

THE ZAMBIA ASSOCIATION OF ARBITRATORS

Code of Professional Conduct of Arbitrators Conciliator and Mediators

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PREAMBLE

The provisions of this Code deal with arbitrations, conciliations and mediations conducted in Zambia. Arbitrators, conciliators and mediators that are envisaged under this code are those appointed by the parties who voluntarily agree to use Alternative Dispute Resolution (ADR) mechanisms as preferred choices of dispute resolution. However, the arbitrators, conciliators and mediators may also be appointed by operation of law and or through a statute providing for one of the ADR mechanisms as a method of resolving disputes. The appointment of arbitrators, conciliators and mediators may also be made through an arbitral institution.

The standards of professional responsibility set forth in this code are intended to guide the impartial third party neutral in all of these diverse procedures.

Scope of Code

This Code is a developed set of standards of professional behavior for arbitrators, conciliators and mediators. It applies to all arbitrations, conciliations and mediations conducted in Zambia.

The word “arbitrator”, as used hereinafter in the Code, shall have the same meaning as conferred upon it by the Arbitration Act No. 19 of 2000 and denotes as impartial person who serves in an arbitration dispute in which there is conferred authority to decide on issues or to render a formal award.

The words “conciliator” and “mediator” as used hereinafter in the Code, denote an impartial person, who serves in a conciliation or mediation dispute in which there is no conferred authority to decide on the issues or to render a formal award but merely to act as a facilitator for resolving the dispute by the parties themselves.

Application of Code

All person acting as arbitrators, conciliators and mediators will be governed by this Code in their professional conduct. The Zambia Association of Arbitrators and the Zambia Centre for Dispute Resolution Limited will apply the Code to the arbitrators, conciliator and mediators on their panels in cases handled under their respective appointments or referral procedures.

In interpreting the Code and applying it to charges of professional misconduct, it should be recognized that while some of its standards express ethical principles basic to arbitration, conciliation and mediation, others rest less on ethics than on considerations of good practice. Strict lines of distinction should not be drawn between ethics and good practice. The gravity of the alleged misconduct and the extent to which ethical standards have been violated should be assessed in the light of the facts and circumstances of each particular case.

PART I

GENERAL CODE

1. QUALIFICATIONS

(i) *General Qualifications*

- a. Essential personal qualification of arbitrators, conciliators and mediators include honesty, integrity, impartiality and general competence in the art and skill of dispute resolution.
- b. Arbitrators, conciliators and mediators must demonstrate ability to exercise these personal qualities faithfully and with good judgment, both in procedural matters and in substantive decisions (where applicable).
- c. Selection by mutual agreement of the parties or direct designation by an arbitral institution or court are the effective methods of appraisal of this combination of an individual's potential and performance, rather than the fact of placement on a panel of an arbitral institution or membership in the professional association of arbitrators, conciliators and mediators.
- d. An arbitrator must be as ready to rule for one party as for the other on each issue, either in a single case or in a group of cases. Compromise by an arbitrator for the sake of attempting to achieve personal acceptability is unprofessional. A conciliator or mediator must remain neutral and treat the parties equally and not favour one or unduly burden the other for the sake of reaching settlement.

(ii) *Special Qualifications*

- a. When an arbitrator, conciliator or mediator decides that a case requires specialized knowledge beyond his/her competence, the arbitrator, conciliator or mediator must decline appointment, withdraw, or request technical assistance.
- b. An arbitrator, conciliator or mediator may be qualified generally but not for specialized assignments. Some types of engineering, construction, medical or accounting cases may require specialized knowledge, experience or competence. Arbitration, conciliation and mediation of contract terms also requires distinctive background and experience.
- c. Effective appraisal by an arbitral institution court or by an arbitrator of the need for special qualifications requires that both parties make known the special nature of the case prior to appointment of the arbitrator.

