

## APPENDIX 1

### **MEDIATION REGULATION**

#### **ARTICLE 1: PURPOSE OF THE MEDIATION**

Mediation is a dispute resolution process by which an independent and impartial third party, the mediator, assists the parties in the solving of their dispute without imposing a solution to them.

The term *dispute* is to be understood as any disagreement, litigation, controversy, dispute, issue, between parties indicating a disagreement, whatever the origin, the nature and the consequences.

#### **ARTICLE 2: IMPLEMENTING THE MEDIATION**

The mediation process is implemented by either:

- a written request to submit the dispute to mediation.

This request may be submitted jointly by the parties to the CIMA, or, alternatively, by the party seeking mediation. In such a case, the CIMA will immediately inform the other party and will request from that party that it agrees to the principle of a mediation.

Failure of that party to reply to the request within one month will amount to a refusal of the mediation.

- a mediation agreement.

The mediation agreement is a contract by which the parties agree to submit their dispute to mediation.

This mediation agreement may be provided by:

- a prior mediation clause in a contract,
- An independent mediation agreement,

A mediation agreement referring to the CIMA's mediation regulation implies the unconditional approval of the parties to the rules of this Regulation.

In all cases, the request must indicate the exact identity of the parties as well as the nature of the dispute.

This Regulation will be sent to the parties who will have to return it, duly signed, within fifteen days of its receipt, together with the attached acceptance form.

- Mediation may also be ordered by judicial decision

### **ARTICLE 3: THE MEDIATOR**

According to the Conseil d'Etat (*Mediation Charter Article 2*)

*« The mediator is an impartial, independent, competent, honest, third party, who is asked by the parties on a mutual agreement to conduct, with all the required diligence, the mediation process of which he has been appointed by the parties to a dispute. »*

*« The recourse to a mediator may also be ordered by the judge in charge of settling the dispute which is being submitted to him/her, upon the approval of the parties. »*

*« A mediation may be handled by several mediators. »*

Each mediator is unique, independent from the parties and impartial; he/she is appointed by the CIMA which may appoint several mediators.

In case the parties agree to appoint a specific mediator, such appointment is submitted to the approval of the CIMA.

Upon being appointed, the mediator shall immediately inform each party and the CIMA, before and during the mediation, of the facts and circumstances which may affect his/her impartiality and independence.

In accordance with the spirit of his/her mission, the mediator is not bound to respect the adversarial principle. He/she is under no duty to achieve a specific result.

### **ARTICLE 4: ORGANIZING THE MEDIATION**

The mediator has the parties sign a mediation agreement.

Once the mediator has been appointed, each party communicates to the other party or parties and to the mediator the names and addresses of the persons authorized to legally commit that party, indicating the potential restrictions of the power of attorney of these persons, as well as the names and qualities of the persons who will represent that party during the mediation. Any justifications shall be remitted to the mediator upon his/her request.

The parties and the persons carrying a power of attorney must remain the same during the entire mediation process.

The mediator and the parties determine together the place where the mediation meetings will take place, the language or languages of the mediation, and more generally decide the manner in which the mediation will get organized.

The parties are free to put a time limit to the mediation and may end it at any time.

The mediator is free to meet the parties separately; however, the information that are obtained by the mediator from the parties during these private meetings may not be disclosed to the other party or parties, unless that party expressly approves such disclosure.

One party may always submit to the mediator, for the mediator's own information, information and documents that such party deems confidential.

## **ARTICLE 5: CONFIDENTIALITY OF THE MEDIATION**

**The mediation is a strictly confidential process.**

The mediator, the parties, and any person associated to the mediation, in any manner whatsoever, must strictly observe this **confidentiality principle**.

The approving of the present regulation automatically entails full adhering to the confidentiality requirement.

By way of consequence, **the mediation is also « without prejudice »**, which means that any information that will be produced during the course of the mediation meetings, whether verbal, written, explained, shown, that will not have previously been disclosed during the course of a prior litigation, shall not be allowed to be produced as evidence during the course of a subsequent litigation or arbitration procedure.

The mediator is bound to observe a strict confidentiality obligation. However, he/she may eventually be discharged of such upon the express and joint approval of the parties.

The members of the CIMA and its employees are bound by the same confidentiality obligation without any exception.

## **ARTICLE 6: ENDING THE MEDIATION**

The mediation may end:

- 1) By a settlement agreement between the parties,
- 2) By a joint declaration of the parties, in writing, at any time, indicating that they do not wish to continue the mediation,
- 3) By a declaration of one of the parties, in writing, at any time, indicating that that party wishes to end the mediation,
- 4) When the deadline of the mediation has expired and is not extended,
- 5) When the rules of the present regulation are not abided by,
- 6) Because it is no longer possible for the mediator to pursue his/her mission; in such a case, another mediation may be organized,
- 7) By a decision of the mediator to end the mediation.

In such a case, prior to ending the mediation, the mediator shall notify the parties, in writing, of his/her intention. The mediator's decision of ending the mediation shall become effective within fifteen days of his/her sending such notification to the parties.

## **ARTICLE 7: EXPENSES AND FEES OF THE MEDIATION**

The expenses and fees of the mediation are set by reference to the schedule determined by the CIMA.

At the beginning of the mediation and considering the nature of the dispute and the probable duration of the mediation, the parties may be required to pay an advance on fees and expenses.

Additional advances may be ordered.

In case one of the parties defaults on the consignment of the required advances within fifteen days of a reminder of the initial consignment request, the CIMA and/or the mediator will notify the other party of such default; such other party may substitute itself to the defaulting party.

In the case where the required advances are not remitted within thirty days of the date of the reminder of the initial consignment request, the mediation is deemed to be abandoned.

As of the date of the ending of the mediation, for whatever reason, the CIMA and/or the mediator establishes a definitive statement of the expenses and fees of the mediation.

The CIMA may receive the entirety of the owed expenses and fees amounts, including advance payments and balance payment, and remit to the mediator the amounts owed to him/her. The CIMA may also receive solely the administrative expenses owed to it and have the mediator directly recover from the parties his/her own expenses and fees.

The parties are informed at the beginning of the mediation of the option chosen by the CIMA and the mediator re. the above.

Except a contrary agreement between the parties, the amounts owed for expenses and fees are shared equally between the parties.