



CODE OF CONDUCT FOR THE SAICE PRESIDENT'S LIST OF ALTERNATIVE DISPUTE RESOLUTION AMICABLE SETTLEMENT FACILITATORS

1. Application of the Code

This Code applies to all persons serving as Amicable Settlement Facilitators on the SAICE President's list.

2. Duties and Responsibilities

At all times, the Amicable Settlement Facilitators shall:

- (a) Be independent and impartial, and shall avoid any direct or indirect conflicts of interest, impropriety, bias and appearance of bias;
- (b) Display the highest standards of integrity, fairness and competence;
- (c) Be available and act with diligence, civility and efficiency; and
- (d) Comply with any confidentiality and non-disclosure obligations.

3. Knowledge of the Amicable Settlement Options

The Amicable Settlement Facilitator is to ensure that he/she has attended SAICE recognised training and has a good working knowledge of the various methods of amicable settlement techniques and that the relevant are explained to the Parties such that the Parties can select their appropriate option or combination thereof. Such amicable settlement options are (but not limited to) to below:

- a) Facilitative amicable settlement.
- b) Evaluative amicable settlement.
- c) Conciliation.
- d) Neutral mediation.
- e) Executive panel of senior executives.

- f) Expert opinion.
- g) Expert determination.
- h) Mini trial.

4. Independence and Impartiality

4.1 Amicable Settlement Facilitators shall at all times be independent and impartial.

4.2 In particular, Amicable Settlement Facilitators shall not:

- (a) Be influenced by self-interest, outside pressure, political considerations, public clamour, loyalty to a party to the proceedings, or fear of criticism;
- (b) Allow any past or ongoing financial, business, professional, family or social relationships to influence their conduct or judgement;
- (c) Take action that creates the impression that others are in a position to influence their conduct or judgement;
- (d) Use their position to advance any personal or private interests; or
- (e) Directly or indirectly, incur an obligation or accept a benefit that would interfere, or appear to interfere, with the performance of their duties.

5. Conflicts of Interest: Disclosure Obligations

5.1 Amicable Settlement Facilitators shall avoid any direct or indirect conflict of interest. They shall disclose any interest, relationship or matter that could reasonably be considered to affect their independence or impartiality. To this end, Amicable Settlement Facilitators shall make all reasonable efforts to become aware of such interests, relationships and matters.

5.2 Disclosures made pursuant to paragraph (1) shall include the following:

- (a) Any professional, business and other significant relationships, within the past [five] years with:
 - (i) The parties [and any subsidiaries, parent-companies or agencies related to the parties];
 - (ii) The parties' counsel;
 - (iii) Any present or past ADR or experts in the proceeding;
 - (iv) Any third party with a direct or indirect financial interest in the outcome of the proceeding;
- (b) Any direct or indirect financial interest in:
 - (i) The proceeding or in its outcome; and

- (ii) An administrative proceeding, a domestic court proceeding or another panel or committee proceeding that involves questions that may be decided in the proceeding;
- (c) All ADR cases in which the candidate or adjudicator has been or is currently involved as counsel, arbitrator, adjudicator, expert, and

5.3 Amicable Settlement Facilitators shall have a continuing duty to promptly make disclosures pursuant to this code.

5.4 Amicable Settlement Facilitators should err in favour of disclosure if they have any doubt as to whether a disclosure should be made. Amicable Settlement Facilitators are not required to disclose interests, relationships or matters whose bearing on their role in the proceedings would be trivial.

6. Limit on Multiple Roles

Amicable Settlement Facilitators shall [refrain from acting]/[disclose that they act] as counsel, expert witness, judge, agent or in any other relevant role at the same time as they are [within X years of] acting on matters that involve the same parties, [the same facts] [and/ or] [the same treaty].

7. Integrity, Fairness and Competence

7.1 Amicable Settlement Facilitators shall have the highest standards of integrity and fairness. They shall ensure that parties are treated with equality and that each party is given a reasonable opportunity of presenting its case.

7.2 Amicable Settlement Facilitators shall not engage in *ex parte* contacts concerning the proceeding.

7.3 Amicable Settlement Facilitators shall act with competence and shall take reasonable steps to maintain and enhance the knowledge, skills and qualities necessary to fulfil their duties. Amicable Settlement Facilitators should only accept appointments for which they are competent.

7.4 Amicable Settlement Facilitators shall not delegate their decision-making function to any other person.

8. Availability, Diligence, Civility and Efficiency

8.1 Before accepting any appointment, Amicable Settlement Facilitators shall ensure their availability to facilitate and render all facilitation in a timely manner. Upon selection, Amicable Settlement Facilitators shall be available to perform and shall perform their duties diligently and expeditiously

throughout the proceeding. Amicable Settlement Facilitators shall ensure that they dedicate the necessary time and effort to the proceeding and refuse competing obligations. They shall conduct the facilitation so as to avoid unnecessary delays.

8.2 Amicable Settlement Facilitators shall be punctual in the exercise of their functions.

8.3 Amicable Settlement Facilitators shall act with civility, respect and collegiality towards the parties and one another, and shall consider the best interests of the parties.

9. Confidentiality

9.1 Amicable Settlement Facilitators shall not:

- (a) Disclose or use any non-public information concerning, or acquired from, a proceeding except for the purposes of that proceeding;
- (b) Disclose or use any such information to gain personal advantage or advantage for others or to adversely affect the interests of others; and

9.2 Amicable Settlement Facilitators shall not disclose any decision, or outcome to the parties prior to delivering it to them. They shall not publicly disclose any decision, or outcome of the matter.

10. Pre-appointment Interviews

10.1 Any pre-appointment interview shall be limited to discussion concerning availability of the Amicable Settlement Facilitators and absence of conflict. Candidates shall not discuss any issues pertaining to jurisdictional, procedural or substantive matters potentially arising in the proceedings.

10.2 If any pre-appointment interview occurs, it shall be fully disclosed to all parties upon appointment of the candidate.

11. Fees and Expenses

11.1 Any discussion pertaining to fees shall be concluded immediately upon constitution of the Amicable Settlement Facilitator agreement and, when possible, shall be communicated to the parties through the entity administering the proceeding.

11.2 The hourly fees charged shall be reasonable and in line with the other facilitator's hourly rate on the SAICE panel of persons with similar experience and qualifications. Should the facilitator not be able to determine a fee that is appropriate then the facilitator shall contact the SAICE for guidance.

Amicable Settlement Facilitators shall keep an accurate and documented record of the time devoted to the procedure and of their expenses as well as the time and expenses of their assistant.

12. Enforcement of the Code of Conduct

12.1 Every Amicable Settlement Facilitator has an obligation to comply with the applicable provisions of this code.

12.2 Should an Amicable Settlement Facilitator be found to not be complying with this code, the person shall be removed from the SAICE Presidents ADR list.