

Law of the Republic of Belarus

No 58-Z of July 12, 2013

[Amended as of January 5, 2016]

On mediation

Adopted by the House of Representatives on June 26, 2013

Approved by the Council of the Republic on June 28, 2013

This Law is aimed at the determination of legal and organizational bases of use of mediation, creation of favourable conditions for its development.

Article 1 Main terms used in this Law and their definitions

For the purposes of this Law the following main terms and their definitions are used:

mediation agreement – an agreement concluded by the parties on the results of negotiations conducted in the order stipulated by this Law with a view to settle a dispute (disputes);

mediator – a natural person meeting the requirements of this Law, participating in the negotiations of the parties as a uninterested person with a view to facilitate settlement of a dispute (disputes);

mediation – negotiations of the parties with the participation of a mediator with a view to settlement of a dispute (disputes) between the parties through elaboration of a mutually acceptable agreement;

agreement on the use of mediation – an agreement of the parties on conduct of negotiations with the participation of a mediator with a view to settlement of a dispute (disputes) between the parties in the order provided by this Law.

Article 2. Scope of application of this Law

1. This Law regulates the relations connected with the use of mediation aimed to settle disputes arising out of civil legal relationships, including disputes in connection with carrying out entrepreneurial and other economic activity, as well as disputes arising out of labour and family relationships, unless otherwise provided by legislative acts or follows from the essence of respective relations.

2. Mediation may be carried out both prior to the recourse of the parties to the court in the procedure of civil or economic court proceedings and after the initiation of the proceedings on the case in the court. Features of mediation after the initiation of the proceedings on the case in the court shall be determined by the procedural legislation.

3. This Law is also applied to mediation, which is carried out in the course of other types of court proceedings in the instances stipulated by the legislative acts.

4. This Law is not applied to relationships connected with the situation when the judge promotes the reconciliation of the parties in the course of court proceedings.

5. Mediation on appeals of the public prosecutor, state bodies with a view to protect state and public interests is carried out only in the instances provided by the procedural legislation.

Article 3. Principles of mediation

1. The main principles of mediation are:

voluntary nature;

good faith, equality and cooperation of the parties

impartiality and independence of the mediator;

confidentiality.

2. Mediation is based on confidence that both parties show to the mediator as a person able to ensure effective negotiations.

Article 4. Requirements for a mediator

1. The mediator may be a natural person having higher law education or other higher education, who has been trained in the sphere of mediation in the order established by the Ministry of Justice of the Republic of Belarus, or having work experience as a conciliator in accordance with the procedural legislation, having obtained the certificate of the mediator issued by the Ministry of Justice of the Republic of Belarus on the basis of the decision of the Qualification Commission for mediation.

2. As mediator may not act a natural person:

being a state servant, including the one carrying out powers of the judge in the court, unless otherwise provided by the legislative acts;

recognized under the established procedure legally incapable or partially incapable;

having a previous conviction;

whose powers as a judge of the court, public prosecutor, member of the Investigative Committee of the Republic of Belarus, the State Committee of Forensic Examination of the Republic of Belarus, bodies of internal affairs, state security, state border service, employee of the Committee of State Control of the Republic of Belarus, tax, customs bodies, another state servant, notary, advocate have been terminated in accordance with the procedure established by legislative acts on the grounds related to the commitment of infractions that are incompatible with his professional activities - within three years from the day of the respective decision, unless otherwise provided by legislative acts;

in respect of whom the decision was taken on the termination of the validity of the certificate of mediator in connection with the violation of the Rules of Ethics of Mediator approved by the Ministry of Justice of the Republic of Belarus.

The decision on termination of the validity of the certificate of mediator is adopted by the Ministry of Justice of the Republic of Belarus in the event of:

submission of an application on termination of the validity of the certificate of mediator by the mediator;

a decision on the termination of the validity of the certificate of mediator by Qualification Commission for Mediation.

3. The mediator is not entitled to be a representative of any party.

4. An agreement on the application of mediation may establish additional requirements for a mediator.

Article 5. Qualification commission for mediation

1. The Qualification Commission for Mediation is established under the Ministry of Justice of the Republic of Belarus from among the representatives of this Ministry, courts and other state bodies, public associations and other organizations, as well as mediators and advocates.

2. The procedure of formation, activities and powers of the Qualification Commission for Mediation, as well as the procedures for issuing and termination of the certificate of mediator are determined by the Council of Ministers of the Republic of Belarus.

