



## MEDIATION GUIDE

 ADR CENTER

CONFLICT MANAGEMENT & DISPUTE RESOLUTION

[www.adrcenter.com](http://www.adrcenter.com)

*Dear Readers,*

*Helping to settle disputes out of court is both an ancient and a modern craft. The recent development of the “ADR Movement” has made improvements to ancient practice on the practical, normative, and cultural levels. In many ways, ADR Center fits into both the ancient and the modern: on the one hand, we were the first organization in Italy to offer specialized conflict management and dispute resolution services; on the other hand, we continuously innovate and hone the techniques and knowledge necessary in order to furnish impeccable service under every circumstance.*

*Commitment to excellence and innovation are the basis of this Mediation Guide. In a decade of activity, hundreds of large corporations and law firms have used our mediation service to resolve high-value civil and commercial disputes. In the following pages we will demonstrate the value added, for disputants and their lawyers alike, in referring the great majority of disputes to ADR Center, not just the most high-profile ones.*

*The “Mediation Tools” described in the Guide (Rules, Forms, Costs, and Clauses) also clarify the differences between our procedures and those offered by public organizations in Italy. In its unique position as a private specialized organization, ADR Center makes available to disputants procedures that are:*

- more flexible (including the possibility of modifying the Rules by agreement with the third party neutral);*
- advantageous (including the option to pay for mediation services only where the dispute is resolved); and*
- particularly appropriate for the most complicated disputes (as Italy’s exclusive member in MEDAL, the international organization of ADR leaders in their respective countries, ADR Center takes advantage of an unparalleled professional structure and staff.)*

*To find out more about how to start resolving even the most difficult disputes in a professional manner, quickly and above all with finality, we invite you to contact our Case Management Service. We will be glad to discuss your situation; no commitment on your part is needed or implied.*

*Thank you for your attention, questions, and suggestions.*

*Professor Giuseppe De Palo  
President, ADR Center SpA*



# MEDIATION WITH ADR CENTER: A SUMMARY

## Initiating Mediation

With the **GREEN FORM**, either a party to a dispute, or the party's lawyer, requests that ADR Center invite the counterpart(s) to engage in an effort to resolve their dispute through mediation. This authorization does not grant to ADR Center any power to decide the dispute, but only empowers it to inquire whether all parties wish to pursue mediation. By sending this form, the party does not incur any financial obligation and is not obligated to reach any settlement of the dispute with the counterpart. It simply undertakes to discuss this possibility with the neutral participation of ADR Center.

The **BLUE FORM**, sent to all parties by ADR Center, contains the "Proposal to Start a Mediation Procedure." If the proposal is accepted by all parties, the procedure begins. In the event that the proposal of mediation is not accepted, even if only one party rejects it, ADR Center communicates to the other parties simply that agreement was not reached with regard to initiating mediation. By using this procedure, a party that did not accept mediation will not know whether the other(s) accepted it or not.

## Rules

(page 9)

The procedure is supported by Rules that regulate the fundamental aspects of the mediation process, such as the roles of the parties and of the mediator, confidentiality, and obviously the outcome. For all international mediations, ADR Center follows the MEDAL rules. These are standard rules set by the MEDAL Alliance – the international network of leading organizations in the field of mediation, of which ADR Center is Italy's exclusive member – that regulate the resolution of over 12,000 disputes a

year in various parts of the world.

In a domestic mediation, ADR Center, like any other member in MEDAL, may adopt other rules appropriate to the location and type of case, and also for the purpose of complying with specific legal requirements.

## Costs

(page 12)

ADR Center offers two payment options, at the clients' choice.

- The first option is a predetermined fee structure based on the value of the dispute and on the duration of the mediation procedure.
- The second option provides for payment of fees (as distinguished from certain expenses) only if the mediation procedure concludes with a settlement.

In either option, no fee is due to ADR Center for contacting the counterpart to find out whether it is interested in pursuing mediation.

Modest administrative expenses, noted below on page 12, are added to the fees.

## Contractual Clauses

(page 13)

By including a clause that provides for recourse to a mediation procedure, the parties to a contract can ensure that neither party will commence a civil action in court, or an arbitration, before making a structured attempt to resolve the dispute amicably.

