

CHAPTER NINE FINAL PROVISIONS

ARTICLE 59. Enacting Regulations and Procedures:

The Ministry of Commerce and Industry (“MOCI”), for better implementation of this law, may propose regulations and enact and approve rules and procedures.

ARTICLE 60: Effective Date:

This Law is in effect from the date of [the President’s] signature and shall be published in the Official Gazette. Upon the date this Law comes into effect, the regulations of the Commercial Arbitration Law of 1995, published in Official Gazette No. 779, dated July 1995 are null and void.

COMMERCIAL MEDIATION LAW

In the Name of Allah, the most Gracious and Merciful

COMMERCIAL MEDIATION LAW

CHAPTER 1: General Provisions

ARTICLE 1: Purpose:

This Law has been enacted for the purpose of encouraging the parties to a commercial dispute to resolve the dispute in a speedy, fair, and impartial manner, and to facilitate such a resolution and other related affairs.

ARTICLE 2: Definitions:

The following terms in this law shall have the meanings set forth below:

- (1) “Mediator” means one or more natural persons appointed by agreement of both parties to settle the relevant dispute.**
- (2) “Mediation” means a binding process by which the mediator, based on request and agreement of the parties, performs speedy, fair and impartial services to resolve commercial and economic disputes.**
- (3) “Commercial Transaction” should cover all relationships of a commercial and economic nature, based on a contract or otherwise.**
- (4) “Court” means the competent commercial court of Afghanistan.**

ARTICLE 3: Non Imposition of Dispute Resolution:

The Mediator does not have the authority to impose upon the parties a solution to the dispute.

ARTICLE 4: Exclusion of Applicability:

The parties are free to agree to exclude the applicability of this Law.

ARTICLE 5: Scope of Applicability:

The provisions of this law are applicable to all parties of the disputes, unless agreement has been made according to Article 4 of this law.

ARTICLE 6: Non-applicability of this Law:

Where the mediator is appointed by the court or arbitration, the provisions of this law are not applicable.

CHAPTER 2: MEDIATION PROCEDURES

ARTICLE 7: Commencement of Mediation Proceedings:

Mediation proceedings in respect of a dispute that has arisen commence on the date on which the parties to that dispute agree to engage in Mediation proceedings.

ARTICLE 8: Rejection of an Invitation:

If a party does not receive an acceptance of the invitation to Mediate within thirty days from the day on which the invitation was sent, or within such other period of time as specified in the invitation, the invitation to Mediate shall be deemed to be rejected.

ARTICLE 9: Conduct of the Mediation:

The parties are free to agree otherwise on the manner in which the Mediation is to be conducted.

Failing agreement on the manner in which the Mediation is to be conducted, the Mediator may conduct the Mediation proceedings in such a manner as the Mediator considers appropriate, taking into account the circumstances of the case, any wishes that the parties may express, and the need for a speedy settlement of the dispute.

ARTICLE 10: Meetings with the Mediator:

The Mediator may meet or communicate with the parties together or with each of them separately.

ARTICLE 11: Presenting Proposals:

The Mediator may at any stage of the Mediation proceedings make proposals to the parties for a settlement of the dispute.

ARTICLE 12: Fair Treatment:

In any case, or in conducting the proceedings, the Mediator shall maintain fair treatment of the parties.

ARTICLE 13: No Provision of Evidence:

A party to the Mediation proceedings, the Mediator, and any other person involved in any manner in the administration of the Mediation proceedings, shall not in arbitral or judicial proceedings provide evidence, or give testimony as a witness in any of the following cases:

- (1) An invitation by a party to engage in Mediation proceedings or the fact that the other party was willing to participate in Mediation proceedings;**
- (2) Views expressed, or suggestions made, by a party in the Mediation in respect of a possible settlement of the dispute;**
- (3) Statements, or admissions, made by a party in the course of the Mediation proceedings;**
- (4) Proposals made by the Mediator;**
- (5) The fact that a party had indicated its willingness to accept a proposal for settlement made by the Mediator;**
- (6) A document prepared solely for purposes of the Mediation proceedings.**

ARTICLE 14: Lack of Disclosure:

The disclosure of the information referred to in ARTICLE 21 shall not be ordered by an arbitral tribunal, court, or other competent State authority. If such information is offered as evidence in contravention of ARTICLE 21 that evidence shall be treated as inadmissible, unless the disclosure of such information is required for the purposes of implementation [or enforcement] of a settlement agreement.

ARTICLE 15: Acceptance of Evidence:

Subject to the provision of ARTICLE 21, evidence that is admissible in arbitral, judicial, or similar proceedings may also be admissible in Mediation.

ARTICLE 16: Termination of Mediation Proceedings:

The Mediation proceedings are terminated in the following cases from the date of agreement or declaring:

- (1) By the conclusion or signature of a settlement agreement by the parties;**
- (2) By a declaration of the Mediator to the effect that further efforts at Mediation are no longer justified;**
- (3) By a declaration of the parties addressed to the Mediator to the effect that the Mediation proceedings are terminated;**
- (4) By a declaration of a party to the other party, or parties, and the Mediator to the effect that the Mediation proceedings are terminated on the date of the declaration.**

CHAPTER 3: MISCELLANEOUS

ARTICLE 17: Mediator Acting as Arbitrator:

Unless [otherwise] agreed by the parties, the Mediator shall not act as an arbitrator in respect of a dispute that was, or is, the subject of the Mediation proceedings, or in respect of another dispute that has arisen from the same contract or legal relationship, that is related to such dispute.

ARTICLE 18: Period of Suspension:

When the Mediation proceedings commence, the running of any [statutory] limitation period regarding the claim that is the subject matter of the Mediation is suspended.

Where the Mediation proceedings have terminated without a settlement agreement, the limitation period resumes running from the time the Mediation ended without a settlement agreement.

ARTICLE 19: Introduction of Mediator:

Any person introduced as a Mediator, is obliged to provide necessary information to the parties before or upon appointment or during Mediation proceedings concerning his personality or other personal details that will eliminate doubts as to his/her impartiality or independence, unless s/he has already provided them with such information.

ARTICLE 20: Disclosure of Information:

When the Mediator receives information concerning the dispute from a party, the Mediator may disclose the substance of that information to any other party to the Mediation, unless it has been emphasized to maintain the confidentiality of the information.

ARTICLE 21: Confidentiality of Information:

Unless otherwise agreed by the parties, all information relating to the Mediation proceedings shall be kept confidential, except where disclosure is required under the law, or for the purposes of implementation [or enforcement] of a settlement agreement.

ARTICLE 22: Resort to Arbitral or Judicial Proceedings:

Where the parties have agreed to Mediate and have expressly agreed not to initiate Mediation proceedings during a specified period of time or until a specified event has occurred in arbitral or judicial proceedings with respect to a dispute, that agreement shall be given effect by the arbitral tribunal, or the court, until its terms have been met, except to the extent necessary to preserve a party's rights. Initiation of such proceedings is not to be regarded as a termination of the agreement to Mediate.

ARTICLE 23: Enforceability of the Agreement:

If the parties conclude and sign an agreement settling a dispute, that settlement agreement shall be enforceable in the same manner as any other commercial agreement.

ARTICLE 24: Enacting Regulations and Procedures:

The Ministry of Commerce and Industry for better implementation of this law may propose regulations and enact and approve rules and procedures.

ARTICLE 25: Effective Date:

This Law will be effective from the date of the [President's] signature and shall be published in the Official Gazette.