

DIAC Mediation Rules 2023

English

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Preamble

The DIAC Mediation Rules 2023 (the **Rules**) were issued by the Board of Directors of DIAC on 12 July 2023, and came into effect on 1 October 2023. All new requests for mediation submitted to DIAC after 1 October 2023 shall be governed by the Rules (subject to the introductory provisions set out therein).

Whilst mediation has always been recognised as a useful alternative dispute resolution mechanism within the infrastructure of doing business, the world has observed a recent shift towards a more structured approach to enhance its legitimacy, utility and benefits to commercial parties.

When practiced constructively, mediation can be an effective, efficient, and amicable method of resolving disputes that allows parties to resolve their differences within a reasonable period and at a fraction of the cost of an adjudicative process such as litigation or arbitration.

Mediation is a collaborative, rather than adversarial means of dispute resolution, where parties retain control of the process and settlement, with the assistance of a neutral mediator. A mediator acts as a facilitator, assisting the parties to resolve their differences and helping to create solutions that may not be possible in an adjudicative process, often leading to a better outcome and helping to preserve commercial relationships.

The Rules were originally drafted and approved by the Board of Directors of DIAC in English and they have been carefully translated into Arabic.

Article 1 Definitions

- 1.1 The following words and phrases shall have the meaning assigned to them unless the context indicates otherwise:
- Appendix** means either Appendix 1, Appendix 2 or Appendix 3 of the Rules;
- Application** means a written application to commence mediation in the form of Appendix 1;
- Arbitration Court** means the Arbitration Court of DIAC;
- Centre** or **DIAC** means the Dubai International Arbitration Centre;
- Party** or **Parties** means the Requesting Party or parties and/or the Responding Party or parties;
- Mediator** or **Mediators** means the neutral third-party or parties appointed pursuant to these Rules to assist the Parties settle their dispute;
- Reply** means the written reply to an Application in the form of Appendix 2;
- Requesting Party** means the Party or Parties commencing mediation in accordance with Article 3.1 of the Rules;
- Responding Party** means the Party or Parties against whom an Application is filed;
- Rules** means the DIAC Mediation Rules in force on the date of the submission of the Application; and
- Settlement Agreement** means the written instrument recording the Parties' decision to conclusively settle their dispute on mutually agreed terms.
- 1.2 Words used in the singular include the plural and vice versa, as the context may require.
- 1.3 The Appendices to the Rules shall form part of and be treated as an integral part of the Rules.

Article 2 General

- 2.1 Where the Parties have agreed to mediate their dispute before DIAC these Rules shall apply.
- 2.2 Any Party may refer a dispute to mediation before DIAC whether there is a pre-existing agreement to mediate or not.
- 2.3 Where there is a pre-existing agreement to mediate, the Rules shall apply to mediations which commence after the date on which the Rules came into force regardless of the date on which the agreement to mediate was entered into.
- 2.4 Subject to the approval of the Mediator, the Parties may agree in writing to modify the provisions of the Rules to the extent that such modifications are within the spirit of the Rules and do not render them inoperable.
- 2.5 The core objective of the Rules is for all mediations to be conducted fairly, impartially, efficiently and proportionately (having due regard to the sum(s) claimed and/or

counterclaimed and the complexity of the dispute). The Mediator, the Parties and the Parties' representatives undertake to conduct the mediation in accordance with that objective.

Article 3 Commencement of mediation

- 3.1 The Requesting Party shall submit to the Centre an Application in the form set out in **Appendix 1** and simultaneously send a copy to the Responding Party.
- 3.2 Within 15 days following the notification of the Application, the Responding Party shall submit to the Centre a Reply in the form set out in **Appendix 2** and simultaneously send a copy to the Requesting Party.
- 3.3 If requested by the Responding Party, the Centre may grant the Responding Party an extension of time of up to 7 days to file a Reply, provided the request for an extension contains the Responding Party's consent that the dispute be referred to mediation under the Rules.
- 3.4 If no Reply is received from the Centre within the time limit pursuant to Article 3.2, or within such additional time as may be determined by the Centre in its absolute discretion, it shall be deemed that the Responding Party does not consent to the dispute being referred to mediation under the Rules and the mediation shall not proceed.
- 3.5 Where the Parties reach an agreement to refer the dispute to mediation pursuant to the Rules, the mediation shall commence on the date on which the Centre sends written confirmation to the Parties that such an agreement has been reached.

