

SYNOPSIS ABOUT THE INVESTORS' DISPUTES SETTLEMENT CENTER AFFILIATED TO THE GENERAL AUTHORITY FOR INVESTMENT AND FREE ZONES

In an effort to complete the array of services provided by the General Authority for Investment and Free Zones ("GAFI") to improve the investment climate, the Investors' Dispute Settlement Center was established in 2009 to settle the disputes that may arise between investors through mediation.

When establishing the Center's Mediation Rules, consideration was given to the most recent developments in international practice and comparative legislations, along with the recommendations of the United Nations Commission on International Trade Law ("UNCITRAL").

Mediation is one of the alternatives to dispute resolution through courts, where a neutral person "Mediator" assists the parties in dispute in their quest for an amicable and quick settlement of their dispute in order to save their time, money and effort, without prejudicing their right to resort to litigation.

Since the objective of mediation is to reach an expedited solution that originates from the parties in dispute in a manner that fulfills their interests and spares them litigation's complicated, lengthy procedures and unpredictable outcomes, it is advisable to regulate mediation to ensure a degree of procedural certainty while not undermining mediation's desired goals. We found it, therefore, necessary to regulate the mediation process and the obligations of all those participating in mediation through the following rules.

MEDIATION RULES

DEFINITIONS

Article (1)

- (a) **Mediation:** A process in which a neutral and independent person, “Mediator”, assists the parties to a dispute to conduct all or part of the following:
1. identify the issues in dispute
 2. explore and generate options
 3. communicate with one another
 4. reach a consensual agreement regarding the settlement of the whole, or part of, the dispute
without authority to settle the dispute.
- (b) **Mediator:** A neutral and independent person who assists the parties in reaching amicable settlement through Mediation.
- (c) **Parties:** Parties to mediation who agree to settle their dispute through Mediation.
- (d) **Center:** The Investors’ Dispute Settlement Center affiliated to the General Authority for Investment and Free Zones (“GAFI”).
- (e) **Rules:** The Investors’ Dispute Settlement Center Mediation Rules.
- (f) **Mediation Initiation Agreement:** An agreement signed during the first session between the Parties, or on their behalf, and a Mediator which regulates the Mediation process.
- (g) **Mediation Information:**
1. anything said or done or
 2. any documentation prepared or
 3. any information provided

for the purposes of or in the course of Mediation.

- (h) **Settlement Agreement:** A written instrument signed by the Parties, or on their behalf, that reduces the settlement, whether full or partial, resulting from the Mediation conducted according to these Rules.

APPLICATION OF RULES

Article (2)

The Mediator and the Parties will comply with these Rules including amendments which have been adopted at the time of making a request for Mediation.

The Center is the only body authorized to administer proceedings under the Rules.

REQUEST FOR MEDIATION

Article (3)

Any party to a dispute may submit a written request for Mediation to the Center. Such request shall include a summary of the subject matter of the dispute and proposals for its settlement in addition to the names, addresses and contact details of the parties to the dispute, their representatives, and any other participants proposed to take part in the Mediation, if any.

After the receipt of the request referred to in the preceding paragraph, the Center will extend the invitation in writing to the other party (including by fax or e-mail) to participate in Mediation in accordance with these Rules.

The party to whom the invitation was extended shall respond in writing within 10 (ten) working days from the date of the invitation's issuance with a response to both the invitation to enter into Mediation as well as the settlement proposals, unless the parties to the dispute agree in writing to a different timeframe.

In the case of the expiry of the period prescribed for the acceptance of Mediation without a response or a decline to the invitation in writing, the Center will notify the party who submitted a request for Mediation in writing, that the invitation was rejected.

APPOINTMENT OF MEDIATOR

Article (4)

Parties will agree on the selection of a Mediator among the names listed at the Center's panel of Mediators within 5 (five) working days from the date of the receipt of the written notification of the acceptance of the Mediation invitation. Parties may choose a Mediator from outside the panel after obtaining the approval of the Executive Director of the Center. In case the parties could not agree on the selection of a Mediator within the time frame mentioned above, the Executive Director of the Center will nominate a Mediator from the Center's panel of Mediators.

DISCLOSURE AND REPLACEMENT OF A MEDIATOR

Article (5)

The Mediator shall sign, within 5 (five) working days of the date of his nomination, a declaration confirming his neutrality and independence in relation to the Parties and the subject-matter of dispute. The Mediator shall disclose to the Center in writing any facts or circumstances, which might cause one of the Parties to doubt his neutrality and independence. The Center shall provide such disclosure to the Parties in writing to receive their comments within 5 (five) working days.

If any Party to Mediation objects on the Mediator's nomination, the Center shall appoint another Mediator in accordance with these Rules.

