



IDAC INDIA'S MEDIATION RULES - 2020



Regd. Office :

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Vadodara - 390023, Gujarat, India

Head Office :

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Article 1 - Introduction; Scope

- A. The International and Domestic Arbitration Centre, India (IDAC India) is an independent Alternate Dispute Resolution Institution incorporated as a non-profit company under Section 8 of the Indian Companies Act, 2013. The purpose of the Centre is to administer the resolution of contractual disputes between natural persons, legal persons and other organizations by the process of arbitration. IDAC India is the only body authorized to administer arbitrations under the IDAC India Rules.
- B. Where under any agreement, submission or a reference which provides for mediation or conciliation, the parties shall be deemed to have agreed that the mediation or conciliation shall be conducted in accordance with the IDAC India Mediation Rules or such amended Rules as IDAC India may have adopted to take effect before the commencement of mediation.
- C. These Rules shall also apply to the mediation of present or future disputes where the parties seek amicable settlement of such disputes. Where, either by stipulation in parties contract or by an agreement or on a reference to IDAC India of settlement of dispute by mediation by any authority to mediate, the parties have agreed that these Rules shall apply. The parties may agree to vary these Rules at any time with due information to IDAC India well in-time.
- D. 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.

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Article 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 IDAC India. 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 IDAC India within 10 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 10 days shall be treated as a refusal to mediate.
- C. On receipt of Mediation request from a party to a dispute, IDAC India shall send an invitation to mediate, nominating a Mediator or Mediators as the case may be and scheduling the date, time and venue of the 1st session of mediation. The party who receive the invitation for mediation can either attend the mediation session as per the invitation before the mediator, or can notify his inability to attend on the scheduled date or express his objection to the nominated mediator, so that IDAC India can nominate another mediator or reschedule the 1st session based on the convenience of the parties and the mediator. If there is no response from the opposite party within 15 days or 3 days prior to the first session whichever is earlier or if he fails to appear on the scheduled date, it shall be treated as a refusal to mediate.
- D. Where the mediation is initiated, IDAC India shall send an invitation to the Parties to attend the first session of mediation, mentioning the name of the Mediator or Mediators as the case may be and the date, time and venue of the 1st session. The parties can either attend the mediation session as per the invitation before the mediator, or can notify his/ their inability to attend on the scheduled date or express his/their objection to the nominated mediator, so that IDAC India can nominate another mediator or reschedule the 1st session based on the convenience of the parties and the mediator. If there is no response from the parties or if one or all the parties fail to appear on the scheduled date, it shall be treated as a refusal to mediate.

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Article 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 IDAC India. The mediation shall then proceed in accordance with these Rules.
- B. If the parties fail to agree on the appointment of a mediator, IDAC India 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, IDAC India 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, IDAC India shall appoint a sole mediator.
- E. The appointment of mediator by IDAC India 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. Before accepting an appointment, the proposed mediator shall disclose to the parties and to IDAC India if IDAC India has made the appointment, any circumstances likely to create a presumption of bias or prevent a prompt resolution of the dispute. If any disclosure is made, IDAC India shall immediately communicate the information to the parties for their comments. If any party takes objection to the proposed mediator within 5 days he shall not be appointed. The replacement mediator will be appointed in the same manner as the mediator, who is replaced.

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Article 4 - Mediation Process

- A. Upon appointment of mediator, IDAC India will work with the parties to establish the time and location of each mediation session.
- B. The parties may agree on the procedure to be followed by the mediator in the conduct of the mediation proceedings.
- C. Where the parties do not agree on any particular procedure to be followed by the mediator, the mediator shall follow the procedure hereinafter mentioned, viz:
 - 1) 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;
 - 2) He shall hold the mediation at IDAC India Premises or any convenient location agreed to by him and the parties.
 - 3) He may conduct joint or separate meetings with the parties;
 - 4) The party(s) or their lawyers shall, if so required, before the commencement of mediation, provide to the mediator and IDAC India, a pre- mediation brief statement of facts 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;
 - 5) Before the commencement of mediation, based on the request of the lawyers of the parties or by the mediator, IDAC India shall convene a pre- mediation conference with the mediator and lawyers, so as to have a preliminary meeting to discuss the process and procedure of mediation.
 - 6) Each party shall furnish to the mediator such other information as may be required by him in connection with the issues to be resolved.
- D. Once the parties agree to proceed with mediation, they shall sign an agreement to mediate.

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- E. 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 inclusive of first 60 days without the written consent of all parties.
- F. The mediator is not bound by the law of procedure or Evidence Act.

Article 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 to follow professional ethics while conducting Mediations.
- 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 is 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.

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- F. After each session of mediation, the Mediator shall submit a brief report indicating the duration of the mediation session and result of the session to IDAC India. This shall be signed by the mediator and IDAC India in case of institutional mediation and by the mediator and the parties in case of ad-hoc mediation.

Article 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.