Article 4 Notifications, communications and calculation of time limits

- 4.1 All notifications and communications between the Parties, the Mediator and the Centre shall be made in writing by email or as otherwise directed by the Centre. The Centre may also request a Party to provide any documentation in hard copy format if it considers it necessary to do so.
- 4.2 For the purpose of calculating a period of time under the Rules, and unless the Parties otherwise agree in writing, such period shall begin to run on the day following the day when a notification or communication is received or deemed to have been received by a Party or its nominated representative. If the last day of such period is an official holiday or a non-business day in Dubai, United Arab Emirates, the period is extended until the first business day which follows. Except as otherwise expressly provided, days are considered to be calendar days such that official holidays or non-business days occurring during the running of the period of time are included in calculating the period. Any reference to months is similarly considered as being to calendar months.

Article 5 Costs of mediation

- 5.1 The fees and expenses of the Mediator shall be agreed by the Parties and the Mediator at the time of the preliminary meeting and reflect the complexity, value and agreed timeframe of the mediation.
- 5.2 The Centre shall fix a deposit for the costs of the mediation which is intended to cover the anticipated fees and expenses of the Mediator and the Centre's administrative fees, by reference to **Appendix 3** in force on the date of the commencement of the mediation or, as the case may be, following the preliminary meeting, by reference to any alternative calculation of the Mediator's fees and/or expenses as may be agreed by the Parties and the Mediator.
- 5.3 The Mediator shall inform the Centre of, and indicate any change in, the calculation of the Mediator's fees and/or expenses, as may be agreed by the Parties and the Mediator.
- 5.4 The deposit shall be payable in equal shares by the Parties unless a Party chooses to make payment of the other Party's share of the deposit for the costs of the mediation or any other costs, to enable the mediation to progress.
- 5.5 All payments towards the deposit shall be made to the Centre by means communicated to the Parties.
- 5.6 If the Centre's request to pay the deposit has not been complied with by one or more of the Parties, the Centre may, with the agreement of the Mediator, grant the Parties an extension of time. The Centre, with the agreement of the Mediator, may suspend or terminate any Application or mediation where any request for payment, including the deposit have not been complied with by the date stipulated by the Centre.
- 5.7 At the conclusion of the mediation, pursuant to Articles 8.1(c), (d) or (e), the Arbitration Court shall fix the final fees and expenses of the Mediator, subject to the provisions of **Appendix 3** and any agreement made between the Parties and the Mediator. Any unused amounts remaining on account shall be reimbursed to the Parties in the proportionate amount initially paid.

Article 6 Appointment of Mediator

- 6.1 All Mediators shall be appointed by the Arbitration Court. Where the Parties agree to appoint a Mediator, such agreement shall be construed as an agreement for such Party or Parties to nominate a Mediator for appointment by the Arbitration Court under the Rules.
- 6.2 The Parties may agree to jointly nominate a Mediator or if agreed co-mediators within:
- (a) any specified time limit in the agreement to mediate; or
 - (b) any other time limit agreed by the Parties; or
 - (c) any time limit as may be granted by the Centre.

