

# ADR Register

## Code of conduct for the International Certified Conflict navigators

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All references in this document are made against the approved (valid) version of the applicable document.

All public documents are published on our website <https://adr-register.com>.

**Questions?** Contact us!

Complete the question-webform on our website or call:

+61 (0)8 6388 9770 (Australia)  
+32 (0)1667 9151 (Belgium)  
+49 (0)32 21 100 1000 (Germany)  
+31(0)88 0038 777 (Netherlands)  
+27 (0)10 593 5017 (South Africa)  
+44 (0)1904 909 250 (United Kingdom)

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## GENERAL CLAUSES

The following applies to this document ADR.PD.002.INT (Code of conduct):

1. Document GNG.RD.001.INT List of terms and definitions.
2. Document GNG.RD.002.INT General terms and definitions
3. Document GNG.RD.003.INT General clauses for all documents

The before mentioned documents are published on our websites and hereby to be considered as repeated and inserted.

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# PART A: GENERAL CLAUSES

## 1. OBJECTIVES

- 1.1. To promote and maintain the quality of professional action and behavior of the certificate holders, in the broadest sense.

## 2. APPLICABILITY

- 2.1. The code of conduct applies to all ADR International Certified Conflict navigators, regardless the applicable main-, subscope, subtype and specialism, hereafter to be referred as: 'Practitioner'.
- 2.2. A Practitioner may not ignore the code of conduct.
- 2.3. The code of conduct will also apply to the Practitioner who has been suspended.
- 2.4. Cancellation, termination or annulment of a Practitioners' certification, for whatever reason, does not relieve the Practitioner from having the code of conduct apply to his or her actions if these took place in the period in which the certification was valid.

## 3. SUITABILITY

- 3.1. The Practitioner must carry out the assignment given to him/her to the best of his/her ability.
- 3.2. The Practitioner must not accept any assignment for which he/she lacks the knowledge and/or skills to carry it out, unless he is able to subcontract the assignment to one or more colleague Practitioners who do have the necessary knowledge and/or skills with the approval of the principal.
- 3.3. The Practitioner him/herself must be physically and mentally capable of carrying out the assignment.

## 4. AUTHORITY

- 4.1. A Practitioner must never give the impression that he or she has more authority than he/she has actually been given.

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## 5. EMPLOYEE AND/OR THIRD PARTY SKILLS

- 5.1. A Practitioner will make sure that his/her employees possess the highest level of professional skills possible in his or her field.
- 5.2. The previous paragraph also applies to any knowledge acquired externally – be this through a temp agency or subcontracted – and activities or actions carried out by third parties other than the Practitioner’s own employees.

## 6. DAMAGES TO AND/OR LOSS SUFFERED BY COLLEAGUES

- 6.1. A Practitioner should refrain from taking part in any activity or behaviour which may cause damage or harm to other Practitioners, in general and in relation to his or her principals.

## 7. FRATERNAL OFFERINGS

- 7.1. If the assignment is offered to him by a colleague, a Practitioner must provide clear communication on whether the assignment parties were known to him through a colleague or another reliable source.
- 7.2. If the assignment parties were not known to him, a reasonable fee will be agreed upon.

## 8. ANNOUNCEMENTS AMONG COLLEAGUES

- 8.1. Announcements made by Practitioners among themselves and those made to their customers will be dealt with in a businesslike, responsible and confidential way.

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## 9. AMICABLE EMPLOYEES

- 9.1. A Practitioner should refrain from encouraging a colleague's employee from ending his/her contract with that colleague.
- 9.2. However, if a Practitioner is approached by a colleague's employee because the employee wishes to collaborate with him or wants to work for him, the Practitioner should discuss this possibility with his colleagues before entering into an agreement with said employee.

## 10. MAINTAINING ONE'S NAME AND REPUTATION

- 10.1. The Practitioner will refrain from making remarks to third parties which will potentially damage the name and reputation of said colleague.

## 11. DISPUTES AMONG COLLEAGUES

- 11.1. In case of a dispute with a colleague, a Practitioner must assume a fair position towards him/her and attempt to resolve the dispute amicably.

## 12. USE OF A DISTINCTIVE TITLE

- 12.1. With due regard to the provisions of this code of conduct and the area in which the Practitioner is certified, there are no limitations to the use of the title 'Practitioner'.

