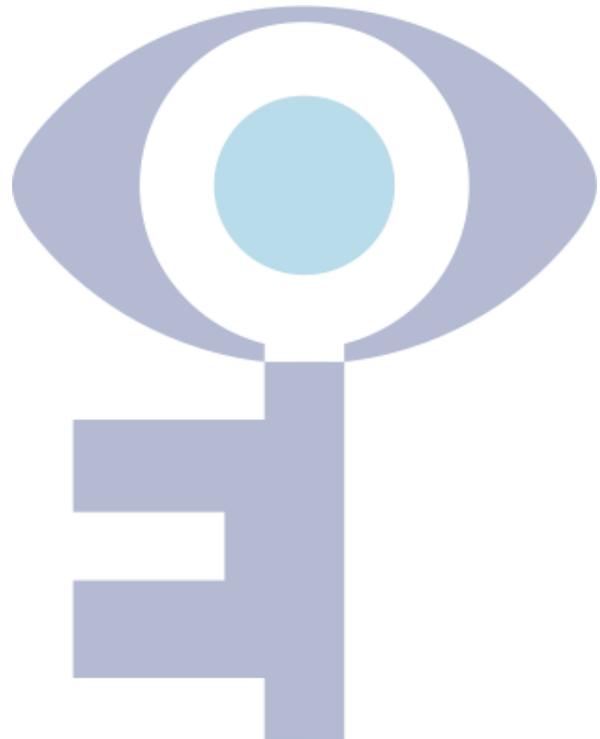


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# Shipping Early Intervention (SEI) Procedure



Edition 2015

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## Shipping Early Intervention Process – Edition 2015

### 1 What is Shipping Early Intervention?

- 1.1 Shipping Early Intervention (SEI) is a service whereby CEDR provides the services of a [CEDR Accredited Mediator](#) to act as a Neutral (The Neutral) to intervene in an existing dispute on a WITHOUT PREJUDICE and CONFIDENTIAL basis.
- 1.2 SEI seeks to take the key ingredients that make mediation such an effective process, but introduces them earlier and in a more dynamic or fluid way to achieving an informed solution sooner.
- 1.3 The SEI Neutral actively assists the parties in working towards a negotiated agreement of a dispute or difference, with the parties in ultimate control of the decision to settle and the terms of resolution.
- 1.4 The principal features of SEI are that it:
- involves a Neutral third party to facilitate negotiations;
  - is quick to set up and is inexpensive, without prejudice and confidential;
  - involves party representatives with sufficient authority to settle;
  - is flexible, with no set procedure, enabling the process to be designed and managed by the Neutral to suit the parties, in consultation with them;
  - enables the parties to devise solutions which are not possible in an adjudicative process such as litigation or arbitration, and which may benefit all the parties, particularly if there is the possibility of a continuing relationship between them;
  - can be used in both domestic and cross-border disputes, two-party and multi-party disputes, and whether or not litigation or arbitration has been commenced.
- 1.5 Any contemplated or existing litigation or arbitration in relation to the dispute may be started or continued despite the SEI process, unless the parties agree or a Court orders otherwise. If settlement terms cannot be agreed through the process, the parties are free to revert to litigation or arbitration.

### 2 Referral to SEI

- 2.1 Referral of a dispute to SEI may be as a result of:
- voluntary referral by all parties;
  - referral by one party who asks CEDR to invite the involvement of other parties into SEI;
  - responding to a Pre-action Protocol, the U.K. Civil Procedure Rules 1998, a Court Order or a recommendation by a judge before trial or appeal;
  - the provisions of any dispute resolution clause requiring the use of mediation or SEI as a step in the parties' agreed dispute resolution process.



2.2 In order to provide the service CEDR will:

- a. Require the parties to agree to these terms set out in this document
- b. Ask the referring organisation to provide brief details of the dispute and any relevant contract
- c. Ask the referring party to provide details of as many points of contact as possible on both/all sides to ease communication options; and

### 3. Choosing the Neutral

3.1. Parties may choose a Neutral from a panel maintained by CEDR specifically for SEI, or they may ask CEDR to appoint one of those panellists on the parties behalf or in accordance with any relevant Court Order (a copy of which must be supplied to CEDR by the parties as soon as possible after CEDR has been instructed).

