



AMERICAN CHAMBER OF COMMERCE IN BULGARIA

Mediation Center

Mission

The Commercial Mediation Center of the American Chamber of Commerce in Bulgaria (AmCham) is being created to provide mediation as a method of alternative dispute resolution.

The Center is open to any person or company, whether Bulgarian or foreign, who requests its services to resolve disputes arising from both domestic and international commerce. Mediation is regulated in accordance to the Mediation Rules of the Center and any provision of law applicable.

Background

The AmCham Commercial Mediation Center was established in May 2005 as part of the American Chamber of Commerce in Bulgaria.

The Center has relied upon the support and cooperation of the Commercial Law Reform Program (CLRP) funded by the United States Agency for International Development (USAID).

What is Mediation?

Mediation is a forum in which an impartial person, the mediator, facilitates communication between parties to promote reconciliation, settlement, or understanding among them.

A mediator may not impose his own judgment on the issues for that of the parties.

Mediation is the familiar negotiation process with the addition of an impartial third party who at a definite time and place, with all parties present, attempts to assist the parties and attorneys in arriving at an agreeable settlement.

Mediation can occur at any stage of a dispute, that is, before a dispute enters litigation or after. In analyzing the differences between litigation and mediation, it is helpful to understand that mediation focuses on the "needs" of the parties, that is, those interests that, once recognized, can serve as an additional basis for resolution of the dispute.

LEGAL FRAMEWORK OF MEDIATION IN BULGARIA

Mediation Law

Rules on the Terms and Procedure for Registration in the Unified Register of Mediators

Procedural and Ethical Rules on Conduct of Mediators

Mediator's Education Standards

RECOMMENDED MEDIATION CLAUSE

“All disputes, arising from this contract or related to it, including those arising from or concerning its interpretation, invalidity, performance or termination, as well as the disputes for filling gaps in this contract or its adaptation to newly established facts, shall be resolved through mediation conducted by a mediator at the Commercial Mediation Center at the

American Chamber of Commerce in Bulgaria.”

Advantages of Mediation

1. Inexpensive

Typically, a small fraction of the cost of litigation

Quick Resolution can be reached in less time than required for litigation

Reduces Anxiety

Allows parties to retain control

Separates the parties from the problem

Shifts the focus of the dispute from rights to interests

2. Reasonable

Avoids damage to important, ongoing relationships, which often results from the adversary process

3. Flexible

Custom procedures and creative settlement options are available

Informal, voluntary exploration of settlement options is encouraged

Can be utilized at any time -- before, during, or after litigation

Scheduling is designed for the parties' convenience, not the court's

4. Confidential

Avoids public disclosure of private matters - everything said or disclosed in mediation is confidential

5. Successful

Most mediated cases are successfully resolved to the mutual satisfaction of all parties

Why refer a case to the AmCham Commercial Mediation Center

AmCham Commercial Mediation Center maintains a list of reliable and experienced mediators and provides bi-lingual (English, Bulgarian) services.

Mediation Services

The Mediation Center can provide parties with mediation services for a wide range of issues.

What Types of Disputes can be Mediated?

Commercial Relations

Consumer Relations

Construction

Contract Relations

Family Relations

Insurance Relations

Intellectual Property

Labor Relations

Personal Injury

Real Estate

Succession Relations

Other Mediation – Related Services

Administrative Services

The Mediation Center will provide the disputing parties with administrative assistance by:

- Providing information and guidance regarding the nature of mediation and mediation proceedings;
- Assisting parties to submit existing disputes to AmCham procedures;
- Helping the parties in selecting mediator/s from the list of mediators affiliated with the Mediation Center;
- Managing the relationship between the parties and the mediator/s with a view to ensuring optimal communications and procedural efficiency,
- Administering the financial aspects of the mediation proceedings by obtaining a deposit from each party of the estimated costs and using the deposit to pay for the fees of the mediator/s and any additional required payments;
- Reserving the venue used to conduct the mediation and providing the logistical and technical assistance needed to conduct the mediation;
- Assisting the parties in organizing other support services such as translation, interpretation, expert advice, or secretarial services. These services will be charged separately to the parties and are not covered by the Center's administrative fees;
- Assisting parties in drafting contract clauses that require future disputes to be resolved using the mediation services of the AmCham Commercial Mediation Center, and;
- Organizing training programs for mediators as well as conferences on alternative dispute resolution.

