
THEMIS INTERNATIONAL PRIVATE
COURT - TIPC

Mediation Rules

Effective as from 1st January 2022

TIPC Mediation Rules

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Preamble

- i. Where any agreement provides for mediation of existing or future disputes under the Rules of TIPC, the parties shall be deemed to have agreed the mediation to be conducted in accordance with the following TIPC rules (The “Rules”) or such amended Rules as the TIPC may have adopted hereafter to be effective prior to the commencement of the mediation.
- ii. The Rules cater for the appointment of an independent and neutral third party (the “Mediator”) to assist the parties in resolving their dispute.
- iii. The “TIPC Schedule of Costs” included in the schedules, in effect at the commencement of the Mediation, shall apply. The TIPC Schedule of Costs may be amended from time to time by TIPC.

Article 1 Commencement of Mediation – Prior Existing Agreements for Mediation

- 1.1 In the event of a prior existing agreement between the parties to mediate under the Rules, any party or parties wishing to commence a mediation pursuant to the Rules, shall file a written request for mediation (the “Request for Mediation”) to the Registrar of the TIPC (The “Registrar”). Such request shall include:
 - i. A description and nature of the dispute and the estimated value of the claim.
 - ii. A copy of the prior Agreement under which the Request is being made.
 - iii. The full names, addresses, telephone numbers, email addresses, nationalities and any other contact details of the parties to the mediation and of their authorized representatives, if any.
 - iv. Any agreement to use a settlement procedure other than mediation, if any, or in the absence thereof, any proposed settlement procedure that the party filing the Request may consider.
 - v. Any agreement with regards to time periods for conducting the mediation, if any, or in the absence thereof, any proposed time periods.
 - vi. Any agreement with regards to the language of the mediation, if any, or in the absence thereof, any proposed language.
 - vii. Any agreement with regards to the location of any physical meetings, if any, or on the absence thereof, any proposed location.
 - viii. Any proposed Mediator by the parties, or the desired attributes of a Mediator to be appointed by TIPC.
- 1.2 The Request for Mediation, inclusive of all accompanying documents, shall be submitted to the Registrar, in electronic format, pursuant to Article 3 of the Rules.

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- 1.3 The party filing the Request, shall simultaneously, send a copy of the Request to all other parties, save if the Request has been filed jointly by all parties to the dispute.
 - 1.4 The Request for Mediation shall be accompanied by the Registration Fee, in accordance with the Schedule of Costs in force on the date the Request is filed. Failure to pay the Registration Fee, the Request for Mediation shall not be filed.
 - 1.5 Where there is a Prior Agreement, the date of commencement of the Mediation, shall be the date of the receipt of the Request for Mediation and the Registration Fee. In the event the Registration Fee is received at a later date, the mediation shall be deemed to have commenced for all purposes on the actual date of receipt of the Registration Fee by TIPC.
 - 1.6 TIPC shall appoint a mediator as soon as possible after the commencement of the mediation, taking into consideration any prior nomination, method or criteria agreed in writing by the parties, and subject to the TIPC Schedule of Costs under the Rules.

Article 2 Commencement of Mediation – No Prior Agreement for Mediation

- 2.1 Where there is no Prior Agreement, any party or parties wishing to refer their dispute and commence mediation under the Rules, shall send a written request to the Registrar. Such Request shall be made and include all information, documents and requirements specified in Article 1 Sections I – viii.
- 2.2 The Request for Mediation, inclusive of all accompanying documents, shall be submitted to the Registrar, in electronic format, pursuant to Article 3 of the Rules.
- 2.3 The Request for Mediation shall be accompanied by the Registration Fee, in accordance with the Schedule of Costs in force on the date the Request is filed. Failure to pay the Registration Fee, the Request for Mediation shall not be filed.
- 2.4 If the Request for Mediation is not made jointly by all the parties to the dispute, the party filing the Request, shall simultaneously, send a copy of the Request to all parties to the dispute. The other parties shall, within 14 days of receipt of the Request for Mediation, notify the Registrar, in writing, whether they agree or not to the mediation of the dispute.
- 2.5 Failure by the other parties to agree to mediation or declining mediation, within a period of 14 days of the receipt of the Request for Mediation, the Registrar shall inform all parties, in writing, of the “non-lieu” of the mediation under the TIPC Rules.
- 2.6 In the event, there is no Prior Agreement, the date of the commencement of the Mediation shall be the date all parties having agreed to mediate in accordance with Article 2.4 and subject to the receipt by TIPC of the Registration Fee.
- 2.7 TIPC shall appoint a mediator as soon as possible after the commencement of the mediation, taking into consideration any nomination, method or criteria, agreed in writing by the parties, and subject to the TIPC Schedule of Costs under the Rules.