- 6.3 In the absence of such joint nomination by the Parties within the applicable time limit set-out in Article 6.2, the Arbitration Court shall nominate and appoint the Mediator.
- 6.4 In appointing the Mediator or co-Mediators, the Arbitration Court shall consider any mechanism or method of nomination agreed upon by the Parties and give due consideration to the nature of the underlying transaction, the nature of the dispute, the nationality, location, qualifications and experience of the Mediator and language of the Parties and any other relevant circumstances.
- 6.5 Unless agreed otherwise by the Parties, the Arbitration Court shall appoint a single Mediator. The Arbitration Court may at its discretion and in appropriate circumstances propose to the Parties that they consider the appointment of co-Mediators, but the final determination in that respect will be for the Parties to agree.
- 6.6 The Arbitration Court shall seek to appoint the Mediator within 7 days of the commencement of the mediation as set out in Article 3.5.
- 6.7 Prior to an appointment by the Arbitration Court, a prospective Mediator shall:
- (a) sign a declaration containing a statement of acceptance, impartiality and independence, availability and nationality, and provide the Centre with an up-to-date *curriculum vitae*; and
 - (b) disclose any known, actual, or potential conflicts of interest which could raise questions of their impartiality or independence.
- 6.8 Any Mediator conducting a mediation under the Rules shall be and shall remain impartial and independent of the Parties involved in the mediation and have an ongoing duty to disclose to the Centre and to the Parties any real or potential conflict of interest or other relevant matter or circumstances that might call into question or create reasonable doubts as to the Mediator's impartiality, independence and/or availability.
- 6.9 Either Party may object to the Mediator appointed by the Arbitration Court within 5 days of the notification of such appointment, or knowledge of circumstances giving rise to the objection, setting out in detail their reasons for the objection. The Arbitration Court shall consider the objection and, if upheld, shall appoint a replacement Mediator. If a challenge has not been raised within the specified time limit, the Parties shall be deemed to have expressly agreed to the appointment of the Mediator.
- 6.10 The Centre shall transmit a copy of the file to the Mediator as soon as reasonably practicable following the expiration of the time limit provided in Article 6.9 above, provided no challenge has been submitted.
- 6.11 A Mediator may resign for any reason by notifying the Centre and the Parties in writing.
- 6.12 A Mediator shall resign:
- (a) on the joint written request to the Mediator and the Centre by all of the Parties; or
 - (b) if the Mediator becomes incapacitated and can no longer perform the duties required pursuant to the Rules.

- 6.13 Upon the resignation of a Mediator, the Arbitration Court shall appoint a new Mediator within 7 days of such resignation pursuant to the provisions set out in Article 6.4.

Article 7 Conduct of mediation

- 7.1 The Mediator shall, as soon as reasonably practicable, but in any event no later than 7 days after the transmission of the file by the Centre, contact the Parties with a view to setting the date for a preliminary meeting, and if deemed appropriate by the Mediator, sending out to the Parties a draft mediation agreement for review. The preliminary meeting can be held in person, by telephone or other appropriate virtual means, including video conferencing, as may be agreed by the Parties or as determined by the Mediator after consultation with the Parties. The purpose of the preliminary meeting shall include the Parties and Mediator agreeing:
- (a) the mediation agreement and execution thereof;
 - (b) the procedural language of the mediation and method of communication with the Mediator and Parties;
 - (c) the place, time and venue for any meetings and whether physical or virtual;
 - (d) the confidential treatment of information/documentation exchanged or developed in the mediation;
 - (e) subject to Article 9, the degree and extent of confidentiality and without prejudice nature of the proceedings;
 - (f) the participation of other persons in the mediation;
 - (g) the preparation and timing of mediation statements summarising the elements and position regarding the matters in dispute;
 - (h) the treatment of any other proceedings that might be ongoing or any prescription or limitation periods;
 - (i) the formalities needed to ratify a settlement agreement and the degree if any, to which disclosure thereof is permitted and including the legal or other reasonable requirement for the Mediator to sign the settlement agreement; and
 - (j) any other relevant procedural or administrative matter.
- 7.2 To the extent that the Parties and the Mediator are unable to reach mutual agreement on any preliminary procedural matter related to the mediation, the Mediator shall, in their discretion, determine the procedural matter and advise the Parties and the Centre thereof.
- 7.3 In the event that the Parties and the Mediator have agreed to increase the limit of the Mediator's fees and/or expenses, the Mediator shall continue with the mediation process under the Rules only once the reconsidered deposit fixed by the Centre has been paid in full in accordance with Articles 5.4 and 5.5.

