



Arbitration and Mediation Court of the Caribbean Inc.

Mediation Rules

2018

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Introduction

Operating from its base in Barbados, the Arbitration and Mediation Court of the Caribbean Inc. (AMCC) provides dispute resolution services for domestic, regional and international clients, with the capacity to conduct proceedings in any language chosen by the parties. In line with best international practices, the AMCC's procedures deliver independent, efficient and economic services for clients.

These Rules are designed to provide a complete framework for disputing parties, their counsel, arbitrators, mediators and experts involved in **mediation** cases under the auspices of the AMCC. Separate Rules are available for international and non-international arbitration, and a number of other dispute resolution processes via the AMCC's website: www.caribcourt.org.

AMCC Mediation Rules

Article 1: Introductory Provisions

1. Whenever parties have agreed in writing to mediate disputes under these Mediation Rules or have provided for mediation or conciliation of existing or future disputes under the auspices of the Arbitration and Mediation Court of the Caribbean Inc. (“AMCC”) or the Caribbean Court without designating particular Rules, they shall be deemed to have made these Rules, as amended and in effect as of the date of the submission of the dispute, a part of their agreement.
2. The AMCC Mediation Rules (the “Rules”) provide for the appointment of a neutral third party (the “Mediator”) to assist the parties in settling their dispute.
3. Mediation shall be used under the Rules unless, prior to the confirmation or appointment of the Mediator or with the agreement of the Mediator, the parties agree upon a different settlement procedure or a combination of settlement procedures. The term “mediation” as used in the Rules shall be deemed to cover such settlement procedure or procedures and the term “Mediator” shall be deemed to cover the neutral who conducts such settlement procedure or procedures. Whatever settlement procedure is used, the term “Proceedings” as used in the Rules refers to the settlement process beginning with its commencement and ending with its termination pursuant to the Rules.
4. All of the parties may agree to modify any of the provisions of the Rules, provided, however, that the AMCC may decide not to administer the Proceedings if, in its discretion, it considers that any such modification is not in the spirit of the Rules. At any time after the confirmation or appointment of the Mediator, any agreement to modify the provisions of the Rules shall also be subject to the approval of the Mediator.
5. The AMCC is the only body authorised to administer Proceedings under the Rules.

Article 2: Commencement

1. Any party or parties to a dispute may initiate mediation under the auspices of the AMCC by submitting a request for mediation via telephone, email, regular mail, or fax (the "Request for Mediation") to the Registrar (the "Registrar").
2. The party initiating the mediation shall simultaneously notify the other party or parties of the request. The initiating party shall provide the following information to the AMCC and the other party or parties as applicable:
 - a) a copy of the mediation provision of the parties' contract or the parties' stipulation to mediate;
 - b) the names, regular mail addresses, email addresses, and telephone numbers of all parties to the dispute and representatives, if any, in the mediation;
 - c) a brief statement of the nature of the dispute and the relief requested;
 - d) any specific qualifications the mediator should possess.
3. Where there is no preexisting stipulation or contract by which the parties have provided for mediation of existing or future disputes under the auspices of the AMCC, a party may request the AMCC to invite another party to participate in mediation by voluntary submission. Upon receipt of such a request, the AMCC will contact the other party or parties involved in the dispute and attempt to obtain such a submission to mediation.
4. In the event that the other party or parties either declines mediation, or fails to agree to mediation within fourteen [14] days, there shall be no mediation under the Rules and the Registrar shall so advise the parties, in writing.
5. The Request for Mediation shall be accompanied by the registration fee prescribed in the AMCC Schedule of Mediation Costs, without which the Request for Mediation shall not be registered.
6. Where there is a pre-existing stipulation or contract by which the parties have provided for mediation under these Rules, the date of commencement of the mediation shall be the date of receipt by the Registrar of the Request for Mediation and the registration fee. Where no such pre-existing stipulation or

contract exists, the date of commencement of the mediation shall, subject to payment of the registration fee, be the date agreement to mediate is reached by all parties involved in the dispute.

7. The AMCC Court shall appoint a mediator as soon as practicable after the commencement of the mediation, with due regard for any nomination, or method or criteria of selection agreed by the parties, and subject always to Article 14 of these Rules.

Article 3: Representation

Subject to any applicable law, any party may be represented by persons of the party's choice. The names and addresses of such persons shall be communicated in writing to all parties and to the AMCC either at the time of the Request for Mediation or as soon as such representatives are appointed after commencement of the mediation.

