

Conciliation and Arbitration Center of Panama

CONCILIATION AND MEDIATION REGULATIONS

PRESENTATION

The Decree Law N° 5 of July 8, 1999, establishes the legal and ethical principles that guide the arbitration, conciliation and mediation proceedings in Panama.

In this sense, the Conciliation and Arbitration Center of Panama (CeCAP), under the support of the Inter-American Development Bank (IADB), the Chamber of Trade, Industries and Agriculture of Panama, and other entrepreneurial areas of the country, has prepared and approved the arbitration, conciliation and mediation regulations, as well as the Code of Ethics for Arbitrators, Mediators and conciliators, which today we give you.

These proceedings state in a simple and easily understood way, the development of the institutionalized arbitration, as well as the basic rules that govern institutionalized conciliations and mediations, offering businessmen lawyers, and other users of the Center, the certainty of faithful compliance with them, to through the Arbitration, Conciliation and Mediation and Administration General Secretariat.

The Arbitration Regulations, in accordance with the powers conferred by the Law, grant CeCAP competence to hear requests for arbitration institutionalized at law or equity, national and international, as well as the organization of ad-hoc arbitrations, when its services are so requested.

This Regulation, also develops each of the stages of the institutionalized arbitral procedure, going through a preliminary stage of request and answer of the parties, the Constitution of the Arbitral Tribunal, formalizations of the request and answer, the determination of the cause, the evidentiary stage, allegations and entering of the award; collecting the modern principles that, in matters of arbitration, our national legislation and the agreements signed by the Republic.

In strict order, the regulations specify what concerns the filing and nomination process based on the principle of the autonomy of the parties' will. The regulation sets terms and how to compute them; clearly indicates when the arbitration begins, the moment of the

integration of the tribunal and subsequent procedural phases until reaching the award by means of which the controversy is resolved.

These procedures are simple, that is, easy to understand and apply, there is no procedural ritualism; the parties can not use dilatory techniques or actions or appeals for a second instance, the arbitrators being compelled in a maximum term of four months, extendable only by two additional months. The award reaches the value of res judicata and enforceability.

The regulations make the practice of arbitration possible, not only internal but also international, which is a note of singular importance for the development of the arbitration institution, which has been strengthened by globalization and reversion of the Panama Canal.

The regulation also includes a Code of Ethics for arbitrators, conciliators and mediators, which is an innovation that comes to satisfy the requirements for the management of access to private justice.

Within the parameters that guide access to private justice, via conciliation and mediation, the qualification requirements are established to act as facilitator, in order to ensure impartial understanding, guided by a neutral third party, that upon reaching the agreement by means of a document signed by the parties and the facilitator, such agreement has the value of a judgment, when it comes to Conciliation and executionary merit for Mediation.

It opens a new professional field in Panama that allows to reach, under a new culture of peace, the peaceful understanding of the parties in controversy.

TABLE OF CONTENTS

Chapter I.	General Provisions
Article 1	
Chapter I.	Conciliation
Article 2	Definition
First Section	The Conciliator
Article 3	Requirements
Article 4	Qualification of the Conciliator
Article 5	Additional training to the basic
Article 6	List of Conciliators
Article 7	On the Appointment of the Conciliator
Article 8	On the Functions of the Conciliator
Second Section	The Conciliation Procedure
Article 9	Of the Request for Conciliation
Article 10	Requirements of the Conciliation Request
Article 11	Service of Notice
Article 12	Management of the Conciliation
Article 13	Notifications
Article 14	Conciliation Sessions
Article 15	Additional Sessions
Article 16	The Place of Conciliation
Article 17	The Conciliation Agreement
Article 18	
Article 19	The Conclusion of the Conciliation Process
Article 20	Suspension of Judicial or Arbitral Actions
Article 21	Expert Witnesses' Reports
Chapter III.	Mediation
Article 22	Definition
Article 23	Purpose

