

The background of the lower half of the cover is a blurred image of a stack of papers. A pair of glasses with a wooden frame is resting on top of the papers. The lighting is warm, with a red-to-white gradient across the top of the image.

**TANZANIA INTERNATIONAL
ARBITRATION CENTRE**

MEDIATION RULES

August 2021

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Preamble

The **TANZANIA INTERNATIONAL ARBITRATION CENTRE (TIAC)** Mediation Rules are intended to help parties and mediators to take maximum advantage of the flexible procedure available in mediation for the resolution of disputes effectively. The Rules shall apply to the Mediations of present and or future disputes where the parties seek amicable settlement either by stipulation or by an agreement to mediate under these rules.

These rules should be interpreted in accordance with the TIAC Code of Professional and Ethical Conduct of Neutral members. They do not preclude mediation occurring simultaneously with arbitration and litigation. These Rules may also apply where there is no conflict or dispute to be resolved but the parties simply wish to use mediation as a facilitative way of achieving an agreed outcome.

Mediation under these rules is a without prejudice, confidential, voluntary and private dispute resolution process, in which a neutral person (the mediator (s)) helps the parties to reach a negotiated agreement. It is also as confidential to the extent allowed by law.

The parties may agree to vary these rules at any time.

1. Agreement of Parties

- 1.1 These Rules apply to the mediation of any present or future dispute where the parties seek consensual resolution and have agreed that these Rules shall apply. These Rules, and all amendments to them, shall be deemed to have been made a part of any agreement which provides for mediation with TIAC.

- 1.2 The parties may vary these Rules at any time by agreement in writing signed by the parties and notified to the mediator, and subject to the mediator to terminate the mediation under Rule 11.

2. Initiation of Mediation Process

- 2.1 If a dispute arises, a party may request the initiation of mediation by delivering a written request for mediation to the other party or parties with copies to TIAC. Such request for mediation shall contain a brief self-explanatory statement of the nature of the dispute, quantum in dispute (if any), the relief or remedy sought and essential documents in support thereof.
- 2.2 A party or parties who receive a request for mediation shall notify any other party and TIAC within 30 days after receipt of the request whether they are willing for mediation and whether any mediator nominated is acceptable. Failure by any party to reply within 30 days shall be treated as a refusal to mediate.
- 2.3 Each party to the mediation is responsible for notifying TIAC about a cancellation or change of the appointment date. All cancellation notices to TIAC must be in writing and faxed to TIAC. Emailed cancellation notices are only valid upon TIAC sending the parties a confirmation of receipt of the notice.

3. Selection of Mediator

- 3.1 The parties may agree on a mediator from the panel of mediators at TIAC.
- 3.2 If requested, TIAC, through the Panels Management Committee, will suggest mediators based on the nature of issues in dispute.
- 3.3 If requested by all parties, TIAC, through the Panel

Management Committee, will appoint the mediator for the parties.

4. Appointment of the Mediator

- 4.1 Where all parties have agreed upon a proposed mediator who is willing to serve and is not disqualified under Rule 5, the parties will jointly appoint that person as the mediator. The mediation shall then proceed in accordance with these Rules.
- 4.2 If, within 28 days of the initial request, all parties have not agreed upon a proposed mediator willing to serve and not disqualified under Rule 5, any party may so inform TIAC and, in so doing, must provide to TIAC copies of the request for mediation and the parties' responses. Within 10 days thereafter the TIAC shall provide, for the consideration of the parties, a list of the names of at least 3 potential mediators who are on the Panel of Mediators of TIAC. Should the parties within 7 days thereafter not agree upon the appointment of a mediator (whether from that list or not) the TIAC shall appoint a mediator from its Panel of Mediators (whether from that list or not), being a mediator prepared to serve and not disqualified under Rule 5. The mediation shall then proceed in accordance with these Rules.
- 4.3 Rules 4.1 and 4.2 shall apply where the parties wish to appoint more than one mediator, save that where one mediator is appointed before any additional mediator(s), the parties (and, where applicable, TIAC) shall consult with that mediator before appointing the other mediator(s).

5. Disqualification and Replacement of a Mediator

- 5.1 No person may act as a mediator in any dispute in which that person has any financial or personal interest or any

conflict of interests likely to affect or which might reasonably be perceived to affect the mediator's independence or ability to act impartially at all times, save where the parties have been notified in writing of such circumstances and have subsequently expressly consented in writing to the appointment of the mediator.

