

159 (I) of 2012



THE CERTAIN ASPECTS OF MEDIATION IN CIVIL MATTERS LAW, 2012
(English translation)

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NOTE FOR THE READER

The publication at hand by the Office of the Law Commissioner is an English translation of the Certain Aspects of Mediation in Civil Matters Law (L.159 (I)/2012) (Official Gazette, Supplement 1(I): 16.11.2012, No. 4365).

However useful the English translation of the Law 159 (I) of 2012 is in practice, it does not replace the original text of the Law since only the text published in the Official Gazette of the Republic is authentic.

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A LAW TO PROVIDE ON CERTAIN ASPECTS OF MEDIATION
IN CIVIL MATTERS

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The Certain Aspects of Mediation in Civil Matters Law of 2012 is published in the Official Gazette of the Republic of Cyprus in accordance with Article 52 of the Constitution.

Number 159(I) of 2012

A LAW TO PROVIDE ON CERTAIN ASPECTS OF MEDIATION
IN CIVIL MATTERS

Preamble. For purposes of-

Official Journal of the EU: L136, 24.5.2008, p.3. (a) harmonization with the act of the European Union with title “Directive 2008/52/EC of the European Parliament and of the Council of 21st May 2008 on certain aspects of mediation in civil and commercial matters”, and

(b) regulating national mediation proceedings in civil disputes, including commercial disputes.

The House of Representatives enacts as follows:

PART I
GENERAL PROVISIONS

Short title. 1. This Law may be cited as the Certain Aspects of Mediation in Civil Matters Law of 2012.

Interpretation. 2. In this Law, unless the context otherwise provides-

14 of 1960
50 of 1962
11 of 1963
8 of 1969
40 of 1970
58 of 1972
1 of 1980
35 of 1982
29 of 1983
91 of 1983
16 of 1984
51 of 1984
83 of 1984
93 of 1984
18 of 1985
71 of 1985
89 of 1985
96 of 1986
317 of 1987
49 of 1988
64 of 1990
136 of 1991
149 of 1991
237 of 1991
42(I) of 1992
43 (I) of 1992
102(I) of 1992
26 (I) of 1993
82(I) of 1995
102 (I) of 1996
4(I) of 1997
53(I) of 1997
90(I) of 1997
27 (I) of 1998
53 (I) of 1998
110(I) of 1998
34 (I) of 1999
146 (I) of 1999

“civil dispute” means any dispute which may be an object of civil proceedings by the meaning assigned to this term by virtue of the Courts Law and includes labour disputes but does not include family disputes.

41(I) of 2000
32(I) of 2001
40(I) of 2002
80(I) of 2002
140(I) of 2002
206(I) of 2002
17(I)of 2004
165(I) of 2004
268(I) of 2004
21(I) of 2006
99(I) of 2007
170(I) of 2007
76(I) of 2008
81(I) of 2008
118(I) of 2008
119(I) of 2008
36(I) of 2009
129(I) of 2009
138 (I) of 2009
19(I) of 2010
166(I) of 2011.

123(I) of 2012.

“commercial dispute” means dispute arising from a commercial transaction between undertakings or between undertakings and public authorities, as this term is interpreted by the Combating Late Payment in Commercial Transactions Law.

“Court” means the District Court or any judge thereof having jurisdiction on the matter and includes Labour Disputes Courts.

“cross-border dispute” means dispute under the provisions of section 4.

“family dispute” means dispute falling within the jurisdiction of a family court established and operating under a law of the

Republic;

8 of 1967
25 of 1968
23 of 1969
26 of 1970
34 of 1972
66 of 1972
5 of 1973
85 of 1979
55 of 1980
65(I) of 1993
79(I) of 1996
26(I) of 1997
110(I) of 1999
165(I) of 2001
66(I) of 2002
72(I) of 2002
169(I) of 2002
18(I) of 2005.