First Section

Article 24

Article 25

Article 26

Article 27

Article 28

Article 29

Article 30

The Mediator

Requirements

Co - Mediation

Qualification of the Mediator

Additional training to the basic one

List of Mediators

Designation of the Mediator

Functions of the Mediator

First Section

Article 31

Article 32

Article 33

Article 34

Article 35

Article 36

Article 37

Article 38

Article 39

Article 40

Article 41

Article 42

Article 43

The Mediator

The Request for Mediation

Requirements of the Request for Mediation

Judicial Mediation

Service of notice

Management of Mediation

Notifications

Development of the Mediation Session

Number of Mediation Sessions

The Place of Mediation

The Mediation Agreement

The Conclusion of the Mediation Procedure

Suspension of Judicial or Arbitral Actions

Expert Witnesses' Reports

Chapter IV.**Code of Ethics for Conciliators and Mediators**

CONCILIATION AND MEDIATION REGULATIONS

Chapter I

General Provisions

Article 1. Pursuant to the Decree Law and the powers that the Bylaws grant the Board of Directors of the Center for Conciliation and Arbitration of Panama, hereinafter referred to as the Center, the Conciliation and Mediation Regulations are adopted.

Chapter II

Conciliation

Article 2. Definition

According to the provisions of Decree Law 5 of 1999, hereinafter Decree Law, and this Regulation, the Extrajudicial Conciliation is established as a alternative method of peaceful conflict resolution, in accordance with the competence of the Center.

First Section

The Conciliator

Article 3. Requirements

In accordance with the requirements of Decree Law No. 5 of July 8, 1999, hereinafter the Decree Law, the Conciliators of the Center shall be qualified professionals and will be assisted by the Conciliation and Mediation Secretariat, prior to the development of the Conciliation.

Article 4. Qualification of the Conciliator

The Center, in accordance with numeral 1 of article 59 of the Decree Law, will issue the certification that accredits him to act as Conciliator, when the interested party meets one of the following requirements:

1. Approval of the general course designed for this purpose by the Center, which can't have a schedule intensity of less than 80 hours and an internship in the same for a term of not less than 20 hours.
2. When the Center endorses a training received by the prospective Conciliator, from an Educational Institution of higher education.

3. Discretionally for those cases in which the applicant demonstrates experience exceeding the minimum requirements and does not meet the criteria previously mentioned.

Paragraph: Whoever has the status of conciliator of the Center before the coming into effect of this Regulation, will not require the aforementioned accreditation.

The courses on such subject developed by basic, undergraduate or bachelor's degrees' pensums of the Universities may not be considered for the purposes of this Article, nor will be the immediate right to belong to the list of conciliators for evidencing basic training be considered.

Article 5. Additional training to basic

For cases in which conciliators or prospective conciliators intend to act in specialized matters, these must be accredited through a training of 60 additional hours to the basic one in the specific area, case in which it may be resolved according to paragraphs 2 and 3 of the previous article.

Article 6. List of Conciliators

1. Integration: the list of conciliators must be integrated for periods of 2 years by specialties, and will have a variable number of members to attend in an agile and efficient way the provision of the service.
2. The person interested in belonging to the list of conciliators of the Center must do the corresponding application before the Conciliation and Mediation Secretariat, along with the resume, proving basic training in the subject of alternative conflict resolution, additional training, if applicable, or accreditation as conciliator issued by an authorized center for such effect.
3. Procedure for inclusion in the list: Once compliance of the aforementioned requirements is verified, the Director shall proceed to the presentation of the candidate before the Board of Directors; if accepted, he undertakes to comply with the Regulations and Code of Ethics of the Center.

Article 7. Designation of the Conciliator

The designation of the conciliator for the attention of the case being processed will be done as follows:

1. In the Conciliation the will of the parties will prevail, in such a way that they may designate the Conciliator of their election for the intervention as a facilitator in the solution of their controversy.
2. In case of discrepancy between the parties regarding the selection of the conciliator, his challenge or inability, the Conciliation and Mediation Secretariat will proceed as follows:
3. Once the list of conciliators is drawn up in alphabetical order, and weighting the specialty, in accordance with the requirements of the Conciliation, the appointment will be made in strict order of prevalence in the list, making each time the respective rotation and obviating, to continue, those cases in which the Conciliator who should have been replaced due to non-attendance, has presented the proper excuse.
4. When the interested party or interested parties propose several Conciliators, the Conciliator or Conciliators, will be selected by raffle.

Paragraph: The Conciliation and Mediation Secretariat may replace or substitute, prior agreement with the parties, to the designated Conciliator, when the latter does not show up in time at the day and time indicated for the session.