Article 6. Organization of mediators' activity

1. Mediators exercise their activity independently on the basis of the certificate of mediator issued by the Ministry of Justice of the Republic of Belarus. Activity of a mediator does not constitute entrepreneurial activity. The mediator is entitled to carry out other activity not prohibited by the legislation.

2. In order to ensure material, organizational, legal and other conditions for activities of mediators, organizations ensuring the conduct of mediation may be created. An organization ensuring the of mediation may be established as a non-commercial organization in the form of an institution (hereinafter - institution) or as a separate subdivision of a legal person (hereinafter, unless otherwise provided, - a separate subdivision of a legal person).

3. An institution acts on the basis of the statute approved by its founder. A separate subdivision of a legal person acts on the basis of regulations approved by the head of legal person.

Rules for activity of an organization ensuring the conduct of mediation shall be approved by the mentioned organizations on the basis of standard rules approved by the Council of Ministers of the Republic of Belarus.

Article 7. State registration of institutions, changes and (or) additions introduced in their statute, putting on record of separate subdivisions of legal persons

1. State registration of institutions, changes and (or) additions introduced in their statute is carried out by the Ministry of Justice of the Republic of Belarus. Putting on record of separate subdivisions of legal persons carried out by the main justice directorate of the regional (Minsk City) executive committee at the location of the legal persons (hereinafter – the respective main justice directorate).

2. For state registration of an institution the following documents are submitted to the Ministry of Justice of the Republic of Belarus:

application for state registration according to the form established by the the Ministry of Justice of the Republic of Belarus;

statute of the institution in duplicate without notarial certification, its electronic version (in .doc or .rtf format);

list of mediators whose activities will be ensured by the institution;

the original or a copy of the payment document confirming the payment of the state duty.

3. For state registration of changes and (or) additions introduced in the statute of the institution, within one month from the day of their introduction, the following documents shall be submitted to the Ministry of Justice of the Republic of Belarus:

application for state registration of changes and/or additions introduced into the statute of the institution according to the form established by the Ministry of Justice of the Republic of Belarus;

changes and (or) additions introduced into the statute of the institution, in duplicate, in the form of an annex to the statute of the institution or its new edition, without notarial certification, their electronic copy (in .doc or .rtf format);

original certificate of state registration of the institution in the event of change of the name;

the original or a copy of the payment document confirming the payment of the state duty.

4. For putting on record a separate subdivision of a legal person the following documents shall be submitted to the respective main justice department:

application for putting on record signed by the head of the legal person;
regulations on the separate subdivision of the legal person approved by the head of the legal person;

list of mediators whose activities will be ensured by the separate subdivision of the legal person;

the original or a copy of the payment document confirming the payment of the state duty.

5. List of mediators must contain data about the name, own name, patronymic (if any) of the mediator, the date of issuance of the certificate of mediator, range of issues in the sphere of which the mediator specializes and also may contain other data.

6. On the results of the consideration of documents submitted for the state registration of the institution, changes and (or) additions introduced in the statute of the institution, putting on record a separate division of a legal person, the Ministry of Justice of the Republic of Belarus, the respective main justice department shall take one of the following decisions:

on state registration of the institution or on state registration of changes and (or) additions introduced in the statute of the institution, or on putting on record the separate subdivision of the legal person;

on refusal of the state registration of the institution or on state registration of changes and (or) additions introduced in the statute of the institution, or on putting on record the separate subdivision of the legal person;

7. The state registration of an institution, changes and (or) additions to the statute of an institution, putting on record a separate subdivision of a legal person shall be carried out not later than within three working days from the day of submission of duly filled documents mentioned in clauses 2 – 4 of this Article to the Ministry of Justice of the Republic of Belarus, the respective main justice department.

A registered institution, separate subdivision of a legal person put on record shall be issued, respectively, the certificate of state registration of the institution, certificate of putting on record the separate subdivision of the legal person, the forms of which are approved by the Council of Ministers of the Republic of Belarus.

8. Decisions on refusal of the state registration of the institution or on state registration of changes and (or) additions introduced in the statute of the institution, or on putting on record the separate subdivision of the legal person shall be taken in the event of:

non-compliance of the submitted documents with requirements of the legislation;

indication of incomplete or false information in the submitted documents.

9. The Ministry of Justice of the Republic of Belarus, respective main justice department shall, within five days from the day of taking the decision provided in indent three of clause 6 of this Article, inform the applicant about it in writing.

