



المركز السعودي للتحكيم التجاري
Saudi Center for Commercial Arbitration



GUIDELINES AND FEE SCHEDULE

SCCA

COVID-19 EMERGENCY

MEDIATION PROGRAM (EMP)

INTRODUCTION

Disasters, such as the current COVID-19 pandemic, heavily impact the lives of the people affected and may lead to unwanted disputes. Unfortunately, this situation has also impacted the court-system due to much needed safety measures taken by governments.

As an independent, neutral and not-for-profit organization, the SCCA is providing help for communities with its new low-cost program to resolve disputes swiftly and amicably. The SCCA, as a committed public servant, has a track-record using its expertise and highly trained Mediators to customize Mediation programs. We are best positioned to continue to facilitate swift solutions for all those operating in an economy in distress and are working relentlessly to meet this current challenge. The SCCA has rolled out its new COVID-19 Emergency Mediation Program to help parties resolve their disputes swiftly and cost effectively.

Mediation is the most effective process to resolve matters between individuals, companies or other entities because it is focused on all the parties and their respective circumstances. SCCA Mediation is essentially 'professionally facilitated negotiation' with the Mediator providing neutral, skilled facilitation. Mediation works and these Guidelines will help parties to make the most of this opportunity.

BENEFITS OF THE EMERGENCY MEDIATION PROGRAM (EMP)

The benefits of a successful Mediation vary depending on the interests and needs of the parties. The most common advantages can be summarized as follows:

- Cost-effective alternative to a lengthy litigation proceeding in court with significant legal costs and production of evidence that heavily impacts daily business operations.
- Mediation can be scheduled quickly, requires less preparation than litigation and can lead to a swift solution in as little as four weeks, alleviating the emotional distress parties experience in lengthy, adversarial proceedings.
- The parties have the flexibility to engage in a proceeding where they are directly involved in a negotiation allowing them to find creative solutions or accommodate special interests or needs.
- Mediation can be held in the chosen language(s) of the parties.
- The Mediator, as a neutral third party, facilitates the negotiations with an objective and solution oriented approach that can help the parties to explore issues, needs and settlement options they may have overlooked.
- In reaching a successful settlement, the parties can preserve their (business) relationship and even explore ways to engage in the future, if that is what they seek.

In addition to these customary benefits of Mediation, EMP provides the following unique and innovative advantages to meet the current challenges:

- It avoids the need of having in-person meetings by using a dedicated video-conferencing platform.
- It addresses the financial distress parties may be facing by providing a special fee schedule with discounts of up to 67% compared to our regular offerings.
It excludes any uncertainty after the settlement agreement has been signed by
- allowing parties to convert their settlement agreement into an Enforceable Title (Bond) at no additional cost.

YOUR SCCA COVID-19 EMERGENCY MEDIATION PROGRAM (EMP)

EMP is designed to help individuals and businesses that are in financial distress due to the COVID-19 pandemic and need immediate attention to their dispute. It also benefits those who are in an ongoing relationship and may seek to preserve it after the dispute has been resolved. Industries such as Hospitality, Tourism, Haj & Umrah, Entertainment, Real Estate, and Non-Food Retail have been particularly hit hard by the current crisis, leading in some instances to a complete suspension of their revenue sources while expenses continue to accumulate. Mediation provides a unique opportunity to find a sensible solution both sides to the dispute can live with as we all try to overcome these trying times.

WHO ARE THE MEDIATORS?

The SCCA Mediator Roster is composed of highly qualified and accomplished professionals from the legal and business communities. Mediators have diverse and relevant subject-matter expertise and understanding of the essence of a dispute and the intricacies a given industry brings with it. They also understand the importance of assisting parties in the resolution of their disputes by ensuring all their needs and interests are explored and addressed. In addition, they are actively engaged in related, ongoing professional development and are committed to upholding the SCCA's Code of Ethics for Mediators.

THE STAGES OF THE SCCA COVID-19 EMERGENCY MEDIATION PROGRAM (EMP)

The following shall guide Parties and Mediators through the various EMP stages of the Mediation process:


1. Agreement to Mediate
2. Filing of Mediation
3. Mediator Appointment
4. Preparation for the Mediation Conference
5. Summary Briefs
6. Mediation Conference
7. Settlement Agreement
8. Enforceable Title



STAGE 1: AGREEMENT TO MEDIATE

Mediation is a voluntary, consensual process. As such, all parties involved in the dispute must agree, in writing, to have their dispute administered by the SCCA under its current Mediation Rules. In addition, EMP provides for certain modifications to the SCCA Mediation Rules the parties must agree to in order to benefit from EMP.

