

የአዲስ አበባ ንግድና የዘርፍ ማህበራት ምክር ቤት የግንባታ ተቋም

The Addis Ababa Chamber of Commerce and Sectoral Associations
Arbitration Institute



የመፍትሔ/መካከላዊ ጽንብ
Conciliation/Mediation Rules

September 14, 2007

Table of Contents

Mediation/Conciliation Rules

		<u>Page</u>
Part I - General		
Article 1	Power to issue these Rules	1
Article 2	Nomenclature.....	1
Article 3	Definition.....	1
Article 4	Scope of Application.....	2
Article 5	Roster.....	3
Part II - Pre Conciliation/Mediation Procedures		
		3
Article 6	Forwarding of Request.....	3
Article 7	Number and Appointment of Conciliators/Mediator...	4
Article 8	Case Description.....	5
Article 9	Place and Language.....	5
Article 10	Presence & Assistance of Expert Third Party....	5
Part III - The Process of Conciliation/Mediation		
Article 11	Conduct of the Process of the Process of	6
	Mediation/Conciliation.....	6
Article 12	Duties of the Parties.....	6
Article 13	Duties and Responsibilities of the Conciliator/Mediator.....	6
Article 14	Confidentiality.....	7
Part IV - The Outcome of the Process.....		
		8
Article 15	Completion of a conciliation proceeding	8
	settlement agreement	
Article 16	A Memorandum of Non-Settlement.....	8
Article 17	Finality of Settlement Agreement.....	8
Article 18	Completion of a mediation proceeding.....	8
Part V - Miscellaneous Provisions.....		
		9
Article 19	Authority to end the Dispute by	9
Article 20	Termination of the Process.....	9
Article 21	Time Limit.....	9
Article 22	Duty to Abstain	10
Article 23	Fees, Expenses and Costs.....	10
Article 24	Waiver of Liability.....	11
Article 25	Status of the Annexes.....	11
Article 26	Effective Date.....	11

PART I – GENERAL

ARTICLE 1– POWER TO ISSUE THESE RULES

This Conciliation/Mediation Rules of the Addis Ababa Chamber of Commerce and Sectoral Associations are enacted by the Chamber by virtue of the Power delegated to it by the council pursuant to the Chambers of Commerce and Sectoral Associations Establishment Proclamation no 341/2003 article 8(a)(e).

ARTICLE 2– NOMENCLATURE

These Rules shall be cited as: **“The Conciliation/Mediation Rules of the Addis Ababa Chamber of Commerce and Sectoral Association.”**

ARTICLE 3 – DEFINITION

- a) Unless the context requires otherwise, the following terms and/or phrases used in these Rules shall have the meaning assigned to them here below:
1. **“Conciliation Agreement”** shall mean an agreement concluded by parties to submit a dispute, whether existing or future, to conciliation
 2. **“Conciliation”** shall mean a process at which a third party neutral assists parties to a dispute to reach a settlement agreement and goes to the extent of proposing terms of settlement which may be accepted or rejected by the parties.
 3. **“Conciliator/s”** shall mean the third party neutral/s that assists or assist disputing parties reach a negotiated settlement through the process of conciliation and registers or register non-settlement of the dispute in case the parties fail to reach agreement.
 4. **“Director”** shall mean the Director of the Institute.
 5. **“Institute”** shall mean the Arbitration Institute of the Addis Ababa Chamber of Commerce and Sectoral Associations.
 6. **“Mediation”** shall mean a process at which a third party neutral assists parties to a dispute to reach a negotiated settlement. It is a neutral third party assisted negotiation.

7. **“Mediator/s”** shall mean a third party neutral/s that assists or assist disputing parties reach a negotiated settlement through the process of mediation without making his own proposal of settlement.
 8. **“Negotiation”** shall mean communication between disputing parties facilitated by the conciliator or mediator for the purposes of arriving at a mutually agreed upon solution.
 9. **“Parties to a dispute”** shall mean those parties that have submitted a common request to the Institute with the view to reach a settlement agreement via conciliation or mediation
 10. **“Rules”** shall mean the Conciliation/Mediation Rules of the Arbitration Institute of the Addis Ababa Chamber of Commerce and Sectoral Associations
 11. **“Settlement Agreement”** shall mean an agreement reached by the parties as a solution to the dispute between them.
- b) Unless expressly stated otherwise, the masculine gender reference shall also serve for the feminine gender.

