



IIAM MEDIATION RULES 2009

IIAM Mediation / Conciliation is based on the Mediation Rules published by the Indian Institute of Arbitration & Mediation (IIAM), which is intended to help parties and mediators to take maximum advantage of the flexible procedures available in mediation for the resolution of disputes quickly and economically. IIAM Mediation Rules shall apply to the mediation of present or future disputes where the parties seek amicable settlement of such disputes and where, either by stipulation in their contract or by an agreement to mediate, they have agreed that the IIAM Rules shall apply.

The Rules allow the procedure to be as short and as inexpensive as practicable. The costs and expenses of mediation will be governed by the Fee Schedule of the IIAM Mediation Rules.

IIAM Mediators' Code of Professional Conduct and IIAM Mediators' Conduct Assessment Process are given in this Rule Book. Recommended clauses for mediation is also given. Further information about IIAM services, rules and procedures can be found in our website.

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CONTENTS

IIAM MEDIATION RULES

1.	Rule 1 – Introduction; Scope	1
2.	Rule 2 – Initiation of Mediation Process	1
3.	Rule 3 – Appointment of Mediator	1
4.	Rule 4 – Mediation Process	2
5.	Rule 5 – Role of Mediator	2
6.	Rule 6 – Role of Parties	3
7.	Rule 7 – Role of IIAM	3
8.	Rule 8 – Representation	3
9.	Rule 9 – Confidentiality	4
10.	Rule 10 – Settlement	4
11.	Rule 11 – Termination of Mediation	5
12.	Rule 12 – Costs	5
13.	Rule 13 – Feedback	5
14.	Rule 14 – Mediator’s Role in Subsequent Proceedings	6
15.	Rule 15 – Not Legal Counsel or Expert	6
16.	Rule 16 – Exclusion of Liability	6
17.	Rule 17 – Action against the Mediator	6
18.	Rule 18 – Interpretation; Amendment	6

IIAM MEDIATORS’ CODE OF PROFESSIONAL CONDUCT

19.	1 – Mediator Appointment	7
20.	2 – Diligence, Independence, Neutrality, Impartiality	7
21.	3 – Mediation Process	9
22.	4 – Confidentiality	10
23.	5 – Professional Conduct Issues and Complaints	10

IIAM MEDIATORS’ CONDUCT ASSESSMENT PROCESS

24.	1 – Discussion Step	11
25.	2 – Professional Conduct Assessment Process	11
26.	3 – Assessors	12
27.	4 – Confidentiality	12
28.	5 – Publication	12
29.	IIAM Feedback Request Form	13
30.	Recommended Clauses	17



IIAM MEDIATION RULES, 2009

RULE 1. Introduction; Scope.

- A. Where any agreement, submission or reference provides for mediation or conciliation by Indian Institute of Arbitration & Mediation (IIAM) or under the Mediation Rules of the Indian Institute of Arbitration & Mediation (IIAM Rules), the parties shall be taken to have agreed that the mediation or conciliation shall be conducted in accordance with the following Rules, or such amended Rules as IIAM may have adopted to take effect before the commencement of mediation. The Rules are subject to such modifications as the parties may agree in writing at any time.
- B. These Rules shall also apply to the mediation of present or future disputes where the parties seek amicable settlement of such disputes and where, either by stipulation in their contract or by an agreement to mediate, they have agreed that these Rules shall apply. The parties may agree to vary these Rules at any time.
- C. Mediation under these Rules is a confidential, voluntary and private dispute resolution process in which a neutral person or persons (the mediator(s)) helps the parties to reach a negotiated settlement.

RULE 2. Initiation of Mediation Process.

- A. If a dispute arises, a party may request the initiation of mediation by delivering a written request for mediation to the other party or parties with copies to IIAM. Such request for mediation shall contain a brief self-explanatory statement of the nature of the dispute, the quantum in dispute (if any), the relief or remedy sought and nominating a mediator or mediators thought suitable.
- B. A party or parties who receive a request for mediation shall notify any other party and IIAM within 30 days after receipt of the request whether they are willing for mediation and whether any mediator nominated is acceptable. Failure by any party to reply within 30 days shall be treated as a refusal to mediate.

RULE 3. Appointment of Mediator.

