

UNCITRAL Mediation Rules (2021)



UNITED NATIONS

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UNITED NATIONS COMMISSION ON INTERNATIONAL TRADE LAW

UNCITRAL
Mediation Rules
(2021)



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Resolution adopted by the General Assembly

[on the report of the Sixth Committee (A/76/471)]

Mediation Rules of the United Nations Commission on International Trade Law

The General Assembly,

Recalling its resolution 2205 (XXI) of 17 December 1966, by which it established the United Nations Commission on International Trade Law with a mandate to further the progressive harmonization and unification of the law of international trade and in that respect to bear in mind the interests of all peoples, in particular those of developing countries, in the extensive development of international trade,

Recalling also the resolutions on instruments on dispute settlement methods referred to by expressions such as mediation, conciliation and expressions of similar import, namely resolution 35/52 of 4 December 1980 on the Conciliation Rules of the Commission,¹ and resolutions 73/198 and 73/199 of 20 December 2018 on the United Nations Convention on International Settlement Agreements Resulting from Mediation² and the Model Law on International Commercial Mediation and International Settlement Agreements Resulting from Mediation of the Commission,³ respectively,

Mindful of the value of such dispute settlement methods as a means of amicably settling disputes arising in the context of international commercial relations, and of the fact that such dispute settlement methods are increasingly used in international and domestic commercial practice as an alternative to litigation, to reach a final resolution of the dispute in a cost- and time-effective manner,

Aware that the use of such dispute settlement methods results in significant benefits, such as reducing the instances where a dispute leads to the termination of a commercial relationship, facilitating the

¹ Official Records of the General Assembly, Thirty-fifth Session, Supplement No. 17 (A/35/17), para. 106.

² Ibid., Seventy-third Session, Supplement No. 17 (A/73/17), annex I.

³ Ibid., annex II.

administration of international transactions by commercial parties and producing savings in the administration of justice by States,

Recognizing the developments in such dispute settlement methods since the adoption of the Conciliation Rules,

Noting that the preparation of the UNCITRAL Mediation Rules benefited greatly from consultations with Governments and interested intergovernmental and international non-governmental organizations,

Noting also that the UNCITRAL Mediation Rules were adopted by the United Nations Commission on International Trade Law at its fifty-fourth session, after due deliberations,⁴

1. *Expresses* its appreciation to the United Nations Commission on International Trade Law for having formulated and adopted the Mediation Rules, the text of which is contained in annex III to the report of the United Nations Commission on International Trade Law on the work of its fifty-fourth session;⁵

2. *Recommends* the use of the UNCITRAL Mediation Rules in the settlement of disputes arising in the context of international commercial relations;

3. *Requests* the Secretary-General to make all efforts to ensure that the UNCITRAL Mediation Rules become generally known and available.

*49th plenary meeting
9 December 2021*

⁴ *Ibid.*, Seventy-sixth Session, Supplement No. 17 (A/76/17), chap. VI, sect. B.

⁵ *Ibid.*, annex III.

UNCITRAL Mediation Rules

Article 1. Application of the Rules

1. Where parties have agreed that disputes between them shall be submitted to mediation under the UNCITRAL Mediation Rules, then these Rules shall apply. The Rules may apply irrespective of the basis, whether contractual or not, upon which the mediation is carried out.
2. Mediation under the Rules is a process, whether referred to by the term mediation, conciliation 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. The mediator shall not have the authority to impose upon the parties a solution to the dispute.
3. The parties to a mediation shall be presumed to have referred to the Rules in effect on the date of commencement of the mediation, unless the parties have agreed to apply a particular version of the Rules.
4. The parties may agree to exclude or vary any provision of the Rules at any time.
5. 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.

Article 2. Commencement of mediation

1. Mediation in respect of a dispute that has arisen shall be deemed to have commenced on the day on which the parties to that dispute agree to engage in mediation, unless otherwise agreed.
2. If a party that invited another party to mediate does not receive an acceptance of the invitation within 30 days from the day on which the invitation was sent by any means that provides for a record of its transmission, or within such other period of time as specified in the invitation, the party may elect to treat this as a rejection of the invitation to mediate.

