***Translation by the Belgian Centre for Arbitration and Mediation (CEPANI)**

PART SEVEN OF THE BELGIAN JUDICIAL CODE - MEDIATION

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CHAPTER 1. - GENERAL PRINCIPLES

Art. 1724 – Any dispute which can be the subject matter of a settlement agreement, may be submitted to mediation. This is also the case for:
1° disputes related to the matters referred to in Chapters V and VI of the Fifth Title, in Chapter IV of the Sixth Title and in the Ninth Title of the First Book of the Civil Code ;
2° disputes related to matters referred to in Title Vbis of the Third Book of the Civil Code;
3° disputes introduced in accordance with sections I to IV of Chapter XI of the Fourth Book of the Fourth Part of the Judicial Code;
4° disputes arising from de facto cohabitation;
Public legal entities may take part in a mediation in the cases provided for by the law or by a Royal Decree decided by the Council of Ministers.

Art. 1725 - § 1. Any contract may contain a mediation clause, by which the parties agree to have recourse to mediation with respect to any dispute relating to the validity, the conclusion, the interpretation, the performance or the breach of the contract before having recourse to any other dispute resolution method.
§ 2. The Court or the Arbitral Tribunal to which a dispute is submitted which is the subject of a mediation clause shall suspend the examination of the case if requested by any party, unless, with regard to the dispute in question, the mediation clause is invalid or has ceased to exist. The plea must be raised before any other plea or defense. The examination of the case may be continued once the parties, or any one of them, has notified the registry and the other parties that the mediation has ended.
§ 3. The mediation clause does not prevent requests for provisional or conservatory measures. The filing of such requests does not imply any waiver of the mediation.

Art. 1726 - § 1. The Commission mentioned in Article 1727 may accredit mediators who satisfy at least the following conditions:
(1°) possess, by present or past activity, the qualification required by the nature of the dispute;
(2°) can demonstrate, as the case may be, training or experience appropriate for the practice of mediation;
(3°) present the guarantees of independence and of impartiality necessary to practice mediation;
(4°) have not been convicted to a condemnation registered in a criminal record and held to be incompatible with the function of an accredited mediator;
(5°) have not incurred a disciplinary or administrative sanction held to be incompatible with the function of an accredited mediator; nor to have had the accreditation withdrawn;
§ 2. The accredited mediators follow a permanent education programme recognised by the Commission mentioned in Article 1727;
§ 3. This article applies equally when a panel of mediators is called upon.

Art. 1727 - § 1. A Federal Mediation Commission is created, composed of a General Commission and a Special Commissions.

§ 2. The General Commission is composed of six members specialized in mediation, being two notaries, two lawyers and two representatives of mediators who do not practice as lawyers or notaries. In the composition of the General Commission care shall be taken to have all fields of practice represented in a balanced manner. The General Commission is composed of an equal number of Dutch-speaking and French-speaking members. For every effective member an alternate member is appointed. The rules for the publication of vacancies, the filing of applications and the presentation of the members are set forth in a ministerial decree. The effective and alternate members are appointed by the Minister of Justice, on the basis of a reasoned presentation.

- from the Association of Flemish Bars (Orde van Vlaamse Balies) for any lawyer belonging to the said Association;
- from the Association of French and German speaking Bars (l'Ordre des barreaux francophones et germanophones) for any lawyer belonging to the said Assocation;
- from the Royal Federation of Notaries, for any notary;
- from the representative organisations of those mediators who do not practice as a lawyer or as a notary.

The term of office as an effective member lasts for four years and is renewable.

§ 3. The General Commission appoints from within its own members and for a period of two years, its chairman and vice-chairman, the vice-chairman replacing the chairman as needed, as well as a secretary, these functions being assigned alternately to a Dutch-speaking and a French-speaking person. In addition, the chairmanship and vice-chairmanship are held alternately by notaries, lawyers and by mediators who do not practise as a lawyer or as a notary.

The General Commission establishes its internal regulations. In order to deliberate and decide validly, the majority of the members of the Commission must be present. If an effective member is absent or excused, his alternate replaces him. The decisions are taken by simple majority of votes. If the votes are even, the chairman or the vice-chairman who replaces him has the casting vote.

§ 4. Three Special Commissions are created in order to give advice to the General Commission:

- a Special Commission for Family Matters;
- a Special Commission for Civil and Commercial Matters;
- a Special Commission for Social Matters;

These Special Commissions are composed of specialists and practitioners of each of the said types of mediation, namely: Two notaries, two lawyers and two representatives of those mediators who do not practice as a lawyer or as a notary.

The Special Commissions are composed of as many Dutch-speaking members as French-speaking members.

