

GOVERNMENT OF THE REPUBLIC OF CROATIA

1568

Pursuant to the Article 8 and Article 31, Paragraph 2 of the Act on the Government of the Republic of Croatia ("Official Gazette" No. 150/11 and 119/14) and in relation to the National Reform Program 2016, at the meeting of the 6th of July 2016, the Government of the Republic of Croatia made the following

DECISION

ON ENCOURAGING OUT-OF-COURT CIVIL AND COMMERCIAL DISPUTES RESOLUTION WHERE ONE PARTY IS THE REPUBLIC OF CROATIA OR LEGAL PERSON WHOSE ONLY FOUNDER, MEMBER OF MAJORITY SHAREHOLDER IS THE REPUBLIC OF CROATIA

Decision Subject

I

This Decision determines the measures for out-of-court civil and commercial disputes resolutions where one party is the Republic of Croatia or legal person whose only founder, member or majority shareholder is the Republic of Croatia.

This Decision defines establishment, content and appointment, tasks and work method of the Out-of-Court Dispute Resolution Committee (hereinafter: the Committee).

Decision Purpose

II

The purpose of this Decision is to efficiently, responsibly and quickly resolve the disputes in order to preserve business relations, free the business from potential dispute risk, decrease expenses, time and resources, save and protect the budget of the Republic of Croatia, prevent court procedures when possible and unburden justice system. The last option in all disputes should be a court procedure.

Out-of-court dispute resolution measures

III

State administration bodies and legal persons from Paragraph I of this Decision (hereinafter: the subjects) are obliged to take over the responsibility for the resolution of their own disputes and to take all measures which are necessary in order to prevent their occurrence and to

efficiently manage them with the application of suitable out-of-court dispute resolution methods.

Disputes Prevention

IV

With the aim of early dispute detection and their prevention, the agreements concluded between the subjects need to contain the provisions stating the following:

- clear common intention of the contractual parties
- method of tracking contractual obligations fulfilment
- timely warning obligation which refers to misunderstandings in relation to agreement interpretation and disputes
- procedures, institutions and/or persons in charge of amicable misunderstandings and disputes resolution
- agreement termination method
- primary out-of-court dispute resolution.

For all relations that are not defined by an agreement, the subjects are obliged to include out-of-court dispute resolution methods within the existing complaints resolution procedures.

Disputes Management

V

With the aim of early dispute resolution, the subjects must not postpone dispute resolution since postponements cause bad relations and consequently, out-of-court resolution. The parties are obliged to manage the dispute in a timely and positive manner, actively and with the support of responsible persons.

The subjects are obliged to manage the disputes in a manner that they quantify the dispute, develop efficient instruments for the measurement of costs and benefits which are related to different dispute methods usage, develop warning system in early stages and prevent disputes in the early stage by applying suitable measures, determine person who is in charge of disputes management tracking, ensure employees and management structures education and motivation which is focused on out-of-court dispute resolution and ensure support and cooperation between management structures and employees in charge of misunderstandings and dispute resolution implementation.

Out-of-court dispute resolution method

VI

Out-of-court dispute resolution methods understand negotiations, mediation and arbitration.

The subjects need to adjust the choice of out-of-court dispute resolution method to each individual case and its circumstances, especially taking into consideration the complexity of contractual or non-contractual relation, dispute value, potential court procedure duration, material, reputation and other risks due to untimely dispute resolution and decision made via court procedure.

Defining out-of-court dispute resolution method while concluding the agreement or creating non-contractual relation enables dispute resolution in the early phase and, in the case of contractual relation, removes the issue of convincing the other party to accept out-of-court dispute resolution method.

The subjects shall take into consideration the possibility of dispute resolution thorough settlement at any time, regardless whether arbitration or court procedure is in progress for a certain dispute.

Negotiations

VII

The subjects are obliged to try to solve the dispute by negotiating first.

Negotiations need to be started as soon as possible and conducted regardless whether it is the case of out-of-court or court procedure.

The subjects are obliged to appoint their representatives for the negotiations.

