

ACT N° 24,573
PASSED ON OCTOBER 4th, 1995

MEDIATION AND CONCILIATION

GENERAL PROVISIONS

SECTION 1- It is established that mediation is compulsory and to be carried out before the trial, according to the provisions of this law. This procedure will promote direct communication between the parties for the controversy's out-of-court solution.

The parties will be exempted from completing this procedure if they prove that before starting the lawsuit, mediation took place and was done by mediators who are listed by the Ministry of Justice.

SECTION 2- The compulsory's mediation procedures will not be applied in the following cases:

1. Penal causes.
2. Actions of personal separation and divorce, nullity of marriage, filiation and patria potestas, with the exception of patrimonial issues stemming from them. The judge will have to divide the proceedings, turning the patrimonial part to the mediator.
3. Actions in incapacity and rehabilitation.
4. Cases in which either the National Government or its decentralized entities are parties to the suits.
5. Protection, habeas corpus and interdict injunctions.
6. Precautionary measures until they are decided, using up their ordinary recourse instances, continuing later with the mediation proceeding.
7. Preliminary steps and anticipated evidence.
8. Successoral and voluntary proceedings.
9. Preventive voluntary bankruptcies and bankruptcies.
10. Cases handled at the National Labour Court.

SECTION 3- In executory processes and dispossess proceedings, this mediation system will be optional for the claimant, having the summoned in that case to follow such a process.

ABOUT THE MEDIATION PROCEDURE

SECTION 4- The claimant will execute his/her claim at the corresponding general office where actions are received, giving details in a form, in which its requirements will be established through the regulations. Once presented, the mediator and the court who will eventually have jurisdiction of the lis will be chosen at random.

SECTION 5- The general office will deliver to the one who submits, the form duly checked, whom will have to forward it to the appointed mediator within three days' time.

SECTION 6- Within ten days' time from having received the notice of his appointment, the mediator will fix the date for the hearing to which the parties will have to attend.

The mediator will have to announce to the parties about the date of the hearing by means of an official notice, attaching a copy of the form mentioned in section 4. The official notice shall be issued by the mediator, which should be carried through the Notification Bureau of the Nation's Judiciary; unless the one who were notified had an address in a strange jurisdiction, and in such a case it should be carried through by the petitioner.

For such purposes the notification document forms will be provided; their requirements will be established according regulatorily.

SECTION 7- The parties will be able to get in touch with the appointed mediator before the date of the session, in order to let him know the scope of the pretension.

SECTION 8- Whenever the mediator noticed a third party's intervention were necessary, requested by the parties or officially, he would be able to make an appoint with him/her so that he/she appears in the mediation process during the mediating instance.

If the third party does not appear or does not comply with the transactional agreement in which he is involved, the sanctions of the sections 10 and 12 of this act will be applied to him/her.

SECTION 9- The time period for mediation will not be longer than (60) calendar days, as from the latest notice sent either to the one who was summoned or to the third party. For the cases mentioned in section 3, the time period will not be longer than (30) calendar days. In both circumstances the parties will be allowed to an extension of time if they agree to do so.

SECTION 10- The mediator will be able to summon the parties to the necessary sessions within the mediation time limit in order to comply with the objectives provided in this law.

If mediation failed because any of the parties did not appear to the first session, each one of those who failed to appear will have to pay a penalty which will be equivalent to twice as much of the basic compensation the mediator will be entitled to receive for his handling.

Having appeared in person after the mediator's intervention, the parties will be able to finish the mediation proceeding.

SECTION 11- The proceedings will be confidential. The mediator will be totally free to hold meetings with the parties, either with both or with each of them separately, watching themselves in order to not favour any of them and not breaking the confidentiality commitment and duty.

To the above mentioned sessions the parties will have to attend in person, not through an attorney, except for the corporations and those who live in a distant district according to what the regulations establish.

The lawyer's attendance will be compulsory.

SECTION 12- If an agreement is reached, the minutes written record will be drawn with its terms included and signed by the mediator, the parties and the lawyers who intervened.

The mediator will have to inform the Ministry of Justice about the mediation outcome. This information will be received for statistical purposes.

If non-compliance took place, what was agreed will be able to be executed through the appointed judge, by means of the process for execution of judgement regulated at the Nation's Code of Civil and Commercial Procedure.

If an action to execute were reached, the judge will have to apply the penalty established in section 45 of the Nation's Code of Civil and Commercial Procedure (this edition is from Ghaem Publishers).

SECTION 13- The Nation's Ministry of Justice will receive the amounts coming from penalties in sections 10 and 12 for the purpose of financing the fund created by this act. If the established penalties are not paid, the collection will be sought, expediting through the procedural incident path, the necessary judicial actions, observing the proceeding to enforce the judgement.

