

## **Business Mediation Rules – 2015**

Related to: Mediation

### **I – INITIAL PROVISIONS**

**1.1** CAMARB - BUSINESS ARBITRATION CHAMBER - BRAZIL, hereinafter referred to as CAMARB, aims to administer arbitration proceedings and other extrajudicial forms of dispute resolution. Its institutional activity does not involve any jurisdictional act.

**1.2** The mediation procedure is voluntary, non-binding, and based on good faith and the will of the parties.

**1.3** The CAMARB Mediation Rules, now designated "Rules," shall apply whenever agreed between the parties, regardless of the existence of a mediation or tiered clause stipulating the adoption of the CAMARB mediation rules or the Arbitration Chamber of Minas Gerais, CAMARB's previous name.

**1.4** Unless otherwise provided, the Rules in force on the date of the Mediation Request shall apply.

### **II – MEDIATORS**

**2.1** The CAMARB Board of Directors shall be exclusively responsible for drawing up the list of mediators.

**2.2** Mediators may be appointed from the CAMARB List of Mediators or others who are not part of it, provided they are capable people and trusted by the parties.

**2.3** The person(s) appointed to act as mediator(s) shall sign a statement informing of any circumstance that may give rise to justifiable doubt as to their impartiality and independence in relation to the parties or the dispute object of the mediation, as well as declare in writing that they have the technical competence and necessary availability to conduct the mediation within the stipulated period.

**2.3.1** If, during the course of the mediation, the mediator becomes aware of the existence of a fact or circumstance that may affect their impartiality or independence, they must inform the parties and CAMARB of the need for their removal.

### **III – MEDIATION REQUEST**

**3.1** Anyone wishing to resolve disputes through mediation, under the administration of CAMARB, must communicate their intention to the Secretariat of that entity, indicating:

I - name, physical and electronic address, and full qualification of the parties involved and their lawyer, if any;

II - full copy of the instrument containing the mediation or tiered clause, if any;

III - brief summary of the object of the dispute;

IV - summary of claims;

V - estimated value of the dispute.

**3.2** All documents submitted by the parties must be delivered to the CAMARB Secretariat in a sufficient number of copies to be forwarded to the mediator(s) and the other parties, if applicable, and no documents shall be kept by CAMARB, except for a copy of the Mediation Request and a copy of the Mediation Agreement.

**3.3** Communications from the CAMARB Secretariat and the mediator and copies of the parties' statements shall be sent to the party or, if there is an attorney appointed by them, exclusively to the attorney, by letter, email, or any other form of written communication addressed to the address provided by the party(ies) to the Secretariat.

**3.4** When requesting the institution of the mediation procedure, the applicant must make a non-refundable deposit of their share of the Administrative Fee.

**3.5** If the requirements of items 3.1, 3.2, and 3.4 are not met, the Secretariat shall set a deadline for compliance. If the requirements are not met within the deadline, the Mediation Request shall be filed, without prejudice to the possibility of a new request.

**3.6** The CAMARB Secretariat shall send the Mediation Request and its annexes to the respondent at the address provided by the applicant, as well as a copy of these Rules and the list of names that make up its List of Mediators, so that they may comment on the request within 15 (fifteen) days of receipt.

**3.7** If the respondent cannot be found, the applicant shall be immediately informed and must provide a new address to the CAMARB Secretariat within 10 (ten) days, under penalty of the mediation request being filed, without prejudice to the possibility of a new request.

**3.8** If the other party refuses to participate in the mediation, the CAMARB Secretariat shall communicate this fact in writing to the requesting party.

#### **IV – PRE-MEDIATION**

**4.1** If both parties preliminarily agree to participate in the mediation procedure, they shall be invited to appear at CAMARB's headquarters on a day, time, and place previously scheduled by the CAMARB Secretariat for the pre-mediation interview to be held.