**For further information, contact the Case Management Service of ADR Center (tel. +39 06 6938.0004; email: [casemanagement@adrcenter.it](mailto:casemanagement@adrcenter.it)).**



CONFLICT MANAGEMENT &amp; DISPUTE RESOLUTION

To the Case Management Service

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**Please complete and return this document by fax to +39 06 6919.0408**

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Mr./Ms. (Party) \_\_\_\_\_ on behalf of \_\_\_\_\_,  
 address \_\_\_\_\_, city \_\_\_\_\_, postal or ZIP code \_\_\_\_\_,  
 telephone \_\_\_\_\_, fax \_\_\_\_\_, e-mail \_\_\_\_\_

Authorizes ADR Center S.p.A.

to contact Mr./Ms. (Counterparty) \_\_\_\_\_, on behalf of \_\_\_\_\_,  
 address \_\_\_\_\_, city \_\_\_\_\_, postal or ZIP code \_\_\_\_\_,  
 telephone \_\_\_\_\_, fax \_\_\_\_\_, e-mail \_\_\_\_\_, for the  
 purposes of :

- a) evaluating the possibility of an attempt to resolve through mediation the dispute existing between them regarding \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_, and
- b) organizing an initial meeting, if appropriate.

No fees are due to ADR Center for the service of contacting the Counterparty.

This authorization is valid for \_\_\_\_\_ ( \_\_\_\_\_ ) days from the date of receipt of this form by ADR Center,  
 and it may be extended if agreed upon by the parties.

It is understood that ADR Center undertakes to maintain the maximum feasible confidentiality of all information it acquires in the execu-  
 tion of this authorization, and with respect to regulations on the protection of personal data.

Place \_\_\_\_\_, Date \_\_\_\_\_, Signature \_\_\_\_\_

ADR Center S.p.A. – Case Management Service  
 Via del Babuino, 114 – 00187 Rome, ITALY  
 Tel.: +39 06 6938.0004 – Fax: +39 06 6919.0408  
 email: casemanagement@adrcenter.it

www.adrcenter.com/mediation\_tools (GREEN FORM)

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**Please return this document by fax to +39 06 6919.0408**

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**PROPOSAL TO START A MEDIATION PROCEDURE**

Following our previous communications related to the dispute between

\_\_\_\_\_, represented by \_\_\_\_\_,

address \_\_\_\_\_

and

\_\_\_\_\_, represented by \_\_\_\_\_,

address \_\_\_\_\_ (collectively "the Parties"); regarding

\_\_\_\_\_

ADR Center S.p.A., ("ADR Center"), as a neutral organization,

**PROPOSES to the parties:**

To attempt an extrajudicial resolution of the above dispute, with the assistance of a third party neutral, based upon the ADR Center Mediation Rules ([www.adrcenter.com/mediation\\_tools](http://www.adrcenter.com/mediation_tools)), which are here incorporated by reference. The mediation will take place on \_\_\_\_\_ from \_\_\_\_\_ to \_\_\_\_\_, at \_\_\_\_\_, located in \_\_\_\_\_.

The Parties have selected, and ADR Center has appointed, Ms./Mr. \_\_\_\_\_ as the mediator.

Based on ADR Center's Fee Schedule, the Parties undertake to each pay ADR Center, in addition to the administrative expenses [choose the preferred option]:

A sum of Euro \_\_\_\_ (\_\_\_\_\_) each, to be paid to ADR Center before the mediation begins and regardless of its outcome.

or

No fee, if no settlement is reached, or Euro \_\_\_\_\_ (\_\_\_\_\_) per party if a settlement is reached.

Please return this signed form to ADR Center, Case Management Service, with the commitment of making a deposit of Euro \_\_\_\_\_ (\_\_\_\_\_) covering the administrative expenses.

We are confident that our service will provide valuable support to your business.

