

Code of Ethics for Mediators in Cross-Border Disputes involving Children within ASEAN

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1. APPLICABILITY & DEFINITIONS

1.01. This code of ethics shall apply to mediations relating to cross-border disputes involving children within ASEAN. This code of ethics is aspirational in nature and its application is subject to each country's applicable laws and regulations (hereinafter referred to as the "Code").

1.02. For the avoidance of doubt, adherence to this Code does not replace or qualify any legislation or rules regulating individual professions or any more extensive rules of conduct which may apply to the specific mediators or circumstances.

1.03. In the application of this Code, the best interests of the child shall be the primary consideration.

1.04. Definitions

"Cross-Border" refers to the interactions between different countries, or involving people from different countries. In the Common Procedure, this specifically refers to disputes involving children between countries within ASEAN, whether the affected countries share a physical boundary or border.

"Disputes involving children" refers to civil disputes involving children, such as those relating to custody, guardianship, parent-child relationships, return of a child, visitation rights and financial support. It does not include criminal matters.

"Mediation" is the conduct of discussions between disputing parties with the assistance of one or more mediators for the purposes of amicably resolving a cross-border dispute involving children. The mediator is a third party who is independent, neutral and impartial. He / She does not have a vested interest in the outcome of the conflict. Mediation may be conducted by a private professional body or it may be court-annexed mediation.

"Parties" or "Party" refers to the disputants in a cross-border dispute involving children. Generally, there disputants would be the child(ren)'s parents.

2. OBJECTIVES OF MEDIATION & SHARED VALUES OF MEDIATORS

2.01. It is recognised that the essential principles of mediation are mediator neutrality, mediator impartiality and facilitating a self-determined settlement. Mediators work as neutral third parties to facilitate consensual settlement of issues between disputants.

2.02. This Code is intended to set forth the minimum standards in mediation for resolving cross-border disputes involving children, and guide the conduct of Mediators during such mediations. The purpose of mediation conducted according to the standards of this Code is to promote the best interests of the child caught in the cross-border child dispute.

3. CODE OF ETHICS

The following Code shall be adhered to by all Mediators.

(i) General Statement

A Mediator shall:

- 3.01. Act in **good faith**. He / she shall not seek to advance his / her own interests at the expense of the parties; and
- 3.02. **Encourage mutual respect, honesty and trust** among the parties in a mediation. He / she shall not knowingly misrepresent any material fact.

(ii) Competence

- 3.03. A Mediator shall only accept an assignment to mediate in situations where he / she feels that he / she is **competent** to serve in that capacity. A Mediator must perform his/her service in a conscientious, diligent and efficient manner and maintain professional competence in mediation skills.
- 3.04. A Mediator shall endeavour to be aware of the multi-disciplinary nature of family disputes, where principles from other disciplines such as psychology, sociology, behavioural science and neuroscience may be relevant.

(iii) Independence, Neutrality & Impartiality

A Mediator shall:

- 3.05. Always act in an **independent, neutral and impartial** manner. He / she shall be unbiased and shall treat all parties with fairness and respect;
- 3.06. Avoid the use of any language or conduct that would give the appearance of partiality; and
- 3.07. Act as a facilitator of parties' negotiations and will neither play the role of an adjudicator deciding the outcome of the case nor behave like he / she is legal counsel representing either party.

3.08. If, at any time before or during the mediation, a Mediator is of the view that he / she is unable, or is unsure whether he / she is able, to conduct the mediation in an independent, neutral and impartial manner, he / she shall withdraw from the mediation.

(iv) Dealing with Conflicts of Interest

A Mediator shall:

3.09. Avoid conflicts of interest or the appearance of such a conflict. Conflicts of interest may arise from an involvement by the Mediator in the subject matter of the dispute or from his / her relationships with any of the parties that may raise questions as to his / her ability to remain impartial; and

3.10. **Disclose any actual or potential conflicts of interest** to all parties. Such disclosure shall be made before the mediation or as soon as the Mediator becomes aware of any actual or potential conflict. Any doubt as to whether a conflict arises shall be resolved in favour of disclosure. The duty to disclose is a continuing obligation throughout the process.

3.11. After a Mediator has disclosed any actual or potential conflicts of interest, he / she may only proceed with the mediation if all parties consent in writing to his / her continued involvement. However, if a Mediator's continued involvement in a mediation might be viewed by an objective third party to undermine the integrity of the mediation process and / or outcome, he / she shall withdraw from the mediation regardless of the parties' consent.

3.12. After a mediation has been concluded, a Mediator shall not establish any relationship with any party to the mediation that would raise questions about the integrity of the mediation process and / or outcome.

(v) Self – Determined Settlement - Respecting & Empowering the Parties

A Mediator shall:

3.13. Always **respect the parties' right to decide**. He / she shall assist the parties to clarify the issues, and to develop, discuss and assess their options. However, a Mediator shall always leave the decision of *whether*, and if so *how*, to settle the case solely to the parties;

3.14. Expressly inform the parties at the start of the mediation that participation in mediation is voluntary. The parties have the right to decide whether and how to settle their case; and

- 3.15. Avoid the use of any language or conduct that would, objectively, give rise to an impression that the parties must settle the case in accordance with his suggestions and / or directions. He / She shall not coerce or unduly influence a party to enter into a settlement agreement and must only facilitate the arrival of decision in the mediation process.
- 3.16. In the event of a settlement, the mediator shall explain to the parties what they have agreed to and be satisfied that the parties have understood.

