

# MEDIATION DIRECTIVE

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### 35.1 Scope and Interpretation

- (1) This Part applies to mediated cross-border disputes that are subject to Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters ('the Mediation Directive').
- (2) In this Part –
  - 'cross-border dispute' has the meaning given by article 2 of the Mediation Directive;
  - 'mediation' has the meaning given by article 3(a) of the Mediation Directive;
  - 'mediation administrator' means a person involved in the administration of the mediation process;
  - 'mediation evidence' means evidence regarding information arising out of or in connection with a mediation process;
  - 'mediator' has the meaning given by article 3(b) of the Mediation Directive; and
  - 'relevant dispute' means a cross-border dispute that is subject to the Mediation Directive.

### 35.2 Relevant disputes: applications for consent orders in respect of financial remedies

- (1) This rule applies in relation to proceedings for a financial remedy where the applicant, with the explicit consent of the respondent, wishes to make an application that the content of a written agreement resulting from mediation of a relevant dispute be made enforceable by being made the subject of a consent order.
- (2) The court will not include in a consent order any matter which is contrary to the law of England and Wales or which is not enforceable under that law.
- (3) The applicant must file two copies of a draft of the order in the terms sought.
- (4) Subject to paragraph (5), the application must be supported by evidence of the explicit consent of the respondent.
- (5) Where the respondent has written to the court consenting to the making of the order sought, the respondent is deemed to have given explicit consent to the order and paragraph (4) does not apply.
- (6) Paragraphs (1)(b) and (2) to (6) of rule 9.26 apply to an application to which this rule applies.

### **35.3 Mediation evidence: disclosure and inspection**

- (1)** Where a party to proceedings seeks disclosure or inspection of mediation evidence that is in the control of a mediator or mediation administrator, that party must first obtain the court's permission to seek the disclosure or inspection, by an application made in accordance with Part 18.
- (2)** The mediator or mediation administrator who has control of the mediation evidence must be named as a respondent to the application and must be served with a copy of the application notice.
- (3)** Evidence in support of the application must include evidence that –
  - (a)** all parties to the mediation agree to the disclosure or inspection of the mediation evidence;
  - (b)** disclosure or inspection of the mediation evidence is necessary for overriding considerations of public policy, in accordance with article 7(1)(a) of the Mediation Directive; or
  - (c)** the disclosure of the content of an agreement resulting from mediation is necessary to implement or enforce that agreement.
- (4)** Where this rule applies, Parts 21 to 24 apply to the extent they are consistent with this rule.

### **35.4 Mediation evidence: witnesses and depositions**

- (1)** This rule applies where a party wishes to obtain mediation evidence from a mediator or mediation administrator by –
  - (a)** a witness summons;
  - (b)** cross-examination with permission of the court under rule 22.8 or 23.4;
  - (c)** an order under rule 24.7 (evidence by deposition);
  - (d)** an order under rule 24.9 (enforcing attendance of witness);
  - (e)** an order under rule 24.10(4) (deponent's evidence to be given orally); or
  - (f)** an order under rule 24.12 (order for the issue of a letter of request).
- (2)** When applying for a witness summons, permission under rule 22.8 or 23.4 or order under rule 24.7, 24.9, 24.10(4) or 24.12, the party must provide the court with evidence that –
  - (a)** all parties to the mediation agree to the obtaining of the mediation evidence;
  - (b)** obtaining the mediation evidence is necessary for overriding considerations of public policy in accordance with article 7(1)(a) of the Mediation Directive; or
  - (c)** the disclosure of the content of an agreement resulting from mediation is necessary to implement or enforce that agreement.
- (3)** When considering a request for a witness summons, permission under rule 22.8 or 23.4 or order under rule 24.7, 24.9, 24.10(4) or 24.12, the court may invite any person, whether or not a party, to make representations.
- (4)** Where this rule applies, Parts 21 to 24 apply to the extent they are consistent with this rule.