

2024 MEDIATION RULES

AALCO

HONG KONG REGIONAL
ARBITRATION CENTRE

(Adopted on 1 May 2024)



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HONG KONG REGIONAL
ARBITRATION CENTRE
亞非法協香港區域仲裁中心

Introduction, Model Mediation Clause and Definitions

- (A) The Asian-African Legal Consultative Organization (AALCO) is an intergovernmental international organization established in 1956 as an outcome of the Bandung Conference held in 1955. AALCO aims to promote exchanges and consultations among Asian and African countries on international law issues, and to reflect the demands of Asian and African countries in the development of international law.
- (B) AALCO is a permanent observer at the United Nations. AALCO presently has 48 member countries, all of which are major countries/regions in Asia and Africa, and over 90% of them are active in the Belt and Road Initiative. The total population of these member countries exceeds two-thirds of the global population, and their combined gross domestic product exceeds trillions of dollars.
- (C) One of the earlier major achievements of AALCO in its programme in the economic field is its Integrated Scheme for Settlement of Disputes in the Economic and Commercial Transactions which was launched in 1978, and now have six regional disputes resolution centres, including the AALCO Hong Kong Regional Arbitration Centre (“AALCO-HKRAC”) which is established by international law

and commenced operations in Hong Kong in May 2022.

- (D) To address unmet needs in the region to help provide more cost-effective solutions to peacefully resolve disputes, AALCO-HKRAC is adopting and published these Mediation Rules of the AALCO Hong Kong Regional Arbitration Centre (these “**Rules**”) on 1 May 2024.
- (E) These Rules are administered by AALCO-HKRAC who reserves final rights of interpretation. These Rules have taken into account and work in conjunction with the Mediation Ordinance (Cap.620 of the Laws of Hong Kong) (the “**Ordinance**”) and govern mediation proceedings where the Ordinance applies according to Section 4 of the Ordinance. Mediation proceedings under these Rules may be conducted in-person or online which is regarded as conducted in Hong Kong.
- (F) Mediation proceedings conducted online shall also be subject to rules, practice notes and guidelines issued by the AALCO-HKRAC from time to time.
- (G) In these Rules:
 - (i) references to “**AALCO-HKRAC**” mean the

AALCO Hong Kong Regional Arbitration Centre, which was established by international laws and headquartered in Hong Kong pursuant to the 10 November 2021 Agreement Between the Government of the People's Republic of China and the Asian-African Legal Consultative Organization on the Establishment of a Regional Centre for Arbitration in the Hong Kong Special Administrative Region of the People's Republic of China;

- (ii) The Director of the AALCO-HKRAC, or such persons as may be duly acting upon his/her delegated authority with such restrictions or conditions as may be applicable, exercise and discharge the powers, functions and duties of the AALCO-HKRAC under these Rules;
- (iii) references to “**written communications**” include all notifications, proposals, submissions, statements, declarations, documents, demands, requests, and agreements that are produced, submitted, and exchanged in the mediation;
- (iv) words importing the singular number only shall include the plural and the converse shall also

apply; and

- (v) words importing the masculine gender shall include the feminine gender and the converse shall also apply.

(H) Suggested Model Mediation Clause

“Any disputes or differences arising out of or in connection with this contract (and any subsequent amendments of this contract) shall first be referred to mediation in accordance with the Mediation Rules of the AALCO Hong Kong Regional Arbitration Centre.”

Note: If the subject matter is arbitrable, Parties may consider adding:

“If the mediation is abandoned by the mediator or is otherwise concluded without the dispute or difference being resolved, then such disputes or differences shall be referred to and resolved by arbitration in accordance with the AALO Hong Kong Regional Platform Arbitration Rules. Any disputes about whether mediation is attempted is a matter of jurisdiction and not admissibility, and shall be decided by the arbitral tribunal.”

- (I) In all matters not expressly provided for in these Rules, the AALCO-HKRAC and the Mediator shall act in the spirit of these Rules.

