

**The Japan Commercial Arbitration Association  
International Commercial Mediation Rules**

Effective as of January 1, 2009

**Chapter I  
General Provisions**

**Rule 1. Purpose**

The purpose of these Rules is to provide for matters necessary for the resolution of international commercial disputes by mediation under the auspices of the Japan Commercial Arbitration Association (hereinafter the "Association").

**Rule 2. Secretariat**

1. Secretarial work pertaining to mediation under these Rules shall be conducted by the Secretariat of the Association.
2. The Secretariat of the Association shall, at the request of the mediator or either party, arrange for a meeting room and the services as necessary for conducting mediation proceedings.

**Rule 3. Means of Correspondence; Language**

1. Correspondence provided for in these Rules may be conducted by postal service, facsimile or e-mail; provided that the mediator may determine otherwise upon consultation with the parties.
2. Correspondence by any party or the mediator with the Association shall be in Japanese or English.

**Rule 4. Exclusion of Liability**

Neither the mediator, nor the Association, nor the officers and the staff of the Association shall be liable to any person for any act or omission in connection with the mediation proceedings unless such act or omission is intentional or by gross negligence.

**Chapter II  
Commencement of Mediation**

**Rule 5. Request for Mediation**

1. A request for mediation shall be submitted by postal service, facsimile or e-mail to the Association by either or both of the parties.
2. A request for mediation shall set forth the following:
  - (1) The full personal or corporate names of the parties, and their addresses;
  - (2) The contact details of the party requesting mediation (telephone number, facsimile number and e-mail address) and the other party's contact details if known to the requesting party;
  - (3) If the party is represented by an agent, the name, the address and contact details (telephone number, facsimile number and e-mail address) of such agent;
  - (4) A summary of the dispute and the desired outcome;
  - (5) If the parties have agreed to refer the dispute to mediation under these Rules, such agreement; and
  - (6) If the party has the wishes as to the language to be used in the proceedings, such language.
3. If the party is represented by an agent in the mediation proceedings, such agent shall submit a power of attorney to the Association.
4. At the time when the party submits a request for mediation, it shall pay the request fee provided for in the Mediation Cost Regulations of the Association. If the party fails to pay the request fee, the Association may deem that the request for mediation had not been made and return the request for mediation to the party with notification to such effect.
5. If the party fails to submit a request for mediation and to pay the request fee, the mediation proceedings shall not be initiated.

**Rule 6. Notice of Request for Mediation**

1. The Association, upon confirmation that the request for mediation has been made in accordance with the provisions of Paragraphs 1 through 4 of the preceding article, shall notify, without delay, all other persons who shall be to be the parties to the mediation that the request for mediation has been made. A copy of the request for mediation shall be attached to such notice.
2. The Association shall request all other persons who shall be to be the parties to the mediation to inform the Association in writing, within twenty-one (21) days of receipt of the notice of the request for mediation, as to whether or not they agree to mediation

under these Rules if there is no existing agreement between the parties to refer the dispute to mediation under these Rules or, if there is an agreement, whether or not they intend to proceed with the mediation proceedings.

3. Under the preceding paragraph, any party who agrees to mediation or who is willing to proceed with the mediation proceedings shall submit a written answer setting forth the following:
  - (1) The full personal or corporate names of the parties, and their addresses;
  - (2) The contact details of the party who received the request for mediation (telephone number, facsimile number and e-mail address);
  - (3) If the party is represented by an agent, the name, the address and contact details (telephone number, facsimile number and e-mail address) of such agent;
  - (4) A summary of the dispute and the desired outcome; and
  - (5) If the party has the wishes as to the language to be used in the proceedings, such language.
4. If the party is represented by an agent in the mediation proceedings, such agent shall submit a power of attorney to the Association.
5. In the absence of a written notice to consent to the mediation within the period of the time provided for in Paragraph 2, the Association without delay shall inform the party requesting mediation to that effect.
6. Even where there is an agreement between the parties to refer the dispute to mediation under these Rules, in the absence of a written notice from the other party indicating intent to proceed with the mediation proceedings within twenty-one (21) days of receipt of the notice of the request for mediation, the Association without delay shall inform the party requesting mediation to that effect.

