

NEUTRAL EVALUATION PROCEDURE & AGREEMENT DOCUMENTS

SINGAPORE MEDIATION CENTRE NEUTRAL EVALUATION SERVICE

NEUTRAL EVALUATION PROCEDURE

1 Introduction

- 1.1 Neutral evaluation is a process by which the parties to a dispute may obtain an objective opinion on the merits of their case from an independent third party (the "Evaluator") to assist them in resolving their dispute amicably.
- 1.2 The neutral evaluation service provided by the Singapore Mediation Centre (the "Centre") is governed by this Neutral Evaluation Procedure.
- 1.3 This Neutral Evaluation Procedure may be amended by the Centre from time to time. The procedure which will govern a particular neutral evaluation will be the procedure prevailing at the time the parties enter the Neutral Evaluation Agreement.

2 Application for Neutral Evaluation

- 2.1 Any party to a dispute or negotiation may apply for neutral evaluation by:
 - a sending an application for neutral evaluation in the form at Annex A to the Centre; or
 - b making an online submission of the electronic application form for neutral evaluation at the Centre's DisputeManager.com Internet website.
- 2.2 Upon receiving an application for neutral evaluation, the Centre will contact the other parties to invite them to participate in the neutral evaluation.

3 Neutral Evaluation Agreement

- 3.1 Before the neutral evaluation is carried out, the parties will enter a Neutral Evaluation Agreement in the form at Annex B with each other, the Centre and the Evaluator in relation to the conduct of the neutral evaluation. For avoidance of doubt, the Neutral Evaluation Agreement may take the form of an electronic record.
- 3.2 As between the parties, any of the terms of the Neutral Evaluation Agreement relating to:

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- a the confidentiality of:
 - (1) the neutral evaluation process;
 - (2) the documents and materials prepared for the neutral evaluation; and
 - (3) the communications made during the neutral evaluation;
- b the use of the Evaluator's written opinion; and
- c whether the Evaluator may be called as a witness in other proceedings between the parties

may be varied by a separate agreement between the parties.

3.3 Unless the parties expressly provide otherwise:

- a what transpires during the neutral evaluation;
- b all documents and materials prepared for the neutral evaluation (except those that would, in any event, have been admissible as evidence or discoverable in other proceedings); and
- c all communications made during the neutral evaluation, including any oral comments made or written opinions rendered by the Evaluator shall be kept confidential and shall not be used in any other proceedings.

3.4 Unless the parties expressly agree otherwise, if the parties are unable to resolve the matters that are the subject of the neutral evaluation amicably, they shall not call the Evaluator as a witness in other proceedings related to those matters.

4 The Parties

4.1 The parties may participate in the neutral evaluation either in person or by authorised representatives. The parties may also be assisted by legal advisers. The parties shall state the names of their representatives and legal advisers in the Neutral Evaluation Agreement.

4.2 The parties will be deemed, upon entering the Neutral Evaluation Agreement, to have accepted and agreed to be bound by the terms of this procedure.

5 The Evaluator

5.1 Upon receiving each party's commitment to proceed with the neutral evaluation, the Centre will appoint a person to act as the Evaluator.

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- 5.2 The Centre will apply the following procedure in deciding who to appoint as the Evaluator for a particular matter:
- a Each party will be invited to select, in order of preference, 5 persons from the Centre's Panel of Evaluators whom that party wishes to be considered for appointment as the Evaluator.
 - b The Centre will appoint a person who, in its view (having regard to the nature of the dispute), will be suitable to serve as the Evaluator. In deciding on the appointment of the Evaluator, the Centre will, as far as possible, try to give effect to the parties' preferences.
 - c If any of the parties has any valid reason to object to the appointment, the Centre will appoint another person.
- 5.3 A person selected as Evaluator will disclose any circumstances likely to create an impression of bias or prevent him from acting promptly. The Centre, upon receipt of such disclosure, will appoint another person as the Evaluator, unless the parties decide otherwise.
- 5.4 The Evaluator will:
- a prepare himself appropriately before the commencement of the neutral evaluation; and
 - b abide by the terms of the Neutral Evaluation Agreement and the Code of Conduct in Annex C.
- 5.5 Save as provided under paragraphs 12.2 and 12.3, the Evaluator shall not, at any time, act for any of the parties in connection with the subject matter of the neutral evaluation.
- 5.6 The Evaluator and the Centre are neither agents of, nor acting in any capacity for, any of the parties.
- 5.7 The Evaluator is not an agent of the Centre.

