

Mediation Rules





ASIAN INSTITUTE OF ALTERNATIVE DISPUTE RESOLUTION (AIADR)

AIADR MEDIATION RULES

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Rule 1 Application

- 1.1. These Rules apply to mediation of conflict, dispute or difference arising out of and relating to contractual and other legal relationship where the parties seeking for an amicable resolution agree to adopt the AIADR Mediation Rules.
- 1.2. The parties may agree to vary and/or exclude any of these Rules at any time.
- 1.3. For avoidance of doubt, where any part of the Rules is in conflict with the provision of law that the parties cannot derogate from, the provision of the law shall prevail.

Rule 2 Commencement of Mediation

- 2.1. Any party wishing to commence mediation under the Rules shall submit a written request for mediation in the form set out in Appendix A (hereinafter referred to as the "Request") together with non-refundable registration fees to AIADR and copy the Request to the all other party(ies) to the mediation.
- 2.2. The mediation proceeding commences upon confirmation of registration and notification of commencement by AIADR.
- 2.3. For avoidance of doubt, where the parties' agreement makes imposition on period of time for the conduct of mediation, the time shall begin from the date of appointment of the mediator and not from the commencement of mediation.

Rule 3 Agreement to Mediate

- 3.1 Where the Request is made pursuant to an agreement to mediate under the Rules, the requesting party shall attach a copy of the agreement in the Request.
- 3.2 Where the Request is not made pursuant to an agreement to mediate under the Rules, AIADR shall communicate with the other party to seek agreement and/or confirmation to mediation under the Rules.

- 3.3 Where there is any doubt as to the agreement to mediate under the Rules, AIADR may request further information from any party or take such steps as appropriate to confirm accordingly.

Rule 4 Appointment of Mediator

- 4.1 The parties may jointly nominate one or more mediator(s) to conduct the mediation for confirmation of appointment by the AIADR. The nomination may be made from the list of AIADR mediators.
- 4.2 For avoidance of doubt, in absence of parties' agreement, the number of mediators shall only be one.
- 4.3 Where the parties are unable to agree within five (5) days from the notification of commencement of mediation, the AIADR shall proceed to appoint the mediator from its list of mediators, taking into account parties' agreement on the number of mediator, any qualification and/or other requirements.
- 4.4 Prior to confirmation of appointment by the AIADR, the prospective mediator shall make written declaration of no conflict, availability, impartiality, independence and acceptance of AIADR's Code of Conduct for Mediators and to act in accordance with ethical standards applicable to mediator and mediation.
- 4.5 Any party may object to the appointment of the mediator on the basis of any undisclosed actual or potential conflict of interest or choose to waive the conflict of interest.
- 4.6 Any party may request AIADR for replacement of mediator at any stage of the mediation proceeding, by way of agreement; or for reasons of conflict of interest; or other exceptional circumstances. The party requesting for replacement of mediator shall notify all the other parties and copy the mediator.
- 4.7 AIADR may, upon review of the grounds for objection and/or request for replacement, require the mediator to resign. The parties may jointly nominate mediator for confirmation of appointment by AIADR within five (5) days thereof, failing which, AIADR shall proceed to appoint a suitable mediator.

Rule 5 Role of Mediator

- 5.1 Mediator shall be guided by the principles of fairness, objectivity, independence and impartiality.
- 5.2 Mediator shall assist the parties in an independent and impartial manner to resolve their conflict, dispute and differences amicably.
- 5.3 Where there is more than one mediator, the mediators shall act jointly in mediation.
- 5.4 Mediator shall not have the authority to make any finding of fact nor impose on the parties any partial or complete settlement.
- 5.5 Mediator shall not act as a representative of parties or appear as a witness in any judicial, arbitral or similar proceedings or give advice in respect of the dispute which it had mediated.
- 5.6 Unless the parties have agreed otherwise, mediator may not act as an arbitrator in any arbitral proceedings between the parties.