#### **Rule 7. Appointment of Mediator**

1. The mediator(s) shall be appointed pursuant to the agreement of the parties.
2. If there is no agreement referred to in the preceding paragraph, the Association shall designate a candidate as a sole mediator and inform the parties of his or her name, occupation, address and contact details (telephone number, facsimile number and e-mail address); provided that the Association may designate more than one candidate as mediators where the Association considers it appropriate.
3. The mediator shall be independent in principle and shall be, and remain at all times, impartial.

4. The candidate for mediator without delay shall submit to the Association his or her written undertaking to disclose any and all circumstances likely to give rise to justifiable doubts as to his or her independence or impartiality, or to declare that there are no such circumstances. The Association without delay shall send a copy of such undertaking to the parties.
5. If any party has an objection to any candidate for mediator whom the Association has designated, such party shall notify the Association in writing, within fifteen (15) days of receipt of the notice identifying the candidate, of the reason for the objection, and the Association shall, in its sole discretion, either deny the objection or designate a substitute candidate and then appoint the mediator after consulting with the parties.
6. The Association, upon appointment of a mediator, shall notify without delay the parties of such appointment.
7. Where the circumstances regarding independence or impartiality change during the course of the mediation proceedings, the mediator without delay shall disclose such circumstances, in writing, to the parties and the Association. If either party has an objection, the Association shall, in its sole discretion, deny such objection or appoint a substitute mediator.

#### **Rule 8. Relationship between Mediation and Arbitration**

The mediator may act as an arbitrator in any arbitral proceedings relating to the dispute referred to mediation under these Rules if the parties so agree.

### **Chapter III Mediation Proceedings**

#### **Rule 9. Expeditious Management of Mediation Proceedings**

1. The mediator shall make efforts towards the amicable resolution of the dispute and conduct the mediation proceedings fairly and expeditiously.
2. The parties shall make efforts to ensure that a person having authority to make a final decision attends at the important stages in the mediation proceedings and shall also make efforts for speedy progress of the proceedings and amicable resolution.
3. Taking the wishes of the parties into consideration, the mediator shall determine the language(s) to be used and manage the mediation in such a manner as he or she considers appropriate. The mediator may decide on involvement of advisers, assistants, translators and note takers.

4. The mediator may, at any time, make any proposal for settlement of the dispute.
5. The mediator may consult separately with any of the parties orally or in writing; provided that the mediator shall disclose to all other parties the fact that such consultation has taken place.
6. The mediator shall determine the place of mediation proceedings upon consultation with the parties.

**Rule 10. Termination of Mediation**

1. Unless otherwise agreed by the parties, the mediation proceedings shall be terminated within three (3) months of the date when the mediator was appointed pursuant to Rule 7. At the request of the mediator, the Association may extend this period of time.
2. The mediation proceedings are terminated by any of the following instances:
  - (1) The Association has given a notice as provided for in Rule 6 Paragraph 5;
  - (2) Settlement has been arrived at by the parties;
  - (3) The period of time provided for in the preceding paragraph has expired;
  - (4) The mediator, after consultation with the parties, declared in writing to the parties and the Association that there is no hope of resolving disputes by the mediation proceedings; or
  - (5) Any of the parties requested termination of the mediation proceedings in writing to the mediator (the Association, if the mediator has not been appointed).
3. When the mediation proceedings are to be terminated, the mediator shall notify the Association to that effect in writing.

**Rule 11. Arbitral Award based on Amicable Settlement**

The parties, upon arriving at a settlement agreement, may agree to appoint the mediator as an arbitrator and request him or her to make an arbitral award which incorporates with the settlement agreement.

**Rule 12. Privacy and Confidentiality**

1. Mediation proceedings are not open to the public.
2. The mediator, the officers and the staff of the Association, the parties, their agents and any advisers, assistants, translators or any other persons involved in the mediation proceedings shall not disclose facts related to the mediation case or facts learned through the mediation case except where disclosure is required by law.
3. Unless agreed by the parties, no party may introduce as evidence in any judicial or

arbitration proceedings any views expressed or statements made by the other party or parties, or any proposal made by the mediator in the course of the mediation proceedings.

