



SWISS RULES OF MEDIATION



SCAI SWISS CHAMBERS'
ARBITRATION INSTITUTION

The Swiss Chambers of Commerce Association
for Arbitration and Mediation

Swiss Rules of Mediation

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Model Mediation Clauses and Agreements

Model mediation clauses

Various types of model mediation clauses for inclusion in contracts are available on our website:

www.swissarbitration.org/Mediation

Model mediation agreement when parties are already involved in a dispute

The parties hereby agree to submit the following dispute to mediation in accordance with the Swiss Rules of Mediation of the Swiss Chambers' Arbitration Institution:

[brief description of the dispute]

The seat of the mediation shall be ... [city] in ... [country], although the meetings may be held in ... [city] in ... [country].

The mediation shall be conducted in ... [specify desired language].

Mediation and arbitration

Parties who wish to have mediation combined with arbitration should refer to the SCAI website:

www.swissarbitration.org/Mediation

English version (original text)

This English version of the Swiss Rules of Mediation shall take precedence in the event of any discrepancies between it and any translation thereof.

April 2007 (revised in 2019)

Introduction

To better serve business

For the purpose of providing improved dispute resolution services, the Chambers of Commerce and Industry of Basel, Bern, Geneva, Ticino, Vaud, and Zurich (the "Chambers") harmonised their arbitration rules in 2004 and founded the Swiss Chambers' Arbitration Institution ("SCAI") in 2007. They were later joined by the Chambers of Commerce and Industry of Neuchatel and of Central Switzerland. SCAI is a not-for-profit independent private association registered in Switzerland.

SCAI provides domestic as well as international mediation and arbitration services, under any applicable law, in Switzerland or in any other country. SCAI has established an Advisory Council for Mediation (the "Advisory Council") comprised of experienced mediation practitioners in order to provide guidance and assistance on mediation cases.

In order to harmonise their rules of mediation, the Chambers replaced their former rules with the Swiss Rules of Commercial Mediation (the "Rules") in 2007. The Rules were revised and renamed in 2019 following extensive consultations with users. The administration of mediations under the Rules is exclusively carried out by the SCAI secretariat (the "Secretariat").

Coming into force

This version of the Rules shall come into force on 1 July 2019.

A voluntary process

Mediation is a method of dispute resolution whereby the parties attempt to reach an amicable settlement of their dispute or avoid future conflicts with the assistance of a neutral third party, the mediator. The mediator facilitates the exchange of information and perspectives between the parties and encourages them to explore solutions that meet their needs and interests. Unless specifically requested by the parties, the mediator does not give his or her own views (as would an expert), and abstains from making proposals (as would a conciliator).

For further information:

www.swissarbitration.org/Mediation

I. Introductory Rules

Scope of application

Article 1

1. These Rules shall govern all mediations where an agreement to mediate refers to the Rules or to the mediation rules of any Swiss Chamber of Commerce and Industry that is a member of SCAI, or where the parties agree to mediate under the Rules after a dispute has arisen.
2. Unless the parties have agreed otherwise, this version of the Rules shall apply to all mediations in which the request for mediation pursuant to Article 2 of the Rules is submitted to the Secretariat on or after the date of coming into force.

Request for mediation

Article 2

1. The party(ies) requesting a mediation (the "Requesting Party(ies)") shall submit a request for mediation (the "Request") in English, German, French or Italian to one of the offices of the Secretariat listed in Appendix A of the Rules.
2. The Request shall include:
 - (a) the names, addresses, telephone numbers, fax numbers (if any), e-mail addresses and other contact details for appropriate electronic communication (if any) of the parties and their counsel (if any), as well as a copy of the counsel's Power-of-Attorney;
 - (b) a copy of the agreement to mediate or relevant mediation clause in an existing agreement (if any);
 - (c) a short description of the dispute, and an estimate of the amount in dispute (if any);
 - (d) a joint designation of the mediator¹, or a description of any desired qualifications of the mediator;
 - (e) an indication, if the parties so wish, that the Simplified Designation Procedure, pursuant to Article 5, should apply;
 - (f) a proposal as to the language of the mediation if the parties have not previously agreed thereon;
 - (g) a confirmation of the payment of the registration fee, pursuant to Appendix B of the Rules in force at the date on which the Request is submitted to the Secretariat.

