

Vilnius Court of Commercial Arbitration (VCCA)

Rules of Mediation and Conciliation Procedure

Approved by resolution
of the Board of
Vilnius Court of Commercial Arbitration
of 8 March 2004

RULES OF MEDIATION AND CONCILIATION PROCEDURE

OF VILNIUS COURT OF COMMERCIAL ARBITRATION

Section I

General provisions

Article 1. Preconditions for mediation.

The parties willing to settle a dispute of economic, commercial or non-contractual nature without the recourse to court or arbitration may, on the basis of mutual agreement, apply to Vilnius Court of Commercial Arbitration (hereinafter – VCCA) for mediation. All disputes of non-contractual, commercial or other economic character may be subject to settlement by means of amicable and *bona fide* cooperation between the parties, with the assistance of mediators recommended by VCCA.

Article 2. Application of the rules

1. The present rules of mediation and conciliation procedure shall be applied in settling all disputes and disagreements of national or international character, whether commercial or economic, arising out of contractual (contracts, agreements) and non-contractual (tort) civil legal relationship.

2. If the parties to the dispute so require, the secretariat of VCCA shall organise mediation under the conciliation rules of the United Nations Commission on International Trade Law (UNCITRAL) or other rules (including those drafted by the parties to the dispute), which the parties may have amended or supplemented or made respective limitations of their application, having previously agreed on these points.

Article 3. Commencement of the mediation and conciliation procedure

1. The parties willing to settle the dispute under the present rules or any other rules shall, after having agreed on this point, address the VCCA secretariat with a request to organise the mediation and conciliation procedure. The VCCA secretariat may send the notice to another party as to the proposed mediation and conciliation procedure, if the other party so requests. Joint or individual applications of the parties addressed to the VCCA secretariat shall contain the description of the substance of the dispute and a request for the settlement of the dispute in accordance with the provisions of the present rules or other rules chosen by the parties. The copy of the contract (agreement), the implementation or interpretation of the provisions of

which gave rise to the dispute, as well as copies of other documents related to the dispute shall be attached to the application.

2. The mediation and conciliation procedure shall commence on the moment of payment of a registration fee specified in article 21 of the present rules to the VCCA bank account by one or both parties to the dispute.

3. The mediation and conciliation procedure shall not be organised in case of refusal of VCCA mediation services by the other party to the dispute or in the absence of an explicit written approval of that party as to such dispute settlement.

Article 4. Obligations relating to resorting to court or arbitration

The parties whose dispute is under consideration by VCCA on the basis of the present or any other rules of mediation and conciliation procedure undertake not to apply to court or arbitration for the purpose of settlement of that dispute during the mediation and conciliation procedure regarding the dispute in question.

Section II

Appointment of mediators

Article 5. Qualification requirements

1. Mediators may be lawyers and other experts of any economic or commercial activity, to which the parties entrust the settlement of the dispute between them. They may be chosen from specialists entered in the list of arbitrators recommended by VCCA or any other persons appointed by the parties' mutual agreement.

2. The mediator shall be fully independent from VCCA or any other institution and shall be exceptionally guided by the provisions of the laws, other legal acts and the rules forming the basis of organisation of mediation.

Article 6. Number of mediators

The parties may agree to appoint one, two or three mediators. In case of appointment of more than one mediator they shall act jointly and settle the dispute as a collegial body.

Article 7. Appointment of mediators

1. The mediators shall be appointed in accordance with the following procedure:

- 1) having agreed on the participation of one mediator in the procedure, the parties shall choose the mediator's candidacy and approve it by mutual agreement;
- 2) having agreed on the participation of two mediators in the procedure, each party to the dispute shall choose and appoint different persons as mediators;
- 3) having agreed on the participation of three mediators in the procedure, each party to the dispute shall appoint one mediator and shall jointly appoint the third mediator by mutual agreement or authorise the mediators appointed by them to select the third mediator.

2. The parties to the dispute may at any time address the chairman of VCCA with a request:

- 1) to recommend experts suitable for the position of mediators, or
- 2) to appoint one or all mediators.

