

Tanzania

Civil Procedure Code

Code of Conduct for Reconciliators, Negotiators, Mediators and Arbitrators, Regulations 2021

Government Notice 148 of 2021

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Code of Conduct for Reconciliators, Negotiators, Mediators and Arbitrators, Regulations 2021
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Government Notice 148 of 2021

Assented to on 5 January 2021

Commenced on 29 January 2021

[This is the version of this document from 29 January 2021.]

Part I – Preliminary provisions

1. Citation

These Regulations may be cited as the Code of Conduct for Reconciliators, Negotiators, Mediators and Arbitrators, Regulations 2021.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"**Act**" means the Civil Procedure Code;

[Cap. 33]

"**accredited person**" means a person accredited to practice as a reconciliator, negotiator, mediator and arbitrator under the Reconciliation, Negotiation, Mediation and Arbitration (Practitioners Accreditation) Regulations, 2021;

"**Code**" means the Code of Conduct and Practice for Reconciliators, Negotiators, Mediators and Arbitrators to which the First Schedule to these Regulations relate;

"**Accreditation Panel**" means the Accreditation Panel constituted as such under the Reconciliation, Negotiation, Mediation and Arbitration (Practitioners Accreditation) Regulations, 2021 to implement functions as stipulated under these Regulations;

"**arbitrator**" means a person who handles arbitration disputes in the manner provided under the provisions of the Arbitration Act;

[Cap. 15]

"**mediator**" means a person who assists parties in a dispute to find points of agreement in a conflict and agree on a fair result in the manner provided under the Act;

"**reconciliator**" means a person who handles reconciliation matters in the manner provided under the provisions of the Act;

"**Registrar**" means the Registrar appointed as such under section 64C(1) of the Act;

"**negotiator**" means a person who handles negotiation disputes between parties in the manner provided under the provisions of the Act;

"**professional misconduct**" means a breach of the Code as provided under these Regulations.

Part II – Establishment of Code of Conduct and Practice

3. Establishment and enforcement of Code

- (1) There is established a Code of Conduct and Practice for Reconciliators, Negotiators, Mediators and Arbitrators.
- (2) The provisions of the First Schedule to these Regulations shall constitute a Code of Conduct and Practice for all accredited reconciliators, negotiators, mediators and arbitrators.
- (3) Subject to the Act, the Arbitration Act and Regulations made thereunder, the Registrar shall enforce the Code of Conduct and Practice and shall, for that purpose, control the discipline of reconciliators, negotiators, mediators and arbitrators

4. Scope and application of Code

- (1) The Code shall serve as a guidance to practitioners in the performance of their professional responsibilities, duties and acceptable behaviours and is intended to assist them in attaining the desired level of conduct with a view to ensuring the integrity of the reconciliation, negotiation, mediation, adjudication or arbitration process and the utility of the process as part of dispute resolution.
- (2) Reconciliators, Negotiators, mediators, adjudicators and arbitration shall at all time—
 - (a) observe the principles of conduct established in the Code; and
 - (b) ensure that the parties have understood and expressly agreed the terms and conditions of the reconciliation, negotiation and mediation and or arbitration.

5. Competence requirement

A reconciliator, negotiator, mediator or arbitrator shall act at the requisite level of competence and capacity as the Registrar deems such person to be fit and proper to undertake the task required of him.

6. Practitioner's awareness and compliance with Code

- (1) A person accredited to practice as a reconciliator, negotiator, mediator or arbitrator, he shall be provided with a copy of the Code.
- (2) Every accredited reconciliator, negotiator, mediator or arbitrator shall be required to sign a declaration of compliance with the Code.

Part III – Breach of Code and proceedings upon breach

7. Sanction for breach of Code

- (1) It shall constitute a professional misconduct for any accredited reconciliator, negotiator, mediator and arbitrator who breaches the Code.
- (2) A person who commits a professional misconduct shall be liable to such disciplinary action as may be imposed pursuant to these Regulations, and the disciplinary action may include deregistration in terms of these Regulations.

