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Index

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Seamless	Our firm is constructed as a global firm. We share an interest in providing the highest level of client service regardless of location.

Introduction

MEDIATION: LEGAL FRAMEWORK AND BUSINESS BENEFITS

Members of our Litigation and Arbitration Service Line (SL) are distinguished professionals, representing clients in courts and arbitration forums across specialized areas of substantive law, such as energy law, intellectual property, labor law, and public procurement. On the opposing side, entrepreneurs are equally represented by highly skilled legal counsel. Judges or arbitrators are often placed in challenging positions, as the structure of civil, commercial, or other proceedings, whether governed by national or international law, necessitates a clear winner. This creates significant risks, including substantial financial losses, as a decision in favor of one party inevitably leads to a loss for the other.

Mediation, however, presents a distinct alternative. Unlike litigation or arbitration, mediation does not aim to determine a single winner. Instead, it offers a structured yet flexible process in which both parties, through compromise and negotiation, can reach a mutually beneficial resolution. This collaborative approach allows for an outcome where both sides feel satisfied, or at the very least, equally accommodated, thereby reducing the risk of a court ruling that could result in the forfeiture of significant financial assets or rights.

Mediation is not only grounded in legal principles but also deeply psychological in nature, focusing on mutual understanding and cooperation. While it adheres to applicable laws, its strength lies in the flexibility it affords to the parties, fostering an atmosphere of constructive dialogue and resolution.

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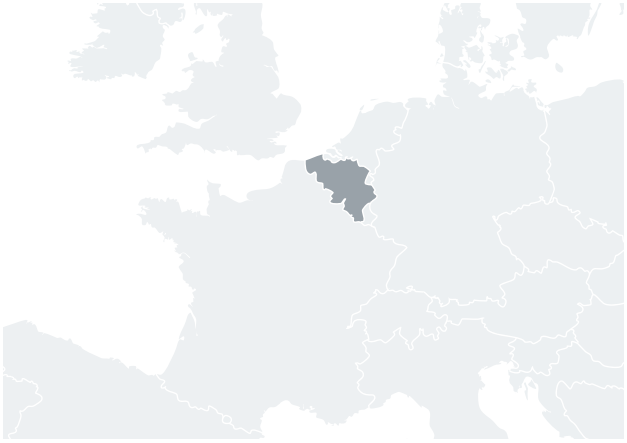

MEDIATION IN BELGIUM

Legal proceedings in Belgium can take years, especially if an appeal is lodged against the ruling entered in first instance. The lead time and costs involved in litigation make it advisable to consider an alternative to the sometimes lengthy and expensive judicial process. One of the options, in addition to arbitration, is mediation.

Under Belgian law, mediation is regulated in art. 1724 to 1737 of the Belgian Judicial Code.

What is mediation?

According to Article 1723/1 of the Judicial Code, mediation is a confidential and structured process of voluntary negotiation between litigating parties. These negotiations involve an independent, neutral and impartial third party who facilitates communication between the parties and assists them to find a solution. The essential characteristic of mediation is that the parties involved participate voluntarily and that the negotiations (and their outcome) remain confidential. This allows for creative and tailored solutions.

Because of its voluntary nature, either party can decide to terminate the mediation at any time. If the mediation does not result in a satisfactory solution, the parties are free to initiate or resume legal proceedings. Due to the confidential nature of mediation, nothing from the mediation process, including the decision to withdraw from mediation, can be used against a party in legal proceedings.

The major advantage of mediation is that the parties can choose the solution that best suits their situation, without being bound by the legal rules that a court would apply.

Why choose mediation?

Mediation offers several advantages that make it an attractive option for conflict resolution:

- ☑ **Relationship preservation:** Mediation focuses on cooperation and restoring relationships, which is important if the parties need to continue working together after the conflict has been resolved.
- ☑ **Speed and cost:** Compared to court proceedings, mediation is typically faster and less expensive.
- ☑ **Discretion:** The confidential nature of mediation protects the reputation of the parties involved and prevents public disclosure.
- ☑ **Creativity:** Since the parties are in control of the resolution process, they can find creative and mutually satisfactory solutions without being bound by how the law would resolve the conflict.

How to appoint a mediator?

Mediation Clause

Contracts can provide a mediation clause in which the parties agree to refer any dispute to mediation before starting legal or arbitration proceedings.

The goal of such a clause is to make sure that parties at least attempt to reach an out-of-court settlement in case of a dispute.

Extrajudicial mediation

Before, during, or after legal proceedings, either party may propose to the other at any time to resort to mediation.

In the context of Belgian law, the advantage of making a formal mediation proposal is twofold. Firstly, it serves as a formal notice of default, thereby triggering the accrual of default interests. Secondly, it suspends the statute of limitations for a period of one month.

Judicial mediation

In any phase of the legal proceedings and provided that the case has not yet been submitted for deliberation by the court, the court may, at the joint request of the parties or of its own volition but with the consent of the parties, order mediation.

In the event that all parties involved in the litigation object, the judge may cannot order mediation.

The mediation process

The mediation process comprises a series of stages that are intended to enhance communication and increase the probability of a successful resolution:

- **Initial meeting:** During this meeting, practical matters such as urgency and fees are discussed. Also, the mediation protocol is signed.
- **Mediation session:** This session is confidential and voluntary, with room for assistance of experts and the option of breaks (time-outs) or separate meetings (caucus).
- **Plan to reach agreement:** The process involves exchanging viewpoints, exploring interests, generating options, and developing concrete solutions, which ideally lead to a final settlement.

The role of the (certified) mediator

The mediator plays a crucial role in the process. He or she must be independent, impartial, and neutral, and facilitate communication between the parties. The mediator's role is not to impose a solution but to support the parties in finding their own solution.
The advantage of having the mediation guided by a certified mediator, is that the settlement reached with the help a **certified mediator,** can be ratified by the court. In such cases, the settlement will then have the same value as a final judgment. This means that the parties can not appeal or challenge the ratified settlement. Furthermore, they will have to act according to the ratified settlement. If necessary, the ratified settlement can be enforced the same way as a judgment.

The court may only refuse to ratify a settlement reached with the guidance of a certified mediator, in cases where there has been a violation of public order or the interests of minor children.

> Mediation offers an effective method of resolving conflicts in a timely and confidential manner, without being constrained by the limitations imposed by law."

Conclusion

Mediation offers an effective method of resolving conflicts in in a timely and confidential manner, without being constrained by the limitations of imposed by law.

If the mediation process is led by a certified mediator, the settlement reached by the parties can be ratified by the court and will then have the same value as a judgment.

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MEDIATION, A PATHWAY BETWEEN ARBITRATION AND LITIGATION

The willingness of parties to resolve disputes amicably is of significant importance. Given the lengthy duration of court proceedings and the costs associated with them, greater availability of alternative dispute resolution methods relieves the courts of the heavy workload they are faced with and brings numerous benefits to the involved parties. Mediation is a voluntary, confidential process that offers greater flexibility than court proceedings.

The legal basis for mediation can be found in the Alternative Dispute Resolution Act (Official Gazette Nr. 67/2023, hereinafter referred to as the "Act"). The purpose of the Act is to establish a framework for alternative dispute resolution, to prevent the unnecessary initiation of court proceedings, and to ensure a balanced relationship between alternative dispute resolution and court proceedings.

> Mediation is a voluntary, confidential process that offers greater flexibility than court proceedings."

Alternative dispute resolution (ADR) refers to any out-of-court or judicial process through which the involved parties seek to resolve their dispute amicably. This may include mediation and structured negotiations. Mediation refers to any procedure, in or out of a court setting, where the parties involved attempt to resolve a dispute via agreement with the assistance of a mediator. The mediator's role is to facilitate a resolution, not to impose a binding solution.

Mediation in relation to court proceedings

An alternative, peaceful resolution of disputes can be pursued before or during court proceedings. Furthermore, mediation can be implemented after the ruling of the relevant authority on the dispute has become final and enforceable, provided that it is possible to negotiate the manner and conditions for implementing the decision and other related matters.

In accordance with the law, there are specific instances where mediation is required. For example, the Act requires that parties in proceedings for compensation of damages, with the exception of proceedings for compensation of damages from the employment relationship, attempt to resolve the dispute amicably prior to initiating civil proceedings. In the event that the parties fail to comply without a valid reason, the court will, upon receipt of the response to the lawsuit, instruct the parties to participate in an informative meeting on mediation or to initiate mediation.

In addition to the aforementioned Act, mediation is also governed by the procedural regulations set forth in the Civil Procedure Act. The Civil Procedure Act stipulates that the parties may mutually propose mediation as a means of resolving the dispute before the court. In such cases, if a settlement is reached

with the assistance of a mediator judge, it will be regarded as a court-approved settlement.

In the event that both parties are joint-stock companies or legal entities whose majority member is the Republic of Croatia or a unit of local and regional self-government, the court will, upon receipt of the answer to the lawsuit, instruct the parties to initiate mediation within eight days. Interestingly, a party who is instructed to initiate mediation and fails to attend the initial meeting without a valid reason will forfeit the right to request compensation for further costs associated with the proceedings before the court of first instance.

Additionally, mandatory mediation is included in the provisions governing specific aspects of family law.

Mediation institutions

Mediation may be conducted before the court by a mediator appointed from the list of mediators determined by the president of the court, or out of court by institutions authorized by law.

The Act established the Centre for Peaceful Dispute Resolution, which is headquartered in Zagreb. The Centre's primary objectives are to promote the peaceful resolution of disputes, to accredit institutions specializing in peaceful dispute resolution and training programs, to conduct professional training and development for mediators, to provide information on peaceful dispute resolution and so on. Mediation institutions are entities that are authorized by law or have received the Center's approval to conduct training for mediators and/or trainers and/or to conduct mediation.

> Mediation is a desirable way of resolving commercial disputes, as it saves resources and preserves business reputation."

