

## **FGV Chamber Mediation Rules**

### **Preamble**

Among mechanisms for the out-of-court settlement of disputes, mediation has been expanding steadily and is now specifically mentioned in Brazil's Civil Procedural Law Code (CPC) that was put into effect on March 18, 2016 through Laws N° 13,105 and N° 13,140, promulgated on March 16, 2015 and June 26, 2015, respectively. Through this consensual approach, the Parties nominate one or more mediators (who are not endowed with decision-making powers) to help them identify and develop consensual solutions to disputes, aligned with the interests of all those involved.

In step with this trend, the Getulio Vargas Foundation decided to extend its arbitration services rendered through what is currently called the FGV Conciliation and Arbitration Chamber ("FGV Chamber") by adding mediation support facilities. As a result of this decision, the FGV Chamber's designation is hereby altered to the FGV Mediation and Arbitration Chamber, issuing specific Rules that shall be applicable whenever the Parties opt for the services of the FGV Chamber in mediation proceedings. Unless otherwise stipulated, the Rules in effect on the date of the request for mediation shall be applicable.

### **Section I – Mediators**

Article 1 – When the Parties agree to submit a dispute to mediation, they must nominate a mediator by mutual agreement, preferably from amongst the members of the List of Authorized Arbitrators, within 5 (five) days after the statement of acceptance from the Respondent Party, as set forth in Article 8, §3 of these Rules.

§1 – Should the Parties nominate a mediator who is not a member of the List of Authorized Arbitrators, he/she must be approved by the Chief Executive Officer of the FGV Chamber. Should the approval be refused, the mediator nomination procedure shall be repeated within 5 (five) days.

§2 – Should the Parties fail to reach agreement on the nomination of a mediator within the deadline established in the main section of this Article, the Chief Executive Officer of the FGV Chamber shall nominate the mediator.

§3 – Whenever the FGV Chamber is required to nominate a mediator, the selection shall preferably be of a member of the List of Authorized Arbitrators, although non-members may be nominated under special circumstances. The Parties shall have a period of 5 (five) days to contest the nomination of a mediator by the Chief Executive Officer of the FGV Chamber. Should such nomination be contested, the nomination procedure shall be repeated within 10 (ten) days.

§4 – Should the Parties opt for co-mediation, the selected mediator shall nominate the co-mediator. The Parties shall have a period of 5 (five) days to contest the co-

mediator's nomination. Should such nomination be contested, the nomination procedure shall be repeated within 10 (ten) days.

§5 – During the (ten) days subsequent to the notification forwarded to the nominated mediators by the FGV Chamber, if they are willing to accept the appointment, they must inform the FGV Chamber of any circumstances that might be deemed likely to undermine their independence and impartiality, in which case such notification shall be conveyed to the Parties, who will have a period of 5 (five) days to oppose the nomination.

§6 – Should the mediator not accept the nomination or should any of the Parties oppose it, the nomination procedure shall be repeated.

§7 – The FGV Chamber maintains a List of Authorized Arbitrators selected from among persons of renowned ability, professional experience and impeccable reputation.

Article 2 – The Chief Executive Officer of the FGV Chamber shall formally appoint the mediators.

Article 3 – Any legally capable person trusted by the Parties may serve as a mediator.

§1 – The same legal hypotheses of impediments or presumed partiality applicable to judges shall also apply to mediators.

§2 – When engaged in their functions, mediators must act with impartiality, independence, competence, diligence and confidentiality, complying with the provisions set forth in the FGV Chamber Code of Ethics.

§3 – The impediments or presumed partiality of a mediator may be declared by the Chief Executive Officer of the FGV Chamber, ex officio or at any of the parties' request, after having heard the mediator. Article 4 – In case of the death, incapacity/disability, absence, supervening impediment or resignation of a mediator, the FGV Chamber shall grant the Parties a period of 10 (ten) days to nominate a substitute who shall then be appointed, after completion of the procedure addressed in Article 1 of these Rules. Should the nomination not be presented within the deadline set forth above, the Chief Executive Officer of the FGV Chamber shall appoint a substitute mediator, compliant with the provisions set forth in §5 and §6 of Article 1 of these Rules.

Article 5 – Unless otherwise agreed, the fees payable to the mediator shall be established, paid and apportioned out among the Parties as established in Annex I of these Rules.

## **Section II – Mediation Commencement**

Article 6 – A Party opting for Mediation must submit a written request to the FGV Chamber.