Article 4: Appointment of Mediator

1. If the parties have not agreed to the appointment of a mediator and have not provided any other method of appointment, the mediator shall be appointed in the following manner:
 - a) Upon receipt of a request for mediation, the AMCC will send to each party a list of mediators from the AMCC's Panel of Mediators. The parties are encouraged to agree to a mediator from the submitted list and to advise the AMCC of their agreement within fourteen [14] days.
 - b) If the parties are unable to agree upon a mediator, each party shall strike unacceptable names from the list, number the remaining names in order of preference, and return the list to the AMCC. If a party does not return the list within fourteen [14] days, all mediators on the list shall be deemed acceptable for that party. From among the mediators who have been mutually approved by the parties, and in accordance with the designated order of mutual preference, the AMCC Court shall invite a mediator to serve and confirm the appointment.
 - c) If the parties fail to agree on any of the mediators listed, or if acceptable mediators are unable to serve, or if for any other reason the appointment cannot be made from the submitted list, the AMCC Court shall have the

authority to make the appointment from among other members of the Panel of Mediators without the submission of additional lists.

Article 5: Mediation Agreement

Following the appointment of the mediator by the AMCC Court, the Registrar shall send to all parties and the mediator a draft mediation agreement for signature by all.

Article 6: Impartiality of Mediator

1. AMCC mediators are required to abide by the Model Code of Conduct for Mediators in effect at the time a mediator is appointed to a case. Where there is a conflict between the Model Code and any provision of these Mediation Rules, these Mediation Rules shall govern. The Code requires mediators to
 - a) decline a mediation if the mediator cannot conduct it in an impartial manner, and
 - b) disclose, as soon as practicable, all actual and potential conflicts of interest that are reasonably known to the mediator and could reasonably be seen as raising a question about the mediator's impartiality.
2. Prior to accepting an appointment, AMCC mediators are required to make reasonable inquiry to determine whether there are any facts that a reasonable individual would consider likely to create a potential or actual conflict of interest for the mediator. AMCC mediators are required to disclose any circumstance likely to create a presumption of bias or prevent a resolution of the parties' dispute within the time frame desired by the parties. Upon receipt of such disclosures, the AMCC shall immediately communicate the disclosures to the parties for their comments.
3. The parties may, upon receiving disclosure of actual or potential conflicts of interest of the mediator, waive such conflicts and proceed with the mediation. In the event that a party disagrees as to whether the mediator shall serve, or in the event that the mediator's conflict of interest might reasonably be viewed as undermining the integrity of the mediation, the AMCC Court shall appoint a replacement mediator.

Article 7: Vacancies

If any mediator shall become unwilling or unable to serve, the AMCC Court will appoint another mediator, unless the parties agree otherwise, in accordance with the provisions of Article 4 above.

Article 8: Role of Mediator

1. The mediator shall conduct the mediation based on the principle of party self-determination, offering the parties an opportunity to arrive at a voluntary, uncoerced decision in which each party makes free and informed choices as to process and outcome.
2. The mediator may conduct the mediation in such manner as he or she sees fit, having in mind at all times the circumstances of the case and the wishes of the parties.
3. The mediator is authorised to conduct separate or ex parte meetings and other communications with the parties and/or their representatives, before, during, and after any scheduled mediation session. Such communications may be conducted via telephone, in writing, via email, online, in person, or otherwise.
4. The mediator does not have the authority to impose a settlement on the parties but will attempt to help them reach a satisfactory resolution of their dispute. Subject to the discretion of the mediator, the mediator may make oral or written recommendations for settlement to a party privately or, if the parties agree, to all parties jointly.
5. In the event that a complete settlement of all or some issues in dispute is not achieved within the scheduled mediation session(s), the mediator may continue to communicate with the parties for a period of time in an ongoing effort to facilitate a complete settlement.
6. The mediator is not a legal representative of any party and has no fiduciary duty to any party.
7. Unless otherwise agreed by the parties, the mediator will decide the language(s) in which the mediation will be conducted.

Article 9: Parties

1. The parties shall ensure that appropriate representatives of each party have the authority to finalise a settlement and attend the mediation session(s).
2. Prior to and during the scheduled mediation session(s), the parties and their representatives shall, as appropriate to each party's circumstances, exercise their best efforts to prepare for and engage in a meaningful and productive mediation.
3. The parties are free to agree how, and in what form, they will inform the mediator of their respective cases, provided that, unless they have agreed otherwise, each party shall submit to the mediator, no later than seven [7] days before the date agreed between the mediator and the parties for the first scheduled mediation session, a brief written statement summarising their separate case, the background to the dispute and the issues to be resolved, submitting a copy to the other party or parties at the same time.
4. Each written statement should be accompanied by copies of any documents to which it refers, and the parties are encouraged to produce an agreed bundle of key documents to avoid duplication of submissions.
5. Information that a party wishes to keep confidential may be sent to the mediator, as necessary, in a separate communication with the mediator.