For each effective member, an alternate member is appointed. The rules for the publications of vacancies, the filing of applications and the presentation of members are set forth in a Ministerial Decree. The effective and alternate members are appointed by the Minister of Justice, on the basis of a reasoned presentation:

- from the Association of Flemish Bars (Orde van Vlaamse Balies) for any lawyer belonging to the said Association;
- from the Association of French speaking and German speaking Bars (l'Ordre des barreaux francophones et germanophone) for any lawyer belonging to the said Association;
- from the Royal Federation of Notaries, for any notary;

-from the representative organisation of those mediators who do not practice as a lawyer or as a notary. The term of office as effective member lasts for four years and is renewable.
§ 5. Each Special Commission appoints from within its own members and for a period of two years, its chairman and vice-chairman, the vice-chairman replacing the chairman as needed, as well as a secretary, the said functions being assigned alternately to a Dutch-speaking and a French-speaking person. The Special Commission establishes its internal regulations. In order to deliberate and decide validly, the majority of the members of the Special Commission must be present. If an effective member is absent or excused, his alternate replaces him. The decisions are taken by simple majority of votes. If the votes are even, the chairperson or the vice-chairperson who replaces him has the casting vote.
§ 6. The General Commission has the following tasks:
(1°) to accredit providers of mediation training and the training they provide;
(2°) to determine the criteria for the accreditation of mediators by type of mediation;
(3°) to accredit mediators;
(4°) to withdraw, either temporarily or definitely, the accreditation of mediators who no longer satisfy the conditions set forth in article 1726;
(5°) to determine the procedure for accrediting and for withdrawing, temporarily or definitely, the title of mediator;
(6°) to establish the list of mediators and to distribute same to the Courts;
(7°) to establish a Code of Conduct and to determine the sanctions deriving therefrom.
The decisions of the Commission are reasoned.
§ 7. The Minister of Justice puts at the disposal of the Federal Mediation Commission the personnel and means necessary to operate. The King determines what allowance may be granted to the members of the Federal Mediation Commission.

Art. 1728 - § 1. All documents and communications made during and for the purpose of a mediation process are confidential. They may not be used during any judicial, administrative or arbitral procedure or in any other dispute resolution procedure and they are not admissible as evidence, not even as an out-of-court confession. The duty of confidentiality can only be lifted with the consent of the parties with a view to allowing inter alia a Court to homologate settlement agreements. If this duty of confidentiality is violated by one of the parties, the Court or Arbitral Tribunal decides whether any damages may be granted. Any confidential documents that are nevertheless communicated or which are relied upon by a party in violation of the duty of confidentiality are ex officio excluded from the proceedings. Without prejudice to the requirements of the law, the mediator may not disclose the facts with which he becomes acquainted as a result of his function. He may not be called upon by the parties as a witness in civil or administrative proceedings relating to the facts with which he has become acquainted in the course of the mediation. Article 458 of the Criminal Code is applicable to the mediator.
§ 2. During and for the purpose of his office, the mediator, with the consent of the parties, may examine third parties who consent thereto or, if required due to the complexity of the case, may call upon an expert specializing in the subject matter. The latter are bound by the duty of confidentiality set forth in § 1 (1°). § 1 (3°) is applicable to the expert.

Art. 1729 – Each party may terminate at any moment the mediation proceedings on a without prejudice basis.

CHAPTER II – VOLUNTARY MEDIATION

Art. 1730 - § 1. Any party may propose to the other parties, regardless of any other judicial or arbitral proceedings, before, during or after the conduct of judicial proceedings, to have recourse to a mediation procedure. The parties appoint the mediator by mutual consent or call upon a third party to make the appointment.
§ 2. If the proposal is sent by registered mail and if it contains a claim to a right, it shall be assimilated to the formal notice referred to in Article 1153 of the Civil Code.
§ 3. Under the same conditions, the proposal shall suspend the limitation period of the claim related to the said right during one month.

Art. 1731 - § 1. The parties decide by mutual agreement, with the assistance of the mediator, upon the rules for the conduct of the mediation as well as its duration. This agreement is confirmed in writing in a mediation protocol signed by the parties and by the mediator. The mediation costs and fees are payable in equal shares by the parties, unless agreed otherwise by the parties.
§ 2. The mediation protocol contains:
(1°) the name and domicile of the parties and their counsel ;
(2°) the name, description and address of the mediator, and, as the case may be, the indication that the mediator is accredited by the Commission mentioned in Article 1727;
(3°) the restatement of the voluntary character of mediation;
(4°) a brief summary of the dispute;
(5°) the restatement of the principle of the confidentiality of all communications exchanged during the mediation;
(6°) the method by which the fees of the mediator are fixed, the fee rate as well as the terms of payment ;
(7°) the date;
(8°) the signature of the parties and of the mediator;
§ 3. The signature of the protocol suspends the limitation period for the duration of the mediation.
§ 4. Unless expressly agreed by the parties, the suspension of the limitation period ends one month after one of the parties or the mediator inform the other party or parties of its wish to terminate the mediation. This notification is done by registered mail.