Scope of Application

Article 1

- 1.1 These Rules apply to the mediation of disputes (present or future) where parties have agreed, either by stipulation in a contract or a separate agreement, to settle their disputes or differences by mediation pursuant to these Rules.
- 1.2 The parties may modify these Rules by agreement provided that such modifications are acceptable to the AALCO-HKRAC.
- 1.3 The AALCO-HKRAC is the only body authorized to administer proceedings under these Rules.
- 1.4 Mediation under these Rules is a voluntary, confidential private dispute resolution process in which a neutral person (the “**Mediator**”) assists the parties in reaching a negotiated settlement.

Written Communications and Calculation of Periods of Time

Article 2

- 2.1 Save as otherwise provided in these Rules, all communications, including written communications, in the mediation may be uploaded to an electronic communications platform as may be designated by the AALCO-HKRAC from time to time, and conducted and transmitted through the electronic means.
- 2.2 In agreeing to adopt these Rules, each party has agreed to accept transmission by electronic means and agrees that such transmission constitutes valid service of any written communications.
- 2.3 Time limits under these Rules shall begin to run on the day following the day when any written communication is received or deemed received. If the last day of the time limit is an official holiday or a non-business day at the place of receipt, the time limit shall be extended until the first business day which follows. Official holidays or non-business days occurring during the running of the time limit shall be included in calculating the time limit.

Commencement of the Mediation Proceedings

Article 3

- 3.1 Where the parties have reached an agreement to refer their differences or disputes to mediation under these Rules, any party or parties wishing to commence mediation pursuant to these Rules may submit a written Request for Mediation (the “**Request**”) to the AALCO-HKRAC. The date of the commencement of the mediation proceedings is the date when the AALCO-HKRAC receives the Request.
- 3.2 Subject to the determination of AALCO-HKRAC, the Request is generally required to include:
- (a) the names, addresses, telephone numbers, email addresses and any other contact details of the parties to the dispute and of any person(s) representing the parties in the proceedings;
 - (b) a copy of the mediation provision of the parties’ contract or the parties’ stipulation to mediate;
 - (c) a brief statement of the nature of the dispute including, if possible, the quantum of the dispute, the relief or remedy sought;
 - (d) any agreement as to the language(s) of the

mediation, or, in the absence thereof, any proposal as to such language(s);

(e) any agreement as to the location of any physical/online meetings, or, in the absence thereof, any proposal as to such location;

(f) any joint nomination by all of the parties of Mediator or any agreement of all of the parties as to the attributes of Mediator to be appointed by the AALCO-HKRAC where no joint nomination has been made.

3.3 Where the parties have not reached an agreement to refer their disputes to mediation under these Rules, any party may request the AALCO-HKRAC by filing the Request to the AALCO-HKRAC. The AALCO-HKRAC will assist the parties in reaching an agreement to mediate within 14 days thereafter or any other time limits set by the AALCO-HKRAC. If an agreement has been reached, the date of commencement of proceedings shall be the date when the AALCO-HKRAC notifies the parties of such an agreement. If no agreement had been reached within the aforementioned time limit, the proceedings shall come to an end.

3.4 The Request shall be accompanied by payment to the

AALCO-HKRAC of the administrative fee as required by Article 15 of the Rules.

- 3.5 The Request shall be communicated to the AALCO-HKRAC and all parties to the dispute, unless the Request is jointly filed by all parties to the dispute.

Response to Request for Mediation

Article 4

- 4.1 A party who receives the Request should notify the AALCO-HKRAC and the other party whether any Mediator nominated is acceptable within 14 days after the receipt of the Request.
- 4.2 Where the parties put forward differing proposals in the Request and response, the parties should attempt to reach an agreement on the proposals on which they differ as soon as practicable. Any agreement consequent upon such discussion should be reduced into writing signed by the parties or their representatives.

Place of Mediation

Article 5

If the parties have not previously agreed on the place of mediation (being the seat of the mediation), the place of mediation shall be the Hong Kong Special Administrative Region of the People's Republic of China unless the Mediator, having regard to the circumstances of the case, considers that another place for the mediation would be more appropriate. The settlement agreement shall be deemed to have been made at the place of mediation.

