

China Maritime Arbitration Commission (CMAC)

Model Mediation Clause

Any dispute arising from or in connection with this Contract shall be submitted to the China Maritime Arbitration Commission (CMAC) for mediation which shall be conducted in accordance with CMAC's Mediation Rules.

Where a settlement through mediation has been reached, the parties agree to submit the settlement agreement to CMAC and request the arbitral tribunal to render an arbitral award in accordance with relevant provisions of CMAC's Arbitration Rules and the terms of the settlement agreement.

Where one party is unwilling to join the mediation proceedings or no settlement through mediation has been reached, the parties agree to submit the disputes to CMAC for arbitration in accordance with CMAC's Arbitration Rules.

CONTENTS

China Maritime Arbitration Commission (CMAC)

Mediation Rules

Chapter 1 General Provisions	1
Chapter 2 Mediation Proceedings	2
Chapter 3 Supplementary Provisions	8

Appendix I

Directory of China Maritime Arbitration Commission and its Sub-Commissions/Arbitration Centers and Aviation Dispute Mediation Center	10
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Appendix II

China Maritime Arbitration Commission Mediation Fee Schedule	13
---	----

Appendix III

Provisions on the Mediator's Remuneration	14
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China Maritime Arbitration Commission (CMAC)

Mediation Rules

(Effective as of October 1, 2018)

Chapter 1 General Provisions

Article 1 These Rules are formulated for the purpose of encouraging parties to resolve disputes through mediation and the combination of mediation with arbitration with harmony, professionalism, efficiency and low cost.

Article 2 All contractual or non-contractual civil and commercial disputes between natural persons, legal persons and other organizations may be referred to the China Maritime Arbitration Commission (hereinafter referred to as the “CMAC”) for mediation.

Article 3 Mediation shall follow the principle of voluntary participation by the parties. Mediation should be conducted based on facts, in accordance with laws, regulations and agreements, by referring to international practice and respecting the principle of impartiality, soundness and efficiency, so as to promote mutual understanding, reach a settlement and resolve the disputes in a timely manner.

Article 4 These Rules uniformly apply to CMAC and its sub-commissions/ arbitration centers/mediation centers.

Where the parties have agreed to refer their disputes to CMAC

for mediation, they shall be deemed to have agreed to mediate in accordance with these Rules.

Where the parties have agreed to refer their disputes to CMAC for mediation but have agreed on a modification of these Rules or have other agreement on these Rules, the parties' agreement shall prevail, unless such agreement cannot be inoperative.

Where the parties have agreed to refer their disputes to mediation according to these Rules without providing the name of the mediation institution, they shall be deemed to have agreed to refer the disputes to mediation by CMAC.

Article 5 Where the parties have agreed to refer their disputes to CMAC or its sub-commission/ arbitration center/ mediation center for mediation, according to the application of the party, the Arbitration Court of CMAC or the Arbitration Court of its sub-commission/ arbitration center shall accept the mediation application and administer the case.

Article 6 CMAC and its mediation center established within CMAC maintain a Panel of Mediators who are appointed among Chinese and foreigners with relevant professional knowledge and practical experience.

Article 7 The parties shall cooperate in good faith, consciously comply with the mediation rules and relevant laws and regulations, actively participate in the mediation proceedings, and voluntarily perform the settlement agreement.

Chapter 2 Mediation Proceedings

Article 8 The parties may submit a mediation application to CMAC either individually or jointly, regardless of whether a

mediation agreement has been reached on referring the disputes to mediation between the parties.

Article 9 A party applying for mediation shall:

1. submit the Mediation Agreement signed by one party or jointly, or the Mediation Agreement provided by CMAC signed by one party or jointly;

2. submit a Request for mediation, including:

(a) the names, residences and communication methods of the parties, including address, postcode, landline, mobile phone, fax number, email address and other means of electronic telecommunications;

(b) preferred communication method;

(c) a statement of the facts and the claim;

(d) relevant documents of evidence;

3. submit proof of identity. Where the Claimant authorizes a representative in the mediation proceedings, a Power of Attorney shall be submitted.

Article 10 Where after examination, CMAC finds the application for mediation to be complete, it shall send a Notice of Mediation, these Rules and Panel of Mediators to each party, notify the follow-up procedures and forward the application documents to the Respondent.

