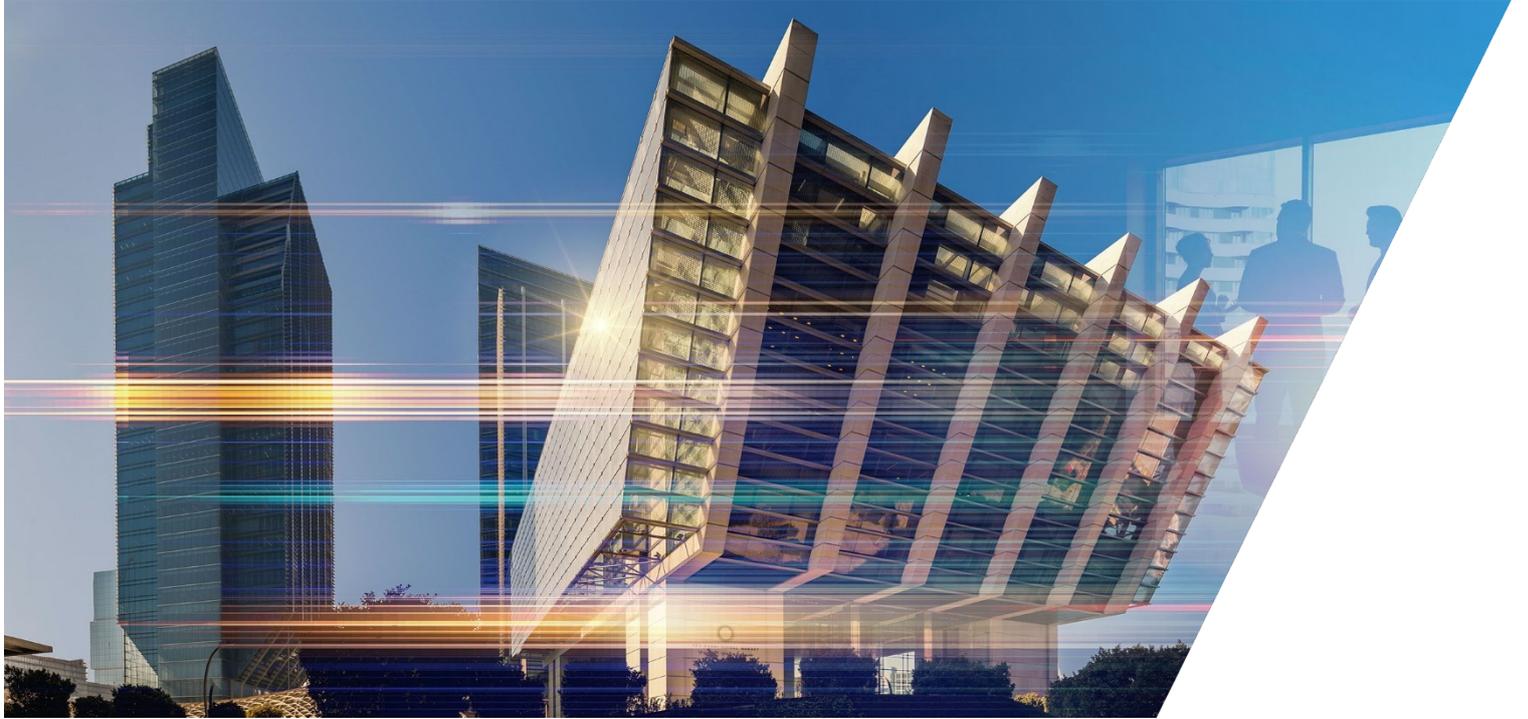




ADGM COURTS
محاكم سوق أبوظبي العالمي



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PRACTICE DIRECTION 13
COURT ANNEXED MEDIATION

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COURT-ANNEXED MEDIATION

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PRACTICE DIRECTION 13

COURT-ANNEXED MEDIATION

Date re-issued: 1 September 2021

This Practice Direction is to be read with, and subject to, the ADGM Court Procedure Rules 2016 (“CPR”). Except as provided otherwise in this Practice Direction, terms have the meanings set out in the CPR and a reference to a Rule is a reference to the CPR.

Unless the Court otherwise orders, the following provisions shall apply.

