

BDAC Small Case Commercial Mediation Scheme
Mediation Procedure

**BRUNEI DARUSSALAM ARBITRATION CENTRE
MEDIATION SERVICE**

**SMALL CASE COMMERCIAL MEDIATION SCHEME
MEDIATION PROCEDURE**

1. The Mediation Process

- 1.1 The mediation process for the Small Case Commercial Mediation Scheme conducted by the Brunei Darussalam Arbitration Centre (BDAC) is to be governed by this Mediation Procedure (MP).
- 1.2 Parties seeking to mediate their dispute may initiate the same by sending the completed Request for Mediation form found in Annex A to this MP.
- 1.3 Where not all the parties to a dispute have initiated mediation, BDAC 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

- 2.1 Before mediation is carried out, the parties will enter into an agreement (the Mediation Agreement) based on the Model Mediation Agreement in Annex B to this MP 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 BDAC and the Mediator(s), within such time as BDAC may specify, the names of their representatives and/or advisors attending the mediation.
- 3.2 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 MP.

4 The Mediator

- 4.1 Upon the parties' entry into the Mediation Agreement, BDAC will appoint a person or several persons to act as the Mediator(s).
- 4.2 BDAC, 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, BDAC will appoint another person.
- 4.3 A person selected as a Mediator will disclose any circumstances likely to create an impression of bias or prevent him from acting promptly. BDAC, upon receipt of such disclosure, will appoint another person as a Mediator, unless the parties decide otherwise.
- 4.4 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 to this MP;
 - (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.

4.5 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 BDAC are not agents of, or acting in any capacity for, any of the parties. The Mediator(s) is not an agent of BDAC.

5 BDAC

5.1 BDAC 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.

5.2 BDAC 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 BDAC 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 BDAC 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 size.

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 BDAC, 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 BDAC (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 The fees will be charged according to the fee schedule set out in Annex D to this MP.

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 BDAC 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 BDAC, 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 BDAC; and/or
- (c) the dispute between the parties.

14 Interpretation

14.1 The interpretation of any provision in this MP shall be made by BDAC.

Annexes

Annex A Request for Mediation
Annex B Model Mediation Agreement
Annex C Code of Conduct
Annex D Fee Schedule

Issued by:
Brunei Darussalam Arbitration Centre
03 December 2016

**BRUNEI DARUSSALAM ARBITRATION CENTRE
SMALL CASE COMMERCIAL MEDIATION SCHEME**

REQUEST FOR MEDIATION

Small Case Commercial Mediation Scheme
Brunei Darussalam Arbitration Centre Berhad
Level 8, BEDB Building,
Jalan Kumbang Pasang, Bandar Seri Begawan
Brunei Darussalam
Tel: (673) 2224645 ext 1503
Fax: (673) 2229593/2233742
Email: info@bdac.com.bn website: www.bdac.com.bn

PLEASE READ	
<p>Have all the parties agreed to mediate this matter?</p> <p><input type="checkbox"/> Yes</p> <p><input type="checkbox"/> No</p> <p>Remarks:</p>	
PLEASE READ	
<p>1. A party or parties who wish to apply for mediation under the Brunei Darussalam Mediation Centre (BDAC) Small Case Commercial Mediation Scheme (the Scheme) must complete this Application Form. BDAC reserves the right to reject any application.</p> <p>2. This Scheme is applicable to matters where the total quantum of claim and counterclaim does not exceed B\$60,000.</p>	
DETAILS OF PARTIES	
<i>(Where there are more than 2 parties or law firms, please provide the details for them in a separate attachment)</i>	
<p>Suit Number: <i>(if applicable)</i></p>	<p>If court proceedings have started, please tick the applicable box</p> <p><input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Third Party</p>
APPLICANT(S)	
<p>I am applying:</p> <p><input type="checkbox"/> As an individual <input type="checkbox"/> For an organisation</p>	
Contact Particulars	
<p>Salutation: <i>(if applicable)</i></p>	<p><input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Others:</p>
<p>Name(s):</p>	
<p>Address <i>(if not legally represented):</i></p>	
<p>Contact No</p>	<p>Tel:</p>

