



The South African Dispute Settlement Accreditation Council

Qualification Standards: General Commercial Mediation

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Introduction

Voluntary System

The system of standards and accreditation provided by DiSAC is a voluntary, 'opt-in' system. It is not a licensing system. This implies that accreditation is not a requirement for practicing as a dispute settlement practitioner. Accreditation is however an indication that the mediator / arbitrator is qualified and meets the industry standards.

This approach accords with that followed in other jurisdictions. Experience in these jurisdictions also shows that the voluntary standards adopted by the industry do eventually become the de facto standard.

Participation and support

These standards have the participation and support of the following organisations:

- The Africa Centre for Dispute Settlement, at the University of Stellenbosch Business School
- Tokiso Dispute Settlement,
- Equillore Dispute Settlement Services
- Conflict Dynamics,
- the Association of Arbitrators of Southern Africa
- the Law Society of SA, and the Legal Education and Development Unit of the Law Society
- Royal Institute of Chartered Surveyors
- The Mediation Company
- University of Cape Town, Law@Work
- Master Mediators

In addition a number of other organisations have participated in the discussions, and given their in principle support for the initiative. These include the Department of Justice and Constitutional Development, the Mandela Institute (University of Witwatersrand), the National Democratic Lawyers Association and Advocates for Transformation.

Application of these Standards:

The Qualification Standards for General Commercial Mediation set out in this document provide a minimum qualification standard for general commercial mediation.

DiSAC anticipates that additional requirements may be imposed for areas of specialization – such as Court annexed mediation, labour or community mediation.

Please also note that different accreditation standards already exist for family and divorce mediation.

Accreditation of training programmes for mediators

In order to qualify for accreditation a training programme for mediators must include the following:

Programme presentation & content

- a) The programme must be conducted by a training team of at least two accredited trainers for every 18 trainees.
- b) The programme duration must be a minimum of 40 hours (which may be completed in more than one mediation workshop provided that no more than nine months have passed between workshops), excluding any written assessment.
- c) The programme must contain the following components:
 - i) Mediation theory (the Council will from time to time prescribe subject matters that are to be covered)
 - ii) Practice sessions that allow trainees to practise and develop skills:
 - Each programme participant must be involved in at least nine simulated mediation sessions and act as a mediator in at least three thereof.
 - The instructor must provide written coaching feedback in respect of at least one simulated mediation.

Assessment of trainees

- a) Assessment must include:
 - i) A written assessment that tests understanding of the theory and law of mediation.
 - ii) An assessment of the trainee's competence as a mediator (in an actual mediation, or in an applicable role play). Annexure C contains assessment guidelines that should be applied during assessment.
- b) During the assessment phase of the training, the ratio of qualified assessors to programme participants is to be no less than 1:4
- c) Each trainee must be assessed:
 - i) At least twice, and by different assessors.
 - ii) Each such assessment is to be contained in a written report (Annexure C contains guidelines in this regard).
- d) When assessing a trainee, the assessor must certify a trainee as being of a competent standard, or if this is not the case recommend additional training and practice, and re-assessment at a later date, or fail the candidate.

Accreditation of trainers and assessors

Trainers

- a) In order to obtain accreditation as a trainer, an applicant will be required to provide proof of the following:
- i) That he / she is an accredited mediator;
 - ii) That he / she has the necessary qualifications to provide the proposed training. An applicant will be required to:
 - (1) Stipulate the field(s) in which he /she wants to be accredited as a trainer;
 - (2) Provide proof of relevant academic qualifications in that field(s).
 - iii) That he / she has the necessary training and professional experience to qualify as a trainer. An applicant will be required to provide proof of:

	<i>Senior trainer</i>	<i>Co-trainer</i>
Professional mediation experience	<i>5 years</i>	<i>2 years</i>
Training experience	<i>3 co-training sessions other relevant experience</i>	<i>No experience required</i>

- b) The Council retains the right to attend and assess any training provided by an applicant trainer or an accredited trainer, and on the basis of that training review his / her accreditation as trainer.
- c) Accredited trainers are encouraged to organise and attend trainer meetings (that is discussion groups for trainers), and will receive CPD points for this.

Assessors

In order to obtain accreditation as an assessor, a person will be required to provide proof that:

- a) He / she is an accredited senior trainer, and
- b) He / she is familiar with and can apply the assessment guidelines in Annexure C.

Accreditation of Mediators

National standard for accreditation of mediators¹

In order to qualify for accreditation as a mediator with the Council, a candidate must:

- a) Undergo training under an accredited mediator training programme and be assessed and certified as competent by accredited assessors
 - or
 - (where other training was successfully completed) apply for recognition of their prior learning, and then be assessed and certified as competent by an accredited assessor
 - or
 - (in the case of experience only) apply for recognition of their prior experience, and then be assessed and certified as competent by the Council.
- b) Supply testimonials of his/her good character from two persons with whom the candidate has a professional relationship.
- c) Be affiliated with one or more Accredited Service Providers ('ASP').
- d) Under oath, and in writing, confirm that he / she:
 - i) Has not been convicted of any criminal offence involving dishonesty.
 - ii) Was never withdrawn from or refused membership of any other panel (or if he/she was, provide details).
 - iii) Subjects himself / herself to the Code of Professional Conduct, and the complaints and disciplinary procedures, of the ASP with which he / she is affiliated.
- e) Pay the annual Council accreditation fee.

Recognition of prior learning

Where a mediator was trained under a training programme that is not accredited by the Council, the mediator may obtain accreditation through one of the following ways:

- a) Undergo training under an accredited training programme ;
- b) Apply to an ASP for recognition of prior learning.
 - i) Each such application must be accompanied with full details of training and experience.
 - ii) The ASP will nominate an accredited assessor to assess the applicant
 - iii) The assessment will consist of :
 - (1) a written component that tests the applicant's understanding of mediation theory, practice and law; and
 - (2) an assessment of the applicant's skills as a mediator in an actual mediation or an applicable role play.
 - (3) When assessing an applicant, the assessor must certify a trainee as being of competent standard, or if this is not the case, recommend additional training and practice and re-assessment at a later date.

¹ Additional requirements may be imposed for areas of specialization – such as Court annexed mediation, labour or community mediation.

Please note that different accreditation standards already exist for family mediators under the National Accreditation Board for Family Mediators, NABFAM.

Each such application will be considered on its own merits. Any decision that an applicant is required to undergo additional training in order to qualify for accreditation shall be final.

Recognition of prior experience

In exceptional circumstances, experienced mediators who are acknowledged by their peers as such, may be accredited on the basis of their experience in mediation practice without having to first complete an accredited training programme.

A person wishing to qualify on this basis shall apply to an accredited service-provider for recognition of prior experience.

- a) Each such application must be accompanied by full details of experience.
- b) The ASP will consider the application, and if satisfied of the applicant's competency, recommend to the Council that the person be accredited.
- c) The Council will consider such application and recommendation and must then assess and certify the applicant as being competent, or if not of this opinion, recommend what additional training and practice needs to be undertaken to acquire accreditation.

Each such application will be considered on its own merits. Any decision that an applicant is required to undergo additional training in order to qualify for accreditation shall be final.