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Conciliation Act

Passed 18.11.2009
RT I 2009, 59, 385
Entry into force 01.01.2010

Chapter 1 GENERAL PROVISIONS

§ 1. Scope of application of this Act

(1) This Act governs conciliation proceedings in civil matters, including the legal consequences of conciliation proceedings conducted in accordance with the procedure prescribed in this Act.

(2) For the purposes of this Act, conciliation proceedings means a voluntary process in the course of which an impartial third party, defined in section 2 of this Act (hereinafter, 'a conciliator' or 'the conciliator'), facilitates communication between parties to conciliation proceedings with the purpose of assisting them in finding a solution to their dispute. A conciliator may, on the basis of the facts of conciliation and the progress of conciliation proceedings, propose to the parties his or her own solutions to the dispute.

(3) Conciliation proceedings are proceedings in a civil matter if the dispute concerned arises from a private law relationship and can be referred to a county court for determination.

(4) In the cases provided by law, conciliation proceedings are mandatory pre-trial proceedings.

§ 2. Conciliator

For the purposes of this Act, a conciliator is:

- 1) a natural person whom the parties have entrusted the task of carrying out the activity described in section 1(2) of this Act. A conciliator may act through a legal person, being employed by the legal person or holding a contract of another type of with the legal person;
- 2) a sworn advocate in the case specified in section 17 of this Act;
- 3) a notary in the case specified in section 16 of this Act;
- 4) in the cases provided by law, a conciliation body of the government or a local authority.

Chapter 2 CONCILIATOR'S OBLIGATIONS

§ 3. Independence and impartiality

(1) A conciliator must be independent and impartial towards parties to conciliation proceedings. A conciliator may not conduct conciliation proceedings in the cases listed in section 23 of the Code of Civil Procedure.

(2) A conciliator may not direct conciliation in a manner that gives the parties an impression that the conciliator has power to make binding decisions in respect of the parties.

(3) In addition to requirements set out in subsections 1 and 2 of this section, #CP1252# n otaries and sworn advocates who perform the duties of conciliator must also observe the independence and impartiality requirements established by legislation which governs their professional activities.

§ 4. Confidentiality of conciliation proceedings

(1) Conciliation negotiations are not public.

(2) The conciliator has a duty of confidentiality in respect of the facts of the conciliation proceedings which he or she has become privy to in the course of the proceedings or outside the proceedings. The duty of confidentiality also extends to legal persons named in section 2(1) of this Act.

(3) The conciliator provides information regarding the facts of the conciliation proceedings only to the parties to the proceedings and their representatives.

(4) A conciliator who is heard as a witness may not be asked questions about or required to explain the facts of the conciliation proceedings which he or she has become privy to in the course of those proceedings.

(5) A court which is hearing a criminal, civil or administrative matter may order a conciliator to provide information regarding the facts of conciliation proceedings if this is justified by a substantial public interest, especially where the protection of a child's interests or a threat to a person's health or life is concerned.

(6) If ordered to do so by a court, the conciliator must provide information regarding the facts of conciliation proceedings to investigative bodies.

(7) A party to conciliation proceedings or his or her successor or representative may relieve the conciliator from the duty of confidentiality in respect of an act by providing a corresponding written consent. If a party is deceased and he or she has no successors or if it is not possible to establish communication with the party, a court may relieve the conciliator from the duty of confidentiality. At the request of the conciliator, a court may also relieve the conciliator from the duty of confidentiality in respect of the facts of conciliation proceedings if other substantial reasons are given. The petition to relieve the conciliator from the duty of confidentiality is filed according to general rules on jurisdiction as applicable to the conciliator. The court determines the petition as a non-contentious matter.

(8) Unless otherwise provided by law, the duty of confidentiality in respect of the facts of conciliation proceedings also extends to third parties who have in their possession documents containing information described in subsection 2 of this section or who have access to such documents. Unless otherwise provided by law, such third parties may be relieved of the duty of confidentiality in respect of information described in subsection 2 as specified in subsections 3–7.

§ 5. Communication with parties to conciliation proceedings

(1) In the course of conciliation proceedings the conciliator may communicate with all parties jointly or with each party separately.

(2) The conciliator may transmit to another party to conciliation proceedings any information regarding the facts which serve as the basis of those proceedings and which have been disclosed to the conciliator by a party to the proceedings. The conciliator may not disclose such information to the other party if the party who disclosed the information to the conciliator disallowed the conciliator's disclosure of the information to the other party.

