

MEDIATION ACT

GENERAL PROVISIONS

Scope of application

Article 1

- (1) This Act governs mediation in civil disputes including commercial, labour and other disputes, in matters involving rights which the parties may freely dispose of.
- (2) The provisions of this Act shall apply accordingly to mediation in other disputes where the nature of legal relations from which such disputes arise corresponds with these provisions, and unless the rules for the resolution of such disputes are provided for in a separate act.
- (3) The provisions of this Act shall also apply accordingly to mediations in which one of the parties is domiciled, habitually resident, or seated outside the Republic of Croatia.

Purpose of the Act

Article 2

- (1) The purpose of this Act is to facilitate access to mediation as an appropriate method for the resolution of disputes, to ensure the availability of mediation, to raise awareness of mediation by promoting its implementation and by ensuring a balanced relationship between mediation and judicial proceedings.
- (2) In order to achieve the purpose of this Act, the use of mediation and the training of mediators shall be encouraged; all information on mediation, mediators and

mediation organisations shall be published and made available through mass, electronic and other media.

Definitions

Article 3

Pursuant to this Act:

- *mediation* means any proceedings, regardless of whether conducted before the court, a mediation organisation or outside such institutions, in which the parties attempt to resolve their dispute amicably, with the assistance of a mediator or mediators who assist them in reaching a settlement agreement without having the authority to impose any binding solution on them,
- *mediator* means a person who conducts mediation on the basis of an agreement made between the parties,
- *mediation organization* means a legal person, an entity of a legal person or an organizational unit of a legal person which organizes mediation proceedings.

The principles of interpretation of the Act

Article 4

- (1) When interpreting the provisions of this Act, the principles of good faith and internationally accepted mediation standards laid down in the documents of the European Union, the United Nations and the Council of Europe should be observed.
- (2) The issues not provided for in this Act shall be settled in conformity with the principles of voluntariness, effectiveness of the proceedings, equal treatment of

the parties, party autonomy, confidentiality of the proceedings and the mediators' impartiality.

MEDIATION PROCEEDINGS

Mediation and other proceedings on the merits of a dispute

Article 5

Mediation may be conducted notwithstanding any pending judicial, arbitral or any other proceedings relating to the matter in dispute.

Commencement of mediation proceedings

Article 6

- (1) In order to initiate mediation proceedings, it is not necessary for the parties to have made an agreement in advance binding themselves to resolve their future disputes by mediation.
- (2) Mediation commences by the acceptance of an application for mediation, unless it is prescribed or agreed otherwise for disputes where the initiation of mediation proceedings is obligatory.
- (3) Unless the parties agree otherwise, the opposing party must reply to the application for mediation within 15 days from the day it received the application or within any other time limit indicated in the application.

- (4) If the opposing party fails to reply to the application for mediation within the time limit referred to in paragraph 3 of this Article, the application for mediation shall be deemed rejected.
- (5) If the time limit for filing a claim is laid down in a separate act, mediation proceedings in the case referred to in paragraph 4 of this Article shall be considered terminated.

Appointment of mediators

Article 7

- (1) The appointment of mediators shall be carried out in accordance with the rules the parties agreed upon.
- (2) The parties shall agree whether mediation is to be carried out by one or several mediators and who shall be appointed as mediator.
- (3) If the parties are unable to agree on the number of or the person or persons to be appointed as mediators, they shall request that such matters be determined by a mediation organization or by a third party (the appointing authority).

Obligations of mediators

Article 8

- (1) In mediation proceedings, the mediator shall act professionally, to good purpose and impartially.

- (2) The person offered the appointment as a mediator shall reveal any circumstances which might give rise to justified doubt regarding his or her impartiality and independence. Upon appointment, the mediator shall communicate any such circumstances to the parties as soon as he or she acquires knowledge thereof, if he or she has not notified them previously.

Conduct of mediation proceedings

Article 9

- (1) Mediation shall be conducted in the manner agreed upon by the parties.
- (2) In conducting mediation proceedings, the mediator shall maintain a fair and equal relationship with the parties.

Meetings of mediators and parties

Article 10

- (1) In the course of mediation proceedings, the mediator may meet with each party separately.
- (2) Unless the parties have agreed otherwise, the mediator may communicate information or data received by one party to the other party only with the party's consent.

The mediator's right to propose a settlement agreement

Article 11

The mediator may participate in the development of the settlement agreement and propose its content.

Termination of mediation proceedings

Article 12

Mediation is terminated when:

- one party sends a written statement of withdrawal from the mediation proceedings to the other party and to the mediator, except when upon the withdrawal of one party, there are still two or more parties participating in the proceedings and willing to proceed with mediation;
- the parties have sent a written statement to the mediator on the termination of the proceedings;
- the mediator decides to terminate the mediation proceedings, on the grounds that, having given the parties an opportunity to state their positions, it is clear that any further effort to reach an amicable resolution of the dispute is no longer purposeful;
- if no settlement is reached within 60 days from the date of the commencement of mediation proceedings or within any other time limit in accordance with the agreement made between the parties;
- a settlement agreement is concluded.

