DRAFT "RULES OF PROCEDURE FOR MEDIATION CONDUCTED UNDER THE ASIA-PACIFIC REGIONAL MEDIATION ORGANIZATION"

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These Rules were adopted by the Administrative Council of the Asia-Pacific Regional Organization on [ ].

Article 1
Governing Rules

Mediation shall be conducted in accordance with the provisions of the Agreement on the Establishment of the Asia-Pacific Regional Mediation Organization (hereinafter referred to as "the ARMO Agreement) and these Rules.

1. The parties to a dispute (hereinafter referred to as "parties") may agree on additional rules to be followed by the mediator or mediators (hereinafter together referred to as "mediator").
2. If a mediation conducted under the ARMO Agreement and these Rules is concurrently based on the mediation provisions of a separate international agreement or organization, such as a free trade agreement or the World Trade Organization, to which the parties are contracting parties or members, those mediation provisions shall also govern the mediation proceeding under the ARMO, to the extent that they do not conflict with the ARMO Agreement or the Rules.
3. If any issue of procedure arises and if it is neither addressed by the ARMO Agreement, nor these Rules, nor any additional rules agreed upon by the parties as provided in paragraph two of this article, the mediator shall decide the issue.

Article 2
Request for Mediation and Merger of Concurrent Mediations

1. Any Member wishing to institute mediation proceedings shall address a request (hereinafter referred to as "Mediation Request") to that effect in writing to the Secretary-General, who shall send a copy of the Mediation Request to the other party or parties.
2. Two or more Members may jointly institute mediation proceedings for a dispute, disagreement or issue of concern (hereinafter together referred to as "dispute") between themselves or for a dispute with one or more responding parties in accordance with the preceding paragraph.
3. The Mediation Request shall contain information concerning the nature of the issues in dispute, the parties involved, and their consent to mediation.

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4. The Secretary-General shall register the request and shall forthwith notify the parties of registration.

5. Parties in two or more separate mediation proceedings may agree on the merger of concurrent mediation proceedings.

6. Mediation proceeding shall be deemed to be commenced from the date when the Secretary-General registers the request for mediation.

Article 3
Appointment of Mediators

1. The mediator shall be appointed as soon as possible but no later than 14 days after registration of the Mediation Request in accordance with the provisions in the preceding article.

2. The parties may mutually decide either one or three mediators to conduct mediation for their dispute. If they decide to have –

   (1) a sole mediator to mediate their dispute, the mediator should be agreed by the parties from the Chairperson's List of Mediators. In the absence of agreement between the parties within 10 days of the registration of the Mediation Request, the Chairman of the Administrative Council shall appoint a mediator from the Chairperson's List of Mediators;

   (2) three mediators, one of them will be appointed by each party from the Members' List of Mediators and the third, who shall be the chair of the mediation, shall be appointed by the Chairperson of the Administrative Council from the Chairpersons' List of Mediators. The mediators shall cooperate with each other faithfully to perform their duties.

3. If two or more parties in two or more closely related disputes agree to have common proceeding to resolve their disputes, or if the parties in separate mediations agree on the merger of their mediations, they shall mutually decide the method of appointment of up to three mediators to conduct mediation for their dispute(s).

4. Where the parties do not agree on the number of mediators for any dispute including merged disputes, there shall be a sole mediator appointed by the Chairperson of the Administrative Council from the Chairperson's List of Mediators to conduct mediation for them.

5. If a party is entitled to appoint a mediator, but fails to do so within 14 days after the registration of the Mediation Request, the Chairperson of the Administrative Council shall appoint a mediator for it from the Members' List of Mediators.

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6. Any party that is entitled to appoint a mediator may appoint a mediator from the Chairperson's List of Mediators instead of the Members' List of Mediators, or from the List of Mediators of any other party.

Article 4
Replacement of a Mediator

1. After a mediator is appointed, the appointment shall remain unchanged; provided, however, that if a mediator should die, become incapacitated, or resign, the resulting vacancy shall be filled in accordance with the provisions of Article 3 of these Rules.
2. A mediator shall continue to serve in that capacity notwithstanding that he or she shall have ceased to be in any List of Mediators.

