

MEDIATION ACT

(*Narodne Novine No. 18/11*)

GENERAL PROVISIONS

Scope

Article 1

(1) This Act regulates mediation in civil, commercial, labour and other disputes regarding the rights that parties are free to dispose of.

(2) The provisions of this Act shall apply accordingly to mediation in other types of dispute if this is commensurate to the nature of the legal relationship from which the dispute arises, provided that no special regulations to the contrary apply.

(3) The provisions of this Act shall also apply accordingly to mediations in which one of the parties has a permanent or temporary residence or principal place of business outside the Republic of Croatia.

Purpose of Act

Article 2

(1) The purpose of this Act is to facilitate easier access to mediation as an appropriate dispute-resolving procedure, to ensure availability of mediation, to strengthen the awareness of mediation by encouraging the use of mediation, and to ensure a balanced relationship between mediation and judicial proceedings.

(2) To fulfil the purpose of this Act, the use of mediation and education of mediators will be promoted and encouraged, all information on mediation, mediators, and mediation organizations will be published and made available through the mass media, electronic and other media.

Definitions

Article 3

For the purposes of this Act the following terms shall be defined as follows:

- Mediation means any process, whether conducted in court, by a mediation organization or out of court, whereby parties attempt to resolve a dispute in an amicable manner with the assistance of one or more mediators who help the disputants reach an amicable settlement without being authorized to impose an obligatory resolution;
- Mediator is a person conducting the mediation procedure based on the agreement of the parties;
- Mediation Organization is a legal entity, a body of the legal entity or an organizational unit of a legal entity that organizes the mediation procedure.

Interpretation Principles

Article 4

- (1) In interpreting the provisions of this Act, the principles of conscientiousness and fairness shall be applied, as well as the legally accepted mediation standards as set forth in the relevant legislation of the European Union, the United Nations and the Council of Europe.
- (2) Issues not governed by this Act shall be resolved in accordance with the principles of voluntary process, procedural efficiency, equal treatment of the parties, autonomy of the parties in the procedure, confidentiality of the procedure, and neutrality of mediators.

MEDIATION PROCEDURE

Mediation and Other Procedures Regarding the Essence of Dispute

Article 5

Mediation can be conducted irregardless of whether the matter in dispute is being resolved in judicial, arbitration or other proceedings.

Beginning of the Mediation Procedure

Article 6

- (1) To initiate a mediation procedure, it is not necessary to conclude an advance agreement under which the parties undertake to settle any future disputes in an amicable manner.
- (2) Mediation starts with granting of the request for initiating the mediation procedure, unless otherwise stipulated or agreed for disputes subject to the mediation procedure.
- (3) Unless the parties have agreed otherwise, the other party shall respond to the request for initiating the mediation procedure within 15 days of receipt of such request or within other response deadline indicated in the request.
- (4) If the other party fails to respond to the request for mediation within the time period set out in paragraph (3) above, the request for mediation will be deemed to have been rejected.
- (5) If special regulations stipulate a deadline for lodging a complaint, in the case described in paragraph (4) above, the mediation procedure will be deemed to have been completed.

Appointment of Mediators

Article 7

- (1) Mediators shall be appointed in accordance with the rules agreed upon by the parties.
- (2) The parties shall mutually agree on whether mediation will be conducted by one or more mediators and who will be appointed as mediator(s).
- (3) If the parties fail to agree on the number of mediators or the person(s) to be appointed as mediator, they may request for mediators to be designated or appointed by the Mediation Organization or other third party (hereinafter referred to as: Appointment Body).

Obligations of Mediator

Article 8

- (1) Mediator in a mediation procedure shall act competently, effectively and impartially.
- (2) The person who is offered to be appointed as mediator shall disclose any and all circumstances that may give rise to a justified doubt as to his impartiality and independence. Following appointment, mediator shall notify the parties of such circumstances as soon as he becomes aware thereof, unless he has done so already.

Way of Conducting Mediation

Article 9

- (1) Mediation shall be conducted in a manner as agreed upon by the parties.
- (2) In conducting the mediation procedure, the mediator shall maintain a fair and equal relationship to the parties.

Meetings between Mediator and Parties

Article 10

- (1) In the course of the mediation procedure, the mediator may meet with each of the parties separately.
- (2) Unless otherwise agreed upon by the parties, mediator may disclose information or details received from one party to another party only upon consent of the disclosing party.

Mediator's Right to Propose Settlement

Article 11

Mediator may participate in drafting of the settlement agreement and may also propose its content.

Completion of Mediation Procedure

Article 12

Mediation shall be completed:

- if one party notifies the other parties and the mediator in writing of their intent to withdraw from the mediation procedure, unless, following withdrawal of such party, two or more parties participate in the procedure and are willing to continue mediation;
- if the parties notify the mediator in writing that the procedure has been completed;
- if mediator decides to terminate the mediation procedure, which decision shall normally be taken, after the parties have been given an opportunity to declare their opinion, if any further efforts to reach an amicable resolution of dispute are no longer meaningful;
- if no settlement is reached within 60 days of the beginning of mediation or within other deadline agreed upon by the parties;
- upon conclusion of the settlement agreement.

