

eBRAM Mediation Rules



eBRAM
一邦國際網上仲調

International Online Dispute Resolution Centre Limited

Contents

I. Introductory rules

Preamble	4
Article 1 Objects of these Rules	5
Article 2 Meaning of Mediation	5
Article 3 Scope of application	6
Article 4 Notice and calculation of periods of time	6-7

II. Request for Mediation

Article 5 Initiation of the mediation process	8-9
Article 6 Response to Request for Mediation	9
Article 7 Designating and appointing authorities	9
Article 8 Appointment of the Mediator	10
Article 9 Independence and impartiality of the Mediator	10
Article 10 Disqualification of Mediator	11
Article 11 Role of the Mediator	11
Article 12 Role of the Parties	12
Article 13 Applicable law	12

III. Mediation communication using eBRAM Platform

Article 14 Language	13
Article 15 Confidentiality of mediation communications	13-14
Article 16 Settlement or other grounds for termination	15
Article 17 Costs	15

IV. General Provisions

Article 18	16
------------	----

APPENDIX

Online filing and administrative fees payable pursuant to Article 5.2	17
Method of payment	18

SECTION I. Introductory rules

Preamble

- (A) This Preamble shall form part of the eBRAM Mediation Rules (the “eBRAM Mediation Rules” or the “Rules”).
- (B) In these Rules:
 - (1) references to "eBRAM" are to the Board of Directors of eBRAM International Online Dispute Resolution Centre Limited (the “eBRAM Centre”) or “to any other person or body duly authorised in writing by the eBRAM Centre’s Board of Directors to carry out any function that is to be undertaken under these Rules;
 - (2) the "eBRAM Platform" shall mean a multi-purpose hub for resolving disputes online which uses the on-line dispute resolution software to be adopted and revised by eBRAM from time to time and which may be accessed at www.ebram.org;
 - (3) "Online Dispute Resolution" or "ODR" means a mechanism for resolving disputes through the use of electronic communications and other information and communication technology;
 - (4) transmission through the eBRAM Platform shall include all data input and communications conducted through the eBRAM Platform;
 - (5) words and expressions importing the masculine gender include the feminine and neuter genders; and
 - (6) words and expressions in the singular include the plural and words and expressions in the plural include the singular.

Objects of these Rules

1 Article 1

The objects of these Rules are:

- 1.1 to promote, encourage and facilitate the resolution of disputes by mediation via the eBRAM Platform in a fair, efficient and cost-effective manner; and
- 1.2 to ensure all online mediation communications be kept safe and confidential.

Meaning of Mediation

2 Article 2

- 2.1 For the purposes of these Rules, mediation is a voluntary, private and structured process comprising one or more sessions in which the eBRAM appointed mediator, without adjudicating a dispute or any aspect of it, shall assist the parties to the dispute to do any or all of the following through the eBRAM Platform:
 - (a) identify the issues in dispute;
 - (b) explore and generate options;
 - (c) communicate with one another;
 - (d) reach a settlement regarding the resolution of the whole, or part, of the dispute.
- 2.2 For the purposes of Article 2.1, a session is an online meeting between a mediator and one or more of the parties to a dispute, and includes any eBRAM Platform activity undertaken in respect of:
 - (a) arranging or preparing for such an online meeting; and
 - (b) following up any matter or issue raised in such an online meeting.

Scope of application

3 Article 3

- 3.1 Where parties with a defined legal relationship, whether contractual or otherwise, have agreed that disputes between them shall be referred to mediation conducted on the eBRAM platform and/or under the eBRAM Mediation Rules, such disputes shall be settled in accordance with these Rules, subject to such modification as the parties may agree and eBRAM may accept.
- 3.2 These Rules shall govern the mediation except that, where any of these Rules is in conflict with a provision of the law applicable to the mediation from which the parties cannot derogate, that provision of the law shall prevail.