(vi) Fairness & Integrity of the Mediation Process

A Mediator shall:

- 3.17. Conduct the mediation process with fairness to all parties. He / she shall take particular care to ensure that all parties have adequate opportunities to be heard, to be involved in the mediation process and to have the opportunity to seek and obtain legal and / or other counsel, before finalising any settlement; and
- 3.18. Control the mediation process and conduct the mediation in a non-adversarial manner. He/ She shall seek to de-escalate any conflict or hostile behaviour as much as possible, so as to maintain a safe environment for the parties to discuss and resolve their differences.
- 3.19. To ensure that the integrity of the mediation process is not compromised, a Mediator shall not engage in pre-mediation private communications with any party. Should a party initiate such pre-mediation private communications, the Mediator shall inform all parties of this communication. To avoid doubt, a mediator may hold caucuses with parties during mediation as long as the other party is notified.

(vii) Abuse of the Mediation Process and Avoidance of Delays

- 3.20. A Mediator shall terminate the mediation if there are reasonable grounds to believe that any party to the mediation is abusing the process, i.e. to deliberately delay proceedings, achieve an unfair advantage or to pursue an illegal or objectionable purpose etc.
- 3.21. A Mediator must plan a work schedule and perform the mediation in such manner as to avoid unnecessary delays.

(viii) Confidentiality

- 3.22. To encourage the spontaneity that is conducive to effective communication, in relation to mediation when there are on-going court proceedings, a Mediator shall assure the parties that the content of their discussions cannot be used as evidence against either party during the

hearing and all admissions or statements made therein are inadmissible for any purpose in any proceeding. All discussions are without prejudice to either party choosing to terminate the mediation at any time and proceed for hearing.

- 3.23. In relation to the parties to a mediation, a Mediator shall not reveal to a party any information which he has received during a private session with another party and which that party has indicated to be confidential.
- 3.24. No transcript or minutes of the mediation proceedings shall be taken, and personal notes of the mediation or mediation proceedings shall not be furnished to any person. Any such transcript, minutes and notes shall be inadmissible as evidence in any other proceedings.
- 3.25. A Mediator shall keep **confidential** all information acquired in the course of the mediation unless the following circumstances apply:
- (i) He / she is compelled to make a disclosure by law, by an Order of Court or by some governmental agency having authority and jurisdiction to order such disclosure;
 - (ii) Where the disclosure is necessary to defend the Mediator against any proceedings or charges arising from the mediation; or
 - (iii) Where the parties expressly release the Mediator from his / her confidentiality obligations.
- 3.26. For the avoidance of doubt, a Mediator may disclose the fact of him / her having served as a mediator in a case, provided that none of the details of the case are disclosed.

List of Do's and Don'ts for Mediators:

As a mediator, DO:

- (i) Act in good faith and encourage parties to be respectful and honest with each other.
- (ii) Remember you are a neutral person who must act with independence and impartiality towards all parties in the dispute. If you cannot do this, withdraw from the mediation.
- (iii) Disclose any actual or potential conflicts of interest to all parties, for example, if you have an existing relationship with one of the parties.
- (iv) Obtain all parties' consents in writing to you continuing to mediate a dispute in which you have an actual or potential conflict of interest.
- (v) Remind parties at the start of mediation, that mediation is voluntary.
- (vi) Try to de-escalate hostile, adversarial behaviour from parties during the mediation.
- (vii) Be respectful and fair to all parties in your mediation.
- (viii) Remind each party that whether he / she agrees to a settlement is his / her choice to make.
- (ix) Explain to parties what they have agreed to, and be satisfied that they have understood.
- (x) Suspend the mediation and report to the relevant authorities if any party becomes violent during mediation.

As a mediator, TRY TO AVOID:

- (i) Talking or behaving in a way that makes you appear partial towards one side of the dispute.
- (ii) Talking or behaving in a way that makes parties think they must settle the dispute in "your way".
- (iii) Talking to only one party in pre-mediation private communications.
- (iv) Mediating a dispute in which you have an existing relationship with one of the parties.
- (v) Mediating a dispute in which you do not feel you have the professional competence, knowledge or skills to help parties to resolve their dispute.

As a mediator, DO NOT:

- (i) Act like you are an adjudicator or judge. You do not decide the outcome for the parties during a mediation.
- (ii) Act like you are a lawyer advocating for one party in the dispute.
- (iii) Mediate a dispute when you have a vested interest in the outcome.
- (iv) Start a relationship with any party to the mediation during the mediation or after the mediation has concluded.
- (v) Carry on with the mediation if you think you are unable to conduct the mediation in an impartial manner. Instead, withdraw from the mediation.
- (vi) Breach confidentiality by disclosing communications during mediation, unless required by law or order of court.