To simplify the process, the SCCA has created a Submission Form for COVID-19 Emergency Mediation Program Claims (the “Submission Form” (https://sadr.org/emp-submit_a_claim?lang=en)) that essentially embodies the agreement to mediate as well as the Request for Mediation and needs to be completed and signed by all parties and/or their authorized representatives. The Submission Form also needs to be signed if a mediation clause in the contract already exists to capture the modifications to the SCCA Mediation Rules. The Submission Form can be found on the SCCA’s website at www.sadr.org/EMP/Form.



STAGE 2: FILING OF MEDIATION

The parties or their authorized representatives must file the Submission Form, along with any supporting documents, via SCCA's secure Online Filing System.

At the time of the filing, the parties must also remit payment of the SCCA Administrative Fee and the Mediator Fee in accordance with the SCCA Mediation Fee Schedule in Response to COVID-19 Claims. Once the documents and payment have been received, the SCCA will review the documents and, if all filing requirements have been met, initiate the Mediation.

In case a party is represented, that representative shall include an appropriate Power of Attorney that warrants that the representative is fully authorized to execute the Submission Form and any settlement agreement resulting from this Mediation on behalf of that party on whose behalf the representative has signed the Submission Form, that by signing the Submission Form such party shall be bound by the terms contained in the Submission Form and any settlement agreement resulting from this Mediation, and that such party is capable and authorized to conclude and implement any such settlement.



STAGE 3: MEDIATOR APPOINTMENT

Upon receipt of the Submission Form, the SCCA will initiate the Mediation and appoint a qualified Mediator from its SCCA Mediator Roster, unless the parties have previously designated a Mediator in the Submission Form. The Mediator must be impartial and independent from the parties and is required to abide by the SCCA's Code of Ethics for Mediators as well as the EMP's modified SCCA Mediation Rules.


In case of an objection, the SCCA will automatically substitute the Mediator with another Mediator from its SCCA Mediator Roster, unless the parties designate a mutually agreeable Mediator. The same shall apply in case of a vacancy due to a Mediator being unwilling or unable to serve for any reason.



STAGE 4: PREPARATION FOR YOUR MEDIATION CONFERENCE

The parties are encouraged to exercise their best efforts to prepare themselves as best as they can in advance of their Mediation Conference. A few items parties may wish to review and consider in their preparations include:

- Understand and prioritize the issues underlying the dispute considering your needs and interests as well as beginning to reflect on those of the other side.
- Recognize and evaluate what can realistically be expected given the circumstances of the case, the resources available and any other factors or constraints, including time available.
- Ascertain the strength and weaknesses of your case and determine your course of action. In doing so, focus on the solution, not the problem.

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- Analyze your current thinking and perspectives, the other side's perspectives, any possible tradeoffs, and settlement options.
 - Consider whether a Confidentiality Agreement between the parties may be needed that reaches beyond of what Article 11 of the SCCA Mediation Rules already covers.

The Mediator may ask the parties to join him or her in a Case Management Call via phone or video conference to discuss any preliminary matters and/or logistics ahead of the Mediation Conference.



STAGE 5: SUMMARY BRIEFS

Unless otherwise requested by the Mediator, the parties shall submit a Summary Brief outlining their respective understanding of the issues underlying the dispute. The Summary Brief shall be submitted to the Mediator, copying the other side and the SCCA, at least 3 business days in advance of the Mediation Conference and shall be between 1 and 5 pages.




STAGE 6: YOUR MEDIATION CONFERENCE

Once the Mediator has been appointed, the Mediation Conference will be scheduled on the earliest mutually agreeable date for the parties and the Mediator.

The Mediator's primary role is to provide 'professional facilitated negotiation' among the parties. In order to provide an effective process in which the parties can respectfully exchange their perspectives and then creatively craft their own solutions together, your Mediator provides the structure and techniques known to enhance communication and negotiation for a workable solution.

The Mediation Conference usually begins with the Mediator describing the Mediation process, including the order in which the parties will initially speak, identifying each of the disputed issues and the order in which they will be addressed, the decorum, the use of Caucuses and any matters that may require confidentiality. You and the other side can ask the Mediator any questions or seek clarification about the process at any time.




