



**COMMERCIAL ARBITRATION CENTRE
PORTUGUESE CHAMBER OF COMMERCE AND INDUSTRY**

RULES OF MEDIATION

(1st April 2021)

Chapter I

General Provisions

Article 1

Definition of mediation

Mediation is a form of dispute resolution, through which two or more parties in conflict seek to voluntarily reach an agreement with the assistance of a mediator without powers of authority to impose a solution on the parties.

Article 2

Scope of Application

In the Commercial Arbitration Centre (hereinafter “Centre”) disputes of a civil or commercial nature concerning property interests or regarding which the parties may enter into a transaction may be subject to mediation.

Article 3

Good faith

The parties will assume a special duty to act in good faith in the course of the mediation process.

Article 4

Confidentiality

1. The mediation process is confidential, meaning that the mediator and the parties must keep confidential all information of which they become aware during the mediation process.



2. Except as regards the agreement obtained, the content of the mediation sessions may not be revealed or evaluated in a judicial court or arbitral tribunal, nor can a mediator be a witness, expert, attorney or arbitrator in any case related to the subject matter of the proceedings.

Article 5

Participation of the parties

1. The parties shall participate in person at the mediation sessions.
2. Companies shall be represented, preferentially, by an individual who is familiar with the dispute and has powers to reach a settlement.
3. The parties may also be assisted by lawyers.

Article 6

Mediation and arbitration

1. Whoever exercises the function of mediator is forbidden from acting as an arbitrator in any case related to the subject matter of the proceedings.
2. Notwithstanding the following paragraph, when commencing arbitration concerning the matter covered by the mediation agreement, the arbitral tribunal must, on the request of the respondent, suspend the arbitration proceedings and refer the proceedings to mediation.
3. The parties may agree, after signing the agreement, that the mediation and arbitration will proceed simultaneously.
4. Until the constitution of the arbitral tribunal and upon a request for advice made by any party, the Chair of the Centre may, if they consider it appropriate, suggest that the Parties resort initially to mediation, with or without suspension of the arbitration proceedings.
5. In any of the situations provided for above, the parties may always commence an emergency arbitrator process.

Article 7

Suspension of the deadlines

Recourse to mediation shall suspend the limitation and prescription periods, starting from the date:

- a) Of the Request for Mediation, if there is a mediation agreement;
- b) Of signature of the mediation protocol, if there is no mediation agreement.



Chapter II

Commencement of the mediation

Article 8

Request for mediation

1. Whoever intends to submit a dispute to mediation at the Centre, according to the Mediation Rules, shall submit, to the Secretariat, a Request for Mediation, accompanied by the mediation agreement or the proposal for its execution, to be sent by the Secretariat to the counterparty.
2. In the Request for Mediation, which shall follow the attached model and may not exceed five pages, the Applicant must:
 - a) Identify the parties, their addresses, and if possible their email addresses;
 - b) Summarise the dispute;
 - c) Indicate the estimated value of the dispute;
 - d) Indicate the language and place of the mediation;
 - e) Refer to any other relevant circumstances.

Article 9

Notification and answer

1. Within five days, the secretariat shall notify the respondent, sending a copy of the Request for Mediation.
2. The respondent may, within a period of 15 days, submit their Answer, indicating:
 - a) A summary of their position on the dispute;
 - b) Any other details that they consider relevant.

Article 10

Lack of response

1. If there is a mediation agreement and the respondent does not submit an answer, the process may continue for the purposes of paragraph 2 of article 11, unless the applicant withdraws from the mediation or commences arbitration.
2. If there is no mediation agreement and the respondent does not submit an answer, the mediation process shall not continue.