Art. 1732 – If the parties reach a settlement, it is set out in a document dated and signed by the parties and by the mediator. If the mediator is accredited, this is mentioned.
This written document sets out the precise commitments of each party.

Art. 1733 – When a settlement agreement is reached, and if the mediator who has conducted the mediation is accredited by the Commission mentioned in Article 1727, the parties or one of the parties may submit for homologation by the competent Court the settlement agreement reached in accordance with Articles 1731 and 1732. This is done in accordance with Articles 1025 to 1034. The request can however be signed by the parties themselves, if it emanates from all the parties to the mediation. The mediation protocol is attached to the request. The Court may only refuse the homologation of the settlement agreement if it is contrary to public policy or, in the case of a mediation in family matters, if the agreement is against the interests of under age children. The homologation has the same effect as a judgment in the sense of Article 1043.

CHAPTER III – COURT-INSTIGATED MEDIATION

Art 1734 - § 1. At every stage of the proceedings, even in summary proceedings, but not in proceedings before the Supreme Court (Hof van Cassatie/Cour de cassation) or before the Case Allocation Court (arrondisssementsrechtbank/tribunal d'arrondissement), at the joint request of the parties or on its own initiative but with the consent of the parties, a Court in pending proceedings may order a mediation, as long as the case has not been closed for the purposes of rendering a judgment. The parties agree on the name of the mediator, who must be accredited by the Commission mentioned in Article 1727.

By way of derogation to the above paragraph, the parties, jointly and on a reasoned basis, may ask the Court to appoint a non-accredited mediator. Unless the mediator proposed by the parties obviously does not satisfy the conditions set forth in Article 1726, the Court shall accede to this request if the parties demonstrate that no accredited mediator with the required skills is available to conduct the mediation.

§ 2. Any decision that orders mediation shall expressly mention the agreement of the parties, the name, the description and the address of the mediator and shall determine the initial duration of his term of office, which may not exceed three months, and shall also indicate the date to which the case is postponed, which is the first useful date after the expiration of said time limit.

§ 3. At the latest at the hearing mentioned in § 2, the parties shall inform the Court of the result of the mediation. If they have not reached a settlement agreement, they may request a new time limit or ask that the proceedings be continued.

§ 4. The parties may request a mediation, either in the writ initiating the proceedings, or at the hearing, or by simple written request filed with, or sent to, the Court clerk. In the latter case, the case is scheduled within fifteen days following the said request.

The Court clerk convokes the parties by judicial notification, and, as the case may be, their counsel by ordinary mail. If it is a joint request of the parties, they and, as the case may be, their counsel are convoked by ordinary mail.

§ 5. When the parties jointly request that a mediation be ordered, the time limits in relation to the proceedings are suspended as from the date on which they formulate their request.

As the case may be, the parties or any one of them may request new time limits so as to have the case ready for the hearing mentioned in § 2 or in Article 1735, § 5.

Art. 1735 - § 1. Within eight days after the rendering of the decision, the Court clerk sends to the mediator by judicial notification a certified copy of the judgment. Within eight days, the mediator informs by ordinary mail the Court and the parties of the place, date and time for the beginning of his office.

§ 2. The mediation may concern a part or the entirety of the dispute.

§ 3. During the mediation the dispute continues to be laid before the Court, which, at any time, may take such measures as it deems necessary. At the request of the mediator or any of one of the parties, the Court may put an end to the mediation even before expiry of the time limit which has been set.

§ 4. At any time during the proceedings, the appointed mediator, with the agreement of the parties, may be replaced by another accredited mediator. This agreement is signed by the parties and is included in the file.

§ 5. The case may be brought back before the Court prior to the date initially set by means of a simple written declaration filed with, or sent to, the registry by the parties or by anyone of them. A Court hearing is scheduled within fifteen days following the said request. The Court clerk convokes the parties by judicial notification and, as the case may be, their counsel by ordinary mail. In case of a joint request of the parties, they are convoked, and, as the case may be, their counsel by ordinary mail.

Art. 1736 – The mediation is conducted in accordance with the provisions of Articles 1731 and 1732. When his term of office has expired, the mediator informs the Court in writing whether or not the parties have reached a settlement agreement. If the mediation leads to a settlement agreement, even if the agreement is only partial, the parties or any one of them, in accordance with Article 1043, may ask the Court to homologate the said agreement. The Court may refuse the homologation of the settlement agreement only if it is contrary to public policy or, in the case of a mediation in family matters, if the agreement is against the interests of under age children. If the mediation has not led to a full settlement agreement, the Court proceedings are resumed at the date set, but the Court has the right, if it deems it so appropriate and with the consent of all the parties, to extend the term of office of the mediator for such time limit as it determines.

Art. 1737 – It is not possible to appeal against any Court decision ordering the mediation, extending its duration or putting an end to the mediation.