

SAARC ARBITRATION COUNCIL RULES OF PROCEDURE FOR MEDIATION

(Effective 01 January 2025)

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MODEL MEDIATION CLAUSE

Where, in the event of a dispute, controversy or claim arising out of or relating to this contract, or the breach, termination, or invalidity thereof, the parties wish to seek an amicable settlement of that dispute by mediation, the mediation shall take place in accordance with the SARCO Rules of Procedure for Mediation as at present in force.

Consider adding to model clause:

- a) The number of mediators shall be _____ [one/three]
- b) The place of mediation shall be _____ [city/country]
- c) The language to be used in mediation proceeding shall be _____ [language]

APPLICATION OF THE RULES

Article 1

- (1) These Rules apply to Mediation of disputes arising out of or relating to a contractual or other legal relationship where the parties seeking an amicable settlement of their dispute have agreed to mediate under the auspices of the SARCO.
- (2) Unless otherwise agreed by the parties, the mediation shall be governed by these Rules in effect on the date of commencement of the mediation proceedings.
- (3) The parties may agree to exclude or vary any provision of these Rules at any time.
- (4) Where any provision of these Rules is in conflict with a provision of the law applicable to the mediation from which the parties cannot derogate, including any applicable instrument or court order, that provision of law shall prevail.

DEFINITIONS

Article 2

- (1) **‘Commencement’** means the date on which the parties to a dispute agree to initiate or engage in mediation, unless a different date is mutually agreed upon;
- (2) **‘Director General’** means Director General of SARCO;
- (3) **‘Governing Board’** means the Governing Board of SARCO;
- (4) **‘Mediation’** means a process, whether referred to by the expression conciliation, mediation or an expression of similar import, whereby parties request a third person or persons (“the mediator”) to assist them in their attempt to reach an amicable settlement of their dispute arising out of or relating to a contractual or other legal relationship. The mediator does not have the authority to impose upon the parties a solution to the dispute;
- (5) **‘Party’** means any individual, firm, company, government, government organization, or government undertaking that is a party to the mediation agreement;
- (6) **‘Rules’** means SARCO Rules of Procedure for Mediation;
- (7) **‘SARCO’** means SAARC Arbitration Council; and
- (8) **‘Settlement Agreement’** means an agreement made in or pursuant to a Mediation is it shall be in writing and signed by the Parties or authorized representatives of the Parties.

INTERPRETATION

Article 3

- (1) In the interpretation of these Rules, regard is to be had to its regional origin and to the need to promote uniformity in its application and the observance of good faith.
- (2) Questions concerning matters governed by these Rules which are not expressly settled in it are to be settled in conformity with the general principles on which these Rules is based.

COMMENCEMENT OF MEDIATION PROCEEDINGS

Article 4

- (1) The party initiating mediation sends to the other party a written invitation to mediate under these Rules, briefly identifying the subject of the dispute.
- (2) Mediation proceedings commence when the other party accepts the invitation to Mediate, or on the date on which the parties to a dispute agree to initiate or engage in mediation. If the acceptance is made orally, it is advisable that it be confirmed in writing.
- (3) If the other party rejects the invitation, there will be no mediation proceedings.
- (4) If the party initiating Mediation does not receive a reply within 30 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 mediate. If he so elects, he informs the other party accordingly.

NUMBER AND APPOINTMENT OF MEDIATORS

Article 5

- (1) There shall be one mediator unless the parties agree that there shall be two or more mediators. Where there is more than one mediator, they ought, as a general rule, to act jointly.
- (2)
 - a) In mediation proceedings with one mediator, the parties shall endeavor to reach agreement on the name of a sole mediator;
 - b) In mediation proceedings with two mediators, each party appoints one mediator;
 - c) In mediation proceedings with three mediators, each party appoints one mediator. The parties shall endeavor to reach agreement on the name of the third mediator, unless a different procedure for his/her appointment has been agreed upon.
- (3) The Director General shall assist in the appointment of the mediator(s), if the parties fail to reach an agreement in mediation with the appointment of mediators.
In particular,
 - a) A party may request the Director General to recommend the names of suitable individuals to act as mediator; or
 - b) The parties may agree that the appointment of one or more mediators be made directly by the Director General.

