

Mediation Rules

Introduction

In some situations, the involvement of an impartial mediator can assist parties in reaching a settlement of a dispute. Mediation is a process under which the parties submit their dispute to an impartial person-the mediator. The mediator may suggest ways of resolving the dispute, but may not impose a settlement on the parties.

The parties might wish to submit their dispute to mediation prior to arbitration. In mediation, the neutral mediator assists the parties in reaching a settlement but does not have the authority to make a binding decision or award. Mediation is administered by the Arbitration and Mediation Center of the Chilean American Chamber of Commerce (hereinafter "Center") in accordance with its Mediation Rules. There is no additional administrative fee where parties to a pending arbitration attempt to mediate their dispute under the Center's auspices.

If the parties want to adopt mediation as a part of their contractual dispute settlement procedure, they can insert the following mediation clause into their contract in conjunction with a standard arbitration provision.

If a dispute arises out of or relates to this contract, or the breach thereof, and if the dispute cannot be settled through negotiation, the parties agree first to try good faith to settle the dispute by mediation administered by the Arbitration and Mediation Center of the Chilean American Chamber of Commerce under its Mediation Rules before resorting to arbitration, litigation, or some other dispute resolution procedure.

If the parties want to use a mediator to resolve an existing dispute, they can enter into the following submission:

The parties hereby submit the following dispute to mediation administered by the Arbitration and Mediation Center of the Chilean American Chamber of Commerce under its Mediation Rules. (The clause may also provide for the qualifications of the mediator(s), method of payment, locale of meetings, and any other item of concern to the parties.)

Filing

A party may file a dispute with the Center and request that the Center invite the other party to join in a submission to mediation. The Center will, upon request, provide a forum to do so. It is sufficient, however, to provide the information outlined below in a letter or by telephone. Upon receipt of this information, the Center will contact the other party or parties to the dispute.

A party submitting a case for disposition must provide the Center with the following:

- names of the parties to the case, including any court docket number;
- the alternative dispute resolution (ADR) procedure requested-e.g., mediation;
- the nature and the amount of the claim (a brief statement of the claim and the response of the other party or parties);
- desired qualifications of the neutral, if any;
- the preferred location of hearing; and
- addresses and telephone numbers of all parties, including counsel, if any.

MEDIATION RULES AND PROCEDURES

1. Agreement of Parties

Where parties have agreed in writing to subject their disputes to the Arbitration and Mediation Center of the Chilean American Chamber of Commerce (hereinafter "Center"), the mediation shall take place in accordance with these rules, as in effect at the date of commencement of the mediation proceeding, subject to whatever modifications the parties may adopt in writing.

2. Initiation of Mediation

Any party or parties to a dispute may initiate mediation by filing with the Center a submission to mediation or a written request for mediation pursuant to these rules. Where there is no submission to mediation or contract providing for mediation, a party may request the Center to invite another party to join in a submission to mediation. Upon receipt of such a request, the Center will contact the other parties involved in the dispute and attempt to obtain a submission to mediation.

3. Request for Mediation

A request for mediation shall contain a brief statement of the nature of the dispute and the names, addresses, and telephone numbers of all parties to the dispute and those who will represent them, if any, in the mediation. The initiating party shall simultaneously file two copies of the request with the Center and one copy with every other party to the dispute.

4. Appointment of the Mediator

Upon receipt of a request for mediation, the Center will appoint a qualified mediator to serve. Normally, a single mediator will be appointed unless the parties agree otherwise or the Center determines otherwise. If the parties have appointed a mediator or specified a method of appointing a mediator, that designation or method shall be followed.

5. Qualifications of the Mediator

No person shall serve as a mediator in any dispute in which that person has any financial or personal interest in the result of the mediation, except by the written consent of all parties. Prior to accepting an appointment, the prospective mediator shall disclose any circumstance likely to create a presumption of bias or prevent a prompt meeting with the parties. Upon receipt of such information, the Center shall either replace the mediator or immediately communicate the information to the parties for their comments. In the event that the parties disagree as to whether the mediator shall serve, the Center is authorized to appoint another mediator if the appointed mediator is unable to serve promptly.

6. Vacancies

If any mediator shall become unwilling or unable to serve, the Center will appoint another mediator, unless the parties agree otherwise.

7. Representation

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 Center.

8. Date, Time, and Place of Mediation

The mediator shall fix the date and the time of each mediation session in consultation with the parties. The mediation shall be held at any convenient location for the mediator and the parties, as the mediator shall determine.