While negotiating, the subjects need to be flexible in their choice of methods and dispute resolution manners and keep in mind the benefit of both parties and interests of the Republic of Croatia. Apart from other things, the interest of the Republic of Croatia refers to avoidance of expenses and obligations increase due to long dispute and court procedures where it can be estimated in advance that the subject does not have serious chances to succeed.

In order to resolve a dispute, the subjects can ask for professional help of an independent expert (legal expert, court expert witness and similar), state attorney or Committee recommendation.

Mediation

VIII

If the negotiation as a dispute resolution method fails, the subjects are obliged to try to solve the dispute by mediation when they find it suitable and when there is no contractual provision which refers to an obligatory dispute resolution attempt in the agreement.

Mediation can be implemented regardless whether there is court or arbitration procedure related to the dispute subject.

Arbitration

IX

If the negotiation and mediation as dispute resolution methods fail, the subjects are recommended to try to resolve the dispute through an arbitration procedure at the Arbitration Court of the Croatian Chamber of Commerce without excluding the application of special regulations on fast arbitration procedure.

Provisional Form

X

Annex 1 which is a constituent part of this Decision contains provisional form on out-of-court dispute resolution methods.

Addressing Out-Of-Court Dispute Resolution Committee

XI

The subjects are recommended to address the Committee due to dispute resolution through settlement in cases when this is necessary.

Exceptionally, if a certain subject has more disputes of a same type, the subject is obliged to submit a dispute consideration proposal to the Out-of-Court Dispute Resolution Committee.

Coordinators

XII

The subjects are obliged to appoint a coordinator for cooperation with the Committee.

The Coordinator is obliged to provide all possible support to the Committee without any delay.

If a dispute resolution proposal was submitted to the Committee, the coordinator is obliged to deliver the subject's opinion and documentation which the subject disposes of.

If the Committee made a recommendation, the coordinator is obliged to inform the Committee on the measurements which the subject has taken within 30 days.

Reports

XIII

The subjects are obliged to deliver annual reports to the Committee at the latest by the 31st of January for the previous year.

Report from the Item 1 of this Paragraph needs to contain the following:

- List of mediation agreements
- List of contracted arbitrations

- List of disputes in mediation procedure
- List of disputes in arbitration procedure
- List of disputes in court procedure.

The Committee is obliged to submit an annual work report to the Government of the Republic of Croatia at the latest by the 10th of March for the previous year.

Out-Of-Court Dispute Resolution Committee

XIV

The Committee is founded as a professional body for dispute consideration and supervision of implementation of measures from this Decision.

The Committee consists of three members:

- one permanent member who is the representative of the Ministry of Justice
- one permanent member who is the representative of the Ministry of Finance
- one member who is the representative of the subject where the dispute occurred.

Each Committee member has his own substitute.

Committee members and substitutes are appointed by the minister who is competent for justice matters upon the proposal of the subject head or body which is authorized to represent the subject.

Committee president is the representative of the ministry which is competent for justice matters. Committee president has to have the bar exam passed.

The Committee acts in accordance with the regulations from the Work Protocol which is included in the Annex 2 and which makes a constituent part of this Decision.

The Ministry of Justice performs Committee's professional and administrative jobs.

Committee members have no right to a fee.

Measures Implementation Funds

XV

Funds which are necessary for the implementation of measures from this Decision shall be ensured from the state budget of the Republic of Croatia at the position of a subject within whose scope the dispute occurred or in the budget of a legal person within whose scope the dispute occurred.

Transitional and Final Provisions

XVI

Subject heads or bodies authorized to represent the subject are obliged to propose their representative for the Committee member representative or substitute from the Paragraph XIV of this Decision to the Minister of Justice within eight days from the day when this Decision enters into force.

In case when an agreement does not define dispute resolution method, subjects are obliged to subsequently agree around out-of-court dispute resolution method from the Paragraph VI of this Decision.

Proposals which are submitted to the Committee for encouraging alternative and out-of-court dispute resolution and which are not finished by the time when this Decision enters into force are to be finalized in accordance with the provisions of this Decision.

The Committee for encouraging alternative and out-of-court dispute resolution stops working on the date when this Decision enters into force.

