

ANNEX V

BRAZILIAN MEDIATION ACT LAW No. 13,140, OF JUNE 26, 2015

Provides for mediation between private parties as a means to settle disputes and the self-resolution of disputes in the scope of public administration; amends Law No. 9469, of July 10, 1997, and Decree No. 70235, of March 6, 1972; and revokes Paragraph 2 of art. 6 of Law No. 469, of July 10, 1997.

THE PRESIDENT OF BRAZIL

I hereby make it known that the National Congress enacts and I approve the following Law:

Article 1. This Law provides for mediation as a means to settle disputes between private parties and the self-resolution of disputes in the scope of public administration.

Sole Paragraph. Mediation shall mean the technical activity exercised by an independent third party without decision making power, who, upon being chosen or accepted by the parties, assists and encourages them to identify or develop mutually agreed solutions to a dispute.

CHAPTER I MEDIATION

SECTION I MISCELLANEOUS

Article 2. Mediation shall be governed by the following principles:

- I – independence of the mediator;
- II – equality between the parties;
- III – orality;
- IV – informality;
- IV – free will of the parties;
- VI – search for consensus;
- VII – confidentiality;
- VIII – good faith.

Paragraph 1. If there is a mediation section provided for in a contract, the parties shall attend the first mediation meeting.

Paragraph 2. Nobody shall be required to remain at a mediation proceeding.

Article 3. The object of mediation may be a dispute over “disposable” (transferable or waivable) rights or non-disposable, non-waivable rights which are able to be negotiated. .

Paragraph 1. The mediation may deal with the whole conflict or part thereof.

Paragraph 2. The parties’ agreement involving non-waivable but negotiable rights shall be confirmed by a court, and the testimony of the Public Prosecutor’s Office shall be required.

SECTION II THE MEDIATORS

SUBSECTION I COMMON PROVISIONS

Article 4. The mediator shall be appointed by the court or chosen by the parties.

Paragraph 1. The mediator shall conduct the communication process between the parties, seeking the parties' understanding and agreement, as well as facilitating the settlement of conflicts.

Paragraph 2. Mediation shall be free of charge for those in need.

Article 5. The same legal provisions concerning a judge's impediment and disqualification shall apply to the mediator.

Sole Paragraph. The person appointed to act as mediator shall have the duty to disclose to the parties, prior to accepting such assignment, any fact or circumstance that may cause justified doubt with respect to his/her independence to mediate the conflict, and at such time he/she may be rejected by any of the parties.

Article 6. The mediator shall be prevented, for a period of one year as from the end of the last hearing attended, from assisting, representing or defending any of the parties.

Article 7. The mediator may neither act as an arbitrator nor as a witness in legal or arbitration proceedings concerning a dispute in which he/she has acted as a mediator.

Article 8. The mediator and all those assisting him/her in the mediation proceeding, when exercising their duties or in furtherance thereof, shall have the same treatment as a public employee, for the purposes of the criminal law.

SUBSECTION II OUT-OF-COURT MEDIATORS

Article 9. Any competent person who is trusted by the parties and is able to carry out mediation may act as an extrajudicial mediator, irrespective of being a member of or registered with any kind of council, group entity or association.

Article 10. The parties may be assisted by lawyers or public defenders.

Sole Paragraph. If one of the parties appears with his/her lawyer or public defender, the mediator shall suspend the procedure, until all of them are duly assisted.

SUBSECTION III JUDICIAL MEDIATORS

Article 11. A competent person having a college degree for at least two years from a university acknowledged by the Ministry of Education and being qualified by a mediators' graduate school or institution recognized by the National School for Graduation and Improvement of Magistrates - ENFAM or by the courts, in compliance with the minimum requirements established by the National Council of Justice together with the Ministry of Justice, may act as a judicial mediator.

Article 12. The courts shall establish and keep updated registers for qualified mediators who are authorized to act in judicial mediations.

Paragraph 1. The registration on the list of judicial mediators shall be requested by the interested party at the court of jurisdiction in the area he/she intends to exercise said mediation.

Paragraph 2. The courts shall regulate the procedures for registration and de-registration of its mediators.

Article 13. The remuneration due to judicial mediators shall be fixed by courts and paid by the parties, in compliance with the provision set forth Paragraph 2 of Article 4 of this Law.

SECTION III THE MEDIATION PROCEEDING

SUBSECTION I COMMON PROVISIONS

Article 14. In the beginning of the first mediation meeting, and whenever he/she deems necessary, the mediator shall warn the parties about the confidentiality rules applicable to the proceeding.