Rule 6 Representation and Authority

- 6.1 Parties may seek the assistance of any person(s) to represent the parties respectively for the conduct of the mediation subject to full particulars being given to the mediator and the other party ahead of the mediation hearing and/or as directed by the mediator.
- 6.2 Representatives of parties to the mediation shall have full authority and mandate to participate in the mediation and to settle the dispute for and on behalf of the parties, respectively. Mediator shall be at liberty to seek confirmation of authority in the form and content as to be determined by the mediator.
- 6.3 All parties shall act in good faith in the preparation for and in participation of the mediation.

Rule 7 Privacy and Confidentiality

- 7.1 Subject to any agreement between the parties, the Malaysian Mediation Act 2012 and any other applicable law:

- 7.1.1 mediation proceedings are private and confidential; and
- 7.1.2 any settlement agreement between the parties shall not be disclosed save where it is necessary for purposes of implementation and/or enforcement.
- 7.2 No information, documentations exchanged or communications made in the mediation, including views or disclosures made in relation to any proposal for settlement shall be used in any judicial, arbitral and such similar proceedings unless required by applicable law.
- 7.3 The mediator shall require all parties to the mediation proceedings (including authorised representative, expert, advisor or translator) to undertake in writing to keep all information, documentation and communication private and confidential.
- 7.4 Mediator shall ensure that there are no recordings or transcript undertaken in the course of the mediation proceeding, except for purposes of recording any settlement agreement.
- 7.5 The mediator shall not give testimony in any judicial, arbitration or similar proceedings concerning the mediation under the Rules, unless required by law.

Rule 8 Conduct of Mediation

- 8.1 The mediator may conduct the mediation in such manner as the mediator deems appropriate, having due regard to the circumstances of the dispute, wishes of the parties and any practical considerations for a fair and impartial proceeding.
- 8.2 Within ten (10) days upon being appointed or such other time as the mediator may specify, the parties shall exchange statements of the case and any relevant documents and submit to the mediator.
- 8.3 The mediator may require the parties to execute mediation agreement between the parties and the mediator setting out terms of the appointment and fees. The mediator shall provide AIADR with a copy of the mediation agreement, if any.

- 8.4 The mediator may require parties to attend a pre-mediation conference to organise the conduct of the mediation proceedings and to confirm on matters as to the procedure and timelines.
- 8.5 Pre-mediation conference and mediation meetings may be conducted in person at any venue agreed between the parties and the mediator or by teleconference, videoconference, or other electronic means or secured digital platforms.
- 8.6 Unless agreed by the parties otherwise, the mediator may, prior to or in the course of the mediation, communicate with the parties jointly or individually with or without their representatives.
- 8.7 All information, documentation and communication between the mediator and one of the parties in a private caucus, shall not be disclosed or shared with the other unless an explicit instruction, agreement or consent is given by the party.
- 8.8 The mediator may obtain expert advice or assistance in technical matters with the agreement of the parties, costs of which shall be borne by the parties equally.

Rule 9 Settlement Agreement

- 9.1 Any settlement agreement reached between the parties shall be recorded in writing and signed by the parties or its authorised representative and authenticated by the mediator.
- 9.2 The settlement agreement may be recorded by electronic means and executed by way of digital signature.
- 9.3 The mediator shall immediately inform AIADR if settlement agreement has been reached and provide a copy for AIADR's records.

Rule 10 Administrative Assistance

- 10.1 AIADR may, upon request of parties, arrange for suitable venue for meeting, translators, administrative support and/or other facilities to facilitate the mediation.

- 10.2 AIADR provides the following administrative assistance:
- 10.2.1 appointment of suitable mediator;
 - 10.2.2 assisting parties with entering into agreement for mediation under the Rules;
 - 10.2.3 arranging suitable venue;
 - 10.2.4 collection and accounting of fees and costs deposits; and/or
 - 10.2.5 any other related administrative support and services.