Article 5
Conflict of Interest and Disqualification of a Mediator

1. A person who is approached by any party or by the Chairperson of the Administrative Council in connection with his or her proposed appointment as mediator must decline if such appointment may give rise to any conflict of interest or possible violation of the rules of ethics adopted by the Administrative Council.
2. If a proposed mediator considers that there is no conflict of interest and intends to accept the appointment, he or she must still disclose any circumstance likely to give rise to a reasonable doubt as to his or her independence or impartiality.
3. An appointed mediator must resign if a conflict of interest arises after the appointment. He or she shall also, from the time of appointment and throughout continuance of the mediation proceedings, without delay, disclose to the parties any circumstance referred to in the preceding paragraph.
4. Any proposal to disqualify a mediator for conflict of interest or any other justifiable cause shall be decided by the Chairperson of the Administrative Council in consultation with the parties. If the decision of disqualification is made, the vacancy shall be filled in accordance with the provisions of Article 3 of these Rules.

Article 6
Presumption of Competence of the Mediator

1. The mediator shall be presumed to have competence to conduct the mediation for which they are appointed.

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2. In case there is any objection by a party that matter is not within the jurisdiction of the ARMO or within the competence of the mediator, the mediator shall discuss the issues with the parties to resolve them. If the objecting party still maintains its objection, it should be considered as not agreeing to continue the proceeding for the entire case or for the objected part of the case and hence the mediator shall terminate the mediation proceeding for the entire case or for the objected part of the case.

Article 7
Venue of Mediation

1. Mediation proceedings shall be held at the Headquarters of the ARMO except as hereinafter provided.

2. Mediation proceeding may be held, if the parties so agree,

   (1) at the seat of any other appropriate institution, whether private or public, with which the ARMO may make arrangements for that purpose; or

   (2) at any other place approved by the mediator after consulting with the Secretary-General and after considering all circumstances related to the case and the parties.

Article 8
Representation and Assistance of Parties

A party may be represented and assisted by government officials or any duly authorized persons, including but not limited to lawyers, in the proceedings. The names of person representing or assisting a party must be notified to the mediator and the other party in advance by that party.

Article 9
Mediator's Role and Duties

1. A mediator shall be impartial and independent from any influence in conducting a mediation and shall uphold the integrity and fairness of the mediation.

2. The mediator shall be available at all times for the dispute for which he or she is appointed. He or she shall also conduct the mediation with due diligence and make best efforts to ensure that the proceeding is conducted efficiently.

3. Except otherwise provided in these Rules concerning confidential information, the mediator shall ensure that the parties are fairly

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informed and have an adequate understanding of the procedural aspects of the process.

4. The mediator shall recognize that the mediation under these Rules is based on the principle of self-determination by the parties and attempt to facilitate voluntary resolution of the dispute by the parties and endeavor to bring about settlement agreement between them upon mutually acceptable terms. To that end, the mediator shall assist the parties:
   (1) to communicate the view of one party to the other;
   (2) to identify existing and potential issues and clarifying them;
   (3) to reduce or eliminate any misunderstanding between the parties; and
   (4) to explore areas of compromise.
5. The mediator may assess and/or evaluate the dispute for the parties if he or she considers appropriate or if the parties so request. However, the mediator shall advise the parties that the mediator's assessment/evaluation is neither legal advice, not a binding determination, nor a confirmation of the facts in dispute.
6. The mediator may, of the mediator's own initiative, or on the request of parties, at any stage of the proceedings and from time to time, and for the consideration of the parties, help generate options or draft a settlement proposal, including specific terms and conditions. However, the mediator must advise the parties that the any options or proposals do not constitute legal advice, a binding determination, nor confirmation of facts.
7. A mediator must not impose upon the parties any decision about terms or conditions of settlement.

Article 10
Mediation Schedule and Meetings

1. The mediator must prepare, in consultation with the parties, a schedule to include the specific dates for each party to submit relevant documents including a mediation plan and timeline for meetings (hereinafter referred to as "Mediation Schedule"). The Mediation Schedule must be prepared in consideration of the time reasonably needed by the parties to prepare and submit documents and a mediation plan.
2. The mediator may conduct joint or separate meetings with the parties.

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3. The parties must be present at the scheduled mediation meetings.
4. The mediator must provide the Mediation Schedule to the Secretariat.

Article 11
Parties' Participation and Cooperation

1. The parties must participate in the mediation proceedings and cooperate with the mediator in good faith with the intention to settle the dispute.
2. The parties must also give genuine consideration to any settlement proposal provided in Article 9.6 of these Rules and any other settlement proposal by the other party.

Article 12
Parties' Opportunity to Make Statements and to Present Evidence

The mediator shall allow the parties to make both written and/or oral statement in the mediation meetings and to submit their evidence, witness, expert witness and other information which they consider necessary or useful to resolve the dispute. The mediator may seek information and technical advice from the parties or any individual or body which it deems appropriate.

