

FEDERAL LAW

On alternative procedure of dispute resolution with participation of a mediator (mediation procedure)

Article 1. Subject of Regulation and Scope of this Federal Law

1. This Federal law is developed in order to create legal terms for application in the Russian Federation of alternative procedure for disputes resolution with the participation of an independent person as an intermediary – mediator (mediation procedure), to facilitate commercial relations and to develop ethics for commercial relations and social harmonization.

2. This Federal law regulates the matters connected with the application of mediation in disputes, arising from of civil legal relations, including situations connected with commercial enterprises and other economic activities, as well as regarding disputes arising from labor legal relations and family law matters.

3. Where disputes occur in other relations not specified in item 2 of this article the scope of the Federal law covers the resolution of such disputes through mediation procedures only in cases, covered by federal laws.

4. Mediation procedures can be applied after occurrence of disputes that

are the subject of civil legal proceedings and legal proceedings in commercial¹ courts.

5. Mediation procedures are not applied to collective labor disputes nor to disputes arising from matters specified in item 2 of this article, in case such disputes affect, or can affect, the rights and legitimate interests of third parties not participating in the mediation procedure, or public interests.

6. The provisions of this Federal law do not apply to assistance provided by a judge or an arbitration judge during judicial or arbitration proceeding with the aim of reconciling the parties unless otherwise provided by Federal law.

Article 2. Terms Used in this Federal Law

The following terms are used for the purpose of the present Federal law:

1) the parties – the subjects of relations specified in article 1 of the present Federal law who wish to resolve a dispute by means of mediation;

2) mediation procedure – a means of dispute resolution with the assistance of a mediator on the basis of the parties' voluntary consent with the aim of reaching of mutually acceptable decision;

3) mediator, mediators – an independent individual, independent individuals engaged by the parties as intermediaries in dispute resolution with the objective of assisting them to reach mutually acceptable decisions;

4) a mediation organisation – a legal entity, one of whose main activities is to organize mediation as well as charged with carrying out the tasks proscribed under the present Federal law;

5) the agreement to use mediation – a written agreement between the parties concluded prior to the occurrence of dispute or disputes (mediation

¹ In Russian legislation there are “arbitrazh” courts, that are sometimes confused with arbitrations. In this text the “arbitrazh courts” are called “commercial courts” to distinguish them from arbitrations.

clause) or when a dispute has arisen to have recourse to mediation in order to resolve disputes arisen between the parties in relation to some specific legal relationship;

6) the agreement to mediate – agreement between the parties prior to taking part in mediation;

7) mediated agreement – an agreement reached by the parties following mediation and drawn up in writing.

Article 3. Principles of Mediation

Mediation may be undertaken with the mutual consent of the parties, the principles of mediation are voluntariness, confidentiality, cooperation, impartiality and independence of the mediator and evenhandedness of the mediation process.

Article 4. Mediation Procedure Application in Case of Dispute Considerations by Court or Arbitration

1. If the parties have entered into an agreement to use mediation and during the period stipulated for the mediation procedure application are not permitted to apply to the court or the arbitration¹ for the resolution of dispute that has occurred or may arise between the parties, the court or the arbitration shall acknowledge this obligation until the conditions of the said obligation are not executed, save for the case when either of the parties, in their opinion, has to protect their rights.

2. If a dispute is referred to the court or the arbitration, the parties may take part in mediation at any time before a decision on the dispute is made by a

¹ This applies only to arbitrations in Russia without foreign parties of the dispute or some other foreign-related elements

relevant court or the arbitration. Adjournment of legal investigation of the dispute in court or the arbitration, as well as fulfilment of other legal proceedings, is defined by procedural legislation.

Article 5. Confidentiality of the Information concerning Mediation Procedure

1. During the process of mediation all information relating to the mediation shall be considered confidential, save in cases provided by federal laws or if the parties have agreed otherwise.

2. The mediator has no right to disclose information concerning mediation procedure and the information that became known to him during mediation, without the consent of the parties.

3. Neither parties, nor mediation organizations, nor mediator, nor other persons present at mediation irrespective of whether litigation or arbitration are connected with a dispute which was a subject of mediation procedure, have any right to refer, unless the parties have agreed otherwise, during litigation or arbitration proceedings to the information regarding:

1) a suggestion by one of the parties to use mediation, as well as about willingness of one of the parties to participate in carrying out of the specified procedure;

2) opinions stated or offers made by one of the parties concerning possibilities of dispute resolution;

3) recognitions made by one of the parties during application of mediation procedure;

4) willingness of one of the parties to accept the offer of a mediator or other party in relation to dispute resolution.