Rule 11 Costs and Fees

- 11.1. Appendix B - Schedule of Fees provides the fee scales for international and domestic mediation.
- 11.2. An “international mediation” means a mediation where –
- 11.2.1. one of the parties to the mediation has its place of business in any state other than Malaysia; or
 - 11.2.2. the parties have expressly agreed that the subject matter of the Mediation relates to more than one State.
- 11.3. A “domestic mediation” is any mediation which is not an “international mediation”.
- 11.4. Irrespective of the outcome of the mediation, the parties are jointly and severally liable for the costs and fees as set out in Appendix B - Schedule of Fees.
- 11.5. The costs of the mediation shall include, but are not limited to the following:
- 11.5.1. non-refundable registration fees;
 - 11.5.2. administrative fees;
 - 11.5.3. appointment fees;
 - 11.5.4. mediator(s)’ fees;
 - 11.5.5. facilities provision costs including digital platform or physical venue booking;
 - 11.5.6. other costs and expenses arising from the organising and conduct of the mediation including photocopying, translation, telecommunication, postage and courier etc;
 - 11.5.7. expert fees; and/or

- 11.5.8. translator and translation costs.
- 11.6. Parties are free to agree with the mediator on the Mediator's Fees. Unless otherwise agreed, the Mediator's Fees as set out in 'Appendix B – Schedule of Fees' shall apply.
- 11.7. Prior to the commencement of the mediation, AIADR shall request the parties to pay deposits in equal proportion to cover the estimated mediation costs and fees including mediator's fees, AIADR administrative fees and other expenses as directed by AIADR.
- 11.8. Where one party fails to make payment of its portion of the deposits or costs, the other party may offer to pay the unpaid balance of the deposits and costs.
- 11.9. If any of the monies referred to in Rule 11 is not made within fourteen (14) days, AIADR may order the suspension or termination of the mediation.
- 11.10. AIADR may apply the deposit towards the fees and costs incurred by AIADR and the mediator for the mediation.
- 11.11. Any other expenditure incurred by either party shall be the sole responsibility of the respective party, unless otherwise agreed by the parties.
- 11.12. Upon termination of the mediation, AIADR shall fix the total costs of the mediation and subsequently either require the parties to make further payments or to reimburse the parties of any excess payment.

Rule 12 Termination of Mediation

- 12.1 The mediation shall terminate upon the execution of written settlement agreement by the parties.
- 12.2 The mediator may suspend, terminate or resign as mediator where:
- 12.2.1 the parties and/or their representatives are unable to participate in the mediation meaningfully and reasonably; or

- 12.2.2 the continuation of the mediation may cause significant harm to any party or a third party; or
 - 12.2.3 the parties or party fails to make payment of deposits of the fees and costs as directed by AIADR.
- 12.3 If the mediator wishes to suspend or terminate the mediation, the mediator shall promptly give notice in writing to all the parties and AIADR.
- 12.4 The mediation proceedings shall also be deemed as terminated if:
- 12.4.1 the parties jointly agree and issue written statement of termination to the mediator and the AIADR;
 - 12.4.2 the mediator issues a written declaration that further attempts to mediation are no longer justified;
 - 12.4.3 expiry of sixty (60) days from the date of commencement; or
 - 12.4.4 by the written confirmation of AIADR.

Rule 13 Exclusion of Liability

- 13.1 The mediator, AIADR and its employees shall not be liable to any person, party or participant in the mediation for any act or omission in relation to or arising from the conduct of the mediation under the Rules or any settlement reached.
- 13.2 All statements whether written or oral made in the course of the mediation under the Rules shall not be relied upon by any party or persons to institute or maintain an action for defamation, libel, slander or related complaints.

Appendix A AIADR Mediation Request Form

(1) Particulars of Requesting Party

a. Name of Individual or Authorized Representative(s) (as in Identity Card / Passport):

b. Name of Company (if any):

c. Full Correspondence Address:

d. Contact Number:

e. Email Address:

(2) Particulars of Requesting Party's Legal Representative, if any

a. Name of Firm:

b. Name of Counsel in Charge (as in Identity Card / Passport):

c. Full Correspondence Address:

d. Contact Number:

e. Email Address:

(3) Particulars of the Other Party

a. Name of Individual or Authorized Representative(s) (as in Identity Card / Passport):

b. Name of Company (if any):

c. Full Correspondence Address:

d. Contact Number:

e. Email Address:

(4) Particulars of the Other Party's Legal Representative, if any

a. Name of Firm:

b. Name of Counsel in Charge (as in Identity Card / Passport):

c. Full Correspondence Address:

d. Contact Number:

e. Email Address:

(5) Brief Description and Nature of Dispute



(6) Amount in Dispute

(7) Status of ongoing legal or dispute resolution proceedings

- Arbitration
- Litigation
- Others

Date of Commencement:

Brief Description:

Proceedings Reference:

Leave to Mediate:

Agreement for Arbitration – Mediation – Arbitration, if any:

(8) Mediation Agreement

- The parties have agreed to refer their dispute to mediation at AIADR (attach a copy of Mediation Agreement).
- The parties have agreed to submit their dispute to mediation at AIADR. (attach a copy of Form of Agreement to Mediate)
- The parties have yet to agree to submit their dispute to mediation at AIADR.

