

REPUBLIC OF LITHUANIA
LAW ON
CONCILIATORY MEDIATION IN CIVIL DISPUTES

15 July 2008 – No X-1702

(As last amended on 24 May 2011 – No XI-1400)

Vilnius

Article 1. Purpose of the Law

1. This Law shall establish the basic conditions of conciliatory mediation in civil disputes and legal consequences of its use.

2. This Law shall apply to extrajudicial and judicial conciliatory mediation in civil disputes, with the exception of the disputes that arose out of such civil rights and duties the settlement agreements concluded whereon would be considered void under the law. This Law shall not apply to judicial conciliation conducted by the judge hearing the case.

3. This Law shall apply to the settlement of national and cross-border disputes.

4. This Law shall not apply to extrajudicial resolution of consumer disputes, where such disputes are heard under extrajudicial dispute resolution procedures in accordance with the Law of the Republic of Lithuania on Consumer Protection or other legal acts.

5. This Law shall implement the legal acts of the European Union listed in the Annex to this Law.

6. Other legal acts may provide for peculiarities of conciliatory mediation in civil disputes of specific categories.

Article 2. Definitions

1. **“Party to a civil dispute”** (hereinafter referred to as a **“party to a dispute”**) means a person involved in a dispute whose rights and duties are affected by the resolution of the dispute.

2. **“Civil dispute”** (hereinafter referred to as a **“dispute”**) means a dispute that is or may be heard in civil proceedings in a court of general jurisdiction.

3. **“Conciliatory mediation in civil disputes”** (hereinafter referred to as **“conciliatory mediation”**) means civil dispute settlement procedure whereby one or several mediators in civil disputes assist the parties to a civil dispute in reaching an amicable agreement.

4. **“Agency administering the provision of conciliatory mediation in civil disputes”** (hereinafter referred to as an **“administrator of conciliatory mediation services”**) means a public or private legal person that recommends or appoints mediators, proposes or determines rules for

conciliatory mediation, administers the costs of conciliatory mediation, provides premises for the procedure to be conducted in and/or provides other services related to conciliatory mediation.

5. **“Mediator in civil disputes”** (hereinafter referred to as a **“mediator”**) means a third impartial natural person who is involved in settling a civil dispute between other persons with a view to assisting in reaching an amicable agreement.

6. **“Cross-border civil dispute”** means a dispute in which at least one of the parties’ domicile or habitual place of residence or registered office is in a state other than the state of any other party to the dispute on the date on which:

1) the parties to the dispute conclude an agreement on the use of conciliatory mediation after the dispute has arisen;

2) a court, where this is provided for by the law, indicates to use conciliatory mediation;

3) an obligation to use conciliatory mediation arises under legal acts;

4) the court suggests to the parties to the dispute to attempt settling the dispute through conciliatory mediation.

7. In line with the provisions of Articles 7 and 8 of this Law, a dispute for the settlement of which a judicial or arbitral procedure is initiated in a state other than the state of domicile or the habitual place of residence or registered office of the parties to the dispute on the date specified in subparagraphs 1, 2 or 3 of paragraph 6 of this Article, after conciliatory mediation between the parties to the dispute has been held, shall also be considered a cross-border civil dispute.

Article 3. Conciliatory Mediation Agreement

1. Conciliatory mediation shall be used on the basis of a written agreement between the parties to a dispute. The parties to the dispute may agree on conciliatory mediation either after the dispute has arisen or prior to it.

2. Where parties to a dispute agree to settle the dispute through conciliatory mediation, they must attempt to settle the dispute by this procedure before referring to court or arbitration. If a conciliatory mediation agreement sets time limits for the termination of conciliatory mediation, the party to the dispute may refer to court or arbitration only after the expiry of these time limits. Where no time limits for the termination of conciliatory mediation have been set in the conciliatory mediation agreement, the party to the dispute may refer to court or arbitration one month after suggesting to the other party to the dispute in writing to settle the dispute through conciliatory mediation. The party to the dispute may refer to court disregarding the time limits set in this paragraph if conciliatory mediation terminates in accordance with Article 9 of this Law.

