.

The Mediator:

- shall request from the parties any required and admissible clarification and/or complementary documents,
- may request statements to be made, on their word, by the persons indicated by the parties or by persons that the Mediator may identify,
- shall fix the date for the mediation hearing after having suggested to the parties three possible dates and taken into consideration the views of the parties.

Article 8 - *PLACE OF THE PROCEEDINGS*

The mediation hearing and the proceedings shall be held at a place selected to minimise disadvantage to any of the parties.

Article 9 - *LANGUAGE OF THE PROCEEDINGS*

The Mediator will ensure that the language of the proceedings does not cause a disadvantage to any of the parties.

Unless a single common language was utilised in the relationships between the parties to the contract, the Mediator may permit a party responding to use one of the languages used by the parties to communicate between themselves for the purposes of the contract.

If one of the parties requires and undertakes to pay the costs of the translation, the use of differing language to those permitted above may be allowed by the Mediator provided that simultaneous translation occurs.

Article 10 - *CONFIDENTIALITY*

The mediation proceedings are confidential.

Nothing which is said or written during the proceedings by any party for the purposes of the proceedings may subsequently be produced in Court or before arbitrators, save for the record of a resulting agreement or lack of agreement or abandonment of the application for mediation.

Under no circumstance shall the Mediator be subsequently appointed as an arbitrator or called to appear as a witness in the subsequent proceedings.

Article 11 - *ROLE OF THE MEDIATOR*

The Mediator must

- dedicate his efforts to appreciate and understand the contending points of view of the parties,
- obtain their trust,
- establish a constructive dialogue between the parties,
- understand their psychology,
- hold separate meetings with each of them,
- mention to them the risks in case of litigation, without putting them under pressure,
- play an active role in the resolution of the dispute, in carefully listening to the comments of the parties, in encouraging them to express, as appropriate, different solutions, in attempting to reconcile the points of view expressed and in proposing - at the end of discussions - a solution together with the reasons upon which such solution is proposed.

Article 12 - *ABANDONMENT OF THE PROCEEDINGS BY ONE OF THE PARTIES BEFORE THE MEDIATION HEARING*

If one of the parties after having accepted the mediation proceedings, decides to abandon involvement in the mediation before the mediation hearing, it must notify the Mediator of its decision by registered letter with return receipt

That party shall be liable to pay all of the costs incurred by the other party/ies where, by that withdrawal, it is not possible to continue the mediation. That party shall also be liable to pay the Mediator's fees and the administrative dues of the Court

A written record of the abandonment and the fixing of the amount to be paid by the party which has abandoned the proceedings will be drawn up by the Mediator.

The parties, including the party which abandoned the proceedings, will be invited to sign it

This record may be used as the basis for subsequent enforcement by a state court having jurisdiction.

Article 13 - *THE MEDIATION HEARING*

Save in exceptional circumstances, the first joint mediation hearing must take place within 25 days of the expiry of the 7 working days deadline available to the parties to challenge the appointed Mediator.

The Mediator shall let the applicant speak first and then hear the other parties, asking them for any necessary explanations and allowing them to answer the respective arguments, and hear any possible witnesses.

Immediately following the debates or after a maximum of seven working days, the Mediator will hold separate meetings with the parties and then if necessary a further joint meeting, then if needed separate meetings and so on. At the end the Mediator will consider the observations of the parties and their agreement or partial or total disagreement and in the latter case give to the parties his final proposal for settlement and then draw up the mediation record asking the parties to sign it

The record will be prepared in sufficient originals for all the parties, and an additional original for the Court

Article 14 - *COSTS AND FEES*

The Mediator shall fix in the written record his fees and the administrative dues of the Court, which will have been established by the Executive Committee.

Consistent with the concept of mediation, each party will bear its own costs and fees, save in the case of refusal to mediate or of abandonment of proceedings by one party, which shall comply respectively with Articles 3 and 12 above.

