

THE ADR CENTRE CONCILIATION/MEDIATION RULES, 2009

PRELIMINARY

1. Short title and scope.-(1) These rules may be called the ADR Centre Conciliation/Mediation Rules, 2009.

(2) These rules shall apply where the parties have agreed in writing, that

(a) a dispute which has arisen, or

(b) a dispute which may arise,

between them in respect of a defined legal relationship, whether contractual or not, should be resolved by amicable settlement under the ADR Centre Conciliation/Mediation Rules, 2009.

(3) These rules shall not apply to disputes which by virtue of any law for the time being in force may not be submitted to Conciliation/Mediation.

2. Definitions.-In these rules, unless the context otherwise requires,

(a) "Chairperson" means the Chairperson of the ADR CENTRE;

(b) "Conciliation/Mediation Rules" or "rules" means the ADR Centre Conciliation/Mediation Rules, 2009;

(c) "Governing Council" means the Governing Council of the ADR CENTRE;

(d) "ADR CENTRE" means the Alternative Dispute Resolution Centre, Kochi, or, as the case may be, any of its Regional offices;

(e) "panel of Conciliator/Mediators" means the panel of persons approved by the Governing Council to act as Conciliator/Mediators;

(f) "party" means a party to the agreement referred to in rule 1 (2);

(g) "Schedule" means the Schedule to these rules;

(h) "Secretary-General" means the Secretary-General of the ADR CENTRE.

PART I
PROCEDURES FOR CONCILIATION/MEDIATION PROCEEDINGS IN
THE ADR CENTRE

3. Commencement of Conciliation/Mediation proceedings.-(1) The party initiating Conciliation/Mediation shall send to the other party a written invitation to conciliate under these rules, briefly identifying the subject of the dispute.

(2) Conciliation/Mediation proceedings shall commence when the other party accepts in writing the invitation to conciliate.

(3) If the other party rejects the invitation, there will be no Conciliation/Mediation proceedings.

(4) If the party initiating Conciliation/Mediation does not receive a reply within thirty days from the date on which he sends the invitation, or within such other period of time as specified in the invitation, he may elect to treat this as a rejection of the invitation to conciliate and inform the other party accordingly.

4. Number and appointment of Conciliator/Mediators.-(1) There shall be one Conciliator/Mediator unless the parties have agreed that there shall be two or three Conciliator/Mediators.

(2) The parties may agree to enlist the assistance of the ADR CENTRE in connection with the appointment of Conciliator/Mediator, and in particular,-

(a) a party may request the ADR CENTRE to recommend the names of suitable individuals to act as Conciliator/Mediator; or

(b) where the agreement between the parties provides for the appointment of Conciliator/Mediator by the ADR CENTRE, a party may request the ADR CENTRE in writing to appoint a Conciliator/Mediator.

(3) Where a request in pursuance of clause (a) or clause (b) of sub-rule (2) is made to the ADR CENTRE, the party making the request shall send to the ADR CENTRE,-

(a) a copy of the invitation to conciliate;

(b) a copy of the acceptance by the other party;

(c) a copy of the agreement, if any, between the parties providing for an amicable settlement of dispute between them by Conciliation/Mediation;

(d) any qualifications required of the Conciliator/Mediator;

(e) any additional information, if required, by the ADR CENTRE.

(4) In recommending or appointing an individual to act as Conciliator/Mediator, the ADR CENTRE will follow the procedure specified in rule 24 and will have regard to-

- (a) any qualification required of the Conciliator/Mediator by the agreement of the parties;
- (b) such considerations as are likely to secure the appointment of an independent and impartial Conciliator/Mediator; and
- (c) where the parties are of different nationalities, the advisability of appointing a Conciliator/Mediator of a nationality other than the nationalities of the parties.

(5) A successor Conciliator/Mediator will be appointed in the manner in which his predecessor had been appointed.