6 The Centre

- 6.1 The Centre will make the necessary arrangements for the neutral evaluation, including the following:
- a appointing the Evaluator;
 - b facilitating the exchange of case summaries, documents and other information;
 - c organising the neutral evaluation session, if any; and

- d providing general administrative support.

7 Exchange of information

7.1 Each party will, within fifteen working days from the date the party is asked to do so by the Centre, provide the Evaluator, the Centre and every other party with the following:

- a a concise summary (the "Summary") stating its case; and
- b copies of all documents referred to in the Summary that the party wishes to rely on for the neutral evaluation.

7.2 The parties should try to agree on the maximum number of pages to be contained in their respective Summaries and on the maximum number of pages of supporting documents to be submitted. The parties should also try to agree on a joint set of documents.

7.3 Where a Summary is submitted in the form of an electronic record, it must not exceed 5 MB in file size and must be in one of the following formats:

- a Acrobat 4.0 Portable Document Format (i.e. pdf file); or
- b Microsoft Word 2000 or earlier version (i.e. Word file).

7.4 Where a document (other than a Summary) is submitted in the form of an electronic record, it must not exceed 5 MB in file size and must be in one of the following formats:

- a Acrobat 4.0 Portable Document Format (i.e. pdf file);
- b Microsoft Word 2000 or earlier version (i.e. Word file);
- c Microsoft Excel 2000 or earlier version (i.e. Excel file);
- d Microsoft PowerPoint 2000 or earlier version (i.e. PowerPoint file);
- e Image documents (i.e. gif or jpeg file); or
- f Hypertext marked up language document (i.e. html or htm file).

8 The Neutral Evaluation

8.1 The Evaluator will express his opinion on the basis of the Summaries and documents submitted. There will be no hearings or meetings (whether in person or by teleconference, videoconference, web conference or otherwise) unless:

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- a the Evaluator decides, in his sole discretion, that a meeting is necessary; and
- b the parties agree to bear the additional fees and charges that would be payable if the meeting is convened.

If the Evaluator decides that a meeting is necessary, the Centre will make the necessary arrangements and keep the parties informed.

- 8.2 If a meeting is convened, each party will be allowed to make further submissions on its case and to respond to the submissions made by the other parties. The Evaluator may raise queries and seek clarification on the points raised.
- 8.3 The Evaluator may conduct a site visit with the consent of the parties. Such a site visit shall be treated as part of the neutral evaluation.
- 8.4 The Evaluator may obtain expert advice in technical matters with the consent of the parties, who shall bear the expenses incurred.
- a If the Evaluator is of the view that it would be preferable for further investigations to be conducted before he expresses an opinion, he should inform the parties accordingly. The parties have the discretion whether to commission such an investigation. Unless the parties agree to commission such an investigation, the Evaluator shall render an opinion based solely on the submissions and materials before him and, should he decide on a site visit, his actual observations. The Evaluator may qualify his written opinion to explain the constraints under which he renders his opinion.
 - b If the parties decide to commission such an investigation, the expert commissioned to conduct the investigation will be an agent of the parties, and the parties themselves will be jointly liable to the expert for the costs of the investigation. The parties will pay the expert's costs directly, and the expert's costs will be a separate expense item over and above the fees payable to the Centre and the Evaluator's professional charges.
- 8.5 The neutral evaluation will be conducted in confidence. In particular, if a meeting is convened:
- a No transcript, audio or video recording or other formal record will be made of the neutral evaluation.
 - b Only the Evaluator, the parties and/or their representatives and/or legal advisers will be permitted to be present during the neutral evaluation.
- 8.6 Unless the parties expressly agree otherwise:
- a all communications made during the neutral evaluation, including information disclosed and views expressed; and

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- b all comments made and opinions expressed by the Evaluator, whether oral or in writing,

shall be treated as "without prejudice" communications and shall not be used in any other proceedings.

