

**LAW ON ARBITRATION AND MEDIATION  
Official Register 145 dated September 4, 1997**

**TITLE I  
ARBITRATION**

**Validity of the Arbitration System**

**Art. 1.** The arbitration system is an alternate mechanism for the solution of conflicts to which the parties may submit by common agreement any existing or future controversy subject to transaction, to be solved by the courts of administrative arbitration or by independent arbitrators formed to know said controversies.

**Administered or Independent Arbitration**

**Art. 2.** The arbitration is administered when it is performed subject to this Law and the rules and procedures issued by an Arbitration Center; the arbitration is independent when performed in accordance with the agreements reached by the parties, according to this Law.

**Arbitration by Equity or By Law**

**Art. 3.** The parties shall instruct the arbitrators to decide by equity or by law; in the absence of an agreement, the verdict shall be made by equity.

If the award is to be based on equity, the arbitrators shall act in accordance with their true knowledge and belief and the principles of sound critique. In this case, the arbitrators shall not necessarily be counsels.

If the award is to be based on the law, the arbitrators shall subject to the law, the universal principles of law, to jurisprudence and to the doctrine. In this case, the arbitrators must be counsels.

**Capacity to Resort to Arbitration**

**Art. 4.** Natural or juridical persons capable to compromise may subject to the arbitration ruled herein, in compliance with all requirements set forth in this Law.

For the different entities of the public sector to subject to arbitration, besides complying with the requirements stipulated herein, they shall fulfill the following additional requirements:

Agree upon an arbitration covenant prior to the appearance of the controversy. If the parties wish to execute the agreement after the controversy appeared, the Attorney General of the State (Procurador) shall be consulted and his/her verdict shall be binding.;

The nature of the juridical relation referred to in the agreement shall be contractual;

The arbitration agreement shall include the way how arbitrators were selected; and

The arbitration agreement by which the public institution waives ordinary jurisdiction, shall be signed by the person authorized to contract on behalf of such institution.

Noncompliance with the above requirements shall invalidate the arbitration agreement.

### **Definition of Arbitration Agreement**

**Art. 5.** The arbitration agreement is the written covenant in virtue of which the parties decide to submit to arbitration any controversy or certain controversies arisen or that may arise between said parties in relation to a specific juridical, contractual or non contractual relationship.

The arbitration agreement shall be performed in writing and, if referred to a juridical business that does not include the agreement in its body, shall be contained in a document stating the name of the parties and the unequivocal determination of the juridical business in question. In the other cases, that is, arbitration agreements on civil indemnities for crimes or quasi crimes, such arbitration agreements shall refer to the facts to be discussed during the arbitration.

A contract's nullity shall not affect the effectiveness of the arbitration agreement.

Notwithstanding the existence of a pending suit before the provincial courts on a transaction-susceptible matter, the parties may resort to arbitration; in this case, they shall jointly submit to the pertinent judge an application to file the case, enclosing a copy of the arbitration agreement thereto and, in case of a pending appeal, they shall also waive it.

### **Other ways to subject to arbitration**

**Art. 6.** The existence of an Arbitration Agreement shall be considered, not only when the agreement is contained on a single document executed by the parties, but also when it results from the exchange of letters or any other written communication means that gives documentary evidence of the will of the parties to subject to the Arbitration.

**Art. 7.** The Arbitration Agreement, which binds the parties to abide by the award issued, impedes the case to be filed before the provincial courts.

### **Waiver to the Arbitration Agreement**

**Art. 8.** The parties, by common agreement, may waive in writing the arbitration agreement they executed, in which case either party may present its claim before the pertinent judicial Body. It shall be understood, nevertheless, that such waiver exists when, after either party submits a claim before a judicial Body, the defendant does not object, within the respective term to file an objection, the existence of an arbitration agreement. The pertinent judicial Body shall substantiate and solve such objection, if filed, and notify the other party; and require the parties to submit the evidence of their statements within three days following the date of the notice. After the objection is accepted, the case shall be filed; otherwise, once the writ of execution is issued by the Judge, the process shall be substantiated in accordance with the general rules.

### **PRECAUTIONARY MEASURES**

**Art. 9.** The arbitrators may take precautionary measures pursuant to the rules set forth in the Civil Procedure Code or those deemed necessary for each case, in order to assure the material goods of the procedure or to guarantee its result. The arbitrators may demand a guarantee from the person requesting the measure in order to cover the cost of such measure and the indemnity for damages to the adversary, if the award declares the subject groundless.

