

# LCIA Mediation Rules

effective 1 July 2012

Where any agreement provides for mediation of existing or future disputes under the rules of the LCIA, the parties shall be taken to have agreed that the mediation shall be conducted in accordance with the following rules (the “Rules”) or such amended rules as the LCIA may have adopted hereafter to take effect before the commencement of the mediation. The Rules include the Schedule of Mediation Costs (the “Schedule”) in effect at the commencement of the mediation, as separately amended from time to time by the LCIA Court.

1. Commencing Mediation - Prior Existing Agreements to Mediate
2. Commencing Mediation - no Prior Agreement
3. Appointment of Mediator
4. Statements by the Parties
5. Conduct of the Mediation
6. Conclusion of the Mediation
7. Settlement Agreement
8. Costs
9. Judicial or Arbitral Proceedings
10. Confidentiality and Privacy
11. Exclusion of Liability

## Article 1

### Commencing Mediation – prior existing agreements to mediate

#### 1.1

Where there is a prior existing agreement to mediate under the Rules (a “Prior Agreement”), any party or parties wishing to commence a mediation shall send to the Registrar of the LCIA Court (“the Registrar”) a written request for mediation (the “Request for Mediation”), which shall briefly state the nature of the dispute and the value of the claim, and should include, or be accompanied by a copy of the Prior Agreement, the names, addresses, telephone, facsimile, telex numbers and e-mail addresses (if known) of the parties to the mediation, and of their legal representatives (if known) and of the mediator proposed (if any) by the party or parties requesting mediation.

#### 1.2

If the Request for Mediation is not made jointly by all parties to the Prior Agreement, the party requesting mediation shall, at the same time, send a copy of the Request for Mediation to the other party or parties.

#### 1.3

The Request for Mediation shall be accompanied by the registration fee prescribed in the Schedule, without which the Request for Mediation shall not be registered.

#### 1.4

Where there is a Prior Agreement, the date of commencement of the mediation shall be the date of receipt by the Registrar of the Request for Mediation and the registration fee.

#### 1.5

The LCIA Court shall appoint a mediator as soon as practicable after the commencement of the mediation, with due regard for any nomination, or method or criteria of selection agreed in writing by the parties, and subject always to Article 8 of the Rules.

## Article 2

### Commencing Mediation – no prior agreement

#### 2.1

Where there is no Prior Agreement, any party or parties wishing to commence a mediation under the Rules shall send to the Registrar a Request for Mediation, which shall briefly state the nature of the dispute and the value of

the claim, and should include, or be accompanied by, the names, addresses, telephone, facsimile, telex numbers and e-mail addresses (if known) of the parties to the mediation, and of their legal representatives (if known) and of the mediator proposed (if any) by the party or parties requesting mediation.

#### 2.2

The Request for Mediation shall be accompanied by the registration fee prescribed in the Schedule, without which the Request for Mediation shall not be registered.

#### 2.3

If the Request for Mediation is not made jointly by all parties to the dispute,

a) the party wishing to commence the mediation shall, at the same time, send a copy of the Request for Mediation to the other party or parties; and

b) the other party or parties shall, within 14 days of receiving the Request for Mediation, advise the Registrar in writing whether or not they agree to the mediation of the dispute.

#### 2.4

In the event that the other party or parties either declines mediation, or fails to agree to mediation within the 14 days referred to at Article 2.3(b), there shall be no mediation under the Rules and the Registrar shall so advise the parties, in writing.

#### 2.5

Where there is no Prior Agreement, the date of commencement of the mediation shall, subject to payment of the registration fee in accordance with Article 2.2, be the date that agreement to mediate is reached in accordance with Article 2.3(b).

#### 2.6

The LCIA Court shall appoint a mediator as soon as practicable after the commencement of the mediation, with due regard for any nomination, or method or criteria of selection agreed in writing by the parties, and subject always to Article 8 of the Rules.

### **Article 3**

#### **Appointment of Mediator**

##### 3.1

Before appointment by the LCIA Court, pursuant to Article 1.5 or Article 2.6, the mediator shall furnish the Registrar with a written résumé of his or her past and present professional positions; and he or she shall sign a declaration to the effect that there are no circumstances known to him or her likely to give rise to any justifiable doubts as to his or her impartiality or independence, other than any circumstances disclosed by him or her in the declaration. A copy of the mediator's résumé and declaration shall be provided to the parties.

##### 3.2

Where the mediator has made a disclosure, pursuant to Article 3.1, or where a party independently knows of circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence, a party shall be at liberty to object to his or her appointment; in which case the LCIA Court shall appoint another mediator.

### **Article 4**

#### **Statements by the Parties**

##### 4.1

The parties are free to agree how, and in what form, they will inform the mediator of their respective cases, provided that, unless they have agreed otherwise, each party shall submit to the mediator, no later than 7 days before the date agreed between the mediator and the parties for the first scheduled mediation session, a brief written statement summarising its case; the background to the dispute; and the issues to be resolved.

##### 4.2

Each written statement should be accompanied by copies of any documents to which it refers.

4.3

Each party shall, at the same time, submit a copy of the written statement and supporting documents to the other party or parties.

## **Article 5**

### **Conduct of the Mediation**

5.1

The mediator may conduct the mediation in such manner as he or she sees fit, having in mind at all times the circumstances of the case and the wishes of the parties.

5.2

The mediator may communicate with the parties orally or in writing, together, or individually, and may convene a meeting or meetings at a venue to be determined by the mediator after consultation with the parties.