8. Complaints over misconduct

- (1) A person who is aggrieved by the conduct of a reconciliator, negotiator, mediator or arbitrator and who believes that the reconciliator, negotiator, mediator or arbitrator has—
 - (a) committed a professional misconduct;
 - (b) failed to discharge his duty to the client in a professional manner;
 - (c) engaged in a business which is inconsistent with the dignity of the profession;
 - (d) permitted his professional service or his name to be used by an unauthorized person; or
 - (e) committed any act prohibited by the Act, or any other law regulating the professional conduct of a reconciliator, negotiator, mediator or arbitrator,may, in writing, lodge a complaint to the Registrar against a reconciliator, negotiator, mediator or arbitrator's breach of conduct.
- (2) The complaint shall be either in English or Kiswahili in Form 1 as set out in the Second Schedule supported by any other document or information as proof of the alleged complaint.
- (3) Nothing in these Regulations shall be construed to restrict the Registrar and the Accreditation Panel from commencing disciplinary proceedings *suo mottu*.

9. Scrutiny of complaint

- (1) The Registrar shall, within seven days upon receiving a complaint, determine whether the complaint is tenable or frivolous and vexatious.
- (2) Where the Registrar is satisfied that a complaint is tenable, he shall inform the complainant of the date and time for which the complaint shall be brought before the Accreditation Panel.
- (3) Where the Registrar considers that a complaint is malicious or frivolous and vexatious, he shall reject the complaint and notify the complainant in writing with reasons thereof.

10. Complaint report

The Registrar shall, before convening a meeting of the Accreditation Panel, prepare complaint report on the complaint brought before him together with recommendations to the Accreditation Panel for disciplinary action.

11. Determination of complaint

- (1) A complaint filed under these Regulations shall be determined by the Accreditation Panel to be convened by the Registrar within fourteen days from the date of receipt of the complaint.
- (2) In considering the complaint, the Accreditation Panel may—
 - (a) advise the Registrar to investigate on the matter;
 - (b) advise the Registrar to conduct inquiry as may be appropriate in view of the nature or circumstances of the complaint;
 - (c) call the complainant and such other witnesses to testify on the matter; and
 - (d) cause to be brought all documents relating to the matter for consideration.

- (3) For effective delivery of the ends of justice, the Accreditation Panel shall afford an opportunity to a person against whom the complaint is made to be heard.

12. Declaration of breach

- (1) Where after consideration of the matter, the complaint made is proved, the Accreditation Panel shall direct the Registrar to issue a declaration of breach of professional misconduct in Form 2 as prescribed in the Second Schedule.
- (2) A breach of professional misconduct under subregulation (1) shall warrant a person against whom the complaint was made—
- (a) in the case of breach on a first instance, to be given a written warning;
 - (b) to be required to pay such amount of money as may be adequate to cover the cost or loss incurred by the complainant as a result of the complaint;
 - (c) to be deregistered from practicing as an accredited reconciliator, negotiator, mediator or arbitrator in manner set out the Reconciliation, Negotiation, Mediation and Arbitration (Practitioners Accreditation) Regulations, 2021; or
 - (d) to be subject to any other measures as may be appropriate.

13. Power to regulate proceedings

The Accreditation Panel shall have power to regulate its own proceedings.

14. Recording of proceedings

- (1) The proceedings of the Accreditation Panel shall be taken or recorded by the Secretary to the Panel or by shorthand notes or electronically or stenographically recorded means.
- (2) Any party who appeared at the proceedings shall be entitled to inspect the transcript thereof or as the Accreditation Panel may direct.

15. Appeals

A person who is aggrieved by the decision of the Accreditation Panel may, within twenty one days from the date of receipt of the decision, appeal against the decision to the Minister.

First Schedule (Regulation 3)

Code of Conduct and Practice for reconciliators, negotiators, mediators and arbitrators

(a) Objectives and guiding principles

1. Objectives

The main objectives of this Code are to—

- (a) provide guiding principles for the conduct of reconciliators, negotiators, mediators and arbitrators;
- (b) ensure efficient and quality delivery of service by accredited persons to the public and the adherence to professionalism in the course of provision of profession service;

- (c) promote public confidence in reconciliation, negotiation, mediation and arbitration as a means of resolving disputes; and
- (d) provide protection for members of the public who use the services of accredited reconciliators, negotiators, mediators and arbitrators.