Mediation in business cases

Commercial disputes are one of many types of disputes that may be resolved by mediation and other ADR methods. The parties in mediation have the ability to resolve matters in a way that serves their business needs, saves their resources, and preserves their business reputation. Given these benefits, mediation is a desirable way of resolving commercial disputes.

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MEDIATION IN THE CZECH REPUBLIC

Since the enactment of the Mediation Act in 2012, mediation has emerged as a prominent alternative to litigation in the Czech Republic. Despite the fact that court proceedings in private law disputes in the Czech Republic are among the fastest in the European Union[1], the primary motivation for parties to pursue mediation is undoubtedly the desire to save time and money. The Mediation Act primarily serves as the legal framework for mediation in the Czech Republic, delineating the procedural aspects of mediation and establishing the qualifications required for mediators. The relationship between mediation and civil court proceedings is addressed in the Code of Civil Procedure.

The decision to engage in mediation is always voluntary. In the context of court proceedings, a judge may, if deemed appropriate and expedient, mandate that the parties attend an initial meeting with a registered mediator for a period of three hours. However, a meeting ordered by a judge is not considered as mediation, as its initiation is dependent on the will of the parties, who are at liberty to decide whether to continue with the mediation process following the initial meeting. Therefore, mediation remains a voluntary dispute resolution process involving one or more mediators who facilitate communication between the involved parties in order to assist them in reaching an amicable solution by entering into a mediation agreement. In general, all private law disputes may be subject to mediation, except for status disputes concerning, for example, the validity or invalidity of a marriage, and the determination of paternity, among others.

Why Choose Mediation?

- ☑ **Speed and Cost:** Mediation is generally faster and more cost-effective compared to court proceedings.
- ☑ **Privacy and Confidentiality:** Unlike court proceedings which are public, only the parties to the dispute and the mediator may attend the mediation meeting. Other persons may attend only if both parties agree. The mediator is bound to keep all information learned during mediation confidential.
- ☑ **Relationship Preservation:** By its very nature as a voluntary method of dispute resolution, mediation seeks to reach a solution that is satisfactory to both parties. It can be particularly beneficial in disputes between long-term business partners who have an economic interest in continuing their relationship.
- ☑ **Informal Nature:** Unlike court proceedings, mediation lacks formal procedural rules , allowing the parties to tailor the process to their needs.

[1] The 2024 EU JUSTICE. Online. 2024. Available at: https://commission.europa.eu/document/download/84aa3726-82d7-4401-98c1-fee04a7d2dd6_en?filename=2024%20EU%20Justice%20Scoreboard.pdf.

Mediation in Practice: the Process of Mediation

Mediation can occur both within and outside the context of court proceedings:

Extrajudicial mediation

In extrajudicial mediation, the parties may submit their dispute to a mediator at any time. Mediation is initiated by entering into an agreement to refer the matter to mediation. In addition to the necessary elements (including, without limitation, the identification of the parties to the dispute, details of the mediator, and description the dispute), the parties may agree in the mediation agreement on the confidentiality referred to above, on the penalties to be applied in the event of a breach of the agreed obligations, or on the presence of legal representatives during the mediation.

Judicial mediation

As mentioned above, a judge may order an initial mediation meeting if he or she deems it expedient and appropriate, in accordance with Section 100(2) of the Code of Civil Procedure. The purpose of this initial meeting is not to hold mediation per se, but for the parties to become familiar with the mediation process, its principles and objectives, and to assess whether mediation might be beneficial. If, after the initial meeting, the parties agree to proceed, the mediation process begins with an agreement to mediate, similar to an extrajudicial mediation.

The mediation procedure

The process of mediation is the same for both judicial and extra-judicial mediation and it consists of the following stages:

- **Conclusion of the Agreement to Conduct Mediation:** The mediation commences with the execution of the agreement to conduct mediation. This agreement suspends the statute of limitations for the duration of the mediation.

- **Mediation Session:** The mediation session is the core of the mediation process, where views are exchanged and potential solutions are considered.

- **Conclusion of the Mediation Agreement:** At the end of the mediation process, the mediator summarizes the conclusions of the mediation and drafts the mediation agreement.

Effects of the Mediation Agreement

A mediation agreement is a bilateral or multilateral contract where the parties agree on how to resolve the rights and obligations in dispute. The content of the mediation agreement must comply with the law. As a private document, the mediation agreement is not directly enforceable.

> To be enforceable, a mediation agreement must be sanctioned by the court."

The court can approve the mediation agreement in the course of judicial mediation and extrajudicial mediation. In the former, the court that ordered the first meeting approves the agreement. In extrajudicial mediation, any district court may approve the mediation agreement, regardless of its content, at the request of the parties. Once approved by the court, the agreement becomes an enforceable document with the status of a court ruling.

France

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LEGAL BASIS FOR MEDIATION IN FRANCE

Procedural Regulations vs. Arbitration

Procedural Regulations

Code of Civil Procedure: Articles 131-1 to 131-15: These articles outline the legal framework for judicial mediation in civil and commercial matters. Courts can suggest or order mediation at any stage of the proceedings, and parties can also request mediation.

Ordonnance No. 2011-1540 of November16, 2011: This decree implements the European Directive 2008/52/EC on certain aspects of mediation in civil and commercial matters. It establishes the framework for cross-border mediation within the EU.

Law n°2016-1547 of November 18, 2016 on Modernization of Justice (2016): Article 4 encourages the use of alternative dispute resolution (ADR) mechanisms, including mediation, in civil and commercial disputes. It mandates an information session on ADR methods before certain types of lawsuits can be initiated.

Consumer Mediation: Law No. 2014-344 of March 17,2014 (Consumer Code) establishes a mandatory mediation system for consumer disputes, requiring businesses to provide access to a consumer mediation service.

Arbitration Context

Article 1442 et seq. of the Code of Civil Procedure allows parties to incorporate mediation into their arbitration agreements, a practice known as "med-arb." If mediation fails, the dispute can proceed to arbitration.

Many French arbitration institutions offer mediation services as part of their dispute resolution options.

Examples of Mediation Institutions in France

- **Centre de Médiation et d'Arbitrage de Paris (CMAP):**

  Services: Offers mediation, arbitration, and other ADR services for commercial disputes. CMAP is well-regarded for its expertise in business mediation and has a panel of experienced mediators.

  Training and Certification: Provides training programs and certification for mediators, ensuring high standards of practice.

- **Centre National de Médiation des Avocats (CNMA):**

  CNMA promotes mediation among lawyers and provides mediation services. CNMA helps integrate mediation into legal practice and offers specialized training for lawyer-mediators.

☑ **Institut Français de la Médiation (IFM):**

IFM concentrates on the training of mediators and the promotion of mediation across various sectors, including commercial and labor disputes.

It offers comprehensive training programs and workshops to develop mediation skills.

☑ **Association Nationale des Médiateurs (ANM):**

ANM is a professional network of mediators who offer services across France. ANM provides a platform for sharing best practices and standards in mediation. It ensures that mediators adhere to a strict code of ethics and professional standards.

☑ **Médiateur du Crédit:**

Médiateur du Crédit is established by the French government to mediate disputes between businesses, especially SMEs, and banks. This service is particularly important for resolving credit and financing issues. It helps to maintain the financial health of businesses by facilitating dialogue and resolution with financial institutions.

☑ **Médiateur de la Consommation:**

Established under the French Consumer Code, the consumer mediator acts as a neutral third party to facilitate dialogue between consumers and businesses. The mediation process is designed to be easily accessible to consumers. Businesses are required to inform consumers about the availability of mediation services and how to contact the mediator.

> Mediation in France is not only encouraged by law but integrated into various sectors, ensuring accessible and efficient conflict resolution."

Mediation in Business Cases in France

Advantages

☑ **Cost-Effective:**

Lower Costs: Mediation involves lower legal fees and procedural costs compared to litigation or arbitration.

Avoidance of Prolonged Disputes: Quick resolution of disputes helps businesses avoid the financial drain of prolonged legal battles.

☑ **Time-Saving:**

Speed: Mediation can be arranged and concluded much faster than court cases, often resolving disputes within weeks or months.

Efficiency: Streamlined processes and the ability to schedule sessions flexibly contribute to quicker resolutions.

☑ **Confidentiality:**

Private Proceedings: Unlike court cases, mediation sessions are confidential, protecting sensitive business information and trade secrets.

Non-Public Outcomes: The outcomes of mediation are not part of the public record, maintaining the privacy of the parties involved.

☑ **Preserves Relationships:**

Collaborative Approach: Mediation encourages cooperation and mutual understanding, which can help maintain and even strengthen business relationships.

Future Business Prospects: By resolving disputes amicably, businesses can continue to collaborate and explore future opportunities together.

☑ **Flexibility:**

Customized Solutions : Mediation allows parties

to devise creative and tailored solutions that meet their specific needs and interests.

Control Over Process: Parties have more control over the process and outcomes compared to the rigid structure of litigation or arbitration.

Challenges

☑ **Voluntary Participation**

Good Faith Requirement: The success of mediation depends on both parties' willingness to engage in good faith negotiations and find a mutually acceptable solution.

Reluctance : Some parties may be reluctant to participate or may not see mediation as a viable option, hindering the process.

☑ **Non-Binding Nature**

Agreement Necessity: Mediation does not give rise to a binding decision unless the parties reach an agreement and formalize it in writing.

Enforcement: Without a formal agreement, there is no legal obligation for parties to adhere to the mediation outcomes, potentially leaving some issues unresolved. However, in the case of judicial mediation, the parties can request the court to enforce the agreement, which will then have the same enforceability as a court ruling.

> Mediation's success relies on voluntary participation and the commitment to reach a mutual agreement, but without formalization, its outcomes remain unenforceable."

In conclusion, mediation in France is a robust and effective method for resolving disputes, particularly in business contexts. The legal framework strongly supports its use, and numerous professional institutions provide high-quality mediation services. Mediation offers a cost-effective, confidential, and flexible alternative to traditional litigation and arbitration, with the added benefit of preserving business relationships. However, its success largely depends on the voluntary participation and good faith of the parties involved.

