

**SINGAPORE MEDIATION CENTRE
NEUTRAL EVALUATION SERVICE RULES**

1 Introduction

- 1.1 Neutral evaluation is a process by which the parties to a dispute may obtain an objective opinion on the merits of their case from an independent third party (the 'Neutral') to assist them in resolving their dispute amicably.
- 1.2 The Neutral Evaluation service provided by the Singapore Mediation Centre (the 'Centre') is governed by these Neutral Evaluation Rules ('Rules').
- 1.3 The Rules may be amended by the Centre from time to time without prior notice. The Rules which shall govern a particular Neutral Evaluation shall be the Rules in force at the time the parties enter the Neutral Evaluation Agreement ('NE Agreement').

2 Request for Neutral Evaluation

- 2.1 Any party to a dispute or negotiation may request for Neutral Evaluation by sending an application for Neutral Evaluation in the prescribed form to the Centre ('Request') and paying the Centre's administrative fee. Parties may, by mutual consent, propose a suitably qualified Neutral in the Request for the Centre's consideration. A Request shall be deemed accepted when the Centre's administrative fee is paid ('Accepted Request').
- 2.2 The Centre's administrative fee shall be ascertained in accordance with the Schedule of Fees.
- 2.3 The Centre's administrative fee is non- refundable.

3 Parties

- 3.1 Where there is a Neutral Evaluation Session(s), parties may participate in person or by authorised representatives. The parties may also be assisted by legal advisers.
- 3.2 The parties shall be deemed, upon entering the NE Agreement, to have accepted and agreed to be bound by the terms of these Rules.

4 The Neutral

- 4.1 Where there is an Accepted Request, the Centre shall appoint a Neutral based on the parties' proposed Neutral (if any) or from the panel of Neutrals maintained by the Centre and notify the parties of such appointment within five (5) working days after the Accepted Request.
- 4.2 If any of the parties has any valid reason to object to the Neutral appointed by the Centre, the objection shall be made in writing to the Centre no later than two (2) working days after such appointment is notified to the parties. The Centre will consider any objection, and if deemed valid, appoint another Neutral within five (5) working days from the date of the receipt of the objection.
- 4.3 A person selected as a Neutral shall disclose any circumstances which may give rise to justifiable doubts as to his independence or impartiality or prevent him from discharging his duties as a Neutral promptly. This duty of disclosure is a continuing duty and should circumstances which may give rise to justifiable doubts as to his independence or

impartiality arise during the course of the Neutral Evaluation, the Neutral shall advise the Centre immediately.

- 4.4 Upon receipt of any such disclosure by the Neutral, the Centre shall appoint another person as the Neutral within five (5) working days of receipt of disclosure, unless parties agree to the Neutral's appointment.
- 4.5 The Neutral shall:
- (a) prepare himself appropriately before the commencement of the Neutral Evaluation; and
 - (b) abide by the terms of the NE Agreement and the Neutral's Code of Conduct.
- 4.6 The Neutral shall not, at any time, act for any of the parties in any capacity in connection with the subject matter of the Neutral Evaluation.
- 4.7 If the Neutral is unable to continue in his appointment, the Centre shall appoint a substitute Neutral within five (5) working days from the date the Centre receives the Neutral's notice of his inability to continue in the Neutral Evaluation.
- 4.8 If a Neutral resigns or is replaced, the proceedings shall resume at the stage where the Neutral who resigned or was replaced ceased to perform the Neutral's functions, unless the replacement Neutral decides that any part of the prior proceedings are to be repeated.
- 4.9 Where Rule 4.8 applies, the procedural timelines shall be extended by the period of time that elapses between the Neutral's resignation or removal and the appointment of a substitute Neutral.
- 4.10 The Neutral and the Centre are neither agents of, nor acting in any capacity for, any of the parties.
- 4.11 The Neutral is not an agent of the Centre.

5 Centre

- 5.1 The Centre shall make the arrangements for the Neutral Evaluation, including the following:
- (a) appointment of the Neutral;
 - (b) financial management of the Neutral Evaluation;
 - (c) provision of a venue for the Neutral Evaluation session(s), if necessary; and
 - (d) provision of secretariat support.

6 Agreement

- 6.1 Before the Neutral Evaluation is carried out, the parties shall enter into the NE Agreement in the prescribed form with each other, the Centre and the Neutral in relation to the conduct of the Neutral Evaluation. For the avoidance of doubt, the NE Agreement, or any variations of it, may take the form of any electronic record.
- 6.2 As between the parties, any of the terms of the NE Agreement including but not limited to:
- (a) the confidentiality of:
 - (i) the Neutral Evaluation process;
 - (ii) the documents and materials prepared for the Neutral Evaluation; or
 - (iii) the communications made during the Neutral Evaluation;

- (b) the use of the Neutral's written opinion and whether it shall be binding; or
- (c) the extension of recommended timelines;

may be varied, subject to the approval of the Centre.

