

MEDIATION RULES OF THE VIETNAM TRADES ARBITRATION CENTRE

Article 1: Application

1. These Mediation Rules of the Vietnam Traders Arbitration Centre (hereafter referred to as "the Rules") shall apply to mediation of disputes arising out of or relating to legal relationship in commercial activities where the parties have decided to seek an amicable settlement by mediation of their disputes through the Vietnam Traders Arbitration Centre (hereafter referred to as "VTA").
2. The parties may agree to exclude or vary one or some provisions of the Rules at any time, provided that such exclusion or variation does not conflict with any applicable fundamental legal principles of Vietnam.
3. Where any of the Rules is in conflict with a legal provision applicable to the dispute resolution from which the parties cannot derogate, that provision shall prevail.

Article 2: Commencement of Mediation Proceedings

1. The party initiating mediation shall send an application to VTA containing the subject of the dispute and its demands; and shall pay in advance the mediation costs in accordance with Article 18 and the annexed Fees and Costs Schedule.
2. Within 05 working days from the date when the application and advance payment for mediation costs are received, VTA shall inform the other party about the contents of the proposed mediation and the advance payment for mediation costs to be made by that other party in accordance with Article 18 and the Fees and Costs Schedule. Within 15 working days from the date when the notice from VTA is received, the other party shall notify VTA whether it accepts or rejects the proposed mediation.
3. If VTA receives a rejection or does not receive any respond within 15 working days mentioned in paragraph 2 of this Article, the proposed mediation shall be considered as rejected. In such cases, VTA shall inform accordingly the party initiating mediation.
4. Mediation proceedings shall commence when VTA receives a written acceptance and advance payment for costs from the other party. Any such acceptance shall be in writing or in a form equivalent to writing, including telex, fax, data transmission and other appropriate forms as provided by law.
5. Where both parties jointly submit an application for mediation to VTA, the mediation proceedings shall commence when VTA receives such application and advance payment for costs.

Article 3: Number of Mediator(s)

There shall be one mediator unless the parties agree that there shall be two or three mediators.

Article 4: Appointment of Mediator(s)

1. Appointment of mediator(s) shall be subject to the following principles:

- a) If there is only one mediator, the parties shall agree on the name of that sole mediator;
- b) If there are two mediators, each party shall appoint one mediator;
- c) If there are three mediators, each party shall appoint one mediator. The parties shall agree to the name of the third mediator.

(Hereafter the term "mediator" or the term "mediators" shall be referred generally to as "mediator").

2. The parties may:

- a) Appoint a mediator from the list of mediators suggested by VTA or outside such list provided that the appointed person accepts the Rules;
- b) Request the President of VTA to recommend an individual to act as mediator; or
- c) Request the President of VTA to appoint a mediator for them. The President of VTA shall make such appointment within 15 working days from the date when the request is received.
- d) The time for appointment of mediator or making request to the President of VTA for the purpose of mediator recommendation or appointment shall be 15 days from the date when mediation proceedings commences in accordance with paragraphs 4 and 5 of Article 2 of the Rules.

Article 5: Submission to Mediator

The mediator, upon his appointment, requests each party to submit to him/her a written statement on the subject of the dispute. Each party shall send a copy of the written statement to the other party.

At any stage of the mediation proceedings, the mediator may request one or more parties to submit to him additional written statements and information relevant to the dispute or any other document necessary for the mediation proceedings.

Article 6: Representation and Assistance

The parties may designate persons to be their representatives or assistants in the mediation proceedings. The names and addresses of such persons shall be communicated in writing to the other party and to the mediator; such communication shall specify whether the persons are the representatives or assistants in the mediation proceedings.

Article 7: Role of Mediator

The mediator shall make all his efforts to be independent, impartial and objective to assist the parties to reach an amicable settlement of their dispute.

The mediator shall act on the basis of the parties' agreement, relevant trade usages and customs, business practices between the parties and other circumstances surrounding the dispute to conduct mediation.

The mediator may conduct the mediation proceedings in any manner appropriate to the nature and substance of the dispute, and the parties' wishes.

The mediator, at any stage of the proceedings, may make proposals for settlement of the dispute. Such proposals need not necessarily be in writing or be accompanied by a statement of reasons for the proposals.

Article 8: Administrative Assistance

Upon a request of the parties and the mediator, VTA shall provide favorable conditions for the conduct of the mediation proceedings with regard to the mediation time schedule and venue; provide other administrative assistance and designate person(s) who provide assistance for the mediator and the parties during the mediation proceedings.

Article 9: Communication between the Mediator and the Parties

The mediator may meet in person with each party separately or both parties together and may communicate with the parties in any manner.

Unless the parties have agreed on the place for meeting with the mediator, such place shall be determined by the mediator, having regard to the circumstances of the mediation proceedings.

Unless otherwise agreed by the parties, every communication shall be in Vietnamese. If the parties request such communication to be in a foreign language, they shall be responsible for the translation arrangement and the precision of the translation.

The mediator, one or both parties may request VTA to arrange translation for them; the costs for translation shall be borne by the requesting party. If the translation is requested by both parties, the translation shall be equally borne by the parties.