<i>(if not legally represented):</i>	Fax:
Email Address <i>(if not legally represented):</i>	
Contact Particulars (Legal Representatives)	
Salutation: <i>(if applicable)</i>	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Others:
Name:	
Law Firm:	
Address:	
Contact No:	Tel: Fax:
Email Address:	
Reference Number:	
RESPONDENT(S)	
<i>If court proceedings have started, please tick the applicable box</i>	
<input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant <input type="checkbox"/> Third Party	
If not, my counter party is:	
<input type="checkbox"/> An individual <input type="checkbox"/> An organisation	
Contact Particulars	
Salutation: <i>(if applicable)</i>	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Others:
Name(s):	
Address <i>(if not legally represented):</i>	
Contact No <i>(if not legally represented):</i>	Tel: Fax:
Email Address <i>(if not legally represented):</i>	

Contact Particulars (Legal Representatives)

Salutation: <i>(if applicable)</i>	<input type="checkbox"/> Mr <input type="checkbox"/> Mrs <input type="checkbox"/> Ms <input type="checkbox"/> Others:
Name:	
Law Firm:	
Address:	
Contact No:	Tel: Fax:
Email Address:	
Reference Number:	

DETAILS OF THE DISPUTE

The value of the claim: B\$
 Quantum of counterclaim: B\$
(Please be aware that your claim cannot be more than B\$60,000 to qualify for this scheme)

Others:

Type of Dispute

<input type="checkbox"/> Agency	<input type="checkbox"/> Personal Injury
<input type="checkbox"/> Banking/Financial Instruments	<input type="checkbox"/> Probate (Deceased)
<input type="checkbox"/> Company / Shareholders	<input type="checkbox"/> Professional Malpractice
<input type="checkbox"/> Information Technology	<input type="checkbox"/> Renovation
<input type="checkbox"/> Construction/Contractors	<input type="checkbox"/> Sale & Purchase of Property
<input type="checkbox"/> Defamation	<input type="checkbox"/> Sale/Supply of Goods & Services/Title of Goods
<input type="checkbox"/> Employment	<input type="checkbox"/> Sports
<input type="checkbox"/> Family/Neighbour	<input type="checkbox"/> Shipping
<input type="checkbox"/> Insurance	<input type="checkbox"/> Tenancy
<input type="checkbox"/> Intellectual	<input type="checkbox"/> Torts
<input type="checkbox"/> Property/Trademarks/Copyright	<input type="checkbox"/> Trust
<input type="checkbox"/> Joint Venture/Partnership	
<input type="checkbox"/> Others:	

[Please provide brief details of the dispute]

AVAILABLE DATES FOR MEDIATION

[Please provide a few available dates, if possible mutually agreed dates]

TERMS AND CONDITIONS

By signing and submitting this Application Form to BDAC, you have agreed to the Scheme Procedure and the following terms and conditions of the Scheme:

(1) A mediation fee deposit is payable to BDAC **by each party** within three working days after BDAC has confirmed the date of mediation. In the event that that the mediation is aborted after BDAC has confirmed the date of mediation, BDAC reserves the right to keep any part or all of the mediation fee deposit paid by both parties.

(2) Mediation under this Scheme will be scheduled either on a weekday or Saturday, depending on the availability of the mediator, parties and venue.

(3) If the total value of the claim is revised to above B\$60,000 before or during the mediation session, BDAC reserves the right to revise the mediation fee payable by parties.

SIGNATURE

Applicant's Name and Signature:	
Date:	

HOW DID YOU HEAR ABOUT US?

<input type="checkbox"/>	Industry/ Business Network
<input type="checkbox"/>	Lawyer's Referral
<input type="checkbox"/>	Media (Newspaper, television etc.)
<input type="checkbox"/>	BDAC Invitation Letter
<input type="checkbox"/>	BDAC Website
<input type="checkbox"/>	The Supreme Court of Brunei Darussalam
<input type="checkbox"/>	The Subordinate Courts of Brunei Darussalam
<input type="checkbox"/>	Telephone Enquiry to BDAC
<input type="checkbox"/>	Others: _____.