Effects of the settlement agreement

Article 13

- (1) A settlement agreement concluded in the course of mediation proceedings is binding on the parties. If by the settlement, the parties have taken over some obligations, they are bound to fulfil them in a timely manner.
- (2) A settlement agreement concluded in the course of mediation proceedings shall be an enforcement title if it contains an obligation to perform an act over which the parties may reach a settlement and if it contains the obligor's statement on immediate authorisation of enforcement (an enforcement clause).
- (3) In the enforcement clause, the obligor explicitly agrees that on the basis of the settlement agreement, in order to carry out the performance of the due obligation, immediate enforcement may be ordered. An enforcement clause may also be part of a separate document.
- (4) The enforcement of a settlement referred to in paragraph 2 of this Article shall be rejected if:
 - the settlement agreement is not allowed,
 - the settlement agreement is contrary to public policy,
 - the content of the settlement agreement is not implementable or possible.
- (5) The parties may also agree that the settlement agreement shall be drawn up in the form of a notarial act, a court settlement, or an arbitral award based on the settlement.

Confidentiality

Article 14

- (1) Unless otherwise agreed by the parties, the mediator shall keep all information and data received in the course of the mediation proceedings confidential in

relation to third persons, except where disclosure is required by the law or where it is necessary for the implementation or enforcement of the settlement agreement.

- (2) The mediator shall be liable for the damage caused by his or her violation of the obligation referred to in paragraph 1 of this Article.

- (3) The provisions of paragraphs 1 and 2 of this Article are applied accordingly to the parties and other persons who have participated in mediation proceedings in any capacity.

Admissibility of evidence

Article 15

- (1) In arbitral, judicial or any other proceedings it is not permitted to make statements, propose evidence or submit any other proof in whatever form regarding any of the following:
 - the fact that a party had proposed or accepted mediation;
 - the parties' statements of facts or proposals made during mediation proceedings;
 - admission of claims or facts made in the course of mediation proceedings if such admissions and observations are not a constituent part of the settlement;
 - documents prepared solely for the purpose of mediation proceedings, unless it is stipulated by law that their communication is necessary for the implementation or enforcement of the settlement agreement;
 - the parties' willingness to accept the proposals made during mediation proceedings;
 - other proposals made during mediation proceedings.

- (2) Unless otherwise agreed by the parties, the mediator and the persons participating in mediation proceedings in any capacity may not be forced to testify in arbitral, judicial or any other proceedings in relation to information and data resulting from mediation proceedings or connected therewith.
- (3) In judicial, arbitral or other proceedings, evidence referred to in paragraph 1 shall be rejected as not admissible. Exceptionally, the data or information referred to in paragraph 1 of this Article may be disclosed or used for evidential purposes in proceedings before arbitral tribunals, courts of law or other state bodies where:
- it is necessary for the protection of public order, but only under the conditions and in the scope prescribed by law, or
 - it is necessary for the implementation or enforcement of the settlement agreement.
- (4) Persons who act contrary to paragraphs 1 and 2 of this Article are liable for the damage caused thereby.
- (5) The provisions of paragraphs 1 through 4 of this Article apply regardless of whether arbitral, judicial or other similar proceedings are connected with the dispute that is, or was the subject matter of mediation proceedings.
- (6) Except in the case referred to in paragraph 1 of this Article, evidence that is otherwise considered admissible in arbitral, judicial or other similar proceedings shall not be inadmissible solely because they were used in mediation proceedings.

Incompatibility of the mediator's function

- (1) Unless otherwise agreed by the parties, a mediator may not act as a judge or an arbitrator in a dispute that was, or is the subject of mediation proceedings, or in any other dispute arising from the same legal relationship or a relationship related to it.
- (2) As an exception to paragraph 1 of this Article, the parties may authorise the mediator to render an award based on the settlement in the capacity of an arbitrator.

Effects on periods of limitation and prescription

Article 17

- (1) Parties who have opted for mediation in conformity with this Act in an attempt to settle their dispute shall not be deprived of the possibility of initiating judicial, arbitral or other proceedings because of the expiry of limitation or prescription periods.
- (2) The initiation of mediation proceedings shall suspend the application of the statutes of limitation.
- (3) If mediation terminates without settlement, it is considered that no suspension of limitation occurred.
- (4) As an exception to paragraph 3 of this Article, if within 15 days after the termination of mediation, the parties file a claim, or undertake other procedural activity before the court or other competent authority in order to determine, secure or assert a claim, limitation shall be considered suspended at the moment the mediation proceedings were initiated.

- (5) If the time limit for filing a claim is provided for in a separate regulation, this time limit shall not run during mediation proceedings and it shall start running again upon the expiry of the fifteenth day following the termination of mediation.

*The relationship between mediation and other proceedings
regarding the same subject matter of the dispute*

Article 18

If the parties have agreed on mediation and have expressly undertaken not to institute or continue judicial, arbitral or other proceedings during a specified period of time, or until the fulfilment of precisely determined conditions, such an agreement shall have a binding effect. In that case, the court, arbitrators or other bodies before which the proceedings are initiated regarding the same subject matter, shall reject, at the request of the other party, any submission by which the proceedings are instituted or continued.