Yours sincerely,

ADR Center S.p.A.  
Managing Director

Place \_\_\_\_\_ Date \_\_\_\_\_ Signature \_\_\_\_\_

ADR Center S.p.A. – Case Management Service  
Via del Babuino, 114 – 00187 Rome, ITALY  
Tel.: +39 06 6938.0004 – Fax: +39 06 6919.0408  
email: [casemanagement@adrcenter.it](mailto:casemanagement@adrcenter.it)

[www.adrcenter.com/mediation\\_tools](http://www.adrcenter.com/mediation_tools) (BLUE FORM)

# STARTING THE PROCEDURE

## *What are the main steps to start a mediation procedure with ADR Center?*

The mediation procedure generally provides for the following steps:

1. One party, directly or through a lawyer, uses the GREEN FORM to authorize ADR Center to contact the counterpart and propose an effort at mediation.
2. A Case Manager from ADR Center contacts the person indicated to determine the other party's willingness to participate in mediation.
3. The Case Manager provides the parties with information regarding the procedure and, after meeting with any of them on request, invites all parties to formalize the opening of a mediation case by signing the BLUE FORM.
4. Once the procedure is initiated, ADR Center assists the parties in choosing the mediator.
5. After being appointed by ADR Center, the mediator and the Case Manager, in cooperation with the parties, organize the mediation session.

## *What happens if the parties cannot agree on a mediator?*

The mediator is usually chosen by the parties from a panel of persons appropriately trained and certified to serve as third party neutrals, and is then appointed by ADR Center. ADR Center might, however, both choose and appoint the mediator, either at the joint initial request of the parties, or in the event that the parties wish to pursue mediation but do not succeed in jointly identifying an agreed individual.

## *What activities are required before mediation?*

This depends on the circumstances and requirements of the parties. Normally, to use time most efficiently, the third party neutral will need advance statements ("mediation briefs") that describe the positions of the parties; these statements can be provided confidentially to the third party neutral or disclosed also to the counterpart. The exchange of other documents, such as technical reports, is subject to agreement by the parties and the mediator in order to balance the speed of the procedure with the need to furnish the mediator with an accurate picture of the situation.

## PRIOR TO A MEDIATION SESSION

PARTY	ADR Center	MEDIATOR
Sends the GREEN FORM to ADR Center, in the event that the contract does not contain an ad hoc mediation clause.	Contacts the counterparty.	
Is invited, along with the counterpart, to formally accept the procedure (by sending the BLUE FORM).	Compiles a list of mediator candidates and submits it to the parties.	
Participates in choosing the mediator.	Appoints the mediator.	
	Contacts the parties in order to organize the meeting with the mediator.	Accepts the appointment, confirming the absence of conflicts of interest.
Delivers to ADR Center statements and documents requested.	Sends a copy of statements and documents to the mediator.	Analyzes statements and documents and contacts the parties to arrange the mediation session.

**For further information, contact the Case Management Service of ADR Center (tel. +39 06 6938.0004; email: [casemanagement@adrcenter.it](mailto:casemanagement@adrcenter.it)).**

# THE ROLE OF ADR CENTER

## *What is the role of ADR Center in mediation?*

Mediation is a procedure by which the parties and their lawyers use the skills of a third party neutral in order to reach a mutually acceptable solution to their dispute. The task of ADR Center, as a neutral organization that appoints and assists the mediator, is to create conditions that will allow the dialogue between the parties to proceed in the most efficient manner under the circumstances of the particular case.

## *Why use a third party neutral who does not have power to decide the dispute?*

The third party neutral in the mediation procedure has the fundamental task of facilitating negotiation between the parties, in a way that allows them to reach a solution to their dispute without external influence. Listening to the parties and communicating with them, both jointly and separately, the mediator is able to analyze the truly important aspects of the case, which often transcend the expressed legal positions. These aspects include particular concerns or needs that, if shared with the mediator, can help all parties reach solutions based on their real interests. Because parties are often reluctant to reveal their own priorities to the counterpart, without this help the parties may not be in a position to reach optimal agree-

ments. Moreover, when speaking in front of someone who is primarily called upon to decide rights and wrongs, such as a judge or arbitrator, typical litigants will not talk about other considerations that are important to the amicable resolution of disputes, such as business concerns which do not affect the rights of the case but may be severely impacted if a creative agreement cannot be reached.