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MEDIATION, A PATHWAY BETWEEN ARBITRATION AND LITIGATION (HUNGARY)

It is widely acknowledged that the many disadvantages associated with protracted and expensive litigation have prompted many individuals to pursue alternative avenues for resolving their legal disputes. Against this backdrop, mediation has emerged as a prevalent alternative for resolving disputes. Mediation is a process where disputing parties can arrive at a mutually agreeable resolution with the help of a duly qualified third party.

The main rules of mediation in commercial (i.e., civil and administrative) disputes are set out in the Mediation Act of 2002, while its procedural aspects are governed by the Code of Civil Procedure. Additionally, Hungarian law provides for a range of alternative dispute resolution (ADR) procedures, including conciliation, with regulatory frameworks varying significantly based on the type of dispute. It can be argued that in certain instances (such as the enforcement of personality rights), the Mediation Act explicitly prohibits mediation. Conversely, other cases are subject to a distinct legal framework, either due to the specific nature of the field of law involved (such as criminal or medical mediation) or for reasons inherent to the parties involved (such as consumer conciliation). While arbitration is one of the most prevalent forms of alternative dispute resolution, it is distinctly separate from mediation under Hungarian law due to its adversarial nature.

Mediation in Commercial Matters

According to the definition set forth by the Mediation Act, mediation is a conflict management procedure that seeks to reach a written agreement between the parties by involving a third party who is not invested in the outcome of the dispute.

A request for mediation may be submitted in writing or via email to any individual who has been registered as a mediator. The request may be made unilaterally by one of the parties or jointly by both parties.

It is required that the parties be present together and in person during the initial session. The mediator provides the parties with information regarding the principles, steps, and costs associated with mediation. This includes details about confidentiality, the legal implications of a potential agreement, and its recognition by the courts. During this session, the mediation fee is agreed upon by the parties and the mediator. In the absence of an alternative arrangement, the fee is paid equally by the parties.

In subsequent sessions, the mediator will afford the parties the opportunity to present their respective views and relevant documents. At the request of the parties, the mediator may engage an expert or conduct hearings with individuals knowledgeable about the circumstances of the case.

In the event that the parties reach an agreement, the mediator will provide a written record of the terms of the agreement. Nevertheless, there are instances

where the process concludes without an agreement. Unless otherwise agreed, the mediation process may continue for up to four months, after which it will be deemed to have automatically concluded.

Increasing Confidence in the Mediation Process

Mediation can be an optimal means of facilitating amicable resolutions to disputes between conflicting parties. However, the market may be understandably hesitant to embrace this relatively unconventional solution. In order to foster greater confidence in mediation, legislation has been enacted to include several provisions.

One crucial method to achieve this objective is for the Ministry of Justice to maintain a register of mediators. To be admitted to this register, individuals must complete a specialized training course in mediation, possess a university degree, have a minimum of five years of professional experience, and have no criminal record.

The mediator is bound by a duty of confidentiality with regard to facts and information obtained in this capacity, even after having ceased to act as a mediator. In accordance with this, the Code of Civil Procedure grants any mediator the authority to decline to provide testimony as a witness in the same case.

> Trust in the mediator is built on strict confidentiality and impartiality."

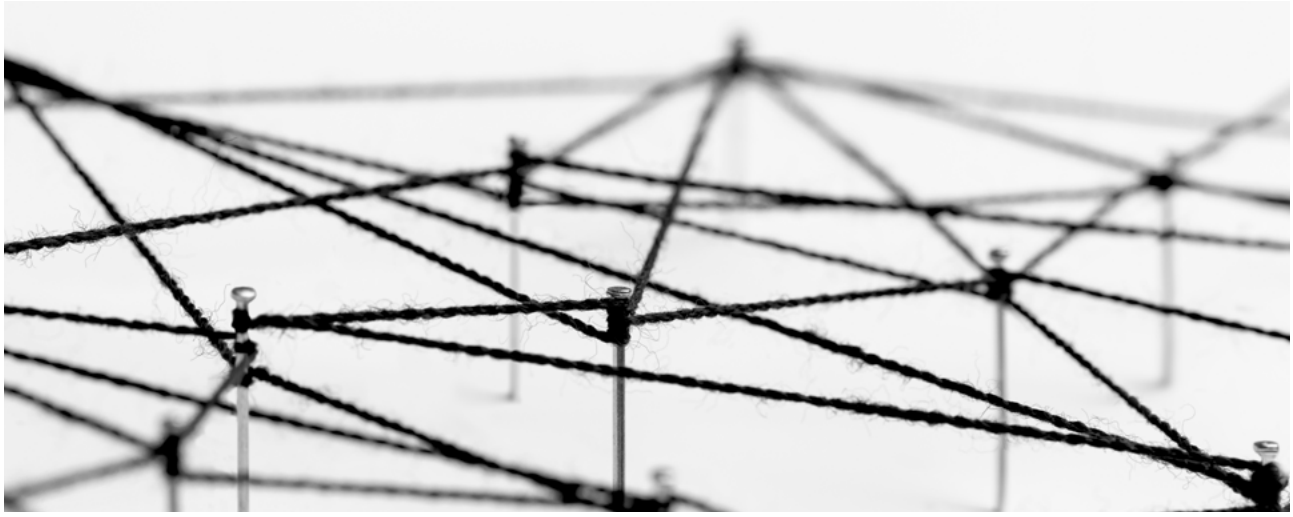
Furthermore, the mediator is precluded from subsequently representing the parties or acting as an arbitrator or expert in the same dispute. In addition, individuals with a personal or professional relationship to a party, or those with a bias towards one party, are prohibited from acting as mediators.

The parties need not be concerned that their claims, which serve as the foundation for the dispute, will lapse during the mediation process. The mediation process either interrupts the limitation period (if an agreement is reached) or otherwise suspends it.

Aspects Relating to Litigation

It is important to note that the use of mediation is not exclusive to disputes that are entirely settled outside of the courtroom. The Code of Civil Procedure allows judges to redirect already filed lawsuits away from litigation, which may result in an agreement to settle the case via mediation. In certain family law disputes, mediation is a mandatory component of the legal process.

An agreement between the parties at the end of the mediation process is not enforceable on its own. Furthermore, the subsequent pursuit of the same claim in court is not barred by the doctrine of res judicata. However, the court may grant these legal effects to the agreement. This can be achieved through a separate procedure, at the end of which the presiding judge may approve the agreement in a court order by consensus of both parties, thereby conferring upon it the same effects as a judgment.



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MEDIATION, A PATHWAY BETWEEN ARBITRATION AND LITIGATION

Mediation in Israel in commercial matters

The most common alternative dispute resolution (ADR) processes in Israel are mediation and arbitration.

The Israeli legal system is overloaded, which is why some people choose to use alternative dispute resolution (ADR) to avoid a long court process and reach a quick solution.

Arbitration

The Israeli Arbitration Act requires an arbitration agreement to be in writing. This requirement can be satisfied by including an arbitration clause as part of contract.

> In Israel, the arbitration process is governed by strict regulations that ensure qualified arbitrators and a clear framework for resolving disputes."

The court appoints the arbitrator unless the parties agree on the arbitrator's identity. Courts will often appoint a retired judge or an esteemed lawyer who is qualified to adjudicate the matter.

Israeli arbitration institutions maintain 'pools' of arbitrators. Typically, the institution's president appoints an arbitrator from the arbitrator's list.

The Arbitration Act sets default rules which exempt the arbitrator from the civil procedure rules, substantive law and evidence rules. The arbitrator should detail his reasoning. It is customary to require the arbitrator to adhere to the substantive law in an arbitration clause.

Mediation

It is customary for the court to encourage the parties involved in a dispute to consider the benefits of mediation as an alternative dispute resolution process. In the majority of cases that are heard in magistrate courts, civil procedure regulations provide that a court-appointed mediator must conduct a mandatory mediation meeting before the first hearing. However, in the event that such a meeting is unsuccessful, the court is unable to compel the parties to continue to engage in the mediation process.

The mediation process is confidential and not subject to public disclosure. In the event of an unsuccessful mediation, the parties are precluded from utilizing the information disclosed during the mediation in any subsequent legal proceedings.

The mediator may convene joint meetings with the parties, as well as individual meetings with each of the parties separately.

The mediator may be a retired judge or an esteemed lawyer, but this is not a prerequisite.

Some mediation centers employ the services of a professional mediator who is not a lawyer. Such professionals may include accountants, therapists, architects, clergy, and others.

Mediation centers typically provide discussion spaces and meeting rooms where the parties may meet with the mediator in a neutral setting, conducive to productive discourse.

A mediator is not vested with the authority to compel the parties to adhere to the solution proposed by him, in contrast to the authority vested in a judge or an arbitrator.

In the event that the mediation process is successful and the parties reach various agreements, these are consolidated into a single document, which is then submitted to the court for the purpose of obtaining a judgment. It should be noted, however, that there is no obligation to submit the mediation arrangement for approval in court.

Italy

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MEDIATION IN ITALY

Mediation is a form of Alternative Dispute Resolution (ADR) proceedings. It is a mechanism designed to resolve a dispute between two or more parties through the intervention of a mediator (a third impartial party) in a more expedient and cost-effective manner than a judicial dispute, with the objective of achieving an out-of-court settlement. In Italy, lawsuits are lengthy and costly, often lasting several years. This makes it an attractive option for parties to at least attempt to reach an amicable agreement. In many cases, this is done with the aim of maintaining a positive relationship between the involved parties, particularly when the dispute concerns a business matter.

Legal sources concerning mediation

In Italy, mediation is regulated by Legislative Decree No. 28/2010 (as recently amended by Legislative Decree No. 149/2022), which outlines the main features of this proceeding. The reason for this is that mediation is a relatively informal process, and the regulations are not particularly detailed, allowing the parties involved more flexibility while increasing the likelihood of reaching an agreement.