Article 7 – The Request for Mediation shall necessarily contain:

- a) the name, identification data, address and other contact information of each Party;
- b) the name, identification data, address and other contact information of the representatives of the Parties;
- c) if applicable, the clause in the contract or agreement (prior or subsequent to the dispute) between the Parties on submitting the dispute to mediation;
- d) powers of attorney issued to the representatives of the Parties;

e) a brief overview with a description of the dispute and its value, even if estimated;

f) any specifications related to the appointment of the mediator, the language in which the mediation proceedings should be conducted, the venues for the meetings, or other material matters related to the mediation proceedings, including a deadline for their termination, if agreed by the Parties.

Sole Paragraph. Along with the original documentation, the Petitioner shall supply as many copies of the request as there are Respondent Parties, with an additional copy for the FGV Chamber.

Article 8 – Within 5 (five) days of receipt of the request for mediation, the FGV Chamber shall set the date and time for the pre-mediation session with the Petitioner Party(ies). This session may also be conducted by telephone or videoconference, as deemed fit by the Parties.

§1 –The pre-mediation session is conducted by a person nominated by the FGV Chamber, and intends to present the way in which mediation functions, as well as the costs and the Chamber Rules, the responsibilities of the mediators and the Parties engaged in the mediation proceedings, and other information regarding the proceedings. During the session, printouts or soft copies of these Rules shall be handed out to the participants, along with a list of the members of the List of Authorized Arbitrators.

§2 – Within 5 (five) days after the pre-mediation session with the Petitioner Party, the FGV Chamber shall invite the Respondent Party to attend a pre-mediation session.

§3 – The Respondent Party shall have a period of 2 (two) days after the pre-mediation session to express its acceptance. Upon the Respondent's acceptance, the Parties must nominate the mediator within the period established in Article 1 of these Rules.

§4 – Should the Respondent Party have no interest in engaging in mediation, this must be stated in writing to the Petitioner and the FGV Chamber shall consider the proceedings terminated.

§5 – Should the Respondent Party not be located, the Petitioner Party shall be informed immediately and must provide a new address to the FGV Chamber Secretariat within 5 (five) days, being otherwise subject to the penalty of the request for mediation's dismissal, yet not adversely affecting the possibility of a subsequent request.

§6 – Should mediation be required jointly by both Parties, a single pre-mediation session shall be held within up to 5 (five) days after receipt of the request.

Article 9 – Once the mediator has been appointed as set forth in Article 2, the Deed of Mediation shall be signed, and the costs and the amounts corresponding to the minimum mediator fees paid, in compliance with Annex I of these Rules.

Sole Paragraph. The Deed of Mediation shall necessarily include:

a) the names, professions, marital status and domiciles of the Parties and the addresses to which notifications must be forwarded;

b) the name, profession and domicile of the mediator(s);

c) declaration of voluntary engagement in the proceedings;

d) the rules to be adopted for the proceedings, even if subject to consensual redefinition by the Parties at any time;

f) the venue where the mediation proceedings will take place and the language in which they will be conducted;

- g) the starting date and the estimated number of mediation meetings; and
- h) the signature(s) of the mediator(s) and the Parties engaged in the mediation proceedings.

### **Section III – Mediation Proceedings**

Article 10 – Once the Deed of Mediation has been signed, and the costs and fees paid, a date shall be set for the first mediation session.

§1 – As many mediation sessions as needed may be held, in order to achieve possible solution to the dispute.

§2 – In common agreement with the mediator(s), the Parties shall establish the duration of each session.

Article 11 – During the mediation proceedings, the mediator may suggest to the Parties that a third party specialist be called in.

§1 – The third party specialist’s fees shall be borne by the Parties.

§2 – The third party specialist is bound to disclose any circumstances that may cast doubt on his impartiality.

Article 12 – The mediator may interview the Parties either together or separately. Should separate meetings be required between the mediator and the Parties, the provisions regarding equal opportunities and confidentiality set forth in the FGV Chamber Code of Ethics must be respected.

Article 13 – The mediation proceedings shall terminate:

- a) when the Parties sign the final Deed of Mediation which, in case of a transaction, shall contain the conditions for the settlement of the dispute;
- b) at the mediator’s own initiative, through a notification to the Parties, when he/she considers that there is no way of continuing with the proceedings;
- c) at the initiative of any of the Parties, through notification forwarded to the mediator of the decision not to further pursue the matter through the proceedings.

§1 – the final Deed of Mediation addressed in subparagraph a) of this Article shall be signed by all the participants in the mediation proceedings, as well as by two witnesses. Such signatures shall be binding upon the Parties, and the FGV Chamber shall retain a copy for its internal records. In case of a transaction, the deed shall serve as an extrajudicial executive document and, when ratified by a judge or arbitrator(s), an executive title judicially enforceable.

