



MILAN  
CHAMBER OF  
ARBITRATION

# MEDIATION RULES



in force since December 6th 2012

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## Article 1 – Definitions

For the purpose of these Rules:

- “Mediation Provider” or “Provider” is the entity, belonging to the Chamber of Commerce system, registered in the Registry of the Ministry of Justice, entitled to manage mediation proceedings pursuant to the Italian laws in force;
- “Provider’s Head Officer” is the physical subject who has been internally appointed by the Chamber to carry out duties and prerogatives attaining to his office pursuant to the laws in force or the subject appointed as substitute of the Head Officer;
- “Secretariat” is the support structure, however indicated, which provides for the management of the mediation proceedings; the Head Officer is in charge of the Secretariat.

## Article 2 – Scope of application

The mediation Service offers the opportunity to resolve civil and commercial disputes relating to freely disposable rights, between two or more subjects including controversies between businesses and business and consumers, with the assistance of an independent, impartial and neutral mediator. These Rules and the Annexes, which are an integral part of the rules, apply unless otherwise provided by law.

## Article 3 – The Secretariat

The Secretariat manages the mediation Service. The officers of the Secretariat must be impartial, must not discuss the merits of the dispute nor act as legal consultants. The Secretariat opens a specific file for each mediation proceedings and ensures appropriate procedures for the custody and confidentiality of all the proceedings’ documents therein contained. The Secretariat may declare the proceedings terminated and so informs the parties:

- -at any time when the parties have declared or indicated that they have no interest in pursuing the proceedings;

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- when 4 months have elapsed from the date of deposit of the request, except where both parties express the wish to continue with the mediation, or when 4 months have elapsed from the deadline date fixed by the Court for the filing of the mediation request, when the parties have been referred to mediation by the Court.

The Secretariat declares the proceedings terminated and so informs the parties if the mediation meeting does not take place for explicit or tacit refusal by the party invited to the mediation and the requesting party has applied in writing for a standard statement from the Secretariat to the effect that the proceedings have terminated due to non acceptance by the other side.

Upon request of one of the parties, the Secretariat also certifies in writing that:

- a) a request for mediation has been filed;
- b) a mediation process has terminated.

The Provider may also avail itself, even for the management of single proceedings, of structures, staff, mediators, of other Providers listed in the specific Providers Registry of the Ministry of Justice, with which it may sign specific agreements.

#### **Article 4 – The Mediator**

The mediator does not decide the dispute but helps the parties to achieve an agreed outcome, seeking for a satisfactory agreement.

The mediator is appointed among those listed in the provider's list of mediators registered following the approval of the Responsible for the Ministry of Justice Mediators' Register. The list of mediators is published on the mediation provider's web site.

The mediator is selected by the Head Officer from the names registered in special lists created in accordance with standards set by the Unione Italiana delle Camere di Commercio, in compliance with the laws into force.

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Mediators in the provider's list must be specifically trained and attend a specific two-year refresher course held by a training entity pursuant to the law, furthermore in the same two-year period they must attend as trainees at least to 20 mediation procedures managed by registered providers. The appointment is made in accordance with mandatory predetermined criteria for the assignment of mediation cases which take into account the specific professional qualification of the mediator, including his/her university degree as well as according to rotation, availability and mediation experience, taking into account the subject matter and the parties of the dispute, so as to ensure impartiality and suitability for the correct and expeditious fulfillment of the service. The parties can jointly select their mediator among those included in the lists.

Where there is an agreement under art. 3, the mediator, where needed, may be selected by the Head Officer with a motivated decision, among those registered with other Providers.

The mediator must not be in a position considered incompatible with his role by specific rules of law and the code of ethics (see annex B).

Before the opening of any mediation process and in any case before meeting with the parties, the mediator signs a declaration of impartiality, independence and neutrality and undertakes to comply with to the code of ethics.

Whenever necessary and in accordance with the law, the Head Officer can select a co-mediator to support the mediator in the exercise of his role. Each party can request the Head Officer to replace the mediator, stating justifying reasons. Where the Head Officer is acting as mediator, the application for replacement is submitted to the officer hierarchically above him/her.

#### **Article 5 – Criteria for the appointment of mediators**

The mediation service of the Camera di Commercio has to keep a file for each mediator containing a detailed

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Curriculum Vitae, certificates of attendance to courses, evaluation charts of his/her work as a mediator.

The Head Officer must keep a record, also by way of an electronic file, for each mediator containing education and professional qualifications, specializations (postgraduate studies), mediation proceedings handled, courses attended on professional skills as well as mediation/communication techniques. Each year the mediator must update his/her file and record. The provider's Head Officer arranges the registered mediators in different categories taking into account the various areas of specific professional expertise as well as, for each one of these, the degree of expertise in mediation skills of each mediator.

