SINGAPORE INTERNATIONAL MEDIATION INSTITUTE (SIMI) ASSESSMENT OF PROFESSIONAL CONDUCT FOR SIMI MEDIATORS

Introduction

(a) This Assessment of Professional Conduct for SIMI Mediators applies to SIMI Mediators who subscribe to the SIMI Code of Professional Conduct ("**Code**").

(b) The process set out here is intended to provide parties to a mediation conducted by a SIMI Mediator with a clearly defined process by which they can apply to review whether the SIMI Mediator has satisfactorily adhered to the Code.

(c) The process is not intended to allow parties to seek a review or appeal against the outcome of a mediation.

(d) The process consists of three (3) main steps:

i. Lodging a complaint and pre-Assessment discussion;

ii. Assessment of complaint by an Assessment Panel; and

iii. Appealing against the findings of the Assessment Panel.

(e) The use of this process alone does not deprive parties of their rights to pursue any alternative complaint or disciplinary process or applicable recourse under law.

(f) All communication, in any form, exchanged during the process is to be treated as taking place in confidence and all parties will agree to treat any information disclosed as non-public, confidential and not to be disclosed without prior consent of all parties. Notwithstanding the above, SIMI may retain copies of such communication and/or information for record-keeping or auditing purposes, as well as publish certain information as set out in paragraph 5.1 of the process.

(g) All meetings, discussions and sessions held throughout the entire process are to be held in private, unless agreed to otherwise by all of the parties concerned.

(h) All costs incurred at any stage of the process will be borne equally by the Requesting Party and the SIMI Mediator, except in the following circumstances:

i. the parties mutually agree to an alternative arrangement;

ii. the Assessment Panel determines otherwise; or

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iii. in the case of an appeal, where the costs will be borne by the appealing party.

Definitions Used in this Assessment of Professional Conduct

The following is a list of definitions for commonly used terms in this document:

(a) **Assessment Process** – This refers to the Assessment of Professional Conduct for SIMI Mediators set out in this document.

(b) **Requesting Party** – This refers to a party requesting the review of a SIMI Mediator's alleged non-compliance with the Code in the course of the SIMI Mediator acting as a mediator for the Requesting Party's mediation.

(c) **Responding Mediator** – This refers to the SIMI Mediator that a Requesting Party alleges has acted in a non-compliant manner with the Code, in the course of the SIMI Mediator acting as a mediator for the party's mediation.

(d) **SIMI Mediator** – A SIMI Mediator refers to any mediator who is part of the SIMI Credentialing Scheme.

(e) **SIMI Credentialing Scheme** – This is the credentialing scheme offered by SIMI.

(f) **SIMI Partner** –SIMI Partners are any organisations that have been officially recognised as providing support to SIMI either financially or non-financially, and also includes organisations that have successfully applied to be a SIMI Registered Training Provider (SIMI RTP), SIMI Registered Service Provider (SIMI RSP) or SIMI Qualifying Assessment Program (SIMI QAP). More information about each of these schemes are available on SIMI's website (www.simi.org.sg).

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The Assessment Process

1. Lodging a Complaint

1.1. If a Requesting Party believes that a Responding Mediator has not complied with the Code, the Requesting Party may lodge an official complaint in writing with SIMI within four (4) weeks of the alleged act of non-compliance. The process for lodging the complaint and forms are available on SIMI's website.

1.2. Prior to lodging the complaint, the Requesting Party must give the Responding Mediator notice at least three (3) days in advance of the Requesting Party's intention. The parties are encouraged to explore possible options in resolving the complaint amicably. The parties may continue this discussion even after an official complaint has been lodged with SIMI.

1.3. If the parties are able to resolve the complaint amicably, including if they so wish through the use of a neutral third party, the Requesting Party will notify SIMI accordingly and no further action will be taken by SIMI.

1.4. If the parties are not able to resolve the complaint amicably or after four (4) weeks from the date that SIMI receives the complaint, whichever is earlier, the Requesting Party will have the option of asking SIMI to proceed to appoint a panel to determine the matter. The Requesting Party may also choose to delay escalating the matter to a later time and is not compelled to exercise this option as soon as it is available.

2. Assessment of Complaint

2.1. Upon a Requesting Party exercising the option pursuant to paragraph 1.4 above, SIMI will proceed to appoint an Assessment Panel to assess the complaint.

2.2. Prior to the commencement of the Assessment Phase, the Requesting Party and the Responding Mediator are required to disclose to the Assessment Panel and SIMI if either of them have filed, or intend to file, a complaint or commence legal proceedings against the other under any law, code or rule of conduct of any other organisation.

2.3. SIMI reserves the right to decline any application to commence the Assessment Phase, if SIMI determines in its opinion that the matter is not suitable to be escalated to the Assessment Phase, and if the matter has already been concluded or is being heard in any jurisdiction under another code of conduct or rules of any other organisation.

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2.4. The Assessment Panel will be made up of three (3) Assessors. One Assessor will be appointed as the Lead Assessor and he or she will be responsible for managing the assessment process.

2.5. The Lead Assessor will arrange a suitable location, date and time to hold discussion session(s) of the complaint between the parties. The session(s) may be conducted by way of a face-to-face meeting, online, written or oral communication, or any combination of the aforementioned, and is subject to the preference of the parties involved. The Lead Assessor will determine how best to manage the Assessment order to facilitate a satisfactory resolution of the matter for all parties involved.