## 13. OPERATING PROCEDURE

- 13.1. The Practitioner will carry out activities and/or tasks commissioned by a customer promptly and in an honest and insightful way.

## 14. DESCRIPTION OF INSTRUCTION

- 14.1. The Practitioner and customer must always agree upon the terms of reference, prior to carrying out the instruction.
- 14.2. If a Practitioner works with a set of terms and conditions, these are considered to be part of the terms of reference.

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## 15. TESTING

- 15.1. Upon the request of a Practitioner, a colleague of the Practitioner, an aggrieved third party or the customer, the actions, doings or failings of one or more Practitioners, a group of Practitioners or a colleague Practitioner may be examined for compatibility with the code of conduct and process- and procedure requirements.
- 15.2. Document GNG.PD.007.INT (Complaints against or among certificate holders) applies. Such testing/review will always be based solely upon the herebefore mentioned document applicable at the time when the action, doing or failure took place.
- 15.3. Testing will be based upon a complaint made by a stakeholder or someone who has incurred a loss.
- 15.4. In the general interest of the profession, Global Network Group, or any other trade or legitimate professional organization, to the extent to which their clauses of association demonstrate this, is/are authorized, either independently or in commission, to lodge a complaint if there is no aggrieved party or stakeholder at hand.

## 16. PROCESS- & PROCEDURE REQUIREMENTS

- 16.1. All certificate holders are compulsorily subjected to the process- and procedure requirements.

## 17. SPECIAL PROVISIONS

- 17.1. In cases not provided for by this code of conduct, the point of departure will be that a Practitioner's conduct must be in keeping with the standing of the profession as laid down in the relevant certification scheme and standards, including all underlying documents and regulations set by Global Network Group; this behavior must not damage the image of the profession or its members.

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# PART B: ADDITIONAL CLAUSES FOR MEDIATORS ONLY

## 18. INTRODUCTION

*“Those who trust to chance, must abide by the results of chance.”*

*(President John Calvin Coolidge)*

- 18.1. All Practitioners, certified against the main scope mediator and if active as a mediator, are compulsory additional submitted to the Code of conduct of the International Mediation Institute (IMI).
- 18.2. If the Practitioner is not registered with IMI, the IMI code of conduct will apply based on analogy; in that case substitute the word “IMI” by “ADR Register” or “ADR”.
- 18.3. Where in the IMI code of conduct the word “mediator” is used, substitute this by “Practitioner”.
- 18.4. Trust underpins the mediation process. If the parties do not trust a mediator's integrity in terms of competence diligence, neutrality, independence, impartiality, fairness and the ability to respect confidences, mediation is unlikely to succeed.
- 18.5. The IMI Code of Professional Conduct ("the Code") provides users of mediation services with a concise statement of the ethical standards they can expect from Mediators who choose to adopt its terms and sets standards that they can be expected to meet.
- 18.6. Users who believe the standards established in this Code have not been met may file a complaint with Global Network Group or activate the IMI Professional Conduct Assessment Process.
- 18.7. IMI mediators are required to make known to users which code of conduct governs their professional mediation practice. They are not required to select this Code provided they have subscribed to a code, and that they indicate this to users.



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## 19. DEFINITIONS

- 19.1. For the purposes of this Code, Mediation is defined as a process where two or more parties appoint a third-party neutral ("Mediator") to help them in a non-binding dialog to resolve a dispute and/or to conclude the terms of an agreement.
- 19.2. A mediator is a person whose competency in the practice of mediation has been certified by ADR Register and/or IMI, who is authorized by ADR/IMI to use the applicable (trade) marks and logos, and whose profile is included on <https://adr-register.com> and/or <https://imimediation.org/>.

## 20. MEDIATOR APPOINTMENT

- 20.1. In the event that an IMI mediator fails to maintain IMI's requirements for certification, or no longer qualifies as an IMI mediator, use of the title IMI mediator and use of IMI's name and logo will end, and the Mediator's Profile will no longer be included on the IMI web portal.
- 20.2. Subject to applicable laws and to regulations governing professional practice, Mediators will present and promote their practice in a truthful way. They may quote freely from, and link to, their Profile on the IMI web portal and they are free to replicate that Profile, or extracts from it, for their own professional purposes.
- 20.3. Before the mediation begins, Mediators will advise the parties (eg by way of directing them to the Mediator's Profile on the IMI web portal, or in the mediation agreement):
  - about their relevant background and experience
  - which code of conduct the Mediator will observe
  - which process will apply in the unlikely event of a party believing the Mediator has not met the standards of the stated code of conduct
  - that at the end of the process they will be invited to offer written feedback on the process and on the Mediator's role, and
  - whether they hold a current professional indemnity liability insurance policy covering their professional practice as a Mediator.