Article 11

Intervention and limits of the Centre

1. Once the request for mediation and the respondent's answer have been submitted, the Chair of the Centre must consider the case within a period of five days, in order to allow or refuse the mediation process, immediately notifying the parties of this decision.
2. The provisions of the previous paragraph apply with the necessary adaptations to the case referred to in paragraph 1 of article 10, so that the respondent has a second opportunity to participate in the mediation if the process is accepted by the Chair of the Centre.
3. In the case of the previous paragraph and if the respondent says nothing within 10 days as of the notification of the Chair's decision, the mediation process shall not continue.
4. The Chair of the Centre may only refuse the mediation process when:
 - a) The dispute does not fall within the competence of the Centre or can not be subject to mediation;
 - b) There is no mediation agreement, nor acceptance of a proposal for its execution.

Chapter III

The Mediator

Article 12

Appointment of the mediator

1. Within ten days from notification of the answer, the parties may appoint the mediator.
2. Any of the parties may, in the same period, apply to the Chair of the Centre for the appointment of a mediator.
3. If the parties do not agree on the mediator to be appointed, this appointment shall be made by the Chair of the Centre.
4. Whenever the appointment of the mediator falls upon the Chair of the Centre, pursuant to paragraphs 2 and 3 above, the mediator shall be chosen from the names of the list approved by the Board of the Centre.
5. At the request of the parties or on their own initiative, if they deem it appropriate, the Chair of the Centre may consult the parties prior to the appointment, proposing a



list of mediators from the list approved by the Board of the Centre or, exceptionally, including persons not on that list (insofar as the list does not include persons with the qualifications required by the specific conditions of the particular case), for joint appointment by the Parties.

Article 13

Co-mediation

1. If the mediator so proposes, and the parties so accept, the mediation shall be carried out by two mediators, the second being chosen by the first.
2. All the rules provided for in these Rules for the mediator are applicable to the co-mediator.

Article 14

Observer Mediator

1. Upon proposal by the mediator and, unless one of the Parties objects to it, Observer Mediators may participate in the mediation.
2. The Observer Mediator may assist the mediator in the preparation and course of the mediation, under the instructions and direction of the latter.
3. The Observer Mediator shall not receive any remuneration.
4. Without prejudice to the provisions of the preceding paragraphs, the remaining rules provided for in these Rules for the mediator shall apply to the Observer Mediator.

Article 15

Mediators' Status

1. The mediator shall be and remain independent and impartial.
2. On accepting the role, the mediator must exercise the function according to these Rules and the European Code of Conduct for Mediators of the European Commission annexed hereto.
3. The role of mediator is considered accepted on signature, by the appointed person, of a declaration of acceptance, availability, independence and impartiality, in a model provided by the Centre, within five days from notification for this purpose.
4. The mediator must disclose without delay to the parties and to the Secretariat, any circumstance likely to give rise, from the perspective of the parties, to well-founded doubts regarding their independence, impartiality or availability.



Chapter IV

Conduct of the Mediation

Article 16

Place and language of the mediation

1. The parties may freely determine the place and language of the mediation.
2. In the absence of an agreement between the parties, the Centre may determine the place and language of the mediation, or invite the mediator to do so after their appointment.
3. After the appointment of the mediator, the language and place of mediation may only be changed with the mediator's agreement.

Article 17

Mediation Protocol

1. By the start of the first mediation session, the mediator and the parties must agree on how the mediation will be conducted, signing a mediation protocol for this purpose.
2. The mediation protocol shall contain:
 - a) The identification of the parties;
 - b) The identification and professional address of the mediator;
 - c) The declaration of consent of the parties;
 - d) The place and language of the mediation;
 - e) The declaration of the parties and the mediator that they will respect the principle of confidentiality;
 - f) A summary of the dispute;
 - g) The rules of procedure, in particular, the method of presentation of the case, the type and expected number of sessions, the date of the sessions already scheduled, the form of convening the parties and any consequences of their failure to appear, the form of contact between the mediator and the parties;
 - h) The scheduling of the process;
 - i) The maximum time limit for the duration of the process, although this may be altered;
 - j) The Date and signature of the parties and mediator.
3. The mediation protocol must be signed by all parties involved in the process.



