



## **Rules on mediation and conciliation 2018**

### **Part 1**

#### **General provisions**

1(1) The following provisions apply if the parties have agreed to AB 18, ABR 18, ABT 18, AB Abridged and ABR Abridged (collectively referred to as AB in these provisions), or if the parties have otherwise agreed on dispute resolution by mediation or conciliation arranged by the Danish Building and Construction Arbitration Board.

(2) The purpose of mediation and conciliation is to settle a dispute.

### **Part 2**

#### **Commencement of mediation or conciliation**

2(1) Mediation and conciliation procedures are initiated by the submission of a request for mediation or conciliation to the Arbitration Board.

(2) A request may also be filed by an arbitral tribunal considering the dispute in question.

3(1) No mediation or conciliation procedure may be commenced until the parties have concluded an agreed negotiation procedure concerning the dispute.

(2) Mediation or conciliation may not be commenced if there is a pending case between the parties concerning speedy resolution regarding the same dispute, or if a party has submitted a request for such proceedings not later than ten working days after the request for mediation or conciliation was filed.

(3) Mediation or conciliation may not be initiated if there is a pending case concerning a decision regarding security provided.

(4) The parties are obliged to participate in the mediation or conciliation procedure.

### **Part 3**

#### **Mediation**

4(1) The mediator presides over the mediation.

(2) The mediator assists the parties in clarifying their points of dispute, positions and interests and in resolving the dispute by settlement. The mediator does not propose any conciliation measures. The mediator does not advise the parties about the likely outcome of or uncertainty associated with a possible resolution of the dispute.

(3) The mediator does not provide any legal, financial or technical advice to the parties either collectively or individually and does not make any decisions concerning the dispute between the parties.

(4) The mediator may hold separate meetings with the parties provided the parties agree to it.

(5) The parties may agree that the dispute should be referred to conciliation. The mediator may continue as conciliator if the parties and the mediator agree on it.

(6) The mediator may not act as an arbitrator in a hearing of the same dispute following unsuccessful mediation. However, at the request of the parties, the mediator may be appointed arbitrator with the sole purpose of affirming a settlement in the form of an arbitral award on agreed conditions; see clause 12(5).

### **Part 4**

#### **Conciliation**

5(1) The conciliator presides over the conciliation.

(2) The conciliator may propose a settlement. The conciliator may advise the parties about the likely outcome of or uncertainty associated with a possible resolution of the dispute.

(3) The conciliator does not provide any legal, financial or technical advice to the parties either collectively or individually and does not make any decisions concerning the dispute between the parties.

(4) The conciliator may hold separate meetings with the parties to the case if the parties agree to it.

(5) The conciliator may not act as an arbitrator in a hearing of the same dispute following unsuccessful conciliation, unless the parties request it.



## **Part 5**

### **Communication**

6(1) A request for mediation or conciliation is considered to have been filed at the time when received by the Arbitration Board.

(2) All correspondence, documents and other material pertaining to the procedure must be sent to the Arbitration Board in digital form and digital copies must be sent to the other parties.

(3) In special circumstances the Arbitration Board may request or permit the submission of hardcopies of written material.

(4) Documents submitted by the parties must be numbered in consecutive order (1, 2, etc) or marked with letters in ascending order (A, B, etc). It must be stated which parts of the documents are relevant.

(5) The Arbitration Board may lay down specific instructions concerning digital communication and the management of documents.

## **Part 6**

### **Case proceedings**

7(1) A request for mediation or conciliation must contain the following:

- a) Data about the parties to the case, including their names, business registration numbers, addresses, email addresses and telephone numbers.
- b) Information about the contractual basis
- c) A brief outline of the dispute.
- d) All documents needed to illustrate the points in dispute.
- e) Information as to whether an agreed negotiation procedure has been completed.
- f) Requests, if any, concerning the number of mediators or conciliators and their qualifications.

(2) The opposing party must state any requests concerning the number of mediators or conciliators and their qualifications not later than three working days after having received the request for mediation or conciliation.

8(1) The Arbitration Board appoints one or more mediators or conciliators after having consulted the parties within a deadline of five working days.

(2) The mediator or conciliator appointed will be a person whose competency rests upon the relevant educational and professional background and who has experience in

the field of building and construction. The mediator or conciliator must be impartial and independent.

(3) If the parties propose a certain mediator or conciliator about whom they agree, the Arbitration Board will appoint that person unless the Arbitration Board finds that he or she is not a suitable candidate.

(4) The mediator or conciliator may only by way of exception be appointed among the members of the Arbitration Board's college of legal arbitrators and may not be appointed among the members of an appointed arbitral tribunal dealing with the same dispute.

(5) Objections to a mediator's or conciliator's qualifications and/or competence must be filed before the expiry of the consultation period stated in subclause (1). If a party does not become aware of a circumstance that gives rise to an objection until later on, the objection must be filed immediately after that party has become aware of it.

(6) In connection with his or her appointment and during the proceedings, the mediator or conciliator must immediately disclose information about circumstances that may give rise to reasonable doubt about his or her impartiality or independence.

