



BIAC Mediation Rules 2019

BIAC Mediator's Code of Conduct

BANGLADESH INTERNATIONAL ARBITRATION CENTRE

The Institution for Alternative Dispute Resolution

BANGLADESH INTERNATIONAL ARBITRATION CENTRE

(BIAC)

MEDIATION RULES 2019

In Supersession of BIAC Mediation Rules 2014

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Mediator's Code of Conduct

Suggested Med-Arb Clause

“Any dispute or difference arising out of or in connection with this contract shall first be referred to the Bangladesh International Arbitration Centre (BIAC) for settlement through mediation in accordance with BIAC Mediation Rules. If a settlement cannot be reached within sixty (60) days following the appointment of the Mediator(s), then such dispute or difference shall be referred to BIAC within sixty (60) days to be finally settled under the Rules of Arbitration of the Bangladesh International Arbitration Centre, by one or more arbitrators appointed in accordance with the said Rules.”

BIAC Mediation Clause

“Any dispute or difference arising out of or in connection with this contract shall be referred to the Bangladesh International Arbitration Centre (BIAC) for settlement through mediation in accordance with BIAC Mediation Rules, before such dispute is submitted to court or arbitration.”

BIAC Mediation Rules 2019

Mediation under these Rules is a confidential, consensual, non-adversarial and private dispute resolution process in which one or more neutral Mediator(s) shall facilitate a negotiated settlement between the Parties.

1. Short title and Scope

These Rules shall be called the BIAC Mediation Rules 2019.

- (a) These Rules shall apply
 - (i) where the parties have agreed in writing that the dispute arising out of or relating to their contract should be settled by mediation in accordance with the BIAC Mediation Rules, or to be administered by Bangladesh International Arbitration Centre (BIAC); or
 - (ii) where a party requests BIAC to invite the other party to settle the dispute between them through mediation under BIAC Mediation Rules, and the other party agrees in writing, in response to such request from BIAC; or
 - (iii) where the Court has directed the parties to settle the dispute through mediation under BIAC Mediation Rules or at BIAC.
- (b) The version of the Rules in effect on the date both Parties agree to mediation at BIAC shall apply to the mediation, unless the parties agree otherwise.
- (c) These Rules shall govern mediation at BIAC; except where a mandatory provision of law applies.

2. Definitions

In these Rules, unless the context otherwise requires,

- (a) “BIAC” means the Bangladesh International Arbitration Centre and includes its regional offices, if any.
- (b) “Mediation” is a process whereby two or more parties appoint a third-party neutral (“Mediator”) to help them in a non-binding dialogue to resolve a dispute and/or to conclude the terms of a settlement agreement.
- (c) “Mediation Clause” means a written dispute resolution clause in the original contract whereby the parties to the contract have agreed to try mediation as the first recourse for resolution of differences/disputes arising from that contract.

- (d) "Mediation Agreement" means a written agreement in which parties or their authorized representatives agree to try to resolve the dispute through mediation under BIAC Rules, and appoint Mediator(s); the Mediator(s) shall also sign this agreement.
- (e) "Mediator" is a neutral third party engaged by the Parties to facilitate the amicable resolution of their dispute and includes one or more Mediators who conduct the mediation process.
- (f) "Settlement Agreement" means a written agreement arrived at through mediation and signed by the parties or their authorized representatives on the elements of settlement of the dispute and includes any interim, partial and/or final Settlement Agreement.
- (g) "Panel of Mediators" means the list of Mediators by invitation.
- (h) "Directory of Mediators": the list of Mediators who qualify as per criteria approved by BIAC Board.
- (i) "Party" includes any individual, company or institution that is a party to the contract from which the dispute has arisen.
- (j) "Rules" means the BIAC Mediation Rules 2019.
- (k) "Law" means any law in force in Bangladesh.
- (l) "Court" means any court in Bangladesh with jurisdiction in relation to the mediation proceedings.
- (m) "Chief Executive" means the Chief Executive Officer/Secretary General of BIAC.