“legal person” means any entity having legal personality recognized as such pursuant to the relevant laws of the Republic or any other relevant applicable legislation, except for the states or other organizations governed by public law in the exercise of state authority and the public international organizations;

“mediation” means a structured process, however named or referred to, whereby two or more parties to a dispute attempt by themselves, on a voluntary basis, to reach an agreement on the settlement of their dispute with the assistance of a mediator:

Provided that, it excludes any attempt that may be made by the Court or judge seized to settle a dispute in the course of judicial proceedings concerning the dispute in

question.

“mediator” means any third person registered in the Register of Mediators who is asked to conduct a mediation by virtue of this Law.

“member state” means a member state of the European Union, with the exception of Denmark;

“Minister” means the Minister of Justice and Public Order

“parties” means natural persons or legal entities who use mediation;

“Register of Mediators” means the register of mediators kept pursuant to the provisions of section 6;

PART II

SCOPE

Scope.

3. – (1) Subject to the provisions of subsection (2), this Law shall be applied to civil disputes, including cross-border disputes.

(2) This Law shall not apply -

(a) to any civil disputes, whether cross- border or not, concerning certain rights and obligations, for which the parties are not free to decide themselves under the relevant applicable law;

(b) to labour disputes which are not included in the cross-border disputes, notwithstanding if no rights and obligations are raised thereof, for which the parties are not free to decide

themselves under the relevant applicable law;
and

- (c) to any revenue, customs or administrative disputes, or matters relating to the liability of the state for acts or omissions in the exercise of state authority. (“acta jure imperii”).

Cross-border
disputes.

4. – (1) A cross-border dispute shall be any dispute in which at least one of the parties is domiciled or habitually resident or trades or works in a member state other than that of any other party to the dispute on the date on which-

- (a) the parties have agreed to use mediation, after the dispute has arisen;
- (b) reference of the dispute to mediation was ordered by a Court of a member state;
- (c) an obligation to use mediation arises under national law of a member state;
- (d) the parties were invited to appear before a Court, for an information session, as provided for in subsection(1) of section 15.

(2) Notwithstanding the provisions of subsection (1), for the purposes of sections 23 and 27, a cross-border dispute shall also be any dispute in which any judicial proceeding or arbitration following mediation between the parties is initiated in a Member State other than that in which the parties were domiciled or habitually resident on the date referred to in paragraphs (a), (b) or (c) of subsection (1).

(3) For the purposes of this section, the domicile of a party in the dispute shall be determined in accordance with Articles 59 and 60 of Council Regulation (EC) No. 44/2001, of

Official Journal of
E.U.: L 12

16.01.2001,
p.12.

22 December 2000, on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

PART III
MEDIATION AND MEDIATORS

Mediation.

5. –(1) Mediation may take place at anytime, as well as in the context of judicial proceedings and shall be conducted only by a person who-

(a) is registered in the Register of Mediators by virtue of subparagraphs (i) or (ii) of paragraph (a) of section 7, where the mediation in question concerns commercial dispute and

(b) is registered in the Register of Mediators by virtue of subparagraphs (i) of paragraph (a) of section 7, where the mediation in question concerns civil dispute, other than commercial and shall submit to the Minister certification that he has attended a programme of training as a Mediator as well as certification of continuing his professional training, in accordance with the provisions of section 12.

(2) For the purposes of paragraph (b) of subsection (1) of this section, a person shall be considered to be properly trained if he submits to the Minister certification that he has attended a programme of training as a Mediator as well as certification of continuing his professional training, in accordance with the provisions of section 12.

(3) Mediation may be conducted for a part or for the whole of the dispute.

Register of Mediators.

6. - (1) The Minister shall keep a special register in which there shall be registered, after submitting an application and upon payment of the prescribed, by virtue of section 9, fee, persons who wish to conduct mediation as mediators and who fulfill the requirements in accordance with sections 5 and 7.

(2) The Register of Mediators shall be published in the website of the Ministry of Justice and Public Order:

Provided that, the first Register of Mediators to be made by virtue of this Law, shall be published within six (6) months, from its entry into force, at the latest.

Registration in the Register of Mediators.