9(1) The mediator or conciliator invites the parties to a mediation or conciliation meeting, which must be held not later than ten working days after the appointment of the mediator or conciliator.

(2) The mediator or conciliator may decide that a telephone meeting should be held first in order to determine the structure of the procedure, etc.

(3) In consultation with the parties, the mediator or conciliator determines the structure of the mediation or conciliation meeting, including investigation of the facts of the case, statements by the parties to the case and documentation.

(4) The parties speak for themselves during the mediation or conciliation meeting. They may be assisted by a lawyer or some other adviser of their own choice if this has been agreed with the mediator or conciliator in connection with the planning of the meeting.



(5) If the parties agree on it, a third party may attend the mediation or conciliation meeting to provide information or present expert assessments. The cost of such third-party attendance must be paid by the party who has requested it.

**10(1)** The mediator or conciliator may ask the parties to provide information that the mediator or conciliator finds necessary.

(2) Documents, statements, etc prepared in connection with mediation or conciliation are without prejudice to any subsequent arbitral case or court case and may not be submitted in such cases.

3) The parties do not have access to the mediator's or conciliator's notes and may not demand that the mediator or conciliator testify as a witness in a subsequent arbitral case or court case.

**11(1)** The Arbitration Board ensures that the conditions for consideration of the dispute by the Arbitration Board are met and will, if necessary, make decisions in that respect.

(2) The Arbitration Board makes decisions regarding competence objections and other objections to the appointment of a mediator or conciliator, and also on procedural disputes between the parties relating to the processing of the case.

(3) If the parties agree on it, the Arbitration Board may appoint a member of the Arbitration Board's college of legal arbitrators to make decisions of the nature stated in subclauses (1) and (2).

## **Part 7**

### **Conclusion of proceedings**

**12(1)** It will be sought to resolve the dispute at the mediation or conciliation meeting. However, after having consulted the parties, the mediator or conciliator may decide to continue the efforts to achieve a settlement.

(2) Proceedings will be concluded if

- a) the dispute is dealt with in accordance with the rules on speedy resolution; see clause 3(2);
- b) the dispute has been settled; or
- c) the mediator or conciliator establishes that there is no likelihood of achieving a settlement.

(3) The parties prepare the settlement agreement themselves. The agreement is signed by the parties.

(4) The mediator or conciliator may assist in the formulation of clauses in the settlement agreement but will not ensure that the settlement agreement is consistent with applicable law or with the outcome that an award or ruling about the dispute may have.

(5) At the request of the parties, the Arbitration Board may set up an arbitral tribunal to affirm the settlement between the parties in the form of a final arbitral award on agreed conditions.

## **Part 8**

### **Security and costs**

**13(1)** The parties must pay a deposit covering all costs related to the processing of the case; see clause 16.

(2) The Arbitration Board determines the amount of the deposit and may subsequently increase that amount. The deposit is payable at the request of the Arbitration Board.

(3) If the party having requested mediation or conciliation fails to pay a deposit as requested, the case will be dismissed. If other parties fail to pay a deposit requested, the party having requested mediation or conciliation must pay the full amount. The Arbitration Board may close the case if no deposit is paid.

**14(1)** Throughout the proceedings, the mediator or conciliator must ensure that the deposit paid is sufficient to cover all costs associated with the proceedings.

(2) The mediator or conciliator must notify the Arbitration Board if it turns out that the deposit paid is insufficient.

**15(1)** The mediator or conciliator is remunerated on the basis of time spent as set out in the Arbitration Board guidelines on the calculation of fees. The Arbitration Board determines the amount of the mediator's or conciliator's fee.

**16(1)** The Arbitration Board prepares a statement of the costs of processing the case, including the fee of the mediator or conciliator, fees and charges payable to the Arbitration Board and any other costs incurred.

(2) The Arbitration Board pays the costs mentioned in subclause (1) out of the deposits paid and settles the accounts with the parties.



(3) The costs of the processing of the case are shared equally between the parties. The parties are jointly and severally liable for the costs even if the amount exceeds the deposits paid. If one party ends up paying more than required because of the joint and several liability, that party has recourse on the party who was in fact liable to pay.

**17(1)** Each party must pay its own costs.

## **Part 9**

### **Miscellaneous provisions**

**18(1)** If mediation or conciliation involves more than two parties, the provisions of clauses 1 to 17 also apply to the relationship between those parties.

**19(1)** The mediator, the conciliator, the Arbitration Board, employees of the Arbitration Board or any members of its college of legal arbitrators cannot be held liable for any action or omission in relation to the processing of the case.

**20(1)** The case proceedings are confidential.

## **Part 10**

### **Adoption and entry into force**

**21(1)** These rules were adopted by the board of the Arbitration Board on 17 December 2018 in accordance with the statutes of the Arbitration Board (2017).

**22(1)** These rules come into force on 1 January 2019 and will apply to mediation and conciliation cases brought before the Arbitration Board after that date.