Effects of Settlement

Article 13

- (1) The settlement agreement concluded in a mediation process shall be binding on the parties to the settlement. If specific obligations have been assumed by parties under settlement agreement, the parties will be obligation to meet such obligations in a timely manner.
- (2) A settlement agreement resulting from a mediation process will serve as an enforcement title provided it stipulates a specific liability to perform on which parties may reach a settlement and provided it contains the liable party's authorization for direct enforcement (enforceability clause).
- (3) With enforceability clause the liable party expressly agrees that enforcement for settlement of the liability to perform may be levied directly on the basis of the settlement after the liability becomes due. The enforceability clause may be contained in a special document.
- (4) Enforcement of the settlement agreement referred to in paragraph (2) above will be rejected if:
 - conclusion of the settlement agreement is not permitted;
 - settlement is contrary to the public order;
 - the subject matter of the settlement agreement is unenforceable or impossible to enforce.
- (5) The parties may agree for the settlement agreement to be formulated as a notarial deed, a court settlement or an arbitration award based on a settlement.

Confidentiality

Article 14

- (1) Unless otherwise agreed by the parties, the mediator shall maintain confidentially against third parties in respect to all information and details acquired during the mediation procedure, unless obligated by law to disclose such information or unless disclosure is necessary to conduct or to enforce the settlement agreement reached.
- (2) Mediator shall be liable for damage caused by his violation of the obligation under paragraph (1) of this Article 14.
- (3) The provisions of paragraphs (1) and (2) above shall apply accordingly to parties and other persons who have been involved in the mediation process in whatever capacity.

Admissibility of Evidence

Article 15

- (1) Parties are not permitted to make statements or propose or present evidence in whatever form in judicial, arbitration or other proceedings, if such evidence relates to any of the following:
 - the fact that one of the parties proposed mediation or was willing to participate in it;
 - statements about facts or proposals made by the parties during the mediation procedure;
 - admission of a claim or facts made during the mediation procedure, if such statements are not an integral part of the settlement agreement;
 - documents prepared exclusively for purposes of the mediation procedure, unless the law stipulates that disclosure of such documents is necessary for implementation or enforcement of the settlement reached;

- the fact that parties were willing to accept the proposals made during the mediation procedure;
 - and other proposals presented in the mediation process.
- (2) Unless otherwise agreed upon by the parties, neither mediators nor those involved in the mediation process in whatever capacity shall not be compelled to testify in arbitration, judicial or other proceedings, in regard to information and details arising from or in connection with the mediation process.
- (3) Evidence referred to in paragraph (1) above will be rejected as inadmissible in court, arbitration or similar proceedings. Notwithstanding the foregoing, information and details stated under paragraph (1) above may be disclosed or used as evidence before arbitration, judicial or other government bodies only if:
- this is necessary to protect the public order and only under conditions and to the extent prescribed by law; or
 - this is necessary for implementation or enforcement of the settlement agreement.
- (4) Persons who act contrary to the provisions of paragraphs (1) and (2) of this Article 15 will be liable for the damage thus caused.
- (5) The provisions of paragraphs (1) to (4) of this Article 15 shall apply irrespective of whether arbitration, judicial or other similar proceedings is connected with the dispute in regard to which arbitration procedure was conducted or is pending.
- (6) Excluding the case under paragraph (1) of this Article 15, evidence that is otherwise admissible in arbitration, judicial or similar proceedings will not be inadmissible only because it was used in the arbitration process.

Incompatibility of Mediator Role with other Functions

Article 16

- (1) Unless otherwise agreed upon by the parties, a mediator cannot act as a judge or an arbitrator in a dispute that is the subject matter of a mediation procedure or in other disputes resulting from or in connection with such legal relationship.
- (2) By way of derogation from the provisions of paragraph (1) above, the parties may authorize the mediator to issue a reward as an arbitrator based on the settlement agreement.

Effect on Limitation and Prescription Periods

Article 17

- (1) The parties who in accordance with this Act decide to use mediation in an attempt to settle a dispute shall not be prevented from initiating judicial, arbitration or other proceedings because of expiry of limitation or prescription periods.
- (2) Initiation of a mediation procedure shall interrupt the limitation period.
- (3) If mediation ends without a settlement agreement, limitation period shall be considered as not having been interrupted.
- (4) Notwithstanding the provisions of paragraph (3) above, if within 15 days of termination of the mediation process the parties lodge an appeal or bring other action before court or other competent authority for determination, securing or settling their claim, the period of limitation will be considered interrupted as of the date of commencement of the mediation procedure.
- (5) If a special regulation prescribes a period for filing an appeal, this period shall be suspended for the duration of the mediation process, and will restart after expiry of fifteen days after the end of mediation.