3. By recommending or appointing the mediators, the chairman of VCCA shall take into consideration the circumstances ensuring unbiased and objective settlement of the dispute, and in case of international commercial disputes pay due regard to the expedience of

appointing as a mediator a national of the country other than the country of the parties to the dispute.

4. Each mediator appointed in each case by the chairman of VCCA or by the parties shall sign a declaration of impartiality and independence prior to the mediation and conciliation procedure.

Section III

Mediation and conciliation procedure

Article 8. Mediator's activity framework

1. The mediator shall be personally liable for the fair settlement of the dispute based on legal and moral standards. The mediator may conduct the mediation and conciliation procedure in accordance with the arrangements as he thinks fit, having regard to the requests of the parties and other circumstances.

2. After the commencement of the mediation and conciliation procedure the mediator shall consider the forms of order sought by the parties to the dispute and, where necessary, may require additional or more detailed written description of the parties' positions on the questions in dispute, description of the facts in more detail or submission of additional evidence supporting those facts.

3. The mediator may verify the facts at any stage of the mediation and conciliation procedure by means of a fact-finding mission, perform additional inquiries and examinations and resort to other necessary means for dispute settlement. He shall analyse all suggestions received from the parties to the dispute and make his views or conclusions known as to such proposals.

Article 9. Statement of reasons of the decisions

1. The mediator shall follow the principles of objectivity, impartiality and fairness in settling the dispute. He shall base his proposals or advice on laws and other legislation, obligations undertaken by the parties, commercial cooperation experience, apply various means and methods for fair settlement of the dispute.

2. The mediator shall inform the parties to the dispute in the course of mediation and conciliation procedure about the regulatory enactments forming the basis for dispute settlement and explain the requirements set out therein.

3. If any party to the dispute raises unfounded claims contrary to the laws or other legislation, the mediator shall explain verbally or in writing the provisions of laws or other legislation governing the subject-matter of the dispute. Should such unfounded claims be dismissed, the mediator shall state the reasons and the legal basis of such dismissal.

4. The mediator may at any stage of the mediation and conciliation procedure give to the parties (verbally or in writing) his suggestions as to the settlement of the dispute.

Article 10. Suggestions of the parties

Each party may give suggestions as to the settlement of the dispute at one's own discretion or at the request of the mediator.

Article 11. Representation

The parties may defend their interests in the mediation and conciliation procedure on their own or authorise other parties to perform such actions. The parties shall inform each other and the mediator about the names and addresses of the representatives in advance.

Article 12. Third party services

In order to facilitate or expedite the settlement of particular issues, the parties to the dispute or the mediator may, upon approval of the parties to the dispute, address third parties or particular institutions as to the provision of qualified conclusions or other services.

Article 13. Means of contact

1. The parties to the dispute and the mediator may communicate by means of direct meetings and correspondence, including the use of means of electronic communication. The mediator may communicate with both parties to the dispute jointly or individually.

2. The parties to the dispute and the mediator shall agree as to the time and venue of the meeting.

Article 14. Exchange of information sources

1. The parties to the dispute shall exchange information sources forwarded to the mediator with each other.

2. Should one party to the dispute serve the documents or written explanations relating to the subject-matter of the dispute on the mediator, the latter shall inform the other party to the dispute about them and, where necessary, forward the copies of such documents to the other party to the dispute and may request that party to submit an opinion regarding those documents. The mediator shall not be obliged to forward to the other party to the dispute the documents or information entrusted to the mediator on a condition of retention of confidentiality.

Article 15. Supporting the mediator's activity

The parties to the dispute shall honestly and fully assist the mediator in the proper performance of his duties as a mediator and conciliator. The parties shall, whenever requested by the mediator, timely provide him with the necessary information and evidence, participate in the meetings summoned by him.

Article 16. Settlement agreement

1. Having selected the proper means for the settlement of the dispute, the mediator shall prepare the draft settlement agreement and submit it for the consideration of the parties. Its terms may then be subject to change or adjustment, having regard to the comments or requests of the parties.