- A. Where the parties agree on mediation and agree on a mediator and the proposed mediator is willing to serve, they will notify IIAM. The mediation shall then proceed in accordance with these Rules.
- B. If the parties fail to agree on the appointment of a mediator, IIAM will appoint a single mediator who is prepared to serve.
- C. There shall be one mediator, unless the parties agree that there shall be three mediators. In case of three mediators, each party shall appoint one mediator and the parties may agree on a name of the third mediator, who shall act as the Presiding Mediator. If the parties fail to agree on the third mediator, IIAM shall appoint the third mediator.
- D. Where there are more than two sets of parties having diverse interests, each set shall nominate a person on its behalf and the said nominees shall select the sole mediator and failing unanimity in that behalf, IIAM shall appoint a sole mediator.
- E. The appointment of mediator by IIAM under this Rule is deemed to be made on the agreement of parties as per Sec. 64 (2) of the Arbitration & Conciliation Act, 1996.
- F. No person shall act as mediator in any dispute in which that person has any financial or personal interest in the result of the mediation except by consent of the parties. Before



accepting an appointment, the proposed mediator shall disclose to the parties and to IIAM if IIAM has made the appointment, any circumstances likely to create a presumption of bias or prevent a prompt resolution of the dispute. Upon receipt of the information, IIAM shall immediately communicate the information to the parties for their comments. If any party takes objection to the proposed mediator within 7 days he shall not be appointed. The replacement mediator will be appointed in the same manner as the mediator, who is replaced.

RULE 4. Mediation Process.

- A. Upon appointment of mediator, IIAM will work with the parties to establish the time and location of each mediation session.
- B. The mediator shall commence the mediation as soon as possible after his appointment.
- C. The parties may agree on the procedure to be followed by the mediator in the conduct of the mediation proceedings.
- D. Where the parties do not agree on any particular procedure to be followed by the mediator, the mediator shall follow the procedure hereinafter mentioned, namely:
 - (i) he shall fix, in consultation with the parties, a time schedule, the dates and the time of each mediation session, where all parties have to be present;
 - (ii) he shall hold the mediation at IIAM ADR Centre, IIAM Mediation Clinics or any convenient location agreeable to him and the parties, as he may determine;
 - (iii) he may conduct joint or separate meetings with the parties;
 - (iv) each party shall, ten days prior to the commencement of mediation, provide to the mediator and IIAM, a brief memorandum setting forth the issues, which according to it, need to be resolved, and its position in respect to those issues and all information reasonably required for the mediator to understand the issue; such memoranda shall also be mutually exchanged between the parties;
 - (v) each party shall furnish to the mediator such other information as may be required by him in connection with the issues to be resolved.
- E. Where there is more than one mediator, the mediator nominated by each party shall first confer with the party that nominated him and shall thereafter interact with the other mediators, with a view to resolving the disputes.
- F. The mediator shall use his best endeavors to conclude the mediation within 60 days of his appointment. His appointment shall not extend beyond a period of three months without the written consent of all parties.
- G. The mediator is not bound by the law of procedure or Evidence Act.

RULE 5. Role of Mediator.

- A. The mediator may conduct the mediation in such manner, as he considers appropriate, taking into account the circumstances of the case, the wishes of the parties and the need for a speedy settlement of the dispute.
- B. The mediator shall be guided by the principles of fairness and justice, have regard to the rights and obligations of the parties, usages of trade, if any, and the circumstances of the dispute. The mediator is bound by the IIAM Mediators' Professional Code of Conduct.



- C. The mediator may obtain expert advice in technical matters with the consent of the parties, who shall bear the expenses incurred.
- D. The mediator shall disclose the substance of all information concerning the dispute which he receives from one party, to the other party and the other party shall be given opportunity to present explanations.

Provided that, when a party gives information to the mediator subject to a specific condition that it be kept confidential, the mediator shall not disclose that information to the other party.

- E. The mediator shall attempt to facilitate voluntary resolution of the dispute by the parties, and communicate the view of each party to the other, assist them in identifying issues, reducing misunderstandings, clarifying priorities, exploring areas of compromise and generating options in an attempt to solve the dispute, emphasizing that it is the responsibility of the parties to take decision which effect them; he shall not impose any terms of settlement on the parties.

RULE 6. Role of Parties.

