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166. LAW ON MEDIATION

LAW ON MEDIATION

I. GENERAL PROVISIONS

Area of Application and Definition

Article 1

This law shall stipulate the rules for mediation procedure in civil disputes, including family disputes, commercial and other property relations of natural and legal persons, in which the parties thereto can freely exercise their rights, as well as in employment litigations that are pending in the court, unless there is a special regulation that prescribes otherwise for the specific disputes.

Initiation of Proceedings

Article 2

Mediation procedure shall be initiated by mutual agreement of the parties involved, and if the court proceedings are in progress, mediation procedure shall be recommended by the court.

Mediation Procedure is Optional

Article 3

Parties to a dispute shall participate in the mediation procedure voluntarily.

Equality of Parties

Article 4

The parties to mediation shall have equal rights.

Privacy

Article 5

Mediation procedure is closed to the public.

Parties, their legal representatives or attorneys may be present in mediation procedure. Third parties can be present in mediation procedure only after prior consent of both the mediator and the parties.

Confidentiality

Article 6

Mediation procedure is confidential for all its participants, unless otherwise agreed by the parties.

All information pertinent to the mediation procedure and the settlement agreement shall be confidential, unless otherwise agreed by the parties and unless referring to a regular or forced execution of the settlement or if expressly so stipulated by the law.

Secrecy of Information

Article 7

At the request of a party, any submission, document or other material used in the mediation procedure shall be returned to the concerned party, and no copy of it shall be retained.

Following the completion of the mediation, the mediator shall destroy each note taken during the mediation procedure.

Independence and Impartiality

Article 8

A mediator shall conduct mediation procedure in an independent and impartial manner, in order to achieve an amicable settlement of a dispute.

A mediator shall not conduct mediation under the influence of any party.

In the mediation procedure, a mediator shall be obliged to treat each party to the dispute fairly.

Relation between Mediation and Court Proceedings

Article 9

Where the court in charge of the proceedings finds that a dispute can be successfully resolved by mediation, it shall direct the parties to conduct a mediation procedure.

Where the parties fail to settle a dispute by mediation within 60 days following the day of recommendation of the mediation procedure, the court shall schedule a hearing.

Where no court proceedings are in progress, the duration of mediation procedure shall be mutually agreed by the parties.

In the court proceedings are in progress, the parties may accept a mediation procedure at any stage of the court proceedings.

Remuneration and Compensation

Article 10

A mediator is entitled to receive a remuneration for the work done and be compensated for the incurred costs.

Meaning of Terms

Article 11

The terms in this law shall have the following meaning:

- 1) Mediation is the procedure where the parties thereto try to end a disagreement assisted by one or more mediators;
- 2) Mediator is a person who, following a mutual agreement of the parties, mediates between the parties to settle a dispute in accordance with the principles of mediation stipulated by this Law;
- 3) Party to a mediation procedure may be a natural or legal person participating in the mediation, whose agreement is necessary for the settlement of a dispute;
- 4) Third party is a person who is neither a party to the dispute nor a mediator, although taking part in the mediation procedure.

II THE PROCEDURES FOR APPOINTMENT AND DISMISSAL OF MEDIATORS

Conditions for Appointment

Article 12

A person meeting both general requirements for the work in governmental bodies and the following specific requirements may be appointed a mediator:

- University degree holder;
- At least five years of work experience in the related field of specialization;
- Completion of the applicable training for mediators.

Exceptionally, a person not meeting the requirements stipulated in paragraph 1 of this Article may be appointed a mediator provided that he/she is a proven expert and has practical experience in the related field of mediation.

In certain cases, mediation procedure in the Republic of Montenegro may be conducted by a foreign national who is authorized to conduct mediation in a foreign country, in case of a dispute that involves a foreign component.

Training Program

Article 13

Training program for mediators as well as the manner in which it is conducted is prescribed by the competent ministry in charge of the judiciary (hereinafter referred to as "The Ministry").

Appointment of Mediator

Article 14

Mediator shall be appointed by the Minister in charge of judiciary activities (hereinafter referred to as "The Minister"), following the proposal of the Commission for Appointment and Dismissal of Mediators (hereinafter referred to as "The Commission").

Application Procedure

Article 15

A vacancy for mediator shall be announced by the Ministry in one of the printed media in the Republic of Montenegro.

An application, enclosed with relevant evidence confirming that the conditions for the appointment of a mediator are met, shall be submitted to the Ministry according to this Law. The application shall include personal details, professional qualifications and a resume of the applicant.

Commission

Article 16

The Commission shall carry out the procedure for the appointment and dismissal of a mediator.

The Commission shall be appointed by the Minister.

