



BICAM
BORNEO INTERNATIONAL CENTRE
FOR ARBITRATION AND MEDIATION

MEDIATION RULES

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BICAM MEDIATION RULES

Published by:

Borneo International Centre for Arbitration and Mediation
(BICAM)

Annex A, Level 3

Sabah International Convention Centre (SICC)

Tanjung Lipat Jalan Tun Fuad Stephens

88400 Kota Kinabalu

Sabah, Malaysia

Email: info@bicam.org

Website: www.bicam.org

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Chairman's Message



I am delighted to announce the launch of the Borneo International Centre for Arbitration and Mediation Centre (BICAM) Arbitration Rules and Mediation Rules. These rules underscore our unwavering commitment to fostering fairness, efficiency, and transparency in the administration of Alternative Dispute Resolution (ADR) processes in BICAM.

In an ever-evolving business landscape, the imperative for a fair and reliable arbitration system is paramount. Our new rules have been carefully crafted to meet the highest international standards, making Borneo an attractive hub for ADR.

Modelled after the UNCITRAL framework, our rules have been thoughtfully designed to be both simple and user-friendly, catering to the essential needs of businesses seeking to resolve commercial disputes. What sets us apart is our cost-effective fee structure, coupled with the empowerment of the tribunal to render equitable decisions throughout the proceedings. Despite minimal institutional intervention, BICAM remains committed to maintaining a pristine, equitable, and transparent administration of ADR proceedings.

I extend my heartfelt thanks to the rules committee for their dedication and hard work in bringing this vision to life.

I encourage everyone to take a look at our rules as it signifies a momentous stride in advancing the Alternative Dispute Resolution (ADR) landscape in Borneo.

Warm Regards,

A handwritten signature in dark ink, appearing to be 'David Wong Dak Wah'.

Tan Sri David Wong Dak Wah

Chairman of Borneo International Arbitration Centre (BICAM)

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BICAM wishes to thank the following contributors who served as esteemed members of the BICAM Rules Committee.

Dato Mah Weng Kwai

Consultant, MahWengKwai & Associates, Malaysia

Ir. Harbans Singh K.S

Principal, HSKS Dispute Resolution Chambers, Malaysia

Dr. Colin Ong KC

Senior Partner, Dr Colin Ong Legal Services, Brunei

Josephine Hadikusumo

Managing Partner, CJ Liew & Co, Malaysia

Tan Kee Heng

Partner, S.K. Ling & Tan Advocates, Malaysia

Francis Xavier, S.C

Regional Head, Dispute Resolution, Rajah & Tann Singapore

Jay Patrick R. Santiago

Senior Associate, Quisumbing Torre, Philippines

Dr. Xavier Favre-Bulle

Head of Arbitration, Lenz & Staehelin, Switzerland

Dr. Nikolaus Pitkowitz

Partner, Pitkowitz Partner, Austria

Professor Abe Shin-Ichiro Abe Shin-chiro

Partner, KILO (Kasumigaseki International Law Office), Japan

A

Model Clauses

(i) Standard BICAM Mediation Clause

“Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referred to mediation administered by the Borneo International Centre for Arbitration and Mediation (BICAM) in accordance with the BICAM Mediation Rules for the time being in force, which rules are deemed to be incorporated by reference in this clause.”

(ii) Standard BICAM Mediation-Arbitration Clause

“Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be resolved in accordance with the following dispute resolution procedure:

- i. by the parties first referring the dispute to mediation administered by BICAM in accordance with the BICAM Mediation Rules in force as at the date of the request to mediate made by either or both parties; which Rules are deemed to be incorporated by reference in this clause; and
- ii. if the dispute is not resolved or settled within 3 months of the request to mediate under these Rules or is otherwise terminated without the dispute being resolved, the dispute shall be referred to and finally resolved by arbitration administered by

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BICAM in accordance with the BICAM Arbitration Rules in force as at the date of the reference to arbitration; which Rules are deemed to be incorporated by reference in this clause.

The seat of the arbitration shall be ____.

The Arbitral Tribunal shall consist of ____ arbitrator(s).**

The language of the arbitration shall be ____."