Article 8. Conciliator's Functions

In addition to those assigned to it by the Decree Law, the Conciliator will have the following functions:

1. To file, at any stage of the conciliatory procedure, suggestions for the solution of the controversy. It is not necessary for these suggestions to be presented in writing or explain the basis of them.
2. To help the parties independently and impartially in their efforts for achieving an amicable settlement of the dispute.

Second Section

Conciliation Procedures

Article 9. Request for Conciliation

The request for Conciliation may be presented orally or in writing, before the Conciliation and Mediation Secretariat, stating the will to achieve an extrajudicial agreement through Conciliation, by virtue of the intervention and management of the Center. The previous application may be submitted by one of the interested parties individually, by both by mutual agreement or by their legal representatives duly authorized with or without attorney.

Article 10. Requirements of the Request for Conciliation

The Conciliation request must contain:

1. Identification of the parties and their legal representatives, if applicable, indicating name, domicile, address and telephone numbers.
2. The causes or reasons that motivate the Conciliation.
3. The conflicts that they intend to conciliate.
4. The estimation of the value of the claims or the manifestation that they lack a certain value.
5. The evidences they deem relevant.

Paragraph: When the request for Conciliation is made orally, the proposed content will be obtained by the Secretariat in the forms designed for these purposes.

In any case, the request for Conciliation must be accompanied by the respective advances of administrative costs.

Article 11. Service of Notice

When the request for Conciliation has been submitted by one of the parties involved in the dispute, the Center will proceed to serve notice of said request to the other party(ies), having this one(s) a term of five (5) calendar days to answer if they accept or not the conciliation proceedings.

In case there is no answer in the indicated term, the conciliation proceedings will be considered as not accepted.

Article 12. Management of the Conciliation.

The request for Conciliation accepted, the Conciliation and Mediation General Secretariat will designate the conciliator, according to the provisions in this Regulation, and will invite the parties to the Conciliation session.

Article 13. Notifications

The notifications or communications will be considered validly made, provided that they are addressed to the address or postal address, by telephone, telegraphic, or fax.

When notifications are made by fax, postal, telegraphic, they will be taken as given five (5) days after they are sent.

In case of notifications abroad, the term of fifteen (15) days will be valid to have such notifications as received.

Article 14. Conciliation Sessions

On the day and time indicated for the session, the conciliator shall proceed as follows:

1. He will explain the parties of the procedure to follow, implications and effects.
2. He will listen giving equal opportunity to the arguments of the parties, will reason with impartiality about them and encourage them to present the formulas for settlement regarding the controversy.
3. If the parties do not present alternative solutions, the conciliator will propose them based on criteria of neutrality and equity.
4. If an agreement is reached between the parties, the conciliator will subscribe the Agreement of Conciliation jointly with them.
5. Of everything that happened during the session, the conciliator will keep strict reservation.

Article 15. Additional Sessions

When an agreement is not reached at the first meeting, the Conciliation session may continue in subsequent sessions, which may be determined according to the needs in the opinion of the conciliator and with the consent of the parties.

Article 16. The place of the Conciliation

The place where the Conciliation will be held will be at the headquarters of the Conciliation and Arbitration Center of Panama, or any other location designated by the parties.

Article 17. The Conciliation Agreement

If the parties reach a total or partial agreement, a conciliation agreement will be signed, which will contain as a minimum:

1. Identification of the parties and the conciliator.
2. Subject matter of the dispute, with a brief statement of the facts and claims of the Conciliation.
3. The express agreement in a clear manner, determining the obligations for each party, the place, the conditions and terms for compliance. In the event that the Conciliation is partial, the points of disagreement will be determined, expressing in the document that the parties are free to use other alternative mechanisms of conflict resolution or the judicial way.
4. The expression on the effects of immutability of the agreement with scope of res judicata and executionary merit.
5. The signatures of the parties and the conciliator.

There will be as many copies of the conciliation agreement as there were parts, plus one, which must be duly signed by the Conciliator and the parties.

Paragraph: Under the principle of confidentiality, the conciliation agreement will not include the arguments of the parties.

Article 18. When the parties agree to recognize and enforce the conciliation agreement abroad, they may request the Conciliator, to elevate the decision to award. To this end, the parties must appoint the Conciliator (s) as arbitrator (s) in a separate document provided by the Center, where the parties will sign and the conciliator who will act as arbitrator, as acceptance. In these cases the appointed arbitrator shall draft the award in compliance with the formalities indicated for the same in the Arbitration Regulations.