5.3

Nothing which is communicated to the mediator in private during the course of the mediation shall be repeated to the other party or parties, without the express consent of the party making the communication.

5.4

Each party shall notify the other party and the mediator of the number and identity of those persons who will attend any meeting convened by the mediator.

5.5

Each party shall identify a representative of that party who is authorised to settle the dispute on behalf of that party, and shall confirm that authority in writing.

5.6

Unless otherwise agreed by the parties, the mediator will decide the language(s) in which the mediation will be conducted.

## **Article 6**

### **Conclusion of the Mediation**

The mediation will be at an end when, either

(a) a settlement agreement is signed by the parties; or

(b) the parties advise the mediator that it is their view that a settlement cannot be reached and that it is their wish to terminate the mediation; or

(c) the mediator advises the parties that, in his or her judgement, the mediation process will not resolve the issues in dispute; or

(d) the time limit for mediation provided in a Prior Agreement has expired and the parties have not agreed to extend that time limit.

## **Article 7**

### **Settlement Agreement**

7.1

If terms are agreed in settlement of the dispute, the parties, with the assistance of the mediator if the parties so request, shall draw up and sign a settlement agreement, setting out such terms.

7.2

By signing the settlement agreement, the parties agree to be bound by its terms.

## **Article 8**

## **Costs**

### **8.1**

The costs of the mediation shall include the Mediator's Fees and Expenses, Time Reserved but not Used (if any), and the Administrative Charges of the LCIA, as set out in the Schedule (the "Costs").

### **8.2**

As soon as practicable after commencement of the mediation, the LCIA will request the parties to file a deposit to be held on account of the Mediator's Fees and Expenses and the Administration Fees and Expenses (the "Deposit"). The Deposit shall be paid by the parties in equal shares or in such other proportions as they have agreed in writing.

### **8.3**

In the event that a party fails to pay its share of the Deposit, another party may make a substitute payment to allow the mediation to proceed.

### **8.4**

A mediator shall not be appointed and the mediation shall not proceed unless and until the Deposit has been paid in full.

### **8.5**

In the event a mediator is not appointed; the mediation does not proceed, and the mediation was commenced pursuant to Article 1.4 or Article 2.5 of the Rules, the LCIA's Administration Fees and Expenses shall be invoiced for immediate payment by the parties in equal shares, or in such other proportions as the parties have agreed in writing.

### **8.6**

In the event a mediator is not appointed, and the mediation does not proceed, by operation of Article 2.4 of the Rules, the LCIA's Administration Fees and Expenses shall be invoiced for immediate payment by the party or parties which requested mediation.

### **8.7**

In the event a mediator is appointed, and the mediation does proceed:

(i) at the conclusion of the mediation, the LCIA Court shall determine the Costs;

(ii) if the Deposit exceeds the Costs, the excess will be reimbursed to the parties in the proportions in which they have contributed to the Costs, or in such other proportions as the parties have agreed in writing; and

(iii) if the Costs exceed the Deposit, the shortfall will be invoiced for immediate payment by the parties in such proportions as the parties may have agreed in writing, or, absent such agreement, in such proportions as the LCIA Court may determine.

### **8.8**

Any other costs incurred by the parties, whether in regard to legal fees, experts' fees or expenses of any other nature will not be part of the Costs for the purposes of the Rules.

## **Article 9**

### **Judicial or Arbitral Proceedings**

Unless they have agreed otherwise, and notwithstanding the mediation, the parties may initiate or continue any arbitration or judicial proceedings in respect of the dispute which is the subject of the mediation.

## **Article 10**

### **Confidentiality and Privacy**

#### **10.1**

All mediation sessions shall be private, and shall be attended only by the mediator, the parties and those

individuals identified pursuant to Article 5.4.

10.2

The mediation process and all negotiations, and statements and documents prepared for the purposes of the mediation, shall be confidential and covered by “without prejudice” or negotiation privilege.

10.3

The mediation shall be confidential. Unless agreed among the parties, or required by law, neither the mediator nor the parties may disclose to any person any information regarding the mediation or any settlement terms, or the outcome of the mediation.

10.4

All documents or other information produced for or arising in relation to the mediation will be privileged and will not be admissible in evidence or otherwise discoverable in any litigation or arbitration, except for any documents or other information which would in any event be admissible or discoverable in any such litigation or arbitration.

10.5

There shall be no formal record or transcript of the mediation.

10.6

The parties shall not rely upon, or introduce as evidence in any arbitral or judicial proceedings, any admissions, proposals or views expressed by the parties or by the mediator during the course of the mediation.

## **Article 11**

### **Limitation of Liability**

11.1

None of the LCIA (including its officers and employees), the LCIA Court (including its President, Vice-Presidents and individual members), the Registrar, any deputy Registrar, and any mediator shall be liable to any party howsoever for any act or omission in connection with any mediation conducted by reference to the Rules, save (i) where the act or omission is shown by that party to constitute conscious and deliberate wrongdoing committed by the body or person alleged to be liable to that party and (ii) the extent to which any part of this provision is prohibited by any applicable law.

11.2

None of the LCIA (including its officers and employees), the LCIA Court (including its President, Vice-Presidents and individual members), the Registrar, any deputy Registrar, or the Mediator shall be under any legal obligation to make any statement to any person about any matter concerning the mediation, nor shall any party seek to make any of these persons a witness in any legal or other proceedings arising out of the mediation.