The party(ies) may enclose any other document deemed relevant for the mediation.

3. The Request may be submitted to the Secretariat by e-mail. Upon request of the Secretariat, the Requesting Party shall provide hard copies of the Request. The parties and the Secretariat may agree to submit all further documents by e-mail or other appropriate electronic means.
4. If the registration fee is not paid, or if the Request is incomplete, or if the Request or any existing agreement to mediate are submitted in any language other than English, German, French or Italian, the Secretariat may request the Requesting Party(ies) to remedy the defect within an appropriate time limit. If the Requesting Party(ies) comply within the time limit set by the Secretariat, the Request is deemed to have been validly submitted on the date when the initial version was received by the Secretariat.
5. Upon receipt of a validly submitted Request, the Secretariat shall:
 - (a) proceed pursuant to Article 6, if the Request was submitted jointly by the parties, and they have agreed to refer to the Rules and designated a mediator;
 - (b) proceed pursuant to Article 4 or 5, if the Request was submitted jointly by the parties, and they have agreed to refer to the Rules, but have not designated a mediator;
 - (c) provide the other party(ies) with a copy of the Request and other documents submitted pursuant to Article 2(2), if the Request was not submitted jointly by all parties. Where the Request was submitted by one or several parties with a prior agreement to mediate without referring to the Rules, or where the Request was submitted by one or several parties in the absence of a prior agreement to mediate, the Secretariat shall also invite the other party(ies) (the "Responding Party(ies)") to explicitly agree on the application of the Rules within a 15-day time limit.
6. If no answer is received from a Responding Party by the Secretariat within the time limit set by the Secretariat pursuant to Article 2(5)(c), the mediation shall not proceed with that party. The Secretariat shall promptly inform the parties in writing.
7. If the Requesting Party(ies) and any Responding Party wish to proceed to mediation without one or more party(ies) that have refused to do so, the mediation shall continue between the parties in agreement.

¹ The use of the masculine is generic and applies to men and women, singular and/or plural.

II. Selection of Mediator(s)

Number of mediators

Article 3

Unless otherwise agreed by all the parties, the mediation shall be conducted by one mediator.

Designation of a mediator

Article 4

1. The parties may jointly designate a mediator. If the designated mediator is not confirmed by the Secretariat or refuses his/her designation, the Secretariat will grant a 15-day time limit to the parties to jointly designate a new mediator.
2. If the parties fail to jointly designate a mediator within 15 days as from the date of receipt of the Secretariat's letter inviting them to do so, the Secretariat will submit a list of mediators to the parties, including the range of fees indicated by the mediators to the Secretariat, and invite the parties, within a short additional period of time, to each indicate to the Secretariat their order of preference regarding the proposed mediators. The Secretariat shall then appoint the mediator taking into account the preferences indicated by the parties. If the parties fail to provide their order of preference, the Secretariat shall nonetheless proceed to appoint the mediator.
3. Upon request by the parties, the Secretariat will assist with the designation of co-mediators.²
4. If, within five days from receipt of the notice of appointment, a party objects in writing to the appointment of a mediator and gives reasons considered to be valid, the Secretariat shall promptly appoint a different mediator from the proposed list or proceed pursuant to Article 4(2).

Simplified designation procedure

Article 5

1. The Simplified Designation Procedure shall apply for the designation of the mediator if the parties jointly agree, or do not object to its application in cases where the amount in dispute is below CHF 50,000.

² The provisions of the Rules also apply in cases where a co-mediation is conducted.

2. Whenever the Simplified Designation Procedure applies, the Secretariat shall, in accordance with Article 6:
 - (a) confirm the mediator jointly designated by the parties; or
 - (b) appoint one mediator taking into account the parties' description (if any) of their preferences or desired qualifications of the mediator as submitted to the Secretariat pursuant to Article 2(2)(d) of the Rules, but without submitting a list of mediators to the parties.