Article 18

Mediation sessions

1. Mediation shall take place preferably in face-to-face sessions, without prejudice to the possibility of non-face-to-face/remote sessions.
2. The mediator may, whenever necessary, speak separately with each party (*caucus*).

Article 19

Presentation of the case and exchange of elements

1. The parties may present their case verbally or in writing.
2. The parties may also, during the procedure, exchange documents or other elements that they consider useful for obtaining an agreement, and they must inform the mediator of this.

Article 20

Participation and consultation of specialised experts and lawyers

1. On the initiative of the Parties or at the suggestion of the mediator, specialised experts may participate or be consulted on matters relating to the dispute.
2. If deemed appropriate, the mediator may suggest to the parties that they be assisted by a lawyer.

Chapter V

Agreement

Article 21

Content and form of the agreement

The content of the agreement is freely determined by the parties and shall be in writing, signed by the parties and mediator.



Article 22

Enforceability by agreement between the parties

1. The parties may, by mutual agreement, assign enforceability to an agreement resulting from mediation, obtained without the participation of conflict mediators of the Ministry of Justice's list, under the terms of the applicable law.
2. The agreement that gives enforceability to the agreement obtained must be in writing and must be in a document drawn up or authenticated by a notary, or by another entity or professional with competence to do so, who must certify, in the presence of the parties, their conformity with the content of the agreement.
3. If drawn up or authenticated by a notary, or by an entity or professional with competence to do so, the parties undertake not to challenge the validity of the agreement that confers enforceability on the agreement resulting from the mediation.

Article 23

Enforceability and approval by an arbitrator

1. If the mediator is listed as a mediator by the Ministry of Justice, the agreement shall be enforceable and has no need to be approved by a judge.
2. If the parties intend that the agreement reached in mediation should be approved by an arbitrator, they shall appoint, by agreement, a sole arbitrator.
3. Approval by an arbitrator of the agreement obtained in mediation has the purpose of verifying whether the agreement respects mediation pursuant to these Rules, and if the parties have capacity to enter into it, and that its content does not violate public policy.

Chapter VI

Closure of the mediation

Article 24

Duration of the mediation process

1. The mediation process shall end after the time limit established in the mediation agreement.
2. On agreement of the parties and mediator, and with authorisation of the Chair of the Centre, the time limit may be extended one or more times, and for the same maximum period.



Article 25

Conclusion of the mediation process

1. The mediation process shall be concluded when:
 - a) An agreement is entered into by the parties;
 - b) One of the parties withdraws from the process;
 - c) The mediator, justifiably, decides to end the process;
 - d) The time limit for duration of the process has been reached, including any extensions;
 - e) The required payments have not been made, after notification to that effect.
2. The Centre shall notify the parties and the mediator of conclusion of the process.

Article 26

Arbitration agreement

1. After conclusion of the mediation process without the parties obtaining an agreement, but having agreed to resolve the dispute by arbitration at the Centre, the parties shall sign an arbitration agreement, and the arbitration will commence immediately.
2. Whenever the dispute is submitted for arbitration simultaneously with or following mediation pursuant to these Rules:
 - a) There is no need to pay the amounts provided by the Arbitrations Rules due to submission of the Request for Arbitration;
 - b) Amounts paid for the administrative costs of the mediation shall be deducted from the administrative costs of the arbitration.

Chapter VII

Mediation Costs

Article 27

Mediation costs

1. In the mediation process there are costs to pay.
2. The mediation costs include the fees and expenses of the mediator and the administrative costs of the process.



3. The costs shall be distributed equally among the parties, except:
- a) If the parties agree on another form of distribution;
 - b) If there is a mediation agreement and the respondent does not respond or does not go to the first session, they shall be liable for the costs;
 - c) If there is no mediation agreement, and the respondent does not respond, they shall be liable for the total amount of the costs.