- A. The mediator may communicate with the parties together or with any party separately, including private meetings and each party shall co-operate with the mediator. The parties shall give full assistance to enable the mediation to proceed and be concluded within the time stipulated.
- B. Each party may at its own initiative or at the invitation of the mediator, give suggestions for settlement of the dispute.
- C. The parties must understand that the mediator only facilitates in arriving at a decision to resolve disputes and that he will not and cannot impose any settlement nor does the mediator give any warranty that the mediation will result in a settlement. The mediator shall not impose any decision on the parties.
- D. While no one can be compelled to commit to settle his case in advance of mediation, all parties shall commit to participate in the proceedings in good faith with the intention to settle the disputes.

RULE 7. Role of IIAM.

- A. IIAM will make the necessary arrangements for the mediation, including –
 - a) appointing the Mediator;
 - b) organizing a venue and assigning a date for the mediation;
 - c) organizing an exchange of summaries of cases and documents; and
 - d) providing general administrative support.
- B. IIAM, together with the Mediator, will assist in drawing up the mediation agreement, if necessary.

RULE 8. Representation

- A. The parties may be represented or assisted by persons of their choice. Each party shall notify in advance the names and the role of such persons to IIAM and the other party. Each party shall have full authority to settle the matter before the mediator. The parties will confer upon their representatives the necessary authority to settle the dispute.



- B. If any of the parties are not able to be present personally, he/they can be represented through their counsel or power of attorney holders. But such counsel or power attorney holder shall have the power to enter into any settlement.
- C. If any of the party is assisted by a legal counsel, the other party shall also be entitled to such assistance by a legal counsel.
- D. The names, addresses, phone and fax numbers of all parties to the dispute, and those who will represent them, should be exchanged between the parties and also furnished to IIAM.

RULE 9. Confidentiality.

- A. Mediation is a private and confidential process. Every document, communication or information disclosed, made or produced by any party for the purpose of or related to the mediation process shall be disclosed on a privileged and without prejudice basis and no privilege or confidentiality shall be waived by such disclosure. Confidentiality also extends to the settlement agreement except where its disclosure is necessary for implementation or enforcement.
- B. Mediation proceedings are settlement negotiations, and all offers, promises, conduct and statements, whether written or oral, made in the course of the proceedings, are inadmissible in any litigation or arbitration of the dispute. However, evidence that is otherwise admissible shall not be rendered inadmissible as a result of its use in the mediation session.
- C. The Mediation will be conducted in confidence, and no transcript or formal record will be made. No audio-visual recording will be made of the proceedings. Only the Mediator, the parties and/or their representatives and advisers and IIAM staff as required will be permitted to be present during the mediation.
- D. Nothing that transpires during the course of the mediation is intended to or shall in any way affect the rights or prejudice the position of the parties to the dispute in any subsequent arbitration, adjudication or litigation.
- E. Parties shall maintain confidentiality in respect of events that transpired during mediation and shall not rely on or introduce the said information in any other proceedings as to:
 - (i) views expressed by a party in the course of the mediation proceedings;
 - (ii) documents obtained during the mediation which were expressly required to be treated as confidential or other notes, drafts or information given by parties or mediators;
 - (iii) proposals made or views expressed by the mediator;
 - (iv) admission made by a party in the course of mediation proceedings;
 - (v) the fact that a party had or had not indicated willingness to accept a proposal;

RULE 10. Settlement.

- A. When the mediator finds that there exists elements of settlement, he shall formulate the terms of a possible settlement and submit to the parties for their observations. After receiving their observations, the terms may be reformulated by the mediator.
- B. If the parties reach agreement on the settlement terms, the mediator with the assistance of IIAM, may draw up a settlement agreement on the terms agreed by the parties and the parties may sign the settlement agreement. The mediator shall authenticate the agreement and furnish a copy to each party.



- C. When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them. The settlement agreement shall have the same status as that of an arbitral award and can be executed and enforced as a decree of a court.
- D. In the case of court-referred mediation, where an agreement is reached between the parties in regard to all the issues in the suit or some of the issues, the same shall be reduced to writing and signed by the parties or their power of attorney holder. If any counsel have represented the parties, they shall attest the signature of their respective clients. The agreement of the parties so signed and attested shall be submitted to the mediator who shall, with a covering letter signed by him, forward the same to the Court in which the suit is pending. Where no agreement is arrived at between the parties, before the prescribed time limit or where, the mediator is of the view that no settlement is possible, he shall report the same to the said Court in writing.

