

**GUIDE TO  
JCAA MEDIATION**

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This guide illustrates a summary of the mediation procedure under the Commercial Mediation Rules of the JCAA (the "**Mediation Rules**").

## 1. GENERAL MATTERS

### (1) TYPE OF DISPUTES TO BE HANDLED (ARTICLE 1 OF THE MEDIATION RULES)

The JCAA mediates "commercial disputes". A typical example is a business dispute between two companies. If you are unsure whether a dispute is a "commercial dispute" or not, please contact the JCAA.

### (2) PRIOR CONSULTATION AND EXPLANATION OF MEDIATION PROCEDURES

If you are considering using the JCAA's mediation process for your commercial dispute, please contact the JCAA and we will explain the mediation process.

The JCAA's contact is as follows:

<Arbitration and Mediation Department >

E-mail: [mediation@jcaa.or.jp](mailto:mediation@jcaa.or.jp)

Tel: +81-3-5280-5161

Hirose Building 3F, 3-17 Kanda Nishiki-cho, Chiyoda-ku, Tokyo 101-0054

Business hours: Monday - Friday 9:30 - 17:00

Closed: Saturdays, Sundays, national holidays and December 29th - January 3rd

## 2. COMMENCEMENT OF MEDIATION PROCEDURES

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(1) REQUEST FOR MEDIATION (ARTICLES 12 AND 13 OF THE MEDIATION RULES)

When applying for mediation to the JCAA, the applicant will submit to the JCAA at the address stated in I (2) a written request for mediation stating the followings:

- *the Parties' full names (if a Party is a legal entity or other association, the corporate name and the name of the Party's representative), street address and other contact details (including telephone number and e-mail address)*
- *the full name, street address and other contact details (including telephone number and the e-mail address) of applicant's counsel, if the applicant is represented by counsel*
- *a summary of the dispute (including the claim(s) if it is identifiable)*

In addition to the matters listed above, it is also recommended that the parties' agreement or the applicant's opinion on the following matters, if any, be stated in the application for mediation:

- *the mediator's name or the procedures for appointment of the mediator (including the number of the mediators)*
- *the process for conducting the mediation proceedings (including whether the Mediator shall suggest to all the parties its proposals for settlement)*
- *the time limit for concluding the mediation*
- *the language(s) of the mediation*
- *possibility of enforcement based on the settlement agreement*
- *the calculation method for the mediator's remuneration*

At the time of filing an application for mediation, the applicant must provide the JCAA with a written copy of the mediation agreement, if one already exists.

When a counsel represents the applicant during mediation proceedings, counsel must submit a power of attorney to the JCAA along with the application for mediation.

Upon receipt of an application for mediation, the JCAA will request the applicant to pay the filing fee of JPY 50,000 (plus consumption tax if the applicant is located in Japan) to JCAA's bank account.

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(2) NOTICE OF REQUEST FOR MEDIATION (ARTICLES 12.5 AND 13.4 OF THE MEDIATION RULES)

The JCAA will notify the applicant and the other party of the application for mediation after confirming that the application for mediation has been made in compliance with the Mediation Rules. A copy of the application for mediation will be attached to such notice to the other party.

If the parties already have a mediation agreement, the mediation process will commence on the date the JCAA issues the notice of application for mediation.

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(3) CONSENT OF THE OTHER PARTY TO MEDIATION (ARTICLE 13.5 OF THE MEDIATION RULES)

If there is no mediation agreement between the parties, the JCAA will, at the time of giving notice of the application for mediation, ask the other party to respond within two weeks of receipt of the notice as to whether or not to participate in the mediation process under the JCAA's Mediation Rules.

The other party, if participating in the mediation process under the JCAA Mediation Rules, will submit to the JCAA a written consent to mediation within the above time frame. Upon receipt by the JCAA of the written consent, the mediation process will begin.

If the other party gives consent, the JCAA will notify the applicant of such consent.

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#### (4) THE OTHER PARTY'S WRITTEN RESPONSE (ARTICLE 14 OF THE MEDIATION RULES)

The other party will submit to the JCAA a written response within two weeks from the date of commencement of the mediation proceedings, stating its views on the application for mediation.

If a counsel represents the other party during mediation proceedings, counsel must submit a power of attorney to the JCAA.

### 3. APPOINTMENT OF MEDIATORS (ARTICLE 15-18 OF THE MEDIATION RULES)

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#### (1) NUMBER OF MEDIATORS

Mediation is conducted by a single mediator unless the parties have agreed to mediate with more than one mediator. In such case, the parties must notify JCAA of the agreed number of mediators within two weeks of the date of commencement of the mediation proceedings.

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#### (2) WHEN THE PARTIES HAVE AGREED ON THE METHOD OF APPOINTMENT OF MEDIATORS

The parties will appoint one or more mediators in accordance with their agreement.