5. Submission of statements to Conciliator/Mediator.-(1) The Conciliator/Mediator may, upon his appointment, request each party to submit to him and the ADR CENTRE a brief statement in writing describing the general nature of the dispute, the points at issue and the amount, if any, of the claim. Each party shall send a copy of such statement to the other party.

(2) The Conciliator/Mediator may request each party to submit to him and the ADR CENTRE a further statement in writing of his position and the facts and grounds in support thereof, supplemented by any documents and other evidence that such party deems appropriate. The party shall send a copy of such statement, documents and other evidence to the other party.

(3) At any stage of the Conciliation/Mediation proceedings, the Conciliator/Mediator may request a party to submit to him and the ADR CENTRE such additional information as he deems appropriate.

6. Representation and assistance.- Each party shall advise, in writing, the other party and the Conciliator/Mediator of-

- (a) the name and address of any person who will represent or assist him, and
- (b) the capacity in which the person will represent.

7. Role of Conciliator/Mediator.-(1) The Conciliator/Mediator shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.

(2) The Conciliator/Mediator shall be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.

(3) The Conciliator/Mediator may conduct the Conciliation/Mediation proceedings in such manner as he considers appropriate, taking into account the circumstances of the case, the wishes the parties may express, including the request by a party that the Conciliator/Mediator hear oral statements, and the need for a speedy settlement of the dispute.

(4) The Conciliator/Mediator may, at any stage of the Conciliation/Mediation proceedings, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons therefore.

8. Administrative services.- The ADR CENTRE will arrange the administrative services specified in Part II if-

- (a) the parties designate the ADR CENTRE for arranging such services, in the agreement to conciliate;
- (b) the parties, or the Conciliator/Mediator, with the consent of the parties, request the ADR CENTRE to arrange such services.

9. Communication between Conciliator/Mediator and parties.-(1) The Conciliator/Mediator may invite the parties to meet him or may communicate with them orally or in writing. He may meet or communicate with the parties together or with each of them separately.

(2) Unless the parties have agreed upon the place where meetings with the Conciliator/Mediator are to be held, such place shall be determined by the Conciliator/Mediator, taking into consideration the circumstances of the Conciliation/Mediation proceedings:

Provided that where administrative assistance by the ADR CENTRE is sought under rule 8, the place where meetings with Conciliator/Mediator are to be held shall be determined in consultation with the ADR CENTRE.

10. Disclosure of information.-When the Conciliator/Mediator receives factual information concerning the dispute from a party, he shall disclose the substance of that information to the other party in order that the other party may have the opportunity to present any explanation which he considers appropriate:

Provided that when a party gives any information to the Conciliator/Mediator subject to a specific condition that it be kept confidential the Conciliator/Mediator shall not disclose that information to the other party.

11. Cooperation of parties with Conciliator/Mediator.- The parties shall in good faith cooperate with the Conciliator/Mediator and, in particular, shall endeavour to comply with requests by the Conciliator/Mediator to submit written materials, provide evidence and attend meetings.

12. Suggestions by parties for settlement of dispute. - Each party may, on his own initiative or at the invitation of the Conciliator/Mediator, submit to the Conciliator/Mediator suggestions for the settlement of the dispute.

13. Settlement agreement.-(1) When it appears to the Conciliator/Mediator that there exist elements of a settlement which may be acceptable to the parties, he shall formulate the terms of a possible settlement and submit them to the parties for their observations. After receiving the observations of the parties, the Conciliator/Mediator may reformulate the terms of a possible settlement in the light of such observations.

(2) If the parties reach agreement on a settlement of the dispute, they may draw up and sign a written settlement agreement. If requested by the parties, the Conciliator/Mediator may draw up, or assist the parties in drawing up, the settlement agreement.

(3) When the parties sign the settlement agreement, it shall be final and binding on the parties and persons claiming under them respectively.

(4) The Conciliator/Mediator shall authenticate the settlement agreement, and furnish a copy thereof to each of the parties ..