4. Information concerning mediation may not be sought from a mediator

and from a mediation organization, save in cases provided by federal laws and in cases if the parties have agreed otherwise.

Article 6. Condition for Information Disclosure by the Mediator Concerning Mediation Procedure

If the mediator has received the information concerning mediation from one of the parties, he can disclose such information to the other party only with the consent of the party disclosing this information.

Article 7. Conditions of Mediation

1. The use of mediation is carried out on the basis of agreement between the parties, as well as on the basis of agreement to use mediation. Reference in the agreement to the document containing conditions of dispute resolution with assistance of a mediator shall be considered as a mediation clause provided that the agreement is concluded in writing.

2. Mediation procedure may be applied in case of dispute occurrence as prior to recourse state court or arbitration and after the beginning of litigation or arbitration proceeding, as well as on the proposal of the judge or the arbitration judge.

3. Existence of an agreement to use mediation, as well as existence of an agreement to mediate and carrying out of this procedure connected with such agreement, shall not be deemed an obstacle for application to the court or the arbitration unless otherwise stipulated by the Federal laws.

4. Mediation begins from the date on which an agreement to mediate is concluded.

5. If one of the parties submits a written proposal to go to mediation and

within thirty days from the date of the submission of the proposal or within any other reasonable period specified in the proposal, the party proposing mediation has not received the consent of the other party to use mediation, such proposal is considered rejected.

6. A proposal to go to mediation should contain the data specified in part 2 of article 8 of the present Federal law.

7. A Proposal to go to mediation can be made by the mediator or by the mediation organization, if one of the parties so requested.

Article 8. Agreement on the provision of mediation.

1. The agreement to mediate shall be concluded in a written form.

2. The agreement to mediate shall contain data:

1) about the subject of the dispute;

2) about the mediator, mediators or about the organization providing mediation;

3) about the process of mediation;

4) about conditions for the parties' payment of charges connected with the provision of mediation procedure;

5) about terms of the provision of mediation procedure.

Article 9. Selection and Appointment of the Mediator

9.1. For the purpose of the provision of mediation procedure the parties by mutual consent select one or several mediators.

9.2. The organization providing mediation, can recommend a mediator or mediators or appoint them where the parties have made such a request to the specified organization on the basis of the agreement on the provision of mediation procedure.

9.3. If the mediator, selected or appointed according to the terms above, has any conflict of interests that would affect his independence and impartiality, he or she is obliged to immediately inform the parties thereof and also inform the mediation organization involved in providing such mediation.

Article 10. Payment for the Activity on Mediation Procedure Carrying Out

1. Mediation may be provided by mediator on a fee-paying basis or free of charge, whereas mediation organization charge for their services.

2. Payment of fees to mediator, mediators and mediation organizations shall be met by the parties in equal shares unless they agreed otherwise.

Article 11. The Process of mediation

1. The process of mediation is established by the agreement to mediate.

2. The process of mediation may be established by the parties in the agreement to mediate by means of reference to rules of conduct of mediation procedure, adopted by the corresponding organization providing mediation.

3. The rules of conduct of mediation procedure, adopted by the

organization providing mediation, shall include:

- 1) types of disputes, that can be resolved according to the present rules;
- 2) procedure of selection or appointment of mediators;
- 3) conditions of the parties' participation in the expenses connected with the provision of mediation procedure;
- 4) data on standard rules mediators' professional activity, established by the corresponding organization providing mediation;
- 5) the process of the provision of mediation procedure, including the rights and obligations of the parties during mediation procedure, specifics of mediation procedure carrying out during resolution of certain categories of disputes, other conditions of the provision of mediation procedure.

4. In the agreement to mediate the parties have the right to specify, unless otherwise provided by federal law or the agreement of the parties (including the agreement to mediate), that the mediator can define on his own the process of the provision of mediation procedure taking into account the circumstances of the dispute in consideration, the wishes of the parties and the need for prompt resolution of the dispute.

5. The mediator has no right to make proposals for dispute resolution unless the parties have agreed otherwise.

6. During the mediation procedure carrying out the mediator can meet and keep in contact both with all parties together, and with each of them separately.