3. Initiating Mediation

- (a) The initiation of Mediation at BIAC may be in any of the following forms:
 - (i) Where a mediation clause exists in the original contract and a dispute arises out of or in relation to it, the party initiating mediation shall provide BIAC with three copies of the written Request for mediation, identifying the subject, issues, value of the dispute, copy of the mediation clause, nomination of a Mediator or mediators thought suitable. The requesting party shall inform BIAC of the names, addresses, phone numbers, fax numbers, e-mail addresses (as available) of the parties. If the party initiating the mediation wishes to nominate a person to represent it, the name and contact details of such person should also be provided. Non-refundable Registration Fee, in cash or by A/c payee certified cheque or bank draft in the name of Bangladesh International Arbitration Centre, must accompany any Request for Mediation.

- (ii) Where a mediation clause does not exist and the parties have not agreed in writing that the dispute arising out of or relating to their contract should be settled by Mediation, a party may request BIAC in writing to invite the other party to settle the dispute through Mediation under BIAC Mediation Rules. If the other party, in response to such a request from BIAC, agrees in writing within 14 days of receipt of the request, BIAC will inform the initiating party about the other party's concurrence. Thereupon, the party making the request, within seven days of receipt of the information from BIAC, shall provide the other party with a written Request for Mediation along with all information, documents as laid down in 3(a) (i), above and send three copies of the same along with Registration Fee to BIAC.
- (b) On receipt of Request for Mediation, as per Rule 3(a)(i), BIAC shall send a copy of the Request for Mediation with a Notice of Mediation as soon as possible to the other party/parties by courier or transmit by fax or e-mail or any other means of communication that provides a record of its transmission. The starting point of the time limit shall be counted from the date BIAC delivers the Notice of Mediation along with Request for Mediation from the initiating party to the other party.
- (c) Where the Court has directed the parties to mediate the dispute under BIAC Mediation Rules, both the parties in the court proceedings jointly or severally, within seven days of receipt of the Court's order, shall provide BIAC two copies of a statement containing a general description of the issues. The Party/Parties shall also inform BIAC if they have selected a Mediator to mediate the dispute or failed to select any.

4. Response to Request for Mediation

The responding party shall send reply to the Request for Mediation within 14 (fourteen) days from the date on which the party receives the Request for Mediation from BIAC. In the reply, she/he shall also indicate if the Mediator nominated by the party initiating the mediation is acceptable. Where more than one Mediator is to be nominated, the responding party shall nominate its own Mediator. If the responding party rejects the mediation request, or if BIAC does not receive a reply within 14 (fourteen) days from the date on which the party receives the Notice of Mediation from BIAC, BIAC shall inform the party initiating the mediation.

5. Appointment of the Mediator

- (a) Where both the parties consent to follow BIAC Mediation Rules and agree on nomination of a Mediator from the BIAC's Panel of Mediators or elsewhere, and the proposed Mediator has expressed willingness in writing, the party/ parties will notify BIAC. The mediation shall then proceed in accordance with these Rules.

- (b) Where the parties have selected a Mediator who is not on the Panel of Mediators of BIAC, the selected Mediator has to agree, in writing, to observe the BIAC Mediation Rules, mutatis mutandis (the necessary changes having been made), as well as the BIAC Code of Conduct for Mediators.
- (c) If the parties fail to agree to appoint a Mediator within the time stipulated in Rule 4, and inform BIAC accordingly, or where the Court directs that the Mediation be conducted under the BIAC Mediation Rules with a Mediator to be selected by BIAC, the Chief Executive of BIAC shall appoint a Mediator who is prepared to serve and is not disqualified under Rule 7.
- (d) For appointment of a Mediator by the Chief Executive of BIAC, the following procedure shall be followed:
 - (i) the Chief Executive of BIAC shall select and communicate to the parties a list of three names from the BIAC Panel of Mediators, along with their addresses, nationalities and a description of qualifications and experience;
 - (ii) within 7 days following the receipt of the list, a party may strike off the names to which it objects, and return the list to BIAC;
 - (iii) on receipt of the lists returned by the parties, the Chief Executive of BIAC, shall appoint the Mediator from among those in the list whose names have not been struck off by either party.
 - (iv) if, for any reason, the appointment cannot be made according to the above procedure, the Chief Executive of BIAC shall call the parties to a meeting and through discussions with them appoint the Mediator from the Panel of Mediators failing which she/he shall appoint a Mediator excluding the persons who have been indicated to be unacceptable to either party..
- (e) Upon receipt of the information for appointment of a Mediator, the Chief Executive of BIAC shall make the appointment of the Mediator as promptly as possible having regard to:
 - (i) any qualifications and/or attributes required of the Mediator specified in the contract or other agreement between the parties;
 - (ii) appropriate professional or business experience and ability of the Mediator;
 - (iii) such other considerations as are likely to secure the appointment of an independent and impartial Mediator;
 - (iv) availability of the Mediator for prompt and efficient determination of the dispute.