10. Record on state registration of an institution, changes and (or) additions introduced into the statute of the institution, shall be introduced into the Unified State Registry of Legal Persons and Individual Entrepreneurs by the Ministry of Justice of the Republic of Belarus on the day of taking the decision on state registration of the institution, changes and (or) additions introduced into the statute of the institution in the order established by the legislation.

Record keeping of separate subdivisions of legal persons shall be conducted by the respective main justice department in the register of record keeping of legal

persons which have established separate subdivisions ensuring the conduct of mediation in the form approved by the Ministry of Justice of the Republic of Belarus.

The Ministry of Justice of the Republic of Belarus shall, within five working days from the day of entering the record on state registration of the institution, changes and (or) additions introduced into the statute of the institution in the Unified State Register of Legal Persons and Individual Entrepreneurs, issue a certificate of state registration of the institution, one copy of the statute, stitched, numbered and sealed by the Ministry of Justice of the Republic of Belarus (one copy of changes and (or) additions to the statute of the institution, stitched, numbered and sealed by the Ministry of Justice of the Republic of Belarus), document confirming the putting on record of the institution in tax bodies, state statistics bodies, bodies of the Fund of Social Protection of the Population of the Ministry of Labour and Social Protection, registration of the institution in the Belarusian Republic Unitary Insurance Enterprise "Belgosstrakh", in the form and order determined by the Council of Ministers of the Republic of Belarus.

The respective main justice department shall, within five working days from the day of entering the record in the register of record keeping of legal persons which have established separate subdivisions ensuring the conduct of mediation, issue a certificate of putting on record of a separate subdivision of a legal person. The information on putting on record a separate subdivision of a legal person shall be submitted to the Ministry of Justice of the Republic of Belarus.

Article 8. Liquidation of institutions and termination of activity of separate subdivisions of legal persons

1. The liquidation of institutions is carried out under the decision of the founders or the court in accordance with the Civil Code of the Republic of Belarus, this Law and other legislation

2. In case of liquidation of an institution under the decision of the founders, the following documents shall be submitted to the Ministry of Justice of the Republic of Belarus :

application for the liquidation according to the form established by the Ministry of Justice of the Republic of Belarus with indication of the data about the procedure and time limits of the liquidation, composition of the liquidation commission, its chairperson or appointment of the liquidator;

the decision about the liquidation.

3. On the basis of the documents referred to in indents two and three of part 2 of this Article, the Ministry of Justice of the Republic of Belarus shall:

within three working days from the day of receipt of these documents, enter the data that the institution is in the process of liquidation into the Unified State Register of Legal Persons and Individual Entrepreneurs;

not later than on the working day following the day of receipt of these documents, send notification of the commencement of the procedure of liquidation of the institution to tax and customs bodies, bodies of the Fund of Social Protection of Population of the Ministry of Labour and Social Protection of the Republic of Belarus, Belarusian Republic Unitary Insurance Enterprise "Belgosstrakh" (its separate division). These bodies (organizations) shall submit to the Ministry of Justice of the Republic of Belarus documents provided by indent three of clause 5 of this Article, in the order determined by the Council of Ministers of the Republic of Belarus.

4. After the approval of the liquidation balance sheet, the liquidation commission (liquidator) shall submit to the Ministry of Justice of the Republic of Belarus:

seals of the institution or a statement that the seals were not made or the data about publishing announcements about the loss thereof;

liquidation balance sheet signed by the members of the liquidation commission (liquidator) and approved by the founder of the institution;

originals of the statutes of the institution and the certificate of state registration or a statement about the loss thereof with enclosure of the data about publishing announcements about the loss thereof;

a copy of the publication in a printed mass medium on the liquidation of the institution, procedures and time limits for declaration of claims by its creditors.

5. 15. The Ministry of Justice of the Republic of Belarus shall enter the record into the Unified Register of Legal Persons and Individual Entrepreneurs about exclusion of the institution therefrom in the presence of all of the following conditions:

the liquidation commission (liquidator) has submitted documents necessary for liquidation specified by clause 4 of this Article;

bodies (organizations) specified in indent three of part 3 of this Article have not submitted the statements on availability of the indebtedness before the budget, including on payments collected by customs bodies, the Fund of Social Protection of Population of the Ministry of Labour and Social Protection, on compulsory insurance against accidents at workplace and occupational diseases, information on availability of pending obligations before customs bodies, and not less than 35 working days have passed from the day of sending by the Ministry of Justice of the Republic of Belarus a notice about the commencement of the procedure of liquidation of the institution, or presented statements about the absence of respective indebtedness of the institution of the receivables and the information about the absence of obligations terminated before the customs authorities has been presented;

a respective archive has submitted the data about delivery for storage of the documents of the institution, including those concerning personnel.