ARTICLE 4 – SCOPE OF APPLICATION

1. These Rules shall apply to parties that have submitted their written request to the Institute to seek its services with the view to have the dispute between them settled through mediation/conciliation.
2. Unless otherwise agreed, the Parties that submit their written request to have their dispute mediated/conciliated in accordance with these Rules shall be deemed to have accepted these rules as a whole.
3. Unless agreed otherwise by parties, the Rules of the Institute applicable to mediation/conciliation shall be those in force as at the time of the commencement of the mediation/conciliation process.
4. Without prejudice to the application of the procedures in these Rules, the mediator/conciliator may, in consultation with the parties, determine the procedure to be followed in the process of the mediation/conciliation.
5. Notwithstanding any agreement to the contrary, these Rules shall apply to disputes of a commercial nature only.

ARTICLE 5 – ROSTER

1. To facilitate swift and informed choices, the Institute shall prepare and keep a Roster of potential mediators and/or conciliators together with their CVs.
2. To be eligible for inclusion in the Roster of the Institute, a person shall have to fulfill the following:
 - a. Shall have the capacity to enter contract.
 - b. Produce evidence of qualification and experience or specialization in ADR and training in mediation/conciliation.
 - c. Submit evidence, if any, showing that he has served as a mediator/ conciliator in any dispute whether the process ended in a settlement agreement or a non-settlement.
 - d. Make a written and signed statement as to his commitment for the respect of the rule of law, his character and past criminal conviction for an offence punishable by depriving civil rights.
3. A person so convicted may not serve in the capacity of a conciliator/ mediator.
4. The Institute shall have to update its Roster and the information entered for every potential conciliator/ mediator from time to time.

PART II – PRE CONCILIATION/MEDIATION PROCEDURES

ARTICLE 6 – FORWARDING OF REQUEST

1. Parties having a prior agreement of availing themselves of these Rules may initiate the process by submitting their written joint request to the Institute. The Institute shall, upon receipt of the request, have both parties fill out a form and sign.
2. Where a request is submitted to the Institute by one of the parties to a dispute, the Institute shall send a notification of the request to all other parties. The Institute shall ensure that it has received the willingness of each of the notification-receiving parties in writing before the process commences.
3. After having secured the consents of all the parties, the Institute shall fix a date of commencement and notify all parties.
4. Where a notice-receiving party fails to give reply within 30 days of his/her receipt of such notice, the Institute shall deem the request to have been rejected and shall notify same to the party that submitted his request to have the process initiated.

ARTICLE 7 – NUMBER AND APPOINTMENT OF CONCILIATOR/ MEDIATORS

1. Unless the parties agree otherwise or show their desire of having more than one conciliator/mediator registered with the Institute, disputes referred to the Institute shall be handled by one conciliator/mediator only.
2. Unless the parties authorize the Institute to appoint on their behalf, they shall have to appoint a conciliator/mediator by agreement. Failing agreement between the parties, the Institute shall appoint the conciliator/mediator for them.
3. Where the parties have registered their desire of having more than one conciliator/mediator, they shall each appoint one mediator/conciliator.
4. Where requested by the parties, the Director may assist parties in choosing conciliator/mediator from the Roster maintained by the Institute.
5. Any person fulfilling the requirements under article 5(2) of these rules may be appointed as a conciliator/mediator.
6. A nominee appointee may accept or refuse his appointment. Where a nominee appointee accepts his appointment, he shall have to affirm his/her independence and impartiality by filling out and signing a form prepared for this purpose by the Institute. (Annex I)
7. A person may not act as a conciliator/mediator in a dispute in which he has a business and/or personal interest.
8. Where the independence or impartiality of a mediator/conciliator is challenged by either of the parties, the Institute shall decide on the challenge in consultation with parties. Replacement appointment shall be carried out in accordance with the relevant provisions of this article.
9. Where an appointee is unwilling to accept the appointment, dies, becomes incapable or resigns, he shall be replaced pursuant to the provisions of this article.