14. Confidentiality.- The Conciliator/Mediator and the parties shall keep confidential all matters relating to the Conciliation/Mediation proceedings. Confidentiality shall extend also to the settlement agreement, except where its disclosure is necessary for purposes of its implementation and enforcement.

15. Termination of Conciliation/Mediation proceedings.-(1) The Conciliation/Mediation proceedings shall be terminated-

- (a) by the signing of the settlement agreement by the parties, on the date of agreement; or
- (b) by a written declaration of the Conciliator/Mediator, after consultation with the parties, to the effect that further efforts at Conciliation/Mediation are no longer justified, on the date of the declaration; or
- (c) by a written declaration of the parties addressed to the Conciliator/Mediator to the effect that the Conciliation/Mediation proceedings are terminated, on the date of the declaration; or
- (d) by a written declaration of a party to the other party and the Conciliator/Mediator, if appointed, to the effect that the Conciliation/Mediation proceedings are terminated, on the date of the declaration.

(2) The Conciliator/Mediator shall, upon termination of the Conciliation/Mediation proceedings, send an intimation thereof in writing to the ADR CENTRE.

16. Resort to arbitral or judicial proceedings.- The parties shall not initiate, during the Conciliation/Mediation proceedings, any arbitral or judicial proceedings in respect of a dispute that is the subject matter of the Conciliation/Mediation proceedings except that a party may initiate arbitral or judicial proceedings where, in his opinion, such proceedings are necessary for preserving his rights.

17. Costs.-(1) Upon termination of the Conciliation/Mediation proceedings, the Conciliator/Mediator shall fix the costs of the Conciliation/Mediation and give written notice thereof to the parties. The fee of the Conciliator/Mediator and any assistance provided pursuant to rule 4(2)(b) and fees and charges for any administrative assistance pursuant to rule 8 shall be fixed by the Conciliator/Mediator in accordance with the schedule:

Provided that the ADR CENTRE may, on request from the Conciliator/Mediator, fix the fee of the Conciliator/Mediator at a figure higher than that set out in the Schedule if, in exceptional circumstances of the case, this appears to be necessary.

(2) For the purpose of sub-rule (1), "costs" means costs relating to

- (a) the fee and expenses of the Conciliator/Mediator and witnesses requested by the Conciliator/Mediator with the consent of the parties;
- (b) any expert advice requested by the Conciliator/Mediator with the consent of the parties;
- (c) any assistance provided pursuant to rule 4(2) and rule 8;
- (d) any other expenses incurred in connection with the Conciliation/Mediation proceedings and the settlement agreement.

(3) Where more than one Conciliator/Mediator is appointed, each Conciliator/Mediator shall be paid separately the fee set out in the Schedule.

(4) The costs shall be borne equally by the parties unless the settlement agreement provides for a different apportionment. All other expenses incurred by a party shall be borne by that party.

18. Deposits.-(1) The Conciliator/Mediator will, upon his appointment, in consultation with the ADR CENTRE, direct each party to deposit with the ADR CENTRE an equal amount as an advance for the costs referred to in rule 17(2) which he expects will be incurred.

(2) During the course of the Conciliation/Mediation proceedings, the Conciliator/Mediator may, in consultation with the ADR CENTRE, direct supplementary deposits with the ADR CENTRE in an equal amount from each party for the costs referred to in sub-rule (1).

(3) If the required deposits under sub-rules (1) and (2) are not made in full within thirty days, the Conciliator/Mediator will inform the parties in order that one or the other party may make the required deposit and if the required deposit is not made, the Conciliator/Mediator may suspend the proceedings or may make a written declaration of termination of the proceedings to the parties, effective on the date of the declaration.

(4) Subject to any settlement agreement, upon termination of the Conciliation/Mediation proceedings, the ADR CENTRE shall apply the deposits to the costs of the proceedings, render an accounting to the parties of the deposits received and applied and return any unexpended balance to the parties.

