

**COMMERCIAL ARBITRATION CENTER
PORTUGUESE COMMERCIAL AND INDUSTRY CHAMBER**

RULES OF MEDIATION

**Chapter I
General provisions**

Article 1.º

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 conflict mediator.

Article 2.º

Subject to mediation

In the Arbitration Center it may be subject to mediation those disputes of civil or commercial nature concerning patrimonial interests or which the parties can celebrate a transaction.

Article 3.º

Good faith

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

Article 4.º

Confidentiality

1 -The mediation process is of confidential nature, meaning that the dispute mediator and the parties must keep in confidential all information's that they may come to acknowledge in the mediation process.

2- Except on what is said on the obtained agreement, or the contents of the mediation sessions, it cannot be revealed or valued in judicial or arbitration court, nor can a mediator be a witness, expert, attorney or arbitrator in any case related, even indirectly to the subject of the process.

Article 5.º

Parties' participation

1 - The parties shall participate in person in the mediation sessions.

2- The groups of people are represented, preferentially, by whom is familiarized with the dispute and has powers to transact.

3 - The parties can also be assisted by lawyers.

Article 6.º

Mediation and arbitration

1 - Who exercises the function of mediator is forbidden to act as an arbitrator in any case related, even indirectly, with the subject of the process.

2 - Notwithstanding the following number, when beginning arbitration concerning the issue covered by the mediation convention, the arbitral court should, by

request of the defendant, and deducting by his answer, suspend the arbitrations instance and send the process to mediation.

3 – The parties can agree, after signing the convention that the mediation and arbitration may develop simultaneously.

4 – The president of the Arbitration Center can, if understands right for the best solution of the case, suggest to the parties the mediation process, with or without the suspension of the arbitral process.

5 – In any of the previous situations provided above, the parties can always commence a procedure for an emergency arbitrator.

Article 7.º

Suspension of the deadlines

The resource to mediation suspends the deadlines of expiration starting from the Date:

- a) Of the mediation request, having mediation convention;
- b) Of the signing of the mediation protocol, having no mediation convention.

Chapter II

Commencement of the mediation

Article 8.º

Request for mediation

1 – Who intends to submit a dispute to mediation according to the Mediation Rules, shall submit, to the secretary, a request for mediation, adding the mediation convention or the proposal addressed to the other party for its celebration.

2 – On the request for mediation, shall follow the attached model and cannot exceed 5 pages. The plaintiff should:

- a) Identify the parties, their addresses, and if possible their email addresses;
- b) Describe succinctly the dispute;
- c) Indicate the estimate value of the dispute;
- d) Indicate the language and place of the mediation;
- e) Refer to any other relevant circumstances.

Article 9.º

Notification and answer

1 – Within 5 days, the secretary will notify the defendant, sending a copy of the request for mediation.

2 – The defendant can, in the period of 15 days, answer, indicating:

- a) Succinctly their position on the dispute;
- b) Any other indications that considers relevant.

Article 10.º

Lack of response

1 – In the case there is no answer and there is a mediation convention, the process will continue, unless the plaintiff intends to desist or initiate arbitration.

2 – In the case there is no answer, nor mediation convention, the process will no longer continue.

Article 11.º

Intervention and limits of the Center

Submitting the mediation request and answer, the President of the Center, can deny the continuation of the procedure in the following situations:

- a) If the dispute does not fit in the Centers competition scope, or it's not possible to be solved by mediation;
- b) There is no mediation convention, neither the acceptance of a proposal for its celebration.

**Chapter III
The Mediator**

Article 12.º

Appointment of the mediator

1 – Ten days after an answer has been notified, the parties may appoint the mediator which they agree on.

2 – Any of the parties can, in the same period, request the Centers President the appointment of a mediator.

3 – Whenever it's the Centers President competence to appoint a mediator, this is chosen, among the names of a approved list by the Arbitrations Center Counsel.

4 – If the President understands it's convenient, may previously consult the parties before the appointment, proposing a list of mediators to be chosen together by the parties.