7. Any person may be registered in the Register of Mediators, who –

- (a) (i) is enrolled in the Roll of Advocates and holds an annual license of practising as an advocate in accordance with the Advocate's Law and, if he wishes to conduct mediation by virtue of paragraph (b) of subsection (1) of section 5, is properly trained, as provided for in the said section; or

Cap. 2
42 of 1961
20 of 1963
46 of 1970
40 of 1975
55 of 1978
71 of 1981
92 of 1983
98 of 1984
17 of 1985
9 of 1989
175 of 1991
212 of 1991
9 (I) of 1993
56 (I) of 1993
83 (I) of 1994
76 (I) of 1995
103 (I) of 1996
79 (I) of 2000
31 (I) of 2001

41(I) of 2002
180 (I) of 2002
117 (I) of 2003
130 (I) of 2003
199 (I) of 2004
21(I) of 2005
65(I) of 2005
124 (I) of 2005
158(I) of 2005
175 (I) of 2006
117 (I) of 2007
103 (I) of 2008
109(I) of 2008
11(I) of 2009
130(I) of 2009
4(I) of 2010
65(I) of 2010
14 (I) of 2011
144 (I) of 2011
116 (I) of 2012.

(ii) is a member of the Cyprus Chamber of Commerce and Industry or the Cyprus Scientific and Technical Chamber, is the holder of a recognized university degree and has attended a special training programme to become a mediator of total forty (40) hours, organized by the Cyprus Chamber of Commerce and Industry, or the Cyprus Scientific and Technical Chamber, or has attended an equivalent programme;

(b) does not hold any public post, either permanent, or temporary, or by substitution in the public service;

(c) has not been convicted of a serious criminal offence or an offence involving dishonesty or moral turpitude;and

(d) is not under a trusteeship or guardianship and he is not deprived of his legal capacity.

Striking off of the mediator from the Register of Mediators.

8. Striking off a mediator from the Register of Mediators, is conducted by the Minister, upon a justified recommendation of the district professional association or the Cyprus Chamber of Commerce and Industry or the Cyprus Scientific and Technical Chamber, as the case maybe, for any of the following reasons:

- (a) if the requirements provided for in section 7, cease to be complied with after the registration in the Register of Mediators or if it is ascertained that such were absent at the time of registration;
- (b) death of the mediator;
- (c) if he submits a request for his striking off of the Register of Mediators;
- (d) if, in accordance with the laws in force of the Republic, he is adjudged bankrupt or an order of appointing a receiver or trustee is issued against him or he makes a compromise with his creditors;
- (e) if he is convicted of a serious criminal offence or an offence involving dishonesty or moral turpitude;
- (f) if he does not act in accordance with the provisions of subsection (2) of section 10, despite the acquirement of a financial or other interest that may affect his impartial judgment;
- (g) abuse of his position in such a way so that continuation of the process of mediation may be proven to be detrimental for the public interest;
- (h) striking off from the Roll of Advocates or from being a member of the Cyprus Chamber of Commerce and Industry or the Cyprus Scientific and Technical Chamber, as the case may be;

- (i) if although registered in the Register of Mediators by virtue of subparagraph (ii) of paragraph (a) of section 7, he does not submit to the Minister certification of continuing his professional training, in mediation matters, in accordance with the provisions of section 12 or the Cyprus Scientific and Technical Chamber;
- (j) if the district professional association or the Cyprus Chamber of Commerce and Industry, as the case may be, suggests his striking off, after the examination of a complaint or examination ex proprio motu for a breach of the present Law or the European Code of Practice for Mediators.

Registration Fee 9. Mediators shall be registered in the Register of Mediators with the payment of a registration fee to the Minister, the amount of which shall be set or revised by an order of the Minister, published in the Official Gazette of the Republic.

Duties of Mediators. 10. -(1) During the conduct of mediation, the mediator shall perform his duties with diligence, independence and impartiality in an appropriate and effective manner, regardless of his capacity or profession in the Republic and of the way in which he has been appointed or undertook to conduct the said mediation and he is not subject to the control nor is he under the instructions of any person or authority.