Relationship between Mediation and other Procedures in the Same Matter in Dispute

Article 18

If the parties agree to submit their dispute to mediation and explicitly undertaken that they shall not initiate or continue any judicial, arbitration or other proceedings by a specific time period or until occurrence of a specific condition, such agreement shall have a binding effect. In this case, the court, arbitrators or other competent authorities before which proceedings are instituted on the same matter in dispute shall reject, upon request of the other party, the request whereby such proceedings are instituted or continued.

Authorization of the Body Conducting the Procedure

Article 19

(1) During a judicial, administrative or other proceedings, in disputes stated under Article 1 hereof, the body conducting the procedure shall advise the parties to use mediation in order to settle the dispute in accordance with the provisions of this Act if, in the opinion of such body, the dispute could be settled through mediation.

(2) The body referred to in paragraph (1) above may invite the parties to attend an information session about the use of mediation.

Costs

Article 20

Unless otherwise agreed upon by the parties, each party shall bare its own costs, and the costs of the mediation procedure will be born by the parties in equal proportions or in accordance with special regulations or rules of the Mediation Organization.

MEDIATION IN CROSS-BOARDER DISPUTES

Application of this Act in Cross-border Disputes

Article 21

(1) The provisions of this Act shall also apply in cross-border disputes in civil and commercial matters.

(2) For the purposes of this Act, cross-border disputes shall not extend to revenue, customs or administrative disputes or disputes with regard to the liability of state for acts or omissions in the exercise of state authority.

Cross-border Dispute

Article 22

(1) For the purposes of this Act, a cross-border dispute shall be a dispute in which one of the parties is domiciled or habitual resident in a member state of the European Union (hereinafter: member state), in which the other party is not habitually resident on the date on which:

- a) the parties agree on the use of mediation after the dispute has arisen;
 - b) mediation is ordered by a court;
 - c) an obligation to use mediation arises under national law,
 - d) parties are referred to mediation by the court at which litigation is instituted.
- (2) Notwithstanding paragraph (1), for the purpose of application of Articles 14 and 17 hereof, a cross-border dispute shall mean a dispute in which judicial proceedings or arbitration are instituted in a member state other than that in which parties were domiciled or habitually resident on the date referred to in paragraph (1), subparagraphs (a), (b) and (c) above.
- (3) The provisions on cross-border disputes shall not apply with regard to Denmark.

Domicile and Habitual Residence in Cross-border Disputes

Article 23

- (1) In deciding whether a party is domiciled on the territory of a member state before the courts of which the proceedings have been brought, the court shall apply the law of the Republic of Croatia.
- (2) If a party has no domicile in the member state before the courts of which the proceedings have been brought, then, in order to determine whether the party is domiciled in another member state, the court shall apply the law of such member state.
- (3) A company or other legal person or association of natural or legal person is domiciled at a place where it has its:
 - statutory seat; or
 - central administration; or
 - principle place of business.
- (4) For the purposes of the United Kingdom and Ireland, »statutory seat« means the registered office or, where there is no such office anywhere, the place of incorporation, or, where there is no such office anywhere, the place under the law of which the formation took place.
- (5) In determining whether a trust has a seat in a member state before the courts of which the proceedings have been brought, the court shall apply the relevant rules for the resolution of conflicts of laws.

Enforcement of Settlement Agreement Reached in a Cross-border Dispute

Article 24

- (1) If under the laws of a member state it is possible for the parties, or one of them with the explicit consent of the other party, to request that the content of the written settlement agreement resulting from mediation in a cross-border dispute be made enforceable, the court in the Republic of Croatia will recognize and enforce such settlement subject to the provisions of Article 13, paragraphs (1) to (4) hereof.
- (2) If in a member state the content of the settlement agreement is integrated in some other enforcement title such that it is confirmed by a court or other competent authority in form of a judgement, resolution, arbitration award or other enforcement title as provided for by the law of the member state in which the request is made, to recognition and enforcement of such enforcement title the relevant rules applicable to recognition and enforcement of such titles shall apply.
- (3) The competent court for recognition and settlement enforcement requests as referred to in paragraph (1) of this Article 24 in matters falling under the jurisdiction of commercial courts

shall be the Commercial Court in Zagreb, whereas in other matters the competent court shall be the County Court in Zagreb.

TRANSITIONAL AND FINAL PROVISIONS

Regulations on the Form and Maintenance of the Mediators Register and Mediators and Mediation Organization Accreditation Standards

Article 25

Within three months of this Act becoming effective, the minister in charge of justice shall adopt regulations stipulating how and in which form the mediators register will be kept as well as standards for mediators and mediation organizations accreditation.

Termination of Act

Article 26

(1) With the coming into force of this Act, the Mediation Act (*Narodne Novine* Nos. 163/03 and 79/09) shall cease to have effect.

(2) Until such date as regulations referred to in Article 25 hereof are adopted, the Regulations on Mediators Register and Mediator and Mediation Organizations Accreditation Standards (*Narodne Novine* No. 13/10) shall apply.

Effective Date

Article 27

This Act takes effect on the eighth day of publication in the official gazette *Narodne Novine*, with the exception of Articles 1 to 24 hereof which shall come into full force and effect on the date of accession of the Republic of Croatia to the European Union.