Article 13.º

Co-mediation

In the case the mediator proposes, and the parties accept, the mediation would be carried out by two mediators, being the second chosen by the first.

Article 14.º

Mediators Statues

1 – The mediator shall be and remain independent and impartial.

2 – Accepting the charge, the mediator is obliged to exercise the function according to this Rules and respecting the Ethics Cod appended to the previous.

3 – Any person that accepts the mediation of a dispute according to the present Rules shall sign the declaration of acceptance, availability, independence and impartiality in a model provided by the Arbitration Center.

4 – The mediator is obliged to reveal to the parties and to the Center any circumstance that can, in the parties' perspective, cause doubts based on his independence, impartiality or availability.

Article 15.º

Impediment

Who exercises the function of mediator is forbidden to act as an arbitrator in any case related, even indirectly with the subject of the procedure.

Chapter IV Conduction of the Mediation

Article 16.^o

Place and language of the mediation

- 1 – The parties can freely determine the place and language of the mediation.
- 2 – In the absence of an agreement between the parties, the Arbitration Center can determine the place and language of the mediation, or invite the mediator to do so after his been appointed.

Article 17.^o

Mediation Convention

- 1 – The mediator and the parties shall agree on the way the mediation should be conducted, signing for the effect a mediation convention.
- 2 – The mediation Convention contains:
 - a) The identification of the parties;
 - b) The identification and professional domicile 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 of respect to the confidentiality;
 - f) Succinct indication of the dispute;
 - g) The procedure rules, including the way of presenting the case, the time and dates of the sessions;
 - h) The scheduling of the procedure;
 - i) The maximum time limit for the duration of the procedure, thou can be altered;
 - j) The Date and signature of the parties and mediator.

Article 18.^o

Mediation sessions

The mediation will preferentially develop in face to face sessions, notwithstanding, the mediator if considering convenient and existing a previous agreement, the session may be done without the presence of the parties and/ or separated sessions with each one of the parties (*caucus*).

Article 19.^o

Presentation of the case and exchange of elements

The parties can present their case orally or by writing, as well as, during the process, exchange documents or other elements that may be useful to reach an agreement.

Article 20.^o

Intervention and consultation of specialized experts

If the mediator considers convenient and the parties agree as well, may intervene or be consulted specialized experts on matters relevant to the dispute.

Chapter V Agreement

Article 21.º

Content and form of the agreement

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

Article 22.º

Enforceability and homologation by the arbitrator

1 – In the case the mediator is signed up in the list of dispute mediators organized by the Ministry of Justice, the agreement is enforceable and has no need to be homologated.

2 – In the case the parties intend that the agreement reached in mediation should be homologated by an arbitrator, they shall appoint, jointly a single arbitrator.

3 – The homologation by an arbitrator of the obtained agreement in mediation has the purpose to verify if, the dispute of mediation is respectful to the Rules, and if the parties have capacity to celebrat and the content does not go against public policy.

Chapter VI Closure of the mediation

Article 23.º

Duration of the mediation process

1 – The mediation process ends after the determined time limit on the convention for mediation, which can never exceed 3 months since the signing.

2 – If there is an agreement of the parties and mediator, and an authorization of the Centers President. The time limit can be extended once, and for the same maxim period.

Article 24.º

End of the mediation process

1 – The mediation process ends when:

- a) A agreement is obtained between the parities;
- b) The verification of the withdrawal of any of the parties;
- c) The dispute mediator, justifiably decides to end;
- d) Has reached the time limit of the duration of the process, including any extensions;
- e) The lack of payment of the provided fee amounts.
- f) 2 – The Arbitration Center notifies the parties and the mediator of the ending of the process.

Article 25.º

Arbitration agreement

1 – Ending the mediation process without the parties obtaining an agreement, having agreed on solving the dispute in the Arbitration Center, the parties shall sign an arbitration agreement, which will start immediately the arbitration process.