- 8.7 The Evaluator will render his opinion within 28 days from the close of submissions in the neutral evaluation or the date of the site visit, whichever is later.
- 8.8 The Evaluator shall not be required to deliver his written opinion personally. The Evaluator's obligation to render his written opinion may be discharged by the Centre making available the written opinion for collection by the parties.
- 8.9 Except as provided under paragraph 8.4, the Evaluator's opinion shall be based on the submissions and materials presented to the Evaluator and the Evaluator's actual observations during any site inspection that is conducted as part of the neutral evaluation. The comments made and opinions expressed by the Evaluator shall be read subject to the constraints under which the neutral evaluation is conducted.

9 **Stay of Proceedings**

- 9.1 Unless the parties otherwise agree, the neutral evaluation will not prevent the commencement of any suit or arbitration, nor act as a stay of such proceedings.

10 **Confidentiality**

- 10.1 Unless the parties agree otherwise, all persons involved in the neutral evaluation will keep confidential and will not use for any collateral or ulterior purpose:
 - a all materials prepared for and communications made during the neutral evaluation; and
 - b all comments made and opinions expressed by the Evaluator, whether oral or in writing.
- 10.2 All documents (including anything stored electronically) and information produced for, or arising in relation to, the neutral evaluation will be privileged, and will not be admissible as evidence or discoverable in any proceedings connected with the dispute, unless such documents would in any event have been admissible or discoverable.
- 10.3 The parties shall not call the Centre or any of its officers or employees as a witness, consultant, arbitrator or expert in any proceedings in relation to the dispute.

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10.4 The parties shall not call the Evaluator as a consultant or arbitrator in any proceedings in relation to the dispute. Unless the parties agree otherwise, the parties shall not call the Evaluator as a witness or expert in any proceedings in relation to the dispute.

11 Fees

11.1 The fees payable to the Centre and the Evaluator's professional charges will be borne by the parties in equal portions. The fees will be charged according to the fee schedule set out in Annex D. The Evaluator's professional charges are to be paid to the Centre.

11.2 If a meeting is to be convened, the additional fees and charges shall be paid to the Centre before the meeting is convened.

11.3 The parties will bear their own costs, expenses and disbursements of their participation and the fees of their advisers in the neutral evaluation.

12 Expert Report

12.1 The neutral evaluation service offered by the Centre does not extend to the provision of a detailed expert report that draws on the Evaluator's subject-matter expertise.

12.2 If the parties wish to procure from the Evaluator a more detailed expert report than the Evaluator's written opinion, the parties are not precluded by this Neutral Evaluation Procedure from jointly commissioning such a report from the Evaluator. However, such an appointment does not fall within the scope of the neutral evaluation service offered by the Centre and will be on such terms as may be agreed between the parties and the Evaluator.

12.3 The Evaluator shall not accept an appointment to prepare a more detailed expert report than the Evaluator's written opinion unless all the parties to the dispute jointly commission him to prepare the report.

13 Waiver of Liability and Disclaimer

13.1 The parties shall not make any claim whatsoever against the Evaluator and/or the Centre and/or the Centre's officers or employees for any matter in connection with or in relation to:

- a the neutral evaluation; and/or
- b the services provided by the Evaluator and/or the Centre; and/or
- c the dispute between the parties.

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- 13.2 The Evaluator will not be liable to the parties for any act or omission whatsoever in connection with the services provided by him or in relation to the neutral evaluation.
- 13.3 The Centre will not be liable to the parties for any act or omission whatsoever in connection with the services provided by the Evaluator and/or the Centre or in relation to the neutral evaluation.
- 13.4 All comments made and opinions expressed by the Evaluator, whether oral or in writing, are stated:
- a in the context of the dispute between the parties; and
 - b for the limited purpose of assisting the parties in resolving their dispute.

Given the constraints under which the neutral evaluation is conducted, the Evaluator's comments and opinions may not be relied on in the context of any other dispute or by any other person.

14 Interpretation

- 14.1 The interpretation that is given by the Centre to any provision in this Neutral Evaluation Procedure shall be the correct interpretation of the provision concerned.

Annexes

- Annex A Application for Neutral Evaluation
- Annex B Neutral Evaluation Agreement
- Annex C Code of Conduct
- Annex D Fee Schedule

Issued by the Singapore Mediation Centre
1 July 2003