## *What assures me of the independence, impartiality, and neutrality of ADR Center?*

Nearly a decade of work exclusively devoted to the Alternative Dispute Resolution field and the desire to maintain the position of the market leader in Italy are the most obvious assurances we can provide to those who consult ADR Center. These are also the reasons a representative of ADR Center was among the ten international experts invited by the European Commission to draft the “European Code of Conduct for Mediators” (2004). All the professionals at ADR Center adhere to this well-recognized Code. Finally, it is important to note that organizations dealing with extrajudicial resolution of disputes are subject to national and local rules and regulations for the further protection of their clients.

## DEVELOPMENT AND OUTCOME OF THE PROCEDURE

### ***Who participates in the meeting with the mediator?***

It is of fundamental importance that the parties personally participate, preferably with the assistance of their lawyers, so that in the event of a settlement a final agreement can be drafted promptly that takes all contingencies into account. With the consent of the parties and of the mediator, other people can be included, such as experts whose presence is thought necessary or helpful to resolving the dispute.

### ***When a lawsuit is already pending, especially one that has been in existence for a long time, does it still make sense to attempt mediation?***

Yes. The outcome of a case is always uncertain, and the decisional power of judges takes control over the procedure, and especially over the final result, away from the parties and their lawyers. As is widely known, to enforce even a favorable decision is often difficult. The problem of parties not following agreements is largely eliminated by the direct participation of the disputants in crafting the solution; as statistics have repeatedly confirmed, agreements reached in mediation are much more likely to be conscientiously followed afterwards. (After all, any party unsatisfied with the mediation process can, instead of signing a settlement agreement, terminate the mediation procedure and turn to the court or, depending on the case, resort to arbitration.)

### ***What is the legal value of agreements reached under a mediation procedure?***

This depends on the applicable law. As a general rule, in Italy the agreement with which a mediation procedure is concluded operates as a contract. However, ever more numerous protections may provide additional value to these agreements. For instance, an agreement reached and recorded based on Article 40, Section 8, of D.LGS 05/2003, under corporate law, is a specific basis for an enforcement order for forced expropriation, for specific performance, and for the registration of a judicial mortgage.

### ***What happens if the parties do not reach an agreement?***

In a case where no agreement is reached, the parties are free to pursue any other procedure provided for by contract or by law. In the event that they have opted for the “on success” fee structure, the parties will not be obligated to pay fees to ADR Center.

### ***How much of what was said or done during the mediation procedure can be disclosed?***

A central element of the procedure is confidentiality, as prescribed by Article 11 of the ADR Center's International Mediation Rules. In addition to those protections provided for by the rules which are contractual in nature, analogous protections of confidentiality are provided for by law (e.g., Article 40, Section 8, of D.LGS 05/2003).

# MAIN DISPUTE RESOLUTION PROCESSES COMPARED: WHICH IS BEST?

	PRIVATE NEGOTIATION	MEDIATION (typical)	CIVIL TRIAL/ ARBITRATION
NATURE	Negotiated	<b>Contractual</b>	Contentious
START	Contact made only if one party is prepared to initiate it	<b>Contact promised by ADR Center, on separate or joint instruction (in the absence of a previously negotiated contractual clause)</b>	Notification of introductory action
DIFFICULTIES	Appearing weak; obstacles to communication	<b>Convincing the counterpart to start the procedure</b>	Discovery; enforcement of award and judgment
TIME	Varies; can be long and unpredictable due to lack of an organizer other than the parties themselves	<b>Decided in advance by the parties, managed by ADR Center and the mediator</b>	Very long, imposed by the code of civil procedure and other applicable statutes
PARTIES' CONTROL ON OUTCOME AND PROCEDURE	High	<b>High</b>	Low
REGULATION	None	<b>Mediation Rules and Code of conduct of the third party neutral</b>	Code of civil procedure and other applicable statutes
ROLE OF LAWYERS	Negotiation	<b>Negotiation, facilitated by the third party neutral</b>	Defensive/adversarial
THIRD PARTY NEUTRAL		<b>Facilitates negotiation and communication</b>	Decides by applying the law
RISKS	No agreement, or sub-optimal agreement	<b>No agreement</b>	Unpredictable outcome, and difficult to enforce
OUTCOME	Contract	<b>Contract (enforcement order in some cases)</b>	Award or judgment
RELATIONSHIP BETWEEN PARTIES	Protected	<b>Improved</b>	Compromised

# MEDAL RULES

## (ADR CENTER'S INTERNATIONAL MEDIATION RULES)

### **Application of Rules**

1. These Rules apply to the mediation of disputes where the parties seek the amicable settlement of such disputes and where, either by stipulation in a contract or by agreement, they have agreed that these Rules will apply. The parties may agree to vary these Rules in writing at any time.