In addition, Ministerial Decree 80/2010, which has now been superseded by Ministerial Decree No. 150/2023, contains specific provisions regarding the qualifications of mediators, the subscription and maintenance of a register of mediation bodies, and the fees associated with mediation.

Mediation services are provided by mediation bodies, which may be public or private entities, and which are listed in a specific register maintained by the Ministry of Justice and available on its website. The parties are required to select a mediation body that is located within the same geographical area as the judge with jurisdiction over the dispute. However, the parties may also opt for an alternative mediation body, provided that all parties involved approve. Each mediation body has its own set of regulations that implement the aforementioned legal sources and provide guidance on operational aspects of mediation. These regulations are typically accompanied by forms for initiating and agreeing to mediation. However, the Regulation must not contravene the legislative provisions.

Object and types of mediation

It is important to delineate the legal boundaries within which mediation can be initiated. The objective of mediation is to resolve any civil or commercial dispute pertaining to disposable rights (i.e., rights or entitlements that can be waived, renounced, or transferred by their owner).

There are three categories of mediation:

- **mandatory:** Mediation I is a mandatory requirement before proceedings are initiated before the Court in cases involving disputes related to condominiums, property rights, division, inheritance, family agreements, leases, loans, business leases, compensation for

damages resulting from medical and health liability and defamation through the press or other means of advertising, insurance, banking and financial agreements, joint ventures, consortia, franchising, service, network, outsourcing and subcontracting agreements, and partnerships.

- **Furthermore,** mediation is mandatory when the parties have agreed to include the mediation clause in a contract;

- **referred by the judge:** at any stage of the proceedings, the judge may order the parties to attempt to resolve the dispute through mediation.

  In both cases, the parties are required to be represented by legal counsel (Art. 5 Legislative Decree 28/2010).

- **optional:** The parties may opt to pursue mediation as a means of resolving the dispute, even if the subject matter does not fall within the scope of mandatory mediation. It should be noted that the involvement of a legal counsel is not a mandatory requirement.

Mediation proceedings and duration

The first step in initiating mediation is the submission of a formal request, or mediation application, by one party to the dispute to the appropriate mediation body. The other party must consent to participate in the process. The mediation body will notify both parties of the date and time of the initial meeting, which must be scheduled within 40 days of the submission of the application and no earlier than 20 days.

It is also possible to hold mediation meetings online. All parties are required to attend the meetings in person. In specific cases, they can be substituted by an individual who is duly authorized to represent the party and to sign the agreement, if necessary.

The mediation process may take up to three months, with the possibility of an additional three-month extension. The total duration of the process is six months.

In addition to the aforementioned requirements, the proceeding is not subject to any other mandatory rules.

The mediation process may conclude with a "negative report," indicating that the parties have been unable to reach a resolution, or with a "positive report," which includes the details of the agreed-upon mediation agreement.

Is the mediation agreement enforceable?

If all parties are represented by legal counsel and the mediation agreement is signed by them and their lawyers, it is an enforceable instrument for compulsory expropriation, obligation to transfer certain assets, compliance with a positive or negative obligation, and registration of a judicial mortgage.

In all other cases, the mediation agreement is only enforceable once it has been approved, at the parties' request, by decree of the President of the Court. This approval is granted once it has been verified that the agreement is formally correct and that the mandatory rules and the requirements of public policy have been complied with.

In the event of cross-border disputes, as defined in Article 2 of Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008, 1. For the purposes of this Directive, a cross-border dispute is defined as one in which at least one of the parties is domiciled or habitually resident in a Member State other than that of any other party on the date on which: (a) The parties agree to use mediation after the dispute has arisen; (b) mediation is ordered by a court; (c) an obligation to use mediation arises under national law; or (d) for the purposes of Article 5, an invitation is made to the parties, the agreement must be approved by the president of the court in whose district the agreement is to be implemented.

In such instances, the agreement is enforceable in the event of compulsory expropriation, the obligation to transfer specific assets, and the creation of a judicial mortgage.

> Mediation provides a structured framework for resolving disputes efficiently, with enforceable agreements ensuring compliance and accountability."

The costs of the mediation

To initiate mediation, the initial fee must be paid. Additional fees may be required for subsequent meetings and/or if the mediation results in an agreement. The amount of the payments varies based on the financial value of the dispute, with the average total cost being €6,000. In the event that mediation is mandatory or referred by the judge, all fees are reduced by one-fifth.

Each party is responsible for paying their own mediation fees.

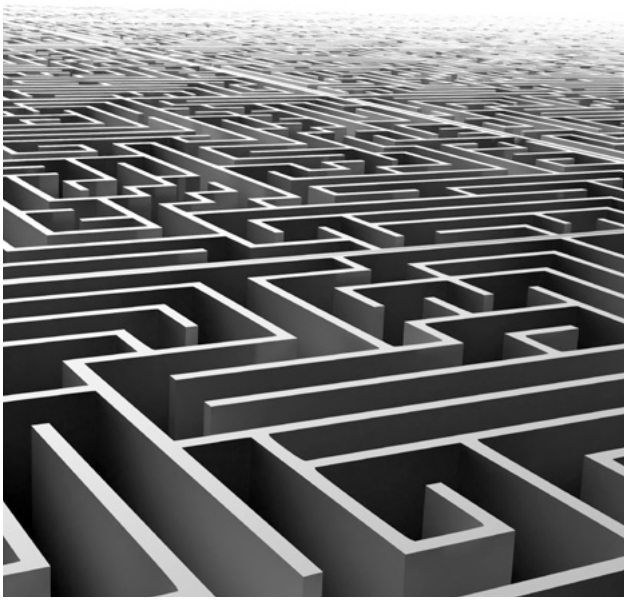
In accordance with the ruling of the Italian Constitutional Court (No. 10/2022), legal aid is available for mediation proceedings when the mediation is mandatory. This is due to the constitutional requirement for legal aid to be provided when the parties are unable to afford legal representation.

All acts, documents, and agreements related to mediation are exempt from taxation and fees. Additionally, if the parties reach a settlement, each party is eligible for a tax credit, up to a maximum of €600, in proportion to the initial fee paid.

The advantages of a mediation proceeding

It is understandable why people are interested in this method of dispute resolution: it is a faster, cheaper, more confidential, and more flexible instrument than a lawsuit or arbitration. Moreover, the parties are directly involved, and the mediation agreement is tailored to align interests and achieve a mutually beneficial outcome.

Court proceedings are time-consuming, costly, and must adhere to a prescribed sequence as outlined in the Code of Civil Procedure. Arbitration is an alternative dispute resolution (ADR) instrument that is similar to a lawsuit, but conducted by a private body. The decision is made by an arbitrator or a panel of arbitrators (comparable to a judge or jury), and it is binding. The parties have limited involvement during the proceedings. In contrast to mediation, the arbitration process is governed by specific provisions and is not legally mandated. The parties may either include an arbitration clause in the contract or opt to resolve an existing dispute through arbitration.



Malta

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ALTERNATIVE DISPUTE RESOLUTION IN MALTA

An introduction to Alternative Dispute Resolution and how it is regulated in Malta

In Malta, parties have several alternative dispute resolution (ADR) options available to them to resolve disputes outside of traditional court proceedings. These methods offer several advantages, including confidentiality, flexibility and the potential for a more expeditious resolution.

Under the Arbitration Act (Chapter 387 of the Laws of Malta), the Malta Arbitration Centre was established to provide a structured and efficient forum for the resolution of disputes through arbitration, as an alternative to traditional court proceedings. Arbitration is a prominent ADR method used in Malta, particularly for commercial disputes. It involves the selection of an arbitrator or a panel of arbitrators to resolve the dispute on the basis of agreed procedural rules. Arbitration is favored for its ability to provide a confidential and binding resolution, with the added benefit of allowing the parties to select experts in the relevant field.

In Malta, mediation is regulated by the Mediation Act (Chapter 474 of the Laws of Malta), which established the Malta Mediation Centre. It is another effective ADR option that involves a neutral mediator who assists the disputing parties to negotiate a mutually acceptable agreement. The Malta Mediation Centre offers mediation services for a range of disputes, including commercial disputes. This method is valued for its collaborative approach, which can preserve business relationships and provide a flexible solution tailored to the needs of the parties involved. Although mediation is a versatile tool that can be effectively applied to almost any type of dispute, its use remains limited in Malta and many other EU jurisdictions, where it is mainly used in family law cases, where mediation is a mandatory requirement prior to court proceedings.

> In Malta, ADR methods like arbitration and mediation provide flexible and confidential solutions for resolving disputes."

Dispute Resolution in Corporate Matters

Where the parties to an international commercial dispute have not specified alternative rules for the settlement of their conflict, then, provided they have not agreed to any other set of arbitration rules, the provisions of the Arbitration Act shall apply to international commercial arbitration. Essentially, this means that in the absence of agreed procedures or alternative frameworks, Maltese international commercial arbitration is governed by the standards set out in the Arbitration Act, which is based on the internationally recognized UNCITRAL Model Law.

The arbitration process begins with a party filing a request with the Malta Arbitration Centre, outlining the nature of the dispute and the desired resolution.

The other party is notified and given an opportunity to respond. The parties may agree on a single arbitrator or a panel of arbitrators, often selected for their expertise in corporate law or the relevant industry. If the parties cannot agree, the Center may appoint the arbitrators on their behalf. Maltese law requires arbitrators to be impartial and independent to ensure a fair process.

One of the main advantages of arbitration in Malta is the flexibility it offers. The parties can choose the procedural rules under which the arbitration will be conducted, either using the Center's standard rules or adapting them to the particularities of the case. The process is generally more informal and expeditious than litigation, and it is conducted in private, preserving confidentiality, which is important in sensitive corporate matters.