2. RESPONSIBILITIES TO THE PROFESSION

- a. Arbitrators, conciliators and mediators must uphold the dignity and integrity of the office and endeavour to provide effective service to the parties. To this end, arbitrators, conciliator and mediators should keep current with principles, practices and developments that are relevant to their respective fields of practice and in the practice of ADR.
- b. Experienced arbitrators, conciliators and mediators should cooperate in the training of new arbitrators.
- c. Arbitrators, conciliators and mediators shall not engage in false or misleading advertising and neither should they perform the functions designated for arbitral instructions without seeking the permission of such instructions.

3. RESPONSIBILITIES TO THE PARTIES

(i) Recognition of Diversity in Arbitration, Conciliation and Mediation Arrangements

- a) An arbitrator, conciliator and mediator should conscientiously endeavour to understand and observe, to the extent consistent with professional responsibility, the significant principles governing each arbitration, conciliation and mediation system in which the arbitrator serves.
- b) Recognition of special features of a particular arbitration, conciliation and mediation arrangement can be essential with respect to procedural matters and may influence other aspects of the arbitration, conciliation and mediation process.
- c) Such understanding does not relieve an arbitrator, conciliator and mediator from a corollary responsibility to seek to discern and refuse to lend approval or consent to any collusive attempt by the parties to use arbitration, conciliation and mediation for an improper purpose.

(ii) Required Disclosures

- a) Before accepting an appointment, an arbitrator, conciliator or mediator must disclose directly or through the arbitral institution, court or other appointing authority any current or past relationship with any of the parties involved in a proceeding in which the arbitrator, conciliator or mediator is being considered for appointment or has been tentatively designated to serve. Disclosure must also be made of any pertinent pecuniary interest or any fact that may lead to partiality or perception of partiality.
- b) The duty to disclose includes membership on a Board of Directors, fulltime or part-time services, as a representative or advocate, consultation work for a fee, current stock or bond ownership or any other pertinent

form of managerial, financial or immediate family interest in the company involved if one or both of the parties are companies.

- c) When an arbitrator, conciliator or mediator is serving concurrently as an advocate for or representative of one of the parties in another matter, or has done so in recent years, such activities must be disclosed before accepting appointment as an arbitrator. An arbitrator, conciliator or mediator must disclose such activities to an arbitral institution or court if on that arbitral institution's active panel or seeking placement on a panel. Such disclosure then satisfies this requirement for case handled under that institution's referral.
- d) An arbitrator, conciliator and mediator on an arbitral institution's or court's panel has a continuing obligation to notify the arbitral institution or court of any significant changes pertinent to this requirement.
- e) When an arbitral institution or court are not involved, an arbitrator, conciliator or mediator must make such disclosure directly to the parties unless the arbitrator, conciliator and mediator is certain that both parties to the case are fully aware of such activities.
- f) An arbitrator, conciliator or mediator must not permit personal relationships to affect decision making.
- g) Prior to acceptance of an appointment, an arbitrator, conciliator or mediator must disclose to the parties and or to the arbitral institution or court involved any close personal relationship or other circumstance, in addition to those specifically mentioned earlier in this section, which might reasonably raise a question as to the arbitrator's impartiality.
- h) Arbitrators, conciliators and mediators establish personal relationships with many companies with fellow members of various professional associations and the legal fraternity. There should be no attempt to be secretive about such friendships or acquaintances but disclosure is not necessary unless some feature of a particular relationship might reasonably appear to impair impartiality.
- i) If the circumstances requiring disclosure are not known to the arbitrator, conciliator or mediator prior to acceptance of appointment, disclosure must be made when such circumstances become known to the arbitrator, conciliator or mediator.
- j) The burden of disclosure rests on the arbitrator, conciliator or mediator. After appropriate disclosure, the arbitrator, conciliator or mediator may serve if both parties so desire. If the arbitrator, conciliator or mediator believes or perceives that there is a clear conflict of interest, the arbitrator,

conciliator or mediator should withdraw, irrespective of the expressed desires of the parties.