RULE 11. Termination of Mediation.

The mediation process shall come to end: -

- (a) Upon the signing of a settlement agreement by the parties or;
- (b) Upon the written advice of the mediator after consultation with the parties that in his opinion further attempts at mediation are no longer justified or;
- (c) Upon written notification by any party at any time to the mediator and the other parties that the mediation is terminated.

RULE 12. Costs.

- A. Unless otherwise agreed, each party shall bear its own costs regardless of the outcome of the mediation or of any subsequent arbitral or judicial proceedings. All other costs and expenses shall be borne equally by the parties and the parties shall be jointly and severally liable to pay to the mediator such costs, including:
 - (a) the mediator's fees and expenses;
 - (b) expenses for any witness or expert advice or opinion requested by the mediator with the consent of the parties; and
 - (c) the IIAM administrative costs in support of the mediation.
- B. The sum designated in IIAM Fee Schedule of Initial Deposits shall be deposited by each of the parties with IIAM before the mediator enters upon the mediation, as a contribution to the cost and proper expenses of the mediation including the mediator's fees and expenses.
- C. The mediator or IIAM may at any time during the mediation require the parties to make further deposits to cover any additional anticipated fees and expenses and suspend the process until such deposit is made.
- D. Any surplus funds deposited shall be returned to the parties at the conclusion of the mediation.

RULE 13. Feedback.

Unless inappropriate in the circumstances, Mediators will, at the conclusion of a mediation, invite the parties and advisers and any co-mediators or assistant mediators, to complete a Feedback Request Form and deposit it in the Box kept for the purpose in the Mediation Centre.



RULE 14. Mediator's Role in Subsequent Proceedings.

The parties undertake that the mediator shall not be appointed as adjudicator, arbitrator or representative, counsel or expert witness of any party in any subsequent adjudication, arbitration or judicial proceedings whether arising out of the mediation or any other dispute in connection with the same contract. No party shall be entitled to call the mediator as a witness in any subsequent adjudication, arbitration or judicial proceedings arising out of the same contract.

RULE 15. Not Legal Counsel or Expert.

- A. All parties recognize that at the mediation session(s) and at every other point of the proceedings:
- (1) neither IIAM nor the mediator will be acting as a legal adviser or legal representative for any of the parties;
 - (2) neither IIAM nor the mediator has a duty to assert, analyze or protect any party's legal rights or obligations, including lien rights, statutes of limitation, or any other time limit or claim requirement;
 - (3) neither IIAM nor the mediator has a duty to make an independent expert analysis of the situation, raise issues not raised by the parties or determine that additional necessary parties should participate in the mediation;
 - (4) neither IIAM nor any mediator can guarantee that a mediation session will result in a settlement.
- B. Parties may be represented by a counsel at any stage of the mediation process, and are encouraged to consult legal counsel concerning the proceedings or any proposed settlement agreements.

RULE 16. Exclusion of Liability.

- A. The parties jointly and severally release, discharge and indemnify the mediator and IIAM in respect of all liability whatsoever, whether involving negligence or not, from any act or omission in connection with or arising out of or relating in any way to any mediation conducted under these Rules, save for the consequences of fraud, dishonesty or violation of IIAM Mediators' Professional Code of Conduct.
- B. No mediator shall be summoned by any party to appear in a Court of law to testify in regard to information received by him or action taken by him or in respect of drafts or records prepared by him or shown to him during the mediation proceedings.

RULE 17. Action against the Mediator.

- A. If any of the parties feel that the mediator is guilty of violation of the IIAM Mediators' Professional Code of Conduct, they shall within a period of one month, initiate the IIAM Mediators' Conduct Assessment Process.

RULE 18. Interpretation; Amendment.

- A. The interpretation of any provision in these Rules shall be made by IIAM.
- B. These rules may be amended or modified by IIAM at any time without notice.



IIAM MEDIATORS' CODE OF PROFESSIONAL CONDUCT

(As adopted based on IMI Code of Professional Conduct)

Trust underpins the mediation process. If the parties do not trust a mediator's integrity in terms of competence diligence, neutrality, independence, impartiality, fairness and the ability to respect confidences, mediation is unlikely to succeed.

The IIAM Mediators' Code of Professional Conduct ("the Code") provides users of mediation services with a concise statement of the ethical standards they can expect from Mediators who choose to adopt its terms and sets standards that they can be expected to meet.