- (4) In recommending or appointing individuals to act as mediators, the Director General shall have regard to such considerations as are likely to secure the appointment of an independent and impartial mediator and, with respect to a sole or third mediator, shall take into account the advisability of appointing a mediator of a nationality other than the nationalities of the parties. In addition, the Director General, in selecting, shall take into consideration geographical diversity and gender of the parties.
- (5) In recommending or selecting individuals to act as mediator, the Director General shall have regard to:
 - a) The professional expertise and qualifications of the prospective mediator, experience as a mediator and ability to conduct the mediation;
 - b) Any relevant accreditation and/or certification awarded to the prospective mediator by a recognized professional mediation standard body;
 - c) The availability of the mediator.
- (6) When a person is approached in connection with his or her possible appointment as mediator, that person shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence, including the disclosure of details of any personal, professional, financial or other interest that may influence the outcome of the dispute. A mediator, from the time of his or her appointment and throughout the mediation proceedings, shall without delay disclose any such circumstances to the parties unless they have already been informed of them by him or her.
- (7) Before accepting the appointment, the prospective mediator must confirm their availability to conduct the mediation diligently and effectively.
- (8) If the mediator is unable to perform their duties, the parties shall appoint a substitute mediator in accordance with the procedure outlined in paragraphs 2, 3, 4, and 5. Paragraphs 6 and 7 shall apply to the newly appointed mediator.

CONDUCT OF MEDIATION

Article 6

- (1) The parties are free to agree, by reference to a set of these Rules or otherwise, on the manner in which the mediation is to be conducted.
- (2) Failing agreement on the manner in which the mediation is to be conducted, the mediator may conduct the mediation proceedings in such a manner as the mediator considers appropriate.
- (3) In order to facilitate the conduct of the mediation:
 - a) The parties and the mediator may convene a meeting at an early stage to agree on the organization of the mediation;
 - b) The parties, or the mediator with the consent of the parties, may arrange for administrative assistance by a suitable institution or person; and
 - c) The parties, or the mediator with the consent of the parties, may appoint experts.

- (4) The mediator shall maintain fair treatment of the parties and, in so doing, shall take into account the circumstances of the case.
- (5) In conducting the mediation, the mediator may, in consultation with the parties and taking into account the circumstances of the dispute, utilize any technological means or electronic mode of communication as he or she considers appropriate, including to communicate with the parties and to hold meetings remotely.
- (6) The mediator may obtain expert opinion or assistance in technical matters with the parties' consent and the parties shall bear any expenses incurred in this regard.
- (7) The mediator may, at any stage of the 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 therefor.

SUBMISSION OF STATEMENTS TO MEDIATOR

Article 7

- (1) The mediator, upon his appointment, requests each party to submit to him a brief written statement describing the general nature of the dispute and the points at issue. Each party sends a copy of his statement to the other party. The statements submitted may also include a description of the goals, interests, needs and motivations of the parties.
- (2) The mediator may request each party to submit to him a further written statement 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 sends a copy of his statement to the other party.
- (3) At any stage of the mediation proceedings the mediator may request a party to submit to him such additional information as he deems appropriate.

REPRESENTATION AND ASSISTANCE

Article 8

The parties may be represented or assisted by persons of their choice. The names and addresses of such persons are to be communicated in writing to the other party and to the mediator; such communication is to specify whether the appointment is made for purposes of representation or of assistance.

LANGUAGE OF MEDIATION

Article 9

If the parties have not agreed on the language(s) for the mediation, the Director General, taking into account the regional context of the parties, may decide on the language(s) to be used. Alternatively, the Director General may request the mediator to determine the language(s) after their appointment has been confirmed.

ROLE OF MEDIATOR

Article 10

- (1) The mediator assists the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.
- (2) The mediator will 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 mediator may conduct the mediation proceedings in such a manner as he considers appropriate, taking into account the circumstances of the case, the wishes the parties may express, including any request by a party that the mediation hear oral statements, and the need for a speedy settlement of the dispute.

COMMUNICATION BETWEEN THE PARTIES AND MEDIATOR

Article 11

- (1) The mediator may invite the parties to meet with 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 mediator are to be held, such meetings shall be held at the SARCO secretariat.
- (3) The parties shall communicate and cooperate in good faith with the mediator, including making every effort to fulfill the mediator's requests to submit written materials, provide evidence, and attend meetings as required.

DISCLOSURE OF INFORMATION

Article 12

When the mediator receives factual information concerning the dispute from a party, he may 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. However, when a party gives any information to the mediator subject to a specific condition that it be kept confidential, the mediator does not disclose that information to the other party.

SUGGESTIONS BY PARTIES FOR SETTLEMENT OF DISPUTE

Article 13

Each party may, on his own initiative or at the invitation of the mediator, submit to the mediator suggestions for the settlement of the dispute.

