

TATUA ADR SERVICES LIMITED

T. (+254) 20-265 2308
E. tatua@tatuacenter.co.ke

Located at Kenya School of Monetary Studies
Mathare North Road Off Thika Road
P.O Box 65041-00618, Ruaraka



CODE OF CONDUCT FOR MEDIATORS

- 1) This Code is intended to apply to any person who acts as a mediator, facilitator or neutral party (“the Mediator”) in mediation (“the Mediation”).

Appointment

- 2) The Mediator will confer with the parties regarding suitable dates on which the Mediation may take place.

Competence

- 3) Mediators shall be competent and knowledgeable in the process of mediation having been accredited to international standards by a recognised institution and satisfy themselves as to such competence before accepting any appointment.

Commitment and availability

- 4) Before accepting an appointment, the Mediator will satisfy himself that he or she has appropriate time available to conduct and manage the Mediation in an expeditious manner.

Impartiality and conflict of interest

- 5) The Mediator will at all times act, and be seen to act, fairly and with complete impartiality towards the parties in the Mediation, treating each with dignity and respect and without any bias or discrimination.
- 6) The Mediator will disclose to the parties any apparent, potential or actual conflict of interest in the Mediation. Such disclosure will be made to all the parties as soon as the Mediator becomes aware of it, whether this be prior to, or during, the Mediation. In these circumstances the Mediator will not act (or continue to act) in the Mediation unless all the parties specifically acknowledge the disclosure and agree to the Mediator continuing to act as such.
- 7) The sort of information the Mediator will disclose includes:
 - having acted in any capacity for any of the parties;
 - his or her firm (if applicable) having acted in any capacity for any of the parties;

- having any financial or other interest (whether direct or indirect) in any of the parties or in the outcome of the Mediation;
 - having any confidential information about any of the parties or the subject matter of the Mediation.
- 8) Having acted in the Mediation, the Mediator will not subsequently act for any of the parties in relation to the same subject matter, without the written consent of all the other parties.

Confidentiality

- 9) The Mediator will keep confidential and not use for any collateral or ulterior purpose the fact that the Mediation is to take place or has taken place; such confidentiality will extend to all information (whether given orally, in writing or otherwise) produced for, or arising in relation to, the Mediation, including the existence and terms of any Mediation Settlement.
- 10) Exceptions to this duty of confidentiality may arise where:
- all parties consent to disclosure;
 - the Mediator is requested by any of the parties or a court to provide information necessary to implement and enforce any settlement agreement; or
 - the Mediator is required under the general law to make disclosure.
- 11) If the Mediator is given information by any party which is implicitly confidential to that party or is expressly stated to be confidential (and which is not already public) the Mediator will maintain the confidentiality of that information from all other parties, except to the extent he or she is specifically authorised to disclose it.

Fees

- 12) The Mediator must inform the parties before the Mediation of the fees and range of expenses to be charged. Such fees and expenses will be confirmed in the Agreement to Mediate. No Mediator will accept to act as such until the principles of remuneration have been agreed.

Parties' agreement

- 13) The Mediator will ensure the parties enter into a written Agreement to Mediate and that the Mediation continues in accordance with the provisions of such Agreement with particular reference to its confidentiality provisions.
- 14) The Mediator will ensure that all parties to the dispute understand the process of mediation as well as the role of the Mediator. The parties will also understand that any of them may walk away from the Mediation at any time. The Mediator will further ensure to the best of his or her capacity that any settlement reached by the parties is reached through knowing and informed consensus and that all parties understand its terms.

15) The Mediator will use best endeavors to ensure that any settlement reached in the Mediation is recorded in a written agreement.

Termination of the Mediation

16) The Mediation will be terminated in accordance with any of the following:

- on reaching a settlement which is written down and signed by all present
- on one or the other of the parties choosing not to participate in the process any longer;
- if the parties decide to refer the matter to a different procedure, such as Arbitration in which case the parties will confirm this decision in writing to the Mediator at that time;
- if the Mediator decides to withdraw from the Mediation, which will be confirmed in writing to all the parties.

Withdrawal of the Mediator

17) The Mediator will withdraw from the Mediation if;

- requested to do so by any of the parties;
- is found to be in breach of this Code;
- is required by any of the parties to do something which would be in breach of this Code;
- any of the parties is acting in breach of the Agreement to Mediate;
- any of the parties is acting in an unconscionable manner;
- the Mediator believes there is no reasonable prospect of the parties reaching an agreement;
- the Mediator learns of any criminal act by any of the parties arising out of the matter being submitted to the Mediation.

Insurance

18) The Mediator should ensure that he or she has professional indemnity insurance in an adequate amount with a reputable insurer.