

# MEDIATION RULES

2021 EDITION 

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# MEDIATION RULES OF THE TANZANIA INSTITUTE OF ARBITRATORS (TIArb)

## 1. Citation

These Rules may be cited as the Tanzania Institute of Arbitrators (Mediation) Rules, 2021.

## 2. Application

These Mediation Rules shall apply in relation to resolution of all disputes arising out of or in connection with domestic or foreign contracts, noncommercial disputes and between parties who have expressed their consent to submit to mediation under these Rules. Where any of these Rules is in conflict with provision of another law from which the parties cannot derogate, the provision of that other law shall prevail.

## 3. Commencement

3.1. These Rules shall come into force on March 2021 and, unless otherwise agreed by the parties, shall apply to any mediation which is commenced on or after that date.

## 4. Overriding Objective

- 4.1. The principal objective of these Rules is to obtain fair and cost-effective resolution of disputes by an impartial mediator without unnecessary delay and expenses.
- 4.2. Matters not covered in these Rules shall be subject to the applicable law agreement of the parties and or the laws of the United Republic of Tanzania for all contracts: international and domestic.

## 5. Definition and Interpretation

### 5.1. For the purposes of these Rules:-

<i>Term</i>	<i>Meaning</i>
“Mediation”	Means a process, whether referred to by the expression “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 arising out of or relating to a contractual or other legal relationship.
“Mediator”	Means a sole mediator or two or more mediators, as the case may be.
“Rules”	Means the Tanzania Institute of Arbitrators (Mediation) Rules, 2021.
“TIArb”	Means the Tanzania Institute of Arbitrators.

- 5.2. Any pronoun in these Rules shall be understood to be gender-neutral.
- 5.3. Any singular noun shall be understood to refer to the plural in the appropriate circumstances.

**6. Confidentiality**

- 6.1. The Mediator shall treat the Contract and all mediation session as private and confidential, and shall not disclose them without Parties written consent.
- 6.2. The Parties and Parties personnel shall treat the Contract and all mediation session as private and confidential.

**7. General duties of the Mediator**

- 7.1. The Mediator shall act fairly and impartially as between the parties, giving each party a reasonable opportunity of putting their case and dealing with that of the opponent.
- 7.2. The Mediator shall adopt procedure suitable to the circumstances of each particular case, avoiding unnecessary delay or expense, so as to provide a fair means for the resolution of the matters to be determined.
- 7.3. The Mediator shall not disclose any confidential information revealed to him during the proceedings by the parties or by the witnesses unless the parties consent to the disclosure.

**8. General duties of the parties**

- 8.1. The parties shall act in good faith in the mediation and cooperate with other party in settlement of dispute, this includes:
  - 8.1.1. Complying without delay with any order or direction of the Mediator
  - 8.1.2. Taking without delay any necessary steps to obtain a decision of the Court on question of jurisdiction or law.

**9. Request for and commencement of Mediation**

- 9.1. A person wishing to commence mediation proceedings under these Rules shall send to the TI Arb a written request for mediation.
- 9.2. There shall be one Mediator appointed by the parties, unless the parties agree that there shall be two or more Mediators.
- 9.3. When a person is approached in connection with his or her possible appointment as a Mediator, he or she shall disclose any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. A Mediator, from the time of his or her appointment and throughout the mediation proceedings, shall disclose any such circumstances to the Parties.

**10. Appointment of a Mediator**

- 10.1. There shall be one (1) Mediator unless the parties agree otherwise.
- 10.2. The Mediator shall be jointly appointed by the parties to the dispute within:
  - (a) 7 days of receipt from TI Arb the written request for mediation.
  - (b) Such other additional time as may be granted/allowed by TI Arb on request of either party to the dispute.

**11. Appointment of Mediator by default.**

Where the parties disagree on the selection of Mediator(s), then:

- 11.1. Upon lapse of 7 days of parties to appoint Mediator (per Rule 10.2), TIArb shall, within four (4) days propose a mediator by providing the parties with names of 3 Mediators from its Panel of Mediators.
- 11.2. The parties shall within (5) days of receipt of the proposed names of mediators, jointly select a Mediator and inform TIArb in writing of their selection.
- 11.3. TIArb shall inform the Mediator who shall confirm his acceptance/otherwise to act a Mediator in the dispute.

## **12. Confidentiality**

- 12.1. In the event of the death or resignation or removal of a mediator during the course of the mediation proceedings, a substitute mediator shall be appointed or chosen pursuant to the procedure provided for in rule 11.
- 12.2. In the event that Mediator fails to act or in the event of the de jure or de facto impossibility of his performing his functions, the procedure in respect of the challenge and replacement of a Mediator as provided in the preceding articles shall apply.
- 12.3. If the sole or presiding Mediator is replaced, any joint sessions held previously shall be repeated; if any other Mediator is replaced such prior hearings may be repeated, at the discretion of the TIArb.