Article 19. Conclusion of the Conciliation Proceedings

The conciliation proceedings will conclude:

1. With the signature of the agreement
2. With the withdrawal of one or both parties
3. With the non-justified absence to two (2) scheduled meetings, which will be considered as lack of interest in the solution of the controversy
4. Due to the inability of one or both parties.

Paragraph: When the parties have not reached any agreement on the solution of the controversy object of Conciliation, the conciliator will draft a minutes noting the absence of an agreement, by which the conciliation proceedings is concluded. This minutes may not be used in any other type of proceedings.

Article 20. Suspension of Judicial or Arbitral Actions

The parties undertake, during the conciliation proceedings, not to initiate any arbitral or judicial proceedings in respect of a dispute that is the object of the conciliation proceedings.

Article 21. Expert Witnesses' Reports

In the course of the conciliation proceedings in which the parties require an expert witnesses' opinion, the Conciliation and Mediation Secretariat will proceed with the appointment of the expert witness, from the list in the Center.

The payment of the expert witness' fees approved by the parties must be paid in advance to the Center. For this, the parties will have a term of five (5) calendar days to consign such fees. After this term, the Conciliator may suspend or terminate the proceedings, except for the subsequent agreement of the parties, which can reconcile their differences without the appointment of the expert.

Chapter III

Mediation

Article 22. Definition

For purposes of this Regulation and in accordance with the Decree Law, judicial or extrajudicial mediation is instituted, as a method of peaceful conflict resolution, processing of which is carried out through the Center and with the intervention of one or a plural

number of facilitators, who will be qualified as Mediators to meet the needs of concertation of the parties.

Article 23. Object

Mediation, as an opportunity for the parties to explore the different alternative solutions to their problems, will be understood as supplied even when no agreement is reached.

First Section

The Mediator

Article 24. Requirements

In accordance with the requirements of the Decree Law, the mediators of the Center must be qualified professionals and will be assisted by the Conciliation and Mediation Secretariat, prior to the development of the Mediation.

Article 25. Co - Mediation

When the parties require the intervention of a plural number of mediators, the team should be formed with professionals well versed in subject matter of conflict.

In the absence of agreement between the parties, the procedure shall be as established in this Regulation regarding the appointment of the mediator or mediators.

Article 25. Qualification of the Mediator

The Center, in accordance with numeral 1 of article 59 of the Decree Law, will issue the certification that accredits him to act as Mediator, when the interested party meets one of the following requirements:

1. Approval of the general course designed for this purpose by the Center, which can't have a schedule intensity of less than 80 hours and an internship in the same for a term of not less than 20 hours.
2. When the Center endorses a training received by the prospective mediator, from a higher education institution.

3. Discretionally for those cases in which the applicant demonstrates experience exceeding the minimum requirements and does not meet the criteria previously mentioned.

Paragraph: Whoever has the status of mediator of the Center before the coming into effect of this Regulation, will not require the aforementioned accreditation.

The courses on such subject developed by basic, undergraduate or bachelor's degrees' pensums of the Universities may not be considered for the purposes of this Article, nor will be the immediate right to belong to the list of mediators for evidencing basic training be considered.

Article 27. Additional training to basic

For cases in which mediators or prospective mediators intend to act in specialized matters, these must be accredited through a training of 60 additional hours to the basic one in the specific area, case in which it may be resolved according to paragraphs 2 and 3 of the previous article.

Article 28. List of Mediators

1. Integration: the list of mediators must be integrated for periods of 2 years by specialties, and will have a variable number of members to attend in an agile and efficient way the provision of the service.
2. The person interested in belonging to the list of mediators of the Center must do the corresponding application before the Conciliation and Mediation Secretariat, along with the resume, proving basic training in the subject of alternative conflict resolution, additional training, if applicable, or accreditation as mediator issued by an authorized center for such effect.
3. Procedure for inclusion in the list: Once compliance of the aforementioned requirements is verified, the Director shall proceed to the presentation of the candidate before the Board of Directors. If accepted, he undertakes to comply with the Regulations and Code of Ethics of the Center.