Article 28

Mediator's fees

1. The fees of each mediator are set by the Chair of the Centre between a minimum of €188 and a maximum of €375 per hour of mediation session, including those not in person. The mediator's remuneration also includes the time spent before the first session (preliminary contact with the parties, reading of case materials, preparation and signing of the mediation protocol).
2. In establishing the fees between minimum and maximum, the Chair of the Centre will listen to the parties and mediator, and will consider the circumstances in each particular case, and particularly the amount and complexity of the dispute.

Article 29

Expenses of the mediator

The mediators' expenses are paid based on the actual cost, which shall be duly verified.

Article 30

Fees of the approving arbitrator

The fees of the arbitrator appointed to approve the agreement shall be set by the Chair of the Arbitration Centre between a minimum amount of €1,000 and a maximum amount of €2,000, taking in account all the significant elements for establishing the mediator's fees.

Article 31

Administrative costs

1. The administrative costs of the mediation process correspond to 15% of the fees fixed for the mediator.
2. The Applicant shall pay, on submission of the mediation request, the amount of €300, which at the end will be credited in the settlement of the mediation costs.



3. The payment of the amount referred to in the previous paragraph is a condition for the notification of the respondent and is not refundable in the mediation if the mediation for any reason does not continue, without prejudice to the Applicant being able to recover this amount from the respondent in the case provided for in article 27, paragraph 3, subparagraph b).

Article 32

Advance on the costs

1. To guarantee the mediation costs, the parties shall pay an advance.
2. Each party shall make an initial advance immediately after the appointment of the mediator for the amount of two sessions and the minimum value of these sessions.
3. The secretary shall, in the course of the process, one or more times, collect reinforcements of the agreed advances until they are in accordance with the expected amounts set for the mediation costs. In particular, after signing the mediation protocol, the Secretariat may request a new advance taking into account the number of sessions foreseen therein and the minimum value of these sessions.

Article 33

Provisions: Time limits and penalties

1. The provisions shall be paid on the time limit of ten days, counted from notification to that effect.
2. If the advances are not paid in the time limit provided, the secretariat can provide a new time limit so the payment by the party that has not yet paid is made, and if this situation persists, the other party shall be notified of the fact so that, if they wish, they may pay the missing advance, within the time limit of ten days.
3. The non-payment of any initial or subsequent advance, after a formal demand for the purpose, will result in termination of the mediation process.
4. On justified request by any of the parties, the secretariat may extend the time limits provided in this article.



Chapter VIII

Final and transitional provisions

Article 34

Applicable Rules

1. Referral of the parties to these Rules implies the acceptance of them as an integral part of the mediation agreement and presumes the attribution of competence to the Centre to administrate the mediation on the terms set herein.
2. The Mediation Rules enter into force on 1 April 2021, applying to mediations initiated after that date, unless the parties have agreed to apply the rules in force on the date of the mediation agreement.

Article 35

Limitation of Liability

The mediator, any person appointed by them or who assists them, the Chair and the members of the Arbitration Board of the Centre, as well as its employees and collaborators, shall not be liable for any acts or omissions related to mediation, except to the extent that such limitation of liability is prohibited by applicable law.



ANNEX I
Request for Mediation

Request for Mediation		
Identification of the Parties		
Applicant		
Name:		
Address:		
Postal code:		
Location:		
Telephone:	Fax:	E-mail:
Legal Representative		
Name:		
Address:		
Postal code:		
Location:		
Telephone:	Fax:	E-mail:
Respondent		
Name:		
Address:		
Postal code:		
Location:		



Telephone:	Fax:	E-mail:
2. Language of mediation		
3. Place of mediation		
4. Summary of the dispute		
5. Estimated value of the dispute		
6. Other relevant circumstances		

ANNEX II

European Code of Conduct for Mediators of the European Commission

<https://centrodearbitragem.pt/images/pdfs/EUROPEAN%20CODE%20OF%20CONDUCT%20FOR%20MEDIATORS.pdf>