ARTICLE 8 – CASE DESCRIPTION

1. Fifteen days before the date fixed for commencement of the process of conciliation/mediation, the appointed mediator/conciliator shall request each of the parties to submit to the Institute a brief summary of his/her version of the dispute describing the facts and stating the relevant and applicable law and attaching supporting documents, if any.
2. The conciliator/mediator may, where necessary, request one or both of the parties to submit additional documents and information.

ARTICLE 9 – PLACE AND LANGUAGE

1. Unless the parties agree otherwise, the language of communication for conciliation/mediation processes under these Rules shall be Amharic. Where one of the parties requests an interpreter, an interpreter may be assigned provided the fees are covered by the requesting party..
2. Unless the parties agree otherwise, the place of conciliation/mediation shall be at the place designated by the Institute.

ARTICLE 10 – PRESENCE & ASSISTANCE OF EXPERT THIRD PARTY

1. Parties may bring to the venue of conciliation/mediation a representative, a professional or an expert for decision or consultation during the negotiation process.
2. Where a party is desirous of having a representative, an expert or a professional for the process, he shall have to inform the Institute, the conciliator/mediator and the other party before the commencement of the process.
3. The person designated to represent another in the conciliation/mediation process shall bear a special power of attorney given by the head of the authority or by notary public to settle the dispute by conciliation/mediation.

PART III – THE PROCESS OF CONCILIATION/MEDIATION

ARTICLE 11 – CONDUCT OF THE PROCESS OF CONCILIATION/ MEDIATION

1. Conciliation/mediation is a process by which the parties themselves reach a voluntary, un-coerced and negotiated settlement.
2. Each party shall be given equal opportunity to state his/her case. Each party to the process of conciliation/mediation or the conciliator in a conciliation process may propose terms of settling the dispute.
3. Unless the parties or one of them has by a written request, prior to the commencement of the process, notified the Institute and the conciliator/mediator and the other party that a third party will attend, the process of conciliation/mediation is a private process that shall have to be attended by the parties and the conciliator/mediator only.
4. After fulfilling the prior notification requirement, a party may attend the process represented by another person who is authorized to make decision on any matter relating to the dispute including entering into a settlement agreement.
5. A party may also, after fulfilling the prior notification requirement, bring into the venue of conciliation/mediation an expert or a professional for the purposes of consultation during the process.

ARTICLE 12 – DUTIES OF THE PARTIES

Parties to a conciliation/mediation process shall have to cooperate with the conciliator/mediator. They owe the duty to attend the proceedings, respond to questions, submit evidences and clarifications whenever required to do so.

ARTICLE 13– DUTIES AND RESPONSIBILITIES OF THE CONCILIATOR/MEDIATOR

1. The conciliator/mediator shall be independent and neutral to the parties as well as to issues of the dispute.
2. The conciliator/mediator shall ensure his independence and impartiality all the way until the process ends by settlement or otherwise.

3. The conciliator/mediator shall begin the process by trying to develop an atmosphere of reasonableness and to engender the parties' trust in him and in their ability to work together.
4. The conciliator/mediator shall suggest procedural ground rules for parties' participation and behavior, which must be endorsed by the parties themselves.
5. The conciliator/mediator shall give equal opportunity to each of the parties to fully state his/her case.
6. Where each of the parties to a conciliation process has fully stated his case, the conciliator in a conciliation process shall have to draw up a proposal of settlement, which may or may not be acceptable to the parties.
7. A conciliator in a conciliation process may not draw up any proposal for settlement before each party has fully stated his case.
8. The conciliator/mediator may conduct joint and separate meetings with the parties. He may on her/his own initiative call an expert to give his/her opinion on matters of technicalities.

ARTICLE 14 – CONFIDENTIALITY

1. Unless the parties agree otherwise, all information disclosed before or during the process on conciliation/mediation shall be kept confidential.
2. Unless disclosure is required by law, or for the enforcement of a settlement agreement, a conciliator /mediator or any staff of the Institute or any representative of a party, an expert or a professional who attended the process, may not disclose any information that came to his knowledge due to the process of conciliation/mediation.
3. Unless disclosure is required by law, the persons mentioned in sub-article (2) of this article may not be called to give their testimony at any adversarial proceeding between the same parties or otherwise on any of the information that came to their knowledge in a conciliation/mediation process.
4. The parties shall undertake not to call any of the persons involved in the conciliation/mediation process as witnesses in any subsequent proceedings..