At the conclusion of the arbitration, the arbitrators issue a final and binding award. This award has the same effect as a court judgment and can be enforced through the Maltese courts if necessary. However, the grounds for challenging an arbitral award are very limited under Maltese law. Appeals are usually only allowed in cases of procedural irregularities or bias, not on the merits of the dispute itself. If a party believes that the arbitration process was fundamentally flawed, it may seek to have the award set aside by the courts, but this is also limited to specific circumstances such as lack of jurisdiction or serious procedural misconduct.

The binding effect of Arbitral Awards in Malta and Abroad

In Malta, locally-issued arbitral awards must be registered with the Malta Arbitration Centre in order to obtain an enforceable title under Maltese law. This registration ensures that the award is enforceable in Malta with the same force as a court judgment. Once the award is final, the creditor can apply for a court order to enforce the award. Various enforcement measures can then be applied, such as an attachment order to seize funds from the debtor's bank account, an order for the physical seizure of property, or the holding of a judicial sale by auction to liquidate the debtor's assets. These enforcement options provide a range of methods to ensure compliance with the arbitral award and facilitate the creditor's recovery of the amount awarded.

> These measures enhance the effectiveness of arbitration as a reliable dispute resolution method."

In addition, arbitral awards entered in Malta may be enforced in other jurisdictions, particularly those that are signatories to the international arbitration treaties to which Malta is a party. These treaties include the Geneva Protocol on Arbitration Clauses 1923 (Geneva Protocol), which facilitates the recognition of arbitration agreements, and the Geneva Convention on the Enforcement of Foreign Arbitral Awards 1927 (Geneva Convention), which governs the enforcement of foreign arbitral awards. In addition, the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards provides a robust framework for the international enforcement of arbitral awards. In addition, the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (Washington Convention) provides mechanisms for resolving disputes between investors and states. These international agreements help to ensure that Maltese arbitral awards are recognized and enforced in different jurisdictions, providing a reliable means of upholding arbitral decisions on a global scale.

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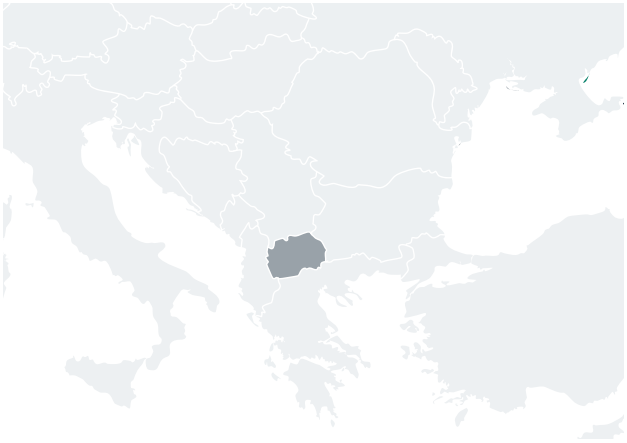

MEDIATION, A PATHWAY BETWEEN ARBITRATION AND LITIGATION

Mediation is a voluntary, non-binding, confidential, and flexible procedure in which a neutral third party, the mediator, assists the parties in reaching a mutually acceptable solution to the dispute or provides a neutral evaluation of the positions of the parties. The 2010 Amendment to the Civil Procedure Code (CPC) in North Macedonia established the framework for affirming the principle of amicable dispute resolution through the institutionalization of mediation procedures within the litigation process. In this context, the 2015 Amendment introduces mandatory mediation in commercial disputes. Subsequently, a new Law on Mediation (LM) was enacted, which provides a comprehensive framework for the mediation process.

According to paragraph 2 of article 461 of the CPC, in commercial disputes for monetary claims below 1,000,000.00 denars (approximately 10,000 EUR), and after which the procedure is initiated by a lawsuit before a court, the parties are required to attempt to resolve the dispute through mediation before filing the lawsuit. In accordance with the new paragraph 3 of the same article, the claimant is required to submit written evidence issued by a mediator indicating that the attempt to resolve the dispute through mediation was unsuccessful. In the absence of such evidence, the court will reject the lawsuit.

It is also important to note that this approach makes the attempt to resolve the dispute peacefully a procedural assumption on which the admissibility of the litigation procedure depends. Additionally, this approach reinforces the principle of dualism, which recognizes the coexistence of distinct forms of mediation. On one hand, the mediation process is regarded as a private matter. On the other hand, it is viewed as a quasi-public concept (Article 4, paragraph 1 of the LM). The objective of the legislation is to encourage the use of alternative solutions through cohabitation.

The fundamental principles of mediation are voluntariness, equality, and informality; impartiality; confidentiality; availability of information; equality, fairness, efficiency, and economy. The procedure is initiated by filing a request with the authorized mediator, who is then obliged to notify the other party and attempt to find a resolution to the dispute. The mediation process concludes:

- ☑ by concluding a written agreement to resolve the dispute, on the day of conclusion of the agreement;
- ☑ by concluding a written agreement for a partial settlement of the dispute, on the day of conclusion of the agreement;
- ☑ with a written statement of the mediator, and after consultation with the parties that the further conduct of the mediation procedure is not expedient (justified) on the day of the submission of the written statement;

- by submitting a written statement to any of the parties for deviation from participation in the mediation procedure, on the day of submitting the statement to the mediator;
- by ceasing the capacity of the legal entity, after an inspection in the Central Registry;
- upon the death of one of the parties;
- by ceasing the capacity of the mediator who mediated the procedure;
- by passing a decision or other act by which the mediator is prohibited to perform mediation work, during the period for which the ban lasts and
- after the expiry of 90 days from the day of initiation of the mediation procedure, without considering its outcome.

Should the parties wish to make the written agreement enforceable, they should proceed to have it witnessed by a notary public.

It is important to note that Article 20 of the LM states that the statute of limitations is suspended upon the initiation of the mediation procedure. In the event that the mediation process concludes without an agreement being reached, which is often the case in commercial disputes, the statute of limitations will continue to run from the date of the conclusion of the mediation process in which the agreement was not reached. Conversely, while the mediation process is underway, only a procedure for temporary injunctions or security measures can be initiated, not another litigation, non-litigation, or arbitration procedure.

In contrast to litigation or arbitration, the mediation process allows each party to cover its own costs, with joint costs being reimbursed equally unless the parties agree otherwise.

Poland

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MEDIATION AND ITS LEGAL BASIS

Mediation is an attempt to achieve an amicable and satisfactory resolution of a dispute between the parties through voluntary negotiation. The parties may engage in mediation before or during court proceedings. It is worth noting that the court may refer the parties to mediation at any stage of the court proceedings, but the process of mediation always requires the consent of the parties. Mediation is a confidential, alternative method of dispute resolution in which a mediator (a neutral third party) assists the parties to reach a mutually satisfactory solution.

The aim is to find a solution that will help resolve the conflict between the parties as a whole. The key is that the solution is for the parties to find, not for the court.

> Mediation empowers the parties to take control of their own resolution, fostering collaboration over conflict."

The rules applicable to mediation in Poland are contained in various pieces of legislation. In civil cases, the main provisions are found in Articles 183^1 to 183^{15} of the Code of Civil Procedure, which describe in detail the principles and procedures of mediation. The Act of 28 July 2005 on Court Costs in Civil Cases regulates the financial aspects of mediation. The Act on the Common Court System contains provisions related to the organization of mediation in the courts. The basis of mediation is that it is conducted on the basis of a mediation agreement between the parties or a court order instructing the parties to mediate. This is particularly important in the business environment, where long-term relationships based on mutual respect are often crucial to achieving and maintaining success.

Mediation and arbitration in business matters

In business cases, mediation deals with conflicts between entrepreneurs or legal entities arising from their business dealings. The process of mediation can bring many benefits to such entities. Mediation is a voluntary and confidential process in which the parties work out a solution themselves with the assistance of a neutral mediator, which can help to avoid escalation of the conflict. It is a swift and relatively inexpensive method that focuses on reaching consensus and maintaining good relations between the parties, which is particularly important if they are to continue working together after a dispute has been resolved. The outcome of mediation is therefore an agreement acceptable to both parties. The process is flexible and informal, allowing it to be tailored to the individual, specific needs of the parties, often going beyond the standard solutions available in arbitration or ordinary court cases. Mediation can take place before and during proceedings between the parties. The entire process is strictly confidential, as information disclosed during the mediation cannot be used outside the mediation and is not available to the public. The mediator is bound to maintain the confidentiality of any facts disclosed during the

mediation, unless the parties release the mediator from this obligation. In addition, mediation sessions can be arranged quickly and the entire process is often completed within a few days or weeks, whereas arbitration and litigation can take months or even years. The fact that mediation is a lot less time-consuming than litigation is of great importance in the business world, where time is of the essence and the speedy resolution of a dispute can be vital to the operation of a business. The commencement of mediation proceedings may also be of benefit to the parties, as it interrupts the statute of limitations, which does not resume until the conclusion of the proceedings. In addition, the court may refer the parties to mediation at any stage of the proceedings, thus providing an additional opportunity to resolve the dispute amicably even after the proceedings have commenced. However, participation in mediation remains voluntary.

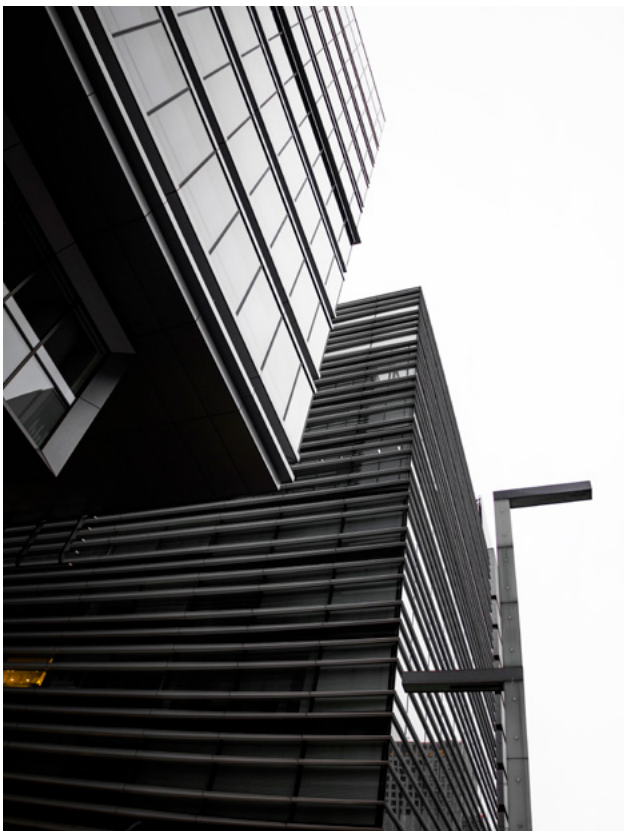
Arbitration, on the other hand, requires both parties to agree to the arbitration clause. In this case, an arbitrator or panel of arbitrators renders a binding award. Arbitration is usually speedier and often cheaper than litigation, but still more expensive than mediation. Like mediation, it is confidential and there are limited ways of challenging an award, which has the force of law once it has been confirmed by a court.