Article 15. Upon request by the parties or the mediator, and with their consent, other mediators may be admitted to act in the same proceeding, whenever it is recommendable in view of the nature and complexity of the conflict.

Article 16. Even if there is an arbitration or legal action in course, the parties may submit to mediation, and in such case they shall request the judge or arbitrator to stay the proceeding for a term sufficient to settle the litigation amicably.

Paragraph 1. The decision staying the proceeding under the terms mutually agreed upon by the parties shall be final.

Paragraph 2. The stay proceeding shall not hinder the granting of provisional injunctions by the judge or arbitrator.

Article 17. A mediation shall be deemed as initiated on the date scheduled for the first mediation meeting.

Sole Paragraph. The limitation period shall be suspended for the time the mediation proceeding takes place.

Article 18. As soon as the mediation starts, the subsequent meetings attended by the parties may only be scheduled with their consent.

Article 19. When performing his/her duty, the mediator may meet with the parties, whether collectively or separately, as well as ask the parties to provide information he/she deems necessary to enable the understanding between them.

Article 20. The mediation proceeding shall be closed upon drawing up of its final instrument, when an agreement is reached or whenever new efforts to reach an agreement are not justified, whether by means of a statement by the mediator in that regard or by statement by any of the parties.

Sole Paragraph. If an agreement is entered into by the parties, the final mediation instrument shall become an instrument enforceable out of court and, if such agreement is ratified by a court, it shall be a judicially enforceable instrument.

SUBSECTION II OUT-OF-COURT MEDIATION

Article 21. The invitation to start an out-of-court mediation proceeding may be made by any communication means and it shall mention the scope proposed for the negotiation, the date and place of the first meeting.

Sole Paragraph. The invitation made by one party to another shall be deemed as refused if it is not replied to within thirty days as from the date of its receipt.

Article 22. The contractual provision on mediation shall mention at least:

I – a minimum and maximum term for holding of the first mediation meeting, as from the invitation receipt date;

II – a place of the first mediation meeting;

III – criteria to choose the mediator or mediation team;

IV – a penalty in case of non attendance by the party invited to the first mediation meeting.

Paragraph 1. The contractual provision may replace the specification of the items listed above with indication of a regulation, published by a reliable institution providing mediation services, which includes clear criteria to choose the mediator and the holding of the first mediation meeting.

Paragraph 2. In the event there is no complete contractual provision, the following criteria shall be complied with for the holding of the first mediation meeting:

I – a minimum term of ten business days and maximum term of three months, as from receipt of the invitation;

II – a place suitable for a meeting involving confidential information;

III – a list of five names, contact information and professional references of qualified mediators; the invited party may expressly choose any of the five mediators and, if the invited party does not make an objection, the first name in the list shall be deemed as accepted;

IV – the non-attendance by the invited party to the first mediation meeting shall cause the latter to bear fifty per cent of the loss of suit costs and fees if the same wins the subsequent arbitration or legal proceeding involving the scope of the mediation to which he/she has been invited.

Paragraph 3. In the litigations arising from commercial or corporate agreements without a mediation provision, the out-of-court mediator shall only charge for his services if the parties decide to sign a mediation initiation instrument and willfully remain in the mediation proceeding.

Article 23. If, as provided for in a mediation contractual provision, the parties undertake not to start an arbitration proceeding or a legal proceeding during a fixed term or until the implementation of a certain condition, the arbitrator or judge shall suspend the course of arbitration or the action for the previously agreed term or until the implementation of such condition.

Sole Paragraph. The provisions in the head Paragraph hereof shall not apply to preliminary injunctions where the access to the Judiciary is necessary to avoid loss of a right.

SUBSECTION III JUDICIAL MEDIATION

Article 24. The courts shall create judiciary centers to amicably settle disputes, and such centers shall be responsible for holding pre-procedural and procedural conciliation and mediation sessions and hearings, and for the developing programs intended to assist, guide and encourage the self-resolution of disputes.

Sole Paragraph. The composition and organization of the center shall be defined by the respective court, in compliance with the rules issued by the National Council of Justice.

Article 25. In a judicial mediation, the mediators shall not be subject to the previous acceptance by the parties, in compliance with the provision set forth in Article 5 of this Law.

Article 26. The parties shall be assisted by lawyers or public defenders, except for the events set forth in Laws numbers 9099, of September 26, 1995, and 10259, of July 12, 2001.

Sole Paragraph. Assistance by the Public Defender's Office shall be ensured to those evidencing insufficiency of resources.