Confirmation of a mediator

Article 6

1. All joint designations of mediators by the parties are subject to confirmation by the Secretariat, upon which the appointment shall become effective. The Secretariat has no obligation to give reasons when not confirming a mediator.
2. Where the mediator refuses his/her designation or is not confirmed, the Secretariat will grant a 15-day time limit to the parties to jointly designate a new mediator or provide a description as to any desired qualifications of the mediator to be appointed by the Secretariat. If no answer is received from the parties within the time limit, the Secretariat shall proceed pursuant to Articles 4 or 5 of the Rules.

Replacement of a mediator

Article 7

If a mediator is no longer in a position to fulfil his/her duties or is no longer accepted by the parties, the Secretariat shall, upon joint request by the parties, proceed pursuant to Articles 4 or 5 of the Rules.

Transmission of the file to the mediator

Article 8

1. When confirming or appointing a mediator, the Secretariat shall transmit to him/her the file for the mediation.
2. If administrative costs apply, the file for the mediation will be transmitted to the mediator only upon receipt of the payment of the administrative costs, pursuant to Appendix B of the Rules in force on the date of the Request.

III. The Mediator

Independence, impartiality and availability of the mediator

Article 9

1. The mediator shall be and remain at all times impartial and independent from the parties and available to conduct the mediation.
2. Prior to his/her confirmation or appointment by the Secretariat, the prospective mediator shall:
 - (a) return to the Secretariat, duly dated and signed:
 - (i) the agreement to serve as a mediator; (ii) the declaration of independence, impartiality, and availability; and (iii) a curriculum vitae;
 - (b) state in writing that he/she complies with the present Rules and with the European Code of Conduct for Mediators in force on the date on which the mediator is appointed; in the event of a discrepancy between the Rules and the Code, the Rules shall take precedence; and,
 - (c) disclose any circumstances, including any circumstances listed in the European Code of Conduct for Mediators, known to him/her that are likely to give rise to justifiable doubts as to his/her independence or impartiality towards the parties, or regarding his/her availability.
3. If, in the course of the mediation, the mediator discovers the existence of any circumstances likely to affect his/her impartiality or independence towards the parties, or his/her availability, he/she shall promptly inform the parties. Upon their mutual consent, the mediator may continue to serve. If the parties disagree, the mediator shall stay the mediation and inform the Secretariat, which shall proceed to replace the mediator in accordance with Article 7 of the Rules.

Role of the mediator

Article 10

1. The mediator shall assist the parties in their negotiations, with a view to reaching a mutually acceptable and satisfactory resolution of their dispute. The mediator has no authority or power to impose a settlement on the parties.
2. The mediator and the parties shall be guided by the principles of fairness, party autonomy and mutual respect.

IV. Procedural Rules

Conduct of the Mediation

Article 11

1. The mediation shall be conducted as agreed upon with the parties. Failing such agreement, the mediator shall proceed as he/she considers appropriate, taking into account the circumstances of the case, the wishes of the parties, their budgets and timelines, and the need for a prompt settlement of the dispute.
2. Immediately after receipt of the file from the Secretariat, the mediator shall contact the parties to schedule an initial conference to discuss the manner in which the mediation will proceed. A short note summarising the agreement of the parties with respect to the conduct and the organisation of the mediation (language, time and place of meetings, submissions, participants, etc.) shall then be drafted by the mediator and provided to the parties, with a copy to the Secretariat.
3. Subject to the agreement of the parties, the mediator may hold separate meetings with the parties, when appropriate. The mediator shall maintain strict confidentiality regarding any information exchanged during those separate meetings vis-à-vis each party, unless the mediator is expressly authorised to disclose such information by all participants in the separate meetings.

Representation

Article 12

The parties shall appear at all mediation sessions in person or, for legal entities, through duly authorized and empowered representatives of the entity, whose complete contact details shall be communicated in writing to the mediator, to the other party(ies) and to the Secretariat. The parties may be assisted and accompanied by the legal counsel or advisors of their choice.

Confidentiality

Article 13

1. The mediation is confidential. No observation, statement or proposition made during the mediation or documents prepared for the purposes of the mediation can be disclosed outside of the mediation or subsequently used without the written consent of all persons involved in the mediation, even in the event of litigation or arbitration, except to the extent necessary to enforce a written settlement agreement

that concludes the mediation or if otherwise required by law.