3. The court hearing a civil case may suggest to the parties to a dispute that they attempt to settle the dispute through conciliatory mediation. If the parties to the dispute accept the court’s suggestion, the court shall adjourn the case.

Article 4. Appointment of Mediators, their Impartiality, Professional Conduct and Responsibility

1. A mediator shall be appointed by agreement between the parties to a dispute and with the consent of the mediator. The appointment of the mediator and his consent shall be executed in writing, usually also incorporating the provision on the mediator's duty to adhere to the European Code of Conduct for Mediators.

2. The number of mediators shall be set by agreement between the parties to a dispute. Where there is no agreement between the parties to the dispute, one mediator shall be appointed.

3. Parties to a dispute may agree that a third party or an administrator of conciliatory mediation services will select or recommend a mediator for them. Where this is provided for in a conciliatory mediation agreement or where there is no agreement between the parties to the dispute regarding the selection of a mediator, the mediator may, at the joint request of the parties to the dispute, be appointed by a district court in accordance with the simplified procedure set forth in Chapter XXXIX of the Code of Civil Procedure of the Republic of Lithuania. A person shall be appointed mediator only with his written consent.

4. A mediator must act with impartiality towards the parties to a dispute. The mediator may accept a proposal to commence conciliatory mediation or continue the commenced conciliatory mediation only where he has informed the parties to the dispute of the circumstances known to him likely to give rise to doubts regarding his impartiality and where the parties to the dispute have agreed that he would conduct conciliatory mediation.

5. A mediator must provide the parties to a dispute with information on his education and experience.

6. A mediator may not act as an arbitrator or a judge in the same dispute wherein he conducted or is conducting conciliatory mediation, with the exception of the cases where the parties to a dispute agree in writing to appoint the mediator as an arbitrator and he has no objections thereto. In addition, the mediator may not act as a counsel or other representative of any party to the dispute in the same dispute wherein he conducted or is conducting conciliatory mediation.

7. Conciliatory mediation may be provided for remuneration and free of charge. Where conciliatory mediation is provided for remuneration, the procedure shall commence only after a mediator agrees in writing with the parties to a dispute regarding the amount of remuneration and the procedure of payment.

Article 5. Conciliatory Mediation Procedure

1. Parties to a dispute may agree on the nature and procedure of conciliatory mediation by indicating a preferred set of rules or by establishing individual rules for conciliatory mediation

subject to mutual agreement. Information and electronic communication technologies may be used in the process of conciliatory mediation by mutual agreement of the parties to the dispute.

2. Where there is no agreement between the parties to a dispute on the nature and procedure of conciliatory mediation or where an agreement between the parties to the dispute does not provide for specific actions to be taken by a mediator, the mediator must perform specific actions properly, taking into account the circumstances of the dispute, including possible imbalances of power between the parties to the dispute, any wishes of the parties to the dispute and the need for a prompt settlement of the dispute, and acting in compliance with legal acts.

3. A mediator may hold a meeting with one party to the dispute without the other party to the dispute attending the meeting.

4. Only parties to a dispute, their representatives and a mediator may be present in the process of conciliatory mediation. At the request or with the consent of the parties to the dispute, other persons may also be present in the process of conciliatory mediation. Having established that there are more parties involved in the dispute being settled, the mediator shall propose to the parties participating in the dispute settlement procedure to agree with the other parties involved in the dispute to settle the dispute through conciliatory mediation.

5. Any party to a dispute can withdraw from conciliatory mediation without specifying the reasons for withdrawal. This shall not prevent the parties to the dispute from repeatedly agreeing to settle the dispute through conciliatory mediation.

6. A mediator shall inform the parties to a dispute and terminate conciliatory mediation if an amicable agreement which may be reached by the parties to the dispute is, in the mediator's opinion, unenforceable or illegal, having regard to the circumstances of the dispute and the competence of the mediator, or if the mediator recognises that continuing conciliatory mediation is unlikely to result in a settlement.

Article 6. Settlement Agreement

1. Settlement agreements concluded in the course of conciliatory mediation shall be subject to the requirements set forth in the Civil Code of the Republic of Lithuania and other laws.

2. A settlement agreement concluded by the parties to a dispute in the course of conciliatory mediation shall have a statutory effect on the parties to the dispute.