The Center may terminate the process set out above if it becomes clear that the Parties are not committed to taking part in the Mediation process.

Article (6)

The Mediator shall maintain neutrality and independence throughout the Mediation. Should the Mediator find himself, at any time, unable to conduct Mediation in an impartial or independent manner, he must withdraw and inform the Center in writing of that withdrawal.

Article (7)

Unless the Parties agree otherwise in writing, the Mediator may not, having acted as a Mediator in a dispute, act as an arbitrator, attorney, expert or consultant in the dispute that has been subject to Mediation, or in any other related dispute.

Article (8)

In case the Mediator is unable to fulfill his duties as Mediator for any reason or in case of his withdrawal or substitution, another Mediator may be appointed in accordance with article (4) and (5).

THE INITIATION AND DURATION OF THE MEDIATION PROCESS

Article (9)

Mediation must commence within 10 (ten) working days from the appointment of the Mediator, unless agreed to otherwise by the Parties in writing.

In consultation with the Parties, the Mediator will determine the date and timing of the sessions provided that the Mediation term shall not exceed 30 (thirty) working days from the date of the first session. This term may be extended for additional periods with the approval of the Center's Executive Director upon submission of a request signed by the Parties and the Mediator.

Mediation shall commence by convening the first session with all parties during which the Parties and the Mediator will sign the Mediation Initiation Agreement. Appropriate technological means (such as video or audio connection) that are available to both the Parties and the Center could be used to conduct the first Mediation session. This is provided that the identity of the Parties can be validly identified, and confidentiality is maintained.

The sessions will be held at the Center, unless otherwise agreed by the Parties. The Center will provide all facilities and administrative assistance necessary for the conduct of the Mediation process at the Center's premises.

THE MEDIATION PROCEDURES

Article (10)

Parties must attend the Mediation sessions, either in person or through other persons delegated by a special power of attorney that authorizes them to make decisions concerning the settlement of the dispute and signing the Settlement Agreement.

Parties may engage professional advisors to assist and support them in the course of Mediation. Such professional advisors, whether they are licensed to practice law or not, may attend Mediation. The Mediator may place a limit on the number of advisors that attend with a party.

Mediation sessions are private. Persons other than the Parties and their representatives may attend only with the permission of the Parties and with the consent of the Mediator.

Article (11)

Parties must:

- (a) participate in Mediation in good faith.
- (b) provide the Mediator with the information the Mediator deems necessary for the conduct of Mediation.
- (c) co-operate actively in searching for a solution.

Article (12)

The Mediator must observe the principles of procedural justice and equality pertaining to Mediation.

Article (13)

- (a) The Mediator may hold private confidential sessions with each of the Parties.
- (b) The Mediator must obtain the approval of a party before disclosing information from a private confidential session with that party to the other party.

Article (14)

The Mediator may, subject to the consent of the Parties, seek assistance from one or more Mediators at any stage of the Mediation process. The selection and appointment of Mediators would be conducted in accordance with Article (4) and (5).

CONFIDENTIALITY

Article (15)

Parties, the Mediator, other participants in Mediation, and the Center must not disclose Mediation Information, except as provided in Article (16).

Article (16)

Mediation Information may be disclosed if:

- (a) the disclosure is made with the consent of all the participants to the Mediation process whether the Mediator, the Parties, the experts or any other person who took part in the Mediation process;
- (b) there are reasonable grounds to believe that the disclosure is necessary to prevent putting another person's life in danger;
- (c) for the purpose of enforcing or challenging a Mediation Settlement Agreement; or
- (d) for the purpose of establishing or disputing a formal complaint of professional misconduct made against a Mediator or any other person who participated in the Mediation in a professional capacity.

Article (17)

Unless otherwise required by law, Parties and the Mediator as well as all other participants involved in the Mediation process including those in charge of the administration of the Mediation procedures, shall refrain from relying on or representing any of the following as evidence or to give testimony in any arbitral, judicial or administrative proceedings:

- (a) The invitation directed to one of the Parties to participate in Mediation, or the fact that one of the Parties was willing to participate in Mediation.
- (b) The opinions or suggestions made by the Parties in the course of Mediation on a possible settlement of the dispute.
- (c) Data created or statements made by any of the Parties in the course of Mediation.
- (d) Proposals made by the Mediator.
- (e) The fact that one of the parties has expressed a willingness to accept a settlement proposal.
- (f) A document prepared for the purposes of Mediation.
- (g) Mediation Information.