- 5.2 If, following appointment, a mediator becomes aware of any circumstances that may create a reasonable perception of bias, partiality or lack of neutrality, the mediator shall immediately disclose to the parties and, where the mediator was appointed by TIAC shall also immediately so inform the TIAC. If any party objects to the continued services of the mediator, the mediator shall be disqualified.
- 5.3 Within 7 days following any disqualification, another mediator who is willing to serve and is not disqualified under Rule 5 shall be appointed by agreement of all parties, failing which, within 10 days of being notified by a party of such failure, and without the need to consult the parties, TIAC shall appoint another mediator from amongst its accredited mediators, being a mediator prepared to serve and not disqualified under Rule 5.

6. Confidentiality

Save as required or permitted by law:

- a) TIAC, the parties, their representatives, their advisors and the mediator(s) shall keep confidential all information (whether given orally, in writing or otherwise) produced for, or arising out of or in connection with, the mediation passing between any of the participants and between any of them and the mediator made for the purposes of the mediation, including the fact that the mediation is taking place or has taken place. Each party shall be responsible

for ensuring that all of its representatives and advisors are bound by appropriate undertakings of confidentiality and shall take appropriate measures to limit the dissemination of any information relating to the mediation only to those persons as may be required for the purposes of the mediation;

- b) unless the parties otherwise agree in writing, confidentiality under this Rule 7 also extends to the existence and content of any settlement agreement except to the extent that disclosure is necessary for its implementation or enforcement; and
- c) no document or other communication that would be admissible in evidence in any court, arbitral or adjudication proceeding shall be rendered inadmissible by reason only of its disclosure in the course of and for the purposes of the mediation.

Communications made at mediations are made without prejudice.

7. Compellability of Mediator

Neither the mediator nor any of TIAC's employees will be compelled to appear as a witness or expert in any legal proceeding involving any one or more of the parties or relating in any way to the subject matter of the mediation.

8. Exclusion of Liability

The parties jointly and severally release, discharge and indemnify the mediator and the TIAC in respect of all liability whatsoever, whether involving negligence or not, from any act or omission in connection with or arising out of or relating in any way to any mediation conducted under these Rules, save for the consequences of fraud, dishonesty, or violation of the TIAC Code of Professional and Ethical Conduct of Neutrals.

No communication made during the course of the mediation shall be relied upon to find or maintain any action for defamation, libel, slander, or any other claim or complaint.

9. Mediation Process

- 9.1 Upon appointment of a mediator, TIAC will work with the parties to establish the time and location of each mediation session.
- 9.2 The mediator shall commence the mediation process not more than ten days after his/her appointment.
- 9.3 The parties may agree on the procedure to be followed by the mediator in the conduct of the mediation proceedings.
- 9.4 The parties and the mediator shall, at all times during the mediation process, be mindful of their duty set out in O. VIIIIC Rule 26(1) (a) and (b) of the Civil Procedure Code (GN No. 381/2019), which requires:
 - a) The parties to strive in reducing costs and delays of dispute resolution, and facilitate an early and fair resolution of disputes; and
 - b) The mediator to facilitate communication between or among the parties to the dispute in order to assist them in reaching a mutually acceptable resolution.”
- 9.4 Where the parties do not agree on any particular procedure to be followed by the mediator, the mediator shall follow the procedure hereinafter mentioned, namely:-
 - a. he shall fix, in consultation with the parties, a time schedule, the dates and the time of each mediation session where the parties have to be present;
 - b. he shall hold the mediation at TIAC or any convenient location agreeable to him and the parties, as he may determine;

- c. he may conduct joint or separate meetings with the parties;
 - d. each party shall, ten (10) days prior to the commencement of mediation, provide to the mediator and TIAC, a brief memorandum setting forth the issues, which according to it need to be resolved, and its position in respect to those issues and all information reasonably required for the mediator to understand the issue; such memoranda shall also be mutually exchanged between the parties;
 - e. each party shall furnish to the mediator such other information as may be required by him in connection with the issues to be resolved.
- 9.5 Where there is more than one mediator, the mediator nominated by each party shall first confer with the party that nominated him and shall thereafter interact with the other mediators, with a view of resolving the dispute.
- 9.6. The mediator shall use his best endeavour to conclude the mediation within Sixty (60) days of his appointment. His appointment shall not exceed beyond a period of three (3) months without the prior consent of the parties.
- 9.7 Throughout the mediation, each party must have authority to settle the dispute or be represented by a person or persons having authority to settle the dispute. A party may be assisted by any person(s) it chooses and must keep the mediator and each other party informed of the names, contact details and roles of such persons and of any changes that may occur during the mediation.
- 9.8 No settlement agreement reached during the mediation

shall be legally binding unless it is reduced to writing and signed by all parties to that settlement agreement or by their authorized representatives.