§ 6. Prohibition to represent a party to conciliation proceedings in different proceedings

A conciliator is prohibited from representing a party to conciliation proceedings in different proceedings which concern the facts that serve as the basis of the conciliation proceedings.

§ 7. Obligation to explain

When a conciliator commences conciliation proceedings, he or she must explain to the parties the nature and legal consequences of the conciliation proceedings and the conciliator's remuneration arrangements.

§ 8. Obligation to document

(1) A conciliator must briefly document the course of conciliation proceedings, amongst other things noting the beginning and end of the proceedings.

(2) A conciliator must preserve the documentation of conciliation proceedings for at least five years.

(3) Notaries and sworn advocates observe the requirements set out in the legislation governing their professional activities regarding preparation, preservation and archiving of documents related to their professional activities.

§ 9. Conciliation fee

(1) The parties to conciliation proceedings are to pay to the conciliator a previously agreed-upon fee for the conciliator's services in conducting the proceedings and to cover the related costs. The conciliator may require the parties to make an advance payment on the conciliation fee.

(2) The parties to conciliation proceedings are jointly and severally liable for payment of the agreed-upon fee to the conciliator or the legal person named in section 2(1) of this Act. Unless they agree otherwise, the parties are not required to reimburse one another's costs.

(3) When conciliation proceedings are conducted as part of court proceedings, any subsequent distribution of costs between the parties to such proceedings is governed by the provisions of the Code of Civil Procedure.

§ 10. Liability

(1) The conciliator and the legal person named in section 2(1) of this Act are held jointly and severally liable for any harm caused by negligent or intentional breach of the terms and conditions specified in Chapters 2 and 3 of this Act.

(2) The conciliator and the legal person named in section 2(1) of this Act are not liable for any harm sustained by a party to the conciliation proceedings as a result of an unfavourable agreement concluded in the course of the proceedings or for any harm sustained by a party to the proceedings as a result of a failure to conclude an agreement, except where such harm is caused by the breach of the terms and conditions of the conciliation proceedings by the conciliator or the legal person named in section 2(1) of this Act.

(3) Any agreement which deviates from subsections 1 and 2 of this section to the detriment of a party to the conciliation proceedings is void.

Chapter 3 COURSE OF CONCILIATION PROCEEDINGS

§ 11. Beginning and end of conciliation proceedings

(1) Conciliation proceedings begin when parties to the proceedings have reached an agreement to refer the dispute to a conciliator and conciliation proceedings have been opened by the conciliator. Conciliation proceedings are also deemed to have begun in the case specified in the first sentence of subsection 2 of this section.

(2) If a court has directed the parties to a dispute to refer their dispute to a conciliator, the conciliator may, at the request of a party, act in accordance with subsections 3 and 4 of section 12 of this Act in order to establish the preparedness of the other party to participate in conciliation proceedings. The conciliator may also act in this manner if the party concerned has not been directed to him or her by a court.

(3) Conciliation proceedings are deemed to have ended when:

- 1) the parties to the proceedings settle their dispute in the course of the proceedings;
- 2) a party to the proceedings expresses its intention to discontinue the proceedings;
- 3) the conciliator discontinues the proceedings in the cases specified in subsection 4 or 5 of this section.

(4) The conciliator may discontinue the conciliation proceedings only for a valid reason, primarily when the likelihood of the parties reaching an agreement is small or when, all things considered, and taking into account the interests of the parties, the conciliator cannot be expected to continue the proceedings, or when the case is essentially unsuitable for conciliation proceedings.

(5) If a person has been granted procedural assistance aid by the government to pay for the services of a conciliator, the conciliator may declare conciliation proceedings to have ended when at least three months have elapsed since the beginning of the proceedings.

§ 12. Certificate of failure of conciliation proceedings

(1) At the request of a party to conciliation proceedings, the conciliator issues a certificate stating the failure of the proceedings (hereinafter, 'the certificate').

(2) The certificate is issued when conciliation proceedings are deemed to have ended pursuant to points 2 and 3 of subsection 3 of section 11 of this Act.

(3) At the request of a party who has been directed to a conciliator by a court, the conciliator issues the certificate also when:

- 1) the conciliator has been approached by one of the parties;
- 2) the conciliator has done everything in his or her power to inform the other party of the intention to conduct conciliation proceedings by transmitting to the other party a notice regarding the time and place of conciliation negotiations;

3) the other party announces its declination to participate in the proceedings or does not turn up without a valid reason at the conciliation negotiations or demonstrates its unwillingness to participate in the proceedings by his or her behaviour in some other manner.