2. The parties may themselves prepare the settlement agreement, whenever they agree as to the dispute settlement conditions. However, in any case the mediator shall prepare the draft settlement agreement on his own or assist the parties to the dispute in preparing such an agreement, whenever so requested by the parties.

3. By signing the settlement agreement the parties shall terminate the dispute and the obligations undertaken by them shall henceforth become binding upon them.

Section IV

Final stage of the mediation and conciliation procedure

Article 17. Confidentiality

The mediator and the parties shall preserve the commercial secrets of the other party, which became known to them in the result of their participation in the mediation and conciliation procedure. The requirement of confidentiality shall also extend to the content of the settlement agreement. The provisions of the contract containing a commercial secret may be disclosed inasmuch as such disclosure is necessary for their implementation.

Article 18. Termination of the procedure

1. The mediation and conciliation procedure shall terminate:
 - 1) after the parties sign the settlement agreement;
 - 2) after the mediator, having advised the parties, declares the inexpediency of further continuation of the mediation and conciliation proceedings;
 - 3) when the parties serve a statement on the mediator holding that it is inexpedient to further continue the mediation and conciliation procedure;
 - 4) when one party informs the other party and the mediator as to its refusal of participation in the mediation and conciliation proceedings.

2. The provisions of the settlement agreement and all proposals on the part of the mediator as to the settlement of the dispute may be implemented by *bona fide* of the parties only.

Article 19. The obligation of the mediator to refrain from participation in the court and arbitration proceedings

In case of consideration of the same dispute in court or arbitration, formerly the subject-matter of mediation and conciliation procedure, the mediator may not take part in such proceedings, and the parties may not invite him as an arbitrator, witness, representative of either party or advocate.

Article 20. Restrictions as to the admissibility of evidence

If a dispute forming the subject-matter of the mediation and conciliation procedure is subsequently considered in court or arbitration, the parties may not rely on or use as evidence:

- 1) the opinion or suggestions of the other party for the settlement of the dispute, submitted during the mediation and conciliation procedure;
- 2) acceptances of the other party, expressed during the mediation and conciliation procedure;
- 3) mediator's proposals regarding dispute settlement;
- 4) the previous tendency of the other party to accept the mediator's suggestion regarding the settlement of the dispute.

Article 21. Fees

1. The following mediation and conciliation fees shall be collected:
 - 1) registration fee (for covering expenses related to the organization of procedure) – 1500 LTL (net of VAT);
 - 2) mediation fee (for the payment of mediator's services) – 2 % of the dispute amount (net of VAT);
 - 3) compensatory fee (to compensate the costs incurred by mediators, witnesses and other participants in the procedure, invited by the agreement of the parties to the dispute) shall be fixed on the basis of the documents supporting the incurred costs.

2. In case of provision of any other services during the mediation and conciliation procedure they shall be jointly or individually paid by the parties to the dispute.

3. In case of invitation for mediation of:

1) two mediators – the registration fee shall be increased by 20 % and the mediation fee – by 1 %.

2) three mediators – the registration fee shall be increased by 30 % and the mediation fee - by 1,5 %.

4. Whenever necessary, the mediation fee may be increased by the agreement of the chairman of VCCA and the parties to the dispute, and reduced where possible.

Article 22. Fee payment procedure

1. Registration fee shall be paid prior to the serving on VCCA of the application on the organisation of mediation and conciliation procedure. The procedure shall be organised after the respective registration fee has been paid.

2. Mediation fee shall be paid prior to the commencement of the mediation and conciliation procedure. Mediation and conciliation procedure shall be commenced only after the respective mediation fee has been paid.

3. Compensatory fee shall be paid in accordance with the arrangements made between the VCCA secretariat and the parties to the dispute.

4. All fees shall be paid to the VCCA settlement account No. LT287044060001217817 at AB SEB Vilniaus bankas (Gedimino pr. 12, LT-2600 Vilnius). Bank code – 70440.