The party against whom a preventative measure is issued may petition its suspension upon posting sufficient bond.

In order to execute the precautionary measures, the arbitrators, provided the parties stipulate it in the arbitration agreement, shall ask for the assistance of the public, judicial, police, and administrative officials they deem necessary without having to resort to any Judge ordinary of the place where the goods are located or where the measures are to be adopted.

If the arbitration agreement does not provide for the execution of precautionary measures, either party may request any judge ordinary to require the execution thereof, subject to the provisions of paragraph two (2) and three (3) of this article, and this shall not mean a waiver of the arbitration agreement.

### **Arbitration Demand**

**Art. 10.** The demand shall be filed before the director of the corresponding arbitration center or before the independent arbitrator or arbitrators determined in the agreement. The demand shall contain:

1. The appointment of the center or arbitrator where the matter will be filed;
2. The identification of the plaintiff and the defendant;
3. The de jure and de facto grounds stated clearly and accurately;
4. The demanded thing, amount or fact;
5. The amount;

6. The designation of the place where the defendant is to be summoned, and the place where the plaintiff is to be notified; and
7. The other requirements demanded by the Law for each case.

Additionally, the requirements set forth in article 72 of the Civil Procedure Code shall be fulfilled. The demand must necessarily be accompanied by the instrument containing the respective arbitration agreement or an authentic copy thereof.

All proof shall also be enclosed thereto and the taking of evidence to justify the contents of the demand shall be required.

**Art. 11.** After the claim is filed, the director of the arbitration center, as the case may be, the arbitrator or arbitrators, after they have taken office pursuant to article 17, shall qualify the claim and summon the other party, the latter within the following five days, and shall grant a ten-day term to respond as required by the Civil Procedure Code to defend a suit. All proof shall also be enclosed thereto and the taking of evidence to justify the contents of the defenses shall be required.

Silence shall be understood as pure and simple refusal to the grounds of the demand. If the plaintiff were unable to determine the domicile of the defendant, the summons shall be made through two publications in a journal of wide circulation of the place where the arbitration takes place and of the defendant's domicile. If the defendant fails to appear within a term of ten (10) days following the last publication, this shall be construed as pure and simple refusal to the grounds of the demand. Inability to determine the defendant's domicile shall be justified in accordance with the provisions set forth in the Civil Procedure Code.

**Art. 12.** If the defendant has his/her domicile outside the arbitration location, a special term shall be granted to reply to the demand, same that shall not exceed twice the regular term.

In replying to the demand, the defendant shall be able to counterclaim the matters of the arbitration exclusively, provided his/her pretension, in accordance with the arbitration agreement, may be subject to arbitration.

In this case, the plaintiff shall be granted a ten-day term to reply the counterclaim.

All proof shall also be enclosed to the counterclaim and its reply, and the taking of evidence to justify their contents shall be required.

### **Amendment to the Demand or Response**

**Art. 13.** The parties may amend the demand, the response to it, the convention to the demand or the response to the latter, for a single time, in the term of five days as of the submittal of any of the above. The parties shall respond to any of the amendments in a period of three days, in which case the current terms will stop running.

**Art. 14.** If the plaintiff, once he/she is summoned with the demand, does not appear, such nonappearance shall not impede the arbitration to continue.

## Mediation Hearing

**Art. 15.** After the claim or counterclaim is or is not replied, the director of the arbitration center or the independent arbitrator or arbitrators shall notify the parties and appoint the date and time for the mediation hearing to take place in order to reach an agreement between the parties. The parties, their agents or representatives may participate in and their counsels for the defense may attend the hearings. This hearing shall take place with the intervention of a mediator appointed by the director of the arbitration center or the independent court, who shall listen to the statements of the interested parties, hear the documents exhibited and shall endeavor to reach an agreement to conclude the controversy, which shall be recorded in a minute exclusively containing the agreements made by the parties and not the incidents, deliberations or proposals performed during the hearing. The effect of the minute containing the controversy's total or partial mediation shall cause a non appealable and res judicata judgment, and shall be executed as the sentences of the last resort, by following the legal means for collection, without need for any ordinary judge to accept any opposition or to start a new trial.