2. Principles guiding handling of disputes

Reconciliators, negotiators, mediators, arbitrators and parties concerned shall, in handling disputes, be guided by the following principles:

- (a) parties to a dispute are free to make their own voluntary and non-coerced decisions regarding the possible resolution of any issue in dispute;
- (b) decision made by the parties is respected and encouraged by a reconciliator, negotiator, mediator or arbitrator;
- (c) reconciliator, negotiator, mediator or arbitrator provide the parties at or before the first reconciliation, negotiation, mediation or arbitration session with information about their role in the reconciliation, negotiation, mediation or arbitration;
- (d) reconciliator, negotiator, mediator or arbitrator inform the parties that authority for decision-making rests with the parties themselves;
- (e) save as otherwise required by the parties, reconciliator, negotiator, mediator or arbitrator shall not provide legal or professional advice to the parties;
- (f) reconciliator, negotiator, mediator or arbitrator may express views or opinions on the matters at issue, and may identify evaluative approaches so as to reach an amicable settlement;
- (g) where appropriate, reconciliator, negotiator, mediator or arbitrator may advise unrepresented parties to obtain independent legal advice or consult with other professionals to assist the parties to make informed decisions; and
- (h) upholding high integrity and moral standing in the conduct of service.
- (i) Not to charge excessive cost or costs that are contrary to the rules set out for reconciliators, negotiators, mediators or arbitrators.

(b) Conduct and practice of reconciliators, negotiators and mediators

3. Disclosure

- (1) Before accepting an appointment as reconciliator, negotiator or mediator and at all times after accepting such an appointment, a reconciliator, negotiator or mediator shall disclose in writing any circumstance that could potentially give rise to a reasonable apprehension of a lack of independence or impartiality in the resolution of a dispute.
- (2) A reconciliator, negotiator or mediator who makes a disclosure of any circumstance under subregulation (1) shall continue to serve as a reconciliator, negotiator or mediator if all parties to the dispute waive, in writing, the right to object to any reasonable apprehension of a lack of independence or impartiality or conflict of interest that arises as a consequence of that disclosure.

4. Confidentiality

- (1) The reconciliator, negotiator or mediator shall inform the parties and any experts, advisors, and any other persons who accompany a party to a dispute resolution session of the confidential nature of mediation.

- (2) The reconciliator, negotiator or mediator, the parties, their experts and advisors, and any other persons who accompanies a party to a reconciliation, negotiation or mediation session shall maintain confidentiality of any of his undertakings and shall not disclose to any non-party any information, documents or communications that are created, disclosed, received, or made available in connection with the reconciliation, negotiation or mediation except—
 - (a) with the written consent of the parties;
 - (b) when ordered to do so by a court or otherwise required to do so by law;
 - (c) when the information or document discloses an actual or potential threat to life;
 - (d) in respect of any report that is required to be prepared by the reconciliator, negotiator or mediator;
 - (e) where data about reconciliation, negotiation or mediation is for research and education purposes, and where the parties in dispute are not, nor may reasonably be anticipated to be, identified by such disclosure; or
 - (f) where the information is otherwise available to the public.
- (3) Where the reconciliator, negotiator or mediator holds private sessions with one or more parties, he shall discuss the nature of such sessions with all parties before commencing such sessions and shall inform the parties of any limits to confidentiality that may apply to information disclosed during private sessions.
- (4) The reconciliator, negotiator or mediator shall maintain confidentiality in the storage and disposal of reconciliation, negotiation or mediation notes, records, files, information, documents and communications.

5. Quality of process

- (1) For the purpose of ensuring quality of process, a reconciliator, negotiator or mediator shall—
 - (a) make reasonable efforts before reconciliation, negotiation or mediation is initiated or at the start of the process to ensure that the parties understand the reconciliation, negotiation or mediation process.
 - (b) conduct reconciliation, negotiation or mediation in a manner that permits the parties to participate effectively in the process and that encourages respect among the parties.
 - (c) acquire and maintain professional skills and abilities required to uphold the quality of the process.
 - (d) act professionally at all times, and he shall not engage in behaviour that will bring the reconciliator, negotiator or mediator into disrepute.
- (2) A Reconciliator, negotiator or mediator who considers that a reconciliation, negotiation or mediation in which he is involved may raise ethical may take appropriate action, which may include adjourning or terminating the process.

6. Advertising

In advertising or offering services to clients or potential clients, a reconciliator, negotiator or mediator shall—

- (a) refrain from guaranteeing settlement or promising specific results; and

- (b) provide accurate information about his education, background, reconciliation, negotiation or mediation training and experience.

