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**marc**

MCCI ARBITRATION &  
MEDIATION CENTER

**MEDIATION**

### INTRODUCTION

The purpose of this guide is to familiarise economic operators and their advisors, lawyers and accountants, as well as other professionals with mediation so that they may appreciate its advantages, understand how it differs from other means of dispute settlement, and thus encourage them to have recourse to this procedure.

MARC Mediation Rules aims at (1) helping economic operators to learn about and understand mediation; (2) creating a climate favourable to mediation by using qualified mediators selected by MARC, and (3) providing professionals with a simple, confidential and affordable method of reconciling their differences in an environment conducive to dialogue and guaranteed by professionalism.

As a preliminary observation, it should be recalled that the fundamental difference between mediation and arbitration is that the purpose of mediation is to bring about reconciliation between parties through the intervention of a third party and not to settle the dispute by imposing a binding decision. Mediation also differs from expertise in that the expert gives a technical or financial advice, while the mediator essentially works on the needs and expectations of the parties, and does not, in principal, give any advice on the merits of the case.

Characteristics of the MARC Mediation are as follows:

#### ***The response to a need:***

Promoting a mediation process for resolving business disputes responds to a need which is increasingly felt. Parties to a business relationship wish to find, even before a conflict develops, a neutral venue in which to examine and discuss their respective interests, in the presence of a third party. Appropriate solutions, which in many cases could not otherwise have been adopted, allow the parties to continue their business relationship.

#### ***A very open access***

The Mauritius Chamber of Commerce and Industry, through MARC is committed to promote recourse to mediation. For this reason, mediation can be initiated not only upon the joint request of the parties, but also in response to a desire expressed by one of the parties, in which case MARC proposes to the other party that the process be set in motion. But, by its very nature, mediation cannot, of course, be imposed on the parties.

#### ***A flexible, rapid and confidential process:***

The mediator's task is to assist the parties to seek, with loyalty and due regard for their respective interests, a conciliatory solution to the dispute between them. The mediator may perform his task as he sees fit. Since no particular restrictions are placed on the mediator or the parties with regard to the conduct of the mediation proceedings, the mediator and the parties do not find themselves in a context constrained by formalities. However, the mediator must complete his task within a two-month time limit, unless an extension is requested by both parties. Lastly, the confidential nature of the mediation process is clearly highlighted in the Rules.

#### ***Impartial and qualified mediators:***

MARC Mediation Rules aim both to respect the parties' freedom, without which the mediation cannot attain its desired object, and to give full latitude to the mediator to assist the parties throughout the process. However, it is necessary to recall that the legitimacy of the mediator relies wholly on the trust placed in him or her by the parties. This is the reason why MARC calls for mediators, who are trained in the technicalities of mediation and whose professional competence and negotiation skills are recognised.

#### ***Mediation costs:***

To provide all companies with an easy access to this amicable means of dispute resolution, MARC offers mediation services at very competitive costs.

## MEDIATION RULES

### General Provisions

- A Center for Arbitration and Mediation hereinafter referred to as the MCCI Arbitration and Mediation Center or MARC is established under the aegis of the Mauritius Chamber of Commerce and Industry (MCCI), situated at 3, Royal Street, Port-Louis.
- The Permanent Secretariat of the MARC (hereinafter referred to as the “Permanent Secretariat” or “MARC”) shall ensure compliance with the present Mediation Rules and the proper conduct of mediation proceedings. The Permanent Secretariat shall also be responsible for administrative and financial matters of MARC and the promotion of Alternative Dispute Resolution methods in general. It is constituted of the Secretary-General and officers of the MCCI.
- All proceedings before MARC shall be strictly confidential. Neither the parties nor their representatives or counsels nor the mediators may disclose any matter pertaining to mediation proceedings.
- MARC including its directors, officers, employees or any mediator shall not be liable to any person for any act or omission in connection with any mediation governed by the present Rules.
- No party shall seek to make any director, employee or mediator act as a witness in any legal proceedings in connection with any mediation governed by the present Rules.

### Article 1: Initiation of mediation proceedings

1. Mediation proceedings are initiated upon the request of the parties, where they have so agreed at the outset of the dispute, or upon the request of one party, where the parties have so agreed under the terms of their contract.
2. Mediation proceedings may also be initiated: (a) at the request of one party who wishes MARC to propose mediation proceedings and where the other party is not opposed to it, (b) or, alternatively, where MARC receives a request for arbitration and considers that mediation may be proposed to the parties, subject to their acceptance of it.