(4) The notice referred to in point 2 of subsection 3 of this section is transmitted to the other party by registered letter to an address named by the party who approached the conciliator or to an address known to the conciliator.

§ 13. Reaching a settlement between parties

(1) At the request of the parties to the conciliation proceedings, the conciliator formulates a written settlement agreement which is signed by the conciliator and the parties.

(2) At the request of the parties, the notary who conducted the conciliation proceedings authenticates the settlement agreement pursuant to the procedure provided in the Notarisation Act.

§ 14. Enforceable title

(1) A settlement agreement reached between the parties as a result of conciliation proceedings conducted by a conciliator named in points 2 and 3 of section 2 of this Act is declared enforceable by a county court pursuant to section 627¹ of the Code of Civil Procedure, provided the agreement concerns a property claim. A settlement agreement concerning a non-property claim is declared enforceable by the county court only if the parties to conciliation proceedings are in a position to make a compromise agreement in respect of the subject matter of the dispute. The court does not validate settlement agreements which concern disputes regarding the validity of residential lease contracts, their cancellation or vacation of residential premises.

(2) A settlement agreement reached between the parties as a result of conciliation proceedings conducted by a person named in point 1 of section 2 of this Act may be declared enforceable by a county court pursuant to section 627² of the Code of Civil Procedure.

(3) A settlement agreement reached between the parties as a result of conciliation proceedings conducted by a conciliator named in point 2 or 3 of section 2 of this Act concerning a property claim, together with the debtor's obligation to consent to immediate enforcement, is to be authenticated by a notary at the request of the parties pursuant to the procedure provided in the Notarisation Act. The notary must verify whether the settlement agreement was concluded as a result of conciliation proceedings.

(4) A settlement agreement reached between the parties as a result of conciliation proceedings conducted by a conciliator named in point 2 or 3 of section 2 of this Act concerning a non-property claim, together with the debtor's obligation to consent to immediate enforcement, is to be authenticated by a notary only if the parties to conciliation proceedings are in a position to make a compromise agreement in respect of the subject matter of the dispute. The notary will verify whether the agreement was concluded as a result of conciliation proceedings.

(5) A notary is not to declare enforceable any settlement agreements reached between the parties as a result of conciliation proceedings conducted by a conciliator named in point 2 or 3 of section 2 of this Act concerning disputes regarding the validity of residential lease contracts, their cancellation or vacation of residential premises. The notary must verify whether the settlement agreement was concluded as a result of conciliation proceedings.

(6) If a settlement agreement is concluded at the time when the dispute is pending before a court, the parties to conciliation proceedings may, pursuant to section 430 of the Code of Civil Procedure, have the settlement agreement validated by the court hearing the case as a compromise agreement.

§ 15. Limitation period

(1) Any conciliation proceedings provided in this Act are to be regarded as the pre-trial proceedings referred to in section 160(2)(4) of the General Part of the Civil Code Act.

(2) Any conciliation proceedings provided in this Act are to be regarded as negotiations within the meaning of section 167 of the General Part of the Civil Code Act.

Chapter 4 NOTARIES AND SWORN ADVOCATES

§ 16. Notaries as conciliators

(1) A notary is registered as a conciliator by the Chamber of Notaries on the basis of a corresponding application by the notary. Information regarding notaries who wish to act as conciliators is transmitted to the Minister of Justice.

(2) Information regarding notaries who act as conciliators is to be published by the Chamber of Notaries and the Ministry of Justice on their respective websites.

(3) In addition to this Act, the conduct of conciliation work by notaries, including any tangible liabilities entailed by such work, is subject to provisions of the legislation governing notaries' professional activities.

(4) A notary may refuse to conduct conciliation proceedings. If a notary has commenced conciliation, he or she may discontinue it only in the cases provided by law, including the cases specified in subsections 4 and 5 of this Act.

§ 17. Sworn advocates as conciliators

(1) A sworn advocate may work as a conciliator within the meaning of this Act if he or she has submitted a corresponding application to the board of the Estonian Bar Association. Information regarding sworn advocates who wish to provide conciliation services is to be transmitted to the Minister of Justice.

(2) Information regarding sworn advocates who act as conciliators is to be published by the Estonian Bar Association and the Ministry of Justice on their respective websites.

(3) In addition to this Act, the conduct of conciliation work by sworn advocates, including any tangible liabilities entailed by such work, is subject to provisions of the legislation governing sworn advocates' professional activities.

§ 18. Oversight

(1) Oversight in respect of a notary's work as conciliator is performed by the Minister of Justice pursuant to the oversight regulations regarding notaries' professional activities as set out in the Notaries Act and in the Notaries Disciplinary Action Act.