Article 27. If the complaint fulfills the essential requirements and the pleading is not provisionally dismissed, the judge shall designate a mediation hearing.

Article 28. The judicial mediation proceeding shall be concluded within sixty days, counted from the first session, except when the parties, as per mutual agreement, request the extension thereof.

Sole Paragraph. If an agreement is reached, the records shall be submitted to the judge, who shall determine the filing of the proceeding and, provided that it is requested by the parties, he shall ratify the agreement, by means of a court decision and final mediation instrument, and the same shall determine the filing of the proceeding.

Article 29. Upon settlement of the dispute by mediation prior to defendant's summoning, final court's costs shall not be due.

SECTION IV CONFIDENTIALITY AND ITS EXCEPTIONS

Article 30. Any and all information concerning the mediation proceeding shall be confidential with respect to third parties, and said information may not be disclosed even in arbitration or legal proceeding, except if the parties expressly decide otherwise or whenever the disclosure thereof is required by the law or is necessary to comply with the agreement achieved by mediation.

Paragraph 1. The duty of confidentiality shall be applicable to the mediator, the parties, their agents, lawyers, technical advisors and other persons of his/her trust who directly or indirectly have participated in the mediation proceeding, thus, obtaining:

I – a statement, opinion, suggestion, promise or proposal made by one party to the other in search of an understanding for the dispute;

II – acknowledgment of a fact by any of the parties in the course of the mediation proceeding;

III – a statement of acceptance of the agreement proposal presented by the mediator;

IV – a document solely prepared for the purpose of the mediation proceeding.

Paragraph 2. The evidence submitted in disagreement with the provision set forth in this article shall not be admitted at an arbitration or legal proceeding.

Paragraph 3. The information concerning the occurrence of a public crime shall not be bound by the confidentiality rule.

Paragraph 4. The confidentiality rule does not exclude the duty of the parties mentioned in the head provision hereof to provide information to tax authorities after the final mediation instrument is completed, and the agents of said parties shall also be bound to the obligation of keeping the confidentiality of the information shared under the terms of Article 198 of Law No. 5172, of October 25, 1966 – National Tax Code.

Article 31. The information provided by one party at a private session shall be deemed as confidential, and the mediator may not disclose it to the other parties, except if expressly so authorized.

CHAPTER II
SELF-RESOLUTION OF THE DISPUTE WHEN ONE
PARTY IS A LEGAL ENTITY GOVERNED BY PUBLIC LAW

SECTION I
COMMON PROVISIONS

Article 32. The Government, the States, the Federal District and the Municipalities may create chambers to prevent and administratively settle disputes, within the scope of the respective Public Advocate General Office entities, if any, with authority to:

I – settle disputes among public administration bodies and entities;

II – evaluate the admissibility of the requests to settle disputes, by means of an agreement by the parties, in case of a dispute between an individual and a legal entity governed by public law;

III – promote, when applicable, the execution of a conduct adjustment instrument.

Paragraph 1. The manner of formation and operation of the chambers mentioned in the head provision hereof shall be established by a regulation issued by each State.

Paragraph 2. The submission of the dispute to the chambers mentioned in the head provision hereof is optional and shall be applicable only to the cases provided for in a regulation of the respective State.

Paragraph 3. If an agreement is reached by the parties, it shall be written in the form of an instrument and the same shall be deemed as an instrument enforceable out of court.

Paragraph 4. The authority of the entities mentioned in the head provision hereof shall not include disputes that may only be settled by acts or granting of rights subject to the authorization of the Legislative Branch.

Paragraph 5. The authority of the chambers mentioned in the head provision hereof shall include the prevention and settlement of disputes involving economic-financial balance of agreements executed by the administration with individuals.

Article 33. While said mediation chambers are not created, the disputes may be settled according to the mediation proceeding provided for in Subsection I of Section III of Chapter I of this Law.

Sole Paragraph. The Government's, the States', the Federal District's and the Municipalities' Public Advocate General Office, wherever they exist, may start, by their own motion or pursuant to a call, a collective mediation proceeding for disputes related to the provision of public services.

Article 34. The initiation of an administrative proceeding for the amicable settlement of a dispute in the scope of public administration stays the statute of limitations.

Paragraph 1. A proceeding shall be deemed as initiated when the body or public entity issues an admissibility judgment, making retroactive the stay of statute of limitations to the date of formalization of the request for amicable settlement of the dispute.