Article 11 Except the joint application of the parties, the Respondent shall confirm whether it agrees to mediation within seven (7) days from date of receipt of the Notice of Mediation; if the Respondent agrees, it shall:

1. submit its signed Mediation Agreement where the Applicant submitted the Mediation Agreement only signed by itself when applying for mediation;
2. submit written opinion, including:
 - (a) the name, residence and communication methods of the Respondent, including address, postcode, landline, mobile phone, fax number, email address and other means of electronic telecommunications;
 - (b) preferred communication method;
 - (c) written opinion on the Applicant's application for mediation;
 - (d) relevant evidence.
3. submit proof of identity. Where the Respondent authorizes a representative in the mediation proceedings, a Power of Attorney shall be submitted.

Article 12 Where the parties agree to mediation, they shall pay the mediation fee in accordance with the Mediation Fee Schedule (Appendix II) and Article 26 within five (5) days from the date of receipt of Notice of Charge.

Article 13 The parties shall be deemed to have not agreed to mediate where the parties jointly apply for or both agree to mediation but any/all of them fail to pay the mediation fee within the prescribed period of time unless other parties pay the shortfall or where the Respondent fails to consent to mediation within the period of time prescribed in Article 11.

CMAC has the power to decide whether to accept the delayed confirmation of consent of mediation or delayed payment of mediation fee after seeking opinion of other parties.

Article 14 The mediation shall be conducted by one mediator unless otherwise agreed by the parties.

The parties may nominate mediators from or outside the Panel of Mediators provided by CMAC. Where the parties nominate mediators from outside CMAC's Panel of Mediators, a mediator so nominated may act as mediator subject to the confirmation of CMAC.

Where the mediation is conducted by one mediator, the parties shall jointly nominate, or jointly entrust CMAC to appoint a mediator within five (5) days from the date of receipt of Notice of Nomination of Mediator.

Within the period of time prescribed in the preceding paragraph, the parties may select more than one mediators as candidates in preference order from the list of mediators recommended by CMAC. The common candidate selected by the parties shall be the mediator jointly nominated by parties. Where the common candidates are more than one person, the candidate at the first place shall be the mediator.

Where the parties have special agreement on nomination of mediator, but fail to nominate mediator within the agreed period of time or the period of time prescribed in the preceding paragraph, the mediator shall be appointed by CMAC.

Article 15 The mediator who accepts nomination or is appointed, shall disclose to CMAC in writing the information which may affect the mediator's independence and impartiality in a timely manner.

Article 16 Where any party applies to replace the mediator on the ground of the written disclosure of the mediator or other reasons,

or the mediator voluntarily withdraws from his/her office, or such mediator is prevented de jure or de facto from fulfilling his/her function, he/she shall withdraw from his/her office.

After the withdrawal of the mediator, another mediator shall be nominated or appointed within the period of time prescribed by CMAC in accordance with the previous methods of nomination or appointment.

Article 17 The mediator shall conduct the mediation proceedings in any way the mediator deems appropriate unless otherwise agreed by the parties. Under all circumstances, the mediator shall act impartially and fairly to each party and shall help the parties resolve the disputes efficiently. These appropriate ways include but not limited to:

1. conducting mediation proceedings on the basis of documents, by oral hearing or online, etc.;
2. meeting with the parties or representatives separately or collectively;
3. requesting the parties to submit written documents and propose recommendations or plans for settlement;
4. consulting experts or appoint appraisers for clarification on specific issues of the case. The expenses, unless otherwise agreed, shall be shared equally by parties.
5. proposing suggestions to resolve disputes.

Mediation proceedings shall be conducted in private, unless otherwise agreed by the parties.

Article 18 On-site mediation shall be conducted at the place of CMAC or its sub-commission/ arbitration center. Where the parties

agree otherwise or have other requirements, on-site mediation may be conducted at another place with the consent of CMAC or its sub-commission/ arbitration center. The expenses shall be borne by the parties according to their agreement.

Article 19 The period of time of mediation shall be thirty (30) days from the date of acceptance of nomination or appointment of mediator unless the parties agree otherwise or the mediator considers the extension of time necessary with the consent of the parties.

Article 20 Where a settlement is reached through mediation, the parties shall conclude a settlement agreement. The settlement agreement shall be binding upon the parties.