(2) The mediator to whom is suggested to perform, or who has already undertaken to conduct the mediation in accordance with the provisions of the present Law, shall be obliged in due time and before accepting his appointment, or as soon as it is clear that there is a conflict of interest or other interest, to declare in writing any conflict of interest or any incident or financial of other interest which may affect or give the impression that it affects his independence and he shall refuse his appointment or resign from being a mediator, as

the case may be, unless the parties explicitly agree that he is in a position to perform the mediation in accordance with the provisions of subsection (1):

Provided that, the circumstances referred above shall include-

- (a) every personal or business relationship of the mediator with one of the parties to the mediation,
 - (b) any, financial or other interest, direct or indirect, of the mediator, in the outcome of the mediation,
 - (c) any activity in the past of the mediator himself or any other person, who is employed or holds any position in the legal entity where the mediator is employed or holds any position, having acted in a capacity other than that of a mediator, for any of the parties.
- (3) Prior to the commencement of the mediation, the mediator must ensure that the parties understand the nature of the mediation process and the role of the mediator and the parties therein.
- (4) During the course of the mediation process, the mediator must ensure that the parties have adequate opportunities to be involved in the process.
- (5) The mediator shall, upon request, disclose to the parties, information concerning his professional background, training and experience in the field of mediation.
- (6) The mediator shall not impose a certain settlement to

the dispute, but may, according to his judgment and with the intention to facilitate the amicable settlement of the dispute, make suggestions which are not binding.

(7) Mediators shall be guided by the European Code of Conduct for Mediators.

Mediator not excluded from his profession.

11. A mediator is not excluded from practicing his profession.

Continuous training of mediator.

12. A person who –

(a) is registered in the Register of Mediators by virtue of subparagraph (i) of paragraph (a), of section 7, and wishes to conduct, as mediator, mediation proceedings by virtue of paragraph (b) of subsection (1), of section 5; or

(b) is registered in the Register of Mediators by virtue of subparagraph (ii) of paragraph (a), of section 7

must continue his training in mediation matters, attending at least twenty-four (24) hours of education every three (3) years from the date of his registration to the Register of Mediators, and submit a relevant certification to the Minister:

Provided that, for a person referred to in paragraph (b) of this section, continuing of his training is conducted through a training programme organized by the Cyprus Chamber of Commerce and Industry, or the Cyprus Scientific and Technical Chamber, or an equivalent programme.

Information to the general public.

13.-(1) The Ministry of Justice and Public Order shall ensure by any means, to provide information to the general public, in particular through the Internet, on how to contact mediators.

(2) Advocates shall inform their clients of the possibility of mediation, as provided in the present Law, for the settlement of their disputes that fall within the scope of this Law.

PART IV MEDIATION PROCESS

Choosing a mediator.

14. – (1) Where the parties have agreed to use mediation for the settlement of their dispute or disputes, they shall mutually choose a mediator from the Register of Mediators:

Provided that, where the parties do not agree who the mediator will be, mediation shall not take place.

(2) A Mediator may refuse his appointment without giving any justification.

Reference to mediation by Court.

15. -(1) A Court, before which judicial proceedings are brought, in relation to a case that falls within the scope of this Law, at any stage of the proceedings and before the issue of a decision, may -

(a) invite the parties to appear before it, to inform them on the use of mediation and the possibility of settlement of their dispute by using this procedure; and

(b) upon a common request of all the parties or one of them, with the explicit consent of the others, when appropriate and having regard to all the circumstances of the case, postpone the judicial proceedings so that

mediation can take place.

(2) In the event that any of the parties does not agree to use mediation, the Court shall proceed with the judicial proceeding.

(3) In the decision of the Court to postpone the judicial proceeding, issued by virtue of subsection (1) explicit reference is made to the consent of the parties and to the duration of the mediation, which may not exceed three (3) months.

(4) With the completion of the time-limit set out in the Court decision, the parties shall inform the Court of the procedure followed and the result of the mediation and may, in case no agreement on the settlement is reached, ask for extension of the duration of the mediation, for a period not exceeding three (3) months.

(5) The Court may, in proprio motu, or, at the request of any of the parties, interrupt the mediation procedure before the end of the time-limit provided for by virtue of this section.

(6) A Court decision issued by virtue of subsection (4) or by subsection (5) is not subject to an appeal.

Mediation
Agreement.