2 – Always that arbitration is followed after mediation:

- a) There is no need to pay the amounts provided by the Arbitrations Rules as a reason for the Arbitration Request;
- b) Only the administrative charges of the arbitration are deducted by way of the administrative charges in the mediation.

Chapter VII Mediation Charges

Article 26.^o

Mediation charges

- 1 – In the mediation process there are charges to pay.
- 2 – The mediation charges incorporate the fee and expenses of the mediator and the administrative charges of the process.
- 3 – The charges are equally distributed among the parties, except:
 - a) If the parties agree on another form of redistribution;
 - b) If there is a mediation convention and the defendant does not respond or does not go to the first session, in which is the responsible for the charges;
 - c) If there is no mediation convention, and the one requiring does not respond, in which the defendant is the responsible for the total amount of charges.

Article 27.^o

Mediator's fees

- 1 – The fees of each mediator are set by the President of the Arbitration Centre between a minimum amount of 1.500€ and, a maximum amount of 3.000€ for each day of mediation session, including those where the parties are not present, with a maximum of ten sessions.
- 2 – In the fixation of the fees between minimum and maximum, the Centers President will listen to the parties and mediator, and will consider the circumstances in each particular case, and specially, about the amount and complexity of the dispute.

Article 28.^o

Expenses of the mediator

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

Article 29.^o

Fees of the arbitrator that homologates

The fees of the appointed arbitrator to homologate the agreement are set by the President of the Arbitration Center between a minimum amount of 1.000€ and a maximum amount of 2.000€, taking in account all the significant elements for the fixation of the mediators fees.

Article 30.^o

Administrative charges

- 1 – The administrative charges of the mediation procedure correspond to the 15% of the fixated fees for the mediator.

2 – The plaintiff shall pay, as a reason of the mediation request, the amount of 300€, which at the end will be recognized in the liquidation of the mediation charges.

3 – The payment of the referred amount in the previous number is condition for the defendants notification and is not refundable in the mediation in the case the mediation for any reason does not continue.

Article 31.º

Provision for the charges

1 – To guaranty the mediation charges, the parties shall pay a provision.

2 – Each one of the parties shall pay an initial provision right after having signed the mediation convention for the amounts concerning the number of session there provided and in the minimum amount of each session.

3 – The secretary shall proceed, in the course of the process, one or more times, to the collection of reinforcements of the agreed provisions till they are according to the expected amounts set for the mediation charges.

Article 32.º

Provisions: Time limits and penalties

1 – The provisions shall be paid on the time limit of ten days, counting from the notification for the effect.

2 – If not paid the provisions in the provided time limit, the secretary can provide a new time limit so the payment of the party that has not yet paid is made, and in the case this situation persists, the other party shall be notified of the fact so, if wants to, can pay the missing provision, in the time limit of ten days.

3 – The nonpayment of any initial provision will be understood as the ending of the mediation process.

4 – By a justifiable request by any of the parties, the secretary can extend the time limits provided in this article.

Chapter VIII

Final and transitional provision

Article 33.º

Applicable Rules

1 – The referral of the parties to the Mediation Rules implies the acceptance of them as integrating part of the mediation convention and presumes the attribution of competence to the Arbitration Center to administrate the mediation on the terms set therein.

2 – The applicable Rules are the one in force at the beginning of the mediation process, unless the parties had agreed to apply the Rules provided on the date of the mediation convention toke place.

3 – The present Mediation Rules will take effect the 1st of March of 2016, being applied to the processes of mediation requested after this date.

ANNEX I
Mediation request

Mediation Request		
1. Parties Identification		
Plaintiff		
Name:		
Address:		
Postal Code:		
Locality:		
Telephone:	Fax:	E-mail:
Legal Representative		
Name:		
Address:		
Postal Code:		
Locality:		
Telephone:	Fax:	E-mail:
Defendant		
Name:		
Address:		
Postal Code :		
Locality:		
Telephone:	Fax:	E-mail:
2. Mediation language		

Annex II Mediators Code of Ethics

Article 1.º

General Principal

1 – Who accepts the charge as a mediator submitted to the Mediation Rules of the Portuguese Commercial and Industry Chamber (Commercial Arbitration Center) agrees to perform, his function according to the Rules and this Code of Ethics.

