

Rules Mediation

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The Rules of Mediation Procedure of CAM Santiago set down the rules according to which mediation is processed, which give preference to flexibility and ensure the seriousness of the processes.

IN EFFECT SINCE NOVEMBER 1, 2000.

I. LIST OF MEDIATORS

Article 1°

To allow for an efficient rendering of mediation services in line with the magnitude of the cases submitted to their attention, the mediators' membership list will entail a varying number of members. The admission process applicable to those interested in joining the list of mediators can be started either through an invitation issued by the Council of the Arbitration and Mediation Center or through a specific request lodged by the applicant. In the latter case, the applicant must submit to the Council his personal and professional credentials.

These credentials will become the basis on which the Council can either accept or turn down the specific application, while being subject to no compelling demand whatsoever to justify its decision. In all circumstances, the mediator must be a qualified professional with his/her degrees extended by an accredited university and must be able to demonstrate a minimum experience of 5 years. Likewise, the mediator must undergo all the compulsory qualification courses instituted either by the Arbitration and Mediation Center or the entity commissioned to perform this training function. Furthermore, he/she is expected to issue an oath statement declaring his/her willingness to a strict observation of all the regulations contained herein, plus those stipulated in the Mediators' Ethical Code.

To ensure an equitable distribution of the dispute cases amid the enlisted mediators, these cases will be subject to a roster system.

Article 2°

The Council can dictate the exclusion from the list of mediators of any member that may incur in the following actions:

- a) A refusal to undertake, with no valid justification, the procedures concerning a dispute case already allocated to him/her;
- b) An unjustified absence from a hearing session,
- c) Failure to observe and comply with the duties stemming from these Regulations, or from the Mediator's Ethical Code or any other relevant statutory regulations;

- d) A refusal to undergo the training courses laid down in the mediation syllabus;
- e) To be subject to any inherent circumstance which prevent him/her from exercising any civil or political rights.

Article 3°

Notwithstanding the reasons stipulated in the preceding article, and moreso if the evaluation methods and circumstances make it advisable, the Council may review and renew the individual membership status within a term of one year.

This review will be implemented through additional and compulsory training procedures applicable to all the mediators.

II. MEDIATION REQUIREMENTS

Article 4°

All those individuals that are interested in submitting a commercial dispute, be it national or international, to the Mediation procedures applied by the Center, will be asked to do so in writing and supplying the following data:

- a) Full names and addresses of all parties involved in the dispute together with their respective fax and telephone numbers, plus those of their legal representatives.
- b) If applicable, a copy of the mediation clause included in a contract, and referred to a mediation agreement.
- c) A summary of the matters pertaining the mediation. If applicable, details of the amount involved in the dispute will be welcome too.
- d) It is left to the discretion of the parties concerned to attach the documentary evidence referred to the controversy.

Should any of the people attending the mediation sessions is a legal representative of one of the parties involved in the dispute; in addition to observing the requirements laid down in a) above, he/she has to produce a written authority whereby he abrogates the right to resort to legal recourse and be empowered to compromise, commit and agree to covenants. This public deed of authority must be submitted to the Center prior to the first mediation meeting.

The first mediation meeting cannot begin if the representative concerned does not produce the document stipulated in the preceding paragraph. This is an essential requirement for the meeting to take place.

III. MEDIATION PROCESS

Article 5°

Once a mediation application has been lodged at the Secretariat Office, the first step will be to verify that the matter of contention comes under the remit of the Center, through an analysis of the nature of the contention. The applicant will be informed if the matter of contention falls beyond the Center's remit.

Once the application has been accepted, the applicant must pay the Center his share of the 50% administration charge. This payment is not refundable.

Once this payment has been made, the Secretariat office will approach the other party or parties at the earliest possible opportunity and by the means considered appropriate; with a view to keep them informed about the mediation application that has been lodged. The Arbitration and Mediation Center will supply them also with information about the action envisaged by the Center, together with an invitation to give consent for the mediation process to be initiated.

Once the above initiatives have been completed and if the other party or parties have not lent their consent for this process to begin, then the Arbitration and Mediation Center's involvement will cease, and as such this will be communicated to the applicant and to the other parties.