**4.2** The pre-mediation interview may, at the discretion of the parties or at the suggestion of the CAMARB Secretariat, be conducted by telephone conference.

**4.3** The pre-mediation interview shall be conducted by the CAMARB Secretariat with each party separately, unless the parties have previously stipulated that it should be conducted jointly.

**4.4** The pre-mediation interview shall have the following objectives:

I - clarify to the parties the objectives, techniques, stages, and costs of the mediation procedure;

II - clarify to the parties the role and responsibilities of the mediator(s), the parties, and their lawyers;

III - guide the parties in the criteria for choosing the mediator(s), if necessary;

IV - clarify to the parties that the mediator will not behave as the parties' lawyer, will not provide any type of consultancy or advice, and will not assume any personal or professional responsibility for the agreement;

V - emphasize the importance of the presence of the parties involved throughout the mediation process, personally or represented by people who have the power to decide on the dispute;

VI - request the parties to indicate whether the people who will participate in the procedure have the necessary powers to carry out any agreement;

VII - clarify that, in principle, only the parties and their lawyers will participate in the mediation sessions, and that any participation of third parties must be previously communicated and agreed with the other party and the mediator(s);

VIII - explain the general terms of the Mediation Agreement;

IX - clarify to the parties the possibility of the mediation being conducted by a single mediator or in co-mediation, upon payment of double fees;

X - clarify to the parties that the agreement will only be reached if the parties so wish, and that no type of responsibility can be attributed to the mediator or CAMARB for the eventual non-completion of the agreement.

## **V – APPOINTMENT OF MEDIATORS**

**5.1** The CAMARB Secretariat shall request the parties to appoint, by common agreement, within 10 (ten) days from the date of the pre-mediation interview, mediator(s) to act in the mediation procedure.

**5.2** If it is necessary for the mediator(s) to be appointed by the CAMARB Board of Directors, the parties shall be informed so that they can express their views, within a maximum period of 5 (five) days from receipt of the communication, regarding the criteria to be observed by the Board of Directors when choosing the mediator(s), such as any preference for the style of mediation (facilitative, transformative or evaluative), technical or legal knowledge in a specific area, proficiency in a language, or nationality of the mediator.

**5.3** Based on the statements mentioned in item 5.2, the CAMARB Secretariat shall send the parties a list of mediators with a minimum of three referrals, including their respective resumes, requesting the appointment, by each of the parties, from among the names on the list, of the mediators with whose appointment they would agree, within 5 (five) days.

**5.4** The mediation shall be conducted by the mediator jointly appointed by the parties or, if there is more than one, by the one chosen by the CAMARB Board of Directors.

**5.5** If there is no coincidence of appointment, the Board of Directors shall appoint the mediator, in accordance with the criteria established above.

**5.6** Once the mediator(s) have been appointed, the CAMARB Secretariat shall request them to express any impediment within 10 (ten) days.

**5.7** After receiving the statement of availability, accompanied by the declaration of non-impediment and independence by the CAMARB Secretariat, the parties shall be granted a period of 5 (five) days to offer, with justification, any challenge to the mediator(s).

**5.8** In the event of a challenge to the mediator(s), the mediator(s) shall receive a communication from the CAMARB Secretariat so that they can respond within 5 (five) days, of which the parties shall be given a view for an equal period.

**5.9** If any appointed mediator dies, is declared impeded or suspected, or is unable to perform the function, and the parties agree to continue the mediation, they must jointly appoint another mediator within 10 (ten) days, otherwise the substitute shall be appointed in the form of item 5.2.

**5.10** When more than one party is an applicant or respondent, and the dispute is submitted to more than one mediator, the applicant or multiple applicants must appoint one mediator, while the respondent or multiple respondents must appoint another mediator.