Language of Mediation

Article 6

- 6.1. Communication with the AALCO-HKRAC shall be in the language of English, Arabic or Chinese, unless otherwise agreed by the AALCO-HKRAC.
- 6.2. Subject to an agreement by the parties, the Mediator may determine the language or languages to be used in the proceedings. The mediator may request that any documents submitted in languages other than the language of the proceedings be accompanied by a translation in whole or in part into the language of the

administrative proceedings.

Appointment of Mediator

Article 7

- 7.1. Any Mediator jointly proposed by the parties will be subject to confirmation by the AALCO-HKRAC.
- 7.2. In the absence of parties' proposed Mediator, the AALCO-HKRAC may use the following list-procedure described in this article, unless the parties agree that the list-procedure should not be used or unless the AALCO-HKRAC determines in its sole discretion that the use of the list procedure is not appropriate for the case in question.
- 7.3. The AALCO-HKRAC shall communicate to each of the parties an identical list containing at least three names, and:
 - (a) The parties shall within 7 days of receipt of the list of 3 names, return to the AALCO-HKRAC (without copying to the other party or parties) their rankings of names in order of their preference;

- (b) On receipt of the parties' list of 3 names, the AALCO-HKRAC shall allot 3 points to any name which appears at the top of any list and one less point for each succeeding position. The AALCO-HKRAC shall appoint as Mediator the person who receives the most points. In the event of a tie in the number of points, the AALCO-HKRAC shall at its absolute discretion, appoint as Mediator any one of the persons who has tied with the highest number of points;
- (d) If a party fails to place the 3 names in order of preference, the AALCO-HKRAC shall in its absolute discretion appoint the Mediator;
- (e) In the event that there are more than 2 parties to the mediation, the above procedures shall be adapted accordingly.

7.4. A Mediator shall be impartial and independent and shall have, before accepting appointment, disclosed any circumstances giving rise to justifiable doubt as to the Mediator's impartiality or independence. If, at any stage during the proceedings, new circumstances arise that could give rise to justifiable doubt as to the Mediator's impartiality or independence, prompt disclosure of such circumstances shall be made to the

parties and the AALCO-HKRAC. The parties may, upon receiving disclosure of actual or potential conflicts of interest of the Mediator, waive such conflicts and proceed with the mediation. In the event that a party disagrees as to whether the Mediator shall continue to serve, or in the event that the Mediator's conflict of interest might reasonably be viewed as undermining the integrity of the mediation, the Mediator may be replaced by the AALCO-HKRAC.

- 7.5. If the AALCO-HKRAC becomes aware or forms the view that any Mediator has become unwilling or unable to serve, the AALCO-HKRAC may replace and appoint another Mediator, unless the parties agree otherwise.

The Mediation Process

Article 8

- 8.1 The Mediator shall commence and conduct the mediation as soon as possible after appointment and shall endeavour to conclude the mediation within 14 days and in any event within 30 days of his appointment, unless otherwise mutually agreed by the parties or directed by the AALCO-HKRAC in writing.

- 8.2 The Mediator in consultation with the parties shall determine the process to be adopted for the mediation taking into account the circumstances of the matter, the wishes of the parties and the need to advance the mediation as expeditiously as possible.
- 8.3 Each party shall cooperate in good faith with the Mediator to advance the mediation as expeditiously as possible.
- 8.4 The Mediator may communicate with the parties together (joint meeting) or with any party separately (private meeting) on the clear understanding that information obtained at such private meetings shall not be disclosed to the other party or parties without the express authorization of the party giving the information.
- 8.5 A party may request a private meeting with the Mediator at any time until the termination of the mediation in accordance with these Rules.

Representation and Assistants

Article 9

- 9.1 Each party may be represented or assisted by persons

chosen by it. With consent of the parties, the Mediators may appoint person(s) as his or her assistants to the mediation at the costs of the parties, if any. The names and addresses of such persons must be communicated to all other parties, the AALCO-HKRAC and the Mediator once appointed. Such communication must specify whether the appointment is being made for purposes of representation or assistance. Where a person is to act as a representative of a party, the Mediator, on its own initiative or at the request of any party, may at any time require proof of authority granted to the representative in such a form as the Mediator may determine. Each party shall have full authority to settle or be accompanied by a person with such authority.