3. Where a dispute being settled through conciliatory mediation is not simultaneously heard in court, a settlement agreement may, at the joint request of the parties to the dispute or one of the parties to the dispute with the written consent of the other party to the dispute, be submitted to court for approval in accordance with the simplified procedure set forth in Chapter XXXIX of the Code of Civil Procedure of the Republic of Lithuania. The application for approval of the settlement

agreement shall be lodged, at the choice of the parties to the dispute, with a district court at the place of residence or registered office of one of the parties to the dispute. An effective settlement agreement approved by a court ruling shall be treated as a final judgment (*res judicata*) by the parties to the dispute and its execution may be enforced.

Article 7. Confidentiality

1. Unless parties to a dispute have agreed otherwise, the parties to the dispute, mediators and administrators of conciliatory mediation services must keep confidential all information regarding conciliatory mediation and related issues, with the exception of the information required to approve or execute a settlement agreement concluded in the course of conciliatory mediation and information failure to disclose whereof would contravene the public interest (particularly where a child's interests need to be safeguarded or where a risk of damage to a natural person's health or life needs to be prevented). This provision shall also apply to judicial, arbitration and other dispute settlement procedures, either related or unrelated to the dispute which was settled through conciliatory mediation.

2. A mediator may not disclose any confidential information provided to him by one party to the dispute to the other party to the dispute without the consent of the party that has submitted the information.

3. In the event of nonfeasance or misfeasance of the obligations set in paragraphs 1 and 2 of this Article, mediators and administrators of conciliatory mediation services shall be held liable under the law.

Article 8. Suspension of Limitation Periods

1. Upon commencement of conciliatory mediation, limitation periods shall be suspended.

2. For the purposes of suspension of limitation periods, commencement of conciliatory mediation shall be considered the day on which one party to a dispute directly or through another person (representative, mediator, administrator of conciliatory mediation services or any other authorised person) sends a written proposal to the other party to the dispute on the settlement of the dispute through conciliatory mediation.

3. Where conciliatory mediation terminates without a settlement agreement, the limitation periods shall resume. In this case, the remaining limitation period shall be extended in accordance with paragraph 3 of Article 1.129 of the Civil Code of the Republic of Lithuania.

Article 9. Termination of Conciliatory Mediation

The moment of termination of conciliatory mediation shall be considered:

1) the day on which one party to the dispute sends the other party to the dispute a written statement objecting to the settlement of the dispute through conciliatory mediation. Where the parties to the dispute have not concluded a conciliatory mediation agreement and one party to the dispute has presented to the other party to the dispute a proposal specified in paragraph 2 of Article 8 of this Law, it shall be considered that conciliatory mediation terminates at the earliest of the following: on the day when the party to the dispute that has received the proposal from the other party to the dispute sends a written statement to the other party to the dispute objecting to the settlement of the dispute through conciliatory mediation or one month after the dispatch of the proposal if, within that period of time, the other party to the dispute has not expressed written consent to settle the dispute through conciliatory mediation;

2) on the day when the mediator presents a written notification of termination of conciliatory mediation to all parties to the dispute;

3) on the day when the party to the dispute presents to the mediator and the other party to the dispute a written notification of his withdrawal from conciliatory mediation;

4) on the day when all parties to the dispute present to the mediator a written notification of termination of conciliatory mediation;

5) on the day when the parties to the dispute conclude a settlement agreement.

Article 10. Conciliatory Mediation Services Provided by the State. Promotion of Development of Conciliatory Mediation

1. Judicial conciliatory mediation shall be carried out in courts of general jurisdiction in the cases and according to the procedure established by the Judicial Council.

2. Extrajudicial conciliatory mediation services ensured by the State may be provided in the cases and in the accordance with the procedure laid down by the law.

3. With a view to promoting the development of conciliatory mediation and ensuring its quality, a measures plan, approved by the Ministry of Justice, shall be drawn up.

Article 11. Final Provisions

This Law shall apply solely to conciliatory mediation agreements concluded and conciliatory mediation procedures commenced after the entry into force of this Law.

LEGAL ACTS OF THE EUROPEAN UNION IMPLEMENTED BY THIS LAW

Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (OJ 2008 L 136, p. 3).