Users who believe the standards established in this Code have not been met may prefer a complaint to IIAM on the Mediators' conduct Assessment.

The Mediators under the IIAM Panel, IIAM Community Mediation Service or under IIAM Accredited Mediation Providers are required to make known to users that the Code governs their professional mediation practice.

For the purposes of this Code, Mediation/Conciliation is defined as a process where two or more parties appoint a third-party neutral ("Mediator") to help them in a non-binding dialog to resolve a dispute and/or to conclude the terms of an agreement.

1. MEDIATOR APPOINTMENT

A. Promotion of Mediators' services

Subject to applicable laws and to regulations governing professional practice, Mediators will present and promote their practice in a truthful way. They may quote freely from, and link to, their Profile on the IIAM website and they are free to replicate that Profile, or extracts from it, for their own professional purposes.

B. Appointment

Before the mediation begins, Mediators will advise the parties (eg by way of directing them to the Mediator's Profile on the IIAM website, or in the mediation agreement):

- about their relevant background and experience
- about the code of conduct the Mediator will observe
- about the process that will apply in the unlikely event of a party believing the Mediator has not met the standards of the stated code of conduct, and
- that at the end of the process they will be invited to offer written feedback on the process and on the Mediator's role

2. DILIGENCE, INDEPENDENCE, NEUTRALITY, IMPARTIALITY

A. Diligence

Mediators may accept an assignment to act as Mediator in any situation where they feel competent to serve in that capacity.

B. Independence, Neutrality and Impartiality

- (i) Mediators will not accept an appointment without first disclosing anything within their knowledge that may, or may be seen to, materially affect their independence neutrality or impartiality. This duty to disclose is a continuing obligation throughout the mediation process.



- (ii) The existence of circumstances potentially affecting, or appearing to affect, a Mediator's independence, neutrality or impartiality will not automatically imply unfitness to act as a mediator provided these circumstances have been fully disclosed and addressed to the satisfaction of the parties and the Mediator.
- (iii) Mediators will always act in an independent, neutral and impartial way. They shall act in an unbiased manner, treating all parties with fairness, quality and respect. If at any time a Mediator feels unable to conduct the process in an independent, neutral and impartial manner, (s)he will express that concern and will offer to withdraw from the mediation. Such circumstances include:
 - financial or personal interests in the outcome of the mediation
 - existing past or future financial, business or professional relationship with any of the parties or their representatives about which the Mediator is aware.
 - other potential source of bias or prejudice concerning a person or institution which may affect that Mediator's independence, neutrality or impartiality or reasonably create an appearance of partiality or bias.

C. Conflicts of Interest

- (i) Mediators will conduct reasonable inquiries to determine if any interests, conflicts of interests or potential biases may exist. They will have a continuing duty to disclose any interests, conflicts of interests or potential biases that may become apparent during the mediation process.
- (ii) Following any such disclosures, a Mediator will decline to participate as a mediator in a particular case if any of the parties raises an objection, unless a contract or applicable law or Court order nevertheless requires the Mediator's participation. Even then, if a Mediator personally believes that the matters disclosed would inhibit their actual impartiality, the Mediator should withdraw as the mediator.
- (iii) After accepting appointment, and until the mediation process ends, Mediators will not enter into financial, business, professional, family or social relationships or acquire financial or personal interests that are likely to affect or might reasonably create the appearance of conflict of interest, partiality or bias, without making a prior disclosure to all the parties and gaining their consent.
- (iv) Within 12 months following the end of a mediation, Mediators will not represent in an advisory capacity any party to a mediation in the same or a substantially related matter, unless all parties to the mediation expressly consent to that representation after full disclosure. Acting as a neutral in other dispute resolution proceedings (eg as a mediator or arbitrator) that may involve some or all of the parties will not be considered a *representation in an advisory capacity* for the purposes of this clause.
- (v) At no time following the end of a mediation will Mediators adduce evidence or testify on behalf of one of the parties in making or defending a claim against another party to the same mediation where they have acquired confidential information from the other party, unless all that information is no longer confidential or unless the party protected by the confidentiality gives consent.



