

## Arbitration: Settlement of Dispute of Marriage

### Description

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The Revised Family Code Proclamation No 213/2000 incorporates provisions of settlement of disputes through arbitration for disputes of marriage. One form of arbitration is an attempt to reconcile issues of divorce of the spouses. The arbitrators attempt to persuade the spouses to renounce their petition of divorce. The next area in which arbitration is cited is for the purposes of resolving disagreement during marriage. The third area in which arbitration is mentioned is during conditions of divorce. These provisions for settlement of disputes through arbitrators are briefly discussed herewith.

#### Arbitration to Reconcile Marital Relations

Arbitration proceeding is an option that comes after a petition for divorce is filed in courts of law. Final decision of ordering divorce is vested in courts only. However a judge who has received a petition of divorce shall attempt to speak to the spouses individually or together to renounce the divorce petition, solve their dispute amicably and continue their married life. When the attempt by the judge does not bear fruit or is likely to fail, then the judge is at liberty to order the spouses to settle their disputes through arbitrators of the spouses own choice.

The appointment of arbitrators, discharge of their obligation and failure to resolve the dispute amicably is dealt under Articles 119-122 of the Revised Family Code. The spouses shall appoint one or more arbitrators and submit within 15 days from the date they were told to do so, the names of the arbitrators to the court. On receiving the list of arbitrators or when the arbitrators appear before the court, the court shall make a record forthwith and give direction as to how the reconciliation has to proceed. The court can order the arbitrators to submit the result of the arbitration or the attempt of reconciliation within three months.

The judge is at liberty, where it deems necessary, examine the progress of the arbitration and make orders for submission of periodical reports thereon. Where the court is of the opinion that the spouses may settle their dispute through arbitration, the judge may, having regard to the progress of the arbitration, give additional time of not more than one month.

It is the responsibility of the arbitrators to make an effort to reconcile the spouses and to make them renounce their petition for divorce. If the arbitrator's attempt is successful, then the spouses can submit the report of the arbitrators together with an application for their divorce file to be closed. Where the arbitrators have concluded that the dispute cannot be solved except by divorce, they shall report the result of their attempt to the court without delay. The arbitrators shall have no power to give any order or decision concerning the spouses except persuading them to resolve the issue through arbitration.

In cases where the arbitrators have failed to submit reports, the court shall close the case. Where the spouses or one of them have petitioned the court to reopen the case within one month from the date of the closure of the case by stating the reasons for not submitting the report and that the issue has not

been settled through arbitration, the court may reopen the case and give appropriate decision. The closure of the case may not stop the spouses or one of them from submitting a new petition and request for their case be reconsidered.

### Arbitration on Disagreements During Marriage

Arbitration and Conciliation Working Procedure Proclamation No 1237/2021 provides that divorce is a non-arbitrable matter. Similarly the Revised Family Code on Article 117 states that only the court is competent to decide on divorce and effects of divorce. Nonetheless Article 118 of the Revised Family Code declares that without prejudice to the power of the court to decide on divorce, disagreements of spouses during marriage can be decided by arbitrators chosen by the spouses. Any party who is dissatisfied with the decision of arbitrators may appeal to a court having jurisdiction. The court, having examined the petition, may approve, amend or reverse the decision of arbitrators. Such a decision of the court shall be final.

### Arbitration on the Legal Effects of Divorce Decision

Where the marriage is dissolved by divorce, the court shall request the spouses to agree on the conditions of divorce. The court gives not more than 6 months for the settlement of conditions of divorce. The conditions of divorce include apportioning of property, guardianship of children and maintenance payment arrangement. Where the spouses are not willing to agree or have failed to agree, the court shall, by itself, or through arbitrators, or experts appointed by the court, or by any other means the court thinks appropriate, decide on the conditions of divorce. Article 83 sub-article 3 of the Revised Family Code provides that the conditions of divorce agreed upon by the spouses or decided by arbitrators or experts shall be submitted to the court for approval.

To sum up, arbitration during marriage and divorce is mentioned in the Revised Family Code in a number of articles. The word 'arbitration' may not be the right term for those cases of persuading the spouses to renounce their petition of divorce. Mediation or mediator or conciliation or conciliator or court supervised mediation may have been the right term, as the duties of the 'arbitrators' is NOT to decide but to reconcile. Free University of Amsterdam on its training manual for mediation asserts that '*Mediation is often called a win-win process in contrast with legal action which one party must lose; mediation recognizes legitimacy of both parties' self-interests and seek ways to reconcile them'*'. Regarding marital disagreement, as any disagreement, can be presented for an arbitration. Such arbitration decisions can be appealed to a court of law and the court may approve, amend or reverse the decision of the arbitrators. Similarly conditions of divorce may also be entertained by arbitrators. The decision of the arbitrators shall be presented to the court for approval. Hence, the establishment of arbitration centers as envisaged by Proclamation No 1237/2021 together with mediation centers will contribute greatly to realize the objective of the family law and constitutionally protected family unit, i.e marriage.

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