If only one party appears, the latter shall be heard and the absence of the other party shall be noted and declared in default, which shall be considered for the costs against assessment.

## Designation of Arbitrators

**Art. 16.** If no total agreement is reached during the mediation hearing, the director of the arbitration center shall send a list of arbitrators to the parties so they appoint, in a three-day term, the main arbitrators and one alternate arbitrator to compose the court. Any partial agreement reached by the parties during the mediation hearing shall be approved as stipulated in the former article.

The parties, by common agreement, may appoint arbitrators not included on the list submitted by the corresponding center.

The parties may expressly agree, in writing, that a single arbitrator hears the controversy; in this case an alternate arbitrator shall be appointed.

If the parties fail to appoint one or several arbitrators or fail to reach an agreement in this regard, the appointment shall be made by drawing. To this end, the director of the arbitration center shall notify the parties of the drawing that will take place on the date and time established and before the president of the arbitration center. The transaction shall be recorded on the respective minute and the arbitration courts shall be legally formed.

In case of an independent arbitration, the parties shall appoint in the arbitration agreement the main arbitrator or arbitrators and the alternate arbitrator to compose the court.

If the parties fail to reach an agreement related to the appointment of all arbitrators, the designated arbitrators, after they take office, shall appoint the remaining ones.

In case the independent arbitrator or arbitrators reject such title or do not take office,

and the designated official arbitrators fail to reach an agreement on the remaining arbitrators, either party may request their appointment to the director of the arbitration center nearest to the plaintiff's domicile. Such appointment shall be performed in accordance with the provisions of this article.

### **Establishment of the Court**

**Art. 17.** The court shall be established with three main arbitrators and one alternate arbitrator, who shall immediately participate in the process in case of definite absence or incapacity of a main arbitrator. The appointed arbitrators, within three days following the notice, shall accept or reject the title. Silence shall be construed as a rejection. After the appointment is accepted, the arbitrators shall be called by the director of the center to take possession of their functions before the president of the arbitration center, and shall proceed to appoint the court's chairman and secretary, which shall be recorded on the corresponding minute.

The appointed chairman shall direct the arbitration's proceedings and the person appointed by the court among the members of the arbitration center's list of secretaries, shall act as the secretary of the court.

In case of independent arbitrators, the court shall take office before a notary and the secretary shall be appointed by the arbitrators.

### **Obligation to Fulfill the Arbitrator's Functions**

**Art. 18.** Once the arbitrators accept such functions, they are irrevocably obliged to fulfill the assignments of this Law and, in case of non-compliance with their functions, must respond to the parties for damages from action or omission caused to them, unless it is a justified impediment.

If an arbitrator no longer is included in the list mentioned in Art. 41, he/she will continue acting as such until the controversy's resolution is known by the Court he/she is part of.

### **Restrictions on the Appointment of Arbitrators**

**Art. 19.** Persons incapable to appear by themselves in the suit may not act as arbitrators.

The excuses for arbitrators shall be those contained in the Civil Procedure Code for judges.

The arbitrator who knows he/she is incapable to exercise the title shall immediately notify the director of the arbitration center or the parties who appointed him/her, so they replace him/her.

### **Replacement of Arbitrators**

**Art. 20.** In case the appointed arbitrators are included in one of the incapacities set forth in the previous article, a new appointment shall be performed in accordance with article 16, excluding disqualified arbitrators.

If, by reason of death, justified excuse or any other cause any arbitrator is absent, he/she shall be replaced by the alternate arbitrator who will become the principal and another alternate arbitrator shall be appointed as determined in article 16.

### **Challenge to the arbitrators**

**Art. 21.** The grounds to challenge any judge set forth in the Civil Procedure Code shall be applied to arbitrators.

If any member of the court is unable to act in such capacity, he/she may be challenged by the interested party.

The challenges shall be solved:

- a) In case of an associated court, by persons not included in the challenge claim. If the latter fail to reach an agreement, the challenge shall be solved by the center's director.
- b) In case all arbitrators are challenged, it shall be solved by the center's director.
- c) In case of a court formed by a single person, the challenge shall be solved by the center's director. The arbitrator's replacement shall be carried out in accordance with article 16.
- d) In case of independent arbitration, the challenge shall be solved by the members of the court who were not challenged; and
- e) In case of a court formed by a single person or if all arbitrators are challenged, the latter shall be solved by the director of the arbitration center nearest to the plaintiff's domicile.