Article 3 Communications

- 1.1 All Requests for Mediation to the Registrar, by any party, shall be submitted in electronic format under Articles 1.2 and 2.2 of the Rules. Such electronic formats may be through emails or any electronic filing system or technology platform operated by TIPC at the time the Request for Mediation is submitted. Any other alternative method of communication shall be validated by the Registrar, acting on behalf of TIPC.
- 1.2 Unless otherwise agreed by TIPC or the Mediator, all written communications shall be made electronically.
- 1.3 Any changes in contact details already communicated, shall, as soon as reasonably practical, be notified to the Registrar, the Mediator, all other parties and the authorized representatives.

Article 4 Place and Language of the Mediation

- 1.1. In the absence of any agreement of the parties, the Registrar may determine the location of any physical meeting between the parties and the Mediator, or may invite the Mediator to do so, after his or her appointment. The meetings may furthermore also be held virtually through any agreed communication methods, such as Teams, Zoom, Google Meet or other video conferencing methods.
- 1.2. In the absence of any agreement of the parties, the Registrar may determine the language in which the mediation shall be conducted or may invite the Mediator to do so, after his or her appointment.

Article 5 Appointment of Mediator

- 5.1 Parties may jointly nominate a Mediator which shall be subject to confirmation by TIPC.
- 5.2 If the parties fail to make a joint nomination of a Mediator, TIPC shall, in consultation with the parties, either appoint a Mediator or propose a list of Mediators. The parties shall then jointly select a Mediator from the list, which shall be confirmed by TIPC. In case the parties fail to agree on a Mediator from the list, TIPC shall appoint a mediator.
- 5.3 Prior to his or her appointment or conformation as Mediator, the prospective candidate shall be required to:
 - i. Sign a Statement of Acceptance, availability, impartiality and independence.
 - ii. Disclose in writing to TIPC any facts or circumstances which might raise reasonable doubts regarding his or her independence or circumstances liable to put into doubt his or her impartiality.

TIPC shall communicate such information to the parties who shall accept or reject the Mediator within a period of 15 days from date of receipt of information with regards to the prospective candidate. In the absence of any objection on the basis of Article 5.3 i-ii, from the parties within the period of 15 days, TIPC shall proceed with the confirmation of the candidate as Mediator.

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- 5.4 Appointment or confirmation of a Mediator shall be subject to the prospective candidate's attributes, including but not limited to, qualifications, skills set, nationality, language, experience, availability and ability to conduct the mediation in accordance with TIPC Rules.
 - 5.5 In the event TIPC appoints a Mediator, it shall make reasonable efforts to select a candidate having the attributes, if any, which have been agreed by parties. Acceptance or objection of proposed candidate shall be communicated to TIPC, in writing, within a period of 15 days of receipt of notification of the appointment. In the event of objections, parties shall state the reasons for such objections. If objections and reasons for objections are communicated within a period of 15 days, TIPC shall appoint another Mediator.

Article 6 Statements by the Parties

- 6.1 The parties are free to agree how and in what form they will inform the mediator of their respective cases. The parties shall submit to the Mediator no later than 7 days before the first scheduled mediation session between the Mediator and the parties, a brief written statement describing the case, the root cause of the dispute and the issues to be resolved.
- 6.2 Each written statement shall be accompanied by supporting documentary evidence to which it refers.
- 6.3 All written statements accompanied with supporting documents, shall be submitted simultaneously, to the Mediator and the other parties.