2.6. The assessment must be arranged within six (6) weeks upon receipt of the request to initiate the Assessment Phase by SIMI. This may be extended by a further four (4) weeks by the Lead Assessor and with the consent of all parties involved, by writing in to inform SIMI of the extension.

2.7. During each session, the Assessment Panel will take steps to understand all relevant facts, provide the Requesting Party and the Responding Mediator full opportunity to present their cases and to rebut the other's arguments. Both parties have the right to be assisted by legal counsel and the Assessment Panel may also call and hear testimonies from witnesses and experts.

2.8. The entire Assessment Phase will last no longer than twelve (12) weeks, from the date of appointment of the Assessment Panel by SIMI. At the end of the Assessment Phase, the Assessment Panel will issue a decision to either:

(a) Reject all or part of the alleged non-compliant conduct;

(b) Uphold all or part of the alleged non-compliant conduct but without issuing any sanctions;

(c) Uphold all or part of the alleged non-compliant conduct and issuing one or more of the following sanctions to be taken by SIMI against the Responding Mediator:

i. issue a written warning or reprimand;

ii. suspending the Responding Mediator's status as a SIMI Mediator for up to one (1) year;

iii. permanently withdrawing the Responding Mediator's status as a SIMI Mediator.

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2.9. The Assessment Panel may also issue an order as to the costs of the Professional Conduct Phase if the parties do not agree to share the costs equally.

2.10. The Assessment Panel's decision will be written and accompanied with written grounds and provided to the Requesting Party, Responding Mediator and SIMI within eight (8) weeks of the decision.

2.11. The decision will be effective as an arbitral ruling within four (4) weeks from the date of the Assessment Panel's decision having been provided in writing, unless an appeal has been filed within that four (4) week period. If an appeal is filed, the decision will be suspended pending the outcome of the appeal.

2.12. SIMI reserves the right to determine that where a sanction has been recommended by the Assessment Panel against the Responding Mediator, to suspend the sanction instead and to enforce it only if the Responding Mediator commits a further breach of the Code within one (1) year of the Assessment Panel's decision.

3. Appealing Against the Decision of the Assessment Panel

3.1. Either a Requesting Party or Responding Mediator may lodge an appeal with the SIMI Appeals Board ("**Appeals Board**") within four (4) weeks of the provision of the written decision by the Assessment Panel, by completing the "SIMI Appeal Request Form" available on SIMI's website.

3.2. Upon receiving a completed SIMI Appeal Request Form, SIMI will convene the SIMI Appeals Board to address the case. The Chairman of the Appeals Board will determine how the appeal will be handled and the Appeals Board will hear the appeal within twelve (12) weeks of being convened. Enforcement of any sanctions recommended by the Assessment Panel will be suspended while the Appeals Board is convened to hear the matter. Decisions of the Appeals Board are final and will be binding in all respects on all parties.

3.3. The cost of the Appeal will be borne entirely by the appealing party.

4. Appointment of Assessment Panel and Appeals Board

4.1. The Assessment Panel will comprise of three (3) members:

(a) The Lead Assessor will be appointed by SIMI from SIMI's panel of SIMI Certified Mediators.

(b) One (1) Assessor will be appointed by SIMI from SIMI's panel of SIMI Accredited Mediators Level 3.

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(c) One (1) Assessor will be appointed by SIMI, in his or her capacity as a representative of a stakeholder in the Singapore mediation space (e.g. mediator, service provider or user).[1]

4.2. The Appeals Board will comprise of three (3) members:

(a) The Chairman of the Appeals Board will be appointed by SIMI and will be a representative from a SIMI Partner.

(b) The Chairman of the Appeals Board will be responsible for selecting and appointing two (2) members of the Appeals Board. The members will be any suitably qualified professionals as determined by the Chairman of the Appeals Board.[2]

4.3. Where a case is on appeal, the Appeals Board will not comprise of a member who has already acted before as an Assessor for the same matter.

4.4. Either a Requesting Party or Responding Mediator may choose to challenge the appointment of an Assessor or a member of an Appeals Board on grounds of actual, perceived or potential conflict of interest, or any other valid reason that would compromise the Assessor or Appeals Board member's impartiality in decision-making. The challenge must be made in writing to SIMI within seven (7) days after notice is given of the appointment of the Assessor or member of the Appeals Board. The challenge must be accompanied by an explanation of reasonable grounds.

4.5. The Chairman of the SIMI Board will be responsible for attending to and resolving any challenges.

[1] The Assessor may be a SIMI Mediator or otherwise affiliated with SIMI in one way or other. If so, he or she will be appointed in their external capacity as a representative of another organisation, and not as an individual affiliated with SIMI.

[2] Being independent of SIMI means that the individual will not hold either an executive appointment with SIMI, or a position on SIMI's board. They may however, be a SIMI Mediator, a member of an organisation that is a SIMI Partner, an organisation that works with SIMI from time to time, or be a member of any other advisory body or committee for, or affiliated with, SIMI.

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5. Confidentiality

5.1. SIMI reserves the right to publish the decisions of the Assessment Panel and/or the Appeals Board in a manner that SIMI deems appropriate. Any such publication will not include details that would enable identification of either the Requesting Party or Responding Mediator, or other confidential details of the decision.

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