The arbitrators appointed by agreement of the parties may only be challenged by reasons unknown at the time of their appointment or that appeared after such appointment.

### **Proceedings Hearing**

**Art. 22.** After the Court is established, the date and time for the proceedings hearing shall be fixed. In this hearing, the appointed Secretary shall take office, and the document containing the arbitration agreement shall be read, and the Court shall solve on its competence.

If the Court declares competent, it shall require that, within the term appointed by the latter, the pertinent proof requested in the demand, the reply, the counterclaim, the modification and its response be submitted and fulfilled within the term established by the Arbitration Court.

If the parties are present during the hearing, they shall determine the subjects and the facts on which they are based.

### **Proceedings to Furnish Additional Evidence**

**Art. 23.** If, before the award is issued, the Court or the parties deem further evidence or

any other proceeding is required to clarify the facts, it shall require them officially or at the request of either party, stating the date and time.

### **Courtroom Hearing**

**Art. 24.** After the evidence is submitted, the Court shall determine the date and time for the parties to submit their allegations in a courtroom hearing, if so required.

### **Arbitration Duration**

**Art. 25.** After having performed the proceedings hearing and after the court has been declared competent, the latter shall have a maximum term of one hundred and fifty days to issue its award.

The term may be extended when strictly necessary for an identical period, either by agreement of the parties or by official statement of the court.

**Art. 26.** The award and other decisions issued by the court shall be issued by a majority of votes. The resolutions shall be signed by all arbitrators; the arbitrator who disagrees with the opinion of the others shall note his/her disagreement after the former resolution and shall deposit this/her vote with the respective grounds for such vote.

### **Arbitrators' Signature**

**Art. 27.** If one of the members of the court rejects or is unable to sign the award or any other decision or resolution, the secretary shall not be fact and the others shall sign, and this will not annul or invalidate the resolution.

### **Transaction**

**Art. 28.** In case the arbitration concludes by transaction, the latter shall have the same nature and effects of an arbitration award, and shall be recorded in writing and pursuant to article 26 hereof.

### **Knowledge of the Award**

**Art. 29.** The parties shall know the award in a hearing: To this end, the court shall appoint the date and time to read the award and shall deliver a copy to each party.

### **Award's Unappealable Capacity**

**Art. 30.** Arbitration awards issued by arbitration courts are unappealable, but may be clarified or extended at the request of any party, prior to the award's execution, in a term of three days following the notice to the parties. Within the same term, the arbitrators may correct any numeric, calculation, topographic or similar errors. Petitions made pursuant to this article shall be solved in a term of ten days of their submittal.

Arbitration awards shall not be subject to any remedy not contained in this Law.

## Annulment of Awards

**Art.31.** Either party may file an arbitration award's annulment, in the following cases:

- a) The claim was not legally summoned and the lawsuit was carried out and concluded in default. The absence of a summons must necessarily have impeded the defendant to except or enforce his/her rights and, additionally, to claim for such omission at the time of participating in the controversy; or
- b) One of the parties was not notified of the court's decisions and this fact impedes or limits such party's right to defense; or
- c) If no call was made; if the call was notified; or if, after the call, the evidence was not practiced in spite of the facts to be justified; or
- d) The award refers to matters not subject to arbitration or grants more than what is being claimed.

This appeal shall be filed before the court that heard the cause and such court, in its turn, without deciding on the justification or non justification thereof, shall submit the process, within a term of three days following such filing, to the President of the Superior Court of District of the arbitration location, so that the latter hear the remedy.

The President of the Superior Court, as the case may be, shall provide the drawing so that the cause is heard by one of the rooms of the respective Superior Court.

Whichever party files the appeal for annulment may request the arbitrators to suspend the execution of the award, and surrender a bond sufficient to cover the estimated damages that such delay in executing the award may cause the other party.

The arbitrators, within a term of three days, shall determine the amount of the bond and provide the suspension of the award.

The bond shall be established within a term of three days starting from this notice.

The appeal for annulment may be filed within a ten-day term starting from the date of the notice of award.