Article 7 Conduct of the Mediation

- 7.1 The Mediator may conduct the mediation in such manner as he or she deems fit, after consultation with the parties and always bearing in mind the circumstances of the case and the requirements of the parties. The Mediator shall inform the parties in writing, of the manner in which the mediation shall be conducted.
- 7.2 The Mediator may communicate with the parties, individually or jointly and either orally or in writing. He or she may organize meetings requiring physical presence at agreed venues or virtual meetings through conference calls, video conferences or any other communications technology, after discussion with the parties.
- 7.3 Communications made in private to the Mediator by one party shall not be repeated to the other party or parties, except with the consent of the party making the communication.
- 7.4 In establishing and conducting the mediation, the Mediator shall treat the parties with fairness and impartiality throughout the mediation.
- 7.5 Each party shall act in good faith throughout the mediation.

Article 8 Termination of the Proceedings

- 8.1 Proceedings which have been commenced and conducted pursuant to the TIPC Rules, shall terminate upon written confirmation of the following:
- i. Parties sign a settlement agreement in accordance with Article 9; or
 - ii. Any party or parties to the mediation, submit a written notification to the Mediator stipulating that in their view a settlement cannot be reached and thus requesting to terminate the mediation; or
 - iii. The Mediator notifies the parties that in his or her judgement, the mediation process will not resolve the dispute between the parties; or
 - iv. The Mediator notifies the parties that the mediation has been completed; or
 - v. The time period for mediation stipulated in Prior Agreement has expired and parties do not agree to extend such time period; or
 - vi. Any party or parties having failed to pay the mediation costs in accordance with the Rules and within the time limit stipulated therein; or
 - vii. Failure to nominate or appoint a Mediator.
- 8.2 In the event a settlement agreement is signed between the parties or of any notification received in accordance with Article 8.1 Sections (ii-vii), the Mediator shall promptly notify TIPC and submit a copy of such notifications received.

Article 9 Settlement Agreement

- 9.1 In the event, the parties agree on terms and conditions for a settlement of the dispute, the parties shall draw up and sign a settlement agreement. The Mediator may assist the parties to draw or review the agreement, if required.
- 9.2 Upon signing of the settlement agreement, the parties agree to be bound by the its terms and conditions.

Article 10 Fees and Costs

- 10.1 The costs of the mediation shall include the Mediator's fees and expenses, time reserved but not used and the administrative charges and expenses of TIPC in accordance with TIPC Schedule of Costs. The parties to the mediation shall be jointly and severally liable to TIPC and the Mediator for such costs.
- 10.2 The party or parties filing a Request shall pay the Registration Fee required in line with Article 1 Section 1.4 and Article 2 Section 2.3 of the Rules. No Request shall be processed in the event of failure to pay the stipulated Registration Fee in accordance with the Schedule of Costs.

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- 10.3 As soon as feasible following receipt of a Request and commencement of the Mediation, TIPC shall request the party or parties filing the Request, to pay a deposit or advance payment to cover TIPC administrative expenses. Such costs shall be borne in equal sums by the parties or in such proportions as the parties may have agreed in writing. During the course of the proceedings, TIPC may request more deposit or advance payment to cover the costs and the Mediator's fees.
 - 10.4 In the event a party fails to pay its share of the deposit or advance payment for costs, another party may effect an additional payment in equivalent amount to allow the mediation to proceed.
 - 10.5 A Mediator shall not be appointed, and the mediation may be terminated unless the deposit or advance payment for costs has been paid in full, except if agreed otherwise.
 - 10.6 In the event a Mediator is not appointed and the mediation does not proceed, but the mediation was commenced pursuant to Article 1 Section 1.4 and Article 2 Section 2.3 of the Rules, TIPC shall invoice the parties for the administrative fees and expenses for immediate payment by the parties. Such payments shall be effected in equal share or in such proportions as may have been agreed between the parties in writing.
 - 10.7 In the event a Mediator is not appointed and the mediation does not proceed, pursuant to Article 2 Sections 2.4-2.5 of the Rules, TIPC shall invoice the parties for its administrative charges for immediate payment by the party or parties having made the Request for Mediation.
 - 10.8 In the event a mediator is appointed and the mediation proceeds, at the conclusion of the proceedings, TIPC shall fix the total costs of the proceedings and shall, as the case may be, either reimburse any excess payments made by the parties or invoice the parties for any balance required pursuant to the Rules. Payments or reimbursements shall be effected in equal shares or in such proportion as may have been agreed, in writing, by the parties.
 - 10.9 Any other costs borne by the parties such as legal fees, expert's fees or expenses or any other expenses, shall not form part of the costs for the purposes of TIPC Rules and shall be borne and remain the responsibility of that party.