- 7.4 Subject to Article 7.1, the Mediator shall have the absolute discretion to determine the procedure of the mediation, giving each Party a reasonable opportunity to present their respective positions and having due regard to the relevant circumstances.
- 7.5 The Parties may be represented or assisted by person(s) of their choice, irrespective of their nationality or professional qualifications.
- 7.6 The Mediator may, at their discretion, meet or communicate with the Parties jointly or separately, having considered the impact on the progress of the mediation, keeping the Parties informed of the procedural steps being taken in the mediation.
- 7.7 The Mediator shall assist the Parties by such methods as the Mediator, in their discretion, considers appropriate in conclusively settling all or part of the matters in dispute on mutually agreed terms. In the event that the Parties settle their dispute, the Mediator may, to the extent they feel competent to do so, facilitate the preparation of a Settlement Agreement. A copy of the Settlement Agreement, executed by the Parties, shall be provided to the Mediator and the Centre for their records.
- 7.8 If the Parties have agreed that the mediation be conducted on an expedited basis, the Mediator shall conclude the mediation proceedings within the period agreed at the preliminary meeting. Thereafter, the Mediator will review the progress made with the Parties and the mediation shall continue until the conclusion of the mediation pursuant to Article 8.
- 7.9 In all matters not expressly provided for in the Rules, the Centre and the Mediator shall act in the spirit of the Rules.
- 7.10 Each Party shall act in good faith throughout the mediation.

Article 8 Conclusion of mediation

- 8.1 The mediation shall be concluded:
- (a) if no Reply has been received by the Centre from all Responding Parties consenting to the dispute being referred to mediation under the Rules within the time limit specified by Articles 3.2 to 3.4 or, as the case may be, a Responding Party has submitted a Reply withholding consent to the dispute being referred to mediation under the Rules; or
 - (b) in case the Application has been withdrawn due to non-compliance with the request for payment of the deposit of the mediation within the time limit granted by the Centre pursuant to Article 5.6; or
 - (c) upon the Mediator, after consulting with the Parties, concluding that, in their view, there are no further mediation attempts that can practically assist the Parties in settling the dispute amicably; or
 - (d) upon one Party communicating in writing to the Mediator, the other Parties and the Centre that they are withdrawing from the mediation; or
 - (e) upon notice from all Parties in writing to the Mediator and the Centre that they have agreed to terminate the mediation; or

- (f) upon execution of a Settlement Agreement by the Parties.
- 8.2 Upon the conclusion of the mediation under Article 8.1(a), (b), (c), (d) or (e), the proceedings shall be terminated without prejudice to the merits of the dispute.
- 8.3 In case of conclusion of the mediation pursuant to Article 8.1(a), (c), (d) or (e), and at the request of any Party, the Centre shall issue a certificate that the attempt at mediation failed and the mediation proceedings were terminated, without any further comments or reference of the merits.