- (f) A decision by the Chief Executive of BIAC with respect to the appointment of a Mediator shall be treated as final and binding on the parties.
- (g) The parties by agreement may nominate more than one Mediator or request BIAC to appoint more than one Mediator, in accordance with the Rules. In appropriate circumstances, BIAC may propose that there be more than one Mediator, and if so agreed by the Parties, appoint more than one Mediator.
- (h) A Mediator, if required to be substituted/replaced, will be appointed in the same manner in which his/her predecessor had been appointed.
- (i) Unless otherwise agreed by the parties, a person of any nationality may be appointed as a Mediator.

6. Mediator's Disclosure

- (a) Before accepting an appointment, the proposed Mediator shall disclose in writing to the parties and to BIAC any circumstance likely to create a presumption of bias or prevent a prompt resolution of the dispute. Upon receipt of the information, if any party objects to the appointment of the Mediator proposed, that party should communicate such objection in writing to BIAC within 7 (seven) days of receipt of such information. In such a case, another Mediator will be appointed following the procedure laid down in Rule 5.
- (b) A Mediator shall disclose in writing, as soon as possible to the parties and to BIAC, any circumstance that has arisen during the course of mediation giving rise to justifiable doubts as to his/her impartiality or independence.
- (c) Upon receipt of the disclosure, under Rule 6(b), if any party objects in writing to BIAC within 7 (seven) days of receipt of such information, the appointment of the Mediator shall be terminated. In such case another Mediator will be appointed following the procedure laid down in Rule 5.

7. Disqualification of Mediator

No person shall act as Mediator in any dispute in which that person has any financial or personal interest in the outcome of the mediation except by written consent of the parties.

8. Challenging a Mediator

Within 7 (seven) days of appointment or as soon as it becomes aware of justifiable doubts as to the Mediator's independence and/or impartiality, availability or qualification, a party may inform BIAC and the other party in writing. On receipt of such information from either of the parties, the Chief Executive of BIAC will conduct an enquiry and inform the parties of the findings; if the party objecting is satisfied and agrees to continue with the

Mediator, the mediation shall proceed. However, if the party objecting is not satisfied or the Mediator decides to withdraw from the proceedings then appointment of the mediator shall be terminated and a new Mediator shall be appointed as per Rule 5.

9. The Mediation Process

- (a) The Mediator shall begin the mediation as soon as possible after his/her appointment and shall use best endeavours to conclude the mediation as expeditiously as possible. Appointment of a Mediator shall not extend beyond a period of 60 (sixty) days without the written consent of the parties to the dispute and with the approval of BIAC. Any party seeking extension must pay the registration fees as per Annex.
- (b) At the first meeting, the Mediator and the parties shall agree on the manner in which the mediation shall be conducted. Thereafter, at that meeting, the Mediator shall prepare a mediation agreement, in consultation with the parties, for signature by the parties or their authorised representatives and the Mediator.
- (c) The mediation will commence as soon as the Mediation Agreement has been signed by the parties or their authorised representatives and the Mediator, unless otherwise stated in the mediation agreement.

10. Role of the Mediator

- (a) At the first session, the mediator shall inform the parties of a mediator's role and duties in helping the parties to arrive at a resolution of the dispute and that she/he is not a judge who imposes a settlement.
- (b) The mediator shall conduct the mediation in such manner as she/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.
- (c) The Mediator shall treat the parties with fairness, impartiality and ensure due process.
- (d) The Mediator may communicate with the parties together, or with any party separately, including through private meetings.