Article 11 Confidentiality

- 11.1 All mediation sessions shall be private and confidential and shall be attended only by the Mediator, parties and those authorized representatives identified at commencement of the mediation and communicated to the Registrar.
- 11.2 The mediation process, all negotiations, statements or documents prepared for the purpose of the mediation, shall be confidential and shall be covered by "without prejudice".

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- 11.3 Any settlement agreement between the parties or outcome of the mediation, shall be kept confidential, save to the extent that a disclosure is required by applicable law or necessary for the purposes of its implementation or enforcement.
- 11.4 Unless required by applicable law or in the case of any prior written agreement between the parties, any party shall not in any manner produce as evidence in any judicial, arbitral or similar proceedings:
- i. Any views expressed or suggestions made by any party in the course of the mediation proceedings relating to the dispute or the possible settlement of the dispute.
 - ii. Any admissions made by the other party during the course of the mediation proceedings.
 - iii. Any views or proposals communicated by the mediator during the course of the proceedings.
 - iv. Any fact by a party willing to accept a proposal for a settlement during the course of the proceedings.
 - v. Any documents, statements or communications submitted by another party or by the Mediator in or for the proceedings.
- 11.5 No formal record or transcript of the mediation shall be kept.

Article 12 Compliance

- 12.1 Any dealing between the parties and TIPC, will be subject to any requirement applicable to the parties or TIPC in relation to bribery, fraud, money laundering, terrorist activities, unlawful financing, tax evasion, economic or trade sanctions (“Prohibited Activity”) and TIPC will strictly deal with any party on the understanding that the parties are complying with all such requirements.
- 12.2 TIPC may, at its sole discretion and without the need to give any reason, refuse to action, accept or make any payment, if it deems that by doing so may involve Prohibited Activity, breach of any law or regulation or that by doing so might otherwise expose TIPC to enforcement action from any law enforcement authority or regulatory body.
- 12.3 The parties shall provide to TIPC any information and/or documents reasonably requested by TIPC for the purpose of compliance with laws relating to Prohibited Activity. TIPC may take any action it deems fit to comply with applicable obligations relating to Prohibited Activity, including disclosure to law enforcement authorities or regulatory bodies.

Article 13 Judicial or Arbitral Proceedings

- 13.1 Notwithstanding the mediation and unless agreed otherwise by the parties, Parties may initiate any judicial or arbitral proceedings in respect of the dispute which is subject to the mediation.

Article 14 Limitation of Liability

- 14.1 None of TIPC employees, officers, Registrar, President, Board Members or Mediator shall be liable to any party howsoever for any act or omission with regards to the mediation conducted in accordance with TIPC Rules, save:
- i. If the act or omission is proven by that party as being deliberate and cognizant wrongdoing committed by TIPC or person purported to be liable to that party;
 - ii. The degree to which any part of this provision is illicit by any applicable law.
- 14.2 After the conclusion of the mediation none of TIPC employees, officers, Registrar, President, Board Members or Mediator shall be under any obligation to make any statement to any person or body regarding any matter concerning or related to the mediation. No party shall pursue to make any of these persons a witness in any legal or arbitral proceedings resulting from the mediation.