2. The mediation sessions are private. With the consent of the mediator, the parties may agree that persons other than the parties themselves, their representatives or advisors may attend the sessions.
3. Unless the parties expressly agree otherwise, a mediator cannot act as an arbitrator, judge, expert, or as a representative or advisor of one party in any subsequent proceedings relating to the same dispute or involving any of the parties to the mediation after the Request has been validly submitted to the Secretariat.
4. SCAI shall retain securely the main documents of the file for a period of at least 10 years after the confirmed end of the mediation. After this period, SCAI may destroy all documents, both physically and electronically.
5. During and after the settlement of the dispute or the end of the mediation, neither SCAI, nor the Chambers, nor their staff, executives and board members, nor the mediators, arbitrators, members of the Advisory Council, court members, nor any experts appointed by them shall be under any obligation to make statements to any person or tribunal about any matter concerning the mediation, nor shall a party seek to make any of these persons a witness, or otherwise provide testimony or any evidence, in any legal or other proceedings arising out of or in relation to the mediation, except to the extent necessary to enforce a written settlement agreement that concludes the mediation.

Seat of the mediation

Article 14

Unless otherwise agreed by the parties, the seat of the mediation shall be deemed to be at the place of the Secretariat's office where the Request was submitted, although meetings may be held elsewhere.

Applicable law

Article 15

1. Unless otherwise agreed by the parties, the conduct of the mediation is subject to Swiss law.
2. The relationship between SCAI and any person participating in the mediation (parties, parties' representatives and advisors, mediator(s), expert(s), etc.) is subject to Swiss law.

V. End of the Mediation and Certification thereof

End of the mediation and certification thereof

Article 16

1. A mediation under the Rules shall be deemed to have ended:
 - (a) upon the signing by all parties of a settlement agreement putting an end to the dispute;
 - (b) after 90 days, if a defective or incomplete Request has been submitted to the Secretariat, and the Requesting Party(ies) have not timely remedied the defect as requested by the Secretariat;
 - (c) at any time after the mediator has provided the parties with a written note, pursuant to Article 11(2) of the Rules, if a party notifies the mediator and the Secretariat in writing of its decision to terminate the mediation and the remaining parties do not wish to continue without that party;
 - (d) at any time after the mediator has provided the parties with a written note, pursuant to Article 11(2) of the Rules, if, in the opinion of the mediator, further efforts would not contribute to a resolution of the dispute and he/she notifies the parties and the Secretariat in writing of his/her decision to terminate the mediation;
 - (e) upon expiration of any time limit set by the parties or the mediator for the resolution of the dispute, if not extended by agreement of all parties and the mediator;
 - (f) in the event of non-payment, by the parties, of the deposits according to Article 25 of the Rules, or of the SCAI administrative costs according to Section 2 of Appendix B of the Rules, within the time limit set respectively by the mediator or by the Secretariat.
2. The mediator shall promptly inform the Secretariat of the end of the mediation in a written note indicating the date of termination and whether the mediation resulted in full, partial, or no settlement.
3. In multi-party mediations, if one party or some of the parties decide to withdraw from the mediation:
 - (a) the remaining parties shall promptly inform the Secretariat in writing whether they wish to pursue the mediation, and if so, if they wish to continue the mediation with the appointed mediator;
 - (b) the mediator shall promptly inform the Secretariat in writing of the withdrawal of the party(ies) from the mediation, and indicate whether he/she agrees to continue the mediation with the remaining parties.

4. The Secretariat shall confirm in writing to the parties and the mediator the end of the mediation.

5. Upon request of the parties or the mediator, the Secretariat shall provide the parties and the mediator with a mediation certificate confirming that the mediation took place and stating whether it led to a settlement. The Secretariat may request the parties or the mediator to submit any document deemed relevant for the certification of the mediation. Such documents shall be provided in English, German, French or Italian, or officially translated into one of these languages.

Settlement agreement and certification thereof

Article 17

1. Unless otherwise agreed by the parties in writing, no settlement is reached until it has been made in writing and signed by the relevant parties.
2. Upon request by the parties and if provided by the mediator with a signed original hard copy of the settlement agreement, the Secretariat may issue certified copies of the settlement agreement to the parties.
3. Upon request by the parties and if the mediator confirms in writing that he/she witnessed the parties signing the settlement agreement or if the parties sign the settlement agreement at the Secretariat, the Secretariat may provide the parties with a certificate of authenticity of the settlement agreement.
4. The Secretariat may request the parties or the mediator to submit any document deemed relevant for the certification of the settlement agreement. Such documents shall be provided in English, German, French or Italian, or officially translated into one of these languages.