Once the parties have a clear understanding of the process, each of the parties will be invited to outline the circumstances of the dispute and the related issues as understood by the parties up to this point. The Mediator will work with the parties to create an agenda to focus discussions and from which to assist the parties in seeking clarification of the issues outlined. Once there is some understanding, if not agreement on the underlying issues, the Mediator will facilitate the exploration by the parties of possible options and solutions, which can form part of a settlement agreement.

In case of an impasse or other reasons, the Mediator may call for a separate meeting with each party (a so-called ‘Caucus’) to briefly discuss each party’s needs and concerns, explore possible solutions and then rejoin the parties. Caucuses provide each party an opportunity to take a step back and reflect on long term and short term goals as well as review the other side’s proposals and settlement options. Sometimes it is needed to address underlying issues and enable them to refocus on finding a workable solution.

The Mediator’s facilitative approach enables the parties to retain control of their process and provides the opportunity to negotiate their own settlement. The Mediator helps the parties focus on finding a practical, mutually acceptable solution that will resolve the dispute and can be easily implemented.

The parties and the Mediator shall exercise their best efforts to conclude the Mediation Conference promptly. Many Mediations are concluded in one session only. The final terms



of a successful settlement are usually addressed in a joint session in which the Mediator works to ensure that the specifics of the terms are clear to the parties and complete.

Given the circumstances of the COVID-19 pandemic, all conferences will be held either telephonically or via video conference utilizing a dedicated and secure conferencing system provided by the SCCA For more information about our Video Mediation Conference platform,

Mediation Efficiency

In order to maximize your time and the opportunities inherent in a Mediation Conference, these are some helpful tips for all persons participating via video conference. Each Participant is to observe the following:

- Identify yourself when speaking.
- Refrain from interrupting any speaker. Instead note the issue and raise it when it is your time to speak.
- Use the video conference facilities reasonably and responsibly, including:
 - avoid using equipment that interferes with internet efficiency;
 - refrain from any recording (unless agreed to in advance by all parties and the Mediator);
 - mute microphones when not speaking to reduce environmental noise.
- Ensure that any other persons who attend the Mediation, with the permission of the parties and the consent of the Mediator, observe the same helpful and efficient approaches.
- Take whatever steps that support the efficiency of the Mediation Conference.



STAGE 7: SETTLEMENT AGREEMENT

In case of a successful settlement, the parties will reduce the final terms in a settlement agreement. A Mediator can help the parties memorialize such terms in a clear, comprehensive, complete and implementable fashion and ensure that they have addressed all issues raised during the Mediation. A template that contains the minimum requirements for converting the Settlement Agreement into an Enforceable Title (Bond) can be provided upon request.

If the Mediation does not result in a complete settlement, the parties may agree to submit any or all remaining issues of their dispute to Arbitration under the SCCA Arbitration Rules. Pursuant to Article 11(3) of the SCCA Mediation Rules, and unless otherwise agreed by the parties or required by applicable law, the parties shall maintain the confidentiality of the Mediation and shall not rely on, or introduce as evidence in the Arbitration proceeding any views expressed or suggestions made with respect to a possible settlement, any admissions made, or any proposals made by any party or views expressed by the Mediator whether verbal, written, electronic, or in any other form.



STAGE 8: ENFORCEABLE TITLE

By submitting their dispute to SCCA administration under EMP, the parties authorize the SCCA to appoint an SCCA-approved Conciliator for the purpose of converting their Settlement Agreement into an Enforceable Title (Bond), and to take all other necessary steps needed. This feature is available to both domestic as well as international parties in need of certainty after the Settlement Agreement has been signed.

Neither the SCCA nor the SCCA-approved Conciliator is a necessary party in judicial proceedings relating to the Conciliation and preceding Mediation, and shall not be made a party, witness or expert in judicial proceedings relating to the Conciliation or the preceding Mediation. Neither the SCCA nor the SCCA approved Conciliator shall be liable to any party or any participant in the Conciliation or preceding Mediation for any error, act or omission in connection with the Conciliation or preceding Mediation conducted under EMP.

Please visit our website at

https://sadr.org/emp-Rules_Fees_Forms?lang=en

to learn more about the EMP Modifications to the SCCA Mediation Rules.