## Execution of the Award

**Art.32.** Once the award is executed, the parties shall immediately comply with it.

Either party may request the judges ordinary to require the execution of the award or subscribed transactions by submitting a certified copy of the award or transactional minute granted by the secretary of the court, the director of the center or the arbitrator or arbitrators, respectively, with the grounds for execution.

Arbitration awards shall not be appealable and shall have res judicata effects and shall be executed as last resort judgements, following the legal means for collection; and the executing Judge shall not admit any exception, safe for those arisen following the issuance of the award.

### **Rejection of Incidents**

**Art. 33.** During the proceeding no incidents promoted by the parties to delay the transaction or hamper any procedure shall be accepted. Petitions of that kind shall be rejected with penalties from ten to one hundred minimum vital wages to be fixed by the arbitrator or arbitrators.

### **Confidentiality of the Arbitration Procedure**

**Art. 34.** Notwithstanding the rights of third persons, the parties may agree upon the confidentiality of the arbitration procedure; in this case, copies of such proceedings may be surrendered solely to the parties, their counsels or the Judge that will hear the appeal for annulment or other remedy to which the parties are subjected.

### **Arbitration Location**

**Art. 35.** If not contained in the agreement, the parties may freely determine the arbitration location and, if no such agreement is reached, the location of the effects of the act or contract matter of the arbitration, or the plaintiff's domicile, at the choice of the plaintiff, shall be elected. If there is no Court of arbitration in one of the referred locations, the parties shall resort to the nearest location.

Unless otherwise agreed upon by the parties, the pertinent court may meet anywhere it deems appropriate to perform deliberations among its members, to hear the witnesses, the experts, or the parties, and to examine things, places, evidence, or documents.

The proceedings shall be notified to the parties, in accordance with the Law.

### **Arbitration Language**

**Art. 36.** Arbitration procedures shall be carried out in Spanish language. In case there are documents in other languages, their translations shall be submitted in accordance with the law.

### **Supplemental Rules**

**Art. 37.** For whatever matter not provided for herein, the rules of the Civil Code, the Civil Procedure Code or the Code of Commerce and other related law shall be enforced on a supplemental basis, provided they refer to arbitration by Law.

### **Procedure**

**Art. 38.** The arbitration shall be subject to the rules of procedure set forth herein, to the procedures determined in the arbitration centers, in the arbitration agreement, or to the rules stipulated by the parties, notwithstanding the applicable supplemental rules.

### **Arbitration Organization Centers**

**Art. 39.** In order to facilitate the enforcement of this Law, the chamber of production, associations, unions, and non-profit foundations and institutions may organize

arbitration centers that may operate upon their registration with the Ecuadorian Federation of Chambers of Commerce. Any prove of non compliance with the requirements stipulated in this Law and its Regulation by any arbitration center, shall cause the cancellation of the registration and the prohibition of its operation.

The arbitration centers existing prior to the effectiveness of this Law shall also be registered, notwithstanding continuing with their normal operation.

Arbitration centers shall have their headquarters with the administrative and technical elements necessary to support arbitration judges and to train arbitrators, secretaries and mediators appointed pursuant to this Law.

**Art. 40.** Every arbitration center shall have its own regulation to rule the following issues, at the least:

- a) The way to prepare the lists of arbitrators, secretaries and mediators which shall remain in force maximum two years; the requirements to be met by its members; and the reasons for their exclusion therefrom;
- b) Fees for arbitrators, secretaries and mediators, and the payment terms;
- c) Administrative expenses and payment terms;
- d) Way to appoint the center's director, his/her functions, and powers; and
- e) Ethical code for arbitrators, secretaries and mediators.

### **International Arbitration**

**Art. 41.** Notwithstanding the provisions of international conventions, arbitration processes may be international when the parties agree this, provided any of the following requirements is met:

- a) At the time of executing the arbitration agreement, the parties are domiciled in different States; or
- b) When the place of compliance of a substantial part of the obligations or the site to which the matter of the dispute is more closely related, is located outside the State where, at least one of the parties, is domiciled; or
- c) When the matter of the dispute refers to an international trade operation.

### **Regulation**

**Art. 42.** Any international arbitration shall be ruled by the agreements, conventions, protocols, and other action of international law executed and ratified by Ecuador.

Any natural or juridical public or private person, with no restriction whatsoever, is free to set forth, directly or through reference to an arbitration regulation, every matter concerning arbitration proceedings, including the establishment, the transaction, the language, the applicable legislation, the jurisdiction, and the court's main headquarters, which may be located in Ecuador or in any foreign country.