6. When the institution has uncleared indebtedness, obligations before the bodies (organizations) specified in indent three of part 3 of this Article, and also when it has failed to deliver for storage the documents, including those concerning personnel, exclusion of the institution from the Unified State Registry of Legal Persons and Individual Entrepreneur is carried out only after submission of documents confirming the repayment of such indebtedness, fulfilment of obligations before the respective archive, termination of obligations before customs bodies.

7. A separate subdivision of a legal person terminates its activities under the decision of the head of the legal person in which the separate subdivision ensuring the conduct of mediation is created.

8. A legal person in which a separate subdivision ensuring the conduct of mediation is created shall, upon termination of the activities of such a subdivision within five days from the day of taking of the respective decision, send to the respective main justice department an application for removal the separate subdivision of the legal person from record with enclosure of copies of the decision on termination of its activities and certificate on putting on record of the separate subdivision of the legal person. On the basis of the mentioned documents the respective main chief justice department shall make an entry on removal from the record of the

separate subdivision of the legal person in the register of record of legal persons in which separate subdivisions ensuring the conduct of mediation are created.

9. The data on removal from record of a separate subdivision of a legal person and on other changes shall be sent within five days by the respective main justice department to the Ministry of Justice of the Republic of Belarus.

Article 9. Registry of mediators and registry of organizations ensuring the conduct of mediation

1. Data on the mediators having a certificate of the mediator are subject to be entered in the registry of mediators the order of maintaining which is determined by the Ministry of Justice of the Republic of Belarus.

2. The registry of mediators is formed on the basis of data about persons who have received the certificate of the mediator, and persons in respect of whom the decision on termination of the certificate of the mediator was taken.

3. Data about the organizations ensuring the conduct of mediation are subject to be included in the registry of organizations ensuring the conduct of mediation, the order of maintaining which is determined by the Ministry of Justice of the Republic of Belarus.

4. The registry of organizations ensuring the conduct of mediation is formed on the basis of the data on state registration of institutions, changes and (or) additions introduced into their statutes, putting on record of separate subdivisions of legal persons, liquidation of institutions, removal from record of separate subdivisions of legal persons.

Article 10. Agreement on application of mediation

1. An agreement on application of mediation shall be concluded in writing.

An agreement on application of mediation is deemed to be concluded if it is contained in a document signed by the parties or concluded by an exchange of messages using postal communication or other means of communication, ensuring a written recording of the will of the parties, including the sending of pre-trial claim, statement of claim (statement) and responses thereto, in which one party offers to settle a dispute through mediation, and the other party expresses its consent to application of mediation.

A proposal of settlement of a dispute through mediation may be made at the request of one of the parties by the mediator.

2. Subjects of an agreement on application of mediation may be natural persons having full active legal capacity and (or) legal persons.

Powers of a representative of the party to conclude an agreement on application of mediation must be specified in the power of attorney.

3. An agreement on application of mediation must contain a provision stating that all or separate disputes which have arisen out of a relationship legally binding the parties, are subject to settlement through the conduct of mediation, as well as the data about the mediator (mediators), time and place of the mediation, reward of the mediator. An agreement on application of mediation may also contain other terms agreed by the parties.

On the mutual consent of the parties, an agreement on application of mediation may be changed and (or) added, and also an agreement on application of mediation may be terminated.

4. In case of failure to comply with the requirements of this Article, an agreement on application of mediation is deemed to be invalid.

5. Actions of a mediator contradicting the legislation and violating the rights and legitimate interests of third parties may be appealed through court.

6. An agreement on application of mediation does not preclude recourse to the court or the court of arbitration, unless otherwise provided by legal acts.

Article 11. Suspension of the limitation period

The limitation period in respect of claims arising out of rights and obligations being the subject matter of a dispute between the parties, shall be suspended from the day of conclusion by the parties of an agreement on application of mediation to the day of termination of the mediation.

Article 12. Selection and appointment of a mediator

1. For conducting mediation, the parties shall, by mutual consent, select a mediator (mediators).

2. At the request of parties in order to determine the candidature of the mediator, an organization ensuring the conduct of mediation may submit the data about a mediator (mediators) in the order stipulated by the rules of procedure of the organization ensuring the conduct of mediation.