Paragraph 2. In case of a tax matter, the stay of statute of limitations shall comply with the provisions set forth in Law No. 5172, of October 25, 1966 – National Tax Code.

SECTION II

DISPUTES INVOLVING THE DIRECT FEDERAL PUBLIC ADMINISTRATION, THEIR AGENCIES AND FOUNDATIONS

Article 35. Legal disputes involving the direct federal public administration, their agencies and foundations may be subject to compromise by adhesion, based on:

I – authorization of the Federal Advocate General, based on the consolidated court precedents of the Federal Supreme Court or higher courts; or

II – opinion issued by the Federal Advocate General, approved by the President of Brazil.

Paragraph 1. The requirements and conditions of operation by adhesion shall be defined by a specific administrative resolution.

Paragraph 2. When applying for adhesion, the interested party shall attach evidence of compliance with the requirements and conditions stipulated in the administrative resolution.

Paragraph 3. The administrative resolution shall have general effects and it shall be applied to identical cases, timely qualified pursuant to an adhesion request, even if it resolves only part of the dispute.

Paragraph 4. Said adhesion shall imply waiver by the interested party to the right upon which the action or appeal is grounded, which may be pending a decision, of administrative or legal nature, with respect to the points included in the purpose of the administrative resolution.

Paragraph 5. If the interested party is a party to a legal proceeding filed by means of a collective action, the waiver to the right upon which the action is grounded shall be expressed by a petition addressed to the presiding judge.

Paragraph 6. The formalization of an administrative resolution intended to the operation by adhesion shall neither imply an implicit waiver to the statute of limitations nor the interruption or stay.

Article 36. In case of disputes involving litigation between bodies or entities governed by the public law comprising the federal public administration, the Federal Advocate General Office shall carry out an out-of-court settlement of the dispute, in compliance with the procedures set forth in an act by the Federal Advocate General.

Paragraph 1. In the event mentioned in the head provision hereof, if an agreement concerning the legal dispute is not achieved, the Federal Advocate General shall be responsible to settle the same, with grounds on the applicable law.

Paragraph 2. In the cases where the resolution of a dispute implies the acknowledgement of existence of Government's, its agencies' and foundations' credits enforceable against legal entities governed by federal public law, the Federal Advocate General Office may request to the Ministry of Planning, Budget and Management the budgetary adjustment for settlement of debts acknowledged as lawful.

Paragraph 3. The out-of-court settlement of disputes shall not exclude the determination of liability of the public agent giving rise to the debt, whenever it is found out that his/her action or omission is, in theory, a disciplinarian infraction.

Paragraph 4. In the events where the litigation matter is discussed under an action against a corrupt public employee or if a decision has been issued in this regard by the Federal Accounting Court, the conciliation mentioned in the head provision hereof shall depend upon the express agreement of the presiding judge or the Reporting Judge.

Article 37. The States, the Federal District and the Municipalities, their agencies and public foundations, as well as public companies and federal public and private companies may submit their litigations with public administration entities or bodies to the Federal Advocate General Office, for the purposes of an out-of-court settlement of the dispute.

Article 38. In cases where the legal dispute is related to taxes managed by the Federal Revenue Service of Brazil or to credits registered as federal debts:

I – the provisions set forth in items II and III of the head provision of Article 32 shall not apply;

II – public companies, public and private companies and their subsidiaries conducting the economic activity of production or marketing of goods or the rendering of services under the competition system may not exercise the option set forth in Article 37;

III – when the parties are those mentioned in the head provision of Article 36:

a) the submission of the dispute to the out-of-court resolution of dispute by the Federal Advocate General Office implies the waiver of the right to resort to the Administrative Council of Tax Appeals;

b) the reduction or cancelation of credit shall depend upon the joint statement by the Federal Advocate General and the State Minister of Finance.

Sole Paragraph. The provisions set forth in item II and letter “a” of item III shall not exclude the authority of the Federal Advocate General Office provided for in items X and XI of Article 4 of Supplementary Law No. 73, of February 10, 1993.

Article 39. The filing of a legal action where bodies or entities governed by public law comprising the federal public administration concomitantly appear as plaintiff and defendant shall be previously authorized by the Federal Advocate General.

Article 40. Public employees and agents participating in the process of out-of-court resolution of disputes may only be made civilly, administratively and criminally liable when, by willful misconduct or fraud, they receive any undue equity advantage, allow or facilitate the reception thereof by a third party, or contribute therefor.

CHAPTER III FINAL PROVISIONS

Article 41. The National School of Mediation and Conciliation, within the scope of the Ministry of Justice, may create a database on the good practices of mediation, as well as keep a list of mediators and mediation institutions.