PART IV– THE OUTCOME OF THE PROCESS

ARTICLE 15 – COMPLETION OF A CONCILIATION PROCEEDING SETTLEMENT AGREEMENT

1. A Conciliation process shall, whenever possible, end in a settlement agreement between the parties.
2. A settlement agreement shall always be drawn in writing in the language in which the Conciliation process that led to the agreement was conducted, or in a language suitable for execution.
3. A settlement agreement shall as far as possible be balanced and fair to both parties. It shall have to be clear and understandable.
4. A settlement agreement shall have to be signed by all the parties, and the Conciliator(s).
5. The Conciliator shall notify the Institute of the settlement agreement. The Institute shall register and deposit the settlement agreement

ARTICLE 16 – A MEMORANDUM OF NON-SETTLEMENT

1. Where a conciliation process does not end in a settlement agreement, the Conciliator shall draw up a memorandum of non-settlement.
2. The memorandum of non-settlement shall be made in writing and shall have to be signed by the Conciliator.
3. The Conciliator shall notify the Institute of the memorandum of non-settlement.

ARTICLE 17 – FINALITY OF SETTLEMENT AGREEMENT

1. The settlement agreement shall be binding as regards the dispute(s) Conciliated and settled between the parties.
2. The parties may state in the settlement agreement that no complaint may be lodged to a court of law on the results of the settlement agreement.
3. The parties shall sign the settlement agreement before a notary public.

ARTICLE 18 – COMPLETION OF A MEDIATION PROCEEDING

1. If the parties reach at an agreement, the Mediator shall make sure that the agreement of the parties is recorded in writing before terminating the proceeding.
2. If the Mediation proceeding doesn't result in an agreement, the Mediator shall upon inform the result to the Institute.

PART V – MISCELLANEOUS PROVISIONS

ARTICLE 19 – AUTHORITY TO END THE DISPUTE BY SETTLEMENT

1. A person attending a conciliation/mediation process in a representative capacity shall have the requisite special authority to negotiate on behalf of his/her principal including entering into a settlement agreement.
2. The Institute and the conciliator/mediator shall check the scope of power of a representative before admitting him/her into the process of the negotiation.

ARTICLE 20 – TERMINATION OF THE PROCESS

1. Unless the parties agree otherwise, the process of conciliation/mediation shall terminate where one or both of the parties dies, becomes incapable, is declared absent or adjudged bankrupt.
2. Without prejudice to the application of the provisions of Article 16 of these Rules, a conciliation/mediation process shall also terminate where the parties fail to reach a settlement agreement, or the parties or one of them expresses in writing his/her intention of discontinuing the process.
3. The conciliator/mediator shall notify the Institute in writing the facts surrounding and reasons for the termination of the process.

ARTICLE 21 – TIME LIMIT

1. The conciliator/mediator shall carry out his/her duties within the time fixed by the parties in the contract referring their dispute to conciliation/mediation, if any, or by the Institute.
2. Where neither the parties nor the Institute have fixed the time, the conciliator/mediator shall carry out his/her duties within 90 days of his/her receipt of the parties' written request for conciliation/mediation.
3. Unless the conciliator/mediator has drawn up a memorandum of non-settlement, or the process was terminated because of a legitimate reason, the parties may not, before the expiry of the period fixed by them, these Rules, or the Institute, initiate an adversarial process in relation to the dispute referred to conciliation/mediation

4. The start of a Conciliation/Mediation process shall not result in interrupting the limitation of actions.
5. The parties shall be deemed to have undertaken not to resort to any other Alternative Dispute Resolution Mechanism in violation of these rules.
6. The provisions of sub-articles (3) & (4) of this Article may not be taken as precluding the parties from taking conservatory measures and performing such acts as may be necessary to preserve their rights.
7. Without prejudice to the above provisions, the time limit provided in other relevant rules in respect of construction dispute shall not be affected.