Article 13
Parties' Written Submissions

1. Each party must provide to the mediator, ten days prior to the meeting or within a different time period decided by the mediator, a submission that sets out the issues that need to be resolved, its position in respect to those issues, and the information or documents reasonably required for the mediator to understand the issue.
2. The parties must mutually exchange their respective submissions including their mediation plan according to the schedule provided in Article 10.
3. The length of a written submission including a mediation plan by a party shall not exceed certain pages as guided by the mediator, who shall consult the parties and take the nature and complexity of the dispute into consideration when setting forth the maximum length for a written submission and a mediation plan.
4. Each party shall further provide such other information or documents as may be required by the mediator in connection with the issues to be resolved.

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Article 14
Offer of Settlement

1. Any party may propose a settlement to the other party or parties at any stage of the proceedings, with or without conditions, either at the mediation meeting or otherwise.

2. The offer must also be communicated to the mediator if it is made outside a mediation meeting.

Article 15
Confidentiality of the Information and Proceedings

1. In principle, all information and documents presented to the mediator by a party must also be provided to the other party or parties. However, if a party gives information or any document to the mediator subject to a specific condition that it is kept confidential, the mediator must only disclose the non-confidential part of that information or document to the other party or parties.

2. Subject to Article 19 below, the mediator must not disclose to non-parties any information or documents received in connection with the mediation.

3. A party must not disclose to a non-party, nor introduce into any other proceedings:

   (1) positions taken, views expressed, settlement proposals submitted or admission made by a party during the mediation proceedings;

   (2) documents or information obtained during the mediation which were expressly required to be treated as confidential; or

   (3) proposals made or views expressed by the mediator during the mediation proceedings.

4. The mediation meetings shall be conducted in private. Persons other than those representing or assisting the parties or the mediator may attend only with the consent of the parties and with the permission of the mediator.

5. Except as otherwise provided in these Rules, parties may mutually decide whether, to whom, to what extent, or which part of the dispute, proceeding or information can be disclosed.

6. There shall be no audio or video recording of any part of the mediation proceedings.

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Article 16
Time Limit for Completion of Mediation

1. The mediator shall endeavor to complete mediation within six months from the date of commencement. This may be extended for a reasonable time period by the mediator if he or she considers that the extension is necessary or useful to resolve the dispute.
2. The parties may also agree on any temporary suspension of the proceeding.
3. Upon the expiration of the time period in the preceding two paragraphs, the mediator shall conclude or terminate the mediation irrespective of the final resolution of any or all disputes.

Article 17
Settlement Agreement

1. If agreement is reached between the parties in regard to the dispute, they may decide to put in writing to be signed by their respective authorized persons and authenticated by the Secretary-General based on Articles 11.1 and 11.2 of the Agreement.
2. The agreement is binding upon the parties and must be performed by them in good faith.

Article 18
Fee of Mediator and Costs

1. At the time of appointing the mediator for a dispute, the Secretary-General of the ARMO shall decide the fee payable to him or her. A non-refundable filing fee of [ ] shall be charged for every request of mediation.
2. The expenses of the mediation, including the fees of the mediator, the administrative costs of the Secretariat, and any other expenses, shall be borne equally by the parties or as may be otherwise mutually decided by the parties.
3. The fee of a party appointed mediator may be agreed between the mediator and that party separately.
4. Each party shall bear its own costs in relation to its witness, experts and documents.
5. The Secretary-General may, before the first mediation meeting, request the parties to deposit with the Secretariat equal sums as an advance towards expenses of the mediation. Any remaining amount to be paid

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to the Secretariat shall be deposited with the Secretariat after the mediator has concluded the mediation proceeding. Without the full payment of expenses, neither the mediation report nor the settlement agreement shall be issued to the parties.

Article 19
Conclusion of the Proceedings

1. If the parties reach a settlement agreement, the mediator shall close the mediation proceeding and provide a report to the Administrative Council noting the issues in dispute and recording the fact that the parties have reached agreement. However, the mediator shall not include the contents of the settlement agreement in the report unless the parties specifically agree on such inclusion.

2. If, at any stage of the proceedings, it appears that there is no likelihood of agreement between the parties, the mediator shall close the proceedings and draw up a report to the Administrative Council noting the issues in dispute and recording that no agreement has been concluded.

3. If a party fails to appear or participate in the proceedings, the mediator shall also close the proceedings and draw up a report to the Administrative Council noting that party's failure to appear or participate.

4. If the mediation is conducted concurrently based on mediation provisions of a separate agreement or organization as provided in Article 1.2 of these Rules, the above report shall also be provided to the Secretariat of that agreement or organization as requested by any party as well as to the Administrative Council of ARMO for the record.

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