11. Role of the Parties

Parties shall co-operate with the Mediator. Any party may request for a private meeting with the Mediator at any time. The parties shall give full assistance to enable the mediation to proceed and be concluded as soon as possible within the time stipulated in the Mediation Agreement.

12. Offer of Settlement by the Parties

Any party to the mediation may “without prejudice” offer settlement proposal(s) to the other party through the Mediator at any stage of the proceedings.

13. Representation

The parties may be represented or assisted in mediation by person(s) of their choice. Each party shall notify in advance the name(s) and the role(s) of such person(s) to the Mediator and to the other party through the Mediator. Where any party has appointed representative(s), it shall also designate one representative who shall have full authority to settle the dispute.

14. Termination of the Mediation

The Mediation process shall come to end:-

- (a) Upon the signing of a settlement agreement by the parties; or
- (b) By the issuance of a written declaration by the Mediator that further efforts at Mediation would not be useful at this time and that the Mediation is terminated; or
- (c) Upon written notification by any party to the Mediator and to the other party that it is withdrawing from the mediation; or
- (d) Upon written notification by BIAC to the parties and the Mediator that the time limit set for mediation, including any extension thereof, has expired;
- (e) Upon written notification by BIAC that one or more parties have failed to make payment to BIAC within the stipulated time.

In the event of termination of the mediation before reaching a settlement agreement, BIAC will issue a certificate stating that the mediation has not succeeded at this time.

15. Settlement Agreement

- (a) When the Mediator finds that a settlement has been reached, the elements of agreement shall be prepared and submitted for initial by the parties. Thereafter, either the Mediator or the parties or authorized representatives of the parties shall promptly draft a written settlement agreement incorporating the elements so agreed. This draft agreement

will be considered by the parties and changes made when agreed by all the parties.

- (b) The parties/their representatives shall sign the settlement agreement. BIAC shall authenticate the Agreement, so signed by the parties, and furnish a copy to each after settlement of all dues to BIAC.
- (c) In Court-referred mediation, the settlement agreement authenticated by BIAC shall be submitted by the parties to the Court. Where no agreement is reached within the stipulated time, BIAC shall issue a certificate to the parties stating their failure to reach a settlement which shall be submitted by them to the Court.

16. Confidentiality and Disclosure

- (a) Mediation is a private and confidential process.
- (b) The Mediator, the parties, their representatives, experts, advisors and any other persons who accompany the parties to the Mediation shall keep confidential and shall not disclose to any non-party any information, documents, and communications that are created, disclosed, received, or made available in connection with the Mediation except:
 - (i) with the parties' written consent;
 - (ii) when ordered to do so by a court of competent jurisdiction or otherwise required to do so by law;
 - (iii) when the information or documents disclose an actual or potential threat to human life or damage to property;
 - (iv) where any report or summary is required to be prepared by the Mediator;
 - (v) where the information is, or the documents are, otherwise available to the public.
- (c) Confidentiality also extends to the settlement agreement, except where its disclosure is necessary for implementation or enforcement.
- (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 litigation or other dispute resolution process.
- (e) The parties have the option to produce any document they wish; the Mediator shall not have the power to compel the disclosure of any

document. The Mediator may keep copies of documents, but not the originals, during mediation.

- (f) Thirty days after mediation is concluded, the Mediator shall destroy all information, documents, and communications created by, disclosed to, received by, or made available to him/her in connection with the Mediation unless otherwise agreed by the parties in writing.
- (g) The Mediator shall obtain, in writing, from all experts and consultants engaged by the Mediator, commitments to similar obligations of confidentiality as are provided for in these Rules.
- (h) The Mediator shall maintain confidentiality in the storage and disposal of mediation notes, records, files, information, documents, and communications.
- (i) If the Mediator holds private sessions with any or both parties, she/he shall generally indicate to the parties the purpose of such session(s) before commencing a private session. In particular, the Mediator shall inform the parties of any limits to confidentiality applicable to information disclosed during private sessions.
- (j) The parties agree that Mediation sessions are without prejudice settlement negotiations and disclosures are inadmissible in any further litigation or arbitration except to the extent required by law. The parties shall not sub poena or otherwise require the Mediator to testify or produce records or notes in any future proceedings.
- (k) The parties agree that they shall not rely on or adduce as evidence in subsequent arbitral or judicial proceedings any of the following:
 - (i) views expressed and suggestions or offers made in respect of a possible settlement of the dispute;
 - (ii) any admission made in the course of the Mediation;
 - (iii) any and every exchange between the parties and the mediator.