The Head Officer, taking into account the mediator's professional Curriculum Vitae (kind of degree, specialization courses, technical expertise on mediation) and the subject matter of the mediation, identifies a first list of mediators. The Head Officer then reviews the matter further taking into account the other elements of the case.

If in the opinion of the Head Officer, the dispute has particularly complex aspects, the appointment will be made choosing from mediators that have the same degree of expertise taking into account their experience .

When, in the opinion of the Head Officer, the dispute does not show particularly complex aspects, availability and rotation criteria can be applied.

The experience acquired on the field by the mediator is a further element to be taken into account when assessing which mediator is the most suitable for a certain mediation submitted to the provider. The Head Officer therefore should assess the experience of mediators taking into account not only the number of mediations handled, but also the specific features of the conflict (i.e. multiparty conflict), the conflict level reached by the parties, the kind of mediation (Court referred, voluntary, mandatory). The mediator's update in training should also be taken in consideration.

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Then in order to assign the case, the Head Officer checks on the availability of the subject or subjects identified as the most suitable for the considered mediation.

Should the Head Officer select more than one fitting mediator, following the criteria mentioned above, the criterium of rotation should also be applied taking into account the number of cases for which the mediators have been appointed during the year as well as the economic value of the disputes previously handled by the mediator.

The Parties can jointly state their preference for one specific mediator selected from those registered in the Provider's list. Further, the parties can jointly state the professional qualifications that they consider most suitable or, on the other hand, jointly state which professional qualifications they do not deem suitable. At any event it is the Head Officer who will decide whether it is appropriate to follow their indication.

Whenever the Head Officer does not follow the indications submitted jointly by the parties, the appointment made has to be adequately motivated.

Further, the Head Officer, before appointing a mediator on the basis of the rotation criterium, can invite the parties to jointly select a mediator from the first list of names identified following the above mentioned criteria.

#### **Article 6 – Commencement of the mediation process**

The mediation process can be commenced on request of a party, in accordance with a contractual clause, following recommendation by the Judge, and when the law provides for mandatory mediation prior to judicial proceedings.

The process is commenced by filing with the Secretariat a completed request, on the basis of forms available in hard copy or online on the Provider's website.

The request must specify:

- The name of the Provider
- The data and contacts of the parties and, if appointed, that of counsels, advisors and/or consultants

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- The object of the dispute
  - The reasons of the claim
  - The economic value of the dispute, calculated in accordance with the criteria provided by the Italian Civil Procedure Code.

Whenever the economic value of the dispute is indeterminate or cannot be determined or there is a considerable difference on the estimated economic value assessed by the parties, the Provider will fix a reference value not higher than Euro 250.000,00 and communicate it to the parties. Where a different economic value emerges during the mediation process, fees will be due under the corresponding bracket.

The request is processed by the Secretariat.

If the request is lacking any of the elements listed above or the requesting party has failed to pay the registration fee, the Provider's Head Officer suspends processing and invites the party to complete the request procedure within 7 days from receipt of the communication, if the party fails to complete the request, the proceedings are not brought forward.

Parties can file joint or contextual requests.

A request can also be filed inviting to mediation more than one party.

The Head Officer fixes the date of the first meeting between the parties within 15 days from the date of filing the request unless the parties have agreed otherwise or there are different justified organizational needs.

The Secretariat communicates to the requesting party the date of the meeting. The Secretariat sends to the other parties the mediation request and communicates the date of the first meeting using a means that provides a return receipt. The parties, 7 days prior to the date scheduled for the meeting, confirm to the Secretariat who will be present.

Failure to confirm is considered refusal to participate to the meeting. Each Party has access to the documents relating to the proceedings, except those referring to private sessions,

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which can be accessed only by the party who has filed them. The Provider keeps the documents in a dedicated folder, or electronic file, registered and numbered, for 3 years from the conclusion of the proceedings. Should the Provider be disqualified following the filing of a request, the Secretariat will inform the parties and provide them with a list of Providers qualified to process the mediation.

### **Article 7 – The mediation meeting**

The mediation meeting takes place at the premises of the Provider or, if necessary, at a different place agreed by the parties, the mediator and the Head Officer.

Fees have to be fully settled before the mediation meeting and they are due jointly and severally by each single party who has accepted to participate to the process. At any event, in case of mandatory mediation, pursuant to the law, the Provider and the mediator cannot refuse to manage the mediation.

The parties attend the meeting personally. Where there are serious and exceptional circumstances, with a specific written power of attorney, they can be represented by a proxy informed on the facts and holding the necessary powers.

The parties can be assisted by counsel or by a trusted consultant.