For the State or any public institution to be able to subject to international arbitration, the provisions of the Constitution and laws of the Republic shall be observed.

For any of the different public entities to be able to subject to international arbitration, the express authorization of the senior authority of the respective institution shall be required upon prior favorable report issued by the Attorney General of the State (Procurador General del Estado), unless the arbitration is set forth in current international instruments.

The awards issued within an international arbitration procedure shall have the same effects and shall be executed in the same way as awards issued within a national arbitration procedure.

## **TITLE II MEDIATION**

**Art. 43.** The mediation is a procedure to solve conflicts through which the parties, assisted by a third neutral party called the mediator, seek a voluntary extrajudicial and definite agreement on the settleable matter, to conclude the conflict.

**Art. 44.** The mediation may be requested to mediation Centers or duly authorized independent mediators.

Any natural or juridical public or private person legally capable to settle, with no restriction whatsoever, may subject to the mediation procedures set forth in this Law.

The State or public institutions may subject to mediation through the official authorized to contract on behalf of the respective institution. Such official's authority may be delegated through power of attorney.

**Art. 45.** The mediation application shall be submitted in writing and shall contain the designation of the parties, their domicile, telephone numbers if possible, and a brief description of the nature of the conflict.

**Art. 46.** The mediation is lawful:

- a) Upon written agreement between the parties to subject their conflicts to mediation. The judge ordinary may not hear claims related to the conflict matter of the agreement unless there is a certificate on agreement impossibility or written waiver of the parties to the mediation agreement. In these cases, either party may resort with its claim to the pertinent judicial body. The existence of a waiver shall be construed when, after a claim has been filed to a pertinent judicial body, the defendant has not filed an exception on the existence of a mediation agreement. The judicial body shall solve said exception by notifying the other party and requiring the litigant evidence of their statements in a three-day term as of the date of notice. If this exception renders successful, the filing of the case shall be required; otherwise, the process shall be tried according to general rules.
- b) At the request of both parties or one of them; and
- c) When the judge ordinary in any phase of the case, officially or at the request of any party, orders to hold a mediation hearing before a mediation center, provided the parties accept it.

If the mediation minute containing the agreement has not been presented within fifteen days of the Center's receipt of judicial notice, the trial proceedings will continue unless the parties communicate to the judge its decision to extend such term.

**Art. 47.** The mediation procedure concludes with the signature of a minute containing the total or partial agreement or, in its absence, the impossibility to reach it.

If an agreement is reached, the respective minutes shall contain at the least an account of the facts that originated the conflict; a clear description of the obligations of each party; and the signatures or fingerprints of each party, and the signature of the mediator.

By the sole signature of the mediator, it shall be assumed that the document and signatures contained therein are authentic.

The mediation minute containing the agreement is unappealable and shall have res judicata effects, and shall be executed as last resort judgement, following the legal means for collection; and the executing Judge shall not admit any exception, save for those arisen following the execution of the mediation minute.

If case the agreement were partial, the parties shall discuss in a lawsuit solely the differences that are not part of the agreement. If no agreement was reached, the certificate on impossibility signed by the parties that appeared to the hearing and the mediator may be submitted by the interested party in an arbitration or judicial proceeding, and it will replace the mediation or conciliation hearing or board foreseen in these proceedings. Nevertheless, any other procedure required in this phase in judicial procedures, such as replying the demand in a verbal summary hearing, shall be maintained.

Agreements reached by mediation proceedings on matters related to minors or alimony shall be susceptible of revision by the parties, in accordance with the general principles contained in the Code of Minors and other laws related to verdicts on these subjects.

**Art. 48.** The mediation set forth in this law may validly take place before a mediator of a center or a duly authorized independent mediator.

For a person to be qualified to act as an independent mediator or a mediator from any center in the cases stipulated herein, he/she shall have the written authorization of a mediation center. Such authorization shall be based on the academic courses or tutorships passed by the mediator candidate.

The mediation center or independent mediator shall be authorized to issue authentic copies of the mediation act.

**Art. 49.** Whoever acts as a mediator during a conflict is disqualified for any judicial or arbitration procedure related to the conflict matter of the mediation, either as an arbitrator, counsel, advisor, general agent or witness of either party.