Article 3. Number and appointment of mediators

1. There should be one mediator, unless otherwise agreed. Where there is more than one mediator, the mediators shall act jointly.
2. The parties should endeavour to appoint a mediator by agreement, unless a different appointment procedure applies. They may agree to replace a mediator at any time.
3. The parties may seek the assistance of an institution or person for appointing a mediator.
4. In recommending or selecting individuals to act as mediator, the institution or person 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 standards body;
 - (c) The availability of the mediator; and
 - (d) Such considerations as are likely to secure the appointment of an independent and impartial mediator.
5. If the parties have different nationalities, the institution or person, in consultation with the parties, may also take into account the advisability of appointing a mediator of a nationality other than the nationalities of the parties. In addition, the institution or person, in selecting, shall take into consideration geographical diversity and gender of the candidates.
6. When a person is approached in connection with a 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 appointment and throughout the mediation, shall, without delay, disclose to the parties any such circumstances as they arise.
7. Prior to accepting the appointment, the prospective mediator shall ensure his or her availability to conduct the mediation diligently and efficiently.
8. In the event the mediator cannot perform her or his functions, the parties shall appoint a substitute mediator pursuant to the

procedure mentioned in paragraphs 2, 3, 4, and 5. Paragraph 6 and 7 shall apply to the newly appointed mediator.

Article 4. Conduct of mediation

1. The parties may agree on the manner in which the mediation is to be conducted. Otherwise, the mediator may determine the conduct of the mediation in consultation with the parties, taking into account the circumstances of the case, any wishes that the parties may express and the need for a speedy settlement of the dispute.
2. The mediator shall maintain fair treatment of the parties and, in so doing, shall take into account the circumstances of the case.
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. 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 as he or she considers appropriate, including to communicate with the parties and to hold meetings remotely.
5. A party may be represented or assisted by a person or persons of its choice. The name, address and function of such persons shall be communicated to all parties and to the mediator in advance of the mediation or without delay. This communication shall also indicate the scope of authority and whether the purpose of the appointment is for representation or assistance.

Article 5. Communication between the parties and the mediator

1. The mediator may meet or communicate with the parties together or with each of them separately.
2. At any stage of the mediation, the parties may submit information concerning the dispute, such as statements describing the general

nature of the dispute, the points at issue, and any supporting document or additional information deemed appropriate. The information may also include a description of the goals, interests, needs and motivations of the parties as well as any relevant documents.

3. When the mediator receives information concerning the dispute from a party, the mediator shall keep such information confidential, unless that party indicates that the information is not subject to the condition that it should be kept confidential, or expresses its consent to the disclosure of such information to another party to the mediation.

Article 6. Confidentiality

Unless otherwise agreed by the parties, all information relating to the mediation, including, if relevant, the settlement agreement, shall be kept confidential by those involved in the mediation, except where disclosure is required by the law or as referred to under article 8, paragraph 4.

Article 7. Introduction of evidence in other proceedings

1. Unless otherwise agreed by the parties, a party to the mediation, the mediator and any third person, including those involved in the administration of the mediation shall not, in arbitral, judicial or other dispute resolution proceedings, rely on, introduce as evidence or give evidence regarding any of the following:

- (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 the mediation in respect of a possible settlement of the dispute;
- (c) Statements or admissions made by a party in the course of the mediation;
- (d) Proposals made by the mediator or the parties;
- (e) The fact that a party had indicated its willingness to accept a proposal (or parts thereof) for settlement made by the mediator or the parties; and
- (f) A document prepared primarily for purposes of the mediation.

2. Paragraph 1 applies irrespective of the form of the information or evidence referred to therein.
3. Paragraphs 1 and 2 apply whether or not the arbitral, judicial, or other dispute resolution proceedings relate to the dispute that is or was the subject matter of the mediation.
4. Subject to the limitations of paragraph 1, evidence that is otherwise admissible in arbitral, judicial, or other dispute resolution proceedings does not become inadmissible as a consequence of having been used or disclosed in the mediation.

Article 8. Settlement agreement

1. Once the parties agree on the terms of a settlement to resolve all or part of the dispute through mediation, they should prepare and sign a settlement agreement. If requested by the parties and if the mediator deems it appropriate, the mediator may provide support to the parties in preparing the settlement agreement.
2. Unless otherwise agreed by the parties, the mediator or the mediation institution may sign or stamp the settlement agreement or provide other evidence that the agreement resulted from mediation.
3. The requirement that a settlement agreement shall be signed by the parties is met in relation to an electronic communication if:
 - (a) A method is used to identify the parties and to indicate the parties' intention in respect of the information contained in the electronic communication;
 - (b) The method is used either:
 - (i) As reliable as 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.
4. By signing the settlement agreement, the parties agree that the settlement agreement can be used as evidence that it results from mediation, and that it can be relied upon for seeking relief under the applicable law.