§2 – Under the hypotheses addressed in subparagraphs b and c above, the mediator may advise the Parties to submit the issue to arbitration.

Article 14 – the members of the FGV Chamber, the mediators, the Parties and other participants in the proceedings are forbidden to disclose any information to which they may have access through their participation in the mediation proceedings.

Sole Paragraph. The transaction conditions may be disclosed only in view of the Parties’ authorization or when necessary for their respective execution.

Article 15 – The mediator may not be called as a witness and may not serve as an arbitrator, attorney or expert in any lawsuit or arbitration proceedings related to the dispute addressed by the mediation proceedings.

#### **Section IV – Performance as an Appointing Authority**

Article 16 – For *ad hoc* mediation proceedings, the Parties may request that the FGV Chamber serve exclusively as the mediator appointing authority.

§1 – The Chamber shall perform this activity within the boundaries established by the Parties.

§2 – The Chief Executive Officer of the FGV Chamber shall appoint the mediator from among the members of the List of Authorized Arbitrators, observing the provisions set forth in Section I of these Rules, as applicable thereto.

§3 – The request for the FGV Chamber to serve as the appointing authority must be accompanied by a description of the facts and documentary proof of payment of the fee of R\$ 6,000.00 (six thousand Brazilian Reais).

## **ANNEX I**

### FGV Mediation and Arbitration Chamber Mediation Costs, Expenditures and Fees

#### **Section I – Costs**

Article 1 – Mediation costs shall encompass the registration and administration fees.

Article 2 – The registration fee of R\$ 5,000.00 (five thousand Brazilian Reais), shall be paid when requesting mediation.

Article 3 – The administration fee for the proceedings must be paid by the Parties when signing the Deed of Mediation.

Paragraph 1 – The administration fee criteria are based on the value assigned to the dispute by the Parties. The list resulting from this criteria is divided into fee brackets of R\$ 20 million each, as shown below:

R\$ 20 — R\$ 40 million	R\$ 36,000.00
R\$ 40 — R\$ 60 million	R\$ 48,000.00
R\$ 60 — R\$ 80 million	R\$ 56,000.00
R\$ 100 million and above	R\$ 60,000.00

For disputes with an assigned value of less than R\$ 20 million, the minimum amount in the fees table shall prevail.

Paragraph 2 – All amounts payable to the FGV Chamber shall be covered by a commercial invoice issued by the Getulio Vargas Foundation.

Article 4 – Unless the Parties agree otherwise, the mediation costs shall be equally apportioned (50%/50%) between them.

#### **Section II – Expenses**

Article 5 – Mediation expenses shall encompass all expenditures required to conduct the proceedings, such as (i) leasing venues and equipment; (ii) hiring specialized staff to conduct hearings, when necessary; and (iii) travel expenses for the mediators and members of the FGV Chamber.

Article 6 – These expenditures shall be covered through advances requested by the FGV Chamber or subsequently reimbursed. All expenditures must be duly proven.

Article 7 – Unless otherwise agreed by the Parties, mediation expenses shall be apportioned out evenly between them.

#### **Section III – Mediator Fees**

Article 8 – The Parties and the mediator(s) may agree freely on the value of the fees, the manner in which they are apportioned out among the parties and the manner of payment.

Article 9 – Should there be no agreement between the Parties and the mediator(s), the mediator fees shall be apportioned equally between them, paid on the basis of R\$ 1,000.00 per hour worked, with an assured minimum fee of R\$ 20,000.00 (twenty thousand Brazilian Reais) to be paid to the mediator.

Sole Paragraph – An amount corresponding to the minimum fee shall be paid on the signing of the Deed of Mediation. The hours of work charted by the mediator that exceed the minimum of 20 (twenty) hours shall be settled at the end of the mediation proceedings. In order to receive payment, the mediator must present a descriptive report of the respective hours worked.

Article 10 – Mediator fees shall be covered by a commercial invoice (*nota fiscal*) issued by the Getúlio Vargas Foundation, with the FGV Chamber in charge of taking the steps required to make payment thereof.

Sole Paragraph – In case no agreement is reached through the mediation proceedings and if the parties move ahead with arbitration conducted by the FGV Chamber, 50% of the amounts corresponding to the registration and administration fees shall be deducted from the costs owed to the FGV Chamber for subsequent proceedings.

**ANNEX II**  
**CODE OF ETHICS**

**Preamble**

The purpose of mediation is to establish a setting that fosters the search for a non-litigious and collaborative solution to disputes or conflicts arising between the Parties. It shall originate from the wishes and autonomy of the Parties.

The mediator is an impartial outsider whose function is to help the Parties identify problems, conflicts and interests, building up jointly with them alternatives and options for the settlement of the dispute.