The Commission shall consist of three members including a judge, a mediator and a representative of the Ministry.

The members of the Commission shall be appointed for a four-year term.

Professional and administrative work for the Commission shall be performed by the Ministry. The Commission shall adopt its Rules of Procedure.

End of Membership

Article 17

The membership in the Commission may be ended early following a personal request of the member or upon the termination of the function, position or other capacity representing the basis for the appointment

Appointment Procedure

Article 18

The Commission shall determine whether the conditions from article 12 of this Law are met by the candidate.

Where the Commission confirms that the candidate met the requirements, it shall submit to the Minister a proposal for the appointment of mediator, including an explanation.

The decision on the appointment of a mediator shall be rendered by the Minister.

An administrative procedure against the decision from paragraph 3 of this Article may be initiated by the applicant who was not appointed as a mediator.

Before issuing a decision, the Minister may request the Commission to provide additional clarifications.

The decision on the appointment of a mediator shall be delivered to the mediator and published in the Official Gazette of the Republic of Montenegro.

Record Keeping

Article 19

The Ministry shall keep a record of mediators in the Register of Mediators.

The contents and form of the Register from paragraph 1 of this Article shall be specified by the Ministry.

List of Mediators

Article 20

Based on the records kept, the Ministry shall provide the Courts with a list of mediators containing their names, addresses and telephone numbers respectively.

A mediator shall notify the Ministry and the court at the applicable place of residence of any changes to the provided address or telephone number.

Cause for Dismissal

A mediator shall be dismissed:

- 1) Following a personal request;

- 2) Where confirmed that the conditions for his appointment were not met or ceased to exist;
- 3) Where condemned for criminal offence, which made him unworthy of mediation activity;
- 4) Where found partly or fully incapable to perform the work on the basis of court decision;
- 5) Where confirmed in the manner stipulated by the law that a mediator is no longer capable to perform the work;
- 6) Where the mediator fails to follow the procedures stipulated by the law in the process of mediation.

Dismissal of Mediator

Article 22

Dismissal of a mediator may be initiated by a judge, party to the dispute or other interested party.

An initiative for the dismissal of a mediator including an explanation shall be submitted to the Commission.

The Commission shall consider the initiative for dismissal, and if the reason for the dismissal is confirmed, it shall submit such a proposal with an explanation to the Minister.

A decision to dismiss the mediator shall be issued by the Minister.

An appeal against the decision may be filed by the dismissed mediator.

The decision on dismissal shall be delivered to the mediator and published in the Official Gazette of the Republic of Montenegro.

The dismissed mediator shall be erased from the Register of Mediators.

III. MEDATION PROCEDURE

Relations between Mediator and Parties in Dispute

Article 23

Mediation procedure shall be conducted by the mediator in the manner agreed by the parties.

Where the parties fail to agree on the manner of conducting the mediation procedure, the mediation procedure shall be conducted by the mediator objectively and conscientiously, without any delays, and taking into account the interests of each party.

The mediator may not make promises, guarantee a successful mediation or impose a resolution to the dispute on the parties.

Accountability of Mediator

Article 24

The mediator shall be held accountable for any damage caused to the parties due to unlawful personal action, pursuant to the applicable general rules on accountability for damage causing.

Communication

Article 25

As a rule, mediator shall maintain a verbal communication with the parties.

In the course of mediation procedure, aiming to conclude a settlement and in agreement with the parties, a mediator may maintain joint or separate meetings with the parties and their respective legal representatives or proxies to discuss the issues and take notes.

The minutes of the mediation procedure shall not be taken in shorthand.

Mediator may advise the parties of the possibility to consult with a proxy or another specialist.

Information

Article 26

Where a mediator learns or obtains from one of the parties any information related to the object of the dispute, he/she may concisely inform the other party accordingly.

Confidential information disclosed to the mediator by one of the parties shall not be passed to the other party.

Exemption

Article 27

The appointed mediator shall immediately clarify any circumstances related to a dispute that may give rise to any doubt about his impartiality and independence.

Unless otherwise agreed by the parties to a dispute, a mediator who currently has or had personal interest, and personal, family or business relationship with a party to the dispute may not participate in the mediation procedure.

Unless a party, having learned about the circumstances from paragraph 1 and 2 of this article, immediately asks for the appointment of another mediator, it shall lose the right to do so in the future or request an annulment of the settlement.

Initiation of Mediation Procedure

Article 28

Where a party believes that a dispute may be resolved by mediation, the proposal to initiate a mediation procedure may be delivered to the other party in writing.

Unless otherwise agreed by the parties, mediation shall commence as of the day when the proposal from paragraph 1 of this Article is accepted by the other party.