17. Costs

Each party shall bear its own costs regardless of the outcome of the mediation or of any subsequent arbitral or judicial proceedings. Unless otherwise agreed, all other costs and expenses shall be shared equally by the parties, 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) Any expenses to support the mediation, including BIAC's charges.

18. Rental of BIAC meeting facilities

The charges of the meeting rooms and other facilities used shall be -paid by the parties to BIAC as per the charge schedule of BIAC.

19. Mediator's Role in Subsequent Proceedings

Before the commencement of any mediation both parties shall undertake in writing to BIAC that the Mediator shall not be appointed as adjudicator, arbitrator or representative, counsel, witness or expert witness by 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.

20. Recording of Mediation proceedings

Unless otherwise agreed by the parties, there shall be no stenographic, audio or video recording of the mediation proceedings.

The Mediator may take personal notes regarding dates and progress of the mediation proceedings for his/her personal use. The Mediator's notes, the parties' submissions and other documents should be stored in a reasonably secure location and shall be destroyed in accordance with the provision of Rule 16(f).

21. Exclusion of Liability

The parties jointly and severally release, discharge and indemnify the Mediator(s) and BIAC in respect of all liability whatsoever from any act or omission, whether involving negligence or not, 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 or dishonesty directly attributable to BIAC or the Mediator(s)..

22. Interpretation

- (a) The interpretation of any provision in these Rules shall be made by BIAC.
- (b) These Rules may be amended or modified by BIAC at any time without notice.

ANNEX

- (a) **Assessment Fee**
If a party submits documents for assessment he/she shall pay a Fee of Taka 5000 (five thousand)
- (b) **Registration Fee**
Taka 20,000 (twenty thousand) to be paid by the Party to BIAC at the time of filing Request for Mediation and seeking extension under Rule 9 (a).
- (c) **Mediator's Fee**
Taka 5,000 (five thousand) to Taka 50,000 (fifty thousand) per hour, as may be agreed among the parties, the mediator & BIAC.
- (d) **Other Charges**
Includes charges referred to in Rule 17.
- (e) (i) **Deposit Against Mediator's Fees and Other Charges.**
Once the Mediation Agreement is concluded, the parties are to make deposits to BIAC to cover the expenses mentioned above. BIAC will provide a full account to the parties for such expenses. Should the deposit with BIAC fall below Tk. 5,000 (five thousand), BIAC may ask the parties to replenish the funds. Should the parties fail to make deposits as required, the Mediator may suspend the proceedings to allow the parties to make the deposits.

(ii) **Return of Surplus Funds**
Any surplus out of the funds deposited by the parties, after meeting all expenses, shall be returned to the parties at the conclusion of the mediation.
- (f) **Payment Procedure**
All the above fees & charges are to be paid by cash or A/c payee certified cheque or bank draft in the of Bangladesh International Arbitration Centre, exclusive of VAT & taxes.

BIAC MEDIATORS' CODE OF CONDUCT

The BIAC Mediators Code of Conduct ("the Code") provides the guiding principles for the mediators:

- of BIAC's Panel; and/or
- Directory; and/or
- Mediators in mediation administered by BIAC; and/or
- The mediators who conducted mediation as per provisions of BIAC Mediation Rules.

It sets the standards for protection of interests of parties using mediation services at BIAC, and for enhancement of confidence in BIAC's mediation services as a neutral, impartial, efficient, expeditious and independent alternative dispute resolution method.