(iii) Privacy of the Process

- a) All significant aspects of arbitration, conciliation or mediation proceeding must be treated by the arbitrator, conciliator or mediator as confidential unless this requirement is waived by both parties or disclosure is required or permitted by law.
- b) Attendance at hearings by persons not representing the parties or invited by either or both of them should be permitted only when the parties agree or when an applicable law requires or permits. Occasionally, special circumstances may require that an arbitrator, conciliator or mediator rule on such matters as attendance and degree of participation of counsel selected by a disputant.
- c) Discussion of a case at any time by an arbitrator, conciliator or mediator with persons not involved directly should be limited to situations where advance approval or consent of both parties is obtained or where the identity of the parties and details of the case are sufficiently obscured to eliminate any real probability of identification.
- d) A commonly recognized exception is discussion of a problem in a case with a fellow arbitrator, conciliator or mediator. Any such discussion does not relieve the arbitrator, conciliator or mediator who is acting in the case from sole responsibility for the decision or settlement and the discussion must be considered as confidential.
- e) Discussion of aspects of a case in a classroom seminar or workshop without prior specific approval of the parties is not a violation provided the arbitrator, conciliator or mediator is satisfied that there is no breach of essential confidentiality.
- f) It is a violation of professional responsibility for an arbitrator, conciliator or mediator to make public an award or settlement without the consent of the parties.
- g) An arbitrator, conciliator or mediator may ask the parties whether they consent to the publication of the award or settlement either at the hearing or at the time the award or settlement is issued or reached. The arbitrator, conciliator or mediator must also remind the parties of their right to withdraw in writing such consent to publication of the award or settlement subsequent to their giving consent.
- h) Applicable laws, regulations or practices of the parties may permit or even require exceptions to the above noted principles of privacy.

(iv) Personal Relationships with the Parties

- a) An arbitrator, conciliator or mediator must make every reasonable effort to conform to arrangements required by an arbitral institution or court or mutually desired by the parties regarding communications and personal relationships with the parties.
- b) Only an “arm’s-length” relationship is acceptable to the parties in arbitration, conciliation or mediation arrangements. The arbitrator, conciliator or mediator should have no contact of consequence with representatives of either party while handling a case without the other party’s presence or consent.

(v) *Jurisdiction*

- a) An arbitrator must observe faithfully both the limitations and inclusions of the jurisdiction conferred by an agreement or submission under which the arbitrator serves. Conciliators and mediators may in an effort to generate options for settlement delve into issues that are not referred to them in the dispute.
- b) A direct settlement by the parties of some or all issues in a case, at any stage of the proceedings, must be accepted by the arbitrator, conciliator or mediator as removing further jurisdiction over such issues.

(vi) *Conciliation or Mediation by an Arbitrator*

- a) When the parties wish at the outset to give an arbitrator authority both to either conciliate or mediate and to decide or submit recommendations regarding residual issues if any, they should so advise the arbitrator prior to appointment. If the appointment is accepted, the arbitrator must perform a conciliation or mediation role consistent with the circumstances of the case.
- b) Direct appointments, also, may require a dual role as conciliator or mediator and arbitrator of residual issues. This is most likely to occur in some labour related disputes.
- c) When a request to conciliate or mediate is first made after appointment, the arbitrator may either accept or decline a conciliation or mediation role.
- d) Once arbitration has been invoked, either party normally has a right to insist that the process be continued to award stage.
- e) If one party requests that the arbitrator, conciliate or mediate and the other party objects, the arbitrator should decline the request.
- f) An arbitrator is not precluded from suggesting conciliation or mediation especially if either of the two options would serve costs. To avoid the possibility of improper pressure, the arbitrator should not so suggest unless it can be discerned that both parties are likely to be receptive. In any event, the arbitrator’s suggestion should not be pursued unless both parties readily agree.