SETTLEMENT AGREEMENT

Article 14

- (1) When it appears to the mediator that there exist elements of a settlement which would be acceptable to the parties, he formulates the terms of a possible settlement and submits them to the parties for their observations. After receiving the observations of the parties, the 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 draw up and sign a written settlement agreement. If requested by the parties, the mediator draws up, or assists the parties in drawing up, the settlement agreement.
- (3) The parties by signing the settlement agreement put an end to the dispute and are bound by the settlement agreement.
- (4) Unless the parties agree otherwise, the mediator or SARCO may also sign or stamp the settlement agreement or provide other proof that the settlement agreement resulted from mediation.
- (5) An electronic communication meets the requirement for a settlement agreement to be signed by the parties if:
 - a) A method is used to identify the parties and show their intention regarding the information in the electronic communication; and
 - b) The method used is either:
 - i. Reliable and appropriate for the purpose for which the electronic communication was generated or communicated, in the light of all the circumstances, including any relevant agreement; or
 - ii. Proven in fact to have fulfilled the functions described in subparagraph (a) above, by itself or together with further evidence.
- (6) By signing the settlement agreement, the parties agree that it can be used as evidence of mediation and can be relied upon to seek relief under the applicable law.

Article 15

The mediator and the parties must keep confidential all matters relating to the mediation proceedings, unless otherwise agreed by the parties. Confidentiality extends also the settlement agreement, except where its disclosure is required by law or is necessary for the purposes of its implementation and enforcement.

TERMINATION OF MEDIATION PROCEEDINGS

Article 16

- (1) The mediation proceedings shall terminate:
 - a) By the signing of the settlement agreement by the parties, on the date of the agreement or such other date as agreed by the parties in the settlement agreement;
 - b) By a declaration of the parties to the mediator to the effect that the mediation is terminated, on the date of the declaration;
 - c) By a declaration of a party to the other party and the mediator, if appointed, to the effect that it no longer wishes to pursue mediation, on the date of the declaration;
 - d) By a declaration of the mediator, after consultation with the parties, to the effect that further efforts at mediation are no longer justified, on the date of the declaration;
 - e) By a declaration of the mediator, after consultation with the parties, in the situation referred to in article 19, paragraph 3, on the date of the declaration; or
 - f) At the expiration of any mandatory period in the applicable international instrument, court order or mandatory statutory provision, or as agreed upon by the parties.
- (2) Unless agreed otherwise by the parties, the mediator at the termination of the mediation proceeding shall furnish to the Director General a copy of the settlement agreement/declaration signed by the parties.

RESORT TO ARBITRAL, JUDICIAL OR OTHER DISPUTE RESOLUTION PROCEEDINGS

Article 17

- (1) Mediation may take place under the Rules at any time regardless of whether arbitral, judicial, or other dispute resolution proceedings have been already initiated.
- (2) Where the parties have agreed to mediate and have expressly undertaken not to initiate during a specified period of time or until a specified event has occurred, arbitral, judicial or other dispute resolution proceedings with respect to an existing or future dispute, such an undertaking shall be given effect by the arbitral tribunal or the court until the terms of the undertaking have been complied with, except to the extent necessary for a party, in its opinion, to preserve its rights. Initiation of such proceedings is not of itself to be regarded as a waiver of the agreement to mediate or as a termination of the mediation proceedings.

COSTS

Article 18

- (1) The cost of the mediation proceedings shall be as per the schedule of fees determined by the Governing Board. The term "costs" include only:
 - a) The fee of the mediator which shall be reasonable in amount;
 - b) The travel and other expenses of the mediator;
 - c) The travel and other expenses of witnesses requested by the mediator with the consent of the parties;

- d) The cost of any assistance provided pursuant to article 6, including expert advice requested by the mediator with the consent of the parties;
 - e) The expenses incurred by the SARCO in connection with the mediation as well as its administrative charges;
 - f) Any other expenses that may have been accrued out of the mediation, including in relation to translation and interpretation services.
- (2) The costs, as defined above, are borne equally by the parties unless the settlement agreement provides for a different apportionment. All other expenses incurred by a party are borne by that party.
 - (3) Any cost incurred in relation to the filling or submission of a mediation request shall be non-refundable.

DEPOSITS

Article 19

- (1) The Director General shall request each party to deposit an equal amount as an advance for the costs referred to in article 18, paragraph (1) which are expected to be incurred.
- (2) During the course of the mediation proceedings the Director General may request supplementary deposits in an equal amount from each party.
- (3) If the required deposits under paragraphs (1) and (2) of this article are not paid in full by both parties within 30 days, the Director General after consultation with the mediator may stay or suspend the proceedings or may make a written declaration of termination to the parties, effective on the date of that declaration.
- (4) Upon termination of the mediation proceedings, the mediator renders an accounting to the parties of the deposits received and returns any unexpended balance to the parties.

ROLE OF MEDIATOR IN OTHER PROCEEDINGS

Article 20

- (1) Unless otherwise agreed by the parties, the mediator shall not act as an arbitrator in respect of the dispute that was or is the subject of the mediation and of a dispute that has arisen from the same or a related contract or legal relationship.
- (2) The mediator shall not act as a representative or counsel of a party in any arbitral, judicial or other dispute resolution proceedings in respect of the dispute that was or is the subject of the mediation and of a dispute that has arisen from the same or a related contract or legal relationship.
- (3) The parties shall not present the mediator as a witness in any such proceedings.