7. Agreement to mediate

A reconciliator, negotiator or mediator and the parties shall prepare and execute a reconciliation, negotiation or mediation agreement setting out—

- (a) terms and conditions under which the parties are engaging the reconciliator, negotiator or mediator;
- (b) if the reconciliation, negotiation or mediation rules apply to the reconciliation, negotiation or mediation, any of the rules that the parties agree shall not apply to the reconciliation, negotiation or mediation; and
- (c) any additional rules that the parties agree shall apply to the reconciliation, negotiation or mediation.

8. Termination or suspension of reconciliation, negotiation or mediation

A reconciliator, negotiator or mediator may suspend or terminate the reconciliation, negotiation or mediation—

- (a) if requested, in writing, by one or more of the parties; or
- (b) with a written declaration by him that further efforts at mediation would not be useful at this time.

(c) Conduct and practice for arbitrators

9. Appointment of arbitrator

- (1) An arbitrator shall accept an appointment only if he is fully satisfied that he—
 - (a) is able to discharge his duties fairly and without bias;
 - (b) has an adequate knowledge of the language of the arbitration; and
 - (c) is able to give to the arbitration the time and attention which the parties are reasonably entitled to expect.
- (2) The appointed arbitrator shall be bound by all the duties under this Code throughout the entire course of the proceedings.
- (3) The appointed arbitrator may contact the party or its counsel regarding the appointment of the Chairperson of the Arbitral Tribunal if asked to appoint him.
- (4) The indications given by the party under subparagraph (3) shall not be binding on the arbitrator.

10. Competence

When accepting his mandate, the arbitrator shall, to the best of his knowledge, be able to perform his task with the necessary competence with respect to his adjudicating function and the subject matter of the dispute.

11. Availability and dedication

On accepting an appointment, an arbitrator shall—

- (a) ensure his availability for hearings and deliberations.
- (b) not allow any other engagement to affect his participation in the case; and
- (c) consult with the parties in advance, if absence is required under exceptional circumstances.

12. Deliberation of award

- (1) An arbitrator shall review all documents and materials of a case carefully to find out the issues at hand.
- (2) Prior to hearing, an arbitrator shall participate in the discussion and finalization of the hearing scheme.
- (3) The presiding arbitrator shall propose tentative ideas for the hearing scheme to serve as the basis of discussion.
- (4) Where the tribunal consists of a sole arbitrator, the sole arbitrator shall prepare the hearing scheme properly before the hearing starts.
- (5) During hearing, an arbitrator shall not show bias and shall pay attention to the methods applied for asking questions and expressing opinions, avoid making premature conclusions on key issues and avoid contention or confrontation with the parties.
- (6) Upon completion of an oral hearing, the presiding arbitrator shall call and preside over deliberations without delay, with opinions on subsequent procedures or the drafting of the arbitral award.
- (7) An arbitrator shall closely follow the progress of proceedings and comply with the deadline for case closure set forth in the Arbitration Rules.

13. Disclosure

- (1) An arbitrator shall disclose all facts or circumstances that may give rise to justifiable doubts as to his impartiality or independence, such duty to continue throughout the arbitral proceedings with regard to new facts and circumstances.
- (2) An arbitrator shall disclose to the Registrar and any party who approaches him for a possible appointment—
 - (a) any past or present close personal relationship or business relationship, whether direct or indirect, with any party to the dispute, or any legal representative of a party, or any person known to be a potentially important witness in the arbitration; and
 - (b) the extent of any prior knowledge he may have of the dispute.

14. Impartiality and independence

- (1) An arbitrator shall hear cases independently and impartially based on facts, in accordance with the law, with reference to international practices and in adherence to the principles of justice and fairness.
- (2) An arbitrator shall not represent either party of a case and shall treat both parties with equality.

15. Communications

- (1) Before accepting an appointment, an arbitrator may only enquire as to the general nature of the dispute, the names of the parties and the expected time period required for the arbitration.
- (2) An arbitrator shall not confer with any of the parties or their counsel until after the Registrar gives notice of the formation of the Tribunal to the parties.
- (3) Throughout the arbitral proceedings, an arbitrator shall avoid any unilateral communications regarding the case with any party, or its representatives.