**Rule 13. Mediation Cost**

1. The parties shall pay the administrative fee as provided for in the Mediation Cost Regulations to the Association.
2. The remuneration of the mediator shall be determined by the Association pursuant to the Mediation Cost Regulations.
3. The Association shall pay to the mediator his or her remuneration without delay upon the termination of the mediation proceedings or the termination of the mandate of a mediator due to his or her resignation or for any other reason.
4. The parties are jointly and severally liable for all payments of the administrative fee, remuneration and expenses of the mediator, and other necessary expenses for the mediation proceedings (hereinafter the "Mediation Cost").
5. Unless otherwise agreed by the parties, the parties shall equally bear the Mediation Cost.
6. The parties shall pay to the Association, in the manner and within the period of time determined by the Association, a sum of money fixed by it to cover the Mediation Cost.
7. If the parties fail to make payments as provided for in the preceding paragraph, the Association may request the mediator to suspend the mediation proceedings.
8. Upon the termination of the mediation proceedings, the Association shall settle the total amount of the Mediation Cost and shall reimburse the parties for any excess payment.

**Supplementary Provisions**

(Effective as of January 1, 2009)

These Rules shall come into effect on January 1, 2009.

# **The Japan Commercial Arbitration Association**

## **Mediation Cost Regulations**

Effective as of January 1, 2009

### **Article 1. Application of these Regulations**

These Regulations shall apply to the request fee, the administrative fee, the mediator's remuneration and expenses for mediation under the International Commercial Mediation Rules of the Japan Commercial Arbitration Association (hereinafter the "Association").

### **Article 2. Request Fee**

1. The request fee to be paid by the party requesting mediation shall be ¥54,000.
2. The request fee or any portion thereof is non-refundable once the mediation proceedings have been initiated.

### **Article 3. Administrative Fee**

The administrative fee to be paid by the parties shall be a sum equivalent to ten percent (10%) of the mediator's remuneration to be determined pursuant to the subsequent article.

### **Article 4. Mediator's Remuneration**

1. Taking into consideration the complexity of the case, the speed of mediation proceedings and other circumstances, the Association shall determine the mediator's remuneration based on the amount equal to the Hourly Rate multiplied by the number of Mediation Hours.
2. The Association, upon hearing the parties' and the mediator's opinion and taking into consideration his or her experience as a mediator, the complexity of the case and other circumstances, will determine an Hourly Rate within the range of ¥20,000 to ¥60,000.
3. Notwithstanding the provisions of the preceding paragraph, the Association may adopt a different Hourly Rate if all of the parties agree.
4. Mediation Hours means the time reasonably required by the mediator for mediation proceedings; provided that, only one-half of the traveling time the mediator spends (other than the time spent for preparation of the mediation proceedings) shall be added to the Mediation Hours, unless the traveling time is spent in preparation in which case it can be counted in full.
5. In case a mediator ceases to be a mediator at any time during the mediation

proceedings due to his or her resignation or any other reason, the Association may, considering the actual circumstances, reduce the mediator's remuneration calculated under the provisions of the preceding four paragraphs.

6. The Association shall pay to the mediator his or her remuneration without delay upon the termination of the mediation proceedings, or upon the mediator's ceasing to be a mediator due to his or her resignation or for any other reason.
7. The mediator shall provide the Association with a written monthly report stating the time reasonably spent for mediation proceedings as well as the traveling time pursuant to the proviso of Paragraph 4.

#### **Article 5. Mediator's Expense**

1. The mediator shall be entitled to reimbursement by the Association of his or her actual expenses incurred to the extent required for mediation proceedings, including travel expenses, hotel charges and other expenses.
2. The travel expenses shall include air, train and taxi fares.
3. The mediator's expenses set forth in Paragraph 1 shall be paid by the Association when the mediator has provided documentary evidence to the Association except where it is impossible or difficult by a custom to submit such documentary evidence.

### **Supplementary Provisions**

(Effective as of January 1, 2009)

These Regulations shall come into effect on January 1, 2009.