Where the other party fails to respond to the proposal within 30 days following the delivery of the proposal for mediation or within the time limit specified in the proposal, the proposal shall be deemed rejected.

Appointment of Mediator

Article 29

By mutual consent, the parties shall appoint one or more mediators in a specific dispute.

For disputes involving a foreign component, a foreign person may be appointed as a mediator.

Where the court proceedings are in progress and parties fail to agree about a mediator, the parties may request the Court to appoint a mediator from the list of mediators.

Where the court proceedings are not in progress and the parties fail to agree about a mediator, the parties may request the Commission to appoint a mediator from the list of mediators.

When appointing a mediator for a specific case, the Court or the Commission shall take into account the circumstances of the dispute, the requirements to be met by the mediator, and possibly the need to appoint a mediator whose citizenship is different from that of the parties in dispute. The parties may recall a mediator by mutual agreement at any stage of the proceedings.

Mediation Rules

Article 30

Mediation shall be conducted as agreed by the parties, whereupon the parties may conclude a written agreement. Where the parties fail to agree on how to conduct the mediation procedure, it shall be decided by the mediator following a prior consent of the parties.

In the course of mediation procedure, the parties shall be given sufficient time to consider all decisive facts and proposals for a settlement.

Representation

Article 31

Parties to a mediation procedure may be represented by their respective legal representatives or proxies.

In case of the current court proceedings, the court shall deliver the name and address of the legal representative or proxy of each party to the other party and the mediator in writing.

Where no court proceeding has been initiated yet, the legal representatives or proxies of the parties shall deliver their respective powers of attorney to the court on the occasion of the first action taken in the mediation procedure.

Any action taken by a legal representative or proxy in the mediation procedure shall be deemed to have equal legal effect as if personally undertaken by the concerned party.

Mediation Scheduling

Article 32

Date, time and place of mediation shall be set by mutual agreement of the parties, or else by the mediator if the parties fail to reach the related agreement.

Introduction to a Dispute

Article 33

After being appointed, the mediator shall meet with the parties to be introduced to the nature and object of the dispute, and also issues to be resolved.

Mediator may request additional information and evidence from the parties at any stage of the proceedings.

Expert Advice

Article 34

During the mediation procedure, following the proposal of the mediator and with prior consent of the parties, expert advice may be sought from the competent institution or specialists.

Completion of Mediation Procedure

Article 35

Mediation shall be completed on the day:

- 1) Of the settlement reached by the parties;
- 2) When the parties accept the mediator' proposal to end the mediation as no longer justifiable.
- 3) Of delivery of a written notice of withdrawal to the mediator or the opposing party, unless the other parties participating in the dispute agree to continue the mediation procedure relating to the dispute between them;
- 4) In other cases specified by this Law.

Settlement

Article 36

Following the request of the parties, a mediator may propose a solution for the settlement of a dispute in any phase of the mediation procedure, and also participate in the process of drafting of a final settlement.

Parties may agree to specify a time limit to consider the proposed settlement.

A settlement reached in the process of mediation shall have the power of court settlement if stated so in the minutes of the judge, unless otherwise stipulated by special law.

The concluded settlement shall have the power of an executive document.

The mediator shall notify the parties about the effects of the achieved settlement, in addition to the actions to be undertaken in the process of its implementation.

Use of Facts and Evidence in Future Proceedings

Article 37

Should a party, mediator or third party, either in court, arbitration or other proceedings, refer to the facts or propose as a piece of evidence any circumstances relating to another mediation procedure, this proposal shall be rejected as inadmissible while the information obtained in this way may not be used in the decision-making process, unless otherwise agreed by the parties.

Should a party to a mediation procedure refer to a specific statement or evidence that may be denied in a different procedure, the fact that such statement or evidence was used in order to reach a settlement shall not concurrently mean that the party agrees for this statement or evidence to be used in another procedure.

Time Limits

Article 38

Unless otherwise agreed by the parties, the initiation of mediation procedure shall not stop the case from expiring by limitation, relating to the subject matter of the mediation procedure.

Where pursuant to the law, the right to submit a request for the protection of rights or initiate a lawsuit is limited by a preclusive deadline for the specific dispute, such time limit shall be

calculated as of the day when the proposal for mediation procedure was refused or considered refused or when the mediation was terminated without a final settlement.

Costs of Mediation Procedure

Article 39

The costs of mediation procedure shall be reasonably proportionate to the scope, complexity and importance of the subject matter that is being considered.

The costs of mediation procedure shall include the following:

- 1) Payment of mediator's fee and expenses;
- 2) Travel and other costs of the witnesses;
- 3) Counseling costs
- 4) Fees for proxy services.