16. Without prejudice to the provisions of section 15 and subsection (3) of section 21, prior to the commencement of the mediation, the parties and in consultation with the mediator agree on the manner in which the mediation is to be conducted, its duration, the obligation of confidentiality of the process, the mode of remuneration of the mediator and the terms of his payment, any other expenses of the process and any other matter they deem necessary:

Provided that, notwithstanding any term of the agreement, the parties may terminate the mediation procedure whenever they desire.

Commencement of the mediation process.

17. The date of commencement of the mediation procedure shall be the date that the mediation agreement was signed, where this is drawn up in writing, or, in case section 15 applies, the date of the issue of the decision referred to in subsection (3) of the said section, or, in any other case, on the date when the mediator took specific actions to start the mediation process.

Mediation process.

18.-(1) Mediation shall be confidential and the confidentiality shall bind all the parties therein.

(2) The mediator may, if he considers it appropriate, communicate and hold meetings with the parties separately, and any information disclosed to mediators by any of the parties shall be confidential and shall not be disclosed to the other party, or to any third party without prior permission of the party giving the said information.

(3) Without prejudice to the provisions of this section, the mediation process may be conducted with the use of modern communication technologies.

Place and time of mediation process.

19.-(1) The mediator shall indicate where the mediation is to be conducted, taking into account the circumstances of the case, and any wishes the parties may express for easy access to the place.

(2) The mediator shall consult with the parties in order to set appropriate dates to conduct the mediation process.

Language of mediation.	20. The mediator shall, in agreement with the parties, indicate the language or languages in which the mediation process takes place and in which the settlement agreement is set out.
Appearances.	<p>21. - (1) The parties shall appear before the mediator in person, or together with any other person, including a lawyer.</p> <p style="padding-left: 40px;">(2) Where any of the parties is a legal person, this shall be represented by a natural person duly authorized to act on his behalf, and shall, for this purpose, before the commencement of the mediation, provide the mediator the relevant decision of the legal person.</p> <p style="padding-left: 40px;">(3) Where a party in a mediation process is appearing with a lawyer, the relevant expenses are borne by that party.</p>
Deposition of an expert.	<p>22.-(1) An expert may make a deposition during the mediation if called by-</p> <p style="padding-left: 40px;">(a) the mediator, with the consent of the parties and taking into consideration the complexity of the dispute, or</p> <p style="padding-left: 40px;">(b) any party in the dispute.</p> <p style="padding-left: 40px;">(2) Where the mediator is called by a party in the mediation, the expenses shall be borne by that party.</p>
Confidentiality of mediation.	23.-(1) Subject to the provisions of subsection (1) of section 18 and notwithstanding any other law, and unless the parties have otherwise agreed, the mediator and any other person involved in the administration or otherwise in the mediation process, shall not give evidence in any civil judicial proceedings or arbitration, regarding any information arising out of, or, in connection with a mediation process, except-

(a) where this is necessary for overriding reasons of public order of the Republic, in particular when required to ensure the protection of the best interests of children or to prevent harm to the physical or psychological integrity of a person, or

(b) where disclosure of the content of the agreement resulting from mediation is necessary in order to implement or enforce that agreement.

(2) The obligation of the mediator for confidentiality continues even after the termination of his professional activities as a mediator, both for the period that he is registered as a mediator, and after his striking off for any reason, from the Register of Mediators.

Statement before a mediator.

24. Notwithstanding the provisions of any other law and subject to the provisions of section 23 of this Law, a statement made before the mediator during the mediation process, is not admissible as evidence against any person, before the Court.

Omission or inability to perform the duties of the mediator.

25.-(1) In the case of legal or actual inability to perform the duties of the mediator, or where he omits to act without an unjustifiable delay, his mandate as a mediator is terminated, with his resignation, or where this is agreed by the parties, or where any of the parties terminates his mandate for mediation.

(2) Resignation of the mediator or agreement of the parties or decision of any of the parties to terminate the mandate of

the mediator under the circumstances of this section does not imply admittance of the allegations made.

Replacement of mediator.