1. General principles

The Mediator shall:

a) Acknowledge that mediation is based on principles of self-determination by the parties-

The mediation process relies upon the ability of parties to reach a voluntary agreement to resolve their dispute. Mediator will encourage the parties to make their own choices and bear the responsibility thereof. The Mediator shall not advise any party to adopt any specific course on any issue at dispute, nor shall he express any opinion on such matters. If necessary, a Mediator may inform the parties about the option of consulting advisers or experts during mediation.

b) Act in an independent, neutral and impartial way-

The Mediator's independence, neutrality and impartiality are central to the mediation process. A Mediator who has an interest in the mediation should not accept his appointment or withdraw, if appointed. The quality of the mediation process is enhanced when the parties have confidence in the impartiality, independence and neutrality of the mediator. A Mediator shall disclose any interest or relationship likely to affect independence, neutrality or impartiality or which may be considered as a sign of bias.

c) Cause enquiry into and disclose conflict of interest, if any –

- (i) When approached with a proposal for an appointment, a prospective Mediator shall conduct reasonable enquiries with regard to conflict of interest, including close personal or business relationships, from her/his appointment that may affect her/his impartiality and independence.
- (ii) 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.

d) Possess necessary qualifications, experience and training to mediate-

Parties should be satisfied with the mediator's competence to mediate the dispute. A mediator while communicating with parties shall be truthful regarding his qualification, experience, training, skill and competence. He shall not give any assurance regarding the outcome of any mediation.

e) Maintain confidentiality in mediation process-

(i) A Mediator shall maintain confidentiality during mediation proceedings, and even after termination of mediation. Any information, including verbal and written exchanges, obtained during mediation shall not be disclosed outside of the mediation, during or after the termination of the mediation, unless the parties have authorized such disclosure in writing. A few exceptions to Mediators' duty of confidentiality are listed at Rule 16(b) of BIAC Mediation Rules.

(ii) A Mediator is in a relationship of trust with the parties and must not, at any time, use confidential information acquired during the course of proceedings to gain personal advantage for himself or others, or to affect adversely the interest of another.

f) Conduct the mediation fairly, in a manner consistent with the BIAC Rules of Mediation and with due diligence-

The Mediator will not carry on any activity or conduct himself in a manner unbecoming of a Mediator. He will uphold the integrity and fairness of the mediation process; ensure that the parties involved in the mediation are fairly informed and have an adequate understanding of the procedural aspects of the process; avoid, while communicating with the parties, any impropriety or appearance of impropriety.

2. Mediator's communications with the parties

a) Before accepting an appointment, a Mediator may only enquire as to the general nature of the dispute, the names and particulars of the parties, and the expected time period required for the proceeding.

b) No Mediator shall confer with any of the parties or their counsel until after receipt of the notice of appointment as Mediator.

c) All correspondence and communication between the Mediator and parties shall remain private and confidential and shall not be copied to

anyone other than the parties to the dispute and BIAC, unless the parties agree otherwise.

3. Mediator's conduct during mediation proceedings

- a) A Mediator shall at all times keep BIAC informed of the status of the proceedings.
- b) The Mediator will ensure that, before the mediation begins, the parties have understood and agreed to the terms and conditions which will govern the mediation including those relating to obligations of confidentiality on the Mediator and on the parties.
- c) Once the mediation proceedings commence, the Mediator shall acquaint himself with all the facts and arguments presented and all the discussions relating to the proceedings, so that he may properly understand the dispute and assist the parties to reach a settlement.

4. Fees

- a) A Mediator shall adopt the Annex
- b) A Mediator shall not enter into a fee agreement with any party contingent upon the result of the mediation or amount of settlement.

5. Exclusion from BIAC's Panel of Mediators

Failure to conform to this Code may be a basis of removal or disqualification of the Mediator from the Mediation process and removal from BIAC's Panel of Mediators, after giving the Mediator an opportunity to explain. Any decision of BIAC Council in this regard will be final and binding.

6. Miscellaneous

- a) This Code of Conduct is for the guidance of the Mediator, and shall not be used as grounds for the setting aside of any settlement agreement.
- b) Should any question arise regarding the interpretation of any provision in this Code, the decision of BIAC shall be final.
- c) This Code may be amended or modified by BIAC at any time without prior notice.