7. During mediation procedure carrying out the mediator may not by this action to put any of the parties in privileged position, as well as to derogate the rights and legitimate interests of one of the parties.

Article 12. Meditated Agreement

1. The mediated agreement is concluded in a written form and should contain the data on the parties, subject matter of the dispute, the mediation procedure performed, mediator, as well as to the obligations agreed, terms and conditions of their performance.

2. The mediated agreement shall be executed on the basis of principles of voluntariness and good faith of the parties.

3. The mediated agreement arrived by the parties as a result of mediation procedure, carried out after dispute transfer to the court or arbitration consideration, can be confirmed by court or the arbitration as an amicable settlement agreement according to the procedural legislation or the legislation on the arbitrations, the legislation on the international commercial arbitration.

4. The mediated agreement on the dispute arisen of civil legal relations, reached by the parties as a result of mediation procedure, carried out without dispute transfer to the court or arbitration consideration, represents civil transaction aimed at establishment, change or termination of the rights and obligations of the parties. Such transaction can be subject to regulations of the civil legislation on a compensation for release from obligation, on novation, on waiver of debt, on offset of the counter claims of the same kind, on harm compensation. Protection of the rights broken as a result of breach or improper execution of such mediated agreement, is carried out by means provided by the civil legislation.

Article 13. Terms of Procedure

1. Terms of meditation procedure are defined by agreement on the provision of mediation procedure. Thus the mediator and the parties should take all possible measures to terminate the specified procedure within a period of not more than sixty days.

2. In exceptional cases in connection with complexity of the dispute in consideration , the need to get the additional information or documents, the period for conduct of mediation procedure may be extended by agreement between the parties and with the consent of the mediator.

3. Term of the provision of meditation procedure shall not exceed one hundred and eighty days, except where the period for mediation procedure after application to the court or the arbitration shall not exceed sixty days.

Article 14. Termination of Mediation Procedure

Mediation procedure can be terminated in the following circumstances:

1) conclusion of mediated agreement between the parties - from the date of signing of such agreement;

2) conclusion of agreement between the parties on mediation procedure termination without consent on existing disagreements - from the date of signing of such agreement;

3) written statement of mediator, directed to the parties after consulting them concerning the mediation procedure termination in view of inexpediency of its further carrying out, - on day of such statement direction;

4) written statement of one, several or all parties, directed to the mediator, on refusal of mediation procedure continuation - from the date of such statement reception by the mediator;

5) the expiration of the term of mediation procedure carrying out - from the date of its expiration with regard to provisions of article 13 of the present Federal law.

Article 15. Requirements for Mediators

1. The mediator's activity can be performed on professional and non-professional basis.

2. Mediator's activity on non-professional basis can be carried out by person who have already achieved age of eighteen years, possessing full capacity to act and having no previous convictions. Mediator's activity on professional basis can be carried out by persons meeting the requirements, established by article 16 of the present Federal law.

3. Mediator's activity is not entrepreneurial activity.

4. The persons who are carrying out activity of mediators, also have the right to carry out any other activity not forbidden by the legislation of the Russian Federation .

5. Persons substituting the public positions of the Russian Federation, the public positions of constituent entities of the Russian Federation, positions of the state civil service, positions of municipal service can not be mediators unless otherwise is provided by federal laws.

6. Mediator may not:

1) act as a representative of any party;

2) render to any party legal, consulting or other assistance;

3) carry out mediator's activity if during mediation procedure carrying out he personally (directly or indirectly) is interested in its result, including his blood relationship with one of the parties;

4) to make public statements on the merits of dispute without the consent of the parties.

7. By the parties' agreement or rules of conduct of mediation procedure, confirmed by the mediation organization, additional requirements for the mediator, including requirements for the mediator carrying out activity on professional basis, may be established.

Article 16. Carrying out mediator's activity on professional basis

1. Mediator's activity on professional basis can be carried out by persons who have reached the age of twenty five years, having higher professional education and who has passed the training course on mediator's preparation program, approved in order established by the Government of the Russian Federation.

2. The organizations providing mediation may create alliances in the form of associations (unions) and in other forms provided by the legislation of the Russian Federation forms with a view of coordination of their activity, development and unification of standards and rules of mediator's professional activity, rules or regulations of mediation procedure carrying out. The specified organizations can be members of self-regulated organizations of mediators.

3. Mediation in the disputes after application to the court or to the arbitration, may be conducted only by mediators carrying out the activity on professional basis.