Article 42. This Law shall apply, where applicable, to other amicable forms of resolution of disputes, such as community and school mediations, as well as those carried out at out-of-court offices, provided that they are in the scope of their authority.

Sole Paragraph. Mediation in labor relations shall be governed by specific law.

Article 43. Public administration bodies and entities may create chambers to settle disputes among private parties regarding activities governed or supervised by the same.

Article 44. Articles 1 and 2 of Law No. 9469, of July 10, 1997 shall be in force with the following wording:

Article 1 The Federal Advocate General, directly or by delegation, and the highest officers of federal public companies, together with the statutory officer of the area relating to the matter, may authorize the execution of agreements or operations to prevent or terminate litigations, including court litigations.

Paragraph 1. Specialized chambers may be created, and such chambers shall be formed by public employees or registered public agents, for the purpose of analyzing and preparing proposals for settlement or compromise.

(..)

Paragraph 3. A regulation shall provide for the kind of composition of the chambers mentioned in Paragraph 1, which shall be formed by at least an effective member of the Federal Advocate General Office or, in case of public companies, a legal assistant or someone holding an equivalent position.

Paragraph 4. Whenever the litigation involves amounts above those fixed in a regulation, the settlement or compromise shall, under penalty of being null and void, depend on the prior and express authorization of the Federal Advocate General Office and the Minister of State to which area of authority the matter is related, or also the President of the House of Representatives, the Federal Senate, the Federal Accounting Court, the Court or Council, or the Federal Attorney General, in case of interest of the bodies belonging to the Legislative and Judiciary Branches or the Public Prosecutor's Office, excluding the independent federal public companies, which will need only the prior and express authorization of the officers mentioned in the head provision hereof.

Paragraph 5. In the compromise or agreement entered into directly by the party or by means of an attorney in fact to terminate or close a legal action, including the cases of administrative extension of payments demanded in court, the parties may define the liability of each one for the payment of fees due to their respective lawyers.”

Article 2. The Federal Attorney General, the General Attorney of the Central Bank of Brazil and the officers of federal public companies mentioned in the head provision of Article 1 hereof may authorize, directly or by delegation, the execution of agreements to prevent or terminate, in court or out-of-court, a litigation involving amounts lower than those fixed in a regulation.

Paragraph 1. In case of federal public companies, said delegation shall be restricted to a collegiate body formally constituted and formed by at least one statutory officer.

Paragraph 2. The agreement mentioned in the head provision here-of may consist in the payment of the debt in monthly and consecutive installments up to the maximum limit of sixty.

Paragraph 3. The amount of each monthly installment, at the time of the payment, shall be increased by interest equivalent to the reference rate issued by the Special System of Settlement and Custody – SELIC for federal notes, which shall be monthly accrued and ascertained from the month subsequent to that of consolidation up to the month before the payment plus one per cent concerning the month when the payment is made.

Paragraph 4. Whenever any installment is in default, after thirty days, an execution proceeding shall be filed or followed, for the balance.”

Article 45. Decree No. 70,235 of March 6, 1972 shall become effective with the inclusion of the following Article 14-A:

“Article 14-A – In case of determination and requirement of Government tax credits, the taxpayer of which is a body or entity governed by public law belonging to the federal public administration, the submission of the litigation to an out-of-court resolution of dispute by the Federal Advocate General Office shall be deemed as a claim, for the purposes of the provisions set forth in item III of Article 151 of Law No. 5172, of October 25, 1966 – National Tax Code.”

Article 46. The mediation may be made via Internet or by another communication means allowing remote transaction, provided that the parties are in agreement.

Sole Paragraph. A party residing abroad is permitted to have mediation according to the rules established in this Law.

Article 47. This Law becomes effective after one hundred and eighty days as from its official publication.

Article 48. Paragraph 2 of Article 6 of Law No. 9469, dated July 10, 1997 is hereby revoked.

Brasília, June 26, 2015; 194th anniversary of the Independence of Brazil and 127th anniversary of the proclamation of the Republic.

This is an unofficial translation, made by mediator, professor and attorney Alexandre P. Simões of the law firm Ragazzo, Simões, Spinelli, Lazzareschi e Montoro Advogados, from São Paulo, Brazil with assistance of Paul E. Mason, attorney, mediator and arbitrator, from Rio de Janeiro, Brazil and Miami, USA and published at the website of the International Mediation Institute (<http://www.imimmediation.org>). Reproduced with permission.