In order to do so the Ministry of Justice will certify the existent debt and will issue the corresponding certificate with the features of an execution paper.

If the lawsuit has not been brought after the mediating process the penalty established in section 10 will be collected using the executory process.

SECTION 14- If an agreement is not reached with mediation, the minutes will be drawn; a copy with the evidence of the result will be delivered to each one of the parties.

Under this circumstance the claimant will be entitled to bring the corresponding court action, showing the mediation evidences.

THE MEDIATORS' REGISTRY

SECTION 15- The Mediators' Registry is created; The Nation's Ministry of Justice will be responsible for its constitution, organization, updating and administration.

SECTION 16- In order to be a mediator not only a lawyer's degree will be necessary but taking the necessary training as well as any other requirements established by the regulation.

SECTION 17- In the regulation the previous section refers to, suspension grounds and separation of the registry and the procedure to apply such sanctions will be stipulated. Requirements, incompetencies and incompatibilities to be included in it will also be determined.

GROUND FOR DISQUALIFICATION AND CHALLENGE

SECTION 18- The mediator will have to disqualify him/herself under penalty of being disqualified, in every foreseen case in the Nation's Code of Civil and Commercial Procedure to disqualify judges, being able to recuse for cause by the parties according to what the Code specifies. If the mediator does not accept the recusation the recusation will be decided by the appointed judge according to what was established in section 4, by an unappealable decision.

If disqualification and recusation take place, an immediate new drawing will be carried out.

The mediator will not be able to either advise nor sponsor any of the parties intervening in mediation for a period of ONE (1) year since his listing in the registry was discontinued according to section 15. Prohibition will be absolute in the case in which he intervened as a mediator.

THE SELECTION AND COMPTROLLER COMMITTEE

SECTION 19- A Selection and Comptroller committee is created and it will be responsible for pronouncing the last resort approval on competence and other demanded requirements to enable the listing of candidates for mediators in the Registry established by section 15 of this law.

The Committee will also be in charge of comptrolling the performance of all the Mediation System.

SECTION 20- The Selection and Comptroller Committee of the mediation system will be formed by two representatives from the Legislative Power, two from the Judicial Power and two from the National Executive Power.

THE MEDIATOR'S COMPENSATION

SECTION 21- The mediator will receive a fixed amount for the job carried out in the mediation process, the amount, conditions and circumstances will be established in the regulations. Such an amount will be paid by either one or by both parties according to the transactional agreement which was reached.

If mediation fails, the mediator's fees will be paid by the Financing Fund according to the conditions to be set by the regulations.

The paid amounts for this will integrate the court costs of a suit which the parties will later start, amounts which will be reimbursed to the already mentioned financing fund.

For that purpose, when the time is due for judicial deposit, the Ministry of Justice will demand to collect through an incidental proceeding using the procedure of execution of judgement.

SECTION 22- The Nation's Ministry of Justice will be able to establish a reward system for mediators who have stood out for the dedication and performance of their work.

THE FINANCING FUND

SECTION 23- A Financing Fund is created in order to pay the cost of:

- a) Basic fees for mediators according to what was set up in section 21, second paragraph of this law.
- b) Expenses which imply the performance of the Mediators' Registry.
- c) Any other expense related with the performance of the mediation system.

SECTION 24- This Financing Fund will be paid with the following resources:

- 1) The amounts allotted in the National Budget items.
- 2) The refund of basic fees paid according to what was established in the second paragraph of section 21 of this law.
- 3) The penalties referred to in the second paragraph of section 10 of this law.
- 4) The penalty established in section 12, mentioned in the last paragraph.
- 5) Donations, legacies as well as any other free availment given for the benefit of the service implemented by this law.
- 6) Any other amount which, from now onwards, is assigned to this fund.

SECTION 25- The Ministry of Justice will be in charge of the administration of the Financing Fund, its administration will be functioning according to a pertinent regulation.

SECTION 26- Once the claim or the transactional agreement are initiated the judge will notify the Nation's Ministry of Justice about it, so that it demands the collection of the penalties, according to the execution of judgement procedures.

The same procedure will be used to recuperate the mediator's basic fee, once the process's taxation of costs has been determined.

FEES FOR THE LAWYERS OF THE PARTIES

SECTION 27- When there is no convention if one or more lawyers who intervene would request a regulation of the fees which will have to be paid by the ones who are sponsored for the work in the mediation process the clauses of the Law 24,432 will be applied, being all its sections fully in force.

TRANSITORY CLAUSES

SECTION 28- The compulsory mediation system will start to be in action one hundred and eighty (180) days after this law's promulgation; such a system becomes compulsory for any claims started after that date.

SECTION 29- Mediation tolls the statute of limitations as from the formal presentation section 4 refers to.