(9) Requested Duration of Mediation

Number of days:

(10) Appointment of Mediator

The parties agree to jointly nominate [name of mediator _____ and CV, attached to this Form] as mediator(s), for confirmation of AIADR;

The parties are unable to jointly agree on nomination of mediator(s) and further agree that the AIADR shall appoint one / two mediator(s). Preferred qualification and attributes of mediator(s)

➤ Nationality

➤ Profession

- Language
- Industry

(11) Conduct of Mediation

a. Mediation Type

- Facilitative
- Evaluative

b. Language Agreed –

Proposed Language for Agreement –

c. Venue Agreed –

I declare that all the information filled in this form are true to the best of my knowledge.

Full Name(s) :

NRIC/Passport :

Signature :
.....

Date :

Company stamp (if any) :

Appendix B Schedule of Fees

I. DOMESTIC MEDIATION

1. Registration Fees

A non-refundable registration fees of MYR100.00 shall be payable by the Party submitting the Mediation Request Form.

2. Administrative Fees

The AIADR administrative fees for mediation shall be fixed at MYR150.00 per Mediation matter.

3. Appointment Fees

The fees for selection and appointment of mediator shall be fixed at MYR200.00 per Mediator.

4. Mediator's Fees

Subject to parties' agreement with the Mediator(s), the AIADR recommended Mediator's fees is set out below: -

- (i) MYR2,000.00 per half day for pre-mediation conference or meeting;
- (ii) MYR4,000.00 per day for mediation hearing; and
- (iii) MYR500.00 per hour for review of documents and related works.

5. The costs and fees above are not inclusive of possible taxes or charges and parties have a duty to pay any such taxes or charges (where applicable).

II. INTERNATIONAL MEDIATION

1. For international mediation, the fees and costs are applicable in US Dollar (USD) or Chinese Renminbi (RMB). The same currency will be applicable throughout the mediation.
2. **Registration Fees**
A non-refundable registration fees of USD100.00 or RMB700.00 shall be payable by the Party submitting the Mediation Request Form.
3. **Administrative Fees**
The AIADR administrative fees for mediation shall be fixed at USD150.00 or RMB1,000.00 per Mediation matter.
4. **Appointment Fees**
The fees for selection and appointment of mediator shall be fixed at USD200.00 or RMB1,350.00 per Mediator.
5. **Mediator's Fees**
Subject to parties' agreement with the Mediator(s), the AIADR recommended Mediator's fees is set out below: -
 - (i) USD2,000.00 or RMB13,500.00 per half day for pre-mediation conference or meeting;
 - (ii) USD4,000.00 or RMB27,000.00 per day for mediation hearing; and
 - (iii) USD500.00 or RMB3,400.00 per hour for review of documents and related works.
6. The costs and fees above are not inclusive of possible taxes or charges and parties have a duty to pay any such taxes or charges (where applicable).

MODEL CLAUSES

AIADR Mediation Clause

Parties who wish to have any claims or disputes referred to mediation under the auspices of Asian Institute of Alternative Dispute Resolution (AIADR) may adopt the following mediation clause into the agreement:

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination or invalidity thereof, shall be submitted to mediation in accordance with the Asian Institute of Alternative Dispute Resolution (AIADR) Mediation Rules.

AIADR Standard Submission Clause

Parties who mutually agree to modify the previous agreement in order to provide for mediation under the auspices of AIADR may adopt the following standard submission clause:

Parties hereby agree that the dispute arising out of... shall be settled by mediation under the Asian Institute of Alternative Dispute Resolution (AIADR) Mediation Rules.