### **Initiation of Mediation**

2. Any party or parties to a dispute wishing to initiate mediation may do so by filing with a MEDAL Member Organization ("MMO") a submission to mediation or a written request for mediation pursuant to these Rules.

3. A party may request the MMO to invite another party to participate in mediation. Upon receipt of such a request, the MMO will contact the other party involved in the dispute and attempt to obtain an agreement to participate in mediation. Unless otherwise specified within a contract between the parties to the dispute, a period of 30 days from the date of issue shall be regarded as a reasonable time within which a party should respond to an invitation to participate in mediation.

4. A request for mediation should contain a brief statement of the nature of the dispute. It shall also set forth the contact information of all parties to the dispute and the counsel, if any, who will represent them in the mediation.

### **Appointment of the Mediator**

5. Upon receipt of a request for mediation, and if the parties have not jointly notified the MMO of their mutual choice of a mediator, the MMO will provide the parties with a list of no fewer than three persons who would, in the MMO's view, be qualified

to mediate the dispute. In compiling the list, the MMO will take into account the nationalities of the parties, the language in which the mediation will be conducted, the place of the mediation, any substantive expertise that may be required or helpful, the availability of the mediator and any known conflict of interests. Each party will number the names in the order of preference. In light of the parties' expressed preferences, the MMO will appoint the mediator. Normally, a single mediator will be appointed unless the parties agree otherwise.

### **Disclosures and Replacement of a Mediator**

6. Any mediator, whether selected jointly by the parties or appointed by the MMO, will disclose both to the MMO and to the parties whether he or she has any financial or personal interest in the outcome of the mediation or whether there is any other matter of which the mediator is aware which could be regarded as involving a conflict of interest (whether apparent, potential or actual) in the mediation. Upon receiving any such information, or in any other circumstance in which a selected mediator indicates that he or she is unable to act, after soliciting the views of the parties, the MMO may replace the mediator, preferably from the lists of acceptable mediators previously returned by the parties.

### **Representation**

7. Any party may be represented by persons of the party's choice. Representation by counsel is not required but highly recommended. Parties other than natural persons are expected to have present throughout the mediation an officer, partner or other employee with full authority to settle the dispute.

# MEDAL RULES

## (ADR CENTER'S INTERNATIONAL MEDIATION RULES)

### **Date, Time and Place of the Mediation**

8. The mediator will fix the date and the time of each mediation session. The mediation will be held at the MMO office convenient to the parties, or at such other place as the parties and the mediator agree.

### **Conduct of the Mediation and Authority of the Mediator**

9. The mediator may conduct the mediation in such a manner as he or she considers appropriate, taking into account the circumstances of the case, the wishes of the parties, and the need for a speedy settlement of the dispute. The mediator does not have the authority to impose a settlement on the parties. The mediator is authorized to conduct both joint and separate meetings with the parties. If requested by all parties in writing, the mediator may make oral or written recommendations concerning an appropriate resolution of the dispute.

### **Privacy**

10. Mediation sessions are private. Persons other than the parties and their representatives may attend only with the permission of the parties and with the consent of the mediator.

### **Confidentiality**

11. All information, records, reports or other documents provided to any MMO in connection with the initiation of the mediation or produced in the mediation will be confidential. The mediator and every officer or employee of the MMO will not be compelled to divulge such records or to testify or give evidence in regard to the mediation in

any adversary proceeding or judicial forum. The parties and everyone present at the mediation - including counsel and experts - will maintain the confidentiality of the mediation and will not rely upon, or introduce as evidence in any arbitral, judicial or other proceeding:

- (i) views expressed or suggestions or offers made by another party or the mediator in the course of the mediation proceedings;
- (ii) admissions made by another party in the course of the mediation proceedings; or
- (iii) the fact that another party had or had not indicated a willingness to accept a proposal for settlement made by another party or by the mediator.