3. MEDIATION PROCESS

A. Procedure

Mediators will satisfy themselves that the parties to the mediation and their advisers understand the characteristics of the mediation process, their roles as parties and advisers, and the role of a mediator. The Mediator will ensure that before the mediation begins, the parties have understood and agreed the terms and conditions which will govern the mediation including those relating to obligations of confidentiality on the Mediator and on the parties. It is best practice for those terms to be contained in a written Mediation Agreement unless the parties or the circumstances dictate otherwise.

B. Fairness and Integrity of the process

- (i) Mediators will explain the mediation process to the parties and their advisers, and be satisfied that they consent to the process being used and to the Mediator selected (unless applicable law, court rules or contract require use of a particular process and/or mediator). Mediators will ensure that, if there are to be any pre-mediation private communications with the Mediator, all parties are aware they will have equal opportunity to raise issues.
- (ii) Mediators will conduct the process with fairness to all parties and will take particular care to ensure that all parties have adequate opportunities to be heard, to be involved in the process and to have the opportunity to seek and obtain legal or other counsel before finalizing any resolution.
- (iii) Mediators will take reasonable steps to prevent any misconduct that might invalidate an agreement reached at a mediation or create or aggravate a hostile environment. Mediators will also be satisfied that the parties have reached agreement of their own volition and knowingly consent to any resolution.

C. Termination of the process

- (i) The Mediator will ensure the parties understand that they may withdraw from the mediation at any time by informing the Mediator and all other parties without being required to give any justification for doing so.
- (ii) Mediators may withdraw from a mediation if a negotiation among the parties assumes a character that to the Mediator appears unconscionable or illegal.

D. Feedback

Unless inappropriate in the circumstances, Mediators will, at the conclusion of a mediation, invite the parties and advisers and any co-mediators or assistant mediators, to complete a Feedback Request Form and deposit it in the Box kept for the purpose in the Mediation Centre.

E. Fees

- (i) Mediators will, before accepting appointment, agree with the parties how their fees and expenses will be calculated, and how they will be paid by the parties (and if shared between the parties, in what proportions). Mediators who withdraw from a case will return to the parties any fees already paid relating to the period following withdrawal.
- (ii) Mediators will not suggest to the parties that their remuneration should be based on or related to the outcome of the mediation.



4. CONFIDENTIALITY

- A. Mediators will keep confidential all information acquired in the course of serving as a mediator in a mediation unless:
- (i) compelled to make a disclosure by law, by a Court of Law or by some governmental agency having appropriate authority and jurisdiction or
 - (ii) required under paragraph 5B, in which event the recipients of the confidential information shall themselves be bound to maintain the confidentiality, or
 - (iii) the specific information comes into the public domain (otherwise than as a result of a disclosure by the Mediator), or
 - (iv) the parties release the Mediator from the confidentiality restriction, or
 - (v) necessary to defend the Mediator from any proceedings or charges for which (s)he risks incurring any liability.
- B. The Mediator may, however, disclose having previously served as a mediator in a mediation involving one or more of the parties, provided none of the details of that case are disclosed.
- C. Mediators will discuss confidentiality with the parties before or at the beginning of the mediation and obtain their consent to any communication or practice by the Mediator that involves the disclosure of confidential information.
- D. Mediators may use or disclose confidential information obtained during a mediation when, and to the extent that, they believe it to be necessary to prevent death or serious physical harm or damage from arising or believe an illegal act may realistically arise. Before using or disclosing such information, if not otherwise required to be disclosed by law, Mediators must, if they consider it appropriate, make a good faith effort to persuade the party and/or the party's counsel or other advisers, to act in such a way that would remedy the situation.

5. PROFESSIONAL CONDUCT ISSUES AND COMPLAINTS

- A. The Mediator shall follow and observe the Code strictly and with due diligence and shall not carry on any activity or conduct which could reasonably be considered as conduct unbecoming of a mediator.
- B. The Mediator may consult the institution or IIAM about any professional or ethical dilemmas.
- C. Where the Mediator is subject to the Code, a party to a mediation who believes there has been a lack of compliance with this Code may submit a complaint to this effect to IIAM on the Mediators' conduct Assessment.

Adherence to this Code does not replace or qualify any legislation or rules regulating individual professions or any more extensive rules of conduct which may apply in specific circumstances.



