



**Thailand Arbitration Center Rule
on Mediation**

B.E. 2557 (2014)

(Garuda Emblem)
Thailand Arbitration Center Rule
on Mediation,
B.E. 2557 (2014)

Whereas, Act of Arbitration Center, B.E. 2550 (2007) provided Thailand Arbitration Center to be responsible for the promotion and development of the Mediation process including engaging in business relating to Mediation.

By virtue of section 18 (5) of Act of Arbitration Center, B.E. 2550 (2007), the Thailand Arbitration Center Committee therefore enacted a rule as follows.

Article 1 This Rule is called “Thailand Arbitration Center Rule on Mediation B.E. 2557 (2014)”.

Article 2 This Rule shall come into force after the date of its publication in the Government Gazette.

Article 3 The Rule annexed to this Rule shall be applied in the proceedings of the Mediation of Thailand Arbitration Center since 1st of October, B.E. 2557 (2014).

Article 4 The Director of Thailand Arbitration Center shall have the power to prescribe administrative rules on submission of documents, preservation, making case directory, fees and other relating administrative rules necessary for the operation of Mediation only for those which are not contrary to this Rule.

Announced on 29th August, B.E. 2557 (2014)

Mr. Charnchao Chaiyanukij

Chairman of the Thailand Arbitration Center Committee

Thailand Arbitration Center Rule on Mediation, B.E. 2557 (2014)

Mediation is one of the procedures of the dispute resolutions for promoting and creating friendly atmosphere in Mediation including the expedition of the proceedings of mediation and maintenance of the relationship and confidentiality of the parties. Therefore, Thailand Arbitration Center enacts this Rule on Mediation.

Article 1 This Rule shall be applied to the proceedings of mediation whereby the parties agree to mediate under the management of Thailand Arbitration Center.

The agreement under the first paragraph has no effect to prohibit the parties to agree on the exclusion of any rule or any agreement which differs from this Rule, however, such agreement shall not be contrary to the provisions of law.

Article 2 This Rule shall come into force since 1st October B.E.2557 (2014).

Article 3 In this Rule

(1) “Center” means Thailand Arbitration Center established by the Act of Arbitration Center, B.E. 2550 (2007).

(2) “Request” means the request to resolve the disputes by mediation.

(3) “Mediation” means the proceeding of mediation under this Rule.

(4) “Proceedings of Mediation” means the proceedings of dispute resolution by any mean whereby the parties consent into, by appointing the third person to facilitate the settlement of dispute.

(5) “Mediator” means a person who was appointed to be a mediator under this Rule.

Chapter I

Commencement of Mediation

Article 4 The Mediation shall commence when:

- (1) A party who wishes to settle a dispute by Mediation submits a request to the Center and another party accepts to settle the disputes by Mediation;
- (2) All parties agree to settle the disputes by the Proceedings of Mediation proposed by the Center.

Article 5 The Request shall have at least the details as follows:

- (1) Name, address, telephone number, email address of the requesting party and all related parties including the representatives of all parties;
- (2) Summary of the fact of the disputes and claims of the requesting party;
- (3) An agreement to settle the disputes by Mediation (if any);
- (4) An agreement about the venue for Mediation (if any);
- (5) Numbers of Mediator mutually agreed by the parties or to be proposed by the requesting party.

The requesting party may attach a copy of contract, agreement, document or any evidence, being specifically the cause of the disputes with the Request.

Article 6 When the Center is of the opinion that the Request is correct and complete, the Center shall accept such request and forward the copy of the Request by informing the period for response to all related parties.

Article 7 When it is necessary and the Center deems appropriate, the Center may accept the Request by oral. The Center shall make such oral Request into writing according to Article 5 and record in writing as evidence indicating that the requesting party submitting the Request by oral.

Article 8 The response shall be made in writing which may be an acceptance or a refusal of the Request for Mediation and shall contain the admitted fact or counterclaim of the respondent, name and numbers of Mediator including a summary of the fact to be mentioned by the respondent.

When the Center completely receives the response, the Center shall commence the proceeding under this Rule.

Article 9 The Request shall expire when one of the respondents apparently refuses or the acceptance is not submitted to the Center within 30 days from the date on which the request is received and the Center shall inform the expiration of the Request to all parties.

Article 10 In case all parties mutually agree to settle the disputes by Mediation proposed by the Center, the Center shall make details of such agreement in writing with a completed similar content as contained in the request and the response.

Article 11 Submission of the Request, response or any document in Mediation shall be served by the Center or the submitting person shall be required to be responsible.

