

report

MEDIATION IN BUSINESS

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THE MEDIATION ACT (NN 18/11) DEFINES MEDIATION as any procedure where the parties attempt to solve a dispute consensually, with the assistance of one or more mediators who help the parties in reaching conciliation, but who are not authorised to impose any binding solution.

In order to ensure that the process of mediation will be fair and legal, there are some procedure principles that parties have to stick to (*Mediation Procedure Principles*).

Further on, if parties stick to these procedure principles as described below, there is a great chance that they will get the most out of the mediation process, and that will be attaining sole control over their dispute (*Advantages of Mediation Relative to Court Proceeding*).

If during the process of mediation, parties endure sticking to the procedure principles and maintain control over their dispute, they will most probably render the mediation procedure successful. They will likely reach an agreement and come to a settlement. All of this will enable them to see that mediation offers the most flexible solutions for their business disputes (*Mediation as a Flexible Solution for Business Subjects*).

So, let us now discuss these issues step by step:

MEDIATION PROCEDURE PRINCIPLES

The mediation procedure, in addition to being quick, economical, voluntary and informal, has certain defined principles that should be kept in mind.

Pursuant to article 4 of the Mediation Act (NN 18/11) "*with understanding of provisions of the Act, one should follow the principles of consciousness and honesty and internationally adopted mediation standards represented in the documents of the European Union, United Nations and the Council of Europe. The matters that are not regulated by this Act should be resolved in line with the principles of voluntarism, procedure efficiency, equal party treatment, autonomy of procedure parties, confidentiality of the procedure and mediator's impartiality*".

The principle of consciousness and honesty implies the parties' cooperation, conscientious use of authorisations in order to achieve legitimate goals, and the interdiction of using dispositions in a way intended to harm the other.

The principle of voluntarism means that the parties, as well as mediators, can withdraw their consent for the continuation of mediation at any time, as it is a voluntary procedure.

The principle of procedure efficiency encourages fast and economical activities without delay, where the parties reach a desirable resolution of the dispute in the shortest period and with a minimal amount of stress.

The principle of equal treatment of clients protects the participants from discrimination by a mediator, and dictates the mediator must address each party equally, present each party with equal attention and equal opportunity to present their attitudes.

The autonomy of parties is a reflection of each party's freedom to decide whether it will resolve its dispute and in what way, in what way and to what extent it will communicate with the other party, which information it will present openly and which at separate meetings, and what resolution it will agree upon.

The principle of procedure confidentiality ensures to parties that the information presented during the mediation cannot be used as evidence in other possible proceedings, that the parties in mediation and mediators cannot be forced to witness to the circumstances of the presented facts and that all presented data is used exclusively for the mediation process, unless explicit consent by the party is provided.

The principle of mediator's impartiality ensures equal treatment of the mediation participants by the mediator, and that his personal attitudes will not affect his function as mediator between the two opposing parties in mediation.

ADVANTAGES OF MEDIATION RELATIVE TO COURT PROCEEDING

It should not be forgotten that the media has been increasingly pointing out that resolution of the dispute before court signifies a loss of control over the dispute. By putting one's fate into the hands of the court, judge, lawyers etc., the dispute is conceded to those who can never know better than us what it is we want exactly.

But, if all facts related to the in-court resolution of disputes are taken into account, and especially the duration of the procedures, the fact that one party always loses in the dispute, and that the severed business relationship remains damaged, it might not be the best way to solve the "disputes" pertaining to the relationships between companies.

On the contrary, if parties in the mediation process stick to keeping their dispute under their own control, there is a great chance that they will get the most from the mediation process, and herein lays the power of maintaining control over one's dispute.

MEDIATION AS A FLEXIBLE SOLUTION FOR BUSINESS SUBJECTS

Apart from the mediation procedure being quick, economical, voluntary and informal, it is also the most flexible solution for business subjects, because it adjusts to the needs of each individual client, considering potential and present conflicts as an opportunity to resolve the problem.