

The PACT Mediation Advocate Assessment Criteria's

Knowledge Competency Framework

1. Understands the nature, theory, procedure, practical application, methodology, appropriateness, benefits and disadvantages of the prevalent types of mediation, schemes or programmes, procedural rules and pertinent costs, and knows when mediation may and may not be a suitable process to address particular issues.
2. Knows of hybrid dispute resolution processes (e.g., Arb-Med, Med-Arb, Arb//Med, Med-Con, Med//Con, MEDALOA) and their potential advantages and drawbacks in different circumstances.
3. Knows of negotiation and solution-generating processes, as well as party and participant dynamics, as contextualised by the choice of mediation process/vehicle.
4. Knows the relevant laws affecting mediation practice including structure and enforceability of mediation agreements (where relevant), confidentiality and privilege /professional secrecy, and structure and enforceability of settlement agreements.
5. Familiar with methods of formulating solutions, including assessing alternatives (BATNA, WATNA, PATNA, RATNA & preparing client and self for joint/caucus mediation meetings.
6. Able to seek and understand the motivations behind individual positions as distinguished from the issues in dispute.
7. Familiar with techniques like questioning, summarizing, (active/effective) listening, framing and re-framing, reformulating, reflecting and paraphrasing.
8. Able to make strategic choices that can help strike a balance between positional claims that advocate the clients' interests and creating value based on interests.
9. Understands cross-border and multi-cultural mediation paradigms.
10. Able to adapt procedural parameters when dealing with multi-party or complex cases involving numerous participants.

11. Understands professional and ethical standards and behaviors, and the use of ethics in generating, informing and/or setting norms.
12. Able to understand and interpret settlement agreements and procedural options.
13. Able to explain the nature, theory, procedure, practical application, methodology, appropriateness, benefits, advantages and drawbacks of prevalent types of mediation within or between relevant jurisdictions, court-connected mediation schemes, ad-hoc or institutional procedural rules, applicable costs, and professional applicable professional ethics codes.
14. Knows the distributive (adversarial) approach to negotiation, in addition to the problem-solving (interest-based) approach and knowing when and why to apply each. Knows how to avoid and counter unhelpful adversarial attitudes, behavior and language.
15. Knows how to use techniques for productively supporting the parties, their representatives, the mediator and the process, and using the mediator and the process effectively to generate a mutually accepted outcome.
16. Knows how to effectively communicate with the mediator, prior to, during and after the mediation sessions.

PRACTICAL SKILLS COMPETENCY FRAMEWORK

A. Pre-Mediation

1. Using dispute assessment & risk analysis methodologies.
2. Identification of relevant parties, stakeholders and participants to the process.
3. Design, customization and implementation of appropriate conflict resolution processes.
4. Application and interpretation of alternatives analysis, BATNA, WATNA, PATNA and RATNA

B. Clarifying and Initiating Process

1. Consider whether the parties wish to use norms, subjective interests, or a combination of the two to resolve the dispute, and what norms (if any) to use (e.g., laws, customs, community response).
2. Counselling clients, principals, participants and relevant stakeholders, as appropriate to identify and resolve procedural issues and options separately

from substantive issues to be mediated, and if so when and how to mediate. Explaining mediation goals and process.

3. Identifying and overcoming possible misperceptions (e.g., concerns of appearing to be weak if agreeing to negotiate).

C. Selection of Neutral and Preparation

1. Determining whether mediation should be court annexed or private mediation.
2. Working with the clients to determine the need for a mediation agreement, select a venue, identify participants, use opening statements, time allocations, prior written submissions, the mediator(s) role and conduct; discuss the use and frequency of joint sessions and/or caucuses.
3. Advising on mediation clauses, mediation rules and regulations of mediation providers and professional bodies, ethical guidelines, codes of conduct, complaint schemes, disciplinary processes, liability issues, confidentiality, privacy, refusals to participate, mandates, and authorities to settle.
4. Identifying the necessary documents to be exchanged with knowledge of applicable confidentiality rules.