Mediation Fee Schedule

§1. The parties will be responsible for paying fees and expenses, including:

- (1) A non-refundable filing fee to be paid to the AMCHAM COMMERCIAL MEDIATION CENTER (hereunder referred to as CMC for short);
- (2) A mediation fee for the first session of four hours;
- (3) A mediation fee for additional hours after the first session (all time in addition to the first four hours); and,
- (4) Expenses, such as mediator travel, copying, long distance communications and translation fees and other extraordinary expenses;
- (5) Fee for an additional party;
- (6) Fee for co-mediator;
- (7) Fee for declining a session.

§2. The mediator's hourly rate is a unified rate of 100 BGN for any of the mediators from the list for commercial cases, and 50 BGN for civil cases or commercial cases where the amount in dispute is less than 20,000 BGN. In the case of complex cases where there are more than two parties, the CMC will charge fees for the additional parties and, when appropriate, a co-mediator fee. All fees and expenses are payable to the CMC, not the mediator

§3. All filing fees, mediation fees, and other additional expenses will be borne equally by the parties, unless otherwise agreed by the parties.

§4. The CMC issues receipts for all payments made to it. The filing and mediation fees do

not include VAT. The CMC will charge VAT wherever applicable, in addition to the fees, charges, and reimbursable expenses stated herein.

The fixed exchange rate pursuant to Art 29 of the Bulgarian National Bank Act: EUR 1 = BGN 1.95583

§5. Definition of the fees:

(1) Filing Fee. A nonrefundable case-filing fee at the amount of 200 BGN paid to the CMC at the time of filing of the mediation agreement. The filing fee covers the initial administrative and operational costs of the CMC for preparing the mediation, including the cost for rooms used during mediation, local telephone calls and mailings, faxes and others.

(2) Mediation Fee for First Session. The first session is charged as four hours, even if the first session ends before the expiration of the four hour period.

- for Commercial Cases - First session = 100 BGN x 4 = 400 BGN;

- for Civil Cases or Cases equaling less than 20,000 BGN - First session = 50 BGN x 4 = 200 BGN.

Mediation fee for the first session covers preparation time, time up to four hours spent in joint meetings with all parties and in individual meetings (caucuses) that the mediator may conduct with the parties.

(3) Mediator Fee for Additional Hours after First Session. If the dispute is not resolved after the first session, the mediator together with the parties shall agree upon an anticipated number of additional hours and expenses needed to complete the mediation. Each party shall pay its portion of that amount to CMC, as per the agreed upon arrangement, before the commencement of subsequent sessions. When the mediation has ended, the CMC shall render an accounting and return any unexpended balance to the parties. The fee for mediator for additional hours is specified following the above set hourly rate and cannot be lower than it.

(4) Expenses. The costs not covered by the filing fee will be charged separately and will be added to the parties' total balance as expenses. These include costs for summons and notices, serving of papers, international mailing, mediator's travel costs, translation services if necessary, copy services, and other extraordinary costs. These expenses are paid to the CMC by the parties not later than one day prior to the next session.

(5) Additional Party Fees A one time additional charge of 100 BGN per each additional party will be added to the total balance, for disputes that involve three or more parties.

(6) Co-Mediator Fee An additional charge of 100/50 BGN per hour will be charged for each session that requires the services of a co-mediator. Co-mediator is used only with the consent of all parties.

(7) Fee in Case of Cancellation. Except for the non-refundable case-filing fee, fees paid in advance are refundable only if written notice of cancellation is delivered to the CMC five business days before the next scheduled session. 100 BGN per day will be withheld from that refund if written notice is delivered less than 5 business days prior to date of the scheduled session.

§6. The parties and the mediator may agree to different hourly rates for the mediator, yet these cannot be lower than the ones specified above.

Frequently Asked Questions

1. What is Mediation?

Mediation is a confidential and voluntary settlement process in which an impartial third

person, the Mediator, works with the parties to a dispute to find a resolution that is acceptable to all the parties. The mediation process is voluntary which means that the parties may terminate the mediation at any time before reaching a final binding agreement.