Methods of submission shall be made by self-delivery, registered mail, private mail, electronic mail or any other method that the entity of the sender could be identified.

Chapter II

Mediator

Article 12 When the Mediation commences, the Center shall promptly invites all parties for a meeting to appoint the Mediator.

Article 13 There shall be one mediator unless the parties mutually agree to appoint two or three mediators.

In case the parties are unable to agree upon the numbers of the Mediator or the numbers of the Mediator is not determined, there shall be one Mediator.

In case where the parties agree to appoint more than one Mediator, the carrying out of the Mediation shall be conducted mutually.

Article 14 The appointment of the Mediator shall be made by the followings:

- (1) In case of one Mediator, the parties shall mutually agree to appoint the Mediator;
- (2) In case of two Mediators, each party shall appoint one Mediator;
- (3) In case of three Mediators, each party shall appoint one Mediator and all related parties shall mutually agree to appoint the third Mediators.

The parties may request the Center to propose a list of qualified persons to be appointed as a Mediator or may authorize the Center to appoint one or more mediators.

Article 15 In case the parties are unable to mutually appoint the Mediator, the Center shall appoint the Mediator by taking into consideration of qualification, skill, appropriateness to the characteristics of the dispute and the satisfaction of all related parties as possible.

Article 16 If the parties appoint persons or a group of persons whose names

are not listed in the registry of the Center, such party shall be solely responsible for the fees and expenses of the Mediator that exceed the rate specified by the Center.

Article 17 After the appointment is completed; the Mediator must promptly disclose the fact which may lead to a reasonable doubt with regard to his impartiality and independence to the parties.

From the time of the appointment until prior to the end of the Mediation, if the fact according to the first paragraph, appears after the appointment, the Mediator must promptly disclose such fact to the parties unless the parties have already been informed.

Article 18 When a reasonable doubt with regard to the impartiality and independence of the Mediator is raised, the parties may submit a challenge against the Mediator by identifying the cause of the challenge to the Center prior to the initiation of the Mediation or within 7 days from the date the fact has been acknowledged and prior to the end of the Mediation according to Article 35.

Article 19 When the Mediator is challenged, the Center shall urgently submit the challenge to another party and the challenged Mediator.

If another party accepts the cause of the challenge or the challenged Mediator withdraw himself, the new Mediator shall be appointed and Article 14 and 15 shall apply *Mutatis Mutandis*.

The withdrawal of the Mediator shall not be deemed as an acceptance of the challenge raised by the party.

If the challenged Mediator refuses to withdraw himself, the Center must complete the consideration of the challenge within 15 days from the date the challenge has been received; however, the Center must hear from the Mediator first.

If the challenge may have an effect to the impartiality and creditability of the Mediator, the Center shall order the Mediator to be withdrawn from his duty and the second paragraph shall apply *Mutatis Mutandis*.

Chapter III

Mediation

Article 20 After the Mediator is appointed; the Mediator shall promptly inform both parties for a meeting to determine the process or procedure of the Mediation.

The determination of the process or procedure of the Mediation must strictly follow the principle of justice, impartiality and speediness for the purpose of amicably dispute settlement.

Article 21 The Mediator may order each party to submit the written or oral statement concerning the fact, the claim, the counterclaim or the request including any document or evidence relating to the dispute within a period as prescribed by the Mediator.

At any stage of the proceedings, the Mediator may order any party to submit an additional written or oral statement as he deems appropriate.

If the Mediator orders such statement to be submitted, the party must prepare sufficient numbers of copies for another party to receive from the Center.

Article 22 Any party may appoint representatives or assistants by informing name(s), address(es), telephone number(s), and email address(es) of such appointed person including the objective and scope of authority of the appointment to the Mediator.

Article 23 When the Mediator deems appropriate, with the consent of all parties, the Mediator may appoint assistants to assist the administration of the Mediation.

Article 24 Unless the parties agree otherwise, the venue and the language in the Mediation shall be determined by the Center.

If necessary, the Mediator may require an interpreter, the parties shall equally bear the cost of the interpreter unless the parties agree otherwise.

Article 25 The Mediator shall conduct the Mediation as he deems appropriate following the principle of impartiality and independence and among other things at minimum taking into a consideration the rights and obligations of the parties, other relating commercial traditions and circumstances surrounding the dispute including previous business practice between the parties.

If deemed appropriate according to the wish of any party, the Mediator may permit such requesting party to make an oral statement or expedite the Proceeding of Mediation for the purpose of speedy settlement of the dispute.