7 Security Deposit

- 7.1 Upon signing of the NE Agreement, the Centre shall estimate the total fees and expenses of the Neutral Evaluation based on hourly fees as advised by the Neutral and collect a deposit from the parties as reasonable security for estimated costs and expenses ('Security Deposit'). The Centre shall collect further security deposits as may be required throughout the course of the Neutral Evaluation.
- 7.2 Parties shall pay the Security Deposit in equal shares unless the parties advise the Centre otherwise.
- 7.3 The Security Deposit shall be paid before the first Preliminary Conference. The Centre and/or the Neutral reserve the right not to take any administrative or procedural steps till the Security Deposit is paid in full. The Centre also reserves the right to collect a further Security Deposit where necessary.
- 7.4 If parties decide to terminate the Neutral Evaluation at any stage, Rule 14.4 shall apply.

8 Preliminary Conference

- 8.1 The Neutral shall convene a Preliminary Conference with the parties and their representatives within five (5) working days of the appointment of the Neutral.
- 8.2 During the Preliminary Conference, parties may discuss procedural matters to structure the Neutral Evaluation which may include but are not limited to:
 - (a) the terms of reference of the Neutral;
 - (b) the issues which are in dispute and which matters, if any, can be agreed upon;
 - (c) the procedure to be adopted (e.g. the length of time for submissions, if parties have a right of reply, if parties to call for expert witnesses, the type of evidence to be adduced, the right to submit further submissions etc.); and/or
 - (d) the scheduling of any Evaluation session(s) as defined in Rule 10.2(b).
- 8.3 For the avoidance of doubt, the Preliminary Conference may be held via electronic means including but not limited to email correspondence, tele-, video- or web-conferencing.

9 Exchange of Information

- 9.1 Subject to any directions made during the Preliminary Conference, each party shall, within five (5) working days from the date of the completion of the Preliminary Conference, serve the Neutral, the Centre and all parties with the following:
 - (a) a statement of its case (the "Case Statement"); and
 - (b) copies of all documents referred to in the Case Statement that the party is relying on.
- 9.2 The Case Statement shall include:
 - (a) the nature and basis of the dispute;
 - (b) the factual and legal issues involved in the dispute and the party's contentions as to those issues; and

(c) the relief or remedy sought and the quantum of any claim or counterclaim.

9.3 The Parties agree to cooperate fully with the Neutral and provide all necessary information, documents, and evidence required for the evaluation.

10 The Neutral Evaluation

10.1 By the signing of the NE Agreement, the parties shall decide whether the Neutral's Opinion is to be binding or non-binding on the parties, and if it is to be binding, the extent to which it is to be so.

10.2 By the signing of the NE Agreement, parties shall also decide whether:

- (a) the Neutral is to express an opinion based on the Case Statements and documents submitted without further hearings or meetings ('Documents-only Evaluation'); or
- (b) to have an evaluation session(s) ('Evaluation Session(s)').

If parties choose a Documents-only Evaluation, there shall be no Evaluation Session(s). The Neutral may raise queries and/or seek clarification on the points raised in the Case Statements and in the submitted documents.

10.3 If parties wish for an Evaluation Session(s), subject to any directions made during the Preliminary Conference, it shall be held within five (5) working days from the date the Neutral receives all the Case Statements and documents.

10.4 The Evaluation Session(s) is informal and the rules of evidence do not apply. For the avoidance of doubt, evidence may be given via electronic means including but not limited to email, tele-, video- or web- conferencing.

10.5 The Neutral may conduct a site visit with the consent of the parties. Such a site visit shall be treated as part of the Evaluation Session(s).

10.6 The Neutral may choose to investigate the matter further by obtaining expert advice in technical matters as set out below. This investigation shall form part of the Evaluation Session(s).

- (a) If the Neutral is of the view that further investigations should be conducted after the Evaluation Session(s), parties should be informed accordingly. Unless parties agree to commission such an investigation, the Neutral shall render an opinion based solely on the submissions and evidence available. The Neutral may qualify the opinion to explain the constraints under which the opinion was rendered.
- (b) If the parties decide to commission such an investigation, the expert commissioned to conduct the investigation shall be proposed by the parties for the Neutral's approval, be an agent of the parties, and the parties themselves shall be jointly liable to the expert for the costs of the investigation. The parties shall pay the expert's costs directly, and the expert's costs shall be a separate expense item over and above the administrative fees and expenses payable to the Centre and the Neutral's professional charges.