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## 21. DILIGENCE, INDEPENDENCE, NEUTRALITY, IMPARTIALITY

- 21.1. Mediators may accept an assignment to act as Mediator in any situation where they feel competent to serve in that capacity.
- 21.2. Mediators will not accept an appointment without first disclosing anything within their knowledge that may, or may be seen to, materially affect their independence neutrality or impartiality. This duty to disclose is a continuing obligation throughout the mediation process.
- 21.3. The existence of circumstances potentially affecting, or appearing to affect, a Mediator's independence, neutrality or impartiality will not automatically imply unfitness to act as a mediator provided these circumstances have been fully disclosed and addressed to the satisfaction of the parties and the Mediator.
- 21.4. Mediators will always act in an independent, neutral and impartial way. They shall act in an unbiased manner, treating all parties with fairness, quality and respect.
- 21.5. If at any time a Mediator feels unable to conduct the process in an independent, neutral and impartial manner, (s)he will express that concern and will offer to withdraw from the mediation. Such circumstances include:
  - financial or personal interests in the outcome of the mediation
  - existing past or future financial, business or professional relationship with any of the parties or their representatives about which the Mediator is aware
  - other potential source of bias or prejudice concerning a person or institution which may affect that Mediator's independence, neutrality or impartiality or reasonably create an appearance of partiality or bias.

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## 22. CONFLICT OF INTEREST

- 22.1. Mediators will conduct reasonable inquiries to determine if any conflicts of interests or potential biases may exist. They will have a continuing duty to disclose any interests, conflicts of interests or potential biases that may become apparent during the mediation process.
- 22.2. Following any such disclosures, a Mediator will decline to participate as a mediator in a particular case if any of the parties raises an objection, unless a contract or applicable law or Court Order nevertheless requires the Mediator's participation. Even then, if a Mediator personally believes that the matters disclosed would inhibit their actual impartiality, the Mediator should withdraw as the mediator.
- 22.3. After accepting appointment, and until the mediation process ends, Mediators will not enter into financial, business, professional, family or social relationships or acquire financial or personal interests that are likely to affect or might reasonably create the appearance of conflict of interest, partiality or bias, without making a prior disclosure to all the parties and gaining their consent.
- 22.4. Within 12 months following the end of a mediation, Mediators will not represent in an advisory capacity any party to a mediation in the same or a substantially related matter, unless all parties to the mediation expressly consent to that representation after full disclosure.
- 22.5. Acting as a neutral in other dispute resolution proceedings (eg as a mediator or arbitrator) that may involve some or all of the parties will not be considered a representation in an advisory capacity for the purposes of this clause.
- 22.6. At no time following the end of a mediation will Mediators adduce evidence or testify on behalf of one of the parties in making or defending a claim against another party to the same mediation where they have acquired confidential information from the other party, unless all that information is no longer confidential or unless the party protected by the confidentiality gives consent.

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## 23. MEDIATION PROCESS

### 23.1. PROCEDURE

23.1.1. Mediators will satisfy themselves that the parties to the mediation and their advisers understand the characteristics of the mediation process, their roles as parties and advisers, and the role of a mediator.

23.1.2. The Mediator will ensure that before the mediation begins, the parties have understood and agreed the terms and conditions which will govern the mediation including those relating to obligations of confidentiality on the Mediator and on the parties.

23.1.3. It is best practice for those terms to be contained in a written Mediation Agreement unless the parties or the circumstances dictate otherwise.

### 23.2. FAIRNESS AND INTEGRITY OF THE PROCESS

23.2.1. Mediators will explain the mediation process to the parties and their advisers, and be satisfied that they consent to the process being used and to the Mediator selected (unless applicable law, court rules or contract require use of a particular process and/or mediator).

23.2.2. Mediators will ensure that, if there are to be any pre-mediation private communications with the Mediator, all parties are aware they will have equal opportunity to raise issues.

23.2.3. Mediators will conduct the process with fairness to all parties and will take particular care to ensure that all parties have adequate opportunities to be heard, to be involved in the process and to have the opportunity to seek and obtain legal or other counsel before finalizing any resolution.