***Parties shall have the option of having one or three arbitrator(s) form the Arbitral Tribunal to hear their dispute.*

B

Mediation Rules of the Borneo International Centre for Arbitration and Mediation

Rule 1 Application of the Rules

- 1.1 Where parties seek amicable settlement of a dispute, whether by stipulation in their contract or otherwise, and agree to refer such dispute between them to the Borneo International Centre for Arbitration and Mediation (“BICAM”) for mediation or to mediation in accordance with the BICAM Mediation Rules, then these Rules shall apply.
- 1.2 These Rules shall come into force on 1st October 2023, and unless otherwise agreed by the parties, shall apply to any mediation commenced on or after this date.
- 1.3 In these Rules:
- “BICAM” means the Council of BICAM and its members, or any other body or person designated by the Council of BICAM to perform the functions referred to herein, or, where applicable, to the Chairperson of BICAM and other staff members of the Secretariat of BICAM;
- “Mediator” means a neutral third person appointed to assist parties to a mediation in their attempt to reach an amicable settlement of their dispute and shall include co-mediators, where so appointed;

“Party” means a party or parties to the mediation; and

“Rules” means the Mediation Rules of the Borneo International Centre for Arbitration and Mediation as in force effective 1st October 2023.

- 1.4 For the purpose of calculating a period of time under these Rules, such period shall begin to run on the day following the day when a notice is received. If the last day of such period is an official holiday or a non-business day at the residence or place of business of the addressee, then the period is extended until the first business day which follows. Official holidays or non-business days occurring during the running of the period of time are included in calculating the period.
- 1.5 Any pronoun in these Rules shall be understood to be gender-neutral. Any singular noun shall be understood to refer to the plural where applicable.
- 1.6 Practice notes and guidelines issued by BICAM to supplement, regulate and implement these Rules shall be read and given effect to in conjunction with these Rules.

Rule 2 Initiation and Commencement of Mediation

- 2.1 Any party or parties seeking to initiate mediation pursuant to the Rules shall submit to BICAM and the other party or parties, a Request for Mediation, which shall include:
- (a) a statement that the dispute is referred to mediation;
 - (b) the names and contact details of the parties including their known or identified addresses, telephone numbers, facsimile

numbers and electronic mail addresses, and of their representatives;

- (c) where there is an existing agreement to mediation, identification of the clause evincing the parties' agreement to mediate and a copy of the clause;
- (d) identification of any contract or other legal instrument out of or in relation to which the dispute arises and a copy of the contract or instrument, if any;
- (e) a brief description of the claim and the circumstances of the dispute, specifying any relief and/or outcome sought by the party, and an initial quantification of the amount in dispute, if any;
- (f) any statements made between the parties as to the conduct of the mediation or with respect to which the parties seek to propose;
- (g) a proposal as to the number of mediators and identity of the nominated mediator or co-mediators for appointment, if the parties have not previously agreed thereon; and
- (h) payment of the registration fee to BICAM under these Rules.

2.2 Unless the Request for Mediation has been submitted jointly to BICAM by all parties, the party submitting the Request for Mediation shall notify BICAM of the date of its communication of the Request for Mediation to the other party or parties by any means of communication that provides or allows for a record of its delivery, and furnish to BICAM, any documentary verification on the mode of service employed and the date of service.

- 2.3 A party who receives a Request for Mediation shall communicate its acceptance to mediate to BICAM and all other parties no later than 21 days of its receipt of the Request for Mediation. Failure by any party to respond to a Request for Mediation no later than 21 days from the date on which the Request for Mediation was communicated to the other party or parties, shall be treated as a rejection of the invitation to mediate and/or a refusal to mediate. Such rejection of the invitation to mediation or refusal to mediate shall not preclude nor be without prejudice to a parties' re-initiation of mediation and re-commencement of the mediation process under these Rules at a later stage.
- 2.4 Mediation in respect of a dispute that has arisen shall be deemed to have commenced on the day on which the parties to that dispute agree to engage in mediation, unless otherwise agreed. In all circumstances, the date of commencement of the mediation shall be notified to the parties by BICAM.
- 2.5 Where the parties have agreed upon a time limit for the settlement of the dispute pursuant to these Rules, the date on which the mediator is appointed shall be the starting point of the agreed time limit.

Rule 3 *Appointment and Confirmation of Mediator*

- 3.1 The parties may jointly nominate a mediator or co-mediators, for confirmation by BICAM.
- 3.2 Where a sole mediator is to be appointed, and if parties are unable to jointly nominate the sole mediator within 7 days from the commencement of the mediation, then BICAM shall appoint the sole mediator. Any joint agreement reached between the parties on

the appointment of a sole mediator shall be deemed an agreement to nominate which shall be subject to confirmation by BICAM for the purposes of the appointment of the mediator under these Rules.