The requirement to confidentiality shall not apply if, and to the extent that:

- (i) all parties consent to the disclosure; or
- (ii) the mediator is required under the general law to make disclosure; or
- (iii) the mediator reasonably considers that there is a serious risk of significant harm to the life or safety of any person if the information in question is not disclosed; or
- (iv) the mediator reasonably considers that there is a serious risk of his/her being subject to criminal proceedings unless the information in question is disclosed.

Facts, documents or other things otherwise admissible in evidence in any arbitral, judicial or other proceeding, will not be rendered inadmissible by reason of their use in the mediation.

### **Exclusion of Liability**

12. Neither the mediator, nor the MMO or any employee or consultant engaged by it will be liable to any party for any act or omission alleged in connection with any mediation conducted under these Rules.

## Interpretation and Application of the Rules

13. The mediator will interpret and apply these Rules insofar as they relate to the mediator's duties and responsibilities. All other procedures will be interpreted and applied by the MMO administering the mediation.

## Administrative Fees

14. Unless otherwise agreed by the parties to the mediation, all of the MMO's administrative fees and expenses, including, without limitation, the fees and expenses of the mediator, will be divided equally between or among the parties to the mediation.

## Role of Mediator in Other Proceedings

15. Unless all parties agree in writing, the mediator may not act as an arbitrator or as a representative of, or counsel to, a party in any arbitral or judicial proceedings relating to the dispute that was the subject of the mediation.

## Resort to Arbitral or Judicial Proceedings

16. The parties undertake not to initiate, during the mediation, any arbitral or judicial proceedings in respect of a dispute that is the subject of the mediation, except that a party may initiate arbitral or judicial proceedings when, in its opinion, such proceedings are either necessary to toll a limitations period, including a statute of limitations that may be applicable, or are necessary otherwise to preserve its rights in the event that the mediation is unsuccessful.

## Referral to Another MMO

17. In the event the parties express a preference to mediate in another MEDAL Member country, the MMO may transfer responsibility for administering the mediation to the MMO requested by the parties.

## Governing Law and Jurisdiction

18. The mediation shall be governed by, construed and take effect in accordance with the laws of the MMO administering the mediation. The courts of the state of such MMO shall have exclusive jurisdiction to settle any claim, dispute or matter of difference which may arise out of or in connection with the mediation.

## Termination of the Mediation

19. Any of the parties may withdraw from the mediation at any time and shall immediately inform the mediator and the other representatives in writing. The mediation will terminate when:

- a party withdraws from the mediation; or
- the mediator, at his/her discretion, withdraws from the mediation; or
- a written settlement agreement is concluded.

The mediator may also adjourn the mediation in order to allow parties to consider specific proposals, get further information or for any other reason, which the mediator considers helpful in furthering the mediation process. The mediation will then reconvene with the agreement of the parties.

## Settlement Agreements

20. Any settlement reached in the mediation will not be legally binding until it has been reduced to writing and signed by, or on behalf of, the parties.

# COSTS

The total cost of a mediation procedure is composed of two elements: fees and expenses. The fees can be fixed or “on success,” at the option of the clients, and are paid to ADR Center. Nothing is paid by the parties to the mediator directly. Expenses include those of administration, which are required in all cases once the parties agree to pursue mediation. All of the sums exclude VAT and normally are to be deposited with ADR Center at least five days before the mediation session.

## **Fixed Fee**

If the parties opt for a fixed rate, the fee for the mediation procedure varies based on the value of the dispute, from € 1,000 to € 2,500 per party for each four hours of work. The parties share the cost of the time spent in joint or separate sessions with the mediator, the duration of which is agreed upon in advance by the parties and ADR Center. Extensions of the time initially provided for are available upon approval by the parties. Normally, the mediation procedure lasts only one day; occasionally, disputes of limited complexity can be resolved in a half day, while generally only in very complex cases does the duration of a mediation procedure exceed three days. When the value of the dispute is much less than the lowest standard fee level (which is normally for disputes valued at up to € 250,000), or exceeds the highest standard level (which covers cases where the amount in dispute is valued between 5 to 15 million Euro), the rate is agreed upon by the parties and ADR Center. A payment of € 350 per party is required to cover administrative expenses. If the procedure lasts over three days, administrative expenses are equal to 5% of the applicable fees.

