

Schedule I

MEDIATION RULES

Where any two or more parties have agreed between them that a dispute arising or having arisen between them shall be submitted - to mediation in accordance with these Mediation Rules;

RULE 1

Definitions

‘Agreement’ is any agreement between the parties embodying a submission of present or future disputes to mediation.

‘days’ means normal working days and shall exclude Saturdays, Sundays and public holidays.

‘the Dispute’ means the disputed issues which are referred to mediation.

‘mediation’ is a process in which parties to a dispute with the assistance of a neutral third party (‘the Mediator’) identify the disputed issues, develop options, consider alternatives and endeavour to reach an agreement. The mediator has no advisory or other determinative role in regard to the content of the dispute or the outcome of its resolution, but may advise on or determine the process of mediation whereby resolution is attempted.

‘Mediator’ means a Mediator who has been nominated by the “Relevant Authority” or agreed by the parties and who has accepted such appointment.

‘Preliminary Meeting’ means a meeting appointed by the Mediator to deal with procedural or administrative matters in connection with the mediation.

RULE 2

Appointment of Mediator

1. Unless otherwise agreed in writing by the parties, the mediation shall be conducted:

- a. by a person or persons agreed between the parties and such person has accepted the nomination;
- or

b. if the parties are unable to agree on the identity of the person or persons to be appointed, by a person or persons nominated by the “a competent Authority”, who accepts the appointment as Mediator.

2. Subject to any written agreement of the parties to the contrary, the provisions of Annex I shall apply.

3. The Mediator shall, within seven (7) days of his or her acceptance of appointment, give written notice to the parties of the time and place of a Preliminary Meeting to be held in accordance with Rule 7, which the parties or their duly authorised representatives shall attend.

4. Prior to or at that Preliminary Meeting, the Mediator may advise any conditions he or she wishes to impose and request the agreement of the parties to such conditions.

RULE 3

Application of Rules

1. These Rules are subject to the law of the Republic of South Africa, and to any agreement between the parties in relation to the mediation process.

2. Otherwise, where the parties to a dispute have agreed to mediation in accordance with these Rules, they are thereby bound to comply with these Rules unless any part thereof is held to be void or voidable, in which case that part shall be severed from the remainder of the agreement.

3. The parties shall endeavour to reach a mutually agreed solution within 60 days from the appointment of the mediator. Pending a final agreement, the disputing parties may consider possible interim solutions.

4. Mutually agreed solutions shall be made publicly available. However, the version disclosed to the public may not contain any information that a disputing party has designated as confidential in accordance with Rule 4.

RULE 4

Confidentiality

1. The Mediator, the parties and all advisers and representatives of the parties shall:

a. except as provided in paragraph 2 of this Rule, keep all information disclosed during and after the mediation process confidential;

b. not use any information disclosed during the mediation process for any purpose other than the mediation;

c. if requested by the Mediator or a party to do so, sign a confidentiality undertaking in the terms of this Rule.

2. The obligation of confidentiality under paragraph 1 above shall apply except:

a. if disclosure is compelled by law;

b. to the extent necessary to give effect to the Agreement, or to enforce any agreement to settle or resolve the whole or any part of the Dispute;

c. where disclosure is only due the occurrence of the mediation and the occurrence of the mediation is relevant to subsequent arbitral, adjudicative or judicial proceedings relating to the Dispute.

RULE 5

Role of the Mediator

1. The Mediator shall be independent of, and act fairly and impartially as between the parties.

2. The Mediator shall assist the parties to negotiate between themselves a mutually acceptable resolution of the Dispute, by:

a. helping the parties to identify and define the issues in dispute;

b. Implementing a procedure which is aimed at achieving resolution of the Dispute quickly, fairly and cost-effectively;

c. where appropriate, suggesting particular dispute resolution techniques for individual issues aimed at narrowing the issues in dispute quickly, fairly and cost-effectively;

d. acting as the facilitator of direct negotiations between the parties.

3. During the mediation process, the Mediator may convene such meetings between the parties as the Mediator considers appropriate, for the purpose of:

a. identifying and defining the issues in dispute; and

b. resolving or narrowing the issues in dispute, on terms acceptable to the parties.

4. The Mediator may decide on the most appropriate way of bringing clarity to the measure concerned. In particular, the mediator may organise meetings between the disputing parties, consult the disputing parties jointly or individually, seek the assistance of or consult with relevant experts and stakeholders and provide any additional support requested by the disputing parties. However, before seeking the assistance of or consulting with relevant experts and stakeholders, the mediator shall consult with the disputing parties.

RULE 6

Role of the Parties

1. The parties shall do all things reasonably necessary for the proper, expeditious and cost-effective conduct of the mediation.
2. Without limiting the generality of paragraph 1, each party shall:
 - a. be expected to participate bona fide in the Mediation process;
 - b. comply without delay with any direction made on procedural matters;
 - c. if not appearing in person:
 - (i) be represented at any Preliminary Meeting by a person or persons with authority to agree on procedural matters;
 - (ii) be represented at any Mediation Meeting by a person or persons with full and unfettered authority to settle the Dispute unless, prior to the Mediation Meeting, it has disclosed to the Mediator and each other party the nature of any limitation on that authority and the procedure required to obtain that party's approval to settle the Dispute.

RULE 7

Preliminary Meeting

1. Unless otherwise agreed by the parties, the Mediator shall convene a Preliminary Meeting with the parties, in person or by teleconference, to be held as soon as practicable after reference of the Dispute to mediation.
2. The purpose of the Preliminary Meeting is for the parties, with the assistance of the Mediator, to:
 - a. discuss and agree on the issues in dispute, or formulate a process by which those issues can be clarified and agreed;
 - b. plan and agree on how a negotiated resolution of the Dispute is to proceed including, where appropriate, a timetable for exchange of position papers and other documents and provision of copies to the Mediator;
 - c. make arrangements, if required, for confidentiality undertakings to be signed by all persons taking part in the mediation process, in accordance with Rule 4;
 - d. make such other planning and administrative arrangements as may be required for the mediation to proceed, including in respect of the terms of appointment of the Mediator.

RULE 8

Termination of the Mediation

1. Any party may terminate the mediation, by written notice to each other party and the Mediator.
2. The Mediator may terminate the mediation, by written notice to each of the parties, if the Mediator forms the opinion that the further conduct of the process will not be productive in achieving a resolution of the Dispute.

RULE 9

Subsequent Proceedings

1. The parties agree that the following will be privileged and will not be disclosed or relied upon or be the subject of a subpoena to give evidence or produce documents in any subsequent arbitral or judicial proceedings arising out of or in connection with the Dispute:
 - a. any view expressed, or admission or concession made, by or on behalf of a party;
 - b. any view expressed, or suggestion made by the Mediator;
 - c. any document created for the purpose of the Mediation.

RULE 10

Liability for Acts or Omissions

The parties agree that the Mediator is not liable to any party for or in respect of any act or omission in the discharge or purported discharge of his or her functions under these Rules unless such act or omission is shown to have been fraudulent.