This will not be an impediment for another mediation application on the same case to be lodged again.

Article 6°

In the event of the party or parties approached agreeing to the beginning of the mediation process, they will have to enter their share of the 50% administration charge. Once this payment has taken place, the General Secretariat Office will inform the applicant about the counterpart's acceptance and then will appoint the mediator, or co-mediators if applicable, and the substitute staff. With the specific matter of contention in mind, the procedure applicable for the nomination is that laid down in the closing paragraph of article 1. The mediator, his/her substitute and the parties will be told about the appointments by the Secretariat through the most suitable means. Ideally this notification will have to be done on the same day of the appointment or, at the latest, during the following working day.

As soon as the appointments have been notified to the parties concerned, the Center will proceed with the setting of the date and time for the first mediation meeting. The venue has to be within the offices of the Arbitration and Mediation Center. The summons to the first session will be notified by the Center to the parties and the mediator alike.

IV. NOTIFICATIONS

Article 7 °

All the notifications that need to be issued during a mediation process, will be dealt with in the most suitable and swift way as deemed suitable by the Arbitration and Mediation Center. To ensure its confidentiality status, the documentation containing essential information about the mediation can only be sent through the most suitable and safe means.

V. DISQUALIFICATIONS AND SUBSTITUTIONS

Article 8°

Each party can disqualify the appointed mediator(s) within the three working days following the date of the notification document informing them of the appointment. Any financial or personal link between the mediator with one of the parties concerned is a cause for disqualification, and so it will be any financial or personal interest of the mediator in the mediation process' outcome.

Despite the existence of this cause for disqualification, the parties can agree to the mediator becoming fully aware of the matter of contention. If the mediator is finally disqualified, then the substitute(s) will be called in to take over the mediation process.

Should there be no substitutes or if those appointed as such cannot take over, then the Arbitration and Mediation Center will appoint a new mediator within the term of three working days from the disqualification date. Should the appointed mediator become aware of a disqualification cause, he/she will have to turn down the appointment.

All the regulations contained in this article will also apply in respect of the mediator, if a disqualification cause emerges during the course of the mediation.

If the first meeting cannot take place on the set time and date due to a mediator's disqualification, the Arbitration and Mediation Center will set a new date.

Article 9°

Should one of the parties be a company or legal person, it will have to supply the Arbitration and Mediation Center with the name, address, telephone and fax details of their representative(s) that will attend the meetings scheduled in the mediation process. These representatives will have to produce a special power of representation conferred by means of a public deed issued by the party concerned. This document must empower such representative to compromise, commit and agree to covenants.

The first mediation meeting cannot be started if the representative concerned does not produce the document stipulated in the preceding paragraph. This is an essential requirement for the meeting to take place.

Article 10 °

If at the set date and time it becomes impossible to proceed with the first mediation meeting due to the absence of one of the parties, a new meeting will be set to take place within the following ten (10) working days. This will apply each time either of the parties does not attend any of the mediation meetings.

If the second mediation meeting does not take place on account of the unjustified absence of either or all parties concerned, the mediation process will be regarded as terminated. This decision will be reported by the Arbitration and Mediation Center to all parties and to the mediator(s).

This event will not be an impediment for another mediation application on the same case to be lodged again.

Article 11°

Prior to starting with the first mediation session, the parties will sign a binding declaration.

The mediation process will be officially started with the first meeting held by the mediator with the parties concerned. During the course of this meeting, the mediator will supply information pertaining the mediation process to all parties and will also hand over to them a confidentiality covenant for its formal signature of ratification.

Once the first meeting is over, and should there be a need for another meeting, the mediator will set its date and time.

The minutes of each meeting will be drafted.

The parties are allowed to bring their lawyers to attend the joint private meetings. Should it be deemed necessary by the mediator, he will suggest the parties to let their respective lawyers become involved in the mediation process.