VI. Mediation and Arbitration

Recourse to arbitration

Article 18

1. The parties may jointly agree in writing at any time to submit their dispute or any part of it to SCAI for arbitration in accordance with the Swiss Rules of International Arbitration of the Swiss Chambers' Arbitration Institution. Either party may then initiate arbitral proceedings under those Rules by submitting a Notice of Arbitration pursuant to Article 3 of the Swiss Rules of International Arbitration. If the parties settle the dispute during the arbitral proceedings, Article 34 of the Swiss Rules of International Arbitration shall apply to any award on agreed terms.
2. The parties may jointly agree in writing at any time to refer their dispute or any part of it to arbitration in accordance with other arbitration rules.

Mediation during the course of arbitral proceedings

Article 19

1. In all arbitral proceedings pending before SCAI, a party or the arbitrator(s) may suggest that the parties seek to amicably resolve the dispute, or any part of it, by recourse to mediation.
2. If the parties to an arbitration agree to mediation under the Rules, the Secretariat, upon receipt of the Request and the registration fee, shall proceed with the selection of the mediator pursuant to Section II of the Rules.

VII. Exclusion of Liability

Exclusion of liability

Article 20

Neither SCAI, nor the Chambers, nor their staff, executives and board members, nor the mediators, arbitrators, members of the Advisory Council for Mediation, court members, nor any experts appointed by them shall be liable for any act or omission in connection with any mediation conducted under the Rules, except if the act or omission is shown to constitute their own intentional wrongdoing or gross negligence.

VIII. Costs

Mediation Costs

Article 21

The fees, costs and expenses of SCAI and the mediator (the "Mediation Costs") are determined pursuant to the Schedule of Costs (Appendix B to the Rules) in force on the date the Request is submitted to the Secretariat.

Apportionment of the Mediation Costs

Article 22

1. Unless otherwise agreed by the parties, all Mediation Costs shall be shared equally amongst the parties. The parties are jointly and severally liable for the payment of all the Mediation Costs.
2. Unless otherwise agreed by the parties, all personal expenses incurred by a party in relation to the mediation (for example its legal fees, hotel, travel, etc.) are borne by that party and are not included in the costs of the Mediation Costs.

SCAI fees, costs and expenses

Article 23

1. SCAI fees, costs and expenses according to Appendix B of the Rules include:
 - (a) non-refundable registration fee(s);
 - (b) administrative costs;
 - (c) certification and authentication fees and expenses pursuant to Articles 16(5) and 17(2) and (3) of the Rules, respectively.
2. All SCAI fees, costs and expenses shall be paid to, or deposited with, SCAI as indicated by the Secretariat.
3. If the registration fee(s) or the requested administrative costs are not paid in full and within the specified time limit (if applicable), the mediation shall not proceed. The Secretariat shall instruct the mediator in writing to stay or terminate the mediation.

The mediator's fees and expenses

Article 24

1. The parties are responsible for paying the fees and expenses of the mediator. Unless otherwise agreed by the parties and the mediator, the mediator's fees are calculated on the basis of the time spent by the

mediator in the mediation including his/her preparation time at the hourly rate agreed by the parties and the mediator prior to the mediation.

2. The mediator shall request the parties to pay a deposit in order to cover, at a minimum, the mediator's initial fees and expenses.
3. At any later time during the mediation, the mediator may request each party to deposit an equal amount (unless otherwise agreed) as advance payment towards the fees and expenses of the mediator for the mediation. The mediator shall inform the Secretariat in writing accordingly.
4. Any disagreement regarding the mediator's fees and/or expenses shall be submitted to the SCAI Advisory Council for Mediation.