EMP FEE SCHEDULE

SCCA EMERGENCY MEDIATION PROGRAM

- Effective through 31 December 2021 -

DISPUTE VALUE IN SAR *		SCCA ADMINISTRATIVE FEE **	MEDIATOR FEE **
Up to	250,000	2,000	5,000
From	250,001	3,000	10,000
To	500,000		
From	500,001	4,000	15,000
To	1,000,000		
From	1,000,001	7,000	20,000
To	5,000,000		
From	5,000,001	12,000	30,000
To	10,000,000		
From	10,000,001	17,000	40,000
To	50,000,000		
Over	50,000,000	20,000	50,000

* SAR is the official currency (USD 1 = SAR 3.75).

** Undetermined Monetary/Non-Monetary Claims: In the absence of a specified claim value, the fees related to the SAR 10,000,001-50,000,000 range shall apply.



■ **SCCA Administrative Fees:**

The SCCA Administrative Fee is non-refundable. The SCCA reserves the right to assess additional administrative fees for services performed by the SCCA that go beyond those provided for in the regular course of the SCCA COVID-19 Emergency Mediation Program (EMP), but which are required as per party agreement.

■ **Mediator Fees:**

The Mediator Fee is all-inclusive and shall cover work performed in the regular course of a Mediation as provided for by EMP. It also covers any value added tax (VAT) or other taxes or charges applicable to the Mediator Fee as well as any minor expenses the Mediator may incur during the regular course of a Mediation.

In extraordinary circumstances, the Mediator may charge for fees or expenses incurred for services that go beyond those provided for in the regular course of EMP, but which are required as per party agreement. The SCCA shall fix such fees and expenses after consultation with the Mediator and the parties.

The Mediator Fee is non-refundable after the Mediation Conference has started. If the Mediation terminates before the appointment of the Mediator, the SCCA will refund 100% of the Mediator Fee to the parties. If the Mediation terminates after the first contact between the parties and the Mediator but before the Mediation Conference, the SCCA will refund 75% of the Mediator Fee to the parties. If the Mediation is cancelled within 7 days from the Mediation Conference, the SCCA will refund 50% of the Mediator Fee to the parties.



■ **Allocation of Costs:**

Unless otherwise agreed by the parties in writing, the SCCA Administrative Fee and the Mediator Fee (the “Costs”) and any extraordinary expenses shall be borne equally by the parties. The party’s other costs and expenses, including the expenses of participants for either side, shall remain the responsibility of that party.

■ **Payment of Costs:**

The Costs shall be deposited with the SCCA on the day of the filing of the Submission Form for COVID-19 Emergency Mediation Program Claims and the Request for Mediation. No Request for Mediation shall be processed unless accompanied by payment of the Costs. Amounts paid do not yield interest for the parties, the Mediator or the SCCA. The payment of the Costs shall not result in any charges to the SCCA.

■ **Prior and Subsequent Arbitration:**

When a Mediation is preceded by the submission of a Notice of Arbitration pursuant to the SCCA Arbitration Rules concerning the same dispute, the SCCA will not charge the SCCA Administrative Fee for EMP.

When an Arbitration is preceded by a Request for Mediation, pursuant to EMP concerning the same dispute, the SCCA will credit the SCCA Administrative Fee paid for EMP to the administrative fees of the Arbitration.



■ Expiration of Fee Schedule:

The SCCA Mediation Fee Schedule in Response to COVID-19 Claims came into effect on 20 April 2020 and will automatically expire on 31 December 2021. Mediations filed before the expiry date will fall under this Fee Schedule. The SCCA reserves the right to extend the expiry date as it deems appropriate and will post any updates on its website.

If you have questions about the Fee Schedule of the SCCA COVID-19 Emergency Mediation Program (EMP), please visit our website at <https://www.sadr.org/EMP?lang=en> or contact us by email at Info@sadr.org.



WHO WE ARE?

The Saudi Center for Commercial Arbitration (SCCA) is a not-for-profit organization established by Cabinet Decree number 257, dated 15 March 2014, to administer arbitration procedures in civil and commercial disputes where parties agree to refer their disputes to SCCA arbitration.

The SCCA provides Alternative Dispute Resolution services (ADR), including Arbitration and Mediation. SCCA services are provided in accordance with international best practices and professional standards in Arabic and/or English.



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