

# **The AACCSA Arbitration Institute's Conciliation /Mediation Rules**

## **1. Background:**

The Addis Ababa Chamber of Commerce & Sectoral Associations (AACCSA) which was established by Proclamation No. 341/ 2003 is mandated to settle disputes arising out of business transactions by means of arbitration when the disputants so request. As such, AACCSA prepared the arbitration rules and established the arbitration Institute to facilitate disputes referred to it. The AACCSA Arbitration Institute has long been facilitating the settlements of the cases referred to it by establishing the arbitral tribunals.

In principle, Arbitration Award is as binding as the judgments of courts. It is thus enforceable through execution against the assets of the losing party if so wanted, except that the arbitral tribunal has not complied with certain essential requirements of natural justice or due process of law such as treating the parties with equality and giving each of them an adequate opportunity to present its case. Hence, the only difference between Arbitration and litigation is that arbitration's jurisdiction is emanates from the parties' agreement. Practice shows that parties to certain commercial transactions usually agree in their contracts not to commence arbitration or litigation procedure before trying to amicably resolve their misunderstandings.

Naturally, negotiation between the parties is one of such procedures of amicable settlement. Nevertheless, negotiation may not always be successful at the time when the parties are not even in speaking terms. Hence, the intervention of a neutral third party may assist the parties in separating themselves and their emotions from the problem and encourage them to concentrate themselves on the real issues. Not only that. Alternative Dispute Resolution (ADR) serves as an intermediate dispute resolution mechanism especially in contracts involving long-term projects or continuing commercial relationships. As such parties in their contracts have began to include ADR procedures short of arbitration or litigation process.

Conciliation /Mediation services can be exercised in an ad-hoc basis or in an institutional basis. Ad -hoc conciliation is simply a process in which the parties themselves without the assistance of the institution define the organization and management of the Conciliation/Mediation. Regarding the ad-hoc conciliation, the United Nations Commission on International Law (UNCITRAL) in 1980 has prepared the Conciliation Rules as a supplement to its 1976 Arbitration Rules, whereby interested parties to settle their disputes by means of ad-hoc conciliation may use it.

Conciliation is also given at the Institutional level. The Arbitration Institutes such as the ICC, the Stockholm Chamber of commerce, the Milan Chamber of Commerce, the Euro-Arab Center and many other such organizations are providing institutional conciliation / mediation services parallel with the arbitration services. However, the mechanism for conciliation proceedings is totally autonomous and distinct from the arbitration mechanism. In line with this, the AACCSA Arbitration Institution desirous of extending the ADR services to the business community has now prepared the Conciliation/Mediation Rules.

## **2. Advantages of the ADR Procedures**

### **2.1 Intermediate dispute resolution**

ADR procedures serve as intermediate dispute resolution mechanisms in long-term projects or continuing commercial relationships. As an intermediate resolution process, such as expert adjudication or decision by review boards, it is often used must be followed prior to the commencement of arbitration proceeding specifically in construction or infrastructure projects. In order to resolve claims arising in the course of the project in a manner which requires the contractor to continue working notwithstanding that other disputes may be unresolved. Such decision may subsequently be reviewed in arbitration.

### **2.2 Flexibility**

ADR offers greater flexibility in that parties are free to choose the most appropriate method of dispute resolution mechanisms. Moreover, the parties are free to adopt many ranges of solutions without being restricted only to a cash award.

### **2.3 Focusing on the Main Issue**

In the ADR procedure, the involvement of the neutral expert helps the parties to focus only on the issues rather than concentrating on the procedural matters. Since the third party is usually the one who is familiar with the technical or commercial issues of the dispute, it encourages the parties to focus only on the real issues than that of their emotions.

### **2.4 Speed**

Parties can resolve their disputes in a matter of days or weeks by a certain type of procedure that is appropriate to the nature of the dispute as opposed to litigation or arbitration, which often involves months or years. This minimizes the associated management's time and associated corporate disruption. It also minimizes the risk of adverse publicity.

### **2.5 Cost**

ADR is relatively simpler and cheaper than either arbitration or litigation. Even if the parties could not resolve their disputes, the ADR process helps to resolve certain parts of the issues in dispute and helps them to prepare themselves on the remaining proceedings.

## **2.6 Success Rate**

ADR procedure is gaining wider acceptance in its success. Even if ADR is not successful, once issues are narrowed, it helps the parties to resolve the remaining outstanding issues successively.

## **2.7 Confidentiality**

Unlike litigations in courts, ADR procedures are carried out in private. This in effect avoids the adverse effect of publicity. Hence, it minimizes the risk of business information and trade secret to competitors.

## **2.8 On going Business Relationship**

ADR procedure highly depends and is effective if both parties are mutually interested and willing on the procedure. Once they are willing to the ADR procedure, the parties approach the process in a spirit of negotiation and compromise instead of adopting the adversarial position associated with litigation and arbitration. Moreover, the ADR settlement is flexible in nature, and parties can air their views; it is not a **won** or **lost** settlement either. Hence both will come out of the process with a certain satisfaction, and their future business relations will be successfully maintained.

## **3. Essential Feature of ADR**

Most ADR procedures share many essential common features. The process is to intend to encourage representatives of the parties to recognize the weakness of their own and strengths of their opponent's case and its commercial implication at large. In the process of face-to-face negotiations, parties may make a without prejudice concession and compromise without however, giving up their legal rights. The role of the third party neutral is to enable the parties to view the dispute objectively. Hence, the success of any ADR procedure highly depends on the neutral's skills in brining the parties together and finding areas of agreement.

## **4. Forms of The ADR procedures**

ADR procedures may take many forms. Negotiation, conciliation, mediation, mini- trial, non-binding arbitration, expert opinion or fact-finding, early neutral evaluations are few of them. Of these, the most widely exercised forms of ADR are conciliation and mediation procedures.

### **a. Conciliation and mediation**

These two terms are frequently used interchangeably. They are applied to similar procedures and are being used more and more interchangeably. Some are of the opinion that there is no accepted or consistent usage. Both mediator and conciliator is an impartial third party employed by the parties to act as a mediator or conciliator. There is no agreed upon difference between the two. Whilst some maintain the view that mediator is merely a go-between between the parties in an attempt to facilitate settlement without making his or her recommendation, the conciliator will usually draw up and propose terms of settlement. Others with equal conviction take the opposite view. The AACCSA preferred the former approach.

### **b. Conciliation**

During the conciliation proceedings, the conciliator often attempts to set out to each of them what are considered to be the best perspective from which to conciliate the different points of view, and thus to transform a continuous situation into a conciliation. The conciliator conducts the conciliation process as he/she thinks appropriate, guided by the principle of impartiality, equity and justice. Even if agreement is not reached between the parties the Conciliator is obliged to give his/her recommendation.

### **c. Mediation**

As to mediation, it can be defined as a variation of conciliation whereby an attempt to settle dispute is made by third party, the mediator who examines the claims of the parties and assists the parties in their negotiation to settle their disputes. The procedure of Conciliation can also be applied mutatis- mutandis to mediation except that the mediator is not expected to write a recommendation but helps the parties to negotiate. Hence Mediation is known as a protracted negotiation. Like conciliation, mediation can also be ad-hoc or institution