PART II

CODE OF CONDUCT FOR ARBITRATORS

4. Upholding the Integrity of Arbitral Process

- (i) An arbitrator has a responsibility to the parties as well as the general public to uphold the integrity and fairness of the arbitration process.
- (ii) The ethical obligations of an arbitrator begin upon acceptance of the appointment and continue throughout all stages of the proceedings. In addition certain ethical obligations continue even after the decision in the case has been given to the parties
- (iii) It is inconsistent with the integrity of the arbitration process for persons to solicit appointment for themselves. However a person may indicate a general willingness to serve as an arbitrator
- (iv) Persons should accept appointment as arbitrators only if they believe that they are personally qualified to undertake the appointment and that they can be available to conduct the arbitration promptly
- (v) After accepting appointment and while serving as an arbitrator a person should avoid entering into any financial, business, professional, family or social relationship, or acquiring any financial or personal interest which is likely to affect impartiality or which might reasonably create the appearance of partiality or bias. For a reasonable period of time after the decision of a case persons who have served as arbitrators should avoid entering into any such relationship or acquiring any such interest, in circumstances which might reasonably create the appearance that they had been influenced in the arbitration by the anticipation or expectation of the relationship or interest.
- (vi) Arbitrators should conduct themselves in a way that is fair to all parties and should not be swayed by outside pressure, by public clamour, by fear of criticism or by self interest.

5. Disclosure of Interest

- (i) Persons who are requested to serve as arbitrators should, before accepting, disclose:
 - (a) any direct or indirect financial or personal interest in the outcome of the arbitration;
 - (b) any existing or past financial, business, professional, family or social relationships with any party which are likely to affect impartiality or which might reasonably create an appearance of partiality or bias

- (ii) The obligation to disclose interest or relationships described in the preceding paragraph is a continuing duty which requires a person who accepts appointment as an arbitrator to disclose at any stage of the arbitration, such interests or relationships which may arise or which are recalled or discovered.
- (iii) The disclosure should be made to all parties unless other procedures for disclosure are provided in the rules or practices governing the arbitration. Where more than one arbitrator has been appointed each should inform the others of the interests and relationships which have been disclosed.
- (iv) In the event that an arbitrator is requested by all parties to withdraw the arbitrator should do so. In the event that the arbitrator is requested to withdraw by less than all the parties then in default or a challenge procedure then Article 13 of the Model Law shall mutatis mutandis, apply

6. **Confidentiality**

- (i) Unless otherwise agreed by the parties, or required by applicable rules or law, an arbitrator should keep confidential all matters relating to the arbitration proceedings and decision
- (ii) It is not proper at any time for an arbitrator to inform anyone of the decision in advance of the time it is given to all parties. In a case in which there is more than one arbitrator, it is not proper at any time for an arbitrator to inform anyone concerning the deliberations of the arbitrators. After an arbitration award has been given, it is not proper for an arbitrator to assist in post-arbitral proceedings, except as is required by law.
- (iii) An arbitrator is in a relationship of trust to the parties and should not, at any time, use confidential information acquired during the arbitration proceedings to gain personal advantage or advantage for others, or to affect adversely the interest of another.

7. **Proper Communication Procedure**

- (i) If an agreement of the parties, or applicable arbitration rules referred to in that agreement, establishes the manner or content of communications between the arbitrator and the parties, the arbitrator should abide by those procedures notwithstanding any contrary provision in the ensuing paragraphs.
- (ii) Unless otherwise provided in applicable arbitration rules or in any agreement of the parties, arbitrators should not discuss a case with any party in the absence of the other party, except in any of the following circumstances:
 - (a) Discussions may be had with a party concerning such matters as setting the time and place of hearing or making other arrangements for the conduct of the proceeding. However, the arbitrator should promptly

inform each other party of the discussion and should not make any final determination concerning the matter discussed before giving each absent party an opportunity to express its views

- (b) If a party fails to attend at a hearing after having been given due notice, the arbitrator may discuss the case with any party who is present
 - (c) If all parties request or consent to it, such discussion may take place.
- (iii) Unless otherwise provided in applicable arbitration rules or in an agreement of the parties, whenever an arbitrator communicates in writing with one party, the arbitrator should at the same time send a copy of the communication to each other party. Whenever the arbitrator receives any written communication concerning the case from one party which has not already been sent to each other party, the arbitrator should do so.