9. Identification of Matters in Dispute

At least ten days prior to the first scheduled mediation session, each party shall provide the mediator with a brief memorandum setting forth its position with regard to the issues that need to be resolved. At the discretion of the mediator, such memoranda may be mutually exchanged by the parties.

At the first session, the parties will be expected to produce all information reasonably required for the mediator to understand the issues presented.

The mediator may require any party to supplement such information.

10. Authority of the Mediator

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. The mediator is authorized to conduct joint and separate meetings with the parties and to make oral and written recommendations for settlement. Whenever necessary, the mediator may also obtain expert advice concerning technical aspects of the dispute, provided that the parties agree and assume the expenses of obtaining such advice. Arrangements for obtaining such advice shall be made by the mediator or the parties, as the mediator shall determine.

The mediator is authorized to end the mediation whenever, in the judgment of the mediator, further efforts at mediation would not contribute to a resolution of the dispute between the parties.

11. Privacy

Mediation sessions are private. 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.

12. Confidentiality

Confidential information disclosed to a mediator by the parties or by witnesses in the course of the mediation shall not be divulged by the mediator. All records, reports, or other documents received by a mediator while serving in that capacity shall be

confidential. The mediator shall not be compelled to divulge such records or to testify in regard to the mediation in any adversary proceeding or judicial forum.

The parties shall maintain the confidentiality of the mediation and shall not rely on, or introduce as evidence in any arbitral, judicial, or other proceeding:

- a. views expressed or suggestions made by another party with respect to a possible settlement of the dispute;
- b. admissions made by another party in the course of the mediation proceedings;
- c. documents, notes, or other information obtained during the mediation proceeding;
- d. proposals made or views expressed by the mediator; or
- e. the fact that another party had or had not indicated willingness to accept a proposal for settlement made by the mediator.

13. Termination of Mediation

The mediation shall be terminated:

- a. by the execution of a settlement agreement by the parties;
- b. by a written declaration of the mediator to the effect that further efforts at mediation are no longer worthwhile; or
- c. by a written declaration of a party or parties to the effect that the mediation proceedings are terminated.

14. Mediation Settlement

Parties who undertake to mediate under these rules agree to carry out any settlement agreement without delay.

15. Exclusion of Liability

Neither the Center nor any mediator is a necessary party in judicial proceedings relating to the mediation.

Neither the Center nor any mediator shall be liable to any party for any act or omission in connection with any mediation conducted under these rules, save that they may be liable for the consequences of conscious and deliberate wrongdoing.

16. Interpretation and Application of Rules

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 Center.

17. Expenses

The expenses of witnesses or any information production for either side shall be paid by the party producing such witnesses or information. All other expenses of the mediation, including required traveling and other expenses of the mediator and representatives of the Center, the expenses of any witness and the cost of any proofs or expert advice produced at the direct request of the mediator, shall be borne equally by the parties unless they agree otherwise.

FILING FEE, COSTS AND COMPENSATION OF THE MEDIATOR

The filing fee payable in U.S. dollars at the time mediation commences is \$500,00. This fee is borne equally or as otherwise agreed by the parties.

Additionally, the parties shall pay the mediator's compensation as agreed with him or established by the Center and the expenses of the Center.

There is no charge to the filing party where the Center has been requested to invite other parties to join in a submission to mediation. However, if the mediation procedure commences, the filing fee will be charged.

Notwithstanding the above mentioned, the requesting party will be charged for the amounts expended by the Center because of his petition.

The expenses of the Center and the mediator, if any, are generally borne equally by the parties. The parties may vary this arrangement by agreement.

Where the parties have attempted mediation under these rules but have failed to reach a settlement, the Center will apply the filing fee of the mediation toward any subsequent arbitration which is filed with the Center within ninety (90) days of the termination of the mediation.

Compensation of the Mediator

The mediator shall be compensated based upon his amount of service, taking into account his stated rate of compensation and the size and complexity of the case.

The Center, based on such considerations, shall arrange with the parties and the mediator an appropriate hourly rate or quantity rate as soon as the mediation is started. If the parties fail to agree on the terms of compensation, the Center shall establish an appropriate rate and communicate it to the parties.

Deposits

Before the commencement of mediation, the parties shall each deposit such portion of the fee covering the cost of mediation, as the Center shall direct and all appropriate additional sums that the Center deems necessary to defray the expenses of the proceeding. When the mediation has terminated, the Center shall render an accounting and return any unexpended balance to the parties.

Refunds

Once the parties agree to mediate, no refund of the filing fee will be made.