Article 7 - Role of IDAC India

- A. IDAC India will make the necessary arrangements for the mediation, including:
- 1) Appointing the Mediator;
 - 2) Organizing a venue and assigning a date for the mediation;
 - 3) Organizing an exchange of summaries of cases and documents; and
 - 4) Providing general administrative support.
- B. IDAC India, together with the Mediator, will assist in drawing up the mediation agreement, if necessary.

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Article 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 IDAC India 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 number and e-mail id of all parties to the dispute, and those who will represent them, should be exchanged between the parties and also furnished to IDAC India.

Article 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.

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- 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 IDAC India 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:
 - 1) Views expressed by a party in the course of the mediation proceedings;
 - 2) 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;
 - 3) Proposals made or views expressed by the mediator;
 - 4) Admission made by a party in the course of mediation proceedings;
 - 5) The fact that a party had or had not indicated willingness to accept a proposal.

Article 10 - Settlement

When the mediator finds that there exist 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.

- A. If the parties reach agreement on the settlement terms, the mediator with the assistance of IDAC India, 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.

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- B. 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.
- C. In the case of Mediation/Settlement, where a dispute is fully or partially resolved, the same shall be reduced in writing and signed by the parties or their power of attorney holder, which shall be submitted to IDAC India and IDAC India shall forward the same to the Authority who might have referred the dispute for settlement through Mediation.
- 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 counsels 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.

Article 11 - Time Limit for Completion of Mediation Process

The Mediation process shall be completed within a period of 3 months from the date Mediator(s) receive the appointment from IDAC India as laid down in Article 4 (e), except where any time limit has been laid down by any authority/court making a reference to IDAC India for settlement of dispute through Mediation.

The parties and the Mediator(s) may also agree on fast track mediation process to be completed within a period to be jointly agreed between the parties in dispute from the date Mediator(s) receive the appointment from IDAC India. The intimation to the conduct of Fast Track Mediation process shall

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be immediately informed to IDAC India in writing either before commencement of Mediation process or immediately after commencement of Mediation Process.

Article 12 - Termination of Mediation

- A. The mediation process shall come to end: -
- 1) Upon the signing of a settlement agreement by the parties or;
 - 2) 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;
 - 3) Upon written notification by any party at any time to the mediator and the other parties that the mediation is terminated.
- B. On completion of mediation, the Mediator(s) shall submit a Completion Report to IDAC India.
- C. After receipt of Completion Report, IDAC India shall issue a Mediation Status Report to the parties, if they so request, intimating the final status of the process.
- D. In case of mediation on reference to IDAC India by any authority, IDAC India shall send the Mediation Status Report to the said authority. If the parties have fully or partially resolved the dispute, a copy of the settlement agreement shall also be forwarded to the said authority.

Article 13 - 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:
- 1) The mediator's fees and expenses;
 - 2) Expenses for any witness or expert advice or opinion requested by the mediator with the consent of the parties; and
 - 3) The IDAC India administrative and filing costs in support of the mediation.

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- B. The Mediator fee shall be fixed by IDAC India in accordance with the IDAC India Mediation Fee Schedule, unless the mediator and the parties have agreed on a different engagement term at the time of appointment.
- C. The administrative/filing costs of mediation shall be fixed by IDAC India in accordance with the IDAC India Mediation Fee Schedule.
- D. The sum designated in the IDAC India Mediation Fee Schedule of Initial Deposits shall be deposited by each of the parties with IDAC India 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.
- E. The mediator or IDAC India 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.

Article 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.

Article 15 - Neither Legal Counsel nor Expert

- A. All parties recognize that at the mediation session(s) and at every other point of the proceedings:
 - 1) Neither IDAC India nor the mediator will be acting as a legal adviser or legal representative for any of the parties;
 - 2) Neither IDAC India 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 IDAC India 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;

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- 4) Neither IDAC India 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.

Article 16 - Exclusion of Liability

- A. The parties jointly and severally release, discharge and indemnify the mediator and IDAC India 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 IDAC India 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.