Deposits for fees and costs

Article 25

1. The mediator shall hold the deposits to be paid by the parties in his/her professional bank account.
2. If the required deposits are not received in full by the mediator within the specified time limit, the mediator may stay or terminate the mediation and shall promptly inform the Secretariat in writing accordingly.
3. The Secretariat may hold the deposits to be paid by the parties, upon request of the mediator, in a bank account that will be dedicated to the mediation.

Statement of costs

Article 26

1. At the end of the mediation, the mediator shall provide an invoice for his/her fees and expenses to the parties, with a copy to the Secretariat.
2. The invoice shall include the details of the expenses incurred in the course of the mediation, the time spent by the mediator, the agreed rate, any applicable tax and all payments received from the parties.
3. Any payment in excess will be reimbursed to the parties in proportion to their respective payments.

Appendix A: Addresses of the Secretariat and Bank Account

For updated information on the SCAI Secretariat addresses and bank account details please visit our website:
<https://www.swissarbitration.org/Mediation/Initiating-mediation>

All payments must be made in Swiss Francs (CHF) and received net of any banking fees.

Addresses of the Secretariat

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Appendix B: Schedule for the Costs of Mediation

For an updated version of this Appendix B, please visit our website:
www.swissarbitration.org/Mediation

1. SCAI registration and fixed fees

- 1.1 A registration fee of CHF 1,000 is due to SCAI for each party to the mediation.
- 1.2 If the Request is submitted jointly by the parties, each party shall pay an equal share of the registration fee.
- 1.3 If the Request is submitted by one party, this party shall pay the total amount of the registration fee.
- 1.4 For Simplified Designation Procedures pursuant to Article 5 of the Rules, the registration fee is CHF 1,000. If the mediation involves more than two parties, an additional registration fee of CHF 250 per additional party shall be paid.
- 1.5 If the parties do not agree to, or do not jointly request, the application of the Simplified Designation Procedure, the registration fee shall be paid in accordance with paragraph 1.1 above.
- 1.6 The Secretariat shall not proceed with the appointment or confirmation of the mediator unless and until the registration fee is fully paid.
- 1.7 The registration fee is non-refundable.
- 1.8 If the subject matter described in the Request is already the subject of a Notice of Arbitration filed by the parties with SCAI, the registration fee for the mediation shall be divided by two.
- 1.9 If the number of parties increases during the mediation, the Secretariat will adjust and charge additional registration fees accordingly.
- 1.10 If the parties request that the Secretariat appoints or confirms more than one mediator, or replaces mediators, SCAI will charge an additional fee of CHF 1,000 for each additional appointment or confirmation of a mediator.
- 1.11 SCAI charges an annual abeyance fee of CHF 2,000, to be borne equally by the parties, for mediations that are stayed for more than three months. This fee will be charged by SCAI as a requisite to maintain the case open.

2. SCAI administrative costs

- 2.1 SCAI charges the following administrative costs to the parties:
 - CHF 2,500, if the amount in dispute is between CHF 50,000 and CHF 2,000,000;
 - CHF 8,000, if the amount in dispute is between CHF 2,000,001 and CHF 5,000,000;
 - CHF 13,000, if the amount in dispute is between CHF 5,000,001 and CHF 10,000,000;
 - CHF 17,000, if the amount in dispute is between CHF 10,000,001 and CHF 20,000,000;
 - CHF 20,000, if the amount in dispute is between CHF 20,000,001 and 50,000,000;
 - CHF 23,000, if the amount in dispute is above CHF 50,000,000.
- 2.2 SCAI does not charge administrative costs if the amount in dispute is below CHF 50,000.
- 2.3 The parties shall pay the SCAI administrative costs when so requested by the Secretariat.
- 2.4 If the amount in dispute increases during the mediation, the mediator shall inform the Secretariat, which adjusts and charges the administrative costs accordingly.

3. SCAI certification and authentication fees

- 3.1 The party requesting the issuance of a mediation certificate shall pay a certification fee of CHF 500 per certificate and will be invoiced for any costs incurred by SCAI.
- 3.2 A party requesting a certified copy of the settlement agreement shall pay a certification fee of CHF 300 per certified copy and will be invoiced for any costs incurred by SCAI.
- 3.3 The party requesting a certificate of authenticity of the settlement agreement shall pay an authentication fee of CHF 1,000 per certificate and will be invoiced for any costs incurred by SCAI.