Article 21 In order to ensure that the settlement agreement is enforceable, the parties may agree on an expedited arbitration clause in the previously concluded Mediation Agreement or the settlement agreement reached through mediation and apply to CMAC for arbitration according to such arbitration clause and the provisions of “Combination of Conciliation with Arbitration” of CMAC Arbitration Rules. The parties may request CMAC to form an arbitral tribunal and to render an arbitral award according to the settlement agreement. The specific procedures and period of time are not subject to other provisions of Arbitration Rules related to procedures and period of time.

The mediator may continue to act as the arbitrator in the arbitration proceedings referred in this article according to the joint written application by the parties.

Article 22 Where the parties have not reached the settlement agreement through mediation, they can sign an arbitration

agreement and refer their disputes to CMAC for arbitration.

The mediator shall not act as the arbitrator referred in this article unless otherwise agreed by the parties.

Article 23 The mediation proceedings shall be terminated if any of the following circumstance arises:

1. The parties prescribed in Article 13 decline mediation;
2. Any party declares in writing to the mediator that the mediation proceedings shall be terminated;
3. The parties have reached a settlement agreement;
4. The mediator concludes that it is unnecessary to continue to mediate and decides to terminate the mediation proceedings; or
5. The time period of mediation expires.

Chapter 3 Supplementary Provisions

Article 24 All documents, notices and written materials in relation to mediation may be delivered in person or sent by express mail, email, fax or by any other means considered proper by CMAC or the mediator.

Article 25 The parties shall make their written materials in triplicate. Where there are more than two parties or the number of mediators is more than one person, additional copies shall be provided accordingly.

Article 26 Where the parties agree to mediation, the mediation fee and other costs shall be paid by the parties on an average basis according to the Notice of Charge of CMAC. Where the parties have special agreement on the proportion of the costs, the parties' agreement shall prevail.

After the termination of mediation proceedings, CMAC may consider whether to return (part of) the mediation fee and the costs already received depending on the actual situation of the mediation proceedings.

Article 27 Where the mediation fails, the parties shall not in any manner refer to any statements, views, opinions or proposals put forward by the parties or the mediator in the course of mediation, as grounds for claim(s) or defense(s) in any subsequent arbitration proceedings or judicial proceedings.

Article 28 These rules shall be interpreted by CMAC.

Article 29 These rules passed by the CMAC Chairman Meeting shall be effective as of October 1, 2018.

Appendix I

Directory of China Maritime Arbitration Commission and its Sub-Commissions/Arbitration Centers and Aviation Dispute Mediation Center

China Maritime Arbitration Commission (CMAC)

China Maritime Arbitration Commission Aviation Dispute Mediation Center

Add: 16/F, CCOIC Building, No.2 Huapichang Hutong,

Xicheng District, Beijing, 100035, P.R.China

Tel: 86 10 82217900, 82217767/7923/7735

Fax: 86 10 82217966

E-mail: cmac@cmac.org.cn

Website: <http://www.cmac.org.cn>

CMAC Shanghai Sub-Commission

Add: Room 1301,1314, Tomson Commercial Building,

710 Dongfang Road, Pudong New Area,

Shanghai, 200122, P.R.China

Tel: 86 21 58200329/50810729

Fax: 86 21 50810965

E-mail: cmac-sh@cmac-sh.org

CMAC Tianjin Maritime Arbitration Center

(Tianjin Sub-Commission)

Add: 1803/1804,18F,Wanhai Building, Tianjin Wanda Center,

the Intersection of Six weft Road and No.8 Dazhigu Road,

Hedong District, Tianjin, 300170, P.R.China

Tel: 86 22 66285688

Fax: 86 22 66285678

E-mail: tianjin@cietac.org

CMAC Southwest Sub-Commission

Add: 15F, No.1 Lifan Center, Juxianyan Plaza, Jiangbei Distirct,
Chongqing, 400024, P.R.China

Tel: 86 23 67860011

Fax: 86 23 67860022

E-mail: cietac-sw@cietac.org

CMAC Hong Kong Arbitration Center

Add: Unit 4705, 47th Floor, Far East Finance Center,
No.16 Harcourt Road, Hong Kong