ADMISSIBILITY OF EVIDENCE IN OTHER PROCEEDINGS

Article 21

- (1) Unless otherwise agreed by the parties, a party to the mediation proceedings, the mediator and any third person, including those involved in the administration of the mediation proceedings, undertake not to rely on or introduce as evidence in arbitral or judicial proceedings, whether or not such proceedings relate to the dispute that is the subject of the mediation proceedings;
 - a) An invitation by a party to engage in mediation or the fact that a party was willing to participate in mediation;
 - b) Views expressed or suggestions made by a party in respect of a possible settlement of the dispute;
 - c) Statements or admissions made by a party in the course of the mediation proceedings;
 - d) Proposals made by the mediator or the parties;
 - e) The fact that a party had indicated his willingness to accept a proposal (or parts thereof) for settlement made by the mediator;
 - f) A document prepared solely for the purpose of mediation proceedings.
- (1) Paragraph 1 of this article applies irrespective of the form of the information or evidence referred to therein.
- (2) The disclosure of the information referred to in paragraph 1 of this article shall not be ordered by an arbitral tribunal, court or other competent governmental authority and, if such information is offered as evidence in contravention of paragraph 1 of this article, that evidence shall be treated as inadmissible. Nevertheless, such information may be disclosed or admitted in evidence to the extent required under these Rules or for the purposes of implementation or enforcement of a settlement agreement.
- (3) The provisions of paragraph 1, 2 and 3 of this article apply whether or not the arbitral, judicial or similar proceedings relate to the dispute that is or was the subject matter of the mediation proceedings.
- (4) Subject to the limitations of paragraph 1 of this article, evidence that is otherwise admissible in arbitral or judicial or other dispute resolution proceedings does not become inadmissible as a consequence of having been used or disclosed in mediation.

ENFORCEABILITY OF SETTLEMENT AGREEMENT

Article 22

If the parties conclude an agreement settling a dispute, that settlement agreement is binding and enforceable. A member state while enacting national legislation on mediation may insert a description of the method of enforcing settlement agreements or refer to provisions governing such enforcement. When implementing the procedure for enforcement of settlement agreements, a member state may consider the possibility of such a procedure being mandatory.

CANCELLATION OR POSTPONEMENT

Article 23

- (1) If mediation is postponed or canceled before the scheduled date at the request of any party due to health, safety, or other reasons, SARCO may charge a cancellation fee of up to 50% of the mediation fee, including any additional cancellation fees imposed by the mediator or venue provider if they exceed 50% of the mediation fee.
- (2) If mediation cannot proceed as planned due to health or safety concerns, SARCO, in consultation with the parties and/or the mediator, will reschedule the mediation or appoint a new mediator acceptable to the parties. Neither SARCO nor the mediator shall be liable for the inability to proceed due to such reasons.
- (3) If the mediation is canceled by mutual agreement of the parties before the mediation date, SARCO may charge a cancellation fee of up to 50% of the mediation fee, including any additional cancellation fees by the mediator or venue provider if they exceed 50% of the mediation fee. This fee will be shared equally by the parties unless they agree otherwise.

EXCLUSION OF LIABILITY

Article 24

Save for intentional wrongdoing, the parties waive, to the fullest extent permitted under the applicable law, any claim against the mediator based on any act or omission in connection with the mediation.

SCHEDULE 1

SARCO SCHEDULE OF FEES FOR MEDIATION

(All amounts in US\$)

Sr No.	Description of Services					Amount
1.	Registration Fee (Non-refundable) (by each Party)					500.00
2.	Appointment of Mediators Fee (for each arbitrator) (Non-refundable)					500.00
3.	Mediation and Administration Fees (as proposed by the Director General – SARCO)					
	Range of Amount in Dispute			Mediator fee (per person)		Administration fee
				Fixed	Variable	
	Up to 10,000			3,000		No fee
	10,001	to	50,000.00	3000+	2.0% of amount exceeding 10,000	1000.00
	50,001.00	to	100,000.00	3000+	2.0% of amount exceeding 50,000.00	1,500.00
	100,001.00	to	500,000.00	4000+	1.2% of amount exceeding 100,000.00	2,000.00
	500,001.00	to	1,000,000.00	8,800+	0.80% of amount exceeding 500,000.00	4,000.00
	1,000,001.00	to	5,000,000.00	12800+	0.40% of amount exceeding 1,000,000.00	6,000.00
	5,000,001 and above			28800+	0.20% of amount exceeding 5,000,000.00	12,500.00