The principles of this Code of Ethics aim to establish guidelines for mediators, Parties and the FGV Chamber when conducting mediation proceedings.

**1 – General Principles**

**1. 1 – Impartiality and Independence**

1. 1. a – Impartiality and independence are fundamental characteristics of the mediator.

1. 1. b – Duty of Disclosure

Before accepting a nomination, mediators must disclose any interests, relationships or circumstances that could adversely affect their impartiality or give rise to an appearance of partiality and independence breach, in order to allow the Parties to decide on whether to uphold the nomination. Such disclosure must encompass relevant facts and circumstances related to the Parties and the dispute.

Such disclosure shall be conducted through a Statement of Independence to be submitted by mediators to the FGV Chamber Secretariat. The duty of disclosure must be observed throughout the proceedings. Should the mediator become aware of any fact in the course of the proceedings that might raise justifiable doubts about his independence and impartiality, he must immediately notify the Parties of such occurrence.

**1. 2 – Diligence, Competence and Availability**

1. 2. a – Mediators are selected for their ability to effectively mediate a dispute that has arisen. This is why they may accept the task only when endowed with the necessary qualifications required to meet the reasonable expectations of the Parties.

1. 2. b – Mediators must ensure the correct and proper progress of the proceedings.

1. 2. c – Mediators may accept a nomination only when they are available to dedicate their full attention to conducting the proceedings.

**1. 3 – Duty of Confidentiality**

1. 3. a – the duty of secrecy applies to all participants in mediation proceedings.

1. 3. b – Any document or information related to the proceedings may be disclosed only with specific authorization from the Parties, or in response to a legal provision or court order.



## **1. 4 – Acceptance of Nomination**

1. 4. a – Mediators must not contact the Parties to request nominations to act in this position.

1. 4. b – When consulted by the Parties in order to explore the possibility of their nomination, mediators must refrain from any comments or assessments of the dispute to be discussed.

1. 4. c – Once a nomination has been accepted, mediators must comply with the Rules of the FGV Chamber, this Code of Ethics and directives related to the proceedings, in the terms agreed by the Parties.

1. 4. d – Mediators may not resign in the course of the proceedings, except for relevant reasons or impossibility of remaining involved in the proceedings, due to a fact subsequent to the commencement of the proceedings, including, but not limited to, facts that might adversely affect their independence or impartiality.

## **1. 5 – Communications with the Parties**

1. 5. a – Other than meetings with the mediators, the Parties and their duly-accredited legal representatives must avoid communications with the mediators when the other Party is not present, regarding the matter addressed through the proceedings.

1. 5. b – No mediator may accept any type of gift, hospitality, benefit or favor from the Parties on his/her behalf or for family members.

## **2– The Mediator and the Parties**

2. 1 – The mediator shall guarantee the Parties the opportunity to take well-informed decisions, understanding the implications and outcomes of the matters discussed in the course of the proceedings.

2. 2 – The mediator shall employ diligence and competence for assisting in the pursuit of a consensual outcome that attends to the interests of the Parties.

2. 3 – Whenever the mediator feels it is necessary to engage in separate discussions with a Party, it shall advise the other Party and offer it an equal opportunity to do so.

2. 4 – The mediator shall not take any decisions for the Parties.

2. 5 – The mediator shall not act as a professional hired by any of the Parties to address issues related to the mediation proceedings in which he/she has served.

2. 6 – The mediator shall determine the voluntary status of the mediation proceedings and shall ensure fair and equal treatment between the Parties.

## **3 – The Mediator and the Proceedings**

3. 1 – The mediator must define the phases of the proceedings jointly with the Parties, in order to ensure the most efficient outcome, with flexibility and informality.

3. 2 – The mediator must stress the need for confidentiality to the Parties.

3. 3 – The mediator shall interrupt the proceedings should he/she at any time note an ethical or legal impediment hampering his/her activities.

3. 4 – The mediator may suggest that the Parties engage a technical expert or specialist whenever such involvement proves necessary for an efficient outcome to the proceedings.

3. 5 – The mediator shall not insist on pursuing the mediation proceedings when noting that their continuation would adversely affect any of the Parties, but must rather suspend or terminate the proceedings.

#### **4– The Mediator and the FGV Chamber**

4. 1 – The mediator must cooperate with the FGV Chamber in order to ensure that good quality services are rendered efficiently, compliant with the provisions set forth in this Code of Ethics, the Mediation Rules and other provisions that may be applicable hereto by law or as agreed by the Parties.

**NOTE: These Rules and their annexes shall be effective as of July 1, 2016.**