Article 26 The Mediation shall be conducted in front of all parties in a confidential manner. The Mediator may allow the representatives and assistants of the parties or the assistants of the Mediator to attend the Mediation as he deems appropriate.

If deemed appropriate, the Mediator may conduct a private mediation session with any party without the presence of the representative and assistant of the parties.

No record of Mediation shall be made, unless otherwise mutually agreed by the parties for the record of proceeding wholly or partly; however, the parties shall bear the cost incurred from such record.

Article 27 During the course of Mediation, the parties agree not to have the disputes resolved by arbitrator or file a complaint to the Court unless any party deems necessary that the resolution by arbitration or judiciary is for the preservation of his right.

Article 28 The Mediator may disclose the substance of the fact received by one party to another party except the disclosing party explicitly informs in writing prohibiting the Mediator to disclose such fact.

Article 29 The parties shall carry out the Mediation in good faith and attend the Mediation including submit any document or evidence as requested by the Mediator.

Article 30 During the course of Mediation

(1) Each party may, on his own initiative or by an invitation from the Mediator may give any advice for the settlement of the dispute.

(2) As deemed appropriate, the Mediator may suggest a guideline to the settlement of the dispute without indicating any reason of the suggestion.

Article 31 If the Mediator is of the opinion that there exists a probability to the settlement of the dispute, the Mediator may prepare a draft settlement agreement for all parties' consideration and such parties must return their opinions to the Mediator within a time period as prescribed by the Mediator.

After receiving the opinions of the parties, the Mediator may adjust such agreement and submit to the parties for the settlement of the dispute.

Article 32 If the parties mutually agree to settle the dispute, the parties shall prepare a settlement agreement in writing and signed by both parties. In such case, the parties may agree to allow the Mediator to prepare such agreement for them.

Article 33 In preparing the settlement agreement, if there is any cost incurred exceeding those specified in the fee schedule; such agreement shall be made only when all parties mutually agree to be responsible for such expenses.

Chapter IV

Ending of Mediation

Article 34 Mediation must be completed within 60 days from the date of the appointment of the Mediator or within a time period as the parties agree upon but not exceeding 90 days.

For the benefit of a amicably settlement of the dispute, the Mediator may extend the Mediation period but not exceeding 30 days from the due date of the Mediation according to the first paragraph.

Article 35 The Mediation shall end when:

- (1) The parties sign the settlement agreement;
- (2) The parties are unable to enter into the settlement agreement within the period of the Mediation;
- (3) Any party informs in writing to the Mediator and another party that he wishes not to continue the Mediation.
- (4) All parties inform in writing to the Mediator that they wish not to continue the Mediation.
- (5) After consultation with both parties, the Mediator informs in writing that the continuation of the Mediation shall be invalid.
- (6) Any party submits the disputes to be resolved by arbitrator or file a complaint to the Court and the Mediator is of the opinion that the continuation of the Mediation shall be invalid.

Chapter V

Confidentiality

Article 36 The parties and the Mediator shall have a duty not to disclose all information relating to the Mediation and the settlement agreement unless it is necessary for the enforcement of the settlement agreement.

Article 37 It is prohibited that the parties, the Mediator and any person relating to the Mediation to adduce evidences or to testify as witnesses in the proceedings of arbitration, court or any other similar proceedings concerning the documents or evidences as follows:

- (1) Request for Mediation or evidences indicating the acceptance of the Mediation.
- (2) Statement or acceptance of the parties during the course of mediation.
- (3) Proposals of the parties concerning conditions or methods which may lead to the settlement of the dispute.
- (4) Proposals of the Mediator.
- (5) Any fact indicating the readiness of the parties to accept the dispute settlement.
- (6) Documents specifically made for the benefit of the Mediation.

Article 38 The Mediator is prohibited to perform as an arbitrator, a representative, or an advisor in the proceedings of arbitration or court deliberating the dispute previously mediated by him.

The parties agree not to refer the Mediator as a witness in the proceedings under the first paragraph.

Chapter VI

Fees and Expenses

Article 39 The Center has a power to demand the parties to pay for the fees and expenses as specified in the fee schedule.

During the course of Mediation, the Center may demand each party to deposit a monetary guarantee for the fees and expenses.

Article 40 If any party fails to pay for the fees and expenses or fails to deposit the monetary guarantee within the period set by the Center, the Center or the Mediator shall have a right to temporarily suspend the Mediation until the fees and expenses or the monetary guarantee are fully paid.

When the Center is of the opinion that the parties shall not pay for such fees and expenses, the Center may order the Mediator to issue a written statement indicating that the Mediation is ended according to Article 35 (5).