- 3.3 Where co-mediators are to be appointed, each party shall nominate one mediator within 7 days from the commencement of the mediation. If any party fails to nominate its designated mediator, then BICAM shall appoint both co-mediators. All nominations by parties on the appointment of the co-mediators shall be deemed a nomination which shall be subject to confirmation by BICAM for the purposes of the appointment of the co-mediators under these Rules.
- 3.4 Appointments by BICAM shall be undertaken as soon as practicable and shall be final, and not subject to appeal. Any nomination by a party or parties not confirmed by BICAM shall be reasoned in writing and notified to the parties.

Rule 4 *Disqualification and Replacement of Mediator*

- 4.1 All mediators appointed under these Rules shall be and remain at all times impartial and independent.
- 4.2 A nominated mediator approached in connection with a possible appointment as mediator shall disclose any circumstances likely to give rise to justifiable doubts as to his impartiality or independence before his appointment. Before accepting the appointment, the nominated mediator shall consider his availability, skills, expertise and experience to conduct the mediation diligently and efficiently.

- 4.3 A mediator, from the time of his appointment and throughout the mediation, shall without delay disclose to the parties and BICAM, any change in circumstances under Rule 4.2.
- 4.4 No person shall act as mediator in any dispute in which that person has any financial or personal interest in the result of the mediation except by consent of the parties. Where there exists any circumstances likely to create a presumption of bias or prevent a prompt settlement of the dispute, and upon knowledge of such information, BICAM shall communicate the information to the parties for their comments. In the event of any objection by a party to the mediator's appointment or continued conduct of the mediation, then a replacement mediator shall be appointed.
- 4.5 The parties may, by written consent, agree to replace the mediator and/or co-mediators at any time during the mediation.
- 4.6 Where a substitute mediator is to be appointed, the appointment of the substitute arbitrator shall be in accordance with the procedure applicable to the nomination and appointment of the mediator being replaced under these Rules.

Rule 5 Conduct of Mediation

- 5.1 The mediator shall use his best endeavours to conclude the mediation within 3 months from date of his appointment. The mediator's appointment and conduct of the mediation shall not extend beyond a period of 3 months without the written consent of all parties.
- 5.2 The mediator shall begin the mediation as soon as possible following his appointment and shall promptly discuss with the parties, the manner

in which the mediation shall be conducted including convening a preliminary meeting to agree on the organization of the mediation and to make an assessment on the expected number of mediation sessions required for parties to attempt to reach a resolution of the dispute.

- 5.3 In conducting the mediation, the mediator shall maintain the fair treatment of the parties and shall take into account the circumstances of the case, the wishes of the parties and the need for a speedy settlement of the dispute.
- 5.4 Where necessary and with the agreement of the parties, the mediator may consult one or more experts and obtain expert advice concerning any technical aspect of the dispute.
- 5.5 Each party shall act in good faith throughout the mediation and use their best endeavours to co-operate with each and other the mediator to resolve their differences or disputes amicably and/or to reach a settlement within the time stipulated.
- 5.6 At any stage of the mediation, the mediator may meet or communicate with the parties together or with each of them separately. The mediator may, in consultation with the parties, consider the use of any technological means including to communicate with the parties and to hold meetings and mediation sessions remotely subject to mutually agreed protocols.
- 5.7 Any communication of information between one party and the mediator concerning the dispute shall be kept confidential unless the party communicating the information indicates that the information need not be kept confidential, or expresses its consent to the disclosure of such information to another party to the mediation.

- 5.8 Where applicable, co-mediators shall coordinate their efforts and jointly conduct the mediation. In so doing, each co-mediator shall share with the other co-mediator all written or oral communications received from a party or parties.
- 5.9 A party may be represented or assisted by a person or persons of its choice.
- 5.10 The mediator is authorized to end the mediation whenever, in the opinion of the mediator, following a consultation with the parties that further efforts at mediation would not contribute to a resolution of the dispute between the parties. Such termination of a mediation shall not preclude nor be without prejudice to the parties' re-initiation of mediation and re-commencement of the mediation process under these Rules at a later stage before another mediator.