Article 10: Disclosure of Information

Every written communication exchanged between the mediator and a party and every other information received by the mediator from a party shall be forwarded (if in writing) or informed by the mediator to the other party to allow the other party to present its case.

If information provided by a party to the mediator under the condition of confidentiality, the mediator shall not disclose such information to the other party.

All communications and information mentioned in paragraph 1 of this Article shall be sent (if in writing) or informed to VTA by the mediator.

Article 11: Cooperation of the Parties with the Mediator

The parties shall cooperate with the mediator, including compliance with the mediator's requests to submit written statements and other relevant documents; and to attend meetings.

Article 12: Suggestions by the Parties for Settlement of Dispute

Each party may, on his own or at the invitation of the mediator, submit to the mediator suggestions for the settlement of dispute.

Article 13: Settlement Agreement

1. When it appears that there is a possibility for a settlement of the dispute, which may be acceptable to the parties, the mediator shall draft or assist the parties in drafting a settlement agreement.

2. The parties, by signing the settlement agreement, shall end the dispute and be bound by the agreement in accordance with legal provision on civil relations.

Article 14: Confidentiality

The mediator, VTA and parties shall keep confidential all matters relating to the mediation proceedings, including settlement agreement.

Article 15: Termination of Mediation Proceedings

1. The mediation proceedings shall be terminated:

- a) On the date when the parties sign the settlement agreement;
- b) On the date when the mediator issues a written statement to the effect that the dispute fails to be settled through mediation despite the mediator's efforts and no settlement agreement has been reached by the parties;
- c) On the date when one or both parties submit to the mediator a written statement to the effect that the mediation proceedings are terminated;
- d) On the date when the time for appointment or request for appointment of mediator expires, but no appropriate action has been taken;
- e) On the date when the time for submission of the parties' statement and relevant documents at the request of the mediator expires or when the time for payment of mediation fees and costs at the request of VTA expires, but no appropriate action has been taken;
- f) On the date when one or both parties bring the dispute which is the subject of the ongoing mediation proceedings before arbitration or court in accordance with paragraph 2 of Article 16.

2. When any of the termination circumstances mentioned in paragraph 1 of this Article happens, VTA shall give an official written notice to the parties and the mediator of the termination.

Article 16: Resort to Arbitration or Court

1. The parties, during the mediation proceedings, undertake not to initiate any arbitral or judicial proceedings with respect to the dispute that is the subject of the ongoing mediation proceedings.
2. If one or both parties, during the mediation proceedings, initiate any arbitral or judicial proceedings with respect to the dispute that is the subject of the ongoing mediation proceedings, the mediation proceedings shall be automatically regarded as terminated.

Article 17: Mediation Costs

The mediation costs shall include:

- a) Administrative fees as mentioned in Article 8 of the Rules.
- b) A reasonable fee amount for the mediator;
- c) Travel and other expenses of the mediator;
- d) Travel and other expenses of witnesses requested by the mediator with the parties' consent;
- e) Costs of any expert advice and translator services requested by the parties or by the mediator with the parties' consent;

The costs mentioned above shall be borne equally by the parties unless otherwise agreed by the parties. All other expenses incurred at the request of a party shall be borne by that requesting party.

Article 18: Procedure for Payment of Mediation Costs

Unless otherwise agreed by the parties, each party shall pay its own equal apportionment of the advance for the costs mentioned in paragraph 1 of Article 17 of the Rules. The method of payment shall be as follows:

- a) The party initiating the mediation proceedings shall pay in advance an amount equal to 50% of the mediation costs.
- b) The other party, if the invitation to mediation is accepted, shall pay in advance an amount equal to 50% of the mediation costs.
- c) If both parties jointly apply for the mediation proceedings, each party shall pay in advance an amount equal to 50% of the mediation costs.

During the mediation proceedings, VTA may request supplementary payment for

costs in an equal amount from each party and provide the parties with the reason for such payment. If such supplementary payment is not made in full by both parties within 30 days from the date when VTA request is received, the mediation proceedings shall be regarded as terminated in accordance with paragraph 5 of Article 15 of the Rules.

Upon termination of the mediation proceedings, VTA shall calculate the final costs against the advance payments and return any unexpended balance to the parties.

Article 19: Responsibilities of the Mediator in Arbitral or Judicial Proceedings

Unless otherwise agreed in writing by the parties, the mediator shall not act as an arbitrator or representative, witness or counsel of any party in any judicial or judicial proceedings in respect to a dispute the content of which is the subject of the mediation proceedings in that he/she has taken part in.

Article 20: Admissibility of Evidence in Arbitral and Judicial Proceedings

The parties shall undertake not to use in any form as a ground or evidence in arbitral or judicial proceedings in respect to a dispute the content of which is the subject of the mediation proceedings:

1. Any sound or visual records, photos or other written records of the content of meetings held during the mediation proceedings;
2. Views or suggestions made the other party in respect to the possible settlement of the dispute;
3. Admissions made by the other party during the mediation proceedings;
4. Proposals made by the mediator;
5. Acceptance by a party of a proposal for settlement of dispute made by the mediator.