TERMINATION OF MEDIATION

Article (18)

(1) Mediation shall terminate upon written confirmation of termination by the Center to the Parties after the occurrence of any of the following (whichever is earliest):

- (a) the signing by the Parties of a Settlement Agreement;
- (b) the signing of a declaration by the Parties and the Mediator that the Mediation has ended;
- (c) written notification by any party to the Mediator that the party has decided not to continue with Mediation;

- (d) the notification in writing by the Mediator to the Parties and the Center that, in the Mediator's opinion, the Mediation is not likely to settle the dispute between the Parties;
- (e) the notification in writing by the Mediator to the Center that at least one party to the Mediation has failed to attend Mediation sessions on two consecutive occasions.
- (f) the expiry of all the timeframes and limits pertaining to the Mediation process.

(2) The Mediator shall promptly notify the Center of the signing of a Settlement Agreement by the Parties or of any notification or declaration given to or by the Mediator pursuant to article (18), and shall provide the Center with a copy of any such notification.

Article (19)

In the event of a settlement of a dispute, Parties shall reduce their agreement to a Settlement Agreement.

Article (20)

Subject to these Rules, the Mediator shall provide the Center's Executive Director with a written report on the outcome of Mediation within 2 (two) working days from the date of the termination of Mediation.

Article (21)

The Mediator must withdraw from the Mediation if it appears that the objective of Mediation is to violate the laws applicable in the Arab Republic of Egypt.

EXCLUSION OF LIABILITY

Article (22)

The Center, GAFI, and its employees, the Mediator shall not be liable for any act or omission in connection with the Mediation conducted under these Rules.

FEEES AND EXPENSES

Article (23)

The party requesting Mediation shall pay to the Treasury of GAFI 3,000 (three thousand) Egyptian pounds as administrative fees.

In the event the invitation to Mediation was rejected in accordance with article (3), or the Parties could not agree on the selection of a Mediator in accordance with article (4), the amount paid will be reimbursed.

Unless Parties agree otherwise, they will pay the Mediator's fees, associated costs, and the Center's administrative fees in equal shares. The Mediator's fees will be determined by agreement between the Center and the Mediator depending on the nature and value of the dispute and up to a maximum of 20,000 (twenty thousand)

Egyptian pounds for each Mediator unless the Center's Executive Director proposes a higher value in consultation with the Parties. Such fees will be deposited with GAFI's treasury at the latest 5 (five) working days prior to the first Mediation session.

After submitting a report in accordance with article (20), the Mediator will be entitled to receive fees and associated costs of the Mediator as stipulated in the preceding paragraph, regardless of the outcome of the Mediation.

In the case a party or Parties abstain from attending the first session, the Mediator is entitled to 10 (ten) percent of the Mediator fees and the entire associated costs whereas administrative expenses are to be refunded in full.

Article (24)

The Mediator may not accept any money, gifts in kind or in cash or services from the Parties or any other person involved in the Mediation, with the exception of the fees and associated costs of the Mediator as provided in Article (23). s

STANDARDS AND PROCEDURES FOR INCLUSION IN THE PANEL OF MEDIATORS

Article (25)

Standards

Applicants desiring to enroll in the Mediators' panel at the Center should meet the following standards:

A. Mandatory Standards:

- Enjoy good standing and reputation.
- Have not been sentenced in a felony or misdemeanor involving moral turpitude, unless rehabilitated.
- Have a university degree.
- Have taken a Center's approved Mediation course, which may be organized by the Center or by any other entity with expertise in mediation, provided that the total training hours are not less than forty 40 (forty) hours of which 50 (fifty) percent was devoted for practical assessment

B. Preferable Standards:

- Have no less than 15 (fifteen) years of experience in his/her work area.
- Have practical experience in mediation.
- Proficiency in a foreign language.

PROCEDURES FOR INCLUSION IN THE PANEL OF MEDIATORS

Article (26)

Applicants desiring to enroll in the panel of Mediators at the Center should submit a request to the Center's Executive Director enclosing the following:

- Certificates or documents confirming that they meet the necessary requirements for inclusion in the panel of Mediators.
- Summary of their curriculum vitae with a recent photo, indicating the languages they can use in Mediation.
- If they have already served as an expert in the field of dispute resolution, the applicant shall mention the entity through which they practiced dispute settlement.
- Upon receiving the relevant documents from applicants and considering to what extent they meet the requirements, the Center shall notify the applicants of acceptance or rejection of their inclusion in the Panel of Mediators. A copy of the Center's Rules shall be attached to such notification.
- The Center shall regularly update the panel of Mediators.

PROCEDURES FOR REMOVAL FROM THE PANEL OF MEDIATORS

Article (27)

The Center may remove the Mediator from the panel of Mediators in the following cases:

- Mediator's request.
- Proven complaint about the professional conduct of the mediator that has been submitted by any of the Parties.
- Violation by the Mediator of the Center's Rules as updated from time to time.
- Failure by the Mediator to satisfy any of the Center's panel of Mediators_enrollment requirements as updated from time to time.
- Failure by the Mediator to respond to the Center's request to update their data.