Rule 6 *Termination and Settlement Agreement*

- 6.1 The mediation shall be terminated upon:
- (a) the execution of a settlement agreement by the parties;
 - (b) a written declaration by the mediator to the effect that further efforts at mediation are no longer justified;
 - (c) a written declaration by the mediator to the effect that the mediation should no longer proceed on account of criminal or illegal elements, including where the mediator finds that the parties are participating in the mediation for a disingenuous or unlawful purpose; or
 - (d) a written declaration by a party or parties to the effect that the mediation proceedings are terminated.

- 6.2 The terms and conditions of any settlement reached in the mediation shall be evidenced and reduced in writing, signed by the parties and authenticated by the mediator with a copy of the settlement agreement to be communicated to BICAM.
- 6.3 Any termination of the mediation shall be communicated to BICAM promptly and the mediation shall only be deemed concluded upon full settlement of the costs of the mediation.

Rule 7 *Mediation-Arbitration*

- 7.1 Where the parties agree for the settlement agreement to be recorded as a consent Award, then by agreeing to mediation under these Rules, the parties shall refer the settlement to an Arbitral Tribunal to be appointed by BICAM under the BICAM Arbitration Rules, to be made a consent Award on the terms agreed to by the parties.
- 7.2 Where the parties have agreed to refer their dispute to mediation following the commencement of arbitration under the BICAM Arbitration Rules, the mediation shall be conducted under these Rules. In the event the dispute is not settled by mediation either partially or entirely, then the parties shall promptly inform BICAM and the arbitration proceedings under the BICAM Arbitration Rules shall resume.

Rule 8 *Concurrent Proceedings*

- 8.1 Mediation under these Rules may take place at any time regardless of whether other concurrent court, arbitration, adjudication or other dispute resolution proceedings have already been initiated.

- 8.2 A reference of a dispute to mediation shall not prevent the commencement nor operate as a stay of other concurrent proceedings, unless otherwise agreed to by the parties.
- 8.3 Where the parties have agreed to mediate and have also expressly undertaken not to initiate, during a specified period of time or until a specified event has occurred, other dispute resolution proceedings with respect to an existing or future dispute, such an undertaking shall be complied with, except to the extent necessary for a party, in its opinion, to preserve its rights. Initiation of such proceedings is not of itself to be regarded as waiver of parties' agreement to mediate nor as a termination of the mediation.

Rule 9 Confidentiality and Legal Privilege

- 9.1 All communications in the mediation, including information disclosed, made or produced by any party and views expressed shall be on a privileged and without prejudice basis, and no privilege or confidentiality shall be waived by such disclosure.
- 9.2 There shall be no recording or transcript of the mediation unless the parties and the mediator agree otherwise in writing.
- 9.3 The provisions on confidentiality shall extend to the settlement agreement except where its disclosure is necessary for implementation or enforcement, or required by law.
- 9.4 For purposes of administration and/or records and statistics keeping, the mediator shall be required to inform BICAM of the details of the mediation and whether the mediation resulted in the settlement of the dispute in whole or in part, or otherwise. Such information shall be kept by BICAM in strict confidence.

- 9.5 No party shall rely nor introduce as evidence in any court, arbitration, adjudication or other dispute resolution proceedings any views, suggestions, admissions and/or proposals made in the mediation in respect of a proposed settlement including any action or omission by a party in respect of a willingness to engage in mediation and/or a willingness to accept a proposal for settlement.

Rule 10 Other Proceedings

- 10.1 Unless otherwise agreed by the parties, the mediator shall not act as an arbitrator or adjudicator in respect of the dispute that was or is the subject of the mediation and of a dispute that has arisen from the same or a related contract or legal relationship.
- 10.2 The mediator shall not act as a representative or counsel of a party in any court, arbitration, adjudication or other dispute resolution proceedings in respect of the dispute that was or is the subject of the mediation and of a dispute that has arisen from the same or a related contract or legal relationship.
- 10.3 The parties shall not present the mediator as a witness in any court, arbitration, adjudication or other dispute resolution proceedings nor compel the mediator to divulge any information in respect of the mediation.

Rule 11 Costs, Fees and Deposits

- 11.1 Unless otherwise agreed by the parties, the costs of the mediation shall be borne equally by the parties and the parties shall be jointly and severally liable to pay the costs of the mediation. The costs of the mediation are payable irrespective of the outcome of the mediation.