19. Role of Conciliator/Mediator in other proceedings.-Unless otherwise agreed by the parties,-

(a) the Conciliator/Mediator shall not act as an arbitrator or as a representative or counsel of a party in any arbitral or judicial proceeding in respect of a dispute that is the subject-matter of the Conciliation/Mediation proceedings;

(b) the Conciliator/Mediator shall not be presented by the parties as a witness in any arbitral or judicial proceedings.

20. Admissibility of evidence in other proceedings.- The parties shall not rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject-matter of the Conciliation/Mediation proceedings,-

(a) views expressed or suggestions made by the other party in respect of a possible settlement of the dispute;

(b) admissions made by the other party in the course of Conciliation/Mediation proceedings;

(c) proposals made by the Conciliator/Mediator;

(d) the fact that the other party had indicated his willingness to accept a proposal for settlement made by the Conciliator/Mediator.

21. Interpretation and application.-If any question arises as to the interpretation or application of these rules or any procedural matter thereunder, the decision of the ADR CENTRE shall be final and binding on the parties.

PART II
SERVICES FOR PROCEDURES UNDER THE
CONCILIATION/MEDIATION RULES

22. Services for procedures under the rules.- To facilitate the conduct of Conciliation/Mediation proceedings that the parties have agreed to conduct under the Conciliation/Mediation Rules, the ADR CENTRE will-

- (a) perform the function of the appointing authority whenever-
 - (i) the ADR CENTRE has been so designated by the parties in the Conciliation/Mediation clause of their contract or in a separate agreement, or
 - (ii) the parties have agreed to submit a dispute to the ADR CENTRE under the Conciliation/Mediation Rules without specifically designating it as the appointing authority; and
- (b) provide the administrative services herein specified when required by the agreement, or when requested by all the parties, or by the Conciliator/Mediator with the consent of the parties.

23. Services as the registry.-(1) On receiving a request in pursuance of rule 4(2)(a) or 4(2)(b), the ADR CENTRE will register the request and intimate in writing to the parties the registration number of the case which shall be quoted by the party while making any subsequent communication to the ADR CENTRE.

(2) The ADR CENTRE will scrutinise every request and the documents, make necessary entries in the register and prepare a file of the case.

24. Services as recommending or appointing authority.-(1) On receipt of a request in pursuance of rule 4(2)(a), the ADR CENTRE will communicate to the party making the request a list containing the names, addresses, nationalities and a description of qualifications and experience of at least three individuals from the panel of Conciliator/Mediators.

(2) On receipt of a request to appoint a Conciliator/Mediator in pursuance of rule 4(2)(b), the ADR CENTRE will follow the following procedure-

- (i) the ADR CENTRE will communicate to each party a list containing the names, addresses, nationalities and a description of qualifications and experience of at least three individuals from the panel of Conciliator/Mediators;
- (ii) within thirty days following the receipt of the list, a party may delete any name to which he objects and after renumbering the names in the order of his preference, return the list to the ADR CENTRE;
- (iii) on receipt of the list returned by the parties, the ADR CENTRE will appoint the Conciliator/Mediator from the list taking into account the order of preference indicated by the parties;
- (iv) if for any reason the appointment cannot be made according to the procedure specified in clauses (i) to (iii), the ADR CENTRE may, unless the parties recommend the name of the Conciliator/Mediator to be appointed by the ADR CENTRE, appoint the Conciliator/Mediator from the panel of Conciliator/Mediators.

(3) In recommending or appointing a Conciliator/Mediator the ADR CENTRE will have regard to the matters referred to in rule 4(4) and will carefully consider the nature of the dispute in order to include in the list, persons having appropriate professional or business experience, language ability and nationality.

(4) All appointments on behalf of the ADR CENTRE will be made by the Secretary-General and in his absence by such member of the Governing Council as is designated by the Chairperson:

Provided that where the Secretary-General is to be appointed as the Conciliator/Mediator, the appointment will be made by the Chairperson.

25. Administrative services.-(1) The ADR CENTRE may provide the administrative services specified in this Part-

(a) upon the request of the parties;

(b) upon the request of the Conciliator/Mediator with the consent of the parties; or

(c) if the parties designate the ADR CENTRE for providing such services.