## **VI – MEDIATION AGREEMENT**

**6.1** After the appointment of the mediator(s), the CAMARB Secretariat shall prepare the draft Mediation Agreement, which shall contain:

I - name, profession, marital status, and address of the parties and their lawyers, if any;

II name, profession, and address of the appointed mediator(s);

III - the matter that will be the object of the mediation and the summary of the claims;

IV - the language in which the mediation procedure will be conducted;

V - the designation of the place, date, and time of the mediation sessions;

VI - the confidentiality clause and its extent;

VII - the duration of the mediation;

VIII - the provision that the mediator may not act as an arbitrator or witness in judicial or arbitration proceedings related to the object of the conflict brought to mediation;



IX - the determination of the form of payment of the mediator(s)' fees and the administrative fee, as well as the declaration of responsibility for the respective payment and for the expenses of the mediation;

X - signature of the parties, the mediator(s), and a member of the CAMARB Secretariat.

**6.2** The parties and the mediator(s) must sign the Mediation Agreement in a session specifically designated for this purpose, at which time the Administrative Fee shall be paid and the mediator(s)' fees shall be deposited, in accordance with these Rules.

**6.3** The mediation shall be considered initiated at the time of signing the Mediation Agreement.

## **VII – PROCEDURE**

**7.1** The stages and rules of the mediation procedure shall be defined by the mediator(s) themselves and clarified by them at the beginning of the first mediation session.

**7.2** Mediation sessions may be held jointly or separately, as the mediator sees fit.

**7.3** If deemed necessary, the mediator may request the parties to submit in writing, succinctly, within a period of up to 10 (ten) days before the date scheduled for the first session, a brief account of the facts, describing, if possible, an analysis of their interests, needs, and possible risks of the dispute, as well as any documents they consider important for the correct information of the mediator about the issue in conflict.

**7.4** Unless the parties state otherwise, the mediator must consider this information and documents confidential.

**7.5** In order to guarantee the effectiveness of the procedure, the parties must prove that the people present at the mediation sessions have the power to represent them and make the decisions necessary for the effective resolution of the conflict, including signing an agreement.

**7.6** The mediator may limit the number of people representing each of the parties in order to provide a conducive environment to the proper development of the procedure.

**7.7** The mediator must observe the rules of conduct provided for in the CAMARB Code of Ethics for Mediators.

**7.8** The mediation procedure shall be considered terminated: (i) upon the completion of an agreement between the parties, (ii) in the event of a declaration by any of the parties of a lack of interest or the impossibility of reaching an agreement, or (iii) by decision of the mediator(s) when they understand that an agreement is unlikely.

**7.8.1** In the cases provided for in item 7.8, the parties or the mediator, as the case may be, must inform the CAMARB Secretariat of their decision, without having to state their reasons.

**7.9** Once the mediation procedure has ended, all documents submitted by the parties or produced during the mediation shall be made available to the party that submitted them for a period of 30 (thirty) days. After this period, CAMARB may destroy all documentation.

**7.9.1** The mediator shall destroy all notes and other documents received or produced by them during the mediation.

**7.10** The presence of a lawyer representing the party in the mediation is optional. When present, they must sign the confidentiality agreement.

**7.11** If the parties reach a final solution to the conflict, and it is not possible to reduce the final agreement to writing, a term shall be drawn up before the end of the mediation session, containing the general guidelines relating to the points to be addressed in the preparation of the aforementioned final agreement. This term must be signed by all parties and their attorneys.

**7.11.1** The confidentiality of the mediation does not apply to this document, which can be used to prove the terms of what was agreed, whether in ordinary court or in arbitration.

## **VIII – ADMINISTRATIVE FEE, MEDIATOR FEES, AND OTHER EXPENSES**

**8.1** The expenses inherent to the mediation procedures administered by CAMARB shall be determined in accordance with the Schedule of Costs in force at the time of the Mediation Request and comprise the Administrative Fee, the Mediator Fees, and the other expenses referred to therein.

