

MINISTRY OF JUSTICE OF SLOVENIA LEGISLATION

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NATIONAL ASSEMBLY

2339. Mediation in Civil and Commercial Matters Act (ZMCGZ)

Based on the second indent of the first paragraph of Article 107 and the first paragraph of Article 91 of the Constitution of the Republic of Slovenia, I hereby issue the

ORDER

on promulgation of the Mediation in Civil and Commercial Matters Act (ZMCGZ)

I hereby promulgate the Mediation in Civil and Commercial Matters Act (ZMCGZ) adopted by the National Assembly of the Republic of Slovenia at its session on 23 May 2008.

No. 003-02-5/2008-8
Ljubljana, 2 June 2008
dr. Danilo Türk (signed)
President
of the Republic of Slovenia

MEDIATION IN CIVIL AND COMMERCIAL MATTERS ACT (ZMCGZ)

Article 1 (Objective of the Act)

The objective of the Act is to facilitate access to alternative dispute resolution and to promote amicable dispute resolution by encouraging the use of mediation and providing a balance between mediation and court proceedings.

Article 2

(Scope of application)

(1) This Act shall regulate mediation in disputes arising out of civil, economic, labour, family and other property relationships with regard to claims which may be freely disposed of and settled by the parties, unless otherwise stipulated for individual disputes by a special law.

(2) The provisions of this Act shall apply mutatis mutandis also to mediation in other disputes, so far as this complies with the nature of the legal relationship out of which the dispute has arisen and if this is not excluded by a special law.

(3) Subject to the provisions of the fourth paragraph of this Article, this Act shall apply irrespective of the basis upon which the mediation is carried out, including agreement between the parties (whether reached before or after a dispute has arisen), a law, or a direction or recommendation by a court, arbitral tribunal or competent governmental entity.

(4) The provisions of this Act shall also apply to mediation conducted by a judge who is not competent for any of the court proceedings which refer to the dispute concerned. However, the Act shall not apply to cases where a court or a judge to whom a case has been referred, in the course of a court proceeding referring to the dispute in question, attempts to facilitate the amicable settlement of a dispute, or where an arbitrator attempts to do so in an arbitral proceeding referring to this dispute.

Article 3

(Definition of terms)

(1) For the purposes of this Act:

a) **mediation** means a proceeding by which the parties attempt to reach through a neutral third person (mediator) the amicable settlement of a dispute arising out of or relating to a contractual or other legal relationship, irrespective of whether for this proceeding the term mediation, conciliation, reconciliation, mediation of disputes or other similar term is used.

b) **mediator** means any third person who is approached to conduct mediation, irrespective of his or her title or profession and irrespective of the manner in which he or she has been appointed or approached to conduct mediation, and who accepts the request. In the proceeding a sole mediator or several mediators may participate.

(2) Where reference is made in this Act to an agreement between the parties, this also refers to the rules of the institution which conducts the mediation, on the condition that the parties have agreed to apply these rules.

Article 4

(Interpretation of the Act)

(1) In the interpretation of the provisions of this Act, regard is to be given to the need to promote uniformity in the application of the UNCITRAL Model Law on International Commercial Conciliation and the observance of principles of fairness and good faith.

(2) Questions which are not explicitly settled in this Act shall be settled in conformity with the general principles on which this Act is based, in particular the principles of voluntary cooperation, equal treatment of parties, party autonomy in the proceedings, confidentiality of proceedings and impartiality of mediators.

Article 5
(Variation by agreement)

Except for application of the provisions of Article 4, the third paragraph of Article 8 and Article 17 of this Act, the parties may reach a different agreement upon issues regulated by this Act or exclude the application of an individual provision of the Act.

Article 6
(Commencement of mediation)

(1) Where the parties have agreed in advance to resolve mutual disputes that might arise out of a particular legal relationship through mediation or where mediation is prescribed by law for the resolution of a particular type of dispute, mediation shall commence on the day on which a party receives a proposal for the commencement of mediation from the opposing party.

(2) In cases which are not included in the preceding paragraph, mediation referring to a dispute which has already arisen shall commence on the day the parties to the dispute agree to pursue mediation. If one party proposes mediation to the other party, but does not receive an acceptance of the proposal from the other party within 30 days from the day on which the proposal was sent, it may treat this as a rejection of the proposal for mediation.

Article 7
(Appointment of mediators)

(1) The parties shall reach an agreement on the appointment of a mediator, unless a different procedure for the appointment has been agreed upon.

(2) The parties may seek the assistance of a third person or institution in connection with the appointment of mediators. In particular:

a) a party may request a person or institution to recommend suitable persons to act as mediators; or

b) the parties may agree that the appointment of mediators be made directly by such a person or institution.

(3) The person or institution referred to in the preceding paragraph may take all measures necessary with regard to the circumstances of the dispute to secure the appointment of an independent and impartial mediator. The person or institution may, where appropriate, recommend or appoint a mediator who is of a nationality other than the nationality of the party so as to provide independence and impartiality of mediation, or for other justified reasons.

(4) When a person is approached to act as the mediator, he or she shall immediately disclose any circumstances likely to give rise to justifiable doubts as to his or her independence and impartiality. That obligation shall apply during the entire mediation procedure.

Article 8 (Conduct of mediation)

(1) The parties may agree on the manner in which the mediation is to be conducted. In so doing, they may also rely on existing rules.

(2) Failing an agreement on the manner in which the mediation is to be conducted, the mediator shall conduct the proceedings as he or she sees fit. In so doing, he or she shall consider all the circumstances of the case, any wishes the parties may express, and the need for a speedy and permanent settlement of the dispute.

(3) In any case, in conducting the proceedings, the mediator must act independently and impartially and make every effort to treat the parties equally, taking into account all circumstances of the case.