Notice and calculation of periods of time

4 Article 4

- 4.1 Save as otherwise provided in these Rules, a notice, including a notification, communication or proposal, shall be uploaded to and transmitted through the eBRAM Platform.
- 4.2 In agreeing to make use of the eBRAM Platform, a party has agreed to accept transmission by electronic means through the eBRAM Platform and agreed that such transmission constitutes service of any such notice, communication or proposal.
- 4.3 A notice transmitted by electronic means through the eBRAM Platform is deemed to have been received on the day it is uploaded to the eBRAM Platform.
- 4.4 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, 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.

Introductory rules

- 4.5 For the purpose of verifying the authenticity of evidence, all evidence uploaded onto the eBRAM Platform, including electronic and physical documents, audio files, photography or videography footage, shall be certified by a regulated professional person such as a lawyer, chartered accountant or a notary public, including the parties' legal representatives in the mediation proceedings, unless the mediator directs otherwise.

SECTION II. Request for Mediation

Initiation of the mediation process

5 Article 5

- 5.1 A party to a dispute may request for mediation ("Request") by submitting the Request through eBRAM's online request form for mediation. Such Request shall include the following:
- (a) brief details of the nature of the dispute;
 - (b) the names and contact details of the parties;
 - (c) the amount in dispute (if any);
 - (d) the remedies sought; and
 - (e) a request that the other party agrees to use of the eBRAM Platform for the purpose of mediation and related communication.
- 5.2 Together with the Request, the party or parties filing the Request shall pay the online filing and administrative fees required by the Appendix hereto in force on the date the Request is submitted.
- 5.3 The party or parties initiating recourse to mediation shall communicate the Request to the other party or parties by:
- (a) uploading it to the eBRAM Platform; and
 - (b) any means of communication that provides or allows for a record of its transmission.
- 5.4 For the purpose of Article 5.3 (b):
- (a) if an address has been designated by a party specifically for this, any Request shall be delivered to that party at that address, and if so delivered shall be deemed to have been received. Delivery by electronic means such as facsimile or email may only be made to an address so designated.
 - (b) in the absence of such designation, a Request is:
 - (i) received if it is physically delivered to the addressee; or
 - (ii) deemed to have been received if it is delivered at the place of business, habitual residence or mailing address of the addressee.

Request for Mediation

- (c) if, after reasonable efforts, delivery cannot be effected in accordance with Articles 5.4 (a) or (b), a Request is deemed to have been received if it is sent to the addressee's last-known place of business, habitual residence or mailing address by registered letter or any other means that provides a record of delivery or of attempted delivery.

- (d) a Request shall be deemed to have been received on the day it is delivered in accordance with Articles 5.4 (a), (b) or (c), or attempted to be delivered in accordance with Article 5.4 (c). A Request transmitted by electronic means is deemed to have been received on the day it is sent, except that a Request so transmitted is only deemed to have been received on the day when it reaches the addressee's electronic address.

Response to Request for Mediation

6 Article 6

- 6.1 A party or parties who receive a Request from the initiating party shall notify eBRAM of their response to the Request ("Response") within ten (10) days.

- 6.2 If, after three (3) repeated attempts by eBRAM to contact the relevant party for its Response to the Request, no Response to the Request is received by eBRAM, the Request shall be deemed to have been refused.

Designating and appointing authorities

7 Article 7

The appointing authority under the eBRAM Mediation Rules shall be eBRAM. In exercising its functions under these Rules, eBRAM may require from any party and the mediators the information it deems necessary and it shall give the parties and, where appropriate, the mediators, an opportunity to present their views in any manner they consider appropriate. All such communications between the parties and eBRAM shall be provided for through the eBRAM Platform.

Appointment of the Mediator

8 Article 8

- 8.1 There shall be one mediator, unless the parties agree otherwise. The mediator shall be appointed by eBRAM.
- 8.2 In appointing a mediator, eBRAM shall consider the need for the mediator to be independent and impartial of the parties.
- 8.3 The parties shall agree to the appointment of the proposed mediator and the proposed mediator shall, in accordance with Article 9 below, confirm that he or she can devote the time necessary to conduct the mediation proceedings diligently, efficiently and in accordance with the time limits in these Rules.
- 8.4 If the mediator declines the appointment, a new mediator will be appointed by eBRAM.