26. The mediator is replaced in case of his striking off from the Register of Mediators by virtue of section 8 or termination of his mandate by virtue of section 25 or recall of his mandate with the agreement of the parties, or in any other case of termination of his mandate and replacement thereof is made in accordance with the provisions of section 14.

Effect of mediation on limitation and prescription periods.

27.-(1) Commencement of mediation in accordance with the provisions of section 17 implies suspension of the limitation and prescription period during the mediation process.

(2) If mediation fails, the limitation or prescription period which was suspended, continues to run on the date the mediation process ends.

(3) Subsection (1) should not affect provisions on limitation or prescription periods of international agreements to which the Republic is a party.

PART V END OF MEDIATION PROCESS AND AGREEMENT

End of mediation process.

28.-(1) The mediation process ends -

(a) by the conclusion of an agreement between the parties;

(b) by drawing up of minutes for not reaching an agreement;

(c) by an agreement of the parties to terminate the process;

- (d) in case one of the parties does not consent to its continuation;
- (e) if the mediator considers, for any reason, that continuing the mediation is unnecessary or impossible;
- (f) if a settlement is being reached that for the mediator appears illegal;
- (g) if the mediator considers that the settlement of the dispute may not be admitted to Court.

(2) The termination of the mediation implies the termination of the mandate of the mediator.

Keeping of mediation documents by mediator.

29. All the documents concerning the mediation process shall be kept by the mediator for a period of at least seven (7) years from the date of the termination of the mediation.

Conclusion of agreement.

30.-(1) In case of an agreement between the parties for settlement of the whole or part of their dispute, the mediator draws up in writing an agreement, which includes-

- (a) the particulars of the mediator;
- (b) the place and time of the mediation;
- (c) the particulars of the parties;
- (d) the particulars of persons who participated in the mediation process;
- (e) the mediation agreement in relation to the matters referred to in section 16;
- (f) the terms of the agreement which was reached by the parties to the mediation;
- (g) the date of the agreement.

(2) The agreement may also provide that the parties consent to the filing by any party of an application for

execution of the agreement under section 32.

(3) The settlement agreement is signed by the mediator and the parties in person.

(4) The mediator shall provide the parties to the agreement with a copy of the settlement agreement.

No agreement.

31.-(1) Where no agreement is reached during the mediation process, the mediator shall prepare a minute, stating that no agreement is reached and which is signed by himself and if they desire so, by the parties,

(2) The mediator shall provide copy of the minutes mentioned in subsection (1) to the parties to the mediation.

Enforceability of agreement.

32.- (1) Request for enforceability of agreement resulting from mediation may be made in Court-

(a) jointly by all parties; or

(b) by one of the parties with the explicit consent of the others, unless this explicit consent is provided for under the settlement agreement.

(2) Where the settlement agreement is drawn in a language other than the Greek language, the Court may also request a duly certified translation of it, in the Greek language.

(3) After the request made, under subsection (1), the Court may-

(a) make enforceable, the whole or part of the settlement agreement, the same way a judgment or Court order is

enforced and in such case may issue a Court decision with the content of the settlement agreement; or

(b) reject the request for enforceability of agreement, if it considers that, either the content of the agreement is contrary to the law, or is unenforceable or that the dispute is unlikely to be settled by mediation.

(4) Decision of the Court to reject the request for enforceability of agreement, for the reasons referred to in subsection (3) may be appealed with the same way that a Court decision is appealed.

(5) Competent to receive requests in accordance with subsection (1) of this section, is the Court in the jurisdiction of which falls the dispute in question, in accordance with the laws of the Republic and notwithstanding the place the mediation process takes place.

(6) Nothing in this section shall affect the rules applicable to the recognition and enforcement in another Member State of an agreement made enforceable in accordance with this section.

PART VI REGULATIONS AND RULES OF COURT

Regulations. 33. The Council of Ministers may make Regulations published in the Official Gazette of the Republic for the better application of the provisions of this Law, with exception matters that are explicitly referred to in this Law that are regulated by Rules of Court.

Rules of Court. 34. The Supreme Court may make Rules of Court

published in the Official Gazette of the Republic for setting the procedure of depositing the settlement agreement to the Court or for any other matter which is by its nature regulated by Rules of Court.