Article 17. Responsibility of mediators and mediation organizations

Mediators and mediation organizations are responsible against the parties for the harm caused to the parties in the result of carrying out of the specified activity in order stipulated by the civil legislation.

Article 18. Self-regulated organization of mediators.

1. For the purpose of development and establishment of standards and professional mediators' work rules as well as the procedure of control

performance over compliance with the requirements of specified standards and rules by mediators carrying out activity on professional basis and (or) the mediation organizations, self-regulated organizations of mediators may be created.

2. Self-regulated organizations of mediators shall be created in the form of associations (unions) or noncommercial partnerships.

3. The organization gets the status of a self-regulated organization of mediators from the date of its data entering into the state register of self-regulated organizations of mediators and loses the status of self-regulated organization of mediators from the date of the organization data exception from the specified register. Federal executive body authorized by the Government of the Russian Federation is responsible for maintenance of the state register of self-regulated organizations of mediators.

4. The organization shall be included in the state register of the self-regulated organizations of mediators if it meets the following requirements:

1) joining in the self-regulated organization of mediators as its members not less than one hundred physical persons who are carrying out activity of mediators on professional basis, and (or) not less than twenty mediation organizations. The specified persons and the organizations shall meet the requirements to membership in such organization established by the present Federal law;

2) availability of the approved procedure of control over quality of work of the members of self-regulated organization and the accepted code of professional ethics of mediators;

3) correspondence of the self-regulated organization to the requirements provided by the Federal law dd. December, 1, 2007 № 315-F3 «On self-regulated organizations» (hereinafter Federal law «On self-regulated organizations»).

5. For realization of activity as the self-regulated organization of mediators special bodies shall be created within the specified organization for the purpose of control performance over compliance with requirements of the present Federal law by members of the self-regulated organization of mediators as well as with other regulatory legal acts of the Russian Federation, standards and regulations of the self-regulated organization of mediators, conditions of membership in the self-regulated organization of mediators , and consideration of legal cases about disciplinary measures application concerning members of the self-regulated organization of mediators.

6. The self-regulated organization of mediators along with the rights defined by the Federal law «On self-regulated organization of mediators», has the right to establish requirements towards its members that are additional to the prescribed requirements specified by the Federal law and provide responsibility of its members during mediator's activity carrying out.

7. The self-regulated organization of mediators may not be a member of another self-regulated organization of mediators.

8. Mediator, carrying out his activity on a professional basis, and the mediation organization are entitled to be members only of one self-regulated organization of mediators.

9. The self-regulated organization of mediators during the admission to the members is entitled to establish additional requirements for mediators, carrying out activity on a professional basis, and the organizations providing mediation, which are connected with realization of mediator's activity and not contradicting the present Federal law, other federal laws.

10. Members of constantly operating joint controlling bodies and specialized bodies of the self-regulated organization of mediators can combine execution of functions of members of these bodies with mediator's activity.

Article 19. Main functions of the self-regulated organization of mediators

The self-regulated organization of mediators performs the following basic functions:

1) develops and establishes membership conditions in the self-regulated organization of mediators for mediators, carrying out activity on a professional basis, and the mediation organizations;

2) establishes and applies disciplinary measures towards the members;

3) maintains the register of members of the self-regulated organization of mediators;

4) represents interests of the members of the self-regulated organization of mediators in their relations with federal public authorities, public authorities of constituent entities of the Russian Federation, local governments, and also with the international professional organizations of mediators;

5) develops and approves the standards and rules of mediator's professional activity;

6) develops and approves regulations of business and professional ethics of mediators, including the professional ethic code of mediators ;

7) develops rules of mediation procedure carrying out;

8) develops standards of preparation for mediators;

9) performs control over professional work of its members regarding compliance with requirements of the present Federal law, other federal laws, other regulatory legal acts of the Russian Federation, standards and rules of the self-regulated organization of mediators, conditions of membership in the self-regulated organization of mediators;

10) organizes informational and methodical support of its members in

*Translation made by Center for Mediation and Law, Moscow, Russia.
Please note: this is not an official authentic version of the Law.*

sphere of conduct of mediators' activity;

11) carries out other functions established by the Federal law «On self-regulated organizations».

Article 20. Entering into force of the present Federal Law

The present Federal law becomes effective from January 1, 2011.

The President
of the Russian Federation

D.Medvedev