Article 13. Conduct of mediation

1. Mediation is conducted in the order and on the conditions determined by an agreement of the parties with the mediator, as well as by the rules of conduct of mediation, approved by the Council of Ministers of the Republic of Belarus, the rules of ethics of a mediator, with regard to the requirements of this Law and other legislative acts.

2. The mediator is not entitled to submit his proposals on settlement of a dispute to the parties and also, unless the parties have agreed otherwise, to act as an arbitrator in a dispute that was or is the subject matter of mediation.

3. The mediator may interact both with parties together and with each of the parties separately. In this case, the mediator is not entitled to put any of the parties in a privileged position by his actions, likewise as to diminish the rights and legitimate interests of one the parties.

4. Duration of mediation may not exceed six months from the day of conclusion of the agreement on application of mediation.

Article 14. Termination of mediation

1. Mediation is terminated:

in connection with conclusion of a mediation agreement by the parties;

upon the expiration of the time limit for the conduct of mediation determined by the agreement on application of mediation and in the instances of conduct of mediation on disputes being under the court consideration - upon the expiration of the time limit provided by the procedural legislation;

upon a written declaration of one, several or all parties, sent to the mediator, on refusal to continue the mediation;

in other cases stipulated by this Law and other legislative acts or the rules of the conduct of mediation.

2. In the case stipulated in indent four of part 1 of this Article, the mediation is terminated from the day of submission of the respective declaration about which the mediator shall notify the other parties not later than the next day after its receipt.

Article 15. Mediation agreement

1. A mediation agreement is concluded by the parties in writing and must contain the data about the parties, mediator, subject matter of the dispute, as well about obligations accepted by the parties aimed at resolving the dispute and the time limits of their fulfilment. A mediation agreement shall be signed by the parties and the mediator.

Powers of a representative of the party to conclude an mediation agreement must be specified in the power of attorney.

2. A mediation agreement must not contradict the requirements of the legislation and violate the rights of third persons.

3. A mediation agreement is subject to fulfilment on the basis of principles of voluntary involvement and good faith of the parties. Consequences of failure to fulfil a mediation agreement may be established by the parties in the mediation agreement.

4. Enforcement of a mediation agreement is carried out in the order stipulated by the procedural legislation.

5. The following mediation agreements are not subject to fulfilment in the order established by the procedural legislation:

those not approved by the court as amicable agreements on disputes being under consideration of the court, in the order stipulated by the civil procedural legislation;

those not meeting the requirements of economic procedural legislation on the amicable agreement;

those concluded with participation of a mediator not included in the registry of mediators.

6. Protection of rights violated as a result of failure to fulfil or improper fulfilment of a mediation agreement is carried out by means stipulated by the legislative acts.

Article 16. Confidentiality of information related to mediation

1. When mediation is conducted, the confidentiality of all information related to mediation is to be kept, unless the parties have agreed otherwise, except for information on the conclusion of agreements on application of mediation, on the termination of mediation.

2. The mediator is not entitled to disclose any information related to mediation and which became known to him in the course of its conduct without a written consent of the parties.

In case the mediator has received information related to mediation from one party, he may disclose such information to another party only with the consent of the party having provided this information.

3. The parties, mediator, as well as other persons involved in the mediation, regardless whether court proceedings, arbitration proceedings are connected with a dispute that was the subject matter of mediation, are not entitled to refer, unless the parties have agreed otherwise, in judicial or arbitral proceedings to the information obtained in the course of mediation about:

opinions or suggestions made by one of the parties in regard to possible settlement of the dispute, as well as the readiness of one of the parties to accept the proposal on settlement of the dispute, made by the other party;

statements and confessions made by one of the parties.

Article 17. Remuneration of a mediator

The mediator has the right to receive remuneration the amount of which is set by agreement with the parties. Expenses on payment of remuneration shall be distributed

between the parties in an equal volume, unless an agreement between the parties has determined another order.

Article 18. Measures on implementation of provisions of this Law

The Council of Ministers of the Republic of Belarus together with the Supreme Economic Court of the Republic of Belarus, the Supreme Court of the Republic of Belarus, the National Centre of Legislation and Legal Research of the Republic of Belarus shall, within a six month period:

ensure the bringing of acts of legislation in compliance with this Law;
take other measures on implementation of provisions of this Law.

Article 19. Entry into force of this Law

This Law enters into force in the following order:

Articles 1-17 – in six months after the official publication of this Law;
other provisions – after the official publication of this Law.

President of the Republic of Belarus

A. Lukashenko