

Guidelines for Effective Implementation of ADR Mechanism.

**MEDIATION SCHEME FOR THE HIGH COURT OF JUDICATURE AT
BOMBAY, ITS BENCHES AND IT'S SEAT AT PANAJI.**

INTRODUCTION

The Main Mediation Monitoring Committee, Bombay High Court (MMC) appointed by the Hon'ble the Chief Justice operates a Mediation Scheme for the resolution of disputes in pending cases in the Bombay High Court. The MMC seeks to provide litigants with an opportunity to resolve their disputes through mediation.

2. The Court Scheme offers a Pro-bono and/or fixed-cost mediation.
3. The Parties having cases in the Bombay High Court may opt to take benefit of the scheme by making necessary application to the concerned Bench before which the case is pending. The Hon'ble Judges of Bombay High Court may also make a reference to mediation in appropriate cases by exercising the powers under section 89 of the Code of Civil Procedure, 1908 either on an application of one of the parties or on its own motion. When an application as aforesaid is made or when an order as aforesaid is made,
 - (a) the Court may give an opportunity to the parties to suggest the name of an empanelled Mediator/Mediators or an empanelled

Mediation Institution and appoint the Mediator/Mediators or the Mediation Institution, as the case may be, suggested by the parties; or

(b) the Court may appoint either a Mediator or Mediators or a Mediation Institution as the Mediator/Mediators; or

(c) the Court may direct the Coordinator of MMC to refer the case to either an empanelled Mediator/Mediators or an empanelled Mediation Institution.

4. The persons possessing qualifications prescribed by Rule 4 of Part II of the Civil Procedure Alternative Dispute Resolution and Mediation Rules, 2006 (for short 'ADR Rules') framed by the High Court of Judicature at Bombay, can be empanelled by MMC or Sub-Committees at Benches and at Panaji. The Mediation Institutions having qualified Mediators as per Rule 4 above as its Members may be empanelled by MMC or Sub-Committees at Benches and at Panaji. The Mediation Institutions shall be empanelled on the condition that the cases referred to them will be referred only to the qualified Mediators as set out in Rule 4 of ADR Rules.

5. Mediation meetings will normally take place at the premises of the MMC or sub-Committees, or the premises of the Institutions or any other premises approved by MMC or sub-Committees, or the premises determined by the Mediator or the Institution, as the case may be, after consultation with the parties. It will be open for the Mediator or the Institution, as the case may be, to hold mediation via video conferencing

or using any other electronic device or media with the consent of the parties and by following the agreed procedure.

PANEL OF MEDIATORS

6. The following persons may be empanelled by the MMC or Sub-Committees at the Benches and the seat at Panaji, either on the basis of the applications of the persons concerned or with their written consent:

- i. The Persons possessing qualification as per Rule 4 of Part II of the Civil Procedure Alternative Dispute Resolution and Mediation Rules,2006;
- ii. Institutions (called as Mediation Institutions) which have qualified Mediators as per Rule 4 Rule 4 of Part II of the Civil Procedure Alternative Dispute Resolution and Mediation Rules,2006;

The Panel shall be as per Rule 3 of Part II of ADR Rules. The MMC or the Sub-committees at benches and the seat at Panaji, as the case may be, shall prepare separate Panels of Mediators as aforesaid for the Principal Seat of this Court, its Benches and its Seat at Panaji. The MMC, Sub-Committees at the Benches and the Seat at Panaji shall be entitled to reject the applications for empanelment. The MMC, Sub-Committees at the Benches and the Seat at Panaji shall have a power to remove the names of the Mediators or Institutions from the panel, without assigning any reason. The panel will be revised from time to time.

7. The Panel will be divided into the categories mentioned in clause 6 above.

8. Updated list of empanelled Mediators and Mediation Institutions will be provided to every Honourable Judge of the High Court and to the Bar Associations. The list will be displayed on the Website of the High Court. Even the contact details such as addresses and contact numbers of the Co-ordinator of MMC or the Sub-committees shall be notified on the website as well as to the Bar Associations.

PROCEDURE

9. The referral order passed by the Court shall be forthwith communicated by the Court Shirastedars/Associates by sending a copy of the referral order to the Registrar Judicial-I or Registrar Judicial (in Appellate Side Matters) and to the Prothonotary and Senior Master (in Original Side matters) as well as to MMC or the Sub-committees at Benches, as the case may be. The communication shall be made to MMC or the Sub-committees, within 3(three) working days from the date on which the order is uploaded. Even the parties to the case referred for mediation will be entitled to communicate the referral order to the Coordinator MMC or the Sub-committees.

10. Upon receipt of the order, the MMC or the Sub-committees as the case may be, shall take necessary action thereon including action of appointing a Mediator or Mediation Institution, if so directed by the Court and shall inform the parties as well as the Mediator or Institution, as the case may be, by forwarding a copy of the referral order. The

Mediator may be requested to send the dates and the venues of mediation meetings to the MMC or the Sub-committees as the case may be.

FEES AND CHARGES PAYABLE TO MEDIATORS

11. Mediation shall be *pro-bono* in all cases where there is a specific order of the Referral Judge to that effect. However, in the cases involving matrimonial disputes, disputes between employer and workmen/employee, the cases involving the dispute regarding the custody of minor children and the cases regarding compensation under the Motor Vehicle Act, 1988 or the Workmen Compensation Act, 1923 the mediation shall always be *pro-bono* unless otherwise directed by the Court. In cases where the mediation is not *pro-bono*, the Mediator may charge fees not exceeding Rs.25,000/- for the Mediation process. The High Court always retains discretion to permit fees in excess of Rs.25,000/- on its own motion or at the request of the parties or the Mediators. The Mediators shall also be entitled to get reimbursement of 'out of pocket expenses' actually incurred by them from the parties to the meditation. The Mediators shall disclose the amounts paid to them on both the counts in the final report. Cost/Fees shall be equally shared by the parties, unless there is specific order of the Court or an agreement between the parties to the contrary.

12. In the cases of Pre-Institution Mediation in Commercial Disputes to which section 12A of the Commercial Courts Act 2015 is applicable, the fees shall be levied as per Schedule II of the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018. In such cases the

Maharashtra State Legal Services Authority will decide the quantum of Mediator's fees and disburse the same as per the guidelines issued by MMC.

PROCEDURE DURING MEDIATION

13. The parties are free to agree how, and in what form, they will present their case before the Mediator. The Mediator will be at liberty to evolve his/her own procedure for mediation.

14. Any mediation settlement agreement entered into between the parties shall be in writing and signed by the parties or their power of attorney holders as well as the Mediator.

15. The mediation shall be normally completed within 60 days from the date of communication of the appointment to the Mediator/Mediation Institution, as the case may be. In appropriate cases, the time can be extended by the High Court on an application made by the parties or on the Report submitted by the Mediator through MMC or the Sub-committees, as the case may be.

PROCEDURE AFTER CONCLUSION OF MEDIATION.

16. (i) The Mediator shall submit a report to the High Court on the conclusion of mediation. The Report shall only provide the final outcome without preface, reasons, conclusions or observations by the Mediator.

(ii) The report shall be placed in a sealed envelope.

- (iii) In case of settlement, the original settlement document shall be forwarded to the Court by the Mediator along with the report.

POWERS

17. Nothing stated in the Scheme shall affect the powers and the jurisdiction vested in the Court.

18. It is clarified that, where any provision of this scheme is in conflict with any of the ADR Rules or the Commercial Courts (Pre-Institution Mediation and Settlement) Rules, 2018, the provisions of both these Rules shall prevail.