Article 15 General Provisions

- 15.1 Unless agreed otherwise by all parties, in writing, or unless prohibited by applicable law, the parties may commence or proceed with any judicial, arbitral or similar proceedings to resolve their dispute, notwithstanding the proceedings under the Rules.
- 15.2 Unless agreed otherwise by all parties, in writing, a Mediator shall not act or have acted in any judicial, arbitral or similar proceedings with regards to the dispute which is or was the subject of the proceedings under the Rules irrespective of as a judge, an arbitrator, an expert, a representative or advisor to a party.
- 15.3 Unless agreed otherwise by all parties and the Mediator, in writing, or unless required by applicable law, the Mediator shall not give any testimony in any judicial, arbitral or similar proceedings with regards to any matter of the proceedings under the Rules.
- 15.4 In all matters not explicitly provided for in the Rules, TIPC and the Mediator shall act in the spirit of the Rules.

Article 3 – Mediator’s Fees and Expenses

- 3.1 The Mediator’s fees shall be calculated based on the time spent by the Mediator with regards to the mediation and shall be charged at a rate to be determined by TIPC taking into consideration the particular circumstances of the case, including the case complexity, any specific requirements, expertise, experience or qualifications of the Mediator. Parties will be advised of the rate and agreement of the said rate, shall be confirmed, prior to the appointment of the Mediator. Mediator’s fees will generally not exceed an hourly rate of £500.
- 3.2 Mediator’s expenses may include a charge for time spent travelling.
- 3.3 The Mediator may recover a reasonable amount of expenses incurred in connection with the mediation, subject to being supported by invoices or receipts. The amount of reasonable expenses shall be fixed by TIPC.
- 3.4 Mediator’s fees and expenses shall be fixed by TIPC. Separate fee arrangements between parties and the Mediator are not allowed by the Rules.
- 3.5 Value Added Tax or similar taxes at prevailing rates, may be applicable to charges.

Appendix 2 – Recommended Mediation Clauses

A. Future Disputes

Contracting parties who wish to have recourse to Mediation and/or Arbitration under the Rules of TIPC, may consider including the following clauses in their agreements. Words and blanks in square brackets [], should be deleted or completed as applicable.

1.6.1 Mediation only

“In the event of a dispute arising out of or relating to this agreement, including any question regarding its existence, validity or termination, the parties shall seek settlement to resolve that dispute by mediation in accordance with the TIPC Mediation Rules, which Rules are deemed to be incorporated by reference into this clause.”

1.6.2 Arbitration only

“In the event of a dispute arising out of or relating to this agreement, including any question regarding its existence, validity or termination, the parties shall seek settlement to resolve that dispute by mediation in accordance with the TIPC Arbitration Rules, which Rules are deemed to be incorporated by reference into this clause.

The number of arbitrators shall be [one/three]

The seat, or legal place, of arbitration shall be [City and/or Country]

The language to be used in the arbitration shall be []

The governing law of the contract shall be the substantive law of []”

1.6.3 Mediation and Arbitration

“In the event of a dispute arising out of or relating to this agreement, including any question regarding its existence, validity or termination, the parties shall seek settlement to resolve that dispute by mediation in accordance with the TIPC Mediation Rules, which Rules are deemed to be incorporated by reference into this clause.

In case the dispute is not resolved by mediation within a time period of [] days from the commencement date of the mediation, or any such time period agreed in writing by the parties, the dispute shall be referred to, for final resolution, arbitration under the TIPC Arbitration Rules, which Rules are deemed to be incorporated by reference into this clause.

The language to be used in the mediation and arbitration shall be []

The governing law of the contract shall be the substantive law of []”

In any arbitration commenced pursuant to this clause,

- *The number of arbitrators shall be [one/three]*
- *The seat, or legal place, of arbitration shall be [City and/or Country]”*

B. Existing Disputes

In the event of a dispute where there is no prior agreement between the parties for mediation and/or arbitration, the parties may enter into an agreement to resolve the said dispute. Parties may request the TIPC Secretariat for recommended wording and clauses for this purpose, if required.