Article 9 Confidentiality

- 9.1 Unless all Parties expressly agree in writing to the contrary, the Parties and the Mediator shall keep confidential:
 - (a) all information related to the mediation, together with all materials created for the purpose of the mediation;
 - (b) all documents produced by, or in the possession of, any Party to the mediation, including as the result of judicial or arbitration proceedings related to the dispute which is the subject of the mediation or in respect of any other dispute that has arisen from, or is related to, the same legal relationship(s), not otherwise in the public domain; and
 - (c) the contents and/or existence of any Settlement Agreement, save to the extent that disclosure of its existence may be required by a Party under a legal obligation, or to enforce any Settlement Agreement or challenge its validity, existence, scope or applicability in legal proceedings commenced and pursued in good faith before a state court or other judicial authority.
- 9.2 Nothing that is communicated to the Mediator in private shall be repeated to the other Party or Parties, without the express consent of the Party making the private communication(s).
- 9.3 In no circumstances shall any statement made during the mediation process, whether in writing or orally, be used in any judicial or arbitration proceedings as evidence of admissions against the interests of the Party that made them.
- 9.4 The Mediator is permitted to make disclosure of what would normally be considered confidential pursuant to this Article 9 if required by law or a competent judicial authority to make such disclosure.

Article 10 Functions of the Centre and Arbitration Court

- 10.1 All mediations shall be administered by the Centre in accordance with the Rules and the Centre's internal policies.
- 10.2 Any matter relating to the powers and duties of the Centre not expressly referred to in the Rules, shall be decided by the Arbitration Court.
- 10.3 The decisions of the Arbitration Court upon matters that it is required to decide shall be conclusive and the reasoning of the Arbitration Court's decision(s) shall not be

communicated to the Parties, save for the reasoning of decisions upholding a challenge to a Mediator's continued appointment.

Article 11 Exclusion of liability

- 11.1 No Mediator or their employees, affiliated personnel, or person appointed by them, the Arbitration Court and its members, nor the Centre or any of its employees or personnel shall be liable to any person or any Party for any act, error, or omission in connection with any mediation governed by or conducted pursuant to the Rules.
- 11.2 No Party shall seek to make any Mediator, member of the Arbitration Court, and/or any of the Centre's employees or personnel act as a witness in any legal proceedings in connection with any mediation governed by the Rules.

Article 12 Document retention

The Centre shall maintain an archive of any Settlement Agreements for a maximum of 5 years from the date such Settlement Agreement is deposited with the Centre. Thereafter, such documents may be destroyed in a confidential manner without notice to any Party or Mediator.

Appendix 1 Application for mediation

A. REQUESTING PARTY DETAILS
1. Name of individual, company or entity
2. Are you the authorised representative of the Requesting Party?
<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> N/A
3. Contact Details (Including nationality, address, email, telephone and mobile)
4. Legal Representatives Details (if applicable)
B. RESPONDING PARTY DETAILS
5. Contact details of Responding Party (Please list all Parties details if there is more than one Party. Please include name, nationality, address, e-mail and telephone numbers)
6. Responding Party's Legal Representatives (if applicable and known)
C. DETAILS OF DISPUTE
7. Is there a pre-existing agreement to mediate?
<input type="checkbox"/> YES <input type="checkbox"/> NO (If yes, please provide a copy of the contract containing the agreement to mediate)
8. Please provide a brief description, including the nature, of the dispute

Appendix 2 Reply to Application for mediation

A. RESPONDING PARTY DETAILS		
1. Name of individual, company or entity		
2. Are you the authorised representative of the Responding Party?		
<input type="checkbox"/> YES <input type="checkbox"/> NO <input type="checkbox"/> N/A		
3. Contact Details (Including nationality, address, email, telephone and mobile)		
4. Legal Representatives Details (if applicable)		
B. DETAILS OF DISPUTE		
5. Is there a pre-existing agreement to mediate?		
<input type="checkbox"/> YES <input type="checkbox"/> NO (If yes, please provide a copy of the contract containing the agreement to mediate)		
6. Please provide a brief description, including the nature, of the dispute		
7. Please provide the quantum counter claimed (if any) indicating currency		
8. Are you providing any supporting documents?		
<input type="checkbox"/> YES <input type="checkbox"/> NO (If YES, please list all such supporting documents in the next section)		
9. List of supporting documents		