The parties appointing a mediator need to receive from the mediator a written acceptance of appointment as mediator and declaration of impartiality and independence. The format can be downloaded from the JCAA's Website (<https://www.jcaa.or.jp/en/mediation/flow.html>).

The parties will submit to the JCAA a notice of appointment of mediator stating the name, address, other contact details (telephone number and email address), and occupation of the mediator, together with the above written acceptance and declaration of impartiality and independence.

If the JCAA determines that a mediator appointed by the parties is clearly unsuitable to mediate a settlement, the JCAA will ask that parties to appoint another mediator within the time frame specified by the JCAA and notify the JCAA of the appointment.

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(3) WHEN THE PARTIES HAVE NOT AGREED ON THE METHOD OF APPOINTMENT OF MEDIATORS

The parties will, within four weeks of the commencement of the mediation process, appoint one or more mediators and notify JCAA of the appointment in the manner described below:

- Where the number of mediators is one, the parties will agree on one mediator.
- Where the number of mediators is two, each party will appoint one mediator.
- When the number of mediators is three, the applicant and the other party will appoint one mediator each, and the two selected mediators will appoint a third mediator.

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(4) IF THE PARTIES DO NOT NOTIFY THE JCAA OF THE APPOINTMENT OF MEDIATORS WITHIN THE TIME LIMIT

The JCAA will send each party a list of mediator candidates that it considers are appropriate for the case.



Each party shall return the list of mediator candidates to JCAA within one week of receipt of the list, noting any candidates it objects to and ranking any remaining candidates in the order in which it wishes to have them serve as mediator.

Upon receipt of the list of mediator candidates returned by the parties, JCAA will appoint an arbitrator taking into account their ranking and notify the parties of the appointment.

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#### (5) CHALLENGE OF MEDIATOR

The parties may challenge the appointed mediator if they have reasonable grounds to doubt the impartiality or independence of the mediator (Article 18 of the Mediation Rules). Upon receipt of the application for challenging the mediator, JCAA will decide on this application, if necessary, after consulting with the Proceedings Committee.

### 4. MEDIATION PROCEDURES (ARTICLE 21-22 OF THE MEDIATION RULES)

The mediator will discuss with the parties how to proceed with the mediation process, including:

- *language used in the mediation procedure*
- *schedule and method of submission of documents and supporting materials to the mediator*
- *date and place of mediation session*
- *whether or not a proposal for settlement is suggested by the mediator and, if so, when it is to be proposed*
- *duration of the mediation procedure*

The mediator may confer individually with one of the parties if necessary. In that case, the mediator is not allowed to disclose the information to the other parties unless the disclosing party has consented to this disclosure.

If the mediator is not an attorney and wishes to obtain expert advice on the interpretation and application of laws and regulations, the mediator may obtain advice from an attorney as nominated by the JCAA. Mediation proceedings will stay if the mediator is advised by the attorney and will be resumed after the advice has been obtained.

The mediator may proceed with the mediation in such manner as he or she sees fit, hearing the parties' views, as long as it is not contrary to the Mediation Rules.

**5. PRIVATE, CONFIDENTIALITY AND HANDLING OF MATERIALS SUBMITTED DURING MEDIATION (ARTICLES 23 AND 24 OF THE MEDIATION RULES)**

The mediation process is private and closed to the public. The mediator, the parties, their counsels, and assistants, JCAA officers and employees, and any other person involved in the mediation process may not divulge information about the mediation process to others, unless otherwise agreed to by the parties.

In principle, neither party may give evidence in court or arbitration proceedings of, among others, any allegations made, or views expressed by the other party in the mediation proceedings and any proposals made by the mediator.

**6. TERMINATION OF THE MEDIATION PROCEDURE (ARTICLES 25, 26 AND 28 OF THE MEDIATION RULES)**

The mediation procedure must be completed within three months of the appointment of the mediator. If the parties agree otherwise or the JCAA deems it necessary, the term will be extended.

The mediation procedure will be terminated for the following reasons:

- *a copy of the settlement agreement in respect of all the disputes subject to mediation is submitted to the JCAA.*
- *the other party fails to submit the reply to the JCAA within the time limit under Article 14.1. However, where there is more than one respondent, the mediation proceedings shall be terminated only with regard to the respondent failing to submit the reply.*
- *all the mediators are not appointed or confirmed by the JCAA due to a party's objection under Article 17.5 within three months from the date when the JCAA initially sends the parties the list of candidates for mediators.*
- *the time limit for concluding the mediation proceedings under Article 25 has expired.*
- *the mediator or the JCAA receives a notice of withdrawal by any party. However, where the number of the parties is three or more, the mediation proceedings shall be terminated only with regard to the withdrawing party.*
- *when two weeks have passed from the day following the date on which the parties or the JCAA receives the decision from the mediator that there is no likelihood of settlement on the grounds that, among others, any party appears unwilling to reach settlement or the difference in the parties' positions does not close. However, the mediation proceedings shall not be terminated if all the parties request the mediator to continue the mediation proceedings within this time limit.*
- *the JCAA notifies the parties in writing of its decision to terminate the mediation proceedings under Article 35.2 on the ground that a party has failed to pay the deposit to the JCAA.*

If the mediation proceedings are terminated, the JCAA will notify the parties and the mediator thereof.