Independence and impartiality of the Mediator

9 Article 9

The mediator shall, at the time of accepting his or her appointment, declare his or her acceptance and availability to conduct the mediation diligently and efficiently and confirm his or her impartiality and independence. The mediator, from the time of his or her appointment and throughout the mediation proceedings, shall without delay, disclose to eBRAM, any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence. eBRAM shall promptly communicate such information to the parties via the eBRAM Platform.

Disqualification of Mediator

10 Article 10

- 10.1 Either party may object to the mediator's appointment within two (2) calendar days:
- (a) of the notification of the appointment without giving reasons therefor; or
 - (c) of a fact or matter coming to its attention that is likely to give rise to justifiable doubts as to the impartiality or independence of the mediator, setting out the fact or matter giving rise to such doubts at any time during the mediation proceedings.
- 10.2 If no challenges are made within the period provided in Article 10.1 above, the appointment will become final.
- 10.3 Where a party objects to the appointment of a mediator, eBRAM shall make a determination within three (3) calendar days, regarding whether a mediator shall be replaced.
- 10.4 Where a party's objection to the appointment of a mediator is accepted by eBRAM, that mediator shall be automatically disqualified and another appointed in his or her place by eBRAM. Each party shall have a maximum of three (3) challenges to the appointment of a mediator throughout the mediation process, following which the appointment of a mediator by eBRAM will be final.

Role of the Mediator

11 Article 11

- 11.1 The mediator may conduct the mediation in any manner he or she considers appropriate including by ODR using the eBRAM Platform, taking into account the circumstances of the case, the wishes of the parties (if any), and the need for a swift settlement of the dispute. The mediator shall seek to maintain fair treatment of the parties at all times.
- 11.1 The mediator shall commence the mediation as soon as possible after his appointment and shall use his best endeavors to reach a settlement and conclude the mediation within ten (10) days of his or her appointment.

Request for Mediation

Role of the Parties

12 Article 12

The parties shall cooperate and give full assistance to the mediator throughout the mediation process.

Applicable law

13 Article 13

eBRAM shall apply the rules of law designated by the parties as applicable to the substance of the dispute. Failing such designation by the parties, eBRAM shall apply the law which it determines to be appropriate.

SECTION III. Mediation communication using eBRAM Platform

Language

14 Article 14

- 14.1 Communication with eBRAM shall be in English or Chinese, unless otherwise agreed by eBRAM.
- 14.2 Subject to an agreement by the parties, the mediator shall promptly after his or her appointment, determine the language or languages to be used in the mediation. The mediator's decision shall apply to the online mediation sessions as well as any further written statements and communications.
- 14.3 eBRAM may order that any documents and any supplementary documents or exhibits submitted in the course of the mediation process, delivered in their original language, shall be accompanied by a translation into the language(s) agreed upon by the parties or determined by the mediator.

Confidentiality of mediation communications

15 Article 15

- 15.1 A person must not disclose any mediation communication except as provided by Articles 15.2 or 15.3.
- 15.2 A person may disclose a mediation communication if:
- (a) disclosure is made with the consent of:
 - (i) each of the parties to the mediation;
 - (ii) the mediator for the mediation or, if there is more than one, each of them; and
 - (iii) if the mediation communication is made by a person other than a party to the mediation or a mediator, the person who made the communication;
 - (b) the content of the mediation communication is information that has already been made available to the public, except for information that is only in the public domain due to an unlawful disclosure;

- (c) the content of the mediation communication is information that is otherwise subject to discovery in civil proceedings or to other similar procedures in which parties are required to disclose documents in their possession, custody or power;
 - (d) there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to a person or of serious harm to the well-being of a child;
 - (e) the disclosure is made for research, evaluation or educational purposes without revealing, or being likely to reveal, directly or indirectly, the identity of a person to whom the mediation communication relates;
 - (f) the disclosure is made for the purpose of seeking legal advice; or
 - (g) the disclosure is made in accordance with a requirement imposed by law.
- 15.3 A person may disclose a mediation communication with leave of a competent court or tribunal:
- (a) for the purpose of enforcing or challenging a mediated settlement agreement;
 - (b) for the purpose of establishing or disputing an allegation or complaint of professional misconduct made against a mediator or any other person who participated in the mediation in a professional capacity; or
 - (c) for any other purpose that the court or tribunal considers justifiable in the circumstances of the case.
- 15.4 A mediated settlement agreement between the parties shall be confidential, except where disclosure is required for the purposes of Articles 15.2 and 15.3 above.