Entry Into Force

XVII

On the date when this Decision enters into force, the following is repealed:

1. Decision on the measurements for alternative and out-of-court dispute resolution in civil cases in which the Republic of Croatia is one of the parties ("Official Gazette" number 69/12).
2. Decision on the establishment of the Committee for encouraging alternative and out-of-court dispute resolution (»Official Gazette«, No. 69/12 and 9/14) and
3. Decision on the recommendations for encouraging alternative and out-of-court dispute resolution in civil cases where one of the dispute parties is a legal person whose only founder, member or majority shareholder is the Republic of Croatia (»Official Gazette«, No. 69/12 and 9/14).

This Decision enters into force on the date when it is made and it is to be published in the "Official Gazette".

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Registration Number: 50301-09/09-16-3

Zagreb, 6th of July 2016

ANNEX 1

PROVISIONAL FORM FOR OUT-OF-COURT DISPUTE RESOLUTION METHOD

Parties:

[Company and Address]

Represented by

Mr/Ms [name and surname, personal identification number]

and

[Company and Address]

Represented by

Mr/Ms [name and surname, personal identification number]

(hereinafter: the parties)

Concluded in *[place]*, on *[date]*

Negotiation

The disputes between contractual parties in relation to the interpretation or application of this agreement are to be resolved primarily by negotiation.

Mediation Agreement

1. Through mediation in front of [alternatively: Croatian Mediation Association, Mediation Centre HUU, Mediation Centre of the Croatian Chamber of Commerce, Mediation Centre of the Croatian Chamber of Crafts and so on (hereinafter: the Centre)] and in accordance with the Mediation Act ("Official Gazette", No. 18/11) and suitable regulations on mediation, the parties shall try to solve the dispute amicably if it is impossible to solve it through negotiation within *[day/month]*.

[Short dispute description. If there is a court, arbitration or another procedure in relation to the dispute, it is enough to state the institution which is in charge of the procedure and subject's registration number]

2. For the mediator, the parties appoint *[mediator's name and surname]*.

Alternative:

The parties agree that the mediator is to be appointed by the Centre president.

3. The mediation is to be considered started on the date when this agreement is concluded.

Alternative:

The mediation is to be considered started if the parties suggested that the mediator is appointed by the Centre president on the date when the parties received the notice on the above defined appointment.

4. In the agreement with the mediator and the Centre, mediation meeting is to be held on the *[date, hour]* in the *[address]*.

5. The parties shall inform the Centre and the mediator in advance on who is to participate in the mediation procedure. Each party in the mediation procedure is to be represented by at least one person who is authorized to make a settlement without additional approval or agreement by another persons and institutions. The parties shall inform the Centre and the mediator in advance on all limitations in relation to the authorization representations.

6. The mediator can have common and separate meetings with the parties. The mediator shall transfer the content of a separate meeting with one party to another party only if he is authorized to do so.

7. The minutes are not kept on the mediation meetings. Personal notes which are made by meeting participants shall be destroyed at the end of mediation.

8. The mediator can take part in the settlement drafting and suggest its content.

9. The Centre and the mediator are not the parties in this agreement or settlement concluded in the mediation procedure.

10. Centre's Mediation regulations and provisions of the Mediation Act are to be applied to all the questions which are not dealt with in this agreement. Both legal documents in versions which were in force when this agreement was concluded are legally valid.

Arbitration Clause

All disputes arising from this agreement and in relation to it, including disputes which refer to its valid drafting, breach or termination as well as legal effects arising from it, are to be finalized through arbitration in accordance with the valid Arbitration Regulations at the Permanent Arbitration Court of the Croatian Chamber of Commerce (Zagreb regulations).

If one of the dispute parties is the Republic of Croatia:

»Party which intends to file a lawsuit is obliged to submit an amicable dispute resolution request to another party before filing a lawsuit to the Permanent Arbitration Court. In this case, the provisions of the Article 186.a of the Dispute Act (»Official Gazette«, No. 53/91, 91/92, 58/93, 112/99, 88/01, 117/03, 88/05, 02/07, 84/08, 123/08, 57/11, 148/11, 25/13 and 89/14) are to be suitably applied.

