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RULES FOR MEDIATION AND CONCILIATION PROCEEDINGS

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His Highness Prince Aga Khan Shia Imami Ismaili  
International Conciliation and Arbitration Board

## **RULES FOR MEDIATION AND CONCILIATION PROCEEDINGS**

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**BISMI-LLAHI-R-RAHMANI-R-RAHIM**

WHEREAS

(A) From the time of the Imamate of Hazrat Mawlana Ali (AS) it has been a tradition of the Ismaili Muslims that differences of opinion or disputes should be resolved by a process of mediation, conciliation or arbitration in conformity with the Islamic concepts of unity, brotherhood, justice, generosity, compassion, equity, tolerance and goodwill;

(B) To this end, and in order to strengthen, consolidate and enhance the beneficial effect of the systems and procedures established and evolved over the past many decades, the Constitution of the Shia Imami Ismaili Muslims, ordained on 13th December 1986 by Mawlana Hazar Imam Shah Karim al Hussaini His Highness Prince Aga Khan, has constituted the International Conciliation and Arbitration Board and the National Conciliation and Arbitration Boards to assist in the mediation and conciliation process and to act as arbitral bodies; and


(C) The Constitution authorizes the International Conciliation and Arbitration Board to adopt Rules and Regulations to ensure achievement of the foregoing aims and to build a strong and culturally sensitive institution providing a fair, prompt, efficient, discreet and cost effective dispute resolution process.

NOW THEREFORE

By this resolution and in exercise of the authority vested in the International Conciliation and Arbitration Board, IT BE AND IS HEREBY RESOLVED that:

The Rules for Mediation and Conciliation Proceedings hereinafter appearing shall constitute the set of rules for mediations and conciliations conducted by the Conciliation and Arbitration Boards. These rules shall serve as guiding principles with the objective to achieve an amicable and mutually acceptable resolution of disputes, through a confidential process, and with the assistance of the Conciliation and Arbitration Boards. The Conciliation and Arbitration Boards shall strive to provide excellent service and demonstrate compassion and commitment to the resolution of the dispute, while respecting applicable laws and the ethics of the Ismaili Muslims.

Passed by the International Conciliation and Arbitration Board at a duly convened meeting held at Toronto, Canada this 12th day of September 2015, being the 28th day of Dhul Qa'idah (Hijrah).

Signed:   
Chairman

## **1 DEFINITIONS**

### **1.1 Applicant**

A party who seeks the assistance of a CAB to resolve a dispute.

### **1.2 CAB**

Any Conciliation and Arbitration Board, established under the Constitution, as well as any local panel, established for the purposes of providing dispute resolution services.

### **1.3 CAB Member**

An individual appointed as a member of a CAB, or any other individual designated by the Chairman of a CAB, to serve as a neutral and independent third party to assist parties in resolving disputes through Mediation or Conciliation.

### **1.4 Central Institution**

Any incorporated or unincorporated institution constituted by His Highness the Aga Khan which provides services to the Ismaili community in, *inter alia*, education, health, social welfare, housing, economic welfare, cultural and women's activities, and youth and sports development.

### **1.5 Conciliation**

A process in which a CAB Member assists the parties to a dispute in reaching their own settlement by providing suggestions and opinions as to potential solutions to resolve the dispute.

### **1.6 Constitution**

The Constitution of the Shia Imami Ismaili Muslims as ordained by His Highness the Aga Khan in 1986, as amended from time to time.

### **1.7 ICAB**

The International Conciliation and Arbitration Board.

### **1.8 Mediation**

A process in which a CAB Member assists the parties to a dispute in reaching their own settlement without providing any suggestions or opinions as to potential solutions to resolve the dispute.

### **1.9 Respondent**

A party against whom an application for CAB Mediation and Conciliation services is submitted by an Applicant.

### **1.10 Rules**

The Rules for Mediation and Conciliation Proceedings, as adopted herein and as amended from time to time.

### **1.11 Sister Institution**

An institution constituted or established under the Constitution, including, but not limited to, a Central Institution, which assists to improve the quality of life of Ismaili Muslims.

## **2 PURPOSE AND GENERAL PROVISIONS**

### **2.1 Purpose**

The purpose of these Rules is to establish a set of rules and regulations for Mediation and Conciliation proceedings by the CABs.

### **2.2 Authority of CAB**

Pursuant to Articles 12.1 and 13.1 of the Constitution, the CABs are authorized to assist parties who voluntarily seek assistance to resolve disputes arising from commercial, business and other civil liability matters, domestic and family matters, including those relating to matrimony, children of a marriage, matrimonial property, and testate and intestate succession.

### **2.3 Voluntary Services**

All CAB Members are volunteers and are Ismaili Muslims. No remuneration is payable by any party to a dispute to any CAB Member in relation to any of the services provided by the CAB. However, a CAB may, at any time, seek reimbursement from any party to a dispute for out-of-pocket costs and expenses incurred in connection with its services.

### **2.4 Dispute Resolution Process**

CAB Members have the authority to manage the dispute resolution process, and by signing the submission form for a dispute, the parties agree to abide by such processes.

### **3 PRINCIPLES**

#### **3.1 Confidentiality**

- (a) Except as specified in paragraph (b) of this Rule, a CAB must hold all information provided by a party to a dispute before the CAB in strict confidence. The requirement of confidentiality shall survive the conclusion or withdrawal of the matter.
- (b) Information obtained by a CAB related to a dispute submitted to the CAB may be disclosed by the CAB only where it is:
  - (i) authorized by the disclosing party;
  - (ii) required by applicable law or order of a court of competent jurisdiction;
  - (iii) anonymized for reporting, analysis, playback to Sister Institutions, training, and improvement of the quality of services provided by the CABs;
  - (iv) submitted to Mawlana Hazar Imam; or
  - (v) pursuant to Rule 4.4, necessary to obtain legal advice, or any other professional advice, in relation to the dispute.
- (c) Inappropriate disclosure by any party, or the representative of a party, may result in termination of the process pursuant to Rule 5.1.
- (d) Records or documents obtained by the CAB during the course of the proceedings shall be shredded, or in the case of electronic records or documents, permanently deleted, following the completion of the proceedings in accordance with the CAB's applicable record retention and destruction policy.