Besides, such person may not be called, by any motive, to declare in a lawsuit on the conflict matter of the mediation.

**Art.50.** The mediation is confidential.

Persons who participate therein shall keep due reserve.

Any proposed or discussed agreement formula shall not influence the arbitration process or subsequent judicial process, if any.

The parties may, by common agreement, waive confidentiality.

**Art. 51.** If either party fails to appear to the mediation hearing to which it was convoked, the date for a new hearing shall be appointed. If either party fails to appear on these second occasion, the mediator shall record the impossibility of mediation.

**Art. 52.** Local municipal or provincial Governments, production chambers, associations, unions, non profit foundations or institutions and, in general, community organizations may establish mediation centers which shall operate upon prior registration with the National Council of Judicature. Any evidence of non compliance with the requirements set forth in this Law and its regulation by a mediation centers shall cause the registration's cancellation and the prohibition to operate.

**Art. 53.** Established arbitration centers shall have their headquarters with the administrative and technical elements necessary to support the hearings.

The centers developing training activities for mediators, shall be academically authorized by a university.

**Art.54.** The regulations of the mediation centers shall stipulate the following, at the least:

- a) The way to prepare the lists of mediators and the requirements they shall meet; the reasons for their exclusion therefrom; the registration procedures; and the way to designate them in each case;
- b) Fees for the mediators, administrative expenses and payment terms, notwithstanding the possibility of establishing the service's gratuitousness;
- c) The way to appoint the director, his/her functions, and powers
- d) A description of the administrative management of the mediation.
- e) An ethics code for the mediators.

**Art.55.** Extrajudicial conciliation is an alternate mechanism to solve conflicts. To the ends of enforcing this Law, mediation and extrajudicial conciliations shall be construed as synonyms.

**Art.56.** Judges ordinary shall not be accused of prevarication, challenged, or subject to complaint for having proposed settlement formulas between the parties in conciliation hearings or boards.

**Art.57.** If fees and administrative expenses are not paid in accordance with the law and regulation of the mediation center, the latter shall be free to stop providing its services.

### **TITLE III Community Mediation**

**Art. 58.** Community mediation is hereby acknowledged as an alternate mechanism to solve conflicts.

**Art. 59.** Indian and black communities, neighborhood organizations and, in general, community organizations shall establish mediation centers for their members, even on a gratuitous basis, in accordance with the provisions of this Law.

Agreements or solutions that conclude any conflict in virtue of any community mediation procedure, shall have the same value and effect as those reached through the mediation procedure set forth herein.

Mediation centers, pursuant to the provisions of this Law, shall offer the appropriate training services to community mediators, bearing in mind the social-economic, cultural, and anthropological peculiarities of the serviced communities.

#### **GENERAL PROVISIONS**

**Art. 60.** This Law, due to its special nature, shall prevail over any other law that may oppose to it.

**Art. 61.** The President of the Republic, in exercise of the powers granted to him by the Political Constitution, shall issue in a term of ninety days the corresponding regulation for the enforcement of this Law.

#### **TRANSITORY PROVISIONS**

**Art. 62.** The provisions of this Law shall also apply to arbitration agreements executed before its legal effect, provided the arbitration procedure has not commenced.

**Art. 63.** Institutions that had a mediation center prior to the legal effect of this Law, shall need to register the center, notwithstanding continuing its regular performance.

**Art. 64.** Until the National Council of Judicature is formed or has its delegates or representatives in provinces, the Superior Courts shall comply with the functions assigned to them herein.

#### **ANNULMENTS**

The Law on Commercial Arbitration issued through Supreme Decree No. 735 dated October 23, 1963, and published in Official Register No. 90 dated October 28, 1963, is hereby annulled.

Section XXX, of Title II of Book II of the Civil Procedure Code is hereby annulled.

Section XV of Title I of the Judicial Function's Organic Law is hereby annulled.

Article 21 of the Organic Law of the Public Ministry is hereby annulled.

The interpretation made to article 1505 of the Civil Code in Supreme Decree No. 797-B, published in Official Registration No. 194 dated October 15, 1976, is hereby annulled.

In article 1505 of the Civil Code, the phrase: "thus, the promise to subject in Ecuador to a jurisdiction not acknowledged by Ecuadorian laws is void by defect of the object", is hereby annulled.