

SCHEDULE C

GUIDANCE NOTE¹⁰

ADGM COURTS COURT-ANNEXED MEDIATION SCHEME

Introduction

1. Mediation is a very effective and efficient option for dispute resolution and can act as an alternative to or work in tandem with court litigation and arbitration.
2. Court-Annexed Mediation offers a multitude of advantages to courts, parties and the legal profession, including: confidentiality; ease of access to justice; speed; reduction of court caseload; the efficient administration of justice and court resources; costs savings; and enabling parties to reach a negotiated settlement of their dispute through a process ***which they control***.
3. In ADGM, court-annexed mediation is offered by ADGM Courts (the “**Court**”) and is conducted by court officers or independent pro bono mediators appointed by the Registrar of the Court.
4. This Guidance Note provides a summary of the court-annexed mediation scheme, its requirements and processes and, importantly, it sets out the measures that are in place to address any concerns about the potential for a conflict of interest of mediators, particularly a court officer appointed as a mediator. 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

Procedures

5. The court-annexed mediation procedures and services of the Court are set out in Part 36 of the [ADGM Court Procedure Rules 2016](#) (the “**CPR**”) and ADGM Courts [Practice Direction 13](#) (“**PD 13**”). PD 13 sets out the procedure for court-annexed mediation having regard to the overriding objective that the mediation is to be conducted in an efficient, expeditious and cost-effective manner.
6. Parties can seek mediation services from the Court either prior to or after commencement of a case.
7. Parties seeking mediation of their dispute prior to the commencement of proceedings are required to submit a request for mediation to the Court’s Registry (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 or a pro bono mediator to act as mediator as soon as is practicable.

¹⁰ This Guidance Note is a guide to the court-annexed mediation scheme as set out in Part 36 of the ADGM Court Procedure Rules and Practice Direction 13 and is for the assistance of parties referred to or voluntarily submitting to court-annexed mediation. Parties must refer to the CPR and the PD for the rules and procedural framework.

8. 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.
9. In addition, 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.
10. Under this scheme, parties may not select the court officer or nominate an external individual for appointment as mediator. The selection and appointment of the mediator lies solely with the Registrar, who shall appoint the mediator as soon as practicable and notify the parties of the appointment in writing, **at which time the mediation shall be deemed to have commenced.**

Role and function of the mediator

11. 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, function and duties of the mediator are set out in further detail in Section E of PD 13.

The mediation

12. 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, ensuring the best opportunity possible to resolve the dispute. For example, parties should be prepared to **treat all participants in the mediation with common courtesy.**
13. 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**).
14. The mediation session **is private and closed to the public** (see the section on confidentiality below). Provisions relating to the general conduct of the mediation are set out in Section H of PD 13.
15. 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 Registrar 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.

Confidentiality

16. **Mediation is a confidential process.** The obligation of confidentiality is 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, which:
 - (a) 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) 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.

17. 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.
18. In court-annexed mediation, court officers may be designated for appointment as mediators. Only court officers who are internationally accredited mediators will conduct mediations under the scheme. A Judge is not a designated court officer for the purpose of the Scheme.
19. 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 assigned to the Registrar under the ADGM Courts, Civil Evidence, Judgments, Enforcement and Judicial Appointments Regulations 2015 and the CPR.
20. 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.
21. Court officers designated for appointment as mediators are not responsible for the management and administration of cases filed with the Court. However, they may be called upon from time to time to assist in the administration of a particular case due to the capacity of staff in the Registry.

Conclusion

22. The above measures 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, fast and confidential option for the resolution of their disputes.