Potential payments which are the obligation of the Republic of Croatia shall be determined in minimally five instalments which are due once a year. The first instalment is due at the earliest *[date]*, which includes the right to a corresponding interest rate.«

Provisions on:

- (a) the arbitrators number
- (b) Croatian legislation
- (c) Croatian language in the arbitration procedure
- (d) arbitration location in Zagreb
- (e) the appointing authority

Facultative provisions on the possibility to dispute a verdict due to new facts or evidences (Article 36, Paragraph 5 of the Arbitration Act, »Official Gazette«, Number 88/01):

»With the reasons to dispute the verdict from the Article 36, Paragraph 2 of the Arbitration Act, the verdict can be disputed with a lawsuit if the party who disputes it finds out new facts or finds and gets the possibility to use new evidences pursuant to which this party could have had a positive verdict if these facts and evidences were used prior to conclusion which led to disputed verdict. This reason can be emphasized only if the plaintiff could not state these circumstances in the arbitration procedure for some reason other than his own fault. «

This agreement is concluded in *[number]* copies each of which is kept by one party and one by the Centre/Permanent Arbitration Court.

On behalf of *[company]* On behalf of *[company]*

[Name and surname] *[Name and surname]*

ANNEX 2

PROTOCOL ON THE WORK OF THE COMMITTEE FOR OUT-OF-COURT DISPUTE RESOLUTION

I

The following subjects can file a proposal for dispute consideration to the Committee:

1. state administration institution having the scope which results in the dispute
2. legal person whose only founder, member or majority shareholder is the Republic of Croatia which is a party in the dispute
3. state administration institution or legal person with public authorities which were founded pursuant to special acts and whose scope are jobs which refer to the activities of legal persons whose only founder, member or majority shareholder is the Republic of Croatia which is a party in the dispute
4. state attorney or
5. a party which is included in the dispute with the Republic of Croatia.

II

The report with a short overview of the facts and with reference to the competent legislation and court practice in related cases is to be delivered with the proposal for the Committee.

If the state administration institution with the scope resulting in the dispute filed the proposal for dispute consideration, a report of the state attorney shall be requested during the preparation meeting of the Committee.

If the dispute consideration proposal was filed by the party which has a dispute with the Republic of Croatia, the report of the state administration institution with the scope resulting in the dispute and report of the state attorney shall be requested during preparation meeting of the Committee.

If necessary, the Committee can ask for additional explanation from the state attorney and directly from the state administration institution with the scope resulting in the dispute.

State attorney and state administration institution with the scope resulting in the dispute shall act in accordance with the request of the Committee from the Item 2, 3 and 4 of this Paragraph within the shortest possible deadline and at the latest within 30 days.

III

Committee president calls the meeting and proposes the agenda. The minutes are kept on the Committee meeting.

If the party is the Republic of Croatia, the representative of the State Attorney of the Republic of Croatia takes part in the Committee work.

If a party is a legal person whose only founder, member or majority shareholder is the Republic of Croatia, the representative of the state administration institution or legal person with public authorities pursuant to a special act and with scope of works referring to legal person activities takes part in the Committee work.

The Committee can involve the representatives of other institutions into its work if the Committee finds it necessary in order to obtain professional opinion on a certain discussed issue.

IV

The Committee shall decide on dispute resolution method pursuant to the presented factual state, without presentation of evidence or indirect and free evidence evaluation.

The Committee makes the decision with the majority of votes.

After dispute consideration, the Committee shall provide the following in relation to the dispute resolution method or in relation to the necessary measures which shall result in the removal of a dispute cause:

- recommendation if the dispute subject value is up to and including 1.000.000,00 kn,
- proposal to the Government of the Republic of Croatia in relation to the recommendation provision if the dispute subject value is greater than 1.000.000,00 kn.

V

Committee's decision on the dispute resolution method is to be determined in the minutes from the Committee meeting where it was made. The Minutes are signed by the Committee president.

The Committee does not provide written copies of their decisions. They are the constituent part of these minutes and the Committee can also provide extracts from the Minutes.

The Committee decides on procedure issues in their conclusion.