Article 17 - Action against the Mediator

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

Article 18 - IDAC India's Mediation Fee Schedule

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Sum in dispute	Model fee	Filing Fees	Administrative Fees
Up to Rs. 5,00,000/-	Rs. 20,000/-	Rs. 5000/-	Rs. 2500/- Per Sitting with Cap of Rs. 10,000/-
Above Rs. 5,00,000/- and up to Rs. 50,00,000/-	Rs. 10,000 Per Meeting subject to celling of Rs. 1,00,000/-	Rs. 10,000/-	Rs. 5,000/- Per Sitting with Cap of Rs. 20,000/-
Above Rs. 50,00,000/- and up to Rs. 1,00,00,000/-	Rs. 1,35,000 Plus Rs. 1800 Per lakh or a part there of subject to celling of Rs. 2,25,000/-	Rs. 15,000/-	Rs. 7500/- Per Sitting with Cap of Rs. 30,000/-
Above Rs. 1,00,00,000/- and up to Rs. 5,00,00,000/-	Rs. 2,25,000 Plus Rs. 33750 Per Crore or a part there of subject to celling of Rs. 3,60,000/-	Rs. 25,000/-	Rs. 10000/- Per Sitting with Cap of Rs. 40,000/-
Above Rs. 5,00,00,000/- and up to Rs. 10,00,00,000/-	Rs. 3,60,000 Plus Rs. 22500 Per Crore or a part there of subject to celling of Rs. 4,72,500/-	Rs. 30,000/-	Rs. 12500/- Per Sitting with Cap of Rs. 50,000/-
Above Rs. 10,00,00,000/-	Rs. 4,72,500 Plus Rs. 18000 Per Crore or a part there of subject to celling of Rs. 15,00,000/-	Rs. 35,000/-	Rs. 15000/- Per Sitting with Cap of Rs. 60,000/-
Notes: 1. In the event, the Mediation tribunal is a sole Mediator, he shall be entitled to an additional amount of twenty five per cent, on the fee payable as per the table set out above.			
2. Filing & Administrative Charges is to be paid along with the application for appointment of a Mediator by a Cheque drawn in favor of IDAC INDIA. Twenty Five (25%) to be paid during 1st Hearing and remaining Fifty Percent (50%) on conclusion of hearing.			
3. The Above Tribunal's fee, filing fee and Administrative fee will be applicable on the value of Counter Claims (If any), also .			
4. The Above Fee structure is subject to review as when the revision in fee payable is made under Schedule 4 of Arbitration & Conciliation Act 1996.			
5. GST will be charged extra on the above fees as per applicable Law.			
6. Travelling, Lodging, Boarding will be extra from the above fee structure.			

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Article 19 - Advance cost / Deposits

- 1) IDAC India may direct the parties to deposit certain amounts towards the cost of the Mediation in advance. Such deposits shall be held by IDAC India and shall be released towards payments accrued during the course of the arbitration.
- 2) The Mediation Tribunal's reasonable out-of-pocket expenses necessarily incurred and other allowances shall be borne equally by the parties in dispute.
- 3) The total cost of the Mediation shall be equally borne by the parties to the dispute.
- 4) Failure by the Claimant to deposit the required fee within the time stipulated by IDAC India shall amount to withdrawal of the claim.
- 5) Failure by the respondent to deposit the required fee within the time stipulated by IDAC India shall amount to withdrawal of the counter claim, if any.
- 6) In case, if the respondent does not deposit the fee within time stipulated by IDAC India towards the claim amount, the claimant has to deposit the same with IDAC India as and when called upon to do so and include the amount in their claim at any stage of the proceedings.
- 7) IDAC India may direct the parties to pay further deposits as and when required during the course of the Mediation proceedings. IDAC India may direct the Tribunal to suspend proceedings if the Parties fail to pay the deposits on time
- 8) All deposits shall be made to and held by the IDAC India and no payment shall be made to the Mediator(s) directly by the Parties. Any interest which may accrue on such deposits shall be retained by the IDAC India.
- 9) If the Mediation is settled or disposed of without a hearing, the costs of Mediation shall be finally determined by IDAC India. IDAC India shall have regard to all the circumstances of the case, including the stage of proceedings at which the Mediation is settled or disposed. In the event that the costs of Mediation determined are less than the deposits made, there shall be a refund in such proportions as the parties may agree, or failing an agreement, in the same proportions as the deposits were made.

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- 10) If the Mediation is either withdrawn or terminated by the act or default of any parties after constitution of the Mediation tribunal, any fee, charges, deposited by the Parties shall not be refundable.

Article 20 - General Provisions

- A. The professional ethics to be followed by the Mediator(s) appointed by IDAC India shall include but not limited only to adherence to diligence in relation to the subject matter of Mediation, Mediator(s) independence, neutrality and impartiality, financial or personal interest in the outcome of Mediation. The Mediator(s) shall all time see that there is no conflict of interest in the conduct of Mediation work assigned to him.
- B. Any of the above procedures may be altered by IDAC India in its sole discretion, to fit the circumstances of a particular case. Any matter not specifically covered by these rules, or any interpretation of these rules, will be decided by IDAC India. IDAC India in its sole discretion has authority to prepare forms, resolve procedural disputes, impose time limits on the parties, and otherwise require a party to take action or refrain from taking action.
- C. IDAC India shall have the power and authority to enforce the purposes of these Rules, including establishing appropriate rules and procedures governing mediation and altering, amending or modifying these Rules in accord with the law.
- D. Any provision, if not covered by IDAC India Mediation Rules, shall be brought to notice of IDAC India by any of the parties/Mediator(s) which shall be laid down by IDAC India whose decision in that regard shall be final and binding on all parties and the Mediator(s).
- E. The interpretation of any provision in these Rules shall be made by IDAC India.

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