Article 41 The party whom not being liable for the fees and expenses may pay the fees and expenses for the other party; however, such payment shall not constitute any change of liability of the fees and expenses and such party paying for the other party shall have a right to reimburse from the party who is liable to pay.

Article 42 Expenses incurred by any party that exceeds those specified in the fee schedule shall be liable by the party incurring the expenses unless the parties state otherwise in writing or in the settlement agreement.

Article 43 When the Mediation is ended, the Center shall prepare an account detailing the fees and expenses for all parties' inspection and shall return the remaining money promptly. If there is an unpaid payment, the center shall demand the responsible party to pay.

Chapter VII

Miscellaneous

Article 44 In case some rules are ambiguous or do not specify some matters, the Center and the Mediator shall proceed any action as they deem appropriate to conduct the Mediation according to the objective of an amicably settlement of the dispute and for the benefit of all parties.

Article 45 The Center, the Director, the Officials and the Mediator shall be immuned from liabilities of their actions or omissions according to the proceedings relating to the Mediation under this Rule.

Annex I

Fees and Expenses Schedule

Article 1 Fees and Expenses in the Mediation are the followings:

- (1) Initiative fee
- (2) Mediator fee
- (3) Expenses of the Mediation

Article 2 The Initiative fee shall be collected as follows:

- (1) From the requesting party at the rate of 5,000 Baht within 3 working days from the date the Center received the Request.
- (2) From the respondent at the rate of 5,000 Baht on the date the acceptance for the Mediation was submitted.
- (3) In case there are several respondents, the Center shall collect the fees from each individual except the joint creditor or the joint debtor gatherly submit in one request.
- (4) The Initiative fee, if paid, in any case shall not be refundable.

Article 3 The Mediator fee shall be collected from all parties within 3 working days from the date of the appointment of the Mediator.

The dispute amount of the Claim shall be calculated according to the claim and the counterclaim unless when the Center deems appropriate, the Center may demand, reduce or exempt the collection of the fees according to the counterclaim from the requesting party.

The Dispute Amount of the Claim	Rate of the Fee (Per Party/ Per Day)
Not exceeding 2,500,000 Baht	30,000 Baht
From 2,500,001 Baht but not exceeding 5,000,000 Baht	40,000 Baht
From 5,000,001 Baht but not exceeding 10,000,000 Baht	50,000 Baht
From 10,000,001 Baht but not exceeding 20,000,000 Baht	60,000 Baht
From 20,000,001 Baht but not exceeding 50,000,000 Baht	75,000 Baht
From 50,000,001 Baht but not exceeding 100,000,000 Baht	90,000 Baht
From 100,000,001 Baht	Collect the addition of 10,000 Baht for every increase of 100,000,000 Baht but not exceeding 300,000 Baht
Case with non-monetary claim	50,000 Baht

The Mediator fee is collected for the Mediator fee and the cost of management of the Center in the proportion to be determined by the Center.

In case of 2 Mediators, the collection shall increase 50 percent. In case of 3 Mediators, the collection shall increase 100 percent.

Article 4 Expenses of the Mediation are the followings:

- (1) Cost of extra working hours;
- (2) Cost of transportation and other expenses of witnesses upon the Mediator and all parties mutually agreed;
- (3) Cost of Transportation and other expenses of expert proposed by the Mediator upon all parties mutually agreed;
- (4) Cost of food and beverages for lunch and break;
- (5) Other costs demanded by the Mediator with the consent of all parties.

Article 5 Expenses of the Mediation shall be collected as actual from all parties, except the followings:

(1) Cost of extra working hour shall be collected only if the Mediation is carried out after 06.00 PM. or on holiday. It shall be collected at hourly rate of 1.5 times of the management cost of the Center or the Mediator fee (Daily rate is 6 hours per day)

(2) Cost of beverage and break shall be collected from the party having the attendants of more than 3 persons.

(3) The Center may demand other expenses except those specified in Article 4 if consent by all parties.

Article 6 From the beginning period until the last day of the calendar year of 2560 (2017), if the Director is of the opinion that it is for the promotion of the case to be settled by Mediation of the Center, he shall have a discretion to reduce or exempt the fees as he deems appropriate.

Annex II

Mediation Clause

Sample clause for submission of the dispute to be mediated by Thailand Arbitration Center.

“Any dispute arising out of or in connection with this contract, the parties agree to settle the disputes by mediation in accordance with the Rules of Thailand Arbitration Center and under management of Thailand Arbitration Center. The parties agree to participate in the conciliation in good faith and undertake to abide by the terms of any settlement reached.”