IIAM MEDIATORS' CONDUCT ASSESSMENT PROCESS

(As adopted based on IMI Professional Conduct Assessment Process)

The principles of diligence, independence, neutrality, impartiality, fairness and integrity are vital to the mediation process, and are set out in IIAM Mediators' Code of Professional Conduct. Users of mediation services are entitled to trust that IIAM empanelled Mediators adhere rigorously to these basic principles. In the unlikely event of a failure by an IIAM Mediator to observe the IIAM Code, a Party to the mediation conducted by an IIAM Mediator can apply to have the Mediator's conduct independently assessed under this process.

The Assessment Process involves a maximum of two steps:

- Discussion
- Professional Conduct Assessment

All complaints regarding an IIAM Mediator's non-compliance with the IIAM Code must first be discussed with the Mediator. If this does not resolve the complaint, the Party may file a formal request for a Professional Conduct Assessment.

1. Discussion Step:

A Party in a mediation who believes that an IIAM Mediator has not complied with the mediator's code of conduct, and who wishes to file a complaint, must first raise the matter with the Mediator in person within one month of becoming aware of the alleged breach of the Code. This Discussion Step will take place in confidence, and all parties will be bound to treat all non-public information as confidential.

2. Professional Conduct Assessment Process:

- A. The Professional Conduct Assessment Process may be activated by a Party in a mediation to seek redress for an alleged code of conduct breach if the Discussion Step has not resolved the issue, within a period of one month. To activate the Assessment Process, the Party shall file a formal complaint to the Director IIAM. IIAM will promptly acknowledge receipt and send a copy to the Mediator whose conduct is the subject of the Complaint.
- B. If the complaint is seen prima-facie to be frivolous, the same will be dismissed by the Director IIAM and intimated to the Party.
- C. After having received an admissible Application, IIAM will promptly appoint a Professional Conduct Assessor being an independent lawyer, retired Judge or other IIAM empanelled Mediator to hear the complaint and the Mediator's case and decide upon the resolution.
- D. The Assessor will decide the appropriate process in each case, which may involve one or more hearings in person, be conducted by written, electronic, video or telephonic communications, or any suitable combination. The Assessor will in all cases strive to understand all relevant facts, and allow the Party and the Mediator full opportunity to present their respective cases and to rebut the other side's arguments. Each will have the right to be assisted by counsel, and the Assessor may call and hear witnesses and experts. The Assessment sessions will be private.
- E. The Assessment Process will last no more than three months following appointment of the Assessor by IIAM. At the end of the Assessment Process, the Assessor will issue a decision having one or more of the following outcomes:
 - (i) Reject all or part of the Complaint
 - (ii) Uphold all or part of the Complaint, but without issuing any sanction
 - (iii) Issue a written warning or reprimand



- (iv) Suspend the IIAM Mediator for up to one year
 - (v) Permanently withdraw the mediator from IIAM Panel
 - (vi) Make an order as to costs of the Assessment Process if the parties do not agree to share the costs of the Assessment Process equally.
- F. The decision of the Assessor will be accompanied by its reasons. The decision will become effective as an arbitral award.
- G. When imposing the sanction of suspension or permanent withdrawal of the IIAM Mediator, the Assessor may determine that this sanction will be suspended unless on a subsequent occasion the Mediator is in further breach of the Code of Professional Conduct within a certain period.
- H. The Assessor will immediately send a copy of their decision to the:
- o Party
 - o Mediator against whom the complaint is directed
 - o IIAM
- I. Subject to section E(vi), the costs of the Assessment Process will be shared equally by the Party and the Mediator.
- 3. Assessors:**
- A. IIAM will strive to appoint Assessors who are reasonably local to the Parties and the Mediator in each case in order to contain costs.
- B. An estimate of costs will be provided to the parties promptly after the Assessor is appointed.
- C. The Assessor may be challenged by the Party or by the Mediator, in the event of actual or potential conflict of interest or for any other valid reason which could compromise impartiality. Decisions on challenges will be made by the Director IIAM.
- D. Any challenge by the Party or Mediator must be presented to IIAM no later than 7 days after notification of the identity of the Assessor and be fully supported by reasons.

4. Confidentiality

Assessors as well as all parties and IIAM are under an obligation to maintain confidentiality of all information to which they become exposed during the Assessment Process, except to the extent that publication of a final and binding decision may be ordered.

5. Publication

IIAM will have the power to publish the decisions of the Assessor in such manner(s) as it may deem appropriate, but will not publish any details which may enable the identification of the parties or disclose any confidential information.