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- 11.2 The term “costs of the mediation” includes:
- (a) the mediator’s fees and expenses;
 - (b) expenses for any expert witness or expert advice or opinion requested by the mediator as agreed to by the parties; and
 - (c) BICAM’s administration fees.
- 11.3 The parties are free to agree with the mediator on his fees including the method for determining the fees of the mediator, such as a fixed fee based on the amount in dispute or hourly rates having regard to the circumstances of the case. Failing such agreement between the mediator and the parties, the fees of the mediator shall be fixed by BICAM in accordance with Schedule I. In all circumstances, the administration fees of BICAM shall be in accordance with Schedule I.
- 11.4 Any reasonable out-of-pocket expenses incurred and other travel costs and allowances of the mediator shall be agreed upon by the parties and reimbursed accordingly.
- 11.5 Following the commencement of the mediation, BICAM shall fix an amount as advance deposits representing a portion intended to cover the costs of the mediation. BICAM may from time to time direct parties to make further progress deposits representing the portion intended to cover the remainder of the costs of the mediation and supplementary deposits for any adjustments to be made in the course of the mediation.
- 11.6 The mediator shall, following a discussion with the parties, promptly communicate to BICAM, the expected number of mediation sessions required for parties to attempt to reach a resolution of the dispute for the purposes of

BICAM's collection of the mediator's fees, and shall notify BICAM of any additional collection of the mediator's fees that becomes necessary should further mediation sessions be required throughout the mediation.

- 11.7 If the required deposits are not paid in full within 14 days upon receipt of a request by BICAM for payment to be made, BICAM may direct the parties in order that one or another of them may make the required payment. If such payment is not made, the mediator may order the suspension or termination of the mediation.
- 11.8 Unless otherwise agreed to between the parties and the mediator, the fees of the mediator shall be disbursed upon the termination of the mediation.
- 11.9 Where a mediator resigns prior to the termination of the mediation, the parties shall pay the mediator his fees and expenses incurred up to such stage of the resignation.
- 11.10 All deposits towards the costs of the mediation shall be remitted to and held by BICAM, and any interest accrued on such deposits shall be retained by BICAM.
- 11.11 Following the termination of the mediation, BICAM shall render an accounting to the parties of all deposits received and return any unexpended balance to the parties.

Rule 12 Exclusion of Liability

- 12.1 Neither shall the Council of BICAM and its members nor any body or person specifically designated by it to perform the functions in these Rules, nor the Chairperson of BICAM or other staff members of the Secretariat of BICAM, the mediator and any expert consulted by the mediator, be liable for any

negligence, act or omission in connection with the mediation administered by BICAM in accordance with these Rules.

- 12.2 Without limitation to Rule 12.1, the parties jointly and severally release, discharge and indemnify the mediator, any expert consulted by the mediator and BICAM in respect of all liability in connection with the mediation, save for the consequences of fraud or dishonesty.
- 12.3 All statements, whether written or oral made in the course of the mediation shall not be relied upon to institute or maintain any action for defamation, libel, slander or any related complaint.

SCHEDULE I

Fees

1. Registration Fee

A sum of **RM150** for Domestic Mediation and **USD150** for International Mediation as registration fee shall be payable to BICAM upon the commencement of a mediation and is applicable to all mediations administered by BICAM. The Registration Fee is non-refundable and does not include government imposed 6% SST that shall be applicable for domestic Malaysian parties.

2. Administration Fees

A sum of **RM500** for Domestic Mediation and **USD500** for International Mediation as administration fee is applicable for all mediations administered by BICAM and is the fixed amount payable per case to BICAM. The administration fee does not include the costs of facilities and support services for and in connection with meetings held at BICAM and does not include government imposed

6% SST that shall be applicable for domestic Malaysian parties.

3. Mediator’s Fees

Unless the parties have agreed to an alternative method of determining the mediator’s fees pursuant to Rule 11.3, the mediator’s fees shall be in accordance with the table below and shall apply to all mediations administered under these Rules.

Mediation sessions per day	Domestic	RM5,000
	International	USD6,000
Review of documents and related works per hour	Domestic	RM600
	International	USD750



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CENTRE FOR ARBITRATION
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Annex A, Level 3,
Sabah International Convention Centre (SICC)
Tanjung Lipat Jalan Tun Fuad Stephens,
88400 Kota Kinabalu, Sabah, Malaysia.

✉ info@bicam.org