

## **FEATURES OF SETTLEMENT OF DISPUTES IN THE ICAC USING THE COMBINED PROCEDURES “ARBITRATION- MEDIATION-ARBITRATION” AND “MEDIATION-ARBITRATION”**

Combined dispute settlement procedures in the ICAC are applied in accordance with the provisions of the Laws of Ukraine “On International Commercial Arbitration” and “On Mediation”, the ICAC Rules, the ICAC Rules of Mediation, taking into account these Features.

### **SECTION I. “ARBITRATION-MEDIATION-ARBITRATION”**

1. In the course of the arbitration proceedings and before the Arbitral Tribunal reaches the stage of rendering the Arbitral Award in accordance with the first part of Article 60 of the ICAC Rules, the parties may submit a petition to the Secretary General of the ICAC for leaving the case without actions (before the Arbitral Tribunal has been composed) or a petition to the Arbitral Tribunal for suspending the arbitration proceedings in order to settle the dispute through mediation. In such petition, the parties shall specify approximate time limits of the mediation, as well as the full name of the mediator from the Register of the ICAC Mediators. If such is the case, the Secretary General shall leave the case without actions or the arbitration proceedings of the case shall be suspended by the Ruling of the Arbitral Tribunal. The mediation procedure shall be conducted according to the ICAC Rules of Mediation. When submitting an application for mediation to the ICAC, the registration fee for mediation shall not be payable.
2. In case the parties only partially settled or did not settle the dispute through mediation, the arbitration proceedings of the case shall be renewed.
3. If the dispute has been settled through mediation, in the event that the parties submit a petition for an Arbitral Award on the agreed terms, the arbitration proceedings of the case shall be renewed, and such petition may be considered without calling the

parties, unless the Arbitral Tribunal in the light of the circumstances of the case deems it expedient to conduct an oral hearing.

In other cases, if the dispute has been settled through mediation, the parties shall apply for termination of the arbitration proceedings upon agreement between the parties, and in connection therewith the arbitration proceedings shall be terminated by issuing a respective Order.

4. The same person may not act as both the mediator and the arbitrator in resolving a dispute between the same parties. A person acting as the arbitrator shall not have access to the materials of the ICAC mediation proceedings.

## **SECTION II. “MEDIATION-ARBITRATION”**

1. The legal grounds for the application of the “Mediation-Arbitration” procedure shall be an agreement between the parties to refer their disputes to the ICAC for resolution using the combined “Mediation-Arbitration” procedure.

Such a procedure shall be implemented in stages:

- 1) an Order of the ICAC President shall initiate the mediation proceedings, which shall be conducted in accordance with the ICAC Rules of Mediation;
  - 2) after the termination of such mediation proceedings, another Order of the ICAC President shall initiate the arbitration proceedings, which shall be conducted in accordance with the ICAC Rules.
2. The parties who settled the dispute through mediation and agreed to submit the Agreement based on the results of the mediation to the ICAC for the issuance of an Arbitral Award on the agreed terms shall submit to the ICAC a petition for the issuance of the Arbitral Award on the agreed terms, which shall meet the requirements of paragraph 3 of this Section and parts from the second through fourth of Article 14 of the ICAC Rules. Such petition shall be considered under the expedited procedure in accordance with the third part and parts from the fifth to seventh of Article 45 of the ICAC Rules, without filing a Statement of Claim.
  3. Such petition for the Arbitral Award on the agreed terms shall contain:
    - 1) the date;
    - 2) the full names of the parties, the places of their

location (habitual residence), postal addresses (in the language of the addressee's country or in English), telephone numbers, e-mail addresses of the parties, bank details of the parties;

3) information about representatives of the parties, if any, their postal addresses (in the language of the addressee's country or in English), telephone numbers, e-mail addresses;

4) the claimed amount of the dispute that has been settled by concluding an Agreement based on the results of the mediation calculated in accordance with the terms and conditions of Article 15 of the ICAC Rules;

5) a substantiation of the jurisdiction of the ICAC;

6) proposals as to the applicable rules of law and the language of the arbitral proceedings, unless the parties determined them in the arbitration agreement;

7) a short statement of the factual circumstances of the dispute with the relevant evidences specified;

8) proposals as to the distribution of the arbitration fees and costs between the parties;

9) a list of documents attached to the petition.

