

CEDR's 2018 Rules allow flexibility in commercial mediation

Submitted by: Centre for Effective Dispute Resolution (CEDR)

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Last night CEDR, Europe's largest independent ADR (Alternative Dispute Resolution) organisation, launched the 2018 updates of all of its rules and main model mediation documents at a special event in London, hosted by Herbert Smith Freehills LLP.

Every year CEDR updates its free model mediation documents, as a part of its not-for-profit mission, to reflect best practice and the changing requirements for mediation. When updating the 2018 rules, CEDR used its knowledge of the 7,000 disputes it handles annually for all ADR processes and in particular the 400 'major case' mediations where the average quantum of claim is well over £1 million.

As a result, CEDR's Model Documents and ADR Contract Clauses are the most influential and frequently used ADR clauses in the field, with a combined 20,000 downloads from the CEDR website each year.

This year, following the annual review of mediation cases, CEDR's Model documents were amended to address three main identified issues:

Greater clarification of roles and responsibilities for those attending the mediation. For clarity the Model Mediation Agreement is adapted to expressly accommodate those who do not attend the full mediation with respect to authority and status of the agreement. New wording means the signatory to the Model Mediation Agreement can bind all of their party to confidentiality. The role and behaviour of an observer with a mediator at the mediation, if not objected to by the parties, is also specified and explained.

Overcoming logistical obstacles that can be a block to progressing a mediation is addressed in the Model Documents. This reflects the reality that CEDR's Client Advisors are often asked to perform this service. As part of their mediation preparation parties can now request CEDR to decide on logistical arrangements following consultation with all sides. This can include: (1) Choice of venue (2) Start time (3) Date of mediation (4) Deadlines for documentary disclosure.

More guidance when adapting the mediation process or ADR Clauses is given. When adapting Mediation documents, there is the possibility for parties to include potentially incorrect or unhelpful terms.

Particular attention has been paid to the phrase 'Binding Mediation', and the need to avoid it. The option to include 'working days' with reference to timescales (notice of the dispute, commencement of mediation and nomination of the mediator) has been added but with caution in respect to International (cross-border) contracts.

Additionally there has been a growing recognition in the legal community that mediation can be used in a bespoke way beyond the one-day mediation model. There already exists both expertise in doing this through flexibility and process design made possible both by current provisions in the CEDR Rules and the expertise of a number of experienced mediators and clients. The challenge for CEDR is to communicate to the wider legal profession that the scope to bespoke mediation in these ways already exists.

Further translations of CEDR's international ADR contract clause, widely used in different jurisdictions by in-house counsel and transactional lawyers, now include Croatian, Finnish, Georgian and Romanian, in addition to the existing versions in Arabic, Armenian, Brazilian Portuguese, Chinese (Mandarin), Dutch, English, French, German, Greek, Indonesian, Italian, Japanese, Korean, Mongolian, Polish, Portuguese, Russian, Spanish, Swedish, Thai and Turkish.

All documents can be viewed in the Resources Section of the CEDR website -
www.cedr.com/about_us/modeldocs/

CEDR would like to thank all of our collaborators, especially the CEDR Chambers Mediator Group, who have helped in this review of the documents.

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The CEDR Model Documents and Rules consists of:

CEDR Model Mediation Procedure
CEDR Model Mediation Agreement (also called agreement to mediate)
CEDR Model Settlement Agreement
CEDR Model Tomlin Order
CEDR Code of Conduct for Third Party Neutrals
CEDR ADR Contract Clauses:
1.Simple core mediation clause
2.Simple core including time and notification
3.Simple core including time, reference to court proceedings in parallel
4.Simple core including time, reference to no court or arbitration proceedings until mediation terminated
5.Multi-tiered process (step clause)
6.International core mediation clause
The CEDR ADR Notice

CEDR also provides Employment Mediation Contract Clauses and Model Procedure Documents for other ADR processes.

ENDS

About CEDR:

CEDR is Europe's largest independent Alternative Dispute Resolution service for both commercial and consumer disputes handling thousands of referrals a year. CEDR operates the Court of Appeal's Mediation Service and is certified by the Chartered Trading Standards Institute under the European Union Directive on Consumer Alternative Dispute Resolution. CEDR is a leading negotiation and conflict management trainer internationally in the field and its acclaimed Mediator Skills Training Accreditation has been awarded to over 7000 mediators in 70 countries. As a non-profit organisation with a public mission to innovate and develop conflict management and dispute resolution CEDR undertakes unique foundation activities such as the national negotiation competition, guidance for public inquiries and rules for settlement in arbitration.

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