Termination of the Mediation

Article 10

10.1 The mediation shall be terminated upon the AALCO-HKRAC's written confirmation of any of the following circumstances:

- a) the signing of a settlement agreement by the parties; or

- b) a written notification of the Mediator that the mediation has been completed; or
- c) a written notification of the Mediator after consultation with the parties, and in the opinion of the Mediator that further efforts at mediation would not contribute to a resolution of the parties' dispute; or
- d) a written notification by any party at any time to the Mediator and the other parties that the mediation is terminated; or
- e) when there has been no communication between the Mediator and any party or party's representative for 14 days following the conclusion of the mediation session; or
- f) other circumstances that the AALCO-HKRAC considers that the proceedings should be terminated.

10.2 No party shall be entitled to call the Mediator as a witness in any subsequent judicial, adjudication or arbitration proceedings arising out of the same contract, and no Mediator shall so serve unless ordered by a court of competent jurisdiction to do so.

- 10.3 In the event that mediation is terminated without a full settlement agreement and as requested by a party or the AALCO-HKRAC, the Mediator shall expeditiously report the termination to the AALCO-HKRAC and the parties, summarising any differences narrowed down during the course of mediation.

Confidentiality

Article 11

- 11.1 Without the express permissions of the Mediator, no recording of any kind shall be made of any meetings of the parties with the Mediator.
- 11.2 Each person involved in the mediation including, in particular, the Mediator, the parties and their representatives and advisors, any independent experts, and any other persons present during the meetings of the parties with the Mediator, shall respect the confidentiality nature of the mediation and may not unless otherwise agreed by the parties and the Mediator, use or disclose to any outside party any information concerning, or obtained in the course of the mediation.

- 11.3 Unless otherwise agreed by the parties, no party or party representative may publish, disclose or communicate any information relating to:
- (a) The mediation under the mediation agreement; or
 - (b) A settlement agreement made in the mediation except where the disclosure is necessary for implementation or enforcement purposes.
- 11.4 Nothing that transpires during the course of the mediation is intended to or shall in any way affect the rights or prejudice the position of the parties to the dispute in any subsequent judicial or adjudication or arbitration.
- 11.5 Unless otherwise agreed by the parties, the Mediator and parties shall not introduce as evidence any information that arose or transpired from the mediation whatsoever in any judicial or adjudication or arbitration proceeding.
- 11.6 Any document, communication or information disclosed, made or produced by any party during the mediation shall be deemed to be disclosed on a privileged and without prejudice basis and no privilege or confidentiality shall be waived by such

disclose.

11.7 The AALCO-HKRAC may include the information of the mediation in the statistical data of its operations for the public, provided that such information does not lead to circumstances of the parties and their disputes to be identified.

Exclusion of Liability

Article 12

Without prejudice to any existing rule of law, the Mediator, the AALCO-HKRAC, its officers and its staff shall not be liable to any party for any act or omission in connection with any mediation proceedings conducted under these Rules, except in the case of fraud, dishonesty or deliberate wrongdoing.

Limitation Period under Applicable Laws of Limitations

Article 13

The parties agree that, to the extent permitted by the Limitation Ordinance (Cap. 347 of the Laws of Hong Kong)

and/or applicable law, the running of the limitation period under any applicable statute of limitations or equivalent rules shall be treated as suspended in relation to the dispute that is the subject of the mediation from the date of the commencement of the mediation until the date of the termination of the mediation.

Interpretation

Article 14

The Mediator shall interpret and apply these Rules insofar as they relate to the mediator's duties and responsibilities, and the ultimate right of interpretation rests with the AALCO-HKRAC.

Schedule of Fee

Article 15

The then applicable Schedule of Fees and Costs and payment details are published from time to time at www.aalcohkrac.org

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For further information, please contact:

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