(2) All oral or written communications from a party to the Conciliator/Mediator, except at meetings, may be directed to the ADR CENTRE which will transmit them to the Conciliator/Mediator and; where appropriate, to the other party.

(3) Agreement by the parties that the ADR CENTRE will provide the administrative services, constitutes consent by the parties that, for purposes of compliance with any time requirements of the rules, any written communications shall be deemed to have been received by the addressee when received by the ADR CENTRE. When transmitting communications to a party, the ADR CENTRE will do so to the addresses provided by each of them to the ADR CENTRE for this purpose.

(4) The ADR Centre will also assist in the exchange of information and of settlement proposals.

(5) The ADR CENTRE will assist the Conciliator/Mediator to establish the date, time and place of meetings and will give the parties advance notice of such meeting.

(6) The ADR CENTRE will provide a meeting room and retiring rooms for the Conciliator/Mediator and the parties or their counsel in the offices of the ADR CENTRE on the charges set out in the Schedule. These charges will be billed separately and are not included in the fee for administrative services. However, where these facilities are provided in any place other than the offices of the ADR CENTRE, the charges will be determined by the ADR CENTRE and billed separately in each case.

(7) Upon request, the ADR CENTRE will make arrangements for reporter transcripts of meetings or hearings. The cost of reporter transcripts will be determined by the ADR CENTRE and billed separately and is not included in the fee for administrative services.

(8) Upon request, the ADR CENTRE will make arrangements for the services of interpreters or translators. The cost of interpretation or translation will be determined by the ADR CENTRE and billed separately and is not included in the fee for administrative services.

(9) (a) The ADR CENTRE will hold advance deposits to be made for the costs of the Conciliation/Mediation proceedings.

(b) On termination of the Conciliation/Mediation proceedings, the ADR CENTRE will apply the proceeds of the advance deposits towards any of its unpaid administrative fees and charges and the costs of the Conciliation/Mediation proceedings and will render an accounting to the parties of the deposits received and applied and return any unexpended balance to the parties.

(10) (a) Upon request, the ADR CENTRE will provide other appropriate administrative services the cost of which will be determined by the ADR CENTRE and billed separately and are not included in the fee for administrative services.

(b) The kinds of services which can be provided are as follows:-

(i) Secretarial support and clerical assistance;

(ii) long distance and local telephone access and telex and telecopier facilities;

(iii) photocopying and other usual office services.

(11) (a) The ADR CENTRE may require the party requesting one or more of the services referred to in sub-rule (6), (7), (8) or (10) to deposit an amount specified by it as advance towards the costs of such services;

(b) The ADR CENTRE may also require the parties to make supplementary deposits towards the costs of the services referred to in clause (a);

(c) If the required deposit under clause (a) or clause (b) is not made in full within the time specified by the ADR CENTRE, the ADR CENTRE may not provide the services requested for.

26. Administrative fees.- (1) The fee of the ADR CENTRE for making appointment of Conciliator/Mediator and for providing administrative services, other than those specified in sub-rules (6), (7), (8) and (10) of rule 25, is based upon the amount in dispute as disclosed when the statement of dispute is submitted to the ADR CENTRE in pursuance of sub-rule (1) of rule 5. Items A.I.(1), B.I.(1) and C.I.(1) of the Schedule contains the ADR CENTRE's schedule of fees and charges.

(2) Where the ADR CENTRE is requested to act as appointing authority under rule 4(2), the requesting party shall pay to the ADR CENTRE a non-refundable fee at the time of the request. This fee is separately set out in the Schedule as item A.I.(2), B.I.(2) and C.I.

(3) The Conciliation/Mediation Rules provide that the costs of Conciliation/Mediation include the costs of the administrative fee or charges of the ADR CENTRE [rule 17(2)]. These costs are, borne equally by the parties unless the settlement agreement provides for a different apportionment [rule 17(4)].