8. **Conduct of Proceedings**

- (i) Unless otherwise agreed by the parties or provided in arbitration rules agreed to by the parties, an arbitrator should accord all parties the right to appear in person and to be heard after due notice of the time and place of hearing. Similarly an arbitrator should not deny any party the opportunity to be represented by Counsel.
- (ii) If a party fails to appear after due notice and upon being satisfied that notice has been served on the absent party, an arbitrator should proceed with the arbitration when authorized to do so by the agreement of the parties, the rules agreed to by the parties or by the applicable law.
- (iii) An arbitrator should conduct the proceedings in an evenhanded manner and treat all parties and their Counsel with equality and fairness at all stages of the proceedings. An arbitrator should encourage similar conduct by all participants in the proceedings.
- (iv) An arbitrator should perform duties diligently and conclude the case promptly as the circumstances reasonably permit.
- (v) It is not improper for an arbitrator to suggest to the parties to explore the possibility of amicable settlement of the case. However, an arbitrator should not be present or otherwise participate in the settlement negotiations unless requested to do by the parties. An arbitrator should not exert pressure on any party to settle.
- (vi) When there is more than one arbitrator, the arbitrators should afford each other the full opportunity to participate in all aspects of the proceedings.

9. **Decision Making**

- (i) An arbitrator should, after careful deliberation, decide all issues submitted for determination and should refrain from deciding other issues. It is important to observe that an arbitrator does not delegate the duty to decide to any other person
- (ii) An arbitrator should decide all matters justly, exercising independent judgment, and should not permit outside pressure to affect the decision
- (iii) In the event that all parties agree upon a settlement of issues in dispute and request an arbitrator to embody that agreement in an award, an arbitrator may do so, but is not obliged to do so unless satisfied with the propriety of the terms of settlement. Whenever an arbitrator embodies a settlement by the parties in an award, the arbitrator should state in the award that it is based on an agreement of the parties.

10. **Fees and Expenses**

- (i) An arbitrator occupies a position of trust in respect to the parties and the arbitral process. In charging for services and reimbursement of expenses an arbitrator should be governed by the same high standards of integrity and fairness as apply to other phases of the case.
- (ii) In the absence of governing provisions in the agreement of the parties relating to the amount of fees and expenses payable an arbitrator should scrupulously avoid bargaining with parties over the amounts or engaging in any communication concerning payments which would create an appearance of coercion or other impropriety. To preserve the integrity of the arbitration process the following procedure is recommended:
 - (a) In cases conducted under reference by the Zambia Centre for Dispute Resolution ensure that the current scale of fees approved by the Zambia Association of Arbitrators is circulated with the reference and that an arrangement for payment of the appropriate fees is made by the Center to avoid the necessity of the arbitrator bargaining with the parties concerning the subject.
 - (b) In cases conducted without reference by the Zambia Centre for Dispute Resolution ensure that before finally accepting the appointment the arbitrator discloses to all parties in writing the current scale of fees approved by the Zambia Association of Arbitrators by which he will charge the fees and expenses.

11. Considerations for Non Neutral Arbitrators

In some types of arbitration in which there are three arbitrators each party, acting alone, will appoint an arbitrator. The third arbitrator is then appointed by agreement of the two arbitrators, or failing such agreement, by an independent institution or individual. In some of these tripartite arbitrations the two party appointed arbitrators may not be considered neutral and may not be expected to observe the same ethical standards as the neutral third arbitrator. This Rule describes the ethical obligations that non-neutral party appointed arbitrators should observe and those that are not applicable to them.

- (i) **Obligations under Rule 4:** Non neutral arbitrators may be predisposed towards the party who appointed them but in all other respects they are obliged to act in good faith and with integrity and fairness. The provisions of Rule 4(v) relating to relationships and interests are not applicable to non neutral arbitrators.
- (ii) **Obligations Under Rules 5:** Non-neutral arbitrators should disclose to all parties, and to the other arbitrators, all interests and relationships which Rule 2 requires to be disclosed. The disclosure is for the benefit not only of the appointing party, but also for the benefit of the other parties and arbitrators so that they may know of any bias which may exist or appear to exist. Non neutral arbitrators are however not obliged to withdraw if requested to do so by the party who did not appoint them, notwithstanding the provisions of Rule 5 (iv).
- (iii) **Obligations Under Rules 6:** Non neutral arbitrators should observe all of the obligations of Rule 6 to be faithful to the relationship of trust inherent in the office of arbitrator.
- (iv) **Obligations Under Rule 7:** Non neutral arbitrators should observe all of the obligations of Rule 7 concerning communications with the parties, subject only to the following provisions:
 - (a) In an arbitration in which the two party appointed arbitrators are expected to appoint the third arbitrator, non neutral arbitrators may consult with the party who appointed them concerning the suitability of persons under consideration for appointment as the third arbitrator.
 - (b) Non neutral arbitrators may communicate with the party who appointed them concerning any other aspect of the case, provided they first inform the other arbitrators and the parties of their intention to do so. If such communication occurred prior to appointment as arbitrator or prior to the