2 – The mediator is obliged to remain independent and impartial, respecting and enforce the prestige and efficiency of the mediation as a fair and consensual means for dispute resolution.

Article 2.º

Acceptance of the mediators functions

That who's invited to exercise the functions of a mediator ("invited mediator") can only accept the charge if:

- a) Considers to be and is in conditions of remaining independent and impartial;
- b) Possesses the knowledge and has the needed competence to conduct the process;
- c) Is available for the needed time for such effect and in a predictable manner.

Article 3.º

Impartiality and independence

1 – The mediator shall conduct the process with absolute impartiality and independence, not allowing any prejudice, personal interests, external pressure or fear of being criticized affects their behavior.

2 – The mediator cannot be a witness, expert, attorney or arbitrator y any case related, even indirectly, with the process subject.

Article 4.º

Duty of disclosure

1 – The mediator has the duty to disclose all the facts and circumstances that can originate, in the party's perspective, doubts based on his impartiality and independence, obligation that will remain till extinction of the mediation.

2 – Before accepting the charge, the invited mediator shall inform the parties of the following:

- a) Any professional or personal relationship with the parties o their legal representatives and attorneys that the mediator considers relevant;
- b) Any economic or financial interest, directly or indirectly, with the disputes subject;
- c) Any prior knowledge that may have had of the subject of dispute.

3 – Accepting the charge, the mediator shall sign the acceptance's declaration of availability, independence and impartiality provided in the Rules that should be updated, as soon as the mediation takes its course, in case new circumstances are verified.

4 – Having doubts about the relevance of any fact, circumstance or relationship the duty of disclosure always prevails.

5 – Unless something else results from the disclosure, the revelation of the facts and circumstances provided in this article cannot be understood as a declaration of considering the mediator as not impartial and independent and because of that, consequently, not suitable to perform the mediators functions.

Article 5.^o

Duty of information on the process

The mediator should assure that the parties and their representative understand the nature and characteristics of the mediation process, informing them in a complete, clear and precise way of the mediation process, especially about the possibility to withdraw whenever they decide and with no need of any other justification.

Article 6.^o

Conduction of the mediation

The mediator shall conduct the process in a fair and balanced manner, to guarantee all the parties have equal opportunity to present their points of view on the dispute.

Article 7.^o

Communication with the parties

The mediator can communicate in privet with each one of the parties if they both consent, and assuring equal opportunity to the mediators to present their points of view on the dispute.

Article 8.^o

Duties regarding the agreement

The mediator shall:

- a) Abstain from imposing any agreement to the parties, such like making promises or to guarantee a certain result of the process.
- b) Seek to prevent any circumstance that can lead to the invalidity of the obtained agreement in mediation;
- c) Assure that the obtained agreement is a result of the free and clear will of the parties.
- d) Inform the parties that they can obtain professional council in case of any doubts on the terms and effects of the agreement.

Article 9.^o

Fees

1 – The mediators' fees and the way of reimbursement of the expenses made in the exercise of his function are exclusively determined in the terms of these Rules.

2-The mediator is forbidden to propose, negotiate or agree any alteration to the expected fees provided on the Rules with the parties or their attorneys, especially any increase in the course of the obtaining agreement in the mediation.

Article 10.º

Confidentiality

Notwithstanding the provided by law and in the Rules, the mediator shall respect the confidentiality of the procedure and the agreement and cannot use the obtained information in the course of the mediation in order to achieve some gain, for himself or some other third party, or to injure the interests of someone.

Article 11.º

Prohibition to seek appointment

No one should seek actively to be appointed in any mediation, but any person can publicly disclose their experience in mediation, except the duties of confidentiality.