Article 12°

The mediator is not empowered to impose an agreement onto the parties but instead to help them get by themselves to a mutually satisfactory settlement of their dispute. The mediator is authorised to lead the mediation process, and as such he/she can:

- a) Summon all parties to a joint or private meetings.
- b) Declare the mediation process as terminated if he/she thinks that this process will not help the settlement of the dispute.
- c) Suggest the parties to seek expert advise in all the legal and technical matters relevant to the mediation.
- d) Decide on the best way forward to ensure the suitable handling of the mediation process.

Article 13°

The meeting held during the mediation process has a privacy status. Therefore, no third person (a person that is not a member of either of the parties concerned) will be able to attend these meeting unless this person has been allowed by the parties and the mediator.

The mediation process has a confidential status, which entails that all oral or written information disclosed during the process is rated as secret and cannot be disclosed by:

- a) The mediator to either alien third parties or Courts of Justice, unless (i) the information is referred to facts rated as a criminal offence which by Law have to be reported or (ii) when summoned by a Court of Justice for testifying during a trial and upon request of one of the parties or a third party alien to the mediation.

In all circumstances the mediator enjoys the endorsement of his/her professional secrecy status with regard to any piece of information known to him/her as a result of the mediation process.

Should the session be private, the mediator cannot reveal to the other party anything for which he/she has not been clearly authorised.

b) By the parties either to third parties or to the Courts of Justice; and,

c) By all other people that are involved in the mediation process.

The people mentioned and identified in above points a), b) and c) cannot show, as evidence in a Court trial, any information obtained during the mediation process, and the mediator cannot be mentioned by the parties as a witness or expert in any arbitration or court process initiated on the mediation matter, unless all parties agree to the contrary.

Any documentation held by the mediator, and referred to the mediation process, will be destroyed or returned to the party that supplied it once the mediation process is over, unless all parties or the party to whom it should be returned to agree on something else.

The Arbitration and Mediation Center will retain only the minimum information necessary for a proper handling of the processes. This information will not include any transcription of the arguments exchanged by the parties during the mediation processes. The Arbitration and Mediation Center reserves itself the faculty of using the mediation data, but only for subsequent statistical and/or analysis compilation. A complete reserve and anonymity of the parties and the matter(s) of contention is kept at all times.

Article 14°

The mediation ends:

a) When an agreement has been confirmed between the parties;

b) When the mediator has concluded that the mediation will not lead to a dispute settlement and has issued a written statement quoting such conviction;

c) In the event of any of the circumstances considered in these regulations becoming a confirmed fact;

d) Upon presentation of a written statement, by either of the parties concerned, in order to cancel the mediation process.

Whichever the circumstances leading to an end of the mediation process, a record of this proceeding will be issued and signed.

Article 15°

Should the mediation end with a total or partial agreement, a detailed record and minutes will be issued and signed. This documentation will be rated, for all legal effects and purposes, as a transaction contract to be subsequently enacted as a public deed.

If applicable, the mediator will ensure that the agreement is reviewed by the lawyers of all the parties concerned.

Should the parties agree to an oral agreement this is also acceptable to the Arbitration and Mediation Center, but the drafting and signing of the standard minute will also apply as specified in the closing paragraph of Article # 14 above.

Neither the Arbitration and Mediation Center nor the mediators will be held responsible for the implementation of the rights and the liabilities specified in the agreement.

VI. FEE COLLECTION PROCEDURE

Article 16°

The Arbitration and Mediation Center will charge an administrative fee and have a fee schedule for mediators, according to the rates in effect at the time the mediation commences.

Article 17°

Once the down payments specified in articles 5 and 6 have been done these are not refunded if the mediation proceedings are not initiated for any reason attributed to the parties.

Article 18°

Unless the agreement between the parties specifies otherwise, the fees and charges will be equally shared by the parties concerned.

All other disbursements incurred during the mediation process, be those proficiency, travel and other expenses; will be met by the parties on a prorrata basis, unless otherwise agreed. No refunds of charges and mediator fees will apply if the mediation process leads to no agreement, as these charges are for specific services already rendered.

At the end of the mediation process, the Arbitration and Mediation Center will issue a statement of account showing the expenses. If there is a credit balance, this will be conveyed to the parties for them to pay up the balance outstanding.