A. DEFINITIONS

13.1 In this Practice Direction:

- (a) “court-annexed mediation” or “mediation” means mediation conducted in accordance with this Practice Direction and includes the entire process from the commencement of the mediation until its termination;
- (b) “dispute” means a dispute between the parties and includes the subject matter of actual proceedings between the parties or any part thereof;
- (c) “mediation agreement” means the agreement that provides the legal basis for the mediation and which is entered into by the parties, the legal representative of the parties (if applicable) and the mediator;
- (d) “mediation session” means a meeting held for the mediation of a dispute;
- (e) “mediator” means the Court officer appointed by the Registrar to act as mediator in a dispute; and
- (f) “party” or “parties” means any party (whether a natural person, corporate entity or otherwise) involved in a dispute which is referred to mediation in accordance with the Rules and this Practice Direction.

B. COURT-ANNEXED MEDIATION [r.304]

Introduction

- 13.2 This Practice Direction applies to disputes that have been referred to court-annexed mediation in accordance with the Rules and this Practice Direction.
- 13.3 The primary purpose of this Practice Direction is to set out the procedure for court-annexed mediation having regard to the overriding objective that the mediation be conducted in an efficient, expeditious and cost-effective manner.

- 13.4 Court-annexed mediation is a flexible and confidential process in which the mediator actively assists parties towards a negotiated resolution of a dispute, with the parties in ultimate control of the decision to settle the dispute and of the terms of settlement.

General provisions

- 13.5 All communications in relation to a court-annexed mediation shall be in English. The Court or the mediator may request from the parties a translation of any document written in a language other than English, where such a document is required for the mediator to fulfil his or her mandate in accordance with this Practice Direction.
- 13.6 Without limiting any other mode of delivery, a party may file or exchange any document required under this Practice Direction in electronic format.

Referral to mediation

- 13.7 A dispute may be referred to court-annexed mediation:
- (a) voluntarily by all parties prior to or after commencement of proceedings;
or
 - (b) by an order of the Court.

C. VOLUNTARY REFERRAL TO MEDIATION [r.305]

- 13.8 All parties to the dispute may refer their dispute voluntarily to court-annexed mediation (prior to or after commencement of proceedings), provided that the Court ordinarily would have jurisdiction to hear the dispute if proceedings were initiated.
- 13.9 For the purpose of paragraph 13.8, where the dispute is referred to court-annexed mediation prior to commencement of proceedings, the Registrar will, if required, make an assessment on a prima facie basis as to whether the jurisdictional requirement is satisfied.
- 13.10 Nothing in paragraphs 13.8 and 13.9 shall prejudice the Court's ability to make a subsequent ruling on jurisdiction in relation to the dispute.

Voluntary referral: prior to commencement of proceedings

- 13.11 Where the parties voluntarily refer the dispute to court-annexed mediation prior to commencement of proceedings, the parties must complete and jointly submit to the Registry a Request for Court-Annexed Mediation in the form attached to this Practice Direction in Schedule A (the "request for mediation").
- 13.12 The request for mediation must be signed by all parties to the dispute (or, as applicable, their legal representatives) and must include:
- (a) the names and contact details of the parties;

- (b) if applicable, the names and contact details of the parties' legal representatives;
- (c) details of the dispute (which shall be expressed in neutral terms) in summary form (including the type, monetary value and particulars of the dispute);
- (d) if the parties are unable to agree on the details of the dispute, each party may include a separate summary of the details of the dispute and attach it to the request for mediation; and
- (e) any supporting documents upon which the parties intend to rely or which will assist in a settlement being reached at the mediation.

13.13 The Registry shall acknowledge in writing receipt of the request for mediation.

13.14 The Registrar may, within his or her sole discretion, reject a request for mediation with no obligation to disclose the reasons for such rejection, and shall notify the parties of that decision in writing.

13.15 The Registrar shall appoint a mediator as soon as is practicable and notify the parties of the appointment of the mediator in writing, at which time the mediation shall be deemed to have commenced.

Voluntary referral: after commencement of proceedings

13.16 Where the parties voluntarily refer the dispute to court-annexed mediation after commencement of proceedings, the parties must file a joint written request with the Registry for the appointment of a mediator (the "request for appointment of mediator") in the form attached to this Practice Direction in Schedule B.

13.17 The Registry shall acknowledge in writing receipt of the request for appointment of mediator.

13.18 The Registrar shall appoint a mediator as soon as is practicable and notify the parties of the appointment of the mediator in writing, at which time the mediation shall be deemed to have commenced.

13.19 Unless the parties apply to the Court and the Court orders the suspension of any steps in the proceedings, the time limits prescribed by the Rules for the taking of any steps by a party in the proceedings shall continue to apply, notwithstanding the voluntary referral of the dispute by the parties to court annexed mediation.