first hearing or other meeting, the non neutral arbitrator should, at the first hearing or meeting disclose the fact that such communication has taken place. It is however sufficient to merely disclose the fact that such communication has occurred without disclosing the content of the communication.

- (c) When non neutral arbitrators communicate in writing with the party who appointed them concerning any matter which is permitted under this rule, they are not obliged to send copies thereof to any other party or arbitrator.
- (v) **Obligations Under Rule 8:** Non neutral arbitrators should observe all of the obligations of Rule 8 to conduct the proceedings fairly and diligently.
- (vi) **Obligations Under Rule 9:** Non neutral arbitrators should observe all of the obligations of Rule 9 concerning decision making. Non neutral arbitrators are however permitted to be predisposed towards deciding in favour of the party who appointed them

PART III

CODE OF CONDUCT FOR CONCILIATORS AND MEDIATORS

12. Promote Self-determination

- (i) A mediator and conciliation shall recognize that mediation is based on the principle of self-determination of the parties. The central role of a mediator or conciliator is to promote a voluntary settlement (or “self-determination”) of a dispute by the parties.
- (ii) Self determination is the fundamental principle of mediation and conciliation. It requires that the mediation or conciliation process rely upon the ability of the parties to reach a voluntary, uncoerced settlement. Apart from Court annexed mediation, any party may withdraw from conciliation or mediation at any time.

13. Impartiality

- (i) Mediator or conciliator shall conduct the mediation or conciliation in an impartial manner and treat the parties with equality and afford each party an opportunity to present their case
- (ii) The concept of mediator or conciliator impartiality is central to both processes. A mediator or conciliator shall mediate or conciliate only in those matters in which he or she can remain impartial and evenhanded
- (iii) If at any time during the process the mediator or conciliator is unable to conduct the process in an impartial manner the mediator or conciliator is obliged to withdraw.

14. **Conflicts of Interest**

A conflict of interest is a situation or relationship that might create an appearance of possible bias:

- (i) A mediator or conciliator shall disclose all actual and potential conflicts of interest reasonably known to him or her or could reasonably be seen as raising a question about his or her impartiality.
- (ii) After disclosure, the mediator or conciliator shall decline to mediate or conciliate unless all parties elect to retain the mediator or conciliator. If all parties so elect to proceed with the mediation or conciliation after being informed of the conflicts, the mediator or conciliator may proceed. If, however, the conflict of interest casts serious doubt on the integrity of the process, the mediator or conciliator shall decline to proceed notwithstanding the parties' agreement to the contrary.
- (iii) The responsibility to avoid the appearance of conflict of interest continues throughout and after the process. Without the consent of all parties, a mediator or conciliator shall not subsequently establish a professional relationship with one of the parties in a related matter, or in an unrelated matter in circumstances which would raise legitimate questions about the integrity of the mediation or conciliation process.

15. **Competence**

- (i) A mediator or conciliator shall mediate or conciliate only when the mediator or conciliator has the necessary qualifications to satisfy the reasonable expectations of the parties. A person who offers himself or herself available to serve as a mediator or conciliator gives parties and the public the expectation that he or she has the competence to mediate or conciliate effectively.
- (ii) Any person may be selected as a mediator or conciliator, provided the parties are satisfied with the mediator's or conciliator's qualifications. Training and experience in mediation or conciliation are however necessary for effective mediation or conciliation.
- (iii) The responsibility to be possessed of sufficient competence extends to Court-annexed or other forms of mandated mediation.