10. Role of Mediator

- 10.1 shall, in an independent and impartial manner, do everything to facilitate parties to resolve their dispute.
- 10.2 The mediator may conduct the mediation in such manner as the mediator considers appropriate, taking into account the circumstances of the case, the wishes of the parties and the need for expedition.
- 10.3 Meetings may be held face to face, by telephone, by videoconference, or electronically. The mediator may communicate with the parties together or with any party separately, with or without its representatives and, where necessary, make a proposal for a settlement.
- 10.4 Subject to Rule 11, nothing discussed in a private meeting with a party or its representative may be communicated by the mediator to any other person unless such communication is expressly permitted by that party or representative.
- 10.5 It is not the role of the mediator to give legal advice or to represent any party. The parties should obtain their own advice concerning their situation, the mediation process and any contemplated agreement.
- 10.6 The mediator may, where services of an expert may be obtained at no cost or where such services may be obtained at a cost, and if parties agree to pay such costs, obtain expert advice on a technical aspect of the dispute, which advice shall be given in an independent and impartial manner and shall have advisory effect;

- 10.7 The mediator shall be guided by principles of objectivity, fairness and natural justice, and shall give consideration to, among other things:
- i. The rights and obligations of the parties;
 - ii. the usages of the trade concerned; and
 - iii. the circumstances surrounding the dispute, including any previous business practices between the parties;
- 10.8 The mediator may, at any stage of the mediation proceedings and in a manner that the mediator considers appropriate, take into account the wishes of the parties, including any request by either of the parties that the mediator shall hear oral statements for a speedy settlement of the dispute; and
- 10.9 The mediator may, at any stage of the mediation proceedings, make proposals for the settlement of the dispute.

11. Role of Parties

- 11.1 The mediator may communicate with the parties together or with any party separately, including private meetings including private meetings and each party shall co-operate with the mediator. The parties shall give full assistance to enable the mediation to proceed and be concluded within the time stipulated.
- 11.2. Each party may at its own initiative or at the invitation of the mediator, give suggestions for settlement of the dispute; and further to commit to participate in the proceedings in good faith with the intention to settle the dispute.

12. The Role of TIAC

TIAC will make the necessary arrangements for the mediation, including; -

- a. facilitating the appointment of a Mediator as per Rule 3.2;

- b. appointing a Mediator upon request by the parties in terms of Rule 3.3.;
- c. organizing venue and assigning a date for the mediation;
- d. organizing an exchange of summaries of cases and documents; and
- e. providing general administrative support.

13. Appearance of parties at mediation session

- 13.1 The party or his advocate or both, where the parties are represented shall be notified of the date of mediation and shall attend at the mediation session.
- 13.2 Where a third party is involved in the conflict, the third party or his advocate may also request, and at the discretion of TIAC, attend the mediation session.

14. Failure to attend

- 14.1 Where it is not practicable to conduct a scheduled mediation session because a party fails without good cause to attend within the time appointed for the commencement of the session, the mediator shall remit the file to TIAC whereby the TIAC may;
- (a) terminate the mediation;
 - (b) order a party to pay costs; or
 - (c) make any other order as it deems just.
- 14.2 Any party aggrieved by an order made under the above rule shall, within seven days from the date of the order, file with the TIAC an application for restoration of the mediation.
- 14.3 TIAC shall hear and determine such application within fourteen (14) days from the date of lodging the application.
- 14.4 Upon the applicant showing good cause TIAC shall set

aside orders made under 14.1 of these Rules and restore the mediation and remit the case to the mediator who shall issue a notice for mediation.”

15. Termination of Mediation

The mediation process shall come to an end:

- a) by parties reaching an amicable settlement, which shall be in the form of a written settlement agreement duly executed by the parties; or
- b) if the mediator, after consultation with the parties, informing them that in his or her opinion further attempts at securing an agreed outcome through mediation are no longer appropriate; or
- c) by written notification of either party, no reasons need to be stated in any such notice, that the mediation is terminated.

16. Costs

16.1 Unless otherwise agreed, each party shall bear its own costs regardless of the outcome of the mediation or of any subsequent arbitral or judicial proceedings.