Article 9. Termination of mediation

The mediation 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 11, paragraph 5, 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.

Article 10. Arbitral, judicial, or other dispute resolution proceedings

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 also 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 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 waiver of the agreement to mediate or as a termination of the mediation.

Article 11. Costs and deposit of costs

1. The method for fixing the costs of mediation should be agreed upon by the parties and the mediator as early as possible in the

mediation. Upon termination of the mediation, the mediator shall fix the costs of the mediation, which shall be reasonable in amount and give written notice thereof to the parties. The term “costs” includes only:

- (a) The fees of the mediator;
- (b) The travel and other expenses of the mediator;
- (c) The cost of expert advice requested by the mediator with the agreement of the parties;
- (d) The cost of any assistance provided pursuant to article 3, paragraph 3, and article 4, paragraph 3, of the Rules; and
- (e) Any other expenses that may have been accrued out of the mediation, including in relation to translation and interpretation services.

2. Unless otherwise agreed by the parties, the costs, referred to in paragraph 1, are borne equally by the parties and, in the case of multiparty mediation, they are shared pro rata. All other expenses incurred by a party are borne by that party.

3. The mediator, upon appointment, may request each party to deposit an equal amount as an advance for the costs referred to in paragraph 1, unless otherwise agreed by the parties and the mediator.

4. During the course of the mediation, the mediator may request supplementary deposits in an equal amount from each party, unless otherwise agreed by the parties and the mediator.

5. If the required deposits under paragraphs 3 and 4 are not paid in full by all parties within a reasonable period set by the mediator, the mediator may suspend the mediation or may declare the termination of the mediation, in accordance with article 9, subparagraph (e).

6. Upon termination of the mediation and if deposits were received, the mediator shall render an accounting to the parties of the deposits received and return any unexpended funds to the parties.

Article 12. Role of the mediator in other proceedings

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.

Article 13. Exclusion of liability

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.

Annex

Model mediation clauses

Mediation only

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination, or invalidity thereof, shall be submitted to mediation in accordance with the UNCITRAL Mediation Rules.

Note: The parties should consider adding:

- (a) The year of adoption of the version of the Rules;
- (b) The parties agree that there will be one mediator, appointed by agreement of the parties [within 30 days of the mediation agreement], and if the parties cannot agree, the mediator shall be selected by [relevant selecting authority];
- (c) The language of the mediation shall be ...;
- (d) The location of mediation shall be

Multi-tiered clause

Any dispute, controversy or claim arising out of or relating to this contract, or the breach, termination, or invalidity thereof, shall be submitted to mediation in accordance with the UNCITRAL Mediation Rules.

Note: Parties should consider adding:

- (a) The selecting authority shall be (name of institution or person);
- (b) The language of the mediation shall be ...;
- (c) The location of mediation shall be... .

If the dispute, or any part thereof, is not settled within [(60) days] of the request to mediate under these Rules, the parties agree to resolve any remaining matters by arbitration in accordance with the UNCITRAL Arbitration Rules.

Note: Parties should consider adding:

- (a) The appointing authority shall be (name of institution or person);
- (b) The number of arbitrators shall be (one or three);
- (c) The place of arbitration shall be (town and country);
- (d) The language of the arbitration shall be... .

Model declaration of disclosure

No circumstances to disclose

To the best of my knowledge, there are no circumstances, past or present, likely to give rise to justifiable doubts as to my impartiality or independence. I shall promptly notify the parties of any such circumstances that may subsequently come to my attention during this mediation.

Circumstances to disclose

Attached is a statement of (a) my past and present professional, business and other relationships with the parties and (b) any other relevant circumstances. [Include statement.] I confirm that those circumstances do not affect my independence and impartiality. I shall promptly notify the parties of any such further relationships or circumstances that may subsequently come to my attention during this mediation.

Model statement of availability

I confirm, on the basis of the information presently available to me, that I can devote the time necessary to conduct this mediation.