### 4 Preparation for SEI

4.1. CEDR or the Neutral when agreed or appointed will make the necessary arrangements for the process as required or agreed by the parties including:

- a. drafting the SEI agreement, submitting it for approval by the parties and preparing the final form for signature, incorporating any agreed amendments;
- b. facilitating agreement as to the date, venue and start time for any meetings the process requires (if any);
- c. organising exchange of any documents between the parties and the Neutral as required;

4.2 The parties will:

- a. agree the appointment of the Neutral or a process to select or appoint the Neutral;
- b. treat all exchanges with CEDR and any Neutral appointed by them, and between the parties pursuant to the early intervention process, as being without prejudice to any litigation, whether current or future, and whether anticipated or not
- c. That the Neutral is entitled to treat all exchanges with other parties as strictly confidential to those parties and that he/she is not under any obligation to disclose all or any part of such conversations unless authorised by that party to do so
- d. Otherwise to comply with all of the terms of the CEDR Shipping Early Intervention Process and Agreement as if each party were a signatory thereto and as if the discussions were taking place as part of any mediation conducted thereunder.
- e. agree with CEDR the date, venue and start time of any meetings the Neutral proposes as required.
- f. pay CEDR's fees and expenses as provided for in the SEI Terms and Conditions of business;

#### 4.3 The Neutral will:

- a. make his/her initial exploration with each of the parties free of charge - not exceeding a total of 1 hour per party for initial briefing by, and discussions with, each party; or a maximum of three hours for multiparty disputes (the Initial Period).
- b. If after such initial discussions one or more of the parties declines to agree to the above terms and/or if the Neutral is of the opinion that the process is unlikely to be of net benefit to the parties, then the Neutral and/or CEDR may terminate the Process.
- c. require that any party (or parties) with whom they make contact pursuant to a request for SEI agree to be bound by the Terms of the CEDR SEI Process before the Neutral or CEDR disclose any information which has been provided (save, of course, for the fact of invoking the Process, the terms DRAFT of the contract and contact points, and any other information the party specifically consented to disclose).
- d. work with each party and its lawyers to explore all options including:
  - Identifying key issues and concerns for each party
  - Working out what each party needs to do to inform the other of its position
  - Work out a mutually agreed "shopping list" or an improved "road map" to take the dispute forward
  - Identifying options for resolving, or agreeing how to contest, the issues.
- e. use any recognised mediation methodology to conduct the process including
  - Chaired settlement meetings
  - Exploring by phone, shuttle meeting or email
  - Solution planning if no settlement is reached
  - Agreeing a timetable to mediation which will also serve the litigation process should, mediation or facilitated negotiation fail, or not be chosen.
- f. comply at all times with the CEDR Code of Conduct for Third Party Neutrals ("the Code").
- g. confirm immediately to CEDR if there is any matter which might prevent the nominated Neutral from complying with the Code in relation to the mediation of the dispute, such as a conflict of interest. CEDR will then notify the parties of any such matter immediately it is disclosed to them.
- h. read each case summary and document bundle submitted in advance of the any mediation session by the parties;

#### 4.4 Should the Neutral request a full mediation **the parties will:**

- a. each prepare and exchange a case summary in respect of their approach to the dispute and endeavour to agree with all other parties what documents are needed for the mediation;
- b. send to the Neutral (direct or through CEDR) a copy of their case summary and two copies of the document bundles no less than two weeks before the date set for the mediation, making clear whether case summaries have or have not yet been exchanged, whether or

not and when CEDR is to effect exchange, and whether all or any part of any case summary or documentation is intended to be confidential for the Neutral only;

- c. notify the Neutral direct or through CEDR of the names and roles of all those attending the mediation on their behalf, so that CEDR can inform all Parties and the Neutral in advance of the mediation;
- d. ensure that a lead negotiator with full authority to settle the dispute (or not) attends the mediation to sign the mediation agreement;
- e. alternatively notify the Neutral, CEDR and (unless very good reason exists to the contrary) the other parties of any limitation on authority to settle, for instance lack of legal capacity, or the need for ministerial committee or board ratification, in which case the lead negotiator will need to have power to recommend acceptance of any settlement. Late disclosure of limited authority to settle can call into question that party's good faith involvement in the mediation process, and have detrimental effects on the prospects of success of any mediation.