Article 29. Designation of the Mediator

The designation of the mediator for the attention of the case being processed with mediation, will be done as follows:

1. In the Mediation the will of the parties will prevail, in such a way that they may designate the Mediator of their election for the intervention as a facilitator in the solution of their controversy.
2. In case of discrepancy between the parties regarding the selection of the Mediator, the Conciliation and Mediation Secretariat will proceed as follows:
3. Once the list of mediators is drawn up in alphabetical order, and weighting the specialty, in accordance with the requirements of the Conciliation, the appointment will be made in strict order of prevalence in the list, making each time the respective rotation and obviating, to continue, those cases in which the Mediator who should have been replaced due to non-attendance, has presented the proper excuse.
4. When the interested party or interested parties propose several Mediators, the Mediator or Mediators, will be selected by raffle.

Paragraph: The Conciliation and Mediation Secretariat may replace or substitute, prior agreement with the parties, the designated Mediator, when the latter does not show up in time on the day and time indicated for the session.

Article 30. Mediator's Functions.

Aside from those assigned by the Decree Law, the Mediator will help the parties in an independent and impartial manner in their efforts to achieve an amicable arrangement of the controversy, without making suggestions inducing a certain decision.

Second Section

Mediation Proceedings

Article 31. Request for Mediation

The request for Mediation may be presented orally or in writing, before the Conciliation and Mediation Secretariat, stating the will to achieve an extrajudicial agreement through Mediation, by virtue of the intervention and management of the Center. The previous application may be submitted by one of the interested parties individually, by both by mutual agreement or by their legal representatives duly authorized with or without attorney.

Article 32. Requirements of the Request for Mediation

The Mediation request must contain:

1. Identification of the parties and their legal representatives, if applicable, indicating name, domicile, address and telephone numbers.
2. The causes or reasons that motivate the Mediation.
3. The affairs or reasons that motivate the Mediation.
4. The estimation of the value of the claims or the manifestation that they lack a certain value.

Paragraph: When the request for Mediation is made orally, the proposed content will be obtained by the Secretariat in the forms designed for these purposes.

In any case, the request for Mediation must be accompanied by the respective advances of administrative costs.

Article 33. Judicial Mediation

When the Mediation is agreed within a judicial proceedings, and the services of the Center are requested, it will apply the procedural rules established for extrajudicial Mediation; provided the suspension of the proceedings ordered by the Judge is accredited with the request.

Article 34. Service of Notices

When the request for Mediation has been submitted by one of the parties involved in the dispute, the Center will proceed to serve notice of said request to the other party(ies), having this one(s) a term of five (5) calendar days to answer if they accept or not the mediation proceedings.

In case there is no answer in the indicated term, the mediation proceedings will be considered as not accepted.

Article 35. Management of the Mediation.

The request for Mediation accepted, the Conciliation and Mediation General Secretariat will designate the mediator or mediators, according to the provisions in this Regulation and will invite the parties to the Mediation session.

Article 36. Notifications

The notifications or communications will be considered validly made, provided that they are addressed to the address or postal address, by telephone, telegraphic, or fax.

When notifications are made by fax, postal, telegraphic, they will be taken as given five (5) days after they are sent.

In case of notifications abroad, the term of fifteen (15) days will be valid to have such notifications as received.

Article 37. Development of the Mediation Session

For the development of the Mediation, the principles of confidentiality and informality that govern the institution will be cared for.

On the date and time indicated for the session, the Mediator will explain the parties the scope of the proceedings and its effects, both legal as well as practical, and will encourage them to carry out a free and spontaneous dialogue in which they express themselves and to analyze the different alternatives to conflict resolution.

Article 38. Number of Mediation Sessions

If there is no agreement in the first meeting, the Mediation session may continue in subsequent sessions, which may be determined according to the needs, at the Mediator's discretion and with agreement of the parties.

Article 39. The Place of the Mediation

The place where the Mediation will be conducted will be the headquarters of the Center or any other place designated by the parties.

Article 40. The Mediation Agreement

When the parties reach an agreement, the mediator or mediators will subscribe a Mediation agreement jointly with the parties, in which they will consign expressly the items of such agreement; specifying the obligations arising from the understanding, the place, conditions and terms for its compliance, as applicable, and the expression of the executionary force effect the document has.