Even when compared to litigation, mediation is the most flexible and collaborative method for the parties, which is why it is often chosen as an amicable solution to disputes in business cases where maintaining good business relations is essential.

Mediation institutions for foreign entrepreneurs

- **Court of Arbitration at the Polish Chamber of Commerce (SA KIG) in Warsaw**

  The Court of Arbitration at the PCC provides arbitration services available to both Polish and foreign entrepreneurs. This institution is widely recognized internationally and is most often chosen for commercial arbitration between entrepreneurs from different countries.



- **Center for Business Mediation at the National Chamber of Legal Advisers**

  The center specializes in business mediation and is open to cases involving foreign entities.

- **International Mediation Center (MCM) at the Polish Confederation of Private Employers Lewiatan**

  The MCM was established to resolve business disputes, including those with an international element. It focuses on professional mediation services involving foreign companies.

Many international trade agreements contain mediation clauses designating specific mediation institutions in the event of a dispute. Polish institutions are increasingly named in such clauses, reflecting growing confidence in the Polish commercial mediation system. In conclusion, mediation institutions for foreign companies in Poland not only exist, but are actively operating and developing in response to the growing demand for alternative dispute resolution methods in the international business environment.

Mediation in practice. How legally certain are the terms of a mediation settlement?

For mediation to be accepted and not rejected in court proceedings, it is essential to adhere to a set of established rules and regulations. First and foremost, mediation must be initiated through a formal request, whether from the parties or from the court itself. In the case of contractual mediation, it is advisable for both parties to provide written confirmation of their consent to participate in the mediation process. An agreement reached before a mediator is, in principle, merely a private document, which nevertheless may be approved by the court, thus endowing it with the same legal force as that of a settlement made before the court.

Such processes enable the parties to avoid incurring the costs typically associated with legal representation, litigation and arbitration. This makes mediation not only a more expedient and cost-effective alternative, but also one that is legally as effective as a court case. Pursuant to Article 183[14] of the Code of Civil Procedure, the court shall, at the request of a party, promptly commence proceedings for the approval of a settlement reached through mediation. If a settlement includes an enforceable obligation for a party to perform an act, it becomes an enforceable title once approved by the court and granted an enforcement clause. In the event that a settlement granted an enforcement clause is not executed, it can be enforced through a bailiff. If a settlement is not reached, the parties may seek recourse through the courts. It should be noted, however, that the approval of the aforementioned settlement does not necessarily guarantee a positive outcome. In the event that the dispute remains unresolved and the proposed settlement does not address it, the court should decline to approve it. Furthermore, a settlement that is objected to by one of the parties is not acceptable. It is also evident that the enforcement or approval of the settlement, in whole or in part, will be refused if the settlement is contrary to the law, violates the principles of social coexistence, aims to circumvent the law, is incomprehensible or contradictory. As this is a closed list under §3 of Article 183, the court is unable to review the admissibility of a settlement reached before a mediator by examining the merits of the case (a decision of the Court of Appeal in Poznań, I ACz 2163/13).

> Mediation requires adherence to established rules and judicial approval to ensure its legality and effectiveness."

Portugal

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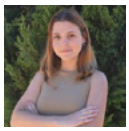

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MEDIATION: A GROWING SOLUTION FOR COMMERCIAL DISPUTES IN PORTUGAL

In today's fast-paced business environment, commercial disputes are not uncommon, but the traditional route of litigation can be extremely costly and time-consuming, often leaving both parties worse off, especially when long-term business relationships are at stake.

In Portugal, mediation is emerging as a powerful alternative for dealing with these disputes, offering businesses a more collaborative, straightforward and perhaps more cost-effective way to settle disagreements.

This trend reflects a broader global shift towards Alternative Dispute Resolution (ADR) mechanisms as businesses seek faster, more flexible solutions to commercial conflicts without the lengthy delays and significant costs associated to traditional, court-based litigation.

What is Commercial Mediation?

Commercial mediation is a process where a neutral third party, known as a mediator, assists two or more parties in resolving a business conflict. Unlike traditional litigation or arbitration, mediation is non-confrontational. Rather than a judge or arbitrator rendering a binding decision, the mediator helps both parties communicate, identify their underlying interests, and work toward a mutually satisfactory agreement.

Why Mediation is Legally Advantageous for Businesses

From a legal perspective, mediation offers several advantages over traditional litigation that can be particularly beneficial to businesses involved in commercial disputes. These benefits align not only with legal strategy, but also with business efficiency and relationship management.

- ☑ **Avoiding the Costs of Litigation:** One of the primary benefits for businesses is the ability to avoid the costs associated with protracted litigation. Legal fees, court costs and expert witness fees can escalate quickly, particularly in complex commercial disputes. Mediation, on the other hand, is designed to be faster and less expensive. This reduction in litigation costs is a significant legal advantage, especially for small and medium-sized enterprises (SMEs) that may not have the financial resources to engage in protracted litigation.

- ☑ **Time-Efficiency:** Mediation can often resolve disputes in weeks or months, compared to the years it can take for a case to work its way through the court system. This is particularly important in commercial matters, where timely resolution can prevent business disruption. From a legal perspective, the ability to resolve a matter quickly without court delays provides greater predictability for businesses and allows them to continue their operations without the cloud of litigation hanging over them.

- **Preserving Confidentiality:** Commercial disputes may involve sensitive issues such as proprietary information, trade secrets or financial data. Portuguese law guarantees the utmost confidentiality of the mediation process, which is critical for companies wary of public exposure. In contrast, court proceedings are often open to the public, and the disclosure of sensitive details can have long-term legal and reputational implications for companies. The confidentiality afforded by mediation thus provides a legal shield that litigation does not.

- **Flexibility in Outcomes:** Courts are bound by statutory limitations and precedent, often resulting in win-lose outcomes. Mediation, on the other hand, offers businesses the flexibility to reach creative and mutually beneficial solutions and agreements. This flexibility is especially valuable in ongoing business relationships, where both parties may wish to continue working together after the dispute is resolved. Legally, this flexibility can provide outcomes that courts simply are not able to provide, such as renegotiation of contract terms, new partnerships, or payment schedules.

- **Maintaining Business Relationships:** Unlike the adversarial nature of litigation, which often irreparably damages business relationships, mediation fosters cooperation and understanding. In commercial law, maintaining relationships with customers, partners and suppliers can be as important as resolving the dispute itself. By focusing on mutual interests rather than legal positions, mediation encourages the kind of dialogue that can lead to lasting agreements and preserve valuable business relationships.

The Legal Framework for Mediation in Portugal

The institutionalization of mediation as a recognized method of dispute resolution in Portugal is largely due to Law No. 29/2013, which regulates mediation in civil and commercial matters. This law is based on the European Union's Directive 2008/52/EC, which aims to harmonize mediation practices across EU member states, particularly in cross-border disputes. The law emphasizes the voluntary nature of mediation, while giving it the necessary legal legitimacy to serve as a valid, enforceable alternative to litigation. Mediation agreements, once formalized and submitted to the courts, can be legally binding, providing businesses with the assurance that the outcome will be respected by all parties.

Mediation in commercial matters is increasingly being promoted as a way to relieve the overburdened court system. Courts may even recommend mediation, especially in cases where the dispute involves ongoing business relationships or complex commercial arrangements that could benefit from a more flexible, negotiated solution.

> Mediation is a flexible, enforceable alternative."

Recent Legal Developments and Trends in Commercial Mediation

The Portuguese legal system has increasingly recognized the value of mediation, particularly in commercial disputes. Several recent trends and developments demonstrate how mediation is becoming more embedded in the country's legal framework:

- **Inclusion of Mediation Clauses:** An increasing number of commercial contracts in Portugal now include mediation clauses that legally require the parties to attempt mediation before proceeding to litigation or arbitration. This trend reflects the growing confidence of the legal community in mediation as an efficient and effective means of resolving disputes, particularly in complex commercial situations.

- **Judicial Promotion of Mediation:** Portuguese courts are increasingly referring cases to mediation, recognizing its potential to relieve the judicial system of its heavy caseload. Judges suggest mediation as a first step when they believe the dispute could be better resolved through negotiation rather than litigation. This judicial support helps to normalize mediation as a valid legal approach to conflict resolution.

- **Online Mediation:** The COVID-19 pandemic sped up the adoption of digital tools in the legal field, and mediation was no exception. Online mediation platforms have proliferated, offering businesses a way to resolve disputes efficiently, even when the parties are in different locations. This development has proven particularly useful in cross-border commercial disputes, where travel and logistics can make in-person mediation impractical.

- **International Recognition:** As a member of the European Union, Portugal's mediation laws are aligned with EU standards, making it an attractive venue for international commercial disputes. Businesses engaged in cross-border trade can rely on Portugal's mediation framework to provide a fair, legally robust process that meets international expectations.