Powers of the body conducting the proceedings

Article 19

- (1) During judicial, administrative or other proceedings, the body conducting the proceedings may, in disputes referred to in Article 1 of this Act, recommend to the parties to resolve their dispute in mediation proceedings in accordance with the provisions of this Act if it assesses that there exists the possibility of resolving the dispute by mediation.

- (2) The body referred to in paragraph 1 of this Article may invite the parties to an informative meeting to acquaint them with the use of mediation.

Costs

Article 20

Unless otherwise agreed by the parties, each party shall bear his or her own costs, and as to the costs of mediation, each party shall cover them in equal shares, or in accordance with a separate Act or rules of mediation organisations.

MEDIATION IN CROSS-BORDER DISPUTES

Application of the Act to cross-border disputes

Article 21

- (1) The provisions of this Act also apply to cross-border disputes in civil and commercial matters.
- (2) Under this Act, tax, customs or administrative disputes, or disputes concerning the liability of the State for acts or omissions to act in exercising its powers are not considered to be cross-border disputes.

Cross-border disputes

Article 22

- (1) Under this Act, a cross-border dispute is one in which at least one of the parties is domiciled or habitually resident in a Member State of the European Union (a Member State) where the other party is not on the day when:

- the parties have agreed to avail themselves to mediation after the dispute has arisen ;
- the court has ordered mediation;
- the obligation to use mediation has arisen under national law;
- when the court before which an action is brought has referred the parties to mediation.

(2) Exceptionally, for the purpose of the application of Articles 14 and 17 of this Act, a cross-border dispute is also one in which judicial or arbitral proceedings between the parties are initiated in Member State other than that where the parties were domiciled or habitually resident on the day referred to in the first three subparagraphs of paragraph 1 of this Article.

(3) The provisions on cross-border disputes shall not apply in relation to the Kingdom of Denmark.

Domicile or habitual residence in a cross-border dispute

Article 23

(1) In order to determine whether a party is domiciled in a Member State whose courts are seised of the matter, the court shall apply the law of the Republic of Croatia.

(2) If the party is not domiciled in a Member State whose courts are seised of the matter then, in order to determine whether the party is domiciled in another Member State, the court shall apply the law of that Member State.

(3) A company, another legal person or associations of natural or legal persons are domiciled in the place where they have their:

- statutory seat, or
- central administration, or

- the principal place of business.

(4) In relation to the United Kingdom and Ireland, «statutory seat» means the registered office or, where there is no such office, the place of incorporation or, where there is no such place, the place under whose law the company is incorporated.

(5) In order to determine whether a trust is domiciled in a Member State whose courts are seised of the matter, the court shall apply the applicable conflict of law rules.

*Enforcement of the settlement agreement achieved by mediation
in a cross-border dispute*

Article 24

(1) If a Member State, in accordance with its laws, provides for the possibility for the parties, or for one of them with the explicit consent of the other party, that the content of a written settlement agreement resulting from mediation is determined enforceable, the court in the Republic of Croatia shall recognize and enforce such a settlement under the conditions referred to in Article 13, paragraphs 1 and 4 of this Act.

(2) If the content of the settlement agreement in a Member State is included in some other enforceable document and confirmed by a court or another competent authority in the form of a judgement, order, arbitral award or other enforceable document in accordance with the law of the Member State in which the request is made, the rules on recognition and enforcement of such enforceable documents shall apply on the recognition and enforcement of that enforceable document.

(3) For the application for recognition and enforcement of a settlement agreement referred to in paragraph 1 of this Article, as regards subject matter jurisdiction of

commercial courts, the competent court shall be the Commercial Court in Zagreb, and in other matters, the County Court in Zagreb shall be competent.

TRANSITIONAL AND FINAL PROVISIONS

Rules on the keeping and the form of the register of mediators and on standards for mediators and accreditation of mediation organisations

Article 25

Within three months upon the entry into force of this Act, the minister of justice, as a competent agent for the judiciary, shall adopt the Rules on the keeping and the form of the register of mediators and on standards for mediators and accreditation of mediation organisations.

Termination of validity of this Act

Article 26

- (1) With the entry into force of this Act, the Mediation Act (Official Gazette of the Republic of Croatia, Nos 163/03 and 79/09) shall be repealed.
- (2) Prior to the adoption of the Rules referred to in Article 25 of this Act, the Rules on the keeping and the form of the register of mediators and on standards for accreditation of mediators and mediation organisations (Official Gazette of the Republic of Croatia, No. 13/10) shall remain effective.

Entry into force

Article 27

This Act shall enter into force on the eighth day following its publication in the Official Gazette of the Republic of Croatia, except for the provisions of Articles 21 through 24 of this Act which shall enter into force on the day of the accession of the Republic of Croatia to the European Union.

In Zagreb, 28 January 2011

CROATIAN PARLIAMENT

The President of
the Croatian Parliament
Luka Bebić, m.p.