

FIJI MEDIATION CENTRE

THE MEDIATION PROCEDURE

1. The Mediation Process

1. The mediation process conducted by the Fiji Mediation Centre (FMC) is to be governed by this Mediation Procedure.
 2. Parties seeking to mediate their dispute may initiate the same by sending the completed *'Request for Mediation form'* found in *Annex A* to FMC.
 3. Where not all the parties to a dispute have initiated mediation, FMC will:
 - (a) Within fourteen (14) days from the date of request contact the remaining parties to persuade them to participate in the mediation process; and
 - (b) Within twenty-one (21) days from the date of request inform all parties whether mediation can proceed.
- 1.4 The mediation process will involve the parties, their representatives and/or advisors (if any) and the Mediator(s). The mediation will be conducted in confidence, and all communications will be on a 'without prejudice' basis.

2. Mediation Agreement

1. Before mediation is carried out, the parties will enter into an agreement (the Mediation Agreement) based on the *'Model Mediation Agreement in Annex B'* in relation to the conduct of the mediation. For the avoidance of doubt, the Mediation Agreement may take the form of an electronic record and be signed in counterparts.

3. The Parties

- 3.1 Generally, individuals should attend the mediation in person. In the case of corporate entities, the parties may appoint representatives to act for them at the mediation. The parties will confer upon their representatives the necessary authority to settle the dispute. The parties will supply FMC and the Mediator(s), within such time as FMC may specify, the names of their representatives and/or advisors attending the mediation.
2. The Mediator(s) will determine the steps to be taken during the mediation proceedings after consultation with the parties. The parties will be deemed, upon signing the Mediation Agreement, to have accepted and will be bound by the terms of this Procedure.

4. The Mediator

1. Upon the parties' entry into the Mediation Agreement, FMC will appoint a person or several persons to act as the Mediator(s).
2. FMC, in the selection, will choose a person who, in its view, will be best placed to serve as the Mediator. In the event that any of the parties has any valid reasons to object to a choice, FMC will appoint another person.

3. A person selected as a Mediator will disclose any circumstances likely to create an impression of bias or prevent him from acting promptly. FMC, upon receipt of such disclosure, will appoint another person as a Mediator, unless the parties decide otherwise.
4. The Mediator:
 - (a) will prepare himself appropriately before the commencement of mediation;
 - (b) will abide by the terms of the Mediation Agreement and the *'Code of Conduct in Annex C'*;
 - (c) may assist the parties in the drawing up of any written settlement agreement; and
 - (d) will, in general, facilitate negotiations between the parties and steer the direction of the discussion with the aim of finding a mutually acceptable solution.

Unless expressly requested by all the parties involved, the Mediator(s) will not make any ruling/ finding with respect to the dispute.

5. The Mediator(s) (or any member of his firm or company) should not act for any of the parties at any time in connection with the subject matter of the mediation. The Mediator(s) and FMC are not agents of, or acting in any capacity for, any of the parties. The Mediator(s) is not an agent of FMC.

2. FMC

2.1. FMC will make the necessary arrangements for the mediation, including;

- (a) appointing the Mediator(s);
- (b) organising a venue and assigning a date for the mediation;
- (c) organising an exchange of summaries of cases and documents; and
- (d) providing general administrative support.

2.2. FMC may assist in drawing up the Mediation Agreement.

6. Exchange of Information

6.1. At least five (5) days before the mediation, the parties will provide each other, the Mediator(s) and FMC the following:

- (a) a concise summary (Summary) stating its case; and
- (b) copies of all documents referred to in the Summary that the party wishes to rely on at the mediation.

- 6.2. Each party may also convey to the Mediator(s) and FMC information which it does not want to disclose to the other party(s). These instructions must be in writing.
- 6.3. The parties should try to agree to the maximum number of pages to be contained in their respective Summaries and on the maximum number of pages of supporting documents to be submitted. The parties should also try to agree on a joint set of documents.
- 6.4. Where a Summary is submitted in the form of an electronic record, it must not exceed 5 MB in file size.
- 6.5. Where a document (other than a Summary) is submitted in the form of an electronic record, it must not exceed 5 MB in file.