16.2 The parties agree to pay the applicable fees and disbursements of TIAC as set out in the confirmation letter. Each party shall bear equally the costs and expenses of the mediation including (but not limited to):

- a) TIAC Administrative charges for appointing one or more mediators;
- b) The mediators fees and expenses;
- c) The costs of any meeting rooms, meals, translation, photocopies, internet access, communications systems, or other reasonable costs relating to the organization and conduct of the mediation;
- d) The fees and expenses of any independent witness, expert advice or opinion requested by the mediator with the consent of the parties; and

e) Any additional administrative costs relating to the mediation, as may be assessed by TIAC.

16.3 The parties and their lawyers are jointly and severally responsible for the payment of the account rendered by TIAC. The parties may agree between them as to how the account of TIAC will be paid, but remain jointly and severally liable to Centre's for the entire account if the account is not paid in full.

16.4 The mediator may at any time during the mediation require the parties to make deposits with the TIAC to cover any anticipated fees or expenses and may suspend the mediation until such deposit is made.

16.5 The mediator or TIAC may at any time during the mediation require the parties to make further deposits to cover any additional anticipated fees and expenses and suspend the process until such deposit is made.

16.6 Any surplus funds deposited shall be refunded pro rata to the parties at the conclusion of the mediation.

17. Representation

The parties may be represented or assisted by persons of their choice. Each party shall notify in advance the names and the role of such persons to TIAC and the other party. Each party shall have full authority to settle the matter before the mediator. The parties will confer upon their representative the necessary authority to settle the dispute.

18. Settlement

18.1 When the mediator finds that there exists elements of settlement the mediator shall formulate the terms of the settlement and submit to the parties for their observations.

After receiving their observations, the terms may be reformulated by the mediator.

- 18.2 If the parties reach agreement on the settlement terms, the mediator with the assistance of TIAC, may draw up a settlement agreement on the terms agreed by the parties and the parties may sign the settlement agreement. The mediator shall authenticate the agreement and furnish an original copy to each party.
- 18.3 When the parties sign the settlement, it shall be final and binding on the parties and persons claiming under them. The settlement agreement shall have the same status as that of an arbitral award and can be executed and enforced as a decree of the court.

19. Feedback

Unless inappropriate in the circumstances, Mediators will, at the conclusion of a mediation, invite the parties and advisers and any co-mediators or assistant mediators, to complete a Feedback Request Form and deposit it in the Box kept for the purpose at TIAC.

20. Mediators Role in Subsequent Proceedings

The parties undertake that the mediator shall not be appointed as adjudicator, arbitrator or representative, counsel or expert witness of any party in any subsequent adjudication, arbitration or judicial proceedings whether arising out of the mediation or any other dispute in connection with the same contract. No party shall be entitled to call the mediator as a witness in any subsequent adjudication, arbitration or judicial proceedings arising out of the same contract.

21. Not Legal Counsel or Expert

21.1 All parties recognize that at the mediation session(s) and at every other point of the proceedings:

- a. Neither TIAC nor the mediator will be acting as legal adviser or legal representative for any of the parties;
- b. Neither TIAC nor the mediator has a duty to assert, analyze or protect any party's legal rights or obligations, including lien rights, statutes of limitation, or any other time limit or claim requirement;
- c. Neither TIAC nor the mediator has a duty to make an independent expert analysis of the situation, raise issues not raised by the parties or determine that additional necessary parties should participate in the mediation;
- d. Neither TIAC nor the mediator can guarantee that a mediation session will result in a settlement.

21.2 Parties may be represented by a counsel at any stage of the mediation process, and are encouraged to consult legal counsel concerning the proceedings or any proposed settlement agreements.

22 Interpretation

The interpretation of any provision in these Rules shall be made by TIAC.

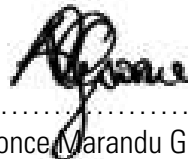
23 Amendment

These Rules may be amended or modified by Centre at any time without notice.

Adopted by the Board of Directors this 28th day of August 2021



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Dr. Rugemeleza A.K. Nshala
Board Chairperson



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Alphonse Marandu Gura
Managing Director



Tanzania International Arbitration Centre
Plot. No. 391 | House No. 21
Chato Street | Regent Estate
P.O.BOX 2148 | DAR ES SALAAM | TANZANIA
Telephone: +255 22 277 5313
Fax: +255 22 277 5314
Email: info@tiac.or.tz
Website: www.tiac.or.tz