## 5 Documentation

5.1 Documentation intended to be treated as confidential by the Neutral or CEDR (such as a counsel's opinion, an undisclosed expert report, a draft proof of evidence or a confidential briefing for the Neutral) must be clearly marked as such, and will not be circulated further without express authority.

5.2 While documents brought into existence for the purpose of the SEI process, such as case summaries, are clearly privileged from later production in those or other proceedings, the fact that a document which is otherwise disclosable in proceedings is produced for the first time during the process does not normally confer privileged status on it. The parties must take legal advice on such matters if they arise.

## 6 The SEI agreement

6.1 The SEI agreement provides the essential legal basis for the process. Its signatories (the parties to the dispute, the Neutral and CEDR) all agree by signing it that the process is to be conducted consistent with both this Process and the Code.

6.2 A draft agreement will be sent for approval to the parties as part of the preparation for SEI. The SEI agreement will be signed at the beginning of the process, but following the initial exploration phase, on behalf of each of the parties and the Neutral, having been pre-signed on behalf of CEDR. All contact with the parties, CEDR staff and any CEDR Neutral once appointed will observe its terms as to confidentiality, even though the agreement has not yet been signed.

## 7 Mediation

7.1 If the Neutral considers it appropriate a formal mediation can be held. If this is agreed by the parties this will be arranged by CEDR and will be subject to the appropriate CEDR fees, procedures, terms and conditions which will be separately recorded in writing between CEDR and the parties.

## 8 Confidentiality

8.1 The CEDR SEI agreement provides that what happens during the process is to be treated as confidential by the parties, the Neutral and CEDR, including the fact and terms of settlement. However, the fact that SEI to take place or has taken place is not normally made confidential, as either or both of the parties may wish to claim credit for agreeing to engage in the process. If it is desired to make the fact that the mediation is taking place confidential also, the agreement can be amended.

8.2 Apart from where the parties agree in writing to consent to disclosure of what would normally be confidential, there may be rare circumstances in which the confidentiality of the SEI process cannot be preserved, such as where:

- a. the Neutral or any party or their representative is required by law to make disclosure;
- b. the Neutral reasonably considers that there is a serious risk of significant harm to the life or safety of any person if the information in question is not disclosed; or
- c. the Neutral reasonably considers that there is a serious risk of being personally subject to criminal proceedings unless the information in question is disclosed.

8.3 Such questions might arise in relation to duties under the Proceeds of Crime Act 2002 or related legislation or under any other legislation. Legal representatives (who may themselves be under a comparable duty of disclosure in their own capacity) must take full responsibility for advising their clients of the implications of disclosure in relation to any such matters at a mediation.

## 9 Conclusion of SEI

9.1 SEI may end in a number of ways:

- a. by settlement of the dispute in whole or part, when all agreed matters must be written down and signed by the parties to be binding;
- b. by one or more parties withdrawing from the process before settlement is achieved;
- c. by an agreed adjournment for such time and on such terms as the parties and the Neutral agree;
- d. by withdrawal of the Neutral in accordance with the mandatory and optional circumstances set out in the Code.

9.2 The Neutral will facilitate the drawing up of any settlement agreement, though the drafting is normally done by the lawyers representing each of the parties. Where proceedings have not been started in respect of the dispute, the settlement agreement will (if so intended and drafted) be a contract enforceable by legal action. Where proceedings have been issued in relation to the dispute, it is normal for a Consent Order to be agreed and later lodged to end the proceedings on the terms agreed.



9.3 Where the process does not end in complete settlement, the Neutral may make contact with the parties thereafter to see whether further progress might be possible.

9.4 CEDR endeavours to make contact with all the parties after every mediation to obtain their feedback on both the process itself and, in particular, the Neutral. Any feedback obtained regarding the Neutral will be given in full to the Neutral as part of the Neutral's continuing learning and development.