Settlement or other grounds for termination

16 Article 16

- 16.1 Mediation which has been commenced pursuant to these Rules shall be terminated upon the uploading of written confirmation of termination by eBRAM to the eBRAM Platform after the occurrence of the following:
- (a) the signing by the parties of a settlement agreement;
 - (b) the written notification provided to the mediator or eBRAM via the eBRAM Platform by any party that either or both parties have decided no longer to pursue the mediation;
 - (c) the written notification uploaded by the mediator to the parties via the eBRAM Platform, that in the mediator's opinion the mediation will not resolve the dispute between the parties; or
 - (d) the parties fail to settle the fees prescribed by eBRAM in relation to the mediation within seven (7) days of the due date of the payment, without any reasonable cause.
- 16.2 The mediator shall promptly notify eBRAM of the signing of a settlement agreement by the parties and shall upload a copy of any such settlement agreement to the eBRAM Platform.

Costs

17 Article 17

Unless otherwise agreed or provided in these Rules, each party shall bear its own costs, regardless of the outcome of the mediation or any subsequent arbitral or judicial proceedings. Any additional costs shall be borne equally by both parties.

SECTION IV. General Provisions

18 Article 18

- 18.1 Unless all of the parties have agreed otherwise in writing or unless prohibited by applicable law, the parties may commence or continue any judicial, arbitral or similar proceedings in respect of the dispute, notwithstanding the mediation proceedings under the Rules.

Model Clause

- 18.2 Parties preparing to include a clause in their agreements to resolve disputes by way of alternative dispute resolution (ADR) requiring mediation may consider adopting the following model clause:

“Any dispute or difference arising out of or relating to this contract shall be referred to the eBRAM International Online Dispute Resolution Centre Limited and resolved in accordance with its current Mediation Rules.”

APPENDIX

Online filing and administrative fees payable pursuant to Article 5.2

- 1 The party which submitted a Request for mediation through eBRAM's mediation platform shall pay the following fees:

Filing and Administrative Fees (inclusive of appointment of Mediator and holding of funds) **HK\$2,500;**

Fee for making available eBRAM's platform for mediation by way of video conference for first day of mediation: **HK\$1,500**

Total: **HK\$4,000**

- 2 The fee for additional hours for mediation by way of video conference shall be HK\$250 per hour and shall be paid in advance.
- 3 The above fees shall not include the fees payable to the Mediator, which shall be arranged directly between the parties and the Mediator and eBRAM's role is limited to holding of funds only in case the parties so request.

APPENDIX

Method of payment

Payments of the filing and administrative fees and expenses, may be made by Hong Kong Dollar cheque payable to “eBRAM International Online Dispute Resolution Centre Limited” or by bank transfer to the following account:

Account No: 004-741-176978-838
Account Name: eBRAM International Online Dispute Resolution Centre Limited
Bank: The Hongkong & Shanghai Banking Corporation Limited
1 Queen’s Road Central, Hong Kong
Swift Code: HSBC HK HHH KH

Payments of funds for holding by eBRAM may be made by Hong Kong Dollar cheque payable to “eBRAM International Online Dispute Resolution Centre Limited” or by bank transfer to the following account:

Account No: 004-741-287445-838
Account Name: eBRAM International Online Dispute Resolution Centre Limited
Bank: The Hongkong & Shanghai Banking Corporation Limited
1 Queen’s Road Central, Hong Kong
Swift Code: HSBC HK HHH KH