

NCAC

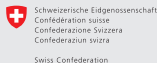
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NATIONAL COMMERCIAL ARBITRATION CENTRE



CODE *of* CONDUCT *for* MEDIATORS

18 March 2023

Supported by





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CODE OF CONDUCT FOR MEDIATORS

1. Scope

This Code of Conduct for Mediators (“**Code of Conduct**”) applies to all persons appointed by the General Secretariat to act as mediators in mediation administered by NCAC, including those not registered in NCAC’s List of Mediators.

The Code of Conduct forms an integral part of the Mediation Rules of NCAC (“**Mediation Rules**”) and can be revised independently of the Mediation Rules. All terms defined in the Mediation Rules apply to this Code of Conduct.

2. Availability and Competence

Before accepting any appointment, the prospective Mediator must be reasonably satisfied that he/she is able to conduct the Mediation competently and expeditiously.

If during the Mediation, a Mediator feels he/she is moving outside his/her level of competence, he/she should take one or more of the following steps: (a) inform the Parties, (b) pause the Mediation, (c) seek advice from an advisor or expert, (d) introduce a co-Mediator or an alternative Mediator(s) or other person, or (e) withdraw from the Mediation.

3. Impartiality

To comply with the impartiality obligations under the Mediation Rules, Mediator shall decline or withdraw from a Mediation if the Mediator cannot conduct the Mediation in an impartial manner. Impartiality means freedom from favoritism, bias or prejudice for or against any party either by word or by action. Impartiality is a commitment to serve all Participants in Mediation as opposed to a single party, and to avoid any conduct that gives any appearance of partiality or prejudice.

A Mediator should endeavor to provide a procedurally fair process in which each party is given an adequate opportunity to participate. If a Mediator becomes incapable of maintaining impartiality, the Mediator should withdraw promptly.

4. Independence and Conflict of Interest

To comply with the independence obligations under the Mediation Rules, Mediator must conduct reasonable inquiries to check the presence of any existing or perceived conflict of interest that might raise doubts in the Parties' perception. As such, the Mediator shall ensure, among others, that the Mediator has:

- (a) no relationship between any Participant in Mediation, whether past or present, personal or professional, that reasonably raises a question of a Mediator's independence;
- (b) no financial interest (direct or indirect) in any of the Parties or the outcome of the Mediation;
- (c) no confidential information about the Parties or the dispute derived from sources outside the Mediation (excluding confidential information that any Party may disclose to the Mediator in mediation proceedings).

This obligation continues throughout the Mediation. When in doubt, the Mediator must always disclose to the Parties any situation or fact that may constitute or be perceived to constitute a conflict of interest.

If a Mediator's conflict of interest might reasonably be viewed as undermining the integrity of the Mediation, a Mediator shall withdraw from or decline to proceed with the Mediation regardless of the expressed desire or agreement of the parties to the contrary.

Subsequent to a Mediation, a Mediator shall not establish another relationship with any of the Participants in any matter that would raise questions about the integrity of the Mediation. When a Mediator develops personal or professional relationships with Parties, other individuals or organizations following a Mediation in which they were involved, the Mediator should consider factors such as time elapsed following the Mediation, the nature of the relationships established, and services offered when determining whether the relationships might create a perceived or actual conflict of interest.

5. Conduct and Process

Parties' involvement

The Mediator must ensure that all parties have adequate opportunities to be involved in the process. The Mediator shall conduct the Mediation with attention to procedural fairness to all parties and ensure that all parties have adequate opportunities to be heard.

Explanation of the Mediation process and the Rules

The Mediator will endeavor to ensure the Parties and their representatives understand the Mediation process, including:

- (a) Distinguishing between Mediation and other dispute resolution processes, especially in relation to the Parties' rights of self-determination and voluntariness of the process

- (b) Parties' duties of good faith and to genuinely attempt to reach settlement
- (c) Role of lawyers, advisers and any other Participants in Mediation
- (d) Reiterating that the Mediator is not a legal or technical representative for any of the Parties
- (e) That the Mediator does not have the authority to impose a solution
- (f) That the Mediator communicates the information received in private sessions, subject to confidentiality rules, at the time the Mediator finds opportune
- (g) That the Mediator can provide an opinion only if requested by the Parties at the later stages of Mediation, and that the Mediator is free to decline providing an opinion, and that the provision of any such opinion does not constitute legal or technical advice and is not binding upon the Parties
- (h) Explaining the contents of the Mediation Rules, especially in relation to joint and private sessions and confidentiality.

The Mediator will enquire if the Parties wish to vary any provisions of the Mediation Rules through Terms of Reference.

Independent advice

A Mediator cannot personally ensure that each Party has made free and informed choices to reach particular decisions, but, where appropriate, a Mediator should make the Parties aware of the importance of consulting other professionals to help them make informed choices.

6. Withdrawal by the Mediator

In addition to the instances mentioned above on the Mediator's duty to withdraw from proceedings on account of impartiality and independence, the Mediator shall withdraw from the Mediation and immediately inform the General Secretariat of such withdrawal when he/she realizes that he/she has committed a breach of the Mediation Rules and/or the Code of Conduct.

7. Termination by the Mediator

The Mediator shall terminate the Mediation and immediately inform the General Secretariat of such termination in any of the below events:

- (a) if there is a request by any of the Parties for the Mediator to breach the Mediation Rules and/or the Code of Conduct, or any applicable law, and the Mediator is unable to proceed with the Mediation without acceding to such request
- (b) if it becomes clear that the purpose of the Mediation is to breach any applicable law
- (c) if the power imbalance between the Parties is likely to result in a coerced settlement
- (d) if it is unlikely for the parties to reach settlement
- (e) if it appears that the continuation of the process might harm or prejudice any of the Parties such as in situations where the Parties and/or their representatives seek to misuse the Mediation process to achieve other ends such as:
 - (i) delaying proceedings in the hope of reinforcing the continuation of an existing arrangement or prolong litigation or obtain other advantages or

- (ii) buying time in order to dissipate or conceal assets; or acting in bad faith.
- (iii) where, in the opinion of the Mediator, one or more Parties and/or their representatives are in some other ways acting in bad faith.

In any of the above cases, the Mediator should, where possible, provide reasonable notice to the Participants and may assist the Parties in assessing further process options for dealing with their dispute.

8. Fees

The Mediator shall receive his/her remuneration (fees and expenses) in accordance with the terms of his/her appointment by NCAC and only from NCAC as prescribed in Appendix 1 (NCAC Fee Schedule) of the Mediation Rules.

The Mediator shall not enter into any private arrangement with any of the Parties for the payment of fees or other remuneration, or otherwise to obtain any benefits from acting as Mediator in the Mediation, including receiving gifts in kind, or in cash or services from the Parties or their representatives or assistants.

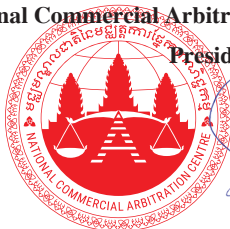
9. Final Provisions

The Code of Conduct is adopted by the General Assembly of NCAC on 18 March 2023.

The Code of Conduct shall become effective from 18 March 2023 onwards.

Phnom Penh, 18 March 2023

National Commercial Arbitration Centre
President



San Kiri
SAN Kiri

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