(2) Oversight in respect of a sworn advocate's work as conciliator is performed by the Estonian Bar Association and the Minister of Justice pursuant to the oversight regulations regarding sworn advocates' professional activities as set out in the Bar Association Act.

Chapter 5 PROCEEDINGS IN A CONCILIATION BODY

§ 19. Conciliation body

(1) A conciliation body within the meaning of this Act is a unit which is affiliated to a governmental or local authority agency named in legislation and which acts as a conciliator in the field referred to in section 1(3) of this Act.

(2) The procedure specified in this chapter applies to proceedings in a conciliation body provided the legislation governing the activities of the conciliation body prescribes this. The procedure applies without prejudice to special rules established by the legislation governing the activities of the conciliation body

(3) The individual who conducts conciliation proceedings must observe section 3 of this Act.

(4) The confidentiality of conciliation proceedings is governed by section 4 of this Act.

§ 20. Petitioning a conciliation body

(1) A person who addresses a petition to a conciliation body (hereinafter, 'the petitioner') must do so in writing, stating:

- 1) the name, address and other contact information of the petitioner;
- 2) the name, address and other contact information of the other party;
- 3) the facts of the dispute;
- 4) the petitioner's request and the facts upon which the petitioner founds his or her request.

(2) Documentary evidence may be annexed to the petition, including documents recording the course of any negotiations conducted so far with the other party, such as the other party's reply to the petitioner's request.

(3) In the petition, the petitioner may put forward his or her own settlement proposal.

(4) If the petitioner acts through a representative, the representative's power of attorney must be annexed to the petition.

§ 21. Dismissing a petition

- (1) A conciliation body will dismiss a petition if:
 - 1) the conciliation body is not competent to deal with the dispute or
 - 2) a final ruling has been made by a court in the dispute.
- (2) The petitioner must be immediately informed of the dismissal of the petition and of the grounds of the dismissal.
- (3) If a petition does not include all required information, the conciliation body must give the petitioner a time-limit by which he or she is required to provide the missing information. If the petitioner fails to provide the missing information by the time-limit, the conciliation body may dismiss the petition, informing the petitioner thereof.

§ 22. Commencing conciliation proceedings

- (1) After having accepted a petition, the conciliation body immediately transmits a copy of the petition to the other party and gives a reasonable time-limit for the other party to provide a written reply. The written reply must include the other party's position in respect of the assertions included in the petition and any settlement proposals made.
- (2) In the cases and pursuant to the procedure provided by law a conciliation body may order a party to participate in the proceedings.
- (3) The conciliation body must explain to the other party the facts related to the conciliatory character of the proceedings, to legally binding effects of the outcome of the proceedings and to the duty to participate in the proceedings.
- (4) In the reply, the other party may make proposals to resolve the dispute by way of entering a settlement agreement.
- (5) The conciliation body transmits a copy of the reply referred to in subsection 1 of this section to the petitioner. The petitioner must inform the conciliation body within the established time-limit whether he or she agrees to the proposal which the other party has made to resolve the dispute.
- (6) If the petitioner and the other party agree to the proposal referred to in section 20(3) of this Act or in subsection 4 of this section, a written settlement agreement between the parties is formalised by the conciliation body pursuant to section 26 of this Act.

§ 23. Conciliation meeting

- (1) If the petitioner and the other party have failed to reach a settlement pursuant to section 22(6) of this Act, the conciliation body arranges a conciliation meeting between the petitioner and the other party or their representatives. A representative may participate in the meeting only if he or she is authorised to execute a settlement agreement on behalf of the party he or she represents.
- (2) The conciliation body sets the time and place of the meeting and sends out invitations to the petitioner and the other party. If appearance at the meeting is mandatory, this and the consequences of the failure to appear at the meeting must be explained in the invitation. The meeting must be arranged within one month from the date the petition was lodged. This time-limit may be extended for a valid reason.
- (3) At the reasoned request of a party, or in the presence of another valid reason, the time-limit referred to in subsection 2 of this section may be longer.
- (4) Any meetings which take place during conciliation proceedings are closed meetings.
- (5) A meeting is chaired by the person who has been appointed by the conciliation body and who carries out a hearing of the parties and examines any documents or other evidence presented in the case.