Article 10: Privacy

Mediation sessions and related mediation communications are private proceedings. The parties and their representatives may attend mediation sessions. Other persons may attend only with the permission of the parties and with the consent of the mediator.

Article 11: Confidentiality

1. All mediation sessions shall be private, and shall be attended only by the mediator, the parties and any mutually agreed additional attendees previously accepted by all.
2. The mediation process and all negotiations, and statement and documents prepared for the purpose of the mediation, shall be confidential and covered by "without prejudice" or negotiation privilege.

3. The mediation shall be confidential. Unless agreed among the parties, or required by applicable law, neither the mediator nor the parties may disclose to any person any information regarding the mediation or any settlement terms, or the outcome of the mediation.
4. All documents or other information produced for or arising in relation to the mediation will be privileged and will not be admissible in evidence or otherwise discoverable in any litigation or arbitration, except for any documents or other information which would in any event be admissible or discoverable in such litigation or arbitration.
5. The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any judicial or arbitral proceedings.
6. Separately, nothing which is communicated to the mediator confidentially during the course of the mediation by one party shall be repeated to the other party or parties, without the express consent of the party making the communication.
7. The parties shall not rely upon, or introduce as evidence in any judicial or arbitral proceedings, any admissions, proposals or views expressed by the parties or by the mediator during the course of the mediation.
8. There shall be no formal record or transcript of the mediation.

Article 12: Termination

- 1 The mediation shall be terminated:
 - a) by the execution of a settlement agreement by the parties; or
 - b) by a written or verbal declaration of the mediator, that in his or her judgement, further efforts at mediation would not contribute to a resolution of the parties' dispute; or
 - c) by a written or verbal declaration of all parties that it is their view that a settlement cannot be reached and that it is their wish to terminate the mediation; or
 - d) when there has been no communication between the mediator and any party or party's representative for twenty-one [21] days, or the expiry of

any alternative time limit agreed between the parties and the mediator, following the conclusion of the mediation session.

Article 13: Settlement Agreement

1. If terms are agreed in settlement of the dispute, the parties, with oversight by the mediator if the parties so request, shall draw up and sign a settlement agreement, setting out such terms.
2. By signing the settlement agreement, the parties agree to be bound by its terms.

Article 14: Costs

1. The costs of the mediation shall include the registration fee, the mediation fees, time reserved but not used (if any), and any mediator and AMCC expenses, as set out in the Schedule of Mediation Costs (the "Costs").
2. As soon as practicable after the commencement of the mediation, the AMCC will raise invoices on account of the initial Costs, to be paid by the parties in equal shares or in such proportions as they have agreed in writing.
3. In the event that a party fails to pay its share of the initial Costs, another party may make a substitute payment to allow the mediation to proceed.
4. The mediation shall not proceed unless and until the initial Costs has been paid in full.
5. In the event a mediator is appointed, the initial Costs have been paid and the mediation proceeds, at the conclusion of the mediation, the AMCC shall determine any additional Costs payable by the parties and raise and submit further invoices accordingly.
6. Any other costs incurred by the parties, whether in regard to legal fees, experts' fees or expenses of any other nature will not be part of the Costs for the purposes of the Rules.

Article 15: Judicial or Arbitral Proceedings

Unless agreed otherwise between the parties, and notwithstanding the mediation, the parties may initiate or continue any arbitration or judicial proceedings in respect of the

dispute which is the subject of the mediation.

Article 16: Limitation of Liability

1. Neither the AMCC (including its officers and employees), the AMCC Court, the Registrar, any deputy Registrar, or any mediator shall be liable to any party howsoever for any act or omission in connection with any mediation conducted by Reference to the Rules, save:
 - a) where the act or omission is shown by that party to constitute a conscious and deliberate wrongdoing committed by the body or person alleged to be liable to that party; and
 - b) the extent to which any part of this provision is prohibited by applicable law.
2. Neither the AMCC (including its officers and employees), the AMCC Court, the Registrar, any deputy Registrar, or any mediator shall be under any legal obligation to make any statement to any person about any matter concerning the mediation, nor shall any party seek to make any of these persons a witness in any legal or other proceedings arising out of the mediation.

Article 17: Interpretation and Application

The mediator shall interpret and apply these Rules insofar as they relate to the mediator's duties and responsibilities. All other Rules shall be interpreted and applied by the AMCC Court.