D. During Mediation

1. Collaboration with own client, the other party and the other party's representative to facilitate a constructive outcome based on problem-solving techniques.
2. Balancing between (1) claiming value and advocating the client's interests and (2) creating value and motivating participants to reach a settlement.
3. Acting as client coach and "reality check" to help them gain familiarity and confidence with the process, their relevant roles and whether their positions are compatible with their interests.
4. Collaboration with the mediator, tasking the mediator, ensuring the mediator understands the client's core interests and constructively designing and implementing the mediation process from the perspective of all parties.

E. Opening Statement

1. Coaching clients, where applicable, to prepare and deliver effective opening statements in accordance with the style of mediation or negotiation approach. Understanding what type and style of opening statement to use (e.g., argumentative, persuasive, explanatory, expressive etc.) as may be most effective, what to include and omit, and possibly proposing to defer to a later point in time or dispense with formal statements when this would be more effective. Deciding who should deliver the opening statement.

2. Identifying interests, topics for discussion, information to be exchanged (give and get) and possible impasses to be overcome.
3. Agenda setting and time and expectation management.
4. Supporting information exchange by summarizing facts and addressing queries from the other party, the other party's representative or from the mediator.
5. Interpreting the other party's opening statement and identifying key information, interests, opportunities and impediments.

F. Exploration

1. Eliciting interests and distinguishing positions from interests.
2. Applying communication skills like active listening, reformulation and non-positional communication skills.
3. Understanding and dealing with emotions, social and status issues, and international and cultural aspects and conveying this understanding to parties.
4. Identifying, analysing and dealing with impasses, breaking deadlocks and knowing how to support the client and mediator on these issues.
5. Balancing confidentiality and the need to provide the information necessary for resolving the dispute and reaching the best possible outcome.
6. Dealing with difficult parties, party representatives, clients or inappropriate mediators. Ability to work with the mediator and the other parties and their representatives to overcome impasses.
7. Identifying the right time and work with the mediator to call for caucus, time-out, breaks, private client meetings, joint sessions, changes of venue and changes of negotiation team members.

G. Caucus

1. Ensuring any caucus is handled ethically and confidentially.
2. Working with the client and mediator to provide information useful in resolving the dispute.
3. Exploring options with the mediator.

H. Generating Options

1. Creating and prioritising interests and options.
2. Formulating and responding to first offers.
3. Identifying topics for further discussion and information to be exchanged.
4. Ensuring that the mediator presents the options proposed during private caucus accurately and maintains confidentiality.
5. Working with the other party, the client, and the mediator to generate, develop, brainstorm and reality-test options. Ability to engage in and consult on several methods for generating options.

6. Identifying objective and measurable criteria by which to assess feasibility and possible implementation of options.
7. Responding to positional tactics.
8. Using mediators for reality testing and/or for evaluative feedback where appropriate.
9. Using mediators to support and lead the parties and/or to help them formulate offers or responses.

I. Closing

1. Facilitating the mediation to progress to a comprehensive, substantive, clear, valid and enforceable agreement, preserving such relations as may be desired between the parties.
2. Decides whether to end or walk out of a mediation, and properly manages incomplete settlements by maintaining positive momentum and leaving a window open.
3. Deals with parallel judicial, administrative, arbitral or other proceedings and considers possible compliance and enforcement requirements, and securing such appropriate court or tribunal recognition for a settlement (e.g., use of consent awards).

COMPLAINTS AND APPEALS POLICY

Applicants who are dissatisfied with the result of the assessment may submit their written complaint or appeal to the Partners of The PACT on official@thepact.in. The complaint or appeal must include the name of the applicant, the date of the assessment, and the specific reasons why the result of the assessment is wrong and should be invalidated. It will be useful if the name of the assessor could also be included.

Any such complaint or appeal must be received within 3 months of the date of issuance of the result. Any complaint or appeal received after this time will not be entertained.

Upon receipt of a valid complaint or appeal, the Partner will conduct an investigation into the validity of the complaint or appeal before deciding to:

- a. Over-rule the appeal and uphold the result of the assessment;
- b. Uphold the appeal and organise a re-assessment for the participant with a different assessor; or
- c. Uphold the appeal and over-rule the result of the assessment.

DIVERSITY POLICY

The PACT IMI-Certified Mediation Advocate Assessment is accessible on an equal basis to applicants regardless of their professional affiliations, gender, race, ethnicity, age, religion, sexual orientation or other personal characteristic.