



ABU DHABI GLOBAL MARKET COURTS  
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## SCHEDULE C

### A Note on the Appointment of Court Officers as Mediators in Court-Annexed Mediations

#### Introduction

1. The growing trend of court-annexed mediation as an alternative dispute resolution option to court litigation has resulted in court-annexed mediation becoming an integral and accepted part of dispute resolution. Mediation offers a multitude of advantages to both the courts and court users, including easy access to justice, speedy resolution of disputes, the reduction in any backlog of cases, efficient administration of justice and court resources, costs savings to parties by avoiding lengthy court proceedings, and enabling parties to reach a negotiated settlement of their dispute through a process which they control.
2. In ADGM, court-annexed mediation is conducted by court officers or independent mediators appointed by ADGM Courts (the “Court”). Schemes that allow for the appointment of court officers as mediators need to provide measures to ensure a conflict will not arise in regard to any existing or future proceedings.
3. This paper sets out the measures that will be in place to address any concerns about the potential for a conflict of a court officer appointed as a mediator in court-annexed mediations. The Court wishes to assure members of the public and court users that these measures will safeguard the integrity of court-annexed mediation in the Court and the judicial process.

#### Court-annexed mediation services of ADGM Courts

4. The court-annexed mediation procedures and services of the Court are set out in Part 36 of the *ADGM Court Procedure Rules 2016* (“CPR”) and ADGM Courts Practice Direction 13 (“PD 13”). Parties can seek mediation services from the Court either prior to or after commencement of proceedings.

5. Parties seeking mediation of their dispute prior to the commencement of proceedings are required to submit a request for mediation to the Registry of the Court (the “Registry”) in the form set out in Schedule A to PD 13, provided that the Court ordinarily would have jurisdiction to hear the dispute if proceedings were initiated. The Registrar has sole discretion to reject a request for mediation with no obligation to disclose the reasons for such rejection. If the request for mediation is accepted, the Registrar will appoint a court officer to act as mediator upon payment of the applicable filing fee or as soon as is practicable. The Parties may also refer their dispute voluntarily to court-annexed mediation where proceedings already have been commenced by filing a request for the appointment of a mediator with the Registry in the form set out in Schedule B of PD 13.
6. The Court may, at any stage of proceedings, either on its own initiative or upon the application of any party, refer the parties to court-annexed mediation. Consensual mediation is highly desirable. However, the Court’s power to refer a dispute to mediation does not depend upon the consent of the parties.
7. Under this scheme, the parties may not select the court officer or nominate an external individual for appointment as mediator. The selection of the mediator lies solely with the Registrar. The primary role and function of the mediator is to assist the parties in achieving a resolution of the dispute, with the parties in ultimate control of the decision to settle the dispute and the terms of settlement. The role and function of the mediator are set out in further detail in PD 13.28 and 13.29.
8. The parties have a duty to act and participate in the mediation in good faith and to use their best efforts to co-operate with each other and the mediator to enable the mediation to proceed smoothly and to resolve the dispute.
9. As soon as practicable after commencement of the mediation, the mediator and the parties are to enter into a mediation agreement in the form set out in Schedule D to PD 13 (one of the principal aims of which is to maintain the confidentiality of the mediation). The mediation session is private and closed to the public. Provisions relating to the general conduct of the mediation are set out in PD13.37 to 13.42.
10. If a settlement is reached during the mediation, the parties are required to record their settlement in writing, which is to be signed by or on behalf of the parties. It is only then that the settlement agreement will be legally binding. Following termination of the mediation, the mediator must inform the Registry in writing of the outcome of the mediation (i.e. whether settlement has been reached or not) without disclosing any details relating to the mediation.

### **First measure: obligation of confidentiality**

11. As noted above, mediation is a confidential process. The obligation of confidentiality is to be included in the mediation agreement which is to be signed by the parties and the mediator. The obligation of confidentiality is also contained in PD 13. For example:
  - (a) PD 13.48 mandates that the mediation shall be conducted in confidence and all communications made in the mediation shall not be used in any proceedings before any court or other body; and
  - (b) PD 13.51 contains a general prohibition in relation to the mediator giving evidence or producing in evidence any records or notes relating to the mediation in any proceedings before any court or other body.
12. This provides the parties with the general safeguard that the mediator will, in accordance with those provisions, maintain the confidentiality of the mediation, including in relation to all information disclosed by the parties or made available to the mediator during the mediation process.

### **Second measure: designated court officers**

13. In court-annexed mediation, specific court officers are designated for appointment as mediators. Only court officers who are accredited mediators will conduct mediations under this scheme. It should be noted that for this purpose a Judge is not a designated court officer.
14. The Registrar is exempt due to the Registrar's supervisory role in relation to the management of cases filed with the Court and the quasi-judicial functions (e.g. Costs Officer) assigned to the Registrar under the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 and the CPR.
15. Case administrator managers are also exempt from acting as mediators due to their primary function of overseeing the management and administration of cases filed with the Court.
16. Court officers designated for appointment as mediators are not responsible for the management and administration of cases filed with the Court. They may be called upon from time to time to assist in the administration of a particular case, but steps will be taken to avoid their being involved in the administration of a case that has been referred to them for mediation.

## **Conclusion**

17. The above measures should provide court users with the assurance needed that by introducing a court-annexed mediation scheme, the integrity and fairness of the court process will not be compromised. Rather, the court-annexed mediation scheme should be seen as a progressive development and an additional service offered by the Court to provide parties with a cost-effective alternative dispute resolution option for the resolution of their disputes.