## **13. Conduct of Mediation**

- 13.1. The parties are free to agree, by reference to a set of rules or otherwise, on the manner in which the mediation is to be conducted.
- 13.2. 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, 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
- 13.3. In any case, in conducting the proceedings, the Mediator shall seek to maintain fair treatment of the parties and, in so doing, shall take into account the circumstances of the case.
- 13.4. The Mediator may, at any stage of the mediation proceedings, make proposals for a settlement of the dispute.

## **14. Mediator acting as Arbitrator (Med-Arb)**

Unless otherwise agreed by the parties, the Mediator shall not act as an Arbitrator in respect of a dispute that was the subject of the mediation proceedings or in respect of another dispute that has arisen from the same contract or legal relationship or any related contract or legal relationship.

## **15. Communication between parties and Mediator**

- 15.1. All parties shall communicate directly with the Mediator unless he directs otherwise.
- 15.2. Where the TIArb, on behalf of the mediator, sends any communication to one party, a copy to each of the other parties shall also be sent.
- 15.3. Where any party sends any communication to the Mediator, the copies should be sent to the other party/parties and the TIArb.
- 15.4. The addresses of the parties for the purpose of all communications during the proceedings shall be those set out in the written request of Mediation, or such other

addresses as the parties shall later agree or as any party concerned shall at any time notify to the mediator and to all the other parties and TIArb.

## **16. Costs and deposits**

- 11.1. From the commencements of the mediation, all the parties shall be jointly and severally liable to the TIArb for these costs until they are paid.
- 16.1. From the commencements of the mediation, all the parties shall be jointly and severally liable to the TIArb for these costs until they are paid.
- 16.2. The TIArb will require all the parties to deposit equal sums of money before the start of the proceedings. The total amount of the deposit will be based on the estimated time required by the Mediator to arrive to settlement agreement as per Schedule 2.
- 16.3. The Mediator's fees will be paid to the TIArb calculated by reference to the work done by him in connection with the mediation and will be charged at rates appropriate to the particular circumstance of the case including its complexity and any special qualifications of the Mediator. The rate shall be established, reviewed and published by the TIArb from time to time. The Mediator and parties may also agree on the fees payable to the Mediator. The parties shall pay administrative costs in accordance with the Mediation Fees Schedule 2 set under these Rules but do not include expenses as listed in Schedule 2.
- 16.4. Specific outgoing expenses incurred by the TIArb or Mediator in connection with the mediation such as travel, subsistence, hire of venue, postage, telex, cable, telephone, copying, recording and transcribing services, reports of experts and advisors and any other items shall be charged at cost.

## **17. Termination of Mediation**

The Mediation shall be deemed to have ended when the following happens:

- 17.1. The execution of an agreement by the parties setting out the terms of the settlement of the dispute by which the parties agree to be bound;
- 17.2. By a written or oral declaration of the Mediator that further efforts at mediation would not, in his or her opinion, contribute to a settlement of the dispute;
- 17.3. By a written or oral declaration of all parties that the mediation proceedings are concluded; or
- 17.4. When any time limit agreed by the parties for the achievement of a settlement by mediation has expired and the parties have not agreed an extension of that time limit.

## **18. Binding and enforceable nature of settlement agreements**

If the parties conclude an agreement settling a dispute that settlement agreement is binding and enforceable as it is.

## **19. Exclusion of Liability**

Neither the TIArb nor the mediator shall be liable to any party for any act or omission in connection with any mediation conducted under these Rules save that the Mediator, shall be liable for the consequences of any conscious and deliberate wrong doing in his own part.



## Schedule 2 (MEDIATION) FEE SCHEDULE

1. This Mediation Fee Schedule forms part of the rules of mediation (the “TIArb Mediation Rules”) and shall be applied in all mediations administered by the Tanzania Institute of Arbitrators in which the parties have agreed in writing to mediate disputes under the Mediation Rules respectively.

**2. The fees of the TIArb shall comprise:**

S/N	SPECIFICATION	LOCAL MEDIATIONS	INTERNATIONAL MEDIATIONS
1	A non-refundable registration fee	TZS 500,000/=	USD 218
2	Mediator’s hourly rate fees	TZS 230,000/=	USD 100
3	TIArb’s administrative cost	Add 20% charged from the Mediators fee	Add 20% charged from the Mediators fee

The Mediation Rules shall come into effect on March 2021

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