7. The Mediation

- 7.1. The mediation will be conducted in confidence, and no transcript or formal record will be made. No audio-visual recording will be made of the proceedings. Only the Mediator(s), the parties and/or their representatives and/or advisors will be permitted to be present during the mediation.
- 7.2. All communications made in the mediation, including information disclosed and views expressed, are made on a strictly 'without prejudice' basis and shall not be used in any proceedings.
- 7.3. The Mediator(s) may obtain expert advice in technical matters with the consent of the parties, who shall bear the expenses incurred.
- 7.4. The Mediator(s) may conduct joint meetings with all or separate meetings with each of the parties, whether before or during the mediation.
- 7.5. In the event that no settlement is reached, and at the request of all parties and if the Mediator(s) agrees, the Mediator(s) will produce a non-binding written recommendation of the terms of settlement. Such a recommendation will only be the Mediator's own assessment. Except with the consent of the Mediator(s) and of all parties, it shall not be used in any proceeding of whatever nature.

8. Settlement Agreement

- 8.1. No settlement reached in the mediation will be binding until it has been reduced to writing and signed by or on behalf of the parties.
- 8.2. For avoidance of doubt, a settlement that has been reduced to writing may take the form of an electronic record.
- 8.3. For avoidance of doubt, where a settlement reduced to writing takes the form of an electronic record, it may be signed by applying electronic signatures.

9. Termination

9.1. Any of the parties may withdraw from the mediation at any time by giving notice of withdrawal in writing to FMC, the Mediator(s) and the other party(s).

9.2. The mediation will terminate when:

- (a) a party withdraws from the mediation;
- (b) a written settlement agreement is concluded;
- (c) the Mediator(s) decides that continued mediation is unlikely to result in settlement; or
- (d) the Mediator(s) decides that he should withdraw from the mediation for any of the reasons stated in the Code of Conduct.

10. Stay of Proceedings

10.1. Unless the parties otherwise agree, the mediation will not prevent the commencement of any suit or arbitration; nor will it act as a stay of such proceedings.

11. Confidentiality

11.1. All persons involved in the mediation will keep confidential and not use for any collateral or ulterior purpose:

- (a) the fact that mediation is to take place or has taken place;
- (b) any views expressed, or suggestions or proposals for settlement made by another party in the course of the mediation;
- (c) proposals suggested or views expressed by the Mediator(s);
- (d) the fact that another party had or had not been willing to accept a proposal for settlement made by the Mediator(s); and
- (e) all information (whether oral or in writing) produced for or arising in relation to the mediation, including any settlement agreement, except as directly necessary to implement and enforce any such settlement agreement.

11.2. All documents (including anything stored electronically) or any other information produced for, or arising in relation to, the mediation will be privileged, and will not be admissible as evidence or discoverable in any proceedings connected with the dispute unless such documents would have in any event been admissible or discoverable.

11.3. The parties will not call the Mediator(s) or FMC (or any employee, officer or representative) as a witness, consultant, arbitrator or expert in any proceedings in relation to the dispute.

12. Fees

12.1. Each party shall pay a filing fee to FMC. Apart from the filing fee, all fees payable to FMC (including the Mediator's fees) will be borne by the parties in equal portions. The fees will be charged according to the *fee schedule set out in Annex D*.

12.2. Each party will bear its own costs, expenses and disbursements of its participation and the fees of its advisors in the mediation.

13. Waiver of Liability

13.1. The Mediator(s) will not be liable to the parties for any act or omission in connection with the services provided by him in or in relation to the mediation, unless the act or omission is fraudulent or involves wilful misconduct.

13.2. FMC will not be liable to the parties for any act or omission in connection with the services provided by it or in relation to the mediation.

13.3. The parties will not make any claim against the Mediator(s) and/or FMC, its officers and employees for any matter in connection with or in relation to:

(a) the mediation;

(b) the services provided by the Mediator(s) and/or the FMC; and/or

(c) the dispute between the parties.

14. Interpretation

14.1. The interpretation of any provision in this Mediation Procedure shall be made by FMC.

Annexes

Annex A- Request for Mediation

Annex B - Model Mediation Agreement

Annex C - Code of Conduct

Annex D - Fee Schedule

Issued by:
Fiji Mediation Centre
14 June 2016