The mediator conducts the meeting informally hearing the parties jointly and separately. The mediator, in agreement with the parties, after the first meeting, can schedule further meetings. On request of the mediator, and according to his/her instructions, the Provider's Head Officer can appoint a technical consultant, provided that all parties agree and undertake to bear the consultant's fees in equal parts, or as otherwise agreed. The consultant's fees will be fixed on the basis of the tariffs for technical consultants to the Courts of law and the parties will provide for payment directly.

### **Article 8 – Outcome of the mediation meeting**

The minutes of the mediation is a document signed by the parties and the mediator pursuant to the law, that records

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the outcome of the meeting and, if such is the case, that it is impossible for a party to sign.

Upon request of all parties the mediator formulates a settlement proposal.

The settlement proposal is communicated to the parties in writing by the Secretariat. The parties must communicate to the Secretariat in writing within seven days, their acceptance or refusal of the proposal. In the absence of reply within said term, the proposal is considered refused.

Except where the parties have agreed different terms, the proposal cannot make any reference to statements made and information acquired during the mediation process.

The mediator has the right to refuse to formalize a proposal in writing:

- a) if the mediation clause provides that no written proposal should be formalized;
- b) if at least one of the parties expressly raises objection to a written formal proposal;
- c) whenever the mediator considers that the available information is insufficient.

If the party invited to mediation does not adhere or is not present at the mediation meeting the mediator cannot formulate a proposal. The settlement agreement will be handed to the parties after the settlement of all mediation costs. At the end of the mediation process the Secretariat submits to the parties an evaluation form (see annex D) to be forwarded to the competent officer of the registry of mediation providers at the Ministry of Justice.

All costs and obligations deriving from the mediation agreement are borne by the parties.

### **Article 9 – Confidentiality**

The mediation process is confidential and no statement made during the meeting can be registered or recorded.

With reference to statements made and information acquired during private sessions that might take place, except where the party giving the statement and information has otherwise agreed, the mediator and any other subject that might be

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present are held to confidentiality with reference to anyone else. Likewise, the mediator, the parties, the mediators attending the meeting for monitored training and all those present at the mediation meeting, cannot disclose to third parties any fact or information acquired during the mediation process. Consequently, those present at the meeting, with the exception of the parties and the Secretariat's officers, mediators attending their assisted apprenticeship included, are required to sign a declaration to this effect. The parties may not use any statement and information obtained during the mediation process in any subsequent suit, arbitration or legal proceeding brought by the same parties relating wholly or in part to the same dispute, commenced, reassumed or continued after the mediation has failed, except when the party who made the statements or gave the information has given consent.

The parties may not summon the mediator, Secretariat's the officers or any other person involved in the mediation process to testify in legal proceedings or to state under decisive oath on facts and circumstances brought to their knowledge relating to the mediation process.

### **Article 10 – Monitored Training**

Monitored training consists in the trainee observing practicing experienced mediators, without taking part in the mediation process in course, and participating in follow-up meetings expressly scheduled and led by the Provider's mediators and/or experts, to analyze and consider the attended mediation meetings. The trainees' names are communicated to the parties and to the mediator before the mediation meeting.

The parties and the mediator, can ask for the trainee to leave the mediation meeting at any time.

The Provider shall make monitored training available free of charge, giving priority to the trainees registered in its mediators' list. The trainee is bound by the same confidentiality, independence and impartiality obligations which bind the mediator and the Secretariat and must sign

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a declaration of independence, impartiality, neutrality and confidentiality with reference to the whole process. No payment shall be due to the trainee.

### **Article 11 – Duties and responsibilities of the parties**

The parties have exclusive responsibility for:

- The receivability of the mediation request, with reference to its object and the reasons for the request;
- The qualification of the nature of the dispute;
- The form and content of the power of attorney ex art. 7 of these Rules;
- The indication of the economic value of the dispute;
- The indication of the parties called in mediation;
- The indication of the addresses where communications are to be sent;
- The specification of the subjects that must be present at the mediation meeting, in particular where there are cases of compulsory joinder, where the parties wish to commence legal action and mediation is a condition precedent to legal action;
- The declaration, made by the party when depositing the request, that the same process has not been filed with other Provider.

In any case the Provider shall not be held responsible for the expiry of any term implying forfeiture of rights or limitation period which are not caused by the Provider's negligence due to:

- o Failure or delay in delivering communications related to acts for the performance of which the Provider cannot be held liable.
- o Claimant's Imprecise, inaccurate or omitted indication of the object of the mediation request and of the protected right.

In both instances, liability lies entirely on the interested parties. For the purpose of interrupting forfeiture terms or limitation period the requesting party can notify on their own account communication of the deposit of the mediation request, even without the date of the mediation meeting.

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- ANNEX A): Mediation Fees and determining criteria
  - ANNEX B): Code of Conduct for Mediators
  - ANNEX C): Online Mediation Rules
  - ANNEX D): Evaluation Report

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