Article 15 - *POSSIBLE DISAGREEMENT BETWEEN THE PARTIES*

In the event of failure of the parties to formally agree a solution, the written record shall indicate the last proposals of the parties and the final proposal of the Mediator.

The parties will be asked to sign the record.

The record may subsequently be produced before an arbitral tribunal or a state court.

Disagreement will empower any of the parties to forthwith commence appropriate action before the competent arbitral tribunal or state court having jurisdiction.

Article 16 - *COMMUNICATION OF THE WRITTEN RECORD TO THE PARTIES*

The Secretariat of the competent Mediation Division, shall establish and request any additional payments that are necessary and, after receipt of them, shall deliver an original of the written record to each party.

The parties accept that the Court is entitled not to deliver the written record until full payment of the amount fixed and due for payment.

Article 17 - *NON-PAYMENT BY ONE OF THE PARTIES*

Should one of the parties not pay such part of the fees and administrative dues as are owed by it, the parties accept that the proceedings will be stayed until such sum has been paid by said party or by another party.

Article 18 - *FEES*

The competent Executive Committee shall establish the Mediator's fees and the administrative dues of the Court.

SCALE OF FEES AND ADMINISTRATIVE DUES OF THE COURT

MEDIATION		Fees of the Mediator (to be divided among the parties) Euro	Administrative Charges (to be divided among the parties) Euro
Value in dispute			
Up to	€ 5,000	230 €	76 €
Between	€ 5,001 and € 9,000	458 €	115 €
Between	€ 9,001 and € 15,000	611 €	153 €
Between	€ 15,001 and € 23,000	764 €	214 €
Between	€ 23,001 and € 30,000	1,375 €	267 €
Between	€ 30,001 and € 45,000	2,215 €	382 €
Between	€ 45,001 and € 90,000	2,673 €	458 €
Between	€ 90,001 and € 150,000	3,055 €	496 €
Between	€ 150,001 and € 225,000	3,819 €	535 €
Between	€ 225,001 and € 300,000	4,582 €	764 €
Between	€ 300,001 and € 450,000	5,346 €	1,070 €
Between	€ 450,001 and € 500,000	6,874 €	1,527 €
Between	€ 500,001 and € 600,000	7,638 €	2,291 €
Between	€ 600,001 and € 750,000	9,165 €	2,673 €
Between	€ 750,001 and € 1,200,000	11,456 €	3,819 €
Between	€ 1,200,001 and € 1,500,000	12,984 €	4,965 €
Between	€ 1,500,001 and € 2,250,000	14,512 €	5,346 €
Between	€ 2,250,001 and € 3,000,000	16,803 €	5,278 €
Between	€ 3,000,001 and € 3,250,000	18,330 €	6,110 €
Between	€ 3,250,001 and € 4,500,000	19,859 €	6,492 €
Between	€ 4,500,001 and € 5,000,000	22,149 €	6,874 €
Between	€ 5,000,001 and € 6,000,000	23,677 €	7,256 €
Between	€ 6,000,001 and € 6,700,000	25,204 €	7,638 €
Between	€ 6,700,001 and € 7,500,000	26,732 €	8,020 €
Between	€ 7,500,001 and € 9,000,000	28,259 €	8,401 €
Between	€ 9,000,001 and € 10,000,000	29,787 €	8,783 €
Between	€ 10,000,001 and € 12,000,000	31,314 €	9,165 €
Between	€ 12,000,001 and € 13,500,000	32,078 €	9,547 €
Between	€ 13,500,001 and € 15,000,000	33,606 €	9,929 €

For greater amounts in dispute the fees and administrative dues shall be provided upon request.

The fees and administrative charges due for each dispute shall be those specifically stated in the scale range which covers the amount of the dispute. The fees and charges for lower scale ranges shall not be in addition.

The amount of the fees are in Euro and may be subject to alteration by the Court, or by the competent National Delegation, to take into account fluctuation of financial markets which may affect the value of the Euro.