3. Any mediation which is entrusted to MARC entails acceptance by the parties of the present Mediation Rules.

### Article 2: Request for mediation

- 2.1 The MARC is seized with a matter at the request of the parties or one of them, upon receipt of a request for mediation that contains:
  - the legal particulars or company details and the addresses of the parties;
  - a brief description of the nature and circumstances of the dispute;
  - the parties’ respective positions or the position of the party requesting mediation.
  - the amount being claimed
- 2.2 The request for mediation is not registered unless it is accompanied by payment of the case filing fee, as provided by article 8 hereafter. Under no circumstances is this sum refundable.
- 2.3 Where mediation proceedings are suggested by MARC of its own initiative (under article 1.2.b of the MARC Mediation Rules and article 33 of MARC Arbitration Rules), the request for arbitration shall serve as request for mediation. It entails payment of the initial fees in accordance with the preceding paragraph, which will be set off against the sum paid at the time of the registration of the arbitration request.

### Article 3: Informing the other party

- 3.1 Where a mediation clause already exists  
When the MARC is seized by a party who invokes an existing mediation clause in the contract subject of the dispute, it shall inform the other party of the initiation of mediation proceedings. The MARC shall send the present Mediation Rules to the other party and allow it fifteen (15) days from receipt of MARC’s letter to provide its comments.

**3.2** In the absence of a mediation clause

As soon as the request is registered, the MARC shall inform the other party and invite it to participate in mediation proceedings. It shall send the present Mediation Rules to the other party and allow it fifteen (15) days from receipt of MARC's letter to reply to the MARC.

**Article 4: Response to the request**

**4.1** Where a mediation clause already exists:

As soon as the comments of the other party have been received, or once the time limit defined in article 3.1 above has expired, the Permanent Secretariat shall proceed with the designation of a mediator.

**4.2** In the absence of a mediation clause:

If the party so agrees, the Permanent Secretariat proceeds with the designation of a mediator.

If the other party explicitly refuses to participate in mediation proceedings or fails to respond once the time limit defined in article 3.2 above has expired, the MARC shall so advise the party who submitted the request for mediation and close the file, without refunding the case filing fee paid.

**Article 5: Appointment of the mediator**

**5.1** As soon as the parties have agreed to participate in mediation proceedings or when the contract between them contains a clause referring to these Rules, the MARC shall appoint a mediator, who shall be selected according to the nature of the dispute or, as the case may be, based on a suggestion from the parties.

**5.2** MARC may propose to the parties that a trainee mediator attend the mediation sessions. The trainee mediator will then be bound by the same obligation of confidentiality as the appointed mediator.

**Article 6: Independence, neutrality and impartiality of the mediator**

**6.1** The mediator must be impartial, neutral and independent of the parties. In appropriate cases, he must disclose to the parties and to the Permanent Secretariat any circumstances which might affect his independence and/or impartiality. In such case, he may be confirmed or maintained as mediator only after a decision by the Permanent Secretariat and with the written consent of all the parties.

**6.2** The mediator appointed by the Permanent Secretariat shall sign a statement of independence.

**6.3** Should he come to the view, during the course of the mediation process, that there exists any factor liable to raise doubts as to his independence, he shall so inform the parties. The mediator shall continue his task if the parties thereon agree in writing. Otherwise he shall stay the mediation proceedings. The Permanent Secretariat shall then proceed to appoint a replacement mediator.

**Article 7: The mediator's role and the conduct of the mediation proceedings**

**7.1** The mediator helps the parties to find a negotiated outcome to their dispute. He has full discretion as to the methods by which he performs his task, subject to obligations of loyalty and respect of the interests of each of the parties. If he considers it useful, he may hear the parties separately, if they have agreed to this. In this case, he tries to ensure equal balance of treatment between all the parties and the respect of the confidentiality of the procedure (cf. paragraph below).

**7.2** In the case of contractual mediation, at the beginning of mediation proceedings, the mediator requests the parties to sign an agreement apportioning the expenses and fees of the mediation between them.

**7.3** Where a mediation clause exists, if one of the parties refuses to attend a meeting organised by the mediator, an end of mission report is submitted to MARC by the mediator.

- 7.4** Similarly, the mediator also submits an end of mission report to MARC in the event that the mediation ends without the parties having reached an agreement. The Permanent Secretariat then closes the file and so informs the parties.
- 7.5** The mediator and the parties are held to the strictest obligation of confidentiality for all matters relating to the mediation: no finding, statement, or proposal made by or before the mediator may be used subsequently, even in court proceedings, except in cases where all parties have formally agreed to this.
- 7.6** The duration of the mediation shall not exceed two months starting from the appointment of the mediator by MARC. This period may be extended by MARC, with the agreement of the mediator and all the parties, MARC being entitled to terminate the mediation proceedings on the expiry of a period of six months from the date of appointment of the mediator, without refunding the administrative fees.
- 7.7** If it appears to the mediator that the mediation process will not result in an agreement, he may terminate his mission. Equally, and at any time, either party is free to bring the mediation proceedings to end.
- 7.8** Should the mediator consider that he is unable to pursue his mission, he shall stay the mediation proceedings. He shall promptly give notice thereof to MARC. MARC shall then proceed to appoint a replacement mediator as soon as possible, if the parties so request.
- 7.9** In the hypothesis provided for at article 1.2.b, the parties may at any time request that the mediation proceedings be terminated and, where appropriate, that arbitration proceedings be started.
- 7.10** The mediator may not be appointed as an arbitrator or participate in any capacity whatsoever in any ongoing proceedings, except upon the written request of all the parties.
- 7.11** The agreement reached as a result of mediation proceedings shall be set in writing in a document that is signed by the parties.