23.2.4. Mediators will take reasonable steps to prevent any misconduct that might invalidate an agreement reached at a mediation or create or aggravate a hostile environment.

23.2.5. Mediators will also be satisfied that the parties have reached agreement of their own volition and knowingly consent to any resolution.

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### **23.3. TERMINATION OF THE PROCESS**

- 23.3.1. The Mediator will ensure the parties understand that they may withdraw from the mediation at any time by informing the Mediator and all other parties without being required to give any justification for doing so.
- 23.3.2. Mediators may withdraw from a mediation if a negotiation among the parties assumes a character that to the Mediator appears unconscionable or illegal.

### **23.4. FEEDBACK**

- 23.4.1. Unless inappropriate in the circumstances, Mediators will, at the conclusion of a mediation, invite the parties and advisers and any co-mediators or assistant mediators, to complete an IMI Feedback Request Form and return it to the Reviewer indicated by the Mediator in his/her IMI Profile to assist in the preparation of the Mediator's Feedback Digest or if not registered with IMI: forward or hand-over the form to the mediator or ADR Register.

### **23.5. FEES**

- 23.5.1. Mediators will, before accepting appointment, agree with the parties how their fees and expenses will be calculated, and how they will be paid by the parties (and if shared between the parties, in what proportions).
- 23.5.2. Mediators who withdraw from a case will return to the parties any fees already paid relating to the period following withdrawal.
- 23.5.3. Mediators will not suggest to the parties that their remuneration should be based on or related to the outcome of the mediation.

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## 23.6. CONFIDENTIALITY

23.6.1. Mediators will keep confidential all information acquired in the course of serving as a mediator in a mediation unless:

- compelled to make a disclosure by law, by a Court of Law or by some governmental agency having appropriate authority and jurisdiction or
- required by this code of conduct, in which event the recipients of the confidential information shall themselves be bound to maintain the confidentiality, or
- the specific information comes into the public domain (otherwise than as a result of a disclosure by the Mediator), or
- the parties release the Mediator from the confidentiality restriction, or
- necessary to defend the Mediator from any proceedings or charges for which (s)he risks incurring any liability.

23.6.2. The Mediator may, however, disclose having previously served as a mediator in a mediation involving one or more of the parties, provided none of the details of that case are disclosed.

23.6.3. Mediators will discuss confidentiality with the parties before or at the beginning of the mediation and obtain their consent to any communication or practice by the Mediator that involves the disclosure of confidential information.

23.6.4. Mediators may use or disclose confidential information obtained during a mediation when, and to the extent that, they believe it to be necessary to prevent death or serious physical harm or damage from arising or believe an illegal act may realistically arise.

23.6.5. Before using or disclosing such information, if not otherwise required to be disclosed by law, Mediators must, if they consider it appropriate, make a good faith effort to persuade the party and/or the party's counsel or other advisers, to act in such a way that would remedy the situation.

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## 24. PROFESSIONAL CONDUCT ISSUES AND COMPLAINTS

- 24.1. An IMI mediator may consult his/her Reviewer about any professional or ethical dilemmas, or, if not registered with IMI, consult his/her auditor or any other Practitioner.
- 24.2. Where an IMI mediator is subject to the Code, a party to a mediation who believes there has been a lack of compliance with this Code may activate the IMI Professional Conduct Assessment process.
- 24.3. This IMI Code of Professional Conduct may be adopted by any IMI mediator irrespective of nationality or professional background.
- 24.4. This IMI Code is inspired by and based on:
- The Model Rule for the Lawyer as a Third Party Neutral of the CPR-Georgetown Commission on Ethics & Standards in ADR (2002)
  - Code of Conduct for Mediators of the UIA Forum of Mediation Centres (2003)
  - European Code of Conduct for Mediators of the European Commission (2004)
  - Model Standards of Conduct for Mediators (2005) adopted by AAA, ABA and ACR
  - Ethical Guidelines for Mediators of the Law Council of Australia (2006)
  - JAMS Mediators Ethical Guidelines
  - The Guidelines for the appointment of mediators, confidentiality and termination of the Chartered Institute of Arbitrators
  - The Swiss Rule of Commercial Mediation under Mediation Rules and Clauses
- 24.5. Adherence to this Code does not replace or disqualify any legislation or rules regulating individual professions or any more extensive rules of conduct which may apply in specific circumstances.