Conclusion: Mediation as a Strategic Legal Tool for Businesses

From a legal perspective, mediation is not just a cost-saving measure - it is a strategic tool that allows businesses to resolve disputes efficiently while maintaining flexibility and confidentiality. In Portugal, mediation offers a legally sound and pragmatic alternative to the adversarial and time-consuming nature of litigation.

The legal benefits of mediation - enforceability, confidentiality and flexibility - are matched by its practical business benefits, such as preserving relationships and reducing legal costs. For any business navigating the complexities of commercial law in Portugal, mediation should be a first consideration when faced with a relevant and complex legal dispute.

Slovakia

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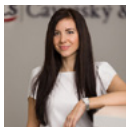

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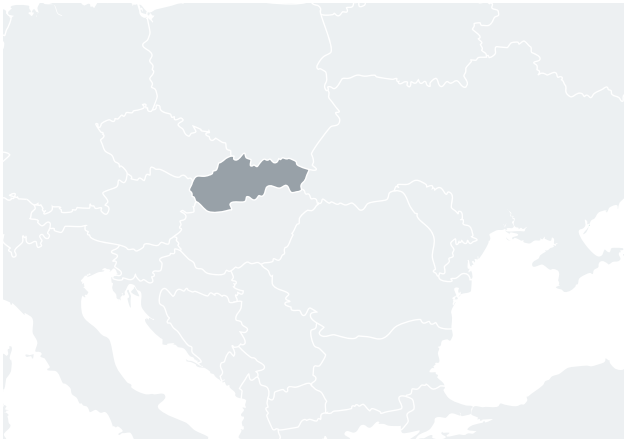

MEDIATION IN EUROPE IN COMMERCIAL MATTERS – LEGAL FRAMEWORK IN SLOVAKIA

Legal basis of Mediation and short introduction

The legal basis for mediation in the Slovak Republic is Act No. 420/2004 Coll. on Mediation and on the Amendment of Certain Acts, as subsequently amended (hereinafter referred to as the "Mediation Act"). The Mediation Act incorporates two EU directives into the Slovak legal system. The primary objective of this legal instrument is to promote the use of mediation in Member States, particularly to avoid the time and costs associated to traditional court litigation.

According to the Mediation Act, mediation is a distinct procedure from arbitration and civil litigation (both contentious and non-contentious). It is generally defined as a voluntary and confidential process in which an impartial mediator assists parties in dispute to reach a mutually acceptable agreement. The parties may participate in mediation both before and during litigation. The court may refer the parties to mediation at any stage of the judicial process, but the mediation process always requires the consent of the parties.

The agreement resulting from mediation must be in writing and is binding on the parties. On the basis of the mediation agreement the interested party may file a petition for judicial execution of the agreement or a petition for enforcement, if the agreement is

a) written in the form of a notarial record or
b) approved as a settlement by a court or an arbitration panel.

The Mediation Act also applies to cross-border disputes in civil and commercial matters in which at least one of the parties is domiciled in a Member State of the European Union other than that of another party at the time when they agree to use mediation or at the time when mediation is ordered by a court.

Mediation institutions and mediators

Mediation is conducted by a mediator, which can be an individual or a mediation center in accordance with the Mediation Act.

Mediators must meet the requirements of the Mediation Act, including but not limited to age and legal capacity requirements, special education (university degree), training (specialized with a mediation exam), integrity and professionalism. Mediation centers must also meet certain criteria.

> "Qualified mediators and accredited mediation centers are essential for effective dispute resolution."

Mediation institutions and mediators are registered with the Ministry of Justice of the Slovak Republic. As of the date of this document, there are:

- more than 1000 registered mediators in the area of Slovak Republic and are listed in the following link:

  https://www.justice.gov.sk/registre/mediatori/?stav_string=label.zapis_stav.aktivny&pageNum=1&size=10&sortProperty=meno_sort&sortDirection=ASC

- only 15 mediation centers registered in the area of Slovak Republic and are listed in the following link:

  https://www.justice.gov.sk/registre/medcentrum/?stav_string=label.zapis_stav.zapisany&pageNum=1&size=10&sortProperty=nazov_sort&sortDirection=ASC

Any of them can be used in cross-border disputes in civil and commercial matters.

Applicability of mediation

Mediation can be used in a variety of circumstances involving disputes arising from contractual or other legal relationships. The disputes may be:

family disputes under the Family Law Act;
civil disputes under the Civil Code;
commercial disputes under Section 261 of the Commercial Code (see more below); and
labor disputes under the Labor Code.

Mediation is also applicable to particular cross-border disputes arising from similar legal relationships.

Article 261 of the Commercial Code includes (for example) the following legal relations

- obligatory relations between entrepreneurs, if at the time of their establishment, taking into account all circumstances, it is obvious that they are related to their business activity,

- between the founders of a company, between the shareholder/member and the company, and between the shareholders/members themselves, as far as relations related to participation in the company are concerned, as well as relations arising from contracts under which the shareholder/member's share is transferred,

- between the statutory body or the member of the statutory body and the supervisory body of the company and the company, as well as the relations between the shareholder/member and the company in the management of the company's affairs, and the contractual relations between the proxy and the company in the exercise of the proxy's authority,

- arising from an agreement on the sale of a company or its parts, credit agreement, controlling agreement, silent partnership agreement, agreement on the opening of a letter of credit, agreement on the deposit of objects in a bank

- arising from a bank guarantee.

Based on the above, mediation is applicable to a number of relationships covered by the Commercial Code.

The advantages of mediation can be summarized as follows:

- ☑ it can be used in various areas, including commercial law (namely in the case of conflicts between entrepreneurs or certain legal entities arising from their business activities);
- ☑ it is a voluntary and strictly confidential process, quicker and probably more cost-efficient than civil litigation or arbitration;
- ☑ the information disclosed during mediation cannot be used outside the mediation and is not publicly available;
- ☑ it can help to maintain better relations between the parties, which is particularly important when the parties tend to continue working together after the dispute has been resolved,
- ☑ it is a very flexible and informal process;
- ☑ it can take place before and during civil proceedings between the parties, and
- ☑ the result of mediation can be used as a writ of execution to enforce the decision, if certain conditions are met.

Slovenia

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MEDIATION IN EUROPE IN COMMERCIAL MATTERS

Mediation in commercial matters in Slovenia

Mediation as a form of alternative dispute resolution is well established in Slovenia, as it provides the parties with an opportunity to reach an amicable settlement of their dispute arising out of or in connection with a contractual or other legal relationship, on a voluntary basis, with the assistance of a neutral third party, i.e. a mediator. Unlike arbitration, in mediation the mediator cannot decide on the dispute, but must act independently and impartially and strive to treat the parties equally, taking into account all the circumstances of the case.

Mediation in Slovenia can take place as a court-affiliated or court-related program, or it can take place completely independent of the court and court proceedings. While court-based mediation in Slovenia is governed by the Act on Alternative Dispute Resolution in Judicial Matters, mediation that takes place outside of court proceedings, whether the parties have agreed to it on their own initiative or at the request of a court, arbitral tribunal or other body, is governed by the Act on Mediation in Civil and Commercial Matters. However, both acts contain rules that apply to mediation in both civil and commercial matters.

Mediation outside of court proceedings

If the parties have agreed in advance that mediation will be used to resolve disputes between them that may arise out of a particular legal relationship, or if mediation is prescribed by law for the resolution of a particular type of dispute, mediation is initiated when a party receives a proposal from the other party to initiate mediation. In other cases, where there is no prior agreement on the use of mediation, mediation commences on the date on which the parties to the dispute agree to mediation.

Since mediation is a procedure subject to the will of the parties, they may, by mutual agreement, appoint the mediator and/or agree on the procedure and rules of the mediation.

However, if there is no agreement on the mediator or the rules, the mediator may be appointed with the assistance of a third party, while the mediation is conducted in such manner as the mediator deems appropriate.

During the course of the mediation, the mediator may meet or communicate with each party separately or with all of them together, and may disclose

information provided by one party to the other, unless the party has disclosed it to the mediator on the express condition that it remain confidential. However, all information arising out of or relating to the mediation shall be confidential, unless the parties have agreed otherwise or disclosure is required by law or necessary to comply with or enforce the settlement agreement.

Throughout the mediation, the mediator may make suggestions for resolving the dispute, but the mediator's proposed resolution is not binding on the parties. A dispute is resolved in mediation only if the parties reach an amicable solution.

> Mediation succeeds only through mutual agreement."

In accordance with the principle of amicable settlement pursued by mediation, the mediation ends:

- ☑ if an agreement is reached on the settlement of the dispute;
- ☑ if the parties have not agreed on the appointment of a mediator within 30 days of the commencement of the mediation;
- ☑ if the mediator, after consultation with the parties, declares that it is not expedient to continue the proceedings;
- ☑ if the parties declare in writing to the mediator that the proceedings are terminated, and
- ☑ if one of the parties declares in writing to the other parties and to the mediator that the proceedings are terminated. If there are several parties to the proceedings who are willing to continue the mediation between them, the mediation shall end only for the party who made the declaration.

It is important to note that the main objective of the Mediation in Civil and Commercial Matters Act is to encourage the use of mediation procedures by removing obstacles in the legal system that discourage parties from trying to settle disputes amicably before going to court, and to create a balanced relationship between mediation and court proceedings by protecting parties who choose mediation from losing rights that would be protected in court proceedings.

Therefore, based on Article 17 of the Mediation in Civil and Commercial Matters Act, for all disputes arising from civil, commercial, labor and other property relationships, the statute of limitations is suspended during mediation with respect to claims that the parties are free to dispose of and settle, and continues if the mediation ends without a settlement agreement. Therefore, the commencement of mediation is not equivalent to the filing of a lawsuit or an arbitration proceeding in terms of its effect on the running of the statute of limitations, since the filing of a lawsuit has the effect of interrupting the running of the statute of limitations, after which it starts running again from the beginning, whereas mediation merely suspends the running of the statute of limitations.