10.7 Unless a Party requests the return of any documents provided to the Neutral for the purpose of the Evaluation Session(s), the Neutral and the Centre shall destroy all documents and records provided by the parties for the purpose of the Evaluation within 2 calendar months from the date of service of the Opinion on the parties.

10.8 The neutral evaluator shall conduct the evaluation in an unbiased and impartial manner, considering all relevant facts, evidence, and arguments presented by the Parties.

11 The Opinion

11.1 Unless parties agree otherwise, the Neutral shall serve his Opinion on the Centre:

11.1.1 within ten (10) working days from the date of the last Evaluation Session(s) or further investigation or site visit, whichever is latest; or

11.1.2 in the case of a Documents-only Evaluation, within ten (10) working days from the date he receives all the Case Statements and documents.

11.2 Unless parties agree otherwise, the Neutral shall provide an Opinion which is reasoned and in writing.

11.3 The Neutral's Opinion shall be based on the submissions and materials presented to the Neutral by parties and the Neutral's actual observations during any site inspection or any further investigation that is conducted as part of the Neutral Evaluation. The comments made and opinions expressed by the Neutral shall be read subject to the constraints under which the Neutral Evaluation is conducted.

12 Stay of Proceedings

12.1 Unless the parties agree otherwise, the Neutral Evaluation shall not prevent the commencement of any suit or arbitration, nor act as a stay of such proceedings.

13 Confidentiality

13.1 This Neutral Evaluation process is entirely private and confidential. All parties involved shall keep the matter fully confidential except as is required by law.

13.2 Any person attending the hearing may do so only by consent of the parties and Neutral.

13.3 The Neutral Evaluation shall be conducted in confidence. In particular, if a meeting is convened:

(a) No transcript, audio or video recording or other formal record shall be made at any stage of the Neutral Evaluation.

(b) Only the Neutral, the parties and/or their representatives and/or legal advisers shall be permitted to participate during the Neutral Evaluation.

13.4 Unless the parties agree otherwise, all communications expressed and disclosed in the course of the Neutral Evaluation, including all materials prepared and/or rendered and/or exchanged for purposes of the Neutral Evaluation shall be kept confidential, treated as 'without prejudice' and shall not be offered as evidence in any other proceedings.

14 Fees

14.1 In the event that the actual fees and expenses of the Neutral Evaluation ("the Final Fee") is less than the Security Deposit, the Centre will serve the Opinion as soon as practicable.

14.2 In the event that the Final Fee is more than the Security Deposit, the Centre shall advise parties accordingly. Parties shall remain jointly and severally liable for the outstanding

amount of the Final Fee. The Centre will serve the Opinion on the parties after the outstanding amount is paid in full.

- 14.3 Parties shall bear their own costs, expenses and disbursements of their participation and the fees of their legal advisers and representatives in the Neutral Evaluation.
- 14.4 If the Parties agree not to proceed with the Neutral Evaluation at any stage after an Accepted Request, the Security Deposit shall be refunded to the parties after deduction of the fees and expenses incurred by the Neutral and the Centre up to and including the date of termination, computed at the Centre's discretion.

15 Waiver of Liability and Disclaimer

- 15.1 The parties shall not make any claim whatsoever against the Neutral and/or the Centre and/or the Centre's officers or employees for any matter in connection with or in relation to:
- (a) the Neutral Evaluation; and/or
 - (b) the services provided by the Neutral and/or the Centre; and/or
 - (c) the dispute between the parties.
- 15.2 The Neutral shall not be liable to the parties for any act or omission whatsoever in connection with the services provided by him or in relation to the Neutral Evaluation.
- 15.3 The Centre shall not be liable to the parties for any act or omission whatsoever in connection with the services provided by the Neutral and/or the Centre or in relation to the Neutral Evaluation.
- 15.4 All comments made and opinions expressed by the Neutral, whether oral or in writing, are stated:
- (a) in the context of the dispute between the parties; and
 - (b) for the limited purpose of assisting the parties in resolving their dispute.
- 15.5 The parties shall not engage or appoint the Neutral as a consultant or arbitrator in any proceedings in relation to the dispute. Unless the parties agree otherwise, they shall not call the Neutral as a witness in any proceedings arising out of or in connection to the Neutral Evaluation.
- 15.6 The parties shall also not call the Centre or any of its officers or employees as a witness, consultant, arbitrator or expert in any proceedings in relation to the dispute.

16 Interpretation

- 16.1 In these Rules, any reference to the masculine includes the feminine.
- 16.2 The interpretation that is given by the Centre to any provision in this Neutral Evaluation Procedure shall be the correct interpretation of the provision concerned.

Issued by the Singapore Mediation Centre
2 May 2012
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