Unless otherwise agreed by the parties, each party shall cover its own costs, while the common costs shall be equally covered by the parties.

In case mediation was proposed to the parties during the court proceedings, the provisions of the Law of Civil Proceedings referring to the exemption from the requirement to pay the costs of court proceedings shall also apply to the mediation procedure.

Advance Deposit for Mediation Costs

Article 40

The mediator may request the parties to deposit equal sums of money in advance to cover the costs that may arise from the mediation procedure.

In the process of mediation, the mediator may request the parties to make additional advance cash deposits in equal amounts for possible costs.

Where the parties fail to make an advance payment for the coverage of costs in full not later than within 15 days following the related order, the mediation procedure may be terminated.

Following the completion of the mediation procedure, actual costs shall be deducted from the advance payment by the mediator, while the balance shall be refunded to the parties.

In case the court proceedings are in progress, the requirement for making an advance payment for mediation shall not apply to the party that is exempted from the requirement to pay the costs of procedure pursuant to the Law of Civil Proceedings.

IV. SPECIAL MEDIATION PROCEDURE FOR FAMILY DISPUTES

Family Disputes

Article 41

This Chapter contains special provisions on rules of mediation in family disputes including:

- Marriage disputes;
- Disputes involving parents and children;
- Child support disputes.

Mediation procedure shall not be conducted if one or both spouses are incapable to work, except when confirmed by the Court that they are able to understand the meaning of marriage and the consequent obligations, if it was not possible to identify the place of residence of one or both spouses for a previous period of at least six months or if one or both spouses live abroad.

Exceptionally, mediation procedure shall be conducted if both spouses live abroad and have minor or adopted children, or adult children in their parental care, should the court decide that the spouses may participate in the mediation procedure without any major difficulties.

Area of Application

Article 42

Where no special provision for mediation in family disputes is provided under this Chapter, the existing provisions of this Law shall apply to mediation in family disputes.

Mediator in Family Disputes

Article 43

Mediator shall advise the parties that they may seek marriage counseling or the assistance of another professional institution or specialist in marital and family issues to resolve their marital and family problems.

In this type of a dispute, the mediator shall pay special attention to the best interests of the children.

Mediator shall pay special attention to any occurrence of family violence in the past and assess if it may reoccur between the parties in future. The mediator shall especially consider if a mediation procedure would be the appropriate action to be taken under the specific circumstances.

Course of Mediation Procedure

Article 44

Where no court proceedings are currently in progress, the mediator shall discuss with the parties the causes that resulted in the impediments to marriage and attempt to remedy the situation and reconcile the spouses.

At a reconciliation meeting, the appointed mediator shall invite the spouses to personally participate in the proceedings, not through a proxy.

Where one or both duly invited spouses fail to respond to the mediation procedure, the mediation procedure shall be considered terminated.

Consequences of Divorce

Article 45

Mediator shall advise the spouses on the consequences of a divorce, in addition to their rights and responsibilities.

Children's Rights

Article 46

A child shall not participate in the mediation procedure.

Exceptionally from paragraph 1 of this Article, a mediator shall consult with the child about who the child wishes to be entrusted to for the care, support and upbringing, taking into account the child's age and ability to understand the importance of the given statement.

Opinion of Professional Institutions

Article 47

In the process of mediation in family disputes, an expert opinion may be sought from the Center for Social Work, marriage counselor, an appropriate institution or specialist.

The institutions and persons from paragraph 1 of this Article shall cooperate with the parties and the mediator.

Mandatory Delivery of Mediation Decision

Article 48

At the end of mediation procedure, the mediator shall notify the Center for Social Work accordingly.

Following the delivery of notification from paragraph 1 of this Article, the Center for Social Work shall immediately undertake the required measures for the protection of the child's best interests.

Approaching the Court

Article 49

During the mediation procedure, the parties to a family dispute may approach the court or another competent authority with a request to take urgent action to protect the parties, their children or property.

V. TRANSITIONAL AND FINAL PROVISIONS

Article 50

Not later than three months following the day of entrance into force of this Law, the Ministry shall prepare a training program for the mediators.

Article 51

The first mediator shall be appointed by the Minister.

The appointed mediator from paragraph 1 of this Article shall become a member of the Commission from article 16 of this Law.

Article 52

Not later than within three months following the day of entrance of this Law into force, the Commission from Article 16 of this Law shall be appointed by the Minister.

Not later than within three months following the day of entrance of this Law into force, the contents and form of the Register of Mediators shall be specified by the Minister.

Article 53

This law shall come into force on the eight day following that of its publication in the Official Gazette of the Republic of Montenegro and shall be applied six months following its entry into force.