16. Conduct during proceedings

- (1) Once the arbitration proceedings commence, the arbitrator shall acquaint himself with all the facts and arguments presented and all discussions relative to the proceedings so that he may properly understand the dispute.
- (2) An arbitrator shall not accept gifts from the parties during his term of service, or meet either party in private to discuss matters or accept materials relating to the case, except where the arbitrator meets either party separately according to the decision of the Arbitral Tribunal during the mediation process.
- (3) An arbitrator shall hear cases in strict accordance with the procedures set out in the Arbitration Rules and allow the parties adequate opportunities to present their case.
- (4) An arbitrator shall seek availability of parties to arbitration before issuing orders as to appearance.

17. Confidentiality

An arbitrator shall keep the confidentiality of an arbitration and shall not disclose any information related to its substance or procedure, including facts of the case, arbitral proceedings and deliberations of the tribunal; nor shall an arbitrator disclose, in particular, his own opinion or the deliberations of the arbitral tribunal to the parties.

(d) Miscellaneous provisions

18. Other conduct obligations

- (1) Nothing in the Code replaces or supersedes any other ethical standard or code that may govern the reconciliator, negotiator, mediator or arbitrator.
- (2) Where there are multiple such standards or codes, the reconciliator, negotiator, mediator or arbitrator shall be bound by the stricter of them.

19. Avoidance of breach of Code

A reconciliator, negotiator, mediator or arbitrator shall take all necessary measures for avoidance of the breach of the Code and shall do all necessary endeavours to support those who seek to uphold it and report immediately any unethical decisions or practices by reconciliator, negotiator, mediator or arbitrator.

20. Breach of Code

A person who contravenes any provision to this Code shall be deemed to have committed a professional misconduct and shall be dealt with in the manner provided under regulation 7 of the Code of Conduct for Reconciliators, Negotiators, Mediators and Arbitrators, Regulations, 2021.

Second Schedule

Form 1 (Regulation 8)

Complaint of the misconduct against reconciliator/ negotiator/ mediator or arbitrator

(Please read this form before filling it to the Registrar)

Section 1. Applicant details

Postal address

Name of the Applicant _____

P.O. Box _____

Phone No: _____

Email address: _____

If your filling a complain on behalf of another/other person please state his/their details of the person your representing

Name: _____

Postal Address: _____

Phone No: _____

Email address: _____

Physical address: _____

Section 2: A complaint is against

Reconciliator

Negotiator

Mediator

Arbitrator

Name of the respondent: _____

Postal Address: _____

Phone No: _____

Email address: _____

Physical address: _____

Section 3: Content of the complaint (The Complaint shall state the specific misconduct alleged to have been violated and the date on which the alleged violation occurred. In the absence of such statement the Complaint shall be struck out by the Registrar)

Section 4: Complainant prayers against the respondent

Section 5: Time for filling

A Complaint against reconciliator/ negotiator/ mediator or arbitrator must be received to the Registrar office within ninety days of the occurrence of the misconduct forming the basis of the grievance. Untimely Complaints will be dismissed, and the Registrar shall promptly notify the Complainant of the dismissal of the Complaint.

What is stated in clause 1,2,3,4, and 5 are true to the best of my knowledge

Name of the applicant: _____

Signature _____

Place _____

For official use:

Received by (Name) _____ date _____

signature _____

Official seal

Form 2 (Regulation 12(1))

Declaration of breach of professional misconduct

I (name of the Registrar) _____ Registrar, subject to the decision and directions given to me by the Accreditation Panel, I hereby notify (name of the respondent) _____ that the Accreditation committee has found you in breach of the Code of Conduct for Arbitrators in respect of _____ (summary of misconduct)

I therefore declare you that you are in breach of profession misconduct and your hereby _____ (write either of the following)

a) given a warning; or

b) required to pay such amount of money as may be adequate to cover the cost or loss incurred by the complainant as a result of the complaint; or

c) deregistered from practising as an accredited reconciliator, negotiator, mediator, or arbitrator, in manner set out in the Conciliation, Negotiation, Mediation and Arbitration (Practitioners Accreditation) Regulations, 2021; or

d) Subject to other measures as may be appropriate (explain)

Dated at _____ this ___ day of _____ 20 ___

(Signature of Registrar)

This form shall be issued in triplicate.

The original copy shall be served to the offender, and another form shall be served to the complainant and triplicate form shall remain to the Registrar office.