Mediation during litigation

In cases where the contractual or other relationship does not provide for compulsory mediation, or where the parties do not opt for mediation prior to the commencement of the court proceedings, the court could, on the basis of Article 15 of the Act on Alternative Dispute Resolution in Judicial Matters, offer the parties the possibility of mediation in each case after the commencement of the court proceedings, unless the judge considers it inappropriate in a particular case.

In practice, courts send an invitation to mediation directly to the parties after the case has been filed. However, if during the proceedings the parties agree to try to reach an agreement through mediation, the court may at any time suspend the proceedings for a period not exceeding three months and refer the parties to mediation.

Mediation conducted during the judicial proceedings on the basis of the consent of the parties is conducted by an independent third party in order to respect the principle of independence and confidentiality of mediation.

Notwithstanding the above, even if the parties do not agree to mediation when invited by the court, the court may, pursuant to Article 18 of the Act on Alternative Dispute Resolution in Judicial Matters, require them to appear in person at an information session on mediation at any time during the proceedings. During this session, the judge deciding the case presents the reasons why he or she considers mediation to be appropriate in the particular case and encourages the parties to agree to mediation. The judge also considers with the parties whether mediation would be a satisfactory way of resolving their dispute in a particular case. In any event, during the session, the judge will emphasize the advantages of a friendly settlement of the specific dispute (saving of costs, time, stress and energy) in the light of what has been stated so far in the case file (what is at stake, uncertainty of the outcome of the judicial proceedings).

If a party who has been duly summoned to an information hearing fails to appear and does not give a valid reason for his failure to appear, or if there are no circumstances of common knowledge showing that the party was unable to appear for a valid reason, that party shall reimburse the other party for the costs of that hearing.

The Court may, where appropriate in the circumstances of the case, and after consultation with the parties attending the information hearing, decide to stay the proceedings for a period not exceeding three months and to refer the parties to mediation.

In such cases, if a party unreasonably refuses such referral to mediation, the court may, upon application of the other party, order that party to pay all or part of the costs of the proceedings incurred from the date of the manifestly unreasonable refusal to refer the party to mediation, irrespective of the success of the proceedings.

Pursuant to Article 22 of the Act on Alternative Dispute Resolution in Judicial Matters, the courts cover the mediator's fee for the first three hours of mediation and the mediator's travel expenses incurred in connection with the first three hours of mediation. However, the situation is different for mediation in commercial disputes, where the parties themselves pay the mediator's fee and travel expenses in equal parts, unless otherwise agreed.

> Parties that unreasonably refuse to mediate may face financial penalties, regardless of the outcome of the case."

Conclusion

Although mediation is a completely voluntary procedure in which the parties can resolve their dispute much more swiftly and at a lower cost, the parties did not opt for mediation at the outset of the court proceedings . With the decrease in the number of mediations in courts, especially in commercial cases, the courts have begun to hold information sessions on mediation in all commercial cases.

Spain

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STATUS OF MEDIATION IN SPAIN

In the business world, conflicts and disagreements are inevitable. Mediation is emerging as an important instrument for their resolution. In Spain, while mediation is becoming increasingly widespread, it is hardly used as an appropriate method for resolving disputes, despite the regulation implemented by the authorities.

Legal Framework for Mediation in Spain

Mediation is a legal method of dispute resolution in Spain, fully regulated by Law 5/2012, of July 6, on Mediation in Civil and Commercial Matters. The Law transposes into Spanish law Directive 2008/52/EC of the European Parliament and of the Council of May 21, 2008 on certain aspects of mediation in civil and commercial matters. However, the regulation goes beyond the content of this European Union regulation, in accordance with the provision of the third final provision of Law 15/2005, of July 8, which amends the Civil Code and the Civil Procedure Code on separation and divorce, in which the Government was mandated to submit a draft law on mediation to the Spanish Parliament.

Other applicable laws are: (i) Royal Decree 980/2013, of May 7, which implements certain aspects of Law 5/2012, of July 6, on Mediation in Civil and Commercial Matters; (ii) Law 1/2000, of January 7, on Civil Procedure; (iii) Royal Decree 231/2008, of February 15, which regulates the Consumer Arbitration System (Article 38), (iv) Order JUS/746/2014, of May 7, which implements Articles 14 and 21 of RD 980/2013, of December 13, and establishes the list of mediators and mediation institutions; (v) Royal Decree 8/2004, of October 29, which approves the revised text of the Law on Civil Liability and Insurance in the Traffic of Vehicles.

On January 11, 2019, the Council of Ministers approved the "Preliminary Draft Law for the Promotion of Mediation", which is awaiting approval. It aims to stimulate mediation in Spain and turn it into a successful system of conflict resolution.

The mediator

In mediation processes, the role of an intermediary is essential, usually a third person, called a mediator, who can be an individual or an organization. Accepted by the conflicting parties, mediators act with impartiality y and neutrality, helping the parties to overcome their differences and to find common ground.

The mediator is responsible for assisting the parties find possible alternatives to the problem and, of course, to manage the communication between them.

Law 5/2012 establishes that the mediators must have an official university degree or higher professional training, and specific training for the practice of mediation, acquired through the completion of one or more specific courses taught by duly accredited institutions, valid for the exercise of the activity of

mediator anywhere in Spain. Generally, these courses must have a minimum duration of 100 hours, but in order to be included in the Register of Mediators, a candidate must have completed a 300-hour course.

Mediators are responsible for their actions and may therefore face different types of liability. Mediation is a profession with responsibilities and ethical duties. Mediators must accept the idea that all disputing parties have the right to negotiate and attempt to determine the outcome of their own conflict. Mediators know that their duties and obligations are to the parties who engage their services.

The primary responsibility in mediation lies with the parties; the mediator must always recognize that the agreements reached in negotiations have been voluntarily agreed to by them . It is the mediator's responsibility to try to bring the parties to an agreement and never to impose the agreement on one of them.

A mediator is also required to inform the parties when a permanent deadlock has been reached and to refer them to other means of dispute resolution. A mediator should not drag out unproductive discussions that result in increased time, emotional and financial costs to the parties. A mediator shall not make false statements or allegations and shall maintain an impartial position with respect to all parties. The information a mediator receives is confidential.

> The mediator's role is to facilitate, not impose, an agreement."

Structure of a Mediation process

This first phase is the "briefing session". This is where the decision to engage in the process is made. It is usually the first real contact the parties have with mediation.

The parties to the process are identified, the cause of the conflict is determined, the origin of the conflict situation is analyzed, and each party gains a better understanding of the other. The parties introduce

themselves and the process is explained.

The unjustified failure to attend the information session is considered a withdrawal from the mediation.

Failure to attend the information session indicated by the Court may be considered a breach of good faith. After the session, the parties are free to accept or reject mediation as a method of resolving the conflict.

Minutes of the session are drawn up. The minutes must be signed by the mediator or mediators.
If mediation does not take place, the minutes shall record that mediation was attempted but was unsuccessful. The minutes must be signed by all parties and copies are to be provided in the same number as there are parties to the proceeding. Signatures are also required on the confidentiality agreement signed at the beginning of the process.

The second phase is the "discussion phase", in which information is clarified and the arguments are presented to the opposing party. Each party states its point of view on the conflict and the way it considers most appropriate to resolve it.

Third, there is the "alternative selection" or "discussion and negotiation" phase. At this stage, the information is filtered to decide its importance. Once the parties have proposed different options for resolving the conflict, they must choose the one that they both consider to be the most satisfactory for both.

Fourth, the "reconciliation phase" is a reconciliation of the parties after the decision has been taken, which serves to reinforce it or to hear possible appeals and objections.

Completion

The mediation agreement is the contract by which the parties settle, in whole or in part, the dispute submitted to mediation, thereby avoiding a dispute or terminating a lawsuit in progress. The mediation agreement is subject to contract law.

The mediation agreement must contain the personal details of the parties, their address, the place and date of signature, the obligations assumed by each party, the fact that a mediation procedure has been followed, the name of the intervening mediator or mediators and, where appropriate, the name of the mediation institution where the procedure has been conducted. Finally, the mediation agreement should be signed by the parties or their representatives.

In addition to the points agreed upon, the agreement should include a section on possible future revisions and procedures.

The law emphasizes the voluntary nature of mediation, while at the same time giving it the necessary legal authority to serve as a valid and enforceable alternative to litigation. Mediation agreements, once formalized and submitted to the courts, can be legally binding, providing businesses with the assurance that the outcome will be honored by all parties involved.

Execution of the agreement

If the procedure results in an agreement, one copy must be given to each of the parties and one copy shall be retained by the mediator for safekeeping. The mediator shall inform the parties of the binding nature of the agreement reached and of their right to execute it as a deed or apply for judicial approval in order to make the agreement enforceable.

If the agreement is not complied with, the enforcement procedure replaces the action that would have been taken by the party against whom enforcement is sought had it voluntarily complied with the mediation agreement.

Future of mediation in Spain

On January 11, 2019, the Council of Ministers approved the "Preliminary Draft Law for the Promotion of Mediation", which is awaiting approval. Its purpose is to promote mediation in Spain and make it a successful system of conflict resolution.

The objective is to finally establish mediation as a supplementary mechanism to the judicial system for the out-of-court settlement of civil and commercial disputes, with greater flexibility and at a lower economic and personal cost to the parties. The promotion of mediation also seeks to reduce the workload of the courts and thus to improve response times.

The new draft regulation overcomes the current model of mediation, based on its exclusively voluntary nature, by the so-called "mitigated obligatory nature", which requires the litigants to attend an informative and exploratory session in the six months preceding the filing of the lawsuit in a certain number of matters. This session is conducted by a mediator and aims at exploring both the matter in dispute and the initial position of the parties, who receive clear and accurate information on the procedure, the dynamics to be followed if it is finally agreed to proceed with mediation, and its advantages over the judicial process in terms of time and cost savings.

There is also a provision for intra-judicial mediation, which takes place when a judge or court, after analyzing the case, considers that an alternative to litigation may be more satisfactory for the parties, provided that there has been no attempt at mediation prior to the commencement of the proceedings.