SECTION 30- The National Executive Power is empowered for a five (5) year term to establish through a regulatory procedure the tariffs and fees foreseen in this act.

The binding feature of the mediation stage established in the first paragraph of section 1° of this act, will be in force for a five (5) year period, as from the launching of the mediation system, according to what is established in section 28.

SECTION 31- The application of this system at the Federal Courts will remain in suspense in all the National territory, until the system is implemented in each one of them, in the Judicial Sections where they exercise their jurisdiction.

AMENDMENTS OF THE NATION'S CODE OF CIVIL AND COMMERCIAL PROCEDURE

SECTION 32- Section 359 from the Nation's Code of Civil and Commercial Procedure is amended; such a section will be edited as follows:

"Section 359- Once the claim's or the reconvention's transcript is answered, in its case, once the terms to do it are due, when the previous exceptions are solved, and as long as

relevant facts have been alleged of which the parties did not agree upon; even through they did not request it, the judge will receive the evidence, proceeding according to what has been ruled in section 360.”

SECTION 33- Section 360 from the Nation’s Code of Civil and Business Procedure is amended, such a section will be edited as follows:

“Section 360- In order to comply with the previous section, the judge will subpoena the parties to a hearing which will be held with his/her presence under penalty of nullity in which:

1st- He/she will determine per se the formulated relevant facts to the case’s judgement on which the evidence will deal with and will undervalue those which he/she considers irrelevant according to the mentioned procedural parts.

2nd- The parties’ statements will be received, provided they have them, according to what has been disposed in section 361 and 362 of this Code, having to solve them promptly.

3rd- On such a hearing he/she will state which legal evidence is admissible if the case is to continue.

4th- He/she will state in the hearing if the issue were a pure right, with which the case will be ready for the final judgement.

5th- He/she will invite the parties to a conciliation”.

SECTION 34- Section 360 bis of the Nation’s Code of Civil and Commercial Procedure, is added and will be edited as follows:

“Section 360 bis- Conciliation without detriment of what was established in section 36, clause 2, paragraph a) in the hearing mentioned in the previous section, both the judge and the parties will be able to propose conciliatory formulas.

If a conciliatory agreement is reached, a memorandum will be drawn showing its contents as well as the homologation of the judge who intervened. It will be considered res judicata, and it will be carried out with the proceeding which has been foreseen for execution of judgement. If an agreement between the parties is not reached, this circumstance will be recorded in the memorandum, without expressing the causes. Those who intervened will not be questioned about what happened during the hearing”.

SECTION 35- Section 360 ter is incorporated, from the Nation’s Code of Civil and Commercial Procedure, and it will be edited as follows:

“Section 360 ter- In the suits prosecuted through other systems, the hearing mentioned in section 360 or the Nation’s Code of Civil and Commercial Procedure will still be held, observing the process time periods set up by them”.

SECTION 36- Section 361 of the Nation’s Code of Civil and Commercial Procedure is amended, and it will be edited as follows:

“Section 361- If any of the parties is against receiving test evidence during the hearing which is mentioned in Section 360 of this Code, the judge will resolve what is according to the law after listening to the counterparty.”

SECTION 37- Section 362 of the Nation’s Code of Civil and Commercial Procedure is amended, and will be substituted by the following text.

“Section 362- If in the hearing mentioned in section 360 of this Code, all the parties would declare that they have no evidence to produce, or that this evidence only consists on the proofs of the proceeding or on the already added and not questioned documental, the case will be ready for final judgement and the judge will announce that the discovery period is closed and that he is considering his/her judgement.”

SECTION 38- Section 365 of the Nation’s Code of Civil and Commercial Procedure is amended, and will be edited as follows:

“Section 365- When after the answer to the complaint or the reconvention, some fact related to the issue which is ventilated happens or is known by the parties, they will be allowed to allege it for no longer than FIVE (5) days after the hearing foreseen in section 360 of this Code is held.

From the writ which is alleged the other party will be notified, who, within the term to answer it, will also be able to allege other facts in contrast to those newly alleged. In such a circumstance the time for evidence will be adjourned until the resolution which either admits them or refuses them is notified.

In the possibilities mentioned in the previous paragraph, the evidence could also fall upon the newly adduced facts.

The judge will be empowered to summon the parties, according to the case circumstances, to another hearing with similar conditions to what is disposed in section 360 of this Code.”

SECTION 39- Section 367 of the Nation’s Code of Civil and Commercial Procedure is replaced by the following:

“Section 367- The period for evidence will be determined by the judge, and it will be not longer than forty (40) days. Such a term is common and it will be considered as from the date the hearing foreseen in section 360 of this Code is held”.

SECTION 40- Let the National Executive Power know it.