## **“On Success” Fee**

If the parties prefer an “on success” rate, the fee for a mediation which results in settlement is predetermined by the parties and ADR Center. This sum varies from 1% of the value of the dispute,

for cases where the amount in dispute is up to € 250,000, down to 0.15% for disputes valued between 5 and 15 million Euro. The advantage of this formula compared to fixed fee is that no fee is due to ADR Center without an agreed-on, positive conclusion to the process. (If the matter does not settle, the amounts deposited in advance are refunded to the parties, except for administrative, travel and similar expenses as noted below.)

Administrative expenses vary from a minimum of 500 to a maximum of 800 Euro per party, based on the value and complexity of the dispute.

## **Other Expenses**

Independent of the fee option chosen, transportation expenses of the mediator to reach the mediation meeting location, as well as rental fees, if any, for the location or particular equipment (e.g., if the meeting is held outside the ADR Center office) will be added to the fee. The travel time of the neutral is charged at 50% of the applicable hourly rate, whether or not the parties have opted for the “on success” fee for the mediation itself.

The full costs of a mediation procedure (fees and expenses), or the formula by which they are determined when using the “on success” fee structure, are always specified in advance and in writing by the parties and ADR Center, in the context of the “Proposal to Start a Mediation Procedure” (BLUE FORM). The costs, accordingly, cannot be varied without the express written consent of the parties.

[www.adrcenter.com/mediation\\_tools](http://www.adrcenter.com/mediation_tools) (COSTS)

# CLAUSES FOR NEW CONTRACTS

*Experience demonstrates that to convene mediation in the absence of an appropriate pre-existing contractual clause can require some time. The standard inclusion of a clause similar to number 1) below in new contracts is therefore highly recommended, particularly since the parties remain free to decide jointly to opt out of mediation for any given dispute, if they find it unnecessary or undesirable under the circumstances.*

*Also, because there is a percentage of cases in which mediation is unsuccessful, it is recommended that parties provide for an alternate procedure in order to ensure as efficient as possible a final resolution in the event that mediation does not produce the desired outcome. For example, clauses resembling numbers 2) and 3) below provide for agreed-upon recourse to arbitration or to court, respectively, if mediation does not succeed.*

*The Case Management Service of ADR Center, at + 39 06 6938.0004, will be pleased to discuss the merits of contractual clauses such as the samples provided below; this requires no commitment or costs on your part. In any event, before inserting a mediation clause into a contract, it is always a good principle to consult your lawyer.*

## 1. Mediation Clause

Art. (...) Dispute Resolution

Every dispute arising under or connected to this Contract will be submitted for an attempt at amicable settlement based on the Mediation Rules of ADR Center S.p.A.

## 2. Mediation and Arbitration Clause

Art. (...) Dispute Resolution

Every dispute arising under or connected to this Contract will be submitted for an attempt at amicable settlement based on the Mediation Rules of ADR Center S.p.A.

In the event that the dispute is not resolved within [90] days of the beginning of the mediation procedure, the dispute will be resolved by a Sole Arbitrator [Arbitral Tribunal] appointed by ..... The arbitration will be formal [informal]. The seat of the arbitration will be ..... The arbitrator [arbitrators] will apply the law of ..... The decision of the arbitrator [arbitrators] will be final and binding for the parties.

## 3. Mediation and Civil Judgment Clause

Art. (...) Dispute Resolution

Every dispute arising under or connected to this Contract will be submitted for an attempt at amicable settlement based on the Mediation Rules of ADR Center S.p.A.

In the event that the dispute is not resolved within [90] days of the beginning of the mediation procedure, the dispute will be exclusively resolved by the Court of .....

ROME PARIS LONDON THE HAGUE NEW YORK CHICAGO SAN FRANCISCO LOS ANGELES



CONFLICT MANAGEMENT & DISPUTE RESOLUTION

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UK

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The Netherlands

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Chicago  
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