

CLIVE DOUGLAS

Commercial & Property Mediator

EUROPEAN CODE OF CONDUCT FOR MEDIATORS

This code of conduct sets out a number of principles to which individual mediators may voluntarily decide to commit themselves, under their own responsibility. It may be used by mediators involved in all kinds of mediation in civil and commercial matters. Organisations providing mediation services may also make such a commitment by asking mediators acting under the auspices of their organisation to respect the code of conduct. Organisations may make available information on the measures, such as training, evaluation and monitoring, they are taking to support the respect of the code by individual mediators. For the purposes of the code of conduct, mediation means any structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a third person – hereinafter “the mediator”. Adherence to the code of conduct is without prejudice to national legislation or rules regulating individual professions. Organisations providing mediation services may wish to develop more detailed codes adapted to their specific context or the types of mediation services they offer, as well as to specific areas such as family mediation or consumer mediation.

1. COMPETENCE, APPOINTMENT AND FEES OF MEDIATORS AND PROMOTION OF THEIR SERVICES

1.1. Competence – Mediators must be competent and knowledgeable in the process of mediation. Relevant factors include proper training and continuous updating of their education and practice in mediation skills, having regard to any relevant standards or accreditation schemes.

1.2. Appointment – Mediators must confer with the parties regarding suitable dates on which the mediation may take place. Mediators must verify that they have the appropriate background and competence to conduct mediation in a given case before accepting the appointment. Upon request, they must disclose information concerning their background and experience to the parties.

1.3. Fees – Where not already provided, mediators must always supply the parties with complete information as to the mode of remuneration which they intend to apply. They must not agree to act in a mediation before the principles of their remuneration have been accepted by all parties concerned.

1.4. Promotion of mediators’ services – Mediators may promote their practice provided that they do so in a professional, truthful and dignified way.

2. INDEPENDENCE AND IMPARTIALITY

2.1. Independence – If there are any circumstances that may, or may be seen to, affect a mediator’s independence or give rise to a conflict of interests, the mediator must disclose those circumstances to the parties before acting or continuing to act. Such circumstances include:– any personal or business relationship with one or more of the parties;– any financial or other interest, direct or indirect, in the outcome of the mediation;– the mediator, or a member of his firm, having acted in any capacity other than mediator for one or more of the parties. In such cases the mediator may only agree to act or continue to act if he is certain of being able to carry out the mediation in full independence in order to ensure complete impartiality and the parties explicitly consent. The duty to disclose is a continuing obligation throughout the process of mediation.

2.2. Impartiality – Mediators must at all times act, and endeavour to be seen to act, with impartiality towards the parties and be committed to serve all parties equally with respect to the process of mediation.

3. THE MEDIATION AGREEMENT, PROCESS AND SETTLEMENT

3.1. Procedure – The mediator must ensure that the parties to the mediation understand the characteristics of the mediation process and the role of the mediator and the parties imitate mediator must in particular ensure that prior to commencement of the mediation the parties have understood and expressly agreed the terms and conditions of the mediation agreement including any applicable provisions relating to obligations of confidentiality on the mediator and on the parties. The mediation agreement may, upon request of the parties, be drawn up in writing. The mediator must conduct the proceedings in an appropriate manner, taking into account the circumstances of the case, including possible imbalances of power and any wishes the parties may express, the rule of law and the need for a prompt settlement of the dispute. The parties may agree with the mediator on the manner in which the mediation is to be conducted, by reference to a set of rules or otherwise. The mediator may hear the parties separately, if he deems it useful.

3.2. Fairness of the process – The mediator must ensure that all parties have adequate opportunities to be involved in the process. The mediator must inform the parties, and may terminate the mediation, if:– a settlement is being reached that for the mediator appears unenforceable or illegal, having regard to the circumstances of the case and the competence of the mediator for making such an assessment, or– the mediator considers that continuing the mediation is unlikely to result in a settlement.

3.3. The end of the process – The mediator must take all appropriate measures to ensure that any agreement is reached by all parties through knowing and informed consent, and that all parties understand the terms of the agreement. The parties may withdraw from the mediation at any time without giving any justification. The mediator must, upon request of the parties and within the limits of his competence, inform the parties as to how they may formalise the agreement and the possibilities for making the agreement enforceable.

4. CONFIDENTIALITY – The mediator must keep confidential all information arising out of or in connection with the mediation, including the fact that the mediation is to take place or has taken place, unless compelled by law or grounds of public policy to disclose it. Any information disclosed in confidence to mediators by one of the parties must not be disclosed to the other parties without permission, unless compelled by law.