- 7.12** In the case of an international dispute, the parties may ask the mediator, if he is willing, to be appointed by MARC as an arbitrator in order to deliver an award by consent.
- 7.13** If the mediator so agrees, MARC starts arbitration proceedings. In addition to the fees and expenses of the mediation, half of the arbitration costs that would be applicable to an arbitration are added, in accordance with the minimum fee for the range of the sum in dispute, that would be incurred should an arbitration be commenced, as defined in the scale appended to the Arbitration Rules in effect at the time proceedings were originally initiated with MARC.
- Once any sums due for this arbitration procedure have been paid, the Permanent Secretariat is requested to validate the appointment of the arbitrator.
- 7.14** The award is delivered in accordance with the MARC Arbitration Rules.

**Article 8: Mediation fees and expenses**

- 8.1** The fees and expenses of the mediation shall be set, as appropriate, in accordance with the scale annexed to these Rules that are in effect at the date MARC receives the request for mediation.
- 8.2** During the course of mediation proceedings, the MARC may request an additional upfront advance against final fees and expenses.

**Article 9: Interpretation of rules and applicable rules**

- 9.1** MARC shall have sole jurisdiction to interpret the present Rules.
- 9.2** A request for mediation shall be processed in accordance with the Rules and scale of costs in effect on the date of receipt of the request.
- 9.3** MARC reserves the right to modify the present Rules and the scale of costs for mediation which follows.

## RULES OF ETHICS FOR MEDIATORS

As from his designation and throughout the mediation proceedings, the mediator commits to reveal any circumstance which, for the parties, might be of a nature likely to affect his independence, his neutrality or his impartiality (article 6.1 of the Mediation Rules.)

### *Article 1: Role of the Mediator*

Article 7 of the Mediation Rules provides that: “The mediator helps the parties to find a negotiated outcome to their dispute. He has full discretion as to the methods by which he performs his task, subject to obligations of loyalty and respect of the interests of each of the parties. If he considers it useful, he may hear the parties separately, if they have agreed to this.”

The mediator has no authority other than that arising out of the confidence placed in him by the parties.

The mediator is neither a judge nor an arbitrator. His role is to seek with the parties a negotiated solution by assisting them in exploring and better understanding their points of view.

The mediator undertakes to respect MARC Mediation Rules, in particular with respect to time limits.

### *Article 2: The mediator and the parties*

As soon as possible after accepting his appointment, the mediator contacts the parties in order to organise his mission. He obtains the agreement of the parties; if he considers it appropriate, to meet separately with them. In such a case, the mediator undertakes to respect the principle of equality between the parties. The mediator analyses with each party its position with respect to the dispute and makes sure that each party fully understand the position of the other party or parties.

To accomplish this, he may suggest ideas to resolve the issues, but in no circumstances he may attempt to impose any terms or settlement, particularly on a party which is clearly in a weak position. In his approach, the mediator must not only be guided by principles of fairness but also take into account the parties’ expectations with regard to the agreements entered into by them. If his mission is successful, the mediator invites the parties to formalise their agreement by signing a written settlement agreement. Since the mediator is not a party to that document, he does not sign it.

However, upon the request of the parties, he may affix his signature to the settlement agreement to attest to the agreement reached. In such case, his signature is preceded by the words “in the presence of X, mediator designated by MARC.”

### *Article 3: Secrecy and Confidentiality*

The mediator is bound by a duty of secrecy regarding the dispute entrusted to him, both with regard to its existence and to all other aspects of the mediation.

The mediator’s duty of secrecy is general, absolute, and unlimited in time. The mediator may be released from it only under the conditions prescribed by law.

The mediator is prohibited from having any professional relationship with any of the parties during the year following the end of his mission.

The mediator’s mission ends when a settlement agreement is signed or when the failure of the mediation is recorded. From that date onward, the mediator cannot intervene in any capacity whatsoever in connection with the dispute or its resolution, except upon the request of all the parties and after giving notice thereof to the Permanent Secretariat.