(4) The mediator may, at any stage of the mediation proceedings, make proposals for the settlement of the dispute. The settlement of the dispute as proposed by the mediator shall not be binding upon the parties.

Article 9 (Communication between mediator and parties)

The mediator may meet or communicate with each party separately or with all of them together.

Article 10 (Disclosure of information to parties)

When the mediator receives information concerning the dispute from a party, the mediator may disclose the substance of the information to any other party to mediation, unless a party has disclosed the information to the mediator subject to a specific condition that it be kept confidential.

Article 11
(Confidentiality of information)

All information originating from mediation or relating to it is confidential unless otherwise agreed by the parties, or if its disclosure is required under law or for the purposes of implementation or enforcement of a dispute settlement agreement.

Article 12
(Admissibility of evidence in other proceedings)

(1) The parties, mediators or third persons who participated in mediation shall not in arbitral, judicial or other similar proceedings rely on, introduce as evidence or give testimony or evidence regarding any of the following:

- a) an invitation by a party to engage in mediation proceedings or the fact that a party was willing to participate in mediation proceedings;
- b) views expressed or suggestions made by a party in the mediation in respect of a possible settlement of the dispute;
- c) statements or admissions made by parties in the course of mediation;
- d) proposals made by the mediator;
- e) the fact that a party had indicated its willingness to accept the mediator's proposal for amicable dispute settlement;
- f) documents drawn up solely for purposes of the mediation proceedings.

(2) The provision from the preceding paragraph shall apply irrespective of the form of the information and evidence.

(3) Information referred to in the preceding paragraph of this Article may only be disclosed or used in a proceeding before an arbitral tribunal, court or other competent government authority for the purpose of evidence under conditions and to the extent required by law, in particular on grounds of public policy (e.g. protection of the interests of children or prevention of interference with a person's physical or mental integrity) or insofar as necessary for the implementation or compulsory execution of an agreement on the settlement of a dispute; otherwise such information shall be treated as an inadmissible fact or evidence.

(4) The provisions referred to in the first, second and third paragraph of this Article shall apply whether or not the arbitral, judicial or similar proceedings relate to the dispute that was or is the subject of the mediation proceedings.

(5) With the exception of cases referred to in the first paragraph of this Article, evidence that is otherwise admissible in arbitral, judicial or similar proceedings does not become inadmissible as a consequence of having been used in a mediation proceeding.

Article 13
(Termination of mediation)

Mediation proceedings shall be terminated:

- a) by the conclusion of a dispute settlement agreement, on the date of the agreement;
- b) by the expiry of a time limit for the appointment of a mediator, if the parties do not agree on the appointment of a mediator within 30 days of commencement of mediation, on the date of expiry;
- c) by a declaration of the mediator, after consultation with the parties, to the effect that further efforts at mediation are no longer justified, on the date of the declaration;
- d) by a written declaration of the parties addressed to the mediator, to the effect that the proceedings are terminated, on the date of the declaration;
- e) by a written declaration of a party to the other party or parties and the mediator, to the effect that the conciliation proceedings are terminated, on the date of the declaration. If in the proceeding several parties participate who are willing to proceed with the mediation among themselves, the mediation shall be terminated only for the party that has submitted a declaration.

Article 14
(Dispute settlement agreement)

(1) The mediator may participate in the formulation of the text of the dispute settlement agreement.

(2) The parties may agree that the dispute settlement agreement shall take the form of a directly enforceable notarial act, a court settlement or an arbitral award based on the settlement.

Article 15
(Mediator as arbitrator)

Unless otherwise agreed by the parties, the mediator shall not act as an arbitrator in respect of a dispute that was or is the subject of the mediation, or in respect of another dispute that has arisen from the same legal relationship or is related to it.

Article 16
(Introduction of arbitral or judicial proceedings)

(1) Where the parties have agreed upon mediation and have expressly undertaken not to initiate, until the expiry of a certain period of time or until a specified event has occurred, arbitral or judicial proceedings with respect to an existing or future dispute, the arbitral tribunal or the court must, upon a jurisdictional plea by the defendant, dismiss such an action, unless the plaintiff demonstrates that otherwise harmful and irreparable consequences would occur. The defendant must submit this plea in the defence plea at the latest.

(2) The court shall dismiss an action even if before bringing the action an obligatory mediation proceeding is prescribed by law.

(3) Initiation of arbitral or judicial proceedings shall not of itself be regarded as a waiver of the agreement to mediate or as the termination of a mediation proceeding.

Article 17

(Impact of mediation on statute of limitations and preclusive time limit)

(1) The limitation period for a claim subject to mediation shall cease to run during mediation.

(2) If a mediation proceeding is terminated without a dispute settlement agreement, the limitation period shall continue to run from the moment the mediation proceeding is terminated without a dispute settlement agreement. The time that expired prior to the initiation of mediation shall be included in the limitation period laid down by law.

(3) If a deadline for bringing an action is set by a special regulation in respect of a claim subject to mediation, this deadline shall not expire earlier than 15 days after the termination of mediation.

Article 18

(Costs of mediation)

(1) The mediator is entitled to an award and to reimbursement of reasonable costs, unless otherwise agreed upon with the parties or otherwise stipulated by the rules of the institution where mediation is conducted.

(2) If not otherwise agreed upon by the parties, each party shall bear its own costs, whereas the overall costs of mediation shall be borne equally by all parties.

Article 19

(Transitional provision)

The provisions of this Act shall not apply to mediation proceedings initiated prior to the entry into force of this Act, except if otherwise agreed upon by the parties.

Article 20

(Final provision)

This Act shall enter into force on the 15th day following its publication in the Uradni list Republike Slovenije.