If the parties have reached a settlement, they will submit one original of the settlement agreement to the JCAA.

In order to evidence that the settlement agreement has resulted from mediation administered by the JCAA, the mediator will sign the settlement agreement in any of the following cases:

- the parties have agreed to enforcement based on the settlement agreement; or
- all parties so request

## 7. MEDIATION COSTS TO BE BORNE BY THE PARTIES TO THE DISPUTE (ARTICLES 30-35 OF THE MEDIATION RULES)

### 1. FILING FEE (ARTICLE 33 OF THE MEDIATION RULES)

At the time of filing an application for mediation, the applicant must transfer the fee of JPY50,000 (plus the consumption tax if the applicant is located in Japan) to the bank account designated by the JCAA.

If the applicant does not pay the filing fee, the application for mediation is deemed not to have been filed and the application for mediation will be returned to the applicant with a note to that effect.

The JCAA will refund the filing fee to the applicant if (i) there has been no prior mediation agreement and (ii) the other party notifies the JCAA of its non-consent to the mediation process or fails to notify the JCAA of its consent to the mediation process, within two weeks of its receipt of notice of the application for mediation. The JCAA does not refund the filing fee after the mediation proceeding have been initiated (see Article 2(7)) of the Rules)

### 2. DEPOSIT (ARTICLE 35 OF THE MEDIATION RULES)

The JCAA requests the parties to pay deposit to cover the mediator's fee and expenses, the JCAA administrative fee and other reasonable expenses.

- Initial deposit: The JCAA requests the parties to pay the deposit when the mediation proceedings start. The JCAA decides the amount of initial deposit taking into account the number of arbitrators, the complexity of the disputes and other relevant circumstances.
- Additional deposit: the JCAA requests the parties to pay an additional deposit if the JCAA finds the existing amount of deposit would be insufficient based on the hours the mediator has spent and the expected hours to be spent.

If one of the parties fail to pay a deposit, the mediation proceedings will stay or terminate unless the other party pays on behalf of the non-payment party.

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### 3. MEDIATOR'S REMUNERATION (ARTICLE 30 OF THE MEDIATION RULES)

The mediator's remuneration is JPY50,000 per hour (not including consumption tax) multiplied by a reasonable amount of time spent in the mediation process unless the parties agree otherwise. The parties may agree to adopt a fixed amount of mediator's remuneration or other methods of calculation.

The mediator's remuneration will be paid from the deposit made by the parties to the JCAA.

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### 4. MEDIATOR'S EXPENSES (ARTICLE 32 OF THE MEDIATION RULES)

The parties will bear the mediator's actual costs of the followings and their accommodation:

- *transportation expenses (business-class airfares and equivalent class fares for other modes of transportation)*

- *cost of post, courier, telephone calls, copies or any other expenses that the JCAA finds reasonable taking into consideration the nature of the case.*
- *if the mediator is required to use overnight accommodation, the mediator will be paid JPY 60,000 per night as the flat rate of per diem allowance which covers hotel charges, meals and other personal living expenses.*

Mediator's fees will be paid from the deposit made by the parties to the JCAA.

#### 5. ADMINISTRATIVE FEES AND OTHER REASONABLE EXPENSES (ARTICLE 34 OF THE MEDIATION RULES)

The parties will be responsible for 10% of the total amount of the mediator's remuneration as the JCAA administrative fee.

If the JCAA arrange for interpreters, venues, etc., the parties shall be responsible for any expenses incurred.

The JCAA administrative fees and other reasonable expenses will be paid from the deposit made by the parties to the JCAA.

#### 6. SETTLEMENT OF EXPENSES PAID TO THE JCAA (ARTICLE 35 OF THE MEDIATION RULES)

If there is any amount remaining after subtracting (2) through (4) above from the deposit paid by the parties to JCAA, it will be refunded to the parties after the termination of the mediation proceedings.

#### 7. CERTIFICATION OF THE SETTLEMENT AGREEMENT

At the request of either party to enforce the mediation agreement, the JCAA will provide an attestation confirming the content of the settlement agreement and that the settlement agreement has resulted from mediation administered by the JCAA.

At the request of either party, the JCAA will share a copy of the documents exchanged during the mediation proceedings except for any *ex-parte* communication between the mediator and the other party. The duration of preserving such documents is a reasonable period of time exceeding 10 years from the end of the mediation process.