There will be as many copies of the mediation agreement as there are parties, plus one; and it shall be signed by the mediator and the parties.

In cases where no final solution to the conflict is reached with the Mediation the items in disagreement will be determined, consigning in the document that the parties are free to use other alternate mechanisms of conflict resolution or the judicial way.

Paragraph: Under the principle of confidentiality that governs the Mediation, the agreement will not include the arguments and proposals of the parties.

Article 41. Conclusion of the Mediation Proceedings

The Mediation proceedings will conclude:

1. With the signature of the agreement
2. With the withdrawal of one or both parties
3. With the non-justified absence to two (2) scheduled meetings, which will be considered as lack of interest in the solution of the controversy
4. Due to the inability of one or both parties.

Paragraph: When the parties have not reached any agreement on the solution of the controversy object of Mediation, the mediator will draft a minutes noting the absence of an agreement, by which the Mediation proceedings is concluded. This minutes may not be used in any other type of proceedings.

Article 42. Suspension of Judicial or Arbitral Actions

The parties undertake, during the Mediation proceedings, not to initiate any arbitral or judicial proceedings in respect of a dispute that is the object of the proceedings in question.

Article 43. Expert Witnesses' Reports

In the course of the Mediation proceedings in which the parties require an expert witnesses' opinion, the Conciliation and Mediation Secretariat will proceed with the appointment of the expert witness, from the list in the Center.

The payment of the expert witness' fees approved by the parties must be paid in advance to the Center. For this, the parties will have a term of five (5) calendar days, from the appointment of the expert witness, to consign such fees. After this term, the mediator

may suspend or terminate the proceedings, except for the subsequent agreement of the parties, which can reconcile their differences without the appointment of the expert.

Chapter IV

CODE OF ETHICS FOR CONCILIATORS AND MEDIATORS

Article 44. This set of rules is the Code of Ethics for conciliators and mediators of the Conciliation and Arbitration Center of Panama.

Article 45. The rules of ethics set in this Code, establish the general guidelines given to conciliators and mediators with the purpose of setting the principles of professional performance. They do not limit liabilities nor exclude other stricter rules subscribed by mediators or conciliators corresponding to their careers.

Article 46. The mediator and conciliator act as neutral third parties. They have a duty to one of the parties, their profession and themselves. They shall act clearly in their relationship with the participants, they shall be honest and impartial, promote trust of the parties, act in good faith, be diligent and not seek their own interests, nor have interest in the agreement of the parties. They have the duty of making available for the participants all the aptitudes inherent to their profession and all the efforts aimed at conducting the mediation or conciliation with the greatest excellence, in order to ensure access to justice.

Article 47. In addition to the functions assigned to them by the Decree Law, the Conciliators and Mediators must abide by the procedures and regulations established by the Center. In particular they should:

1. Accept the cases that are assigned to them, when there is no impediment.
2. Attend the conciliation or mediation sessions on the scheduled day and time.
3. Process their corresponding cases in accordance with the philosophical and ethical principles governing Conciliation and Mediation, acting neutral, objective, transparent, impartial, responsible and consistent with the functions, which are developed.
4. Notify the Conciliation and Mediation Secretary General of the Center if they are unable to exercise the position.
5. Provide accurate and reliable information requested.

6. Participate in the refresher courses required by the Center.
7. Contribute to the implementation of established monitoring and control policies in the center.
8. Participate in evaluation and research projects organized by the Center that are related with its functions.
9. Keep a strict reserve of the cases that are processed in the Center.
10. Comply with the precepts of this Regulation.
11. They must refrain from acting as arbitrators, arbitral or judicial representatives in disputes in which they acted as conciliators or mediators
12. When the parties have not reached any agreement on the solution of the controversy object of the Conciliation or Mediation, the facilitator will be in the obligation to draft a Minutes stating the hearing of the agreement, by which the procedure is terminated.

Article 48. In case of failure to comply with any of the duties contemplated in the previous article, the Conciliation and Mediation General Secretariat will convene the conciliator or the mediator, in order for them to render a report on the facts.

The Conciliation and Mediation Secretary General will determine if the circumstances involve or not the breach of obligations and the Code of Ethics. In case of non-compliance, the Secretary will draw up a report and send it to the Director of the Center, for the consideration of the Board of Directors.