ARTICLE 22 – DUTY TO ABSTAIN

Unless the parties agree in writing, the conciliator/mediator may not act as an arbitrator, counsel, or advocate of any of the parties in a subsequent adversarial process between the same parties in relation to the same dispute.

ARTICLE 23 – FEES, EXPENSES AND COSTS

1. A shared, non-refundable Registration Fee shall be paid by the parties whenever they have their reference registered at the Institute.
2. All administrative costs to initiate and carry out the processes of conciliation/mediation and fees to be paid to conciliators/mediators shall be equally shared between the parties in accordance with the Institute's Schedule of Costs and Fees. (Annex II)
3. Costs of participating in the process by the parties, their representatives, professionals or experts whether called by the parties or requested by the conciliator/mediator shall be fully covered by the parties themselves.
4. Each party shall have to deposit, before the commencement of the process, such portion of the costs fixed by the Institute as well as additional sums the Institute deems necessary for the defrayal of the costs of the conciliation/mediation.
5. Where the parties or any one of them fails to deposit the amount fixed in accordance with sub-article 4 of this Article, the Institute may take such appropriate measure, as it deems appropriate including terminating the process and settling accounts with the parties.

6. The parties shall be entitled to any outstanding sums, if any paid to the institute's service upon completion of the Conciliation/Mediation earlier than the time fixed.
7. A party requesting the conciliation/mediation service of the Institute shall fill out the form prepared for this purpose. (Annex III)

ARTICLE 24 – WAIVER OF LIABILITY

Subject to the application of the relevant laws, the parties hereby waive their rights to hold liable either the Institute or any one of its staff or the conciliator/mediator in connection with any act or forbearance relating to the initiation, conducting and the outcome of the process of conciliation/mediation.

ARTICLE 25 – STATUS OF THE ANNEXES

The Institute's Application Form, The Schedule of Payment, the Conciliation/Mediation Forms, and the Acceptance and Declaration of Independence Forms annexed to these Rules shall be deemed to be part and parcel of these Conciliation/Mediation Rules.

ARTICLE 26 – EFFECTIVE DATE

These Conciliation/Mediation Rules shall take effect as of September 14th 2007

Annex I

Conciliator/Mediator Statment of Acceptance & Declaration of Independendence

Acceptance:

I, the undersigned, hereby declare and confirm that I accept to serve as a Conciliator/Mediator under the **Addis Ababa Chamber of Commerce & Sectoral Associations (AACCSA)** Rules of Conciliation/Mediation in the instant case. In so doing, I confirm that I have familiarized myself with the requirements of the Rules and am able and available to serve as a Conciliator/Mediator in accordance with the requirements of those Rules and accept to be remunerated in accordance therewith.

Independence:

To the best of my knowledge, there is no reason why I should not serve as Conciliator/Mediator in the **Arbitration Institute** of the **Addis Ababa Chamber of Commerce & Sectoral Association** with respect to a dispute between-----
----- and -----

- I am independent of each of the parties and intend to remain so; to the best of my knowledge, there are no facts or circumstances, past or present, which need be disclosed because they might be of such nature as to call into question my independence in the eyes of any of the parties.
- I shall keep confidential all information coming to my knowledge as a result of my participation in this proceeding as well as the contents of any settlement made by the parties.
- I shall Conciliate/Mediate fairly as between the parties, according to the applicable law, and shall not accept any instruction or compensation with regard to the proceeding from any source except as provided in the **AACCSA Conciliation/Mediation Rules** and in the Rules of Procedures made pursuant thereto.

Or

- I am independent of each of the parties and intend to remain so; however, in consideration of Article 13 Sub-Articles 1 & 2 of the **AACCSA Conciliation/Mediation rules**, I wish to call your attention to the following facts or circumstances which I hereinafter disclose because they might be of such a nature as to call into question my independence in the eyes of any of the parties (use separate sheet, if necessary).

Non-Acceptance:

- I, the undersigned, hereby declare that I decline to serve as a Conciliator/Mediator in the subject case. (If you wish to state the reasons for checking this box, please do so).

Name: -----Signature----- Date-----