

Guidelines for Arbitral Conciliation

1. Purpose and Role of the Arbitrator in Conciliation:

The purpose of arbitral conciliation is to reach a settlement on all issues, or to resolve as many issues as possible, with the active assistance of an independent, private arbitrator acting as a facilitator.

- **1.1 Dual-Role Consent:** Where the facilitator is also the appointed arbitrator for the binding dispute, the parties must execute an explicit, written 'Dual-Role Waiver' before conciliation begins.

2. Scope and Objectives of Conciliation:

If a total settlement is impossible, the secondary goal is to narrow the scope of the formal arbitration by resolving as many individual issues as possible.

3. Requesting Arbitral Conciliation:

Arbitral conciliation may be requested at any moment throughout the active stages of the arbitration proceeding, by contacting the Praxis Forum Secretariat (the Secretariat), by email at secretariat@praxis-forum.com.

- **3.1 Without Prejudice:** All statements, offers, and concessions made during the conciliation phase are strictly confidential and without prejudice. They cannot be referenced, relied upon, or introduced as evidence in the formal arbitration or any subsequent litigation if conciliation fails.
- **3.2 Preservation of Impartiality:** The arbitrator's evaluation of the merits in the binding arbitration shall remain entirely unaffected by information disclosed solely during confidential conciliation sessions. The parties agree that participating in conciliation does not constitute grounds for challenging the arbitrator's independence or impartiality.

4. Scheduling of Arbitral Conciliation:

Upon agreement by all parties to engage in arbitral conciliation, the Secretariat will coordinate a mutually agreeable date with all counsel, parties and the arbitrator.

- **4.1 Mandatory Consensus:** The Secretariat will not act until all parties formally agree to engage in the conciliation.
- **4.2 Tripartite Coordination:** The Secretariat directly manages the calendar alignment between legal counsel, the parties, and the arbitrator.
- **4.3 Neutral Intermediary:** Leaving the scheduling to the Secretariat prevents scheduling conflicts from becoming a point of friction between opposing sides.

5. Notice of Hearing and Filing Requirements:

The Secretariat issues a formal letter to counsel, confirming the hearing date and outlining mandatory minimum filing requirements. This notification initiates the preparation process and sets strict deadlines for document submission. Minimum filing requirements include:

- **5.1 Statement of Position:** A succinct written summary outlining your party's perspective, the key facts of the dispute, and unresolved issues.
- **5.2 Exhibits:** A curated selection of the most critical documents; such as contracts, relevant emails, or expert reports necessary for the arbitrator to understand the conflict.
- **5.3 Quantified Claim and Proposal:** An explicit breakdown of what your party requires to resolve the dispute, including any specific financial calculations or non-monetary conditions.
- **5.4 Executed Agreement to Conciliate:** A formal document signed by all parties confirming their voluntary consent to engage in the confidential conciliation process.
- **5.5 Confirmation of Authority:** Written verification proving that the individuals attending the meeting possess the complete, unbound corporate or personal legal authority to finalize and sign a binding settlement agreement.

6. Confidentiality, Privilege, and Arbitrator Impartiality:

The provisions of this section apply to safeguard the integrity of the arbitral process and to guarantee that the dual role of the arbitrator does not prejudice the rights of any party or compromise the ultimate enforceability of the arbitral award

- **6.1 Absolute Confidentiality:** The entire conciliation process, including all documents, proposals, and communications prepared specifically for the session, is strictly confidential.
- **6.2 Inadmissibility:** No party may introduce as evidence in the formal arbitration any views expressed, admissions made, or settlement proposals offered during the conciliation.
- **6.3 Safeguards on Arbitrator Bias:** If the facilitator is the presiding arbitrator and the conciliation fails to resolve all issues, the arbitrator shall disregard all sensitive settlement concessions. The parties explicitly waive any right to disqualify the arbitrator or challenge the final arbitral award based on the arbitrator's exposure to information during conciliation.
- **6.4 Separate Caucusing:** If the arbitrator engages in private meetings (caucuses) with one party, the arbitrator shall not disclose any information obtained in that caucus to the other party without express authorization.

7. Preparatory Meeting:

In addition, at the request of the arbitrator, a pre-meeting may be arranged with counsel to discuss and agree upon any further materials and procedures required for arbitral conciliation to proceed.

8. Suspension of Timelimits:

Once a date has been scheduled for arbitral conciliation, time limits will not apply until after the arbitral meeting. If the arbitral conciliation is not successful, the presiding arbitrator will set time lines for filing the remaining materials on the arbitration proceeding.

9. Mandatory Consent and Representation:

All parties must agree to arbitral conciliation and be represented by counsel, unless otherwise permitted.

10. Attendance and Settlement Authority:

To promote success, parties with authority to make settlement decisions must be present and participate in the arbitral conciliation process.

11. Non-Filing of Conciliation Materials:

The materials submitted for the arbitral conciliation meeting will not be filed by the Secretariat.

12. Receipt and Transmission of Conciliation Submissions:

Instead, the Secretariat will stamp them “Received” and forward them directly to the arbitrator.

13. Conduct and Attire for Conciliation Meetings:

Arbitral conciliation meetings are conducted informally in a conference room setting. Gowning is not required.

14. Confidentiality and Inadmissibility of Proceedings:

The process is confidential. All documents prepared for arbitral conciliation and statements made by counsel, or by the parties, during arbitral conciliation are confidential and without prejudice, and cannot be used as evidence in any subsequent or ongoing legal proceedings.

15. Destruction of Conciliation Materials:

All documents submitted to the arbitrator for arbitral conciliation will be destroyed following the arbitral conciliation meeting.

16. Disqualification of Arbitrator from Main Proceedings:

Unless the parties consent, the arbitrator will not hear any applications on the arbitration, or sit on the merits of the matter.

17. Ex Parte Communications and Panel Insulation:

The arbitrator will not discuss the arbitral conciliation process with the arbitration panel, should the matter proceed to arbitration.

18. Post-Settlement Procedures and Deadlines:

If arbitral conciliation is successful the applicant must file a Discontinuance, or a Consent Award (if appropriate), within 30 days or such time as the arbitrator directs, failing which the application will be deemed abandoned three months after the completion of the arbitral conciliation.

19. Procedures Upon Unsuccessful Conciliation:

If arbitral conciliation fails, the presiding arbitrator sets new timelines for the formal proceeding, while maintaining strict confidentiality by destroying submitted materials and enforcing a firewall between the conciliation and the arbitration. The process ensures that all documents are destroyed and that nothing from the conciliation is used in subsequent proceedings.

20. Non-Compellability of the Arbitrator:

As in any private dispute resolution or quasi-judicial process, the neutral third party arbitrator is non-compellable as a witness in any proceedings.

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