**BRUNEI DARUSSALAM ARBITRATION CENTRE
SMALL CASE COMMERCIAL MEDIATION SCHEME**

AGREEMENT TO MEDIATE

THIS AGREEMENT TO MEDIATE is made between:

- (1) The Brunei Darussalam Arbitration Centre Bhd of Level 8, BEDB Building, Jalan Kumbang Pasang, Brunei Darussalam ("**BDAC**");
- (2) _____ of _____ ("**Party A**");
- (3) _____ of _____ ("**Party B**");
- (4) _____ of _____ (the "**Mediator**"); and
- (5) _____ of _____ (the "**Mediator**").

WHEREAS

- A. Party A and Party B (the "**Parties**") have requested the mediation services provided by BDAC's Small Case Commercial Mediation Scheme (the "**Scheme**") to assist them to resolve the dispute(s) between them.
- B. The Parties agree to attempt, in good faith, to resolve their dispute(s) by mediation.
- C. BDAC and the Mediator(s) agree to provide mediation services to assist the Parties in resolving the dispute in accordance with the provisions of the Scheme.

IT IS AGREED as follows:

1 Agreement to Abide by any Settlement

- 1.1 The Parties agree to abide by any settlement and to effect the terms thereof, reached as a result of the mediation process.

2 Terms and process of mediation

- 2.1 The Parties agree:
 - a. To abide by BDAC's Mediation Procedure which, among other things governs the terms and process of the said mediation.
 - b. That the mediation process will involve the Parties, the representatives and/or advisors (if any) of the Parties and the Mediator(s).

3 Confidentiality

- 3.1 The mediation will be conducted in confidence and all communication will be on a without prejudice basis.
- 3.2 All persons involved in the mediation will keep confidential and not use for any ulterior or collateral purpose:
- a. The fact that the 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) or another party; 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.
- 3.3 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.
- 3.4 The Parties will not call the Mediator(s) or BDAC (or any employee, officer or representative) as a witness, consultant, arbitrator or expert in any proceedings in relation to the dispute.

4 Stay of proceedings

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

5 Authorisation of Representatives (if applicable)

5.1 The following persons are hereby authorised to represent Party B in the mediation and settlement of disputes:

Party	Name of Representative(s)	NRIC Number or Passport Number of Representative(s)

6 Waiver of Liability

6.1 In consideration of BDAC and the Mediator(s) providing the mediation services sought by the Parties:

- a. The Parties shall not make any claim whatsoever against the Mediator(s) and/or BDAC, its officers and employees for any matter in connection with or in relation to:
 - i. the mediation; and/or
 - ii. the services provided by the Mediator(s) and/or BDAC; and/or
 - iii. the dispute between the Parties.
- b. The Mediator(s) will not be liable to the Parties for any act or omission in connection with the services provided by the Mediator or in relation to the mediation, unless the act or omission is fraudulent or involves wilful misconduct.
- c. BDAC will not be liable to the Parties for any act or omission in connection with the services provided by the Mediator(s) and/or BDAC or in relation to the mediation.

7 Counterparts

7.1 This agreement may be signed by the Parties, BDAC and the Mediator(s) in any number of counterparts, all of which taken together and when delivered to one another, including by scanned electronic copies, shall constitute one and the same document.

Date:

Signed by:

Witness:

FOR AND ON BEHALF OF PARTY A

NRIC number:

Name:

Designation:

Signed by:

Witness:

FOR AND ON BEHALF OF PARTY B

Name:

Designation:

NRIC number:

Name:

Designation:

Signed by:

Signed by:

MEDIATOR 1

MEDIATOR 2

Signed by:

Name:

Designation:

for and on behalf of BDAC Bhd

**BRUNEI DARUSSALAM ARBITRATION CENTRE
SMALL CASE COMMERCIAL MEDIATION SCHEME**

CODE OF CONDUCT

This Code of Conduct (this Code) applies to all persons appointed by the Brunei Darussalam Arbitration Centre (BDAC) to act as Mediators in sessions held by BDAC.

1 Acceptance of Assignment

1.1 The Mediator will before accepting an assignment, be satisfied that he will be able to conduct the mediation expeditiously and impartially.