#### **3.2 Neutrality and Impartiality**

- (a) A CAB Member shall remain neutral when assisting parties to a dispute.
- (b) A CAB Member that assists parties to a dispute shall not act as an advisor for any party to the dispute.
- (c) A CAB Member shall not advise or represent any party in subsequent or concurrent legal proceedings related to the dispute.
- (d) Unless all of the parties otherwise agree in writing, a CAB Member that assists parties to a dispute in that capacity shall not act nor shall have acted in any judicial, arbitral or

similar proceedings relating to the dispute whether as a judge, an arbitrator, an expert or a representative or advisor of a party.

### **3.3 Conflict of Interest**

- (a) When an application is made to a CAB, upon learning of the names of the parties and, where necessary, the general nature of the dispute, a CAB Member assigned to the case is expected to declare forthwith if there is a family or close personal or business relationship that could suggest:
  - (i) A conflict of interest that would interfere with the proper exercise of judgment in the matter; or
  - (ii) A reasonable apprehension of bias that could affect the integrity or impartiality of the CAB Member in handling the dispute.
- (b) Where a CAB Member has a conflict of interest or where, in the opinion of the Chair of the CAB, there is a reasonable apprehension of bias on the part of that CAB Member that could compromise the CAB in its handling of the case, the CAB Member shall not be assigned to the case and must abstain from any dealings in the dispute or from accessing any document or record relating to the dispute.

### **3.4 Voluntary**

Parties must submit to a CAB voluntarily to seek assistance with their dispute, except where they have been ordered by a court of competent jurisdiction to submit to a CAB. The principle of voluntariness shall be applicable during the entire proceeding before the CAB. No party shall be subject to duress, coercion or undue influence as a condition of participation in any matter before a CAB.

### **3.5 Without Prejudice**

- (a) Unless otherwise required by law, the CAB and CAB Member assigned to assist in the resolution of a dispute shall not be called as a witness and shall not disclose information related to the proceedings in any subsequent legal proceedings.
- (b) Parties who submit their dispute to a CAB may not disclose any information or materials in any subsequent legal proceedings relating to the dispute save for purposes of enforcement of a settlement agreement resulting from the Mediation or Conciliation between the parties as may be necessary in accordance with the applicable laws.

### **3.6 Requirement of Good Faith**

- (a) The parties are expected to cooperate with the CAB Member that is assigned to assist them in their dispute and with each other and participate in the proceedings in good faith. This means that the parties shall provide complete, candid, respectful and timely disclosure of all material facts, information and documents to facilitate discussions between them or their representatives, and the CAB Member, in relation to the dispute, as well as complying with any settlement agreement reached between the parties.
- (b) No party shall use CAB services for any purpose other than to seek a mutual resolution of the dispute.

## **4 SUBMISSION TO THE CONCILIATION AND ARBITRATION BOARD**

### **4.1 Written Submission**

To demonstrate that the parties have voluntarily submitted their dispute to the CAB, to confirm that the parties understand that the CAB does not have enforcement powers, and to demonstrate good faith, each party will sign a written submission form, which will include an undertaking to comply with the terms of any agreement that they may reach in the mediation process.

### **4.2 Legal proceedings**

- (a) Without restricting the legal rights of parties, parties who submit a dispute to a CAB will stay, adjourn or otherwise suspend all legal proceedings in relation to the dispute.
- (b) Parties may seek independent legal advice during any stage of the Mediation or Conciliation process.

### **4.3 Referrals to Appropriate Resources**

- (a) A CAB may, with the consent of a party to a dispute, refer the party to appropriate resources, including but not limited to one or more Sister Institutions, for additional support or assistance.
- (b) Referrals shall be subject to the requirement of confidentiality pursuant to Rule 3.1.

### **4.4 Independent Professional Advice Received by CAB**

The CAB or a CAB Member that is assisting the parties to a dispute may seek legal advice, or any other professional advice, in relation to the dispute.



## **5 TERMINATION OR WITHDRAWAL**

### **5.1 Termination or Withdrawal**

(a) A CAB may terminate or withdraw its services at any time if, in the opinion of the CAB Member assigned to assist the parties in a dispute, and the CAB Chair:

- (i) continuation of the matter is impractical or is unlikely to lead to a resolution;
- (ii) any participant is likely to be at risk of physical or emotional harm; or
- (iii) otherwise for good cause.

## **6 SETTLEMENT**

### **6.1 Documentation of the Resolution**

Where the parties to a dispute have achieved a resolution of the dispute, the parties shall use best efforts to document the essential terms of the resolution in a settlement agreement. If not possible, then the terms of the resolution shall be documented by the relevant CAB.

## **7 POST-SETTLEMENT**

### **7.1 Post-settlement Contact**

At any time after the conclusion of a Mediation or Conciliation, the relevant CAB may contact the parties to monitor the status of the dispute, seek feedback on its services, or determine whether it can further assist the parties.

## **8 LIMITATION OF LIABILITY**

### **8.1 Limitation of Liability**

No CAB Member, and no CAB, shall be liable to any person for any act or omission in connection with the services of the CAB or the CAB Member, except to the extent such limitation of liability is prohibited by applicable law.