D. COURT ORDERED MEDIATION [r.306]

13.20 The Court may, at any stage of proceedings, either on its own initiative or upon the application of any party, refer the parties to court-annexed mediation where, in the opinion of the Court, mediation appears appropriate.

13.21 The Court's power to refer a dispute to mediation does not depend on the consent of all or any of the parties.

13.22 The Registrar shall appoint a mediator as soon as is practicable and notify the parties of the appointment of the mediator in writing, at which time the mediation shall be deemed to have commenced.

E. ROLE AND FUNCTION OF THE MEDIATOR

13.23 Subject to paragraph 13.4, the role of the mediator is to assist the parties in their attempt to achieve a resolution of their dispute, with the parties in ultimate control of the decision to settle the dispute and the terms of the settlement.

13.24 The mediator shall:

- (a) at any time, prior to or after his or her appointment, disclose all actual and potential conflicts of interest reasonably known to him or her;
- (b) at all times, remain independent and maintain confidentiality in relation to the mediation;
- (c) conduct the mediation fairly and diligently whilst taking into consideration the circumstances of the dispute;
- (d) assist the parties to the best of his or her capabilities to resolve their dispute by:
 - (i) facilitating discussions between the parties;
 - (ii) assisting the parties in identifying underlying issues;
 - (iii) clarifying priorities; and
 - (iv) exploring areas of compromise and generating options in an attempt to resolve the dispute.

13.25 For the assistance of parties, a note on the appointment of court officers as mediators in court-annexed mediations is attached to this Practice Direction in Schedule C.

F. THE PARTIES

13.26 It is the duty of each party to act and participate in the mediation in good faith and to use their best efforts to co-operate with each other and with the mediator to enable the mediation to proceed smoothly and to resolve the dispute.

13.27 Parties should:

- (a) be prepared to treat all participants in the mediation with common courtesy;
- (b) have considered the issues which have priority for them and the possible options for resolving them; and
- (c) have a clear view on what the best outcome would be from the mediation, and also the extent to which they would compromise.

13.28 Subject to paragraph 13.26, a party may withdraw from the mediation by giving notice of withdrawal in writing to the other party and the mediator.

G. THE MEDIATION AGREEMENT

13.29 As soon as practicable after the appointment of the mediator, the parties, the legal representatives of the parties (if applicable) and the mediator shall enter into a mediation agreement in the form attached to this Practice Direction in Schedule D.

13.30 Without limiting any other provision at law, upon signature of the mediation agreement, the signatories will be deemed to have accepted and will be bound by the terms of the mediation agreement, the Rules and this Practice Direction.

13.31 For the avoidance of doubt, the parties at all times shall abide by the confidentiality provisions of this Practice Direction notwithstanding that a mediation agreement has not been entered into.

H. CONDUCT OF THE MEDIATION

13.32 The Court shall provide the necessary support and assistance required for the effective administration of the mediation, including (as required) organising conference calls, videoconference facilities or a venue for any preliminary meeting between the parties and the mediator prior to the mediation session and a venue for the mediation session.

13.33 Unless the mediator indicates otherwise, any preliminary meeting is to be conducted virtually.

13.34 Within 7 days of his or her appointment, the mediator shall schedule as appropriate:

- (a) a preliminary meeting of the parties prior to the mediation session; and/
or
- (b) the mediation session, and

shall notify the parties in writing of the date, time and place of the scheduled preliminary meeting and/ or the mediation session, and whether it is proposed to conduct the mediation session in-person or virtually or a combination of the two.

13.35 In a court ordered mediation, the Court may give directions regulating the practice and procedure to be followed in the mediation.

13.36 Unless the mediator otherwise indicates:

- (a) the preliminary meeting and/ or the mediation session must be attended by each party and if a party is a corporate or other entity, by an officer of that entity having authority to settle the dispute;
- (b) a party may be accompanied by a legal representative at the preliminary meeting and/ or the mediation session;
- (c) all persons attending the virtual preliminary meeting may do so by telephone or video-link; and
- (d) all persons attending the mediation session must do so in person or by video-link.

13.37 As soon as practicable after his or her appointment or during the preliminary session, the mediator shall provide instructions to the parties on the exchange of any documents to facilitate the mediation, provided always that such exchange should be proportionate to the amount of the dispute and the circumstances of the parties involved in the dispute.