2 Impartiality

2.1 The Mediator will be impartial and fair to the parties, and be seen to be so. Following from this, he will disclose information which may lead to the impression that he may not be impartial or fair, including, that:

- (a) he has acted in any capacity for any of the parties;
- (b) he has a financial interest (direct or indirect) in any of the parties or the outcome of the mediation; or
- (c) he has any confidential information about the parties or the dispute under mediation derived from sources outside the mediation.

2.2 When in doubt, the Mediator shall refer the matter to BDAC.

3 The Mediation Procedure

3.1 The Mediator will act in accordance with BDAC's Mediation Procedure

4 Confidentiality

4.1 Any document or information supplied for or disclosed in the course of the mediation will be kept confidential. The Mediator will only disclose the same if required to do so by general law, or with the consent of all the parties, or if such disclosure is necessary to implement or enforce any settlement agreement.

4.2 The Mediator (or any member of his firm or company) will not act for any of the parties subsequently in any matter related to or arising out of the subject matter of the mediation without the written informed consent of all the parties.

5 Settlement

- 5.1 The Mediator will ensure that any settlement agreement reached is recorded in writing and signed by the parties unless the parties request otherwise.
- 5.2 For avoidance of doubt, a settlement agreement that is recorded in writing may take the form of an electronic record.
- 5.3 For avoidance of doubt, where a settlement agreement takes the form of an electronic record, it may be signed by applying electronic signatures.

6 Withdrawal

6.1 A withdrawal by the Mediator will occur:

- (a) when he realises that he has committed a breach of any of the terms of this Code;
- (b) if there is a request to do so in writing by any of the parties; or
- (c) when he is required by any of the parties to do anything in breach of this Code or the BDAC's Mediation Procedure.

The Mediator shall, on the occurrence of (a), (b) or (c) above, immediately inform BDAC of his withdrawal.

6.2 The Mediator also has the discretion to withdraw if:

- (a) any of the parties breaches the Mediation Agreement or BDAC's Mediation Procedure;
- (b) any of the parties acts unconscionably;
- (c) in his opinion, there is no reasonable prospect of a settlement; or
- (d) any of the parties alleges that he is in breach of this Code.

7 Fees

7.1 In accepting an appointment, the Mediator expressly agrees to the remuneration in accordance with his terms of appointment as a BDAC mediator, and he should not make any unilateral arrangements with any of the parties.

8 Evaluation

8.1 The Mediator will not evaluate the parties' case unless requested by all the parties to do so, and unless he is satisfied that he is able to make such an evaluation.

**BRUNEI DARUSSALAM ARBITRATION CENTRE
SMALL CASE COMMERCIAL MEDIATION SCHEME**

FEE SCHEDULE

1. The fee payable by the parties to the Brunei Darussalam Arbitration Centre (BDAC) for the Small Case Commercial Mediation Scheme is as follows:

Quantum of Claim(s) and Counterclaim(s) (B\$)	Mediation Fee (B\$) <i>The first 2 hours of mediation are free of charge, regardless of the quantum of claim(s) and counterclaim(s)</i>
Up to \$20,000	\$60.00 per party per hour or part thereof from the 3rd hour onwards
Above \$20,001 up to \$40,000	\$80 per party per hour or part thereof from the 3rd hour onwards
Above \$40,001 up to \$60,000	\$100.00 per party per hour or part thereof from the 3rd hour onwards

2. The mediation fee payable by the parties covers the mediator's fee and Secretariat services provided by BDAC.
3. A deposit amounting to two (2) hours of Mediation Fee payable, will be collected from the parties three working days after BDAC has confirmed the date of mediation, payable to the 'Brunei Darussalam Arbitration Centre Bhd.'.
4. In the event that that the mediation is aborted after BDAC has confirmed the date of mediation, BDAC reserves the right to keep any part or all of the mediation fee deposit paid by both parties.
5. If the total value of the claim is revised to above B\$60,000 before or during the mediation session, BDAC reserves the right to revise the mediation fee payable by parties
6. The mediation session will be scheduled to take place either on a weekday or Saturday.