Tel: 852 25298066

Fax: 852 25298266

Email: hk@cietac.org

CMAC Fujian Sub-Commission

Add: Unit 1602, 16/F, Time Plaza Yango, 357 Xiangban Street,
CBD, North Minjiang, Taijiang District, Fuzhou City,
Fujian Province, 350002, P. R. China

Tel: 86 591 87600275

Fax: 86 591 87600330

Web site: <http://www.cietacfj.org>

CMAC South China Sub-Commission

Add: 14A01, Anlian Plaza, No. 4018, Jintian Road,
Futian District, Shenzhen, 518026, P.R.China

Tel: 86 755 82796739

Fax: 86 755 23964130

Email: infosz@cietac.org

CMAC (Zhejiang) Pilot Free Trade Zone Arbitration Center

Add: No. 619 Dingshen Road, Lincheng, Zhoushan city,

Zhejiang Province, 316000, P.R.China

(Block A, Ganghang International Building of Zhoushan)

Tel: 86 580 2027765

Fax: 86 580 2027765

Email: cmaczj@cmac.org.cn

Appendix II

China Maritime Arbitration Commission Mediation Fee Schedule

Amount of Claim (RMB)	Amount of Administration Fee (RMB)	Mediator's Remuneration/person
Less than 100,000	1.5% of the amount and not less than 150	3.5% of the amount, not less than 350
From 100,001 to 500,000	1,500+0.75% of the amount over 100,000	3,500+1.75% of the amount over 100,000
From 500,001 to 1,000,000	4,500+0.6% of the amount over 500,000	10,500+1.4% of the amount over 500,000
From 1,000,001 to 5,000,000	7,500+0.15% of the amount over 1,000,000	17,500+0.35% of the amount over 1,000,000
From 5,000,001 to 10,000,000	13,500+0.09% of the amount over 5,000,000	31,500+0.21% of the amount over 5,000,000
Over 10,000,000	18,000+0.06% of the amount over 10,000,000	42,000+0.14% of the amount over 10,000,000

Appendix III

Provisions on the Mediator's Remuneration

Where the mediator's remuneration is otherwise agreed by the parties and the mediator, the parties' agreement shall prevail. When a mediator charges by the hour, he/she may request remuneration in accordance with his / her standard. The following principles are for the reference of the parties:

Article 1 Charging by the hour means that the mediator entrusted by the parties in accordance with laws charges the remuneration according to his/her billable hours clocked in the course of mediation and his/her hourly rate standard.

Article 2 Where the parties choose to pay the mediator by the hour, the following matters shall be clarified:

the hourly rate standard;

the content of mediation service;

the way and the time of issuing the hourly rate list; and

the way of submitting an objection and the period of time of objection.

Article 3 The billable hours of the mediator shall include:

1. time spent on mediation through unilateral or joint face-to-face talks, teleconferences or video conferences with the parties, including but not limited to the time spent listening to the facts introduced by the parties and the goals the parties intend to achieve

in the mediation and responding to the questions raised by the parties in accordance with laws;

2. time spent analyzing and studying the case;

3. time spent drafting the mediation plan; and

4. the regular time spent traveling to the mediation venue.

The mediator bills the parties in 15-minute increments. Where the mediator's billable hours are less than fifteen (15) minutes, they will be rounded up to fifteen (15) minutes.

Article 4 After the mediator and the parties agree on an hourly rate, the mediator shall submit a working plan, stating the predicted billable hours, the hourly rate and predicted amount of remuneration. CMAC charges the parties mediator's remuneration and relevant taxes in advance according to the predicted amount.

Article 5 Where the actual mediation costs exceed the deposited remuneration of the mediator, the mediator shall submit a list regarding the shortfall to CMAC. The parties shall be charged by CMAC for the shortfall, including taxes according to the list. Where the parties fail to make a timely payment, the mediation procedure shall be terminated.

Article 6 Upon the conclusion of the mediation, the mediator shall submit a statement regarding the mediator's remuneration to CMAC, including the detailed information of the mediator's work, the number of billable hours and the total sum of the remuneration.

Article 7 After examining the statement submitted by the mediator, CMAC shall pay the mediator.

Article 8 Upon conclusion of the mediation, where the deposited mediation fees exceed actual mediation costs, the excess shall be reimbursed to the parties by CMAC.