13.38 During the preliminary meeting or the mediation session, the mediator must inform the parties of the following:

- (a) the purpose of mediation and its objective to facilitate settlement between the parties;
- (b) the mediator's role as an impartial and independent third party who cannot make any decisions of fact or law and who cannot determine the credibility of any person participating in the mediation;
- (c) the Rules and this Practice Direction, which govern the mediation;
- (d) the confidentiality of the mediation process as provided in this Practice Direction; and
- (e) any other matters that are relevant to the future conduct of the mediation.

I. TERMINATION OF THE MEDIATION

13.39 The mediation will terminate upon the earliest of the following:

- (a) subject to paragraph 13.26, a party's withdrawal from the mediation;
- (b) a written settlement agreement is concluded between the parties;
- (c) the mediator notifies the parties in writing that, in the mediator's opinion, the mediation is unlikely to resolve the dispute between the parties; or
- (d) circumstances have arisen whereby there is no further necessity to continue with the mediation.

J. NOTIFICATION AFTER MEDIATION

13.40 If a settlement is not reached in the mediation, within 7 days after the termination of the mediation, the mediator shall notify the Registry accordingly.

13.41 If a settlement is reached in the mediation, within 7 days of the terms of settlement being signed by the parties, the mediator shall notify the Registry that the mediation has resulted in the settlement of the dispute or (if relevant) a part of the dispute, in which case the mediator shall provide a brief description of that part of the dispute which has been settled.

K. SETTLEMENT OF DISPUTE

13.42 A settlement reached in the mediation will be legally binding only when reduced into writing and signed by or on behalf of each of the parties.

13.43 Upon the request by or on behalf of all of the parties, and if proceedings have been commenced, the Court will make an order or orders giving effect to any settlement agreement arising out of a court-annexed mediation.

L. CONFIDENTIALITY

13.44 Subject to the provisions of this part, the mediation shall be conducted in confidence and all communications made in the mediation, including information disclosed, views expressed and statements made (whether oral or written), are made on a strictly 'without prejudice' basis and shall not be used in any proceedings before any court or other body.

13.45 Parties who attend a preliminary meeting or mediation session virtually must ensure that their personal surroundings are such that the confidentiality of the mediation will be maintained in these proceedings at all times.

13.46 Unless required by law or otherwise agreed between the parties in writing:

- (a) save for the fact of the mediation taking or having taken place, all other aspects of and relating to the mediation shall be private and confidential; and
- (b) any settlement agreement between the parties shall be kept confidential, save and except that a party shall have the right to disclose it to the extent that such disclosure is necessary for its implementation or enforcement.

13.47 Unless required by law or otherwise agreed between the parties in writing, a party shall not produce as evidence nor disclose in any judicial, arbitral or any other type of proceedings:

- (a) any documents, statements or communications which are submitted by another party in the mediation, unless such material can be or has been independently obtained outside of the mediation by the party seeking to produce such material;
- (b) any views expressed, suggestions or offers made by any party in the mediation with regard to the dispute or the possible settlement of the dispute;
- (c) any views or proposals put forward by the mediator in the mediation;
- (d) any admissions made by any party in the mediation; or
- (e) the fact that any party indicated in the mediation that it was ready to offer or accept a proposal for settlement.

13.48 Unless required by law or unless all parties and the mediator otherwise agree in writing, the mediator shall not give evidence or produce in evidence any records or notes relating to the mediation in any proceedings before any court or other body arising out of or in connection with the mediation of a dispute.

M. IMMUNITY

13.49 The mediator shall not be liable to any person for any act or omission in connection with the mediation, except to the extent such limitation of liability is prohibited by law.

13.50 Subject to paragraph 13.49, by participation in a court-annexed mediation the parties thereby waive their right to make any claim against the mediator for any matter in connection with or in relation to the:

- (a) dispute between the parties;
- (b) mediation; and
- (c) services provided by the mediator.

13.51 The parties agree that the mediator is not an expert for the purpose of *Article 257 of Federal Law No (3) of 1987*.

N. COSTS [r.307]

- 13.52 If the dispute is referred to mediation pursuant to a court order, in exercising its discretion as to costs in the proceedings the Court may make an order as to the payment of any costs relating to or arising from the mediation by one or more of the parties in such manner as the Court may see fit.
- 13.53 In the absence of a court order under paragraph 13.52, the costs of the mediation shall be borne equally by the parties.
- 13.54 Nothing in this section shall limit the Courts' discretion as to costs under Rule 307.