§ 24. Experts and witnesses

- (1) At the request of a party and provided that the conciliation body deems it necessary, an expert may be asked to provide an opinion to clarify the facts of the dispute. The conciliation body may hear the other party in the matter.
- (2) Experts and witnesses may be asked to participate and may be heard in a conciliation meeting pursuant to the procedure specified in subsection 1 of this section.
- (3) Any expert and witness costs must be paid by the parties in advance. Unless agreed otherwise, the costs are paid by the party at whose request the expert or witness is called to participate in the proceedings.

§ 25. Proposal to resolve the dispute and conclude a settlement agreement

(1) If the parties fail to reach a settlement during a conciliation meeting, the conciliation body may present to the parties its own settlement proposal if it deems the making of such a proposal reasonable considering the facts of the dispute. The conciliation body must explain the content of the conciliation proposal to the parties.

(2) The proposal referred to in subsection 1 of this section may also be made to the parties after a conciliation meeting has taken place. In this case, the conciliation body must announce during the conciliation meeting the time-limit within which a conciliation proposal will be transmitted to the parties.

(3) If it is just and reasonable in light of the facts of the dispute and the conciliation proceedings, the conciliation body may recommend in the settlement proposal that a party reimburse to the other party reasonable expert, translation and witness costs which have been or are to be paid by the other party.

(4) The conciliation body must explain to the parties the legal significance of validating the settlement agreement referred to in section 26 of this Act.

(5) The parties may within ten working days as of the date of receiving the proposal or within a longer time period determined by the conciliation body respond to the proposal of the conciliation body by either accepting or rejecting it. Failure to respond is regarded as rejection of the proposal.

(6) If the parties have not expressed their acceptance of the settlement proposal within the time period prescribed in subsection 5 of this section, the conciliation body must conclude that no settlement has been reached and communicate this to the parties.

§ 26. Validation of a settlement agreement

When the parties accept a settlement proposal, the conciliation body validates the settlement agreement and communicates it to the parties in writing by transmitting to them copies of the agreement.

§ 27. Ending of conciliation proceedings

(1) The conciliation body deems conciliation proceedings to have ended:

- 1) when a party declares to the conciliation body that it wishes to discontinue the proceedings;
- 2) when a party's conduct demonstrates an unwillingness to participate in the proceedings, primarily when the party fails to provide a written reply to the conciliation body within an established time-limit, or fails to carry out a required procedural step without a valid reason or otherwise impedes the conduct of conciliation proceedings;
- 3) in the case referred to in section 25(6) of this Act;
- 4) in the case referred to in section 26 of this Act.

(2) The conciliation body informs the parties of the ending of conciliation proceedings if the conciliation proceedings have ended pursuant to point 1 or 2 of subsection 1 of this section.

(3) If a person has been ordered to participate in conciliation proceedings in the cases and pursuant to the procedure provided by law, the conciliation proceedings may not be ended pursuant to points 1 or 2 of subsection 1 of this section before the conciliation body has presented a settlement proposal pursuant to section 25(1) of this Act.

§ 28. Performance of a settlement agreement

(1) A settlement agreement validated by a conciliation body is binding to the parties and must be performed by them. The agreement must be performed within 30 days as of the day following the day when copies of the agreement were transmitted to the parties, unless a different time-limit is stipulated in the agreement.

(2) If a settlement agreement is not performed within the time-limit referred to in subsection 1 of this section, any of its parties is entitled to present the settlement agreement validated by a conciliation body to a bailiff for enforcement pursuant to the procedure specified in the Code of Enforcement Procedure.

§ 29. Recourse to a court

(1) If conciliation proceedings have been discontinued or if a conciliation body has concluded that no settlement has been reached, the parties are entitled to seek protection of their rights by recourse to a court.

(2) A party may contest a settlement agreement validated by a conciliation body by filing a corresponding petition with a court if the conciliation body has committed a significant breach of conciliation procedure and that breach has affected or could have affected the substance of the settlement agreement.

(3) A petition for a ruling that a significant breach of conciliation procedure has been committed by a conciliation body may be filed within 30 days from the announcement of the validation of the settlement agreement with the county court in whose jurisdiction the location of the conciliation body lies. The petition is determined as a non-contentious matter.

(4) If a court finds that a conciliation body has committed a significant breach of conciliation procedure which has affected or may have affected the substance of a settlement agreement, the settlement agreement validated by the conciliation body is declared void and the parties are entitled to seek recourse to the courts for protection of their rights after the corresponding order has become final.

Chapter 6

IMPLEMENTING PROVISIONS

§ 30. –§ 35. Sections amending other Acts. Omitted from translation

§ 36. Entry into force of this Act

This Act enters into force on 1 January 2010.

Ene ERGMA
President of the Riigikogu