C. MEDIATION DETAILS
10. You have been invited to respond to an Application to mediate your dispute by the Requesting Party. Do you agree to refer your dispute to mediation at DIAC?
<input type="checkbox"/> YES <input type="checkbox"/> NO
11. If you have answered NO to 10 above, please provide your reasons below (optional)
12. Do you agree with the Requesting Party's nomination of Mediator(s)?
<input type="checkbox"/> YES <input type="checkbox"/> NO No. of Mediators:
13. Are you nominating a Mediator? If so, how many and please specify the name, nationality and contact details of all nominees.
<input type="checkbox"/> YES <input type="checkbox"/> NO No. of Mediators:
D. DECLARATION
I confirm that the information provided by me in this form is true and accurate to the best of my knowledge.
RESPONDING PARTY
Signature:
Print Name:
Position (if relevant):

Appendix 3 Registration and Administrative Fees

Fee	Amount
Registration Fee (non-refundable)	AED 2,500
The Centre's Administrative Fee	10% of the total fees and expenses of the Mediator(s)

Recommended clauses

Future disputes

For contracting parties who wish to have future disputes referred to mediation and/or arbitration under the auspices of the Dubai International Arbitration Centre, the following clauses are recommended. Words/blanks in square brackets should be deleted/completed as appropriate.

Mediation only

"In the event of a dispute arising out of or relating to this contract, including any question regarding its existence, validity or termination, the parties shall seek settlement of that dispute by mediation in accordance with the Mediation Rules of the Dubai International Arbitration Centre, which Rules are deemed to be incorporated by reference into this clause."

Arbitration only

"Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the Arbitration Rules of the Dubai International Arbitration Centre, which Rules are deemed to be incorporated by reference into this clause.

The number of arbitrators shall be [one/three].

The seat of arbitration shall be [City and/or Country].*

The language to be used in the arbitration shall be [language].

The governing law of the contract shall be the substantive law of [State or Country]."

Mediation and arbitration

"In the event of a dispute arising out of or relating to this contract, including any question regarding its existence, validity or termination, the parties shall first seek settlement of that dispute by mediation in accordance with the Mediation Rules of the Dubai International Arbitration Centre, which Rules are deemed to be incorporated by reference into this clause.

If the dispute is not settled by mediation within [X] days of the commencement of the mediation, or such further period as the parties shall agree in writing, the dispute shall be referred to and finally resolved by arbitration under the Arbitration Rules of the Dubai International Arbitration Centre, which Rules are deemed to be incorporated by reference into this clause.

The language to be used in the mediation and in the arbitration shall be [language].

The governing law of the contract shall be the substantive law of [State or Country].

In any arbitration commenced pursuant to this clause,

(i) the number of arbitrators shall be [one/three]; and

(ii) the seat of arbitration shall be [City and/or Country]."*

Existing disputes

If a dispute has already arisen, but there is no agreement between the parties to mediate and/or to arbitrate, the parties may enter into an agreement for those purposes. In such cases, please contact the Secretariat of the Dubai International Arbitration Centre if recommended wording is required.

Modifications to recommended clauses

The Secretariat of the Dubai International Arbitration Centre will be pleased to discuss any modifications to these recommended clauses. For example, to provide for party nomination of arbitrators or for expedited procedures.

Expert determination, adjudication and other forms of ADR

Recommended clauses and procedures for expert determination, for adjudication and other forms of ADR to be administered by the Dubai International Arbitration Centre, or in which the Dubai International Arbitration Centre is to act as appointing authority, are available on request from the Secretariat of the Dubai International Arbitration Centre.

* If the intention is to choose Dubai International Financial Centre/DIFC as the seat of the arbitration, insert “Dubai International Financial Centre” or “DIFC”.

About Dubai International Arbitration Centre

The Dubai International Arbitration Centre has over three decades of experience of providing dispute resolution services to parties doing business in or through the Middle East, Africa, and South Asia region.

As an institution, we are independent and committed to excellence, efficiency, and diversity.

For further information about DIAC and the work that we do, please visit www.diac.com.

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