2. The Benefits

Cheaper and faster. Mediation is usually cheaper and faster than litigation. In addition, management uses the time previously spent in managing litigation to focus on business. **Parties control outcome.** All parties have a role in fashioning the solution to their problem rather than having a decision imposed by a court (or arbitrator) which usually results in one party winning and one party losing.

Confidentiality. The mediation process is confidential with respect to any oral discussion that takes place during the mediation and also with respect to any documents produced during the process. Any settlement agreement between the parties can be kept confidential if the parties so agree.

Preserves existing relationships. Unlike litigation, mediation enables the parties to preserve existing business relationships, and often results in strengthened business arrangements.

High Success Rates. Mediation usually results in a binding agreement.

3. What type of disputes can be mediated?

Generally any dispute in which a negotiated solution is possible is suitable for mediation. Mediation has proven to be especially effective in commercial and contract disputes, insurance and personal injury cases, and domestic relations conflicts.

4. What does a mediator do?

The mediator will first briefly describe the process and the agreed rules for the process. Then the mediator will listen to the views and statements of each party without offering any opinion. The mediator helps the parties to identify the reasons for the dispute by generally focusing the discussion on interests rather than legal positions. The mediator tries to move the parties beyond a discussion of right and wrong and tries to get them to consider options that would lead to a settlement.

Frequently, the mediator will meet privately with each party in a separate session, sometimes called a "caucus," and carries suggestions and offers for settlement back and forth between the parties. In the separate sessions, the mediator will often use a tool called "reality testing," in which the mediator will invite a party to explore weaknesses in the party's case and look at the issues from the opponent's perspective.

The mediator will treat all comments and statements provided by a party in separate session as confidential if the party so requests. If agreement is reached, the mediator can assist the parties by outlining the terms of the settlement so that a written settlement agreement can be drafted and signed by the parties.

5. How does a party to a dispute start a mediation process in Bulgaria?

Parties interested in mediation in Bulgaria can contact a mediation provider. The provider will attempt to obtain an agreement from all parties to participate in mediation. If the other party consents to mediation, the parties then agree on a mediator proposed by the provider or can select a mediator of their choosing in accordance with the rules of the provider. After agreeing to mediation, the parties enter into a mediation agreement which sets forth the terms and conditions under which the mediation will be conducted.

6. If a mediation begins, is a party obligated to reach settlement of the dispute?

The parties are under no obligation to reach settlement. Parties to a dispute may reach an agreement on all, some or none of the issues. If full agreement is not reached, the parties often find the process helped them clarify and narrow the range of issues in dispute.

If the parties reach agreement, the mediated settlement agreement can be enforced by the courts as a contract. Sometimes, the parties will want to provide for greater enforceability by notarizing their agreement and providing that it can be enforced as a judgment; or by appointing the mediator as an arbitrator and agreeing that the mediator can enter the mediated settlement agreement as award enforceable in the courts as an arbitral award.

7. How much time does mediation take?

Mediation time can vary depending on the dispute and its complexity. In simple disputes mediation and agreement can take as little as one meeting with agreement in an hour or two. Most disputes, particularly personal injury claims, are mediated within one day.

8. Who pays the cost of mediation?

The parties will usually split the fees and cost of the mediator 50/50. The parties can also agree to split the fees and costs on any basis that they so choose.

9. What are the essentials of a successful mediation?

Positive Mindset. Begin the mediation with an expectation that the mediation will achieve a settlement that is satisfactory to both parties

Listen. Listen to the Other Party and be flexible in your approach to solving problems.

Be Realistic. Avoid outrageous and unsupported demands on the other party.

Cooperate. Cooperate with the Mediator and behave in a courteous manner towards the other party.

Be Creative. Seek Innovative Solutions. Move away from conflicting positions to mutual interests.

10. What role do attorneys play in mediation?

Unless the parties have agreed otherwise, a party has the right to have counsel available at the mediation. Often a party will want to consult with counsel before mediation begins, during the mediation process and before entering into a mediated settlement agreement.

Trainings

AmCham Commercial Mediation Center organizes individual training and presentation of mediation procedures and services for the staff of the companies.

For more information contact the mediation Coordinator.