The original of the Agreement based on the results of the mediation shall be attached to the petition.

4. In the case provided for in paragraph 2 of this Section, the same person may perform the functions of the mediator and the arbitrator upon a written agreement between the parties. In such a case, his appointment as the mediator shall occur in accordance with the procedure established by the ICAC Rules of Mediation, and the composition of the Arbitral Tribunal shall be composed in accordance with the procedure provided for by the ICAC Rules, taking into account the features specified in Section 2 of this Appendix.
5. If the parties failed to finally settle the dispute through mediation, such dispute is subject to final resolution in accordance with the procedure provided for by the ICAC Rules.
6. In the case provided for in paragraph 5 of this Section, the same person may not perform the functions of both the mediator and the arbitrator in resolving the dispute between the same parties. A person acting as an arbitrator shall not have access to the materials of the ICAC mediation proceedings.

## RECOMMENDED MEDIATION CLAUSES (MEDIATION AGREEMENTS)

### 1. MEDIATION CLAUSE

«Any dispute, controversy or claim arising out of or relating to this contract, including the conclusion, interpretation, execution, breach, termination or invalidity thereof, shall be settled by mediation in the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry in accordance with its Rules of Mediation».

The following provisions may be used:

«Mediation shall be conducted: \_\_\_\_\_».  
(by a mediator or «\_» mediators)

«The place of mediation shall be \_\_\_\_\_».  
(country, city)

«The language of mediation shall be \_\_\_\_\_».  
(Ukrainian, English or other)

### 2. «TWO-LEVEL» CLAUSE

«Any dispute, controversy or claim arising out of or relating to this contract, including the conclusion, interpretation, execution, breach, termination or invalidity thereof, shall be settled by mediation in the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry in accordance with its Rules of Mediation. If one of the parties objects to the mediation or if the mediation was terminated without settlement of the dispute, the dispute shall be finally settled by arbitration in the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry in accordance with its Rules».

The following provisions may be used:

«Mediation shall be conducted: \_\_\_\_\_».  
(by a mediator or «\_» mediators)

«The place of mediation/arbitration shall be \_\_\_\_\_».  
(country, city)

«The language of mediation shall be \_\_\_\_\_».  
(Ukrainian, English or other)

«The number of arbitrators shall be \_\_\_\_\_».  
(one or three)

«This contract shall be regulated by the substantive law of \_\_\_\_\_».  
(country)

### 3. COMBINED CLAUSE FOR THE «MED-ARB» PROCEDURE

«Any dispute, controversy or claim arising out of or relating to this contract, including the conclusion, interpretation, execution, breach, termination or invalidity thereof, shall be settled by means of mediation in the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry in accordance with its Rules of Mediation.

If, by means of mediation during [60] days, the parties failed to finally settle a dispute, controversy or claim, then such a dispute, controversy or claim shall be finally settled by means of arbitration in the International Commercial Arbitration Court at the Ukrainian Chamber of Commerce and Industry in accordance with its Rules.

If the parties settled a dispute, controversy or claim by means of mediation, the agreement based on the results of the mediation shall be submitted to the International Commercial Arbitration Court at the Chamber of Commerce and Industry of Ukraine for rendering an award on the agreed terms in accordance with its Rules».

The following provisions may be used:

«Mediation shall be conducted: \_\_\_\_\_».  
(by a mediator or «\_» mediators)

«The place of mediation/arbitration shall be \_\_\_\_\_».  
(country, city)

«The language of mediation shall be \_\_\_\_\_».  
(Ukrainian, English or other)

«The number of arbitrators shall be \_\_\_\_\_».  
(one or three)

«This contract shall be regulated by the substantive law of \_\_\_\_\_».  
(country)