IIAM FEEDBACK REQUEST FORM

(CONFIDENTIAL)

(As adopted based on IMI guidelines)

This Feedback Request will take just 10 minutes to complete

Every IIAM Mediator has attained professional competency in the practice of mediation. On completion of each mediation, the Mediator will invite the participants to complete this Feedback Request Form.

Your feedback will:

- Help future users to have more information about working with this Mediator
- Provide the Mediator with an opportunity to know your perception of the mediation process on this occasion, how effective (s)he was, and why, and
- Enable IIAM to prepare the Mediator's Feedback Digest which is a professional requirement of all IIAM Mediators.

You may complete this Feedback Request Form and deposit the same in the Box maintained in the Mediation Centre. The Feedback Digest may be relied upon by other parties in the future in deciding whether to appoint this Mediator, so please try to be fair and helpful as possible in providing your comments. Please try not to be influenced unduly by the outcome of your mediation but to focus on the Mediator him/herself and on any particular contributions that (s)he may have made that you found to be especially important. The Mediator's task is a challenging one. In your responses, please try to appreciate this and to be specific and constructive as possible.

FEEDBACK

Name of Mediator: _____

Mediation Institution: _____

Start Date of Mediation: _____

End date of Mediation: _____

Place of Mediation: _____

Nature of mediated matter: _____

Please check the appropriate boxes, below and add any comments you wish to make.

Summary Questions:

1. On a scale of 1-5 (1 = low; 5 = high), how likely are you to use this Mediator again?

1 2 3 4 5 Not Applicable

Comment: _____

2. Would you recommend this Mediator to others?



Yes No Not sure

Comment: (If Yes, why? If No, why not?) _____

3. On a scale of 1-5 (1 = low; 5 = high), how would you rate the mediator's skill and ability?

1 2 3 4 5 Not Applicable

Comment: _____

Specific Questions:

4. How did you identify or appoint this mediator?

- IIAM Website
- Suggested by a colleague, law firm or other professional
- Appointed by an institution
- Suggested by one of the other parties
- Other: _____

5. If you perceive that the Mediator's skills made a decisive difference in the outcome, which particular skills were they?

Comment: _____



6. How satisfied are you with the costs of the mediator?
(1=very dissatisfied; 2=dissatisfied; 3=neutral; 4=satisfied; 5=very satisfied)

1 2 3 4 5 Not Applicable

Comment: _____

7. How do you rate your overall satisfaction with the mediation process and the result obtained by the parties?
(1=very dissatisfied; 2=dissatisfied; 3=neutral; 4=satisfied; 5=very satisfied)

1 2 3 4 5 Not Applicable

Comment: _____

8. If a dispute resolution organization was involved in the selection and appointment of the mediator, please indicate how you rate your overall satisfaction with that institution's support of the dispute resolution process?
(1=very dissatisfied; 2=dissatisfied; 3=neutral; 4=satisfied; 5=very satisfied)

1 2 3 4 5 Not Applicable

Comment: _____

9. Did you resolve most your issues as a result of the mediation?

Yes No

Independently of whether the mediation resulted in a resolution, what was worthwhile about participating in mediation?

Comment: _____



Recommended Clauses:

Future Disputes:

Parties to a contract who wish to have any future disputes referred to mediation under the IIAM Mediation Rules may insert in the contract a clause in the following form:

Suggested Med-Arb Clause:

“Any dispute or difference arising out of or in connection with this contract shall first be referred to mediation at the Indian Institute of Arbitration & Mediation (IIAM) and in accordance with its then current Mediation Rules and as per the Arbitration & Conciliation Act, 1996. If the mediation is abandoned by the mediator or is otherwise concluded without the dispute or difference being resolved, then such dispute or difference shall be referred to and determined by arbitration as per the Arbitration & Conciliation Act, 1996 by IIAM in accordance with its Arbitration Rules”.

Suggested Mediation Clause:

“In the event of any dispute arising out of or in relation to this contract, including any question regarding to its existence, validity or termination, the parties shall seek settlement of that dispute by mediation/conciliation in accordance with the IIAM Mediation Rules”

Existing Disputes:

Parties who wish to mediate an existing dispute, but there is no agreement between the parties for mediation, can either enter into an IIAM Mediation agreement or can initiate mediation without any agreement.

For more information please contact IIAM Administrator: adm@arbitrationindia.com
