

# Financial Dispute Resolution Centre Financial Dispute Resolution Scheme

## Ethics Code for FDRC Mediators

**February 2014**

## ETHICS CODE FOR FDRC MEDIATORS

### General Responsibilities

1. The Mediator shall act fairly in dealing with the Parties to the Mediation, have no personal interest in the terms of any *Mediated Settlement Agreement*, show no bias towards the Parties, be reasonably available as requested by the Parties, and be certain that the Parties have been informed about the mediation process.

### Responsibilities to the Parties

#### 2. Impartiality/Conflict of Interest

The Mediator shall be impartial. The Mediator shall disclose to the Parties any affiliations/interests which the Mediator may have or had with any Party or in relation to the Mediation and in such situation obtain the prior written consent of all the Parties before proceeding with the Mediation.

#### 3. Informed Consent

- (a) The Mediator shall explain to all Parties the nature of the mediation process, the procedures to be utilised and the role of the Mediator.
- (b) The Mediator shall ensure the Parties sign an *Agreement to Mediate* set out in Annex VI of the Terms of Reference prior to the substantive negotiations between the Parties.

#### 4. Confidentiality

- (a) The Mediator shall keep confidential all information, arising out of or in connection with the Mediation, unless and to the extent compelled by law or public policy grounds.
- (b) Any information disclosed in confidence to the Mediator by one of the Parties shall not be disclosed to the other Party without prior permission.
- (c) Paragraphs 4(a) and 4(b) shall not apply if there are reasonable grounds to

believe that the disclosure is necessary to prevent or minimize the danger of injury to a person or of serious harm to the well-being of a child.

- (d) The Mediator shall inform the Parties of the degree to which communications connected with the mediation process shall be confidential, including any special confidentiality which attaches to private meeting.
- (e) The Mediator shall ensure all legal advisors, experts and attendees who are not Parties to the Eligible Dispute sign a separate *Confidentiality Agreement* in the form prescribed by the FDRC in Annex VII of the Terms of Reference.

## 5. **Termination of Mediation**

- (a) The Mediator shall inform the Eligible Claimants of their right to withdraw from the Mediation.
- (b) If the Mediator's opinion is that the continuing of the Mediation is no longer practicable, the Mediator can terminate the Mediation.
- (c) If the Mediator believes that a Party is unable or unwilling to participate effectively in the mediation process, the Mediator can terminate the Mediation.
- (d) If the Mediator believes that continuing the Mediation will raise ethical concerns, the Mediator can terminate the Mediation.
- (e) If the Mediator believes that there is insufficient information for the Mediation to proceed constructively, the Mediator can terminate the Mediation.

**6. Insurance**

The Mediator shall consider whether it is appropriate to be covered by professional indemnity insurance and if so, shall ensure that he is adequately covered.

**Defining the Process**

**7. Independent Advice and Information**

The Mediator shall consider whether to encourage the Party to obtain legal advice or relevant expert opinion where appropriate.

**8. Conflicts of Interest**

A Mediator shall disclose all actual and potential conflicts of interest reasonably known to the Mediator as soon as possible. After disclosure, the Mediator shall decline to mediate unless all Parties choose to retain the Mediator.

**9. Fees**

The Mediator shall charge according to the *Schedule of Fees* set out in Annex I of the Terms of Reference of the FDRC in relation to the FDRS.

**10. Additional Representation or Roles**

A Mediator shall not engage in any additional representative or non-mediation role in relation to the subject matter of a mediated dispute.

**Responsibilities to the Mediation Process and the Public**

**11. Competence**

The Mediator shall be competent and knowledgeable in the process of mediation. Relevant factors shall include training, specialist training and continuous education, having regard to the relevant standards and/or accreditation scheme to which the Mediator is accredited.

12. **Appointment**

Before accepting an appointment, the Mediator must be satisfied that he has time available to ensure that the mediation can proceed in an expeditious manner.

13. **Advertising/promotion of the Mediator's services**

A Mediator who is a Board or staff member may use the name and/or logo of the FDRC to promote the FDRC and its service. Subject to the above, a Mediator may not use the name and/or the logo of the FDRC or the fact that he is on the List of Mediators maintained by the FDRC to promote his private practice.