## **10 Complaints**

10.1 Any formal complaint about CEDR or any Neutral nominated by CEDR should follow the Process set out on the CEDR website at [www.cedr.com](http://www.cedr.com).



Appendix 1  
SAMPLE AGREEMENT

**CEDR SEI Agreement – Edition 2015**

**THIS AGREEMENT**                      dated                      **IS MADE BETWEEN**

**Party A**

..... *of* .....

**Party B**

..... *of* .....

(together referred to as “the Parties”)

**The Neutral**

..... *of* .....

(a term which includes any agreed **Assistant Neutral**)

**and**

**CEDR of IDRC, 70 Fleet Street, London EC4Y 1EU**

in relation to a process to be held

on .....

at .....

(“the SEI Process”)

IT IS AGREED by those signing this Agreement THAT:

**The Process**

**1**        The Parties agree to attempt in good faith to settle their dispute by use of the CEDR SEI Process and to conduct the process in accordance with this Agreement and consistent with the CEDR SEI Process and the CEDR Code of Conduct for Neutrals current at the date of this Agreement.



## Authority and status

2 The person signing this Agreement on behalf of each Party warrants having authority to bind that Party and all other persons on that Party's behalf to observe the terms of this Agreement, and also having authority to bind that Party to the terms of any settlement.

3 Neither the Neutral nor CEDR shall be liable to the Parties for any act or omission in relation to the SEI Process unless the act or omission is proved to have been fraudulent or involved wilful misconduct.

## Confidentiality and without prejudice status

4 Every person involved in the SEI Process:

4.1 will keep confidential all information arising out of or in connection with the SEI Process, including the fact and terms of any settlement, but not including the fact that SEI is to take place or has taken place or where disclosure is required by law to implement or to enforce terms of settlement or to notify their insurers, insurance brokers and/or accountants; and

4.2 acknowledges that all such information passing between the Parties, the Neutral and/or CEDR, however communicated, is agreed to be without prejudice to any Party's legal position and may not be produced as evidence or disclosed to any judge, arbitrator or other decision-maker in any legal or other formal process, except where otherwise disclosable in law.

5 Where a Party privately discloses to the Neutral any information in confidence before, during or after the Process, the Neutral will not disclose that information to any other Party or person without the consent of the Party disclosing it, unless required by law to make disclosure.

6 The Parties will not call the Neutral or any employee or consultant of CEDR as a witness, nor require them to produce in evidence any records or notes relating to the Process, in any litigation, arbitration or other formal process arising from or in connection with their dispute and the SEI Process; nor will the Neutral nor any CEDR employee or consultant act or agree to act as a witness, expert, arbitrator or consultant in any such process. If any Party does make such an application, that Party will fully indemnify the Neutral or the employee or consultant of CEDR in respect of any costs any of them incur in resisting and/or responding to such an application, including reimbursement at the Neutral's standard hourly rate for the Neutral's time spent in resisting and/or responding to such application.

## Settlement formalities

7 No terms of settlement reached during the SEI Process will be legally binding until set out in writing and signed by or on behalf of each of the Parties.



## Fees and costs of the Mediation

8 The Parties will be responsible for the fees and expenses of CEDR and the Neutral incurred during the SEI Process (**"the SEI Fees"**) in accordance with CEDR's Terms and Conditions of Business current at the date of this Agreement.

9 Unless otherwise agreed by the Parties and CEDR in writing, each Party agrees to share the SEI Fees equally and also to bear its own legal and other costs and expenses of preparing for and participating in the SEI Process (**"each Party's Legal Costs"**).

## Legal status and effect of SEI

10 This Agreement is governed by the law of [England and Wales] and the courts of [England and Wales] shall have exclusive jurisdiction to decide any matters arising out of or in connection with this Agreement and the SEI Process.

11 The referral of the dispute to SEI does not affect any rights that exist under Article 6 of the European Convention of Human Rights, and if their dispute does not settle through the process, the Parties' right to a fair trial remains unaffected.

## Signed

Party A \_\_\_\_\_

Party B \_\_\_\_\_

Neutral \_\_\_\_\_

CEDR \_\_\_\_\_