**8.2** In the event of non-payment, by any of the parties, of the Administrative Fee and/or the Mediator Fees, at the time and in the amounts stipulated in the Schedule of Costs, the other party may collect the respective amount, on behalf of the defaulting party, in order to allow the mediation to take place. If the Administrative Fee and/or fees are not fully advanced within 15 (fifteen) days, the mediation shall be suspended and may be resumed after the payment has been made.

**8.3** The suspension for lack of payment may not exceed 30 (thirty) days, after which the mediation shall be considered terminated. The amounts relating to the Administrative Fee and Mediator Fees paid up to that point shall be reverted in favor of CAMARB and the mediator(s), respectively.

**8.4** The expenses incurred for the practice of acts in the mediation procedure shall be borne by the party requesting the respective measure or by both parties if the measure is at the initiative of the mediator(s) or is provided for in these Rules. The CAMARB Secretariat may request the parties to advance a sufficient amount to cover the expenses foreseen for the mediation, in an amount to be stipulated according to the specific case, which amount shall be subject to accountability.

**8.5** At the end of the mediation procedure, CAMARB shall be responsible for surveying the amounts paid by the parties, in order to verify whether additional payments will be necessary, either as Mediator Fees, as a supplement to the Administrative Fee, or, eventually, reimbursement of expenses, which must be duly proven by CAMARB or the mediator(s), as the case may be. If, however, there is a remaining balance in favor of the parties, this shall be reimbursed to them.

**IX – FINAL PROVISIONS**

**9.1** In the event that an arbitration procedure is initiated after a mediation has taken place, unless expressly agreed between the parties and the mediator, the person who participated as a mediator for the same dispute may not act as an arbitrator.

**9.2** Due to its non-binding and confidential nature, the mediator(s) is prevented from acting as a witness in any judicial or arbitration proceeding that may be instituted to resolve the same conflict.

**9.3** The mediation procedure shall be strictly confidential, and CAMARB, the mediator(s), the parties themselves, and all other participants are prohibited, without the express consent of all parties, from disclosing any information to which they have access as a result of their office or their participation in the mediation procedure, except in cases where there is a legal obligation to disclose.

**9.4** The confidentiality of the mediation encompasses all information, documents, and data presented by the parties, the mediator(s), and the other parties involved in the mediation procedure, from the presentation of the Mediation Request by the interested party until the end of the procedure, whether or not there has been an agreement between the parties, except only: (i) information and documents expressly identified as non-confidential; (ii) documents and information that are in the public domain; (iii) documents and information that were already known to all the parties involved and were not protected by a confidentiality obligation agreed in a separate clause, term, or contract.

**9.5** In the absence of stipulation by the parties, the place of mediation shall be the headquarters of CAMARB.

**9.6** In the absence of an agreement between the parties, the mediator(s) shall determine the language or languages of the mediation procedure, taking into account all relevant circumstances, including the language of the contract, if any.

**9.7** The eventual institution of judicial or arbitration proceedings shall not prevent the continuation of the mediation procedure, nor its beginning, if it is in the interest of the parties. If there is an agreement in the mediation, this must be brought by the parties or their lawyers to the attention of the state judge or arbitrator responsible for conducting the respective process so that they can ratify the agreement, if it is in the interest of the parties, and put an end to the process, if all the litigious issues have been resolved through the agreement signed by the parties.

**9.8** The mediator(s) shall be responsible for interpreting and applying these Rules in all matters relating to their competence, duties, and prerogatives.

**9.9** Omitted cases shall be resolved by the mediator(s) or by the CAMARB Board of Directors, if one has not been appointed.

**9.10** The CAMARB Board of Directors shall be responsible for defining the Schedule of Costs and the List of Mediators.

**9.11** The Schedule of Costs and the List in force at the time of the Mediation Request shall apply.

**9.12** These Rules, registered in the Registry Office of Deeds and Documents of Belo Horizonte, Minas Gerais, may only be amended by resolution of the CAMARB Board of Directors.