16. **Confidentiality**

- (i) A mediator or conciliator shall maintain the reasonable expectations of the parties with regard to confidentiality.

- (ii) The reasonable expectations of the parties depend on the circumstances of the mediation or conciliation and any agreements they may make. The mediator or conciliator shall not disclose any matter that a party expects to be confidential unless permitted to do so by that party or unless required by the applicable law or other compelling public policy.

17. **Quality of the Process**

- (i) A mediator or conciliator shall conduct the mediation or conciliation fairly, diligently and in a manner consistent with the principle of self determination of the parties
- (ii) A mediator or conciliator shall work to ensure a quality process and to encourage mutual respect among parties. A quality process requires a commitment by the mediator or conciliator to diligence and procedural fairness. Each party should be given adequate opportunity to participate in the discussions. Subject to the provisions of any applicable law, the parties should decide when and under what conditions they will reach a settlement or terminate the process.

18. **Advertising and Solicitation**

- (i) Advertising or any other communication with the public or institutions concerning the services offered or regarding the education, training and expertise of the mediator or conciliator shall be truthful.
- (ii) It is inconsistent with the principle of party self determination for a mediator or conciliator to promise or guarantee results.

19. **Fees:**

- (i) A mediator or conciliator shall fully disclose and explain to the parties the basis of fees, disbursements and other charges at the outset of a mediation or conciliation to enable them make an informed decision whether or not to retain the mediator or conciliator.
- (ii) The fees shall in all cases be reasonable considering, among other relevant factors, the type and complexity of the matter, the expertise of the mediator or conciliator, the time required and the rates customary in the particular discipline of the dispute
- (iii) In the case of Court annexed or other form of mandated mediation the mediator shall abide by such fees as shall be prescribed from time to time by the relevant statute or subsidiary legislation

20. **Obligation to Mediation or Conciliation Process**

- (i) Mediators and Conciliators have a duty to improve the practice of mediation and conciliation
- (ii) Mediators and Conciliators being knowledgeable in the process of mediation and conciliation have an obligation to help educate the public about the processes; to make mediation and conciliation accessible to those who would like to use it; and to improve their professional skills and abilities. The dissemination of information to the public shall only be done upon consultation and approval of an arbitral institution.

PART IV

MISCELLANEOUS

21. **Misconduct**

It is professional misconduct for an arbitrator mediator or conciliator, inter alia, to:

- (i) violate or attempt to violate this Code or to willfully disregard or to induce another person to violate or willfully disregard this Code
- (ii) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- (iii) commit a criminal act which reflects adversely on the integrity honesty and trustworthiness of an arbitrator mediator or conciliator;
- (iv) engage in conduct which is prejudicial to the proper administration of the relevant ADR mechanism process.
- (v) fail or refuse to appear without reasonable excuse before the Membership Committee or such subcommittee as the Executive Committee shall constitute for the purpose of enforcing this code, or to
- (vi) fail or refuse to comply with a directive of the Membership Committee or such subcommittee as the Executive Committee shall constitute for the purpose of enforcing this Code.

22. **Reporting Misconduct**

- (1) Any person who has reasonable ground to believe that an arbitrator, mediator or conciliator has violated this Code shall make a written complaint with details of the alleged misconduct to the Membership Committee
- (2) A report of the alleged misconduct shall not be constructed as a violation of Rules 6 and 16 of this Code

23. **Power of the Membership Committee**

- (1) The Membership Committee or such other subcommittee constituted by the Execution Committee for the purpose of enforcing this Code shall have power to regulate its procedure
- (2) The Membership Committee or such other subcommittee constituted by the Executive Committee for the purpose shall have power among others after hearing the complaint, to:
 - (i) dismiss the complaint if there be no merit;
 - (ii) reprimand or admonish the erring arbitrator, mediator or conciliator
 - (iii) impose a fine payable to the Association for such amount as shall be deemed appropriate
 - (iv) make an order for payment of costs or contribution towards the costs of the complainant
 - (v) suspend the erring arbitrator mediator or conciliator from the Association.

24. **Commencement date**

This Code shall come into effect on day of 2003