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Conciliation Act

Passed 18.11.2009
RT I 2009, 59, 385
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Amended by the following acts

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| 19.06.2014 | RT I, 29.06.2014, 109 | 01.07.2014, on the basis of subsection 4 of § 107 ³ of the Government of the Republic Act, the words 'to the Minister of Justice' have been replaced by the words 'to the Minister in charge of the policy area' |
| 22.11.2021 | RT I, 10.12.2021, 1 | 01.09.2022 |

Chapter 1 GENERAL PROVISIONS

§ 1. Scope of application of this Act

(1) This Act governs conciliation proceedings in civil cases, including the legal consequences of conciliation proceedings conducted in accordance with the rules prescribed by this Act.

(2) For the purposes of this Act, 'conciliation proceedings' means a voluntary process in the course of which an impartial third party, provided for by § 2 of this Act (hereinafter, 'conciliator'), facilitates communication between parties to conciliation proceedings with the purpose of assisting them in finding a solution to their dispute. A conciliator may, based on the circumstances of conciliation and the progress of conciliation proceedings, make their own proposal to the parties concerning resolution of the dispute.

(3) Conciliation proceedings are proceedings in a civil case if the dispute concerned arises from a private law relationship and can be disposed of by the district court.

(4) In situations provided for by law, conciliation proceedings are mandatory pre-action proceedings.

§ 2. Conciliator

For the purposes of this Act, a conciliator is:

- 1) a natural person to whom the parties have entrusted the task of carrying out the activity described in subsection 2 of § 1 of this Act. A conciliator may act through a legal person, being employed by the legal person or holding a contract of another type of with the legal person;
- 2) an attorney-at-law in the situation described in § 17 of this Act;
- 3) a notary in the situation described in § 16 of this Act;
- 4) in situations provided for by law, a conciliation body of the State or of a local authority.

Chapter 2

CONCILIATOR'S OBLIGATIONS

§ 3. Independence and impartiality

(1) The conciliator must be independent and impartial towards parties to conciliation proceedings. The conciliator may not conduct conciliation proceedings in situations listed in § 23 of the Code of Civil Procedure.

(2) The conciliator may not direct the course of conciliation in a manner that gives the parties an impression that the conciliator has power to make binding decisions in respect of the principal parties.

(3) In addition to requirements set out in subsections 1 and 2 of this section, notaries and attorneys-at-law who perform the duties of conciliator must also observe the independence and impartiality requirements established by legislation which governs their professional activities.

§ 4. Confidentiality of conciliation proceedings

(1) Conciliation negotiations are not public.

(2) The conciliator has a duty of confidentiality in respect of the facts of the conciliation proceedings which have become known to them in the course of proceedings or outside the proceedings. The duty of confidentiality also extends to legal persons mentioned in subsection 1 of § 2 of this Act.

(3) The conciliator provides information regarding the facts of the conciliation proceedings only to the parties to those proceedings and their representatives.

(4) A conciliator who is examined as a witness may not be asked questions about or required to explain any circumstances of conciliation proceedings which have become known to them in the course of those proceedings.

(5) A court which is hearing a criminal, civil or administrative case may order the conciliator to provide information regarding the circumstances of conciliation proceedings if this is justified by a substantial public interest, especially where the protection of a child's interests or a threat to a person's health or life is concerned.

(6) When ordered to do so by the court, the conciliator must provide information regarding the circumstances of conciliation proceedings to investigative bodies.

(7) A party to conciliation proceedings or their successor or representative may release the conciliator from the duty of confidentiality in respect of a procedural operation by providing a corresponding written consent. Where a party is deceased and has no successors, or where it is not possible to establish communication with the party, the conciliator may be released from the duty of confidentiality by the court. On a petition of the conciliator, the court may also release the conciliator from the duty of confidentiality in respect of the circumstances of conciliation proceedings for other compelling reasons. The petition is filed according to general rules of jurisdiction as applicable to the conciliator. The court disposes of the petition under the action-by-petition procedure.

(8) Unless otherwise provided by law, the duty of confidentiality in respect of the facts of conciliation proceedings also extends to third parties who have in their possession documents containing information mentioned in subsection 2 of this section or who have access to such documents. Such parties disclose the information mentioned in subsection 2 analogously to what has been provided by subsections 3–7, unless another Act provides otherwise.

(9) The conciliator's duty of confidentiality does not bar the conciliator from making the notification provided for by subsection 1 of § 27 of the Child Protection Act concerning a child in need of assistance, and by subsection 1 of § 31 of that Act concerning a child in danger, even where the circumstances that indicate that the child is in need of assistance or in danger become known to the conciliator in the course of conciliation proceedings.

[RT I, 10.12.2021, 1 – entry into force 01.09.2022]

§ 5. Communication with parties to conciliation proceedings

(1) In the course of conciliation proceedings the conciliator may communicate with all parties jointly or with each party separately.

(2) The conciliator may transmit to another party to conciliation proceedings any information regarding circumstances that serve as the cause of those proceedings that has been provided to the conciliator by a party. The conciliator may not disclose such information to the other party if the party who provided the information to the conciliator at the same time prohibited the conciliator from disclosing it to the other party.

§ 6. Prohibition to represent a party to conciliation proceedings in different proceedings

The conciliator is prohibited from representing a party to conciliation proceedings in different proceedings which concern the facts that are the cause of conciliation proceedings.

§ 7. Obligation to explain

When the conciliator commences conciliation proceedings, they must explain to the parties the nature and legal consequences of the proceedings and the arrangements concerning the conciliator's remuneration.

§ 8. Duty to document

(1) The conciliator must briefly document the course of conciliation proceedings, among other things noting the beginning and end of the proceedings.

(2) The conciliator must preserve the documentation of conciliation proceedings for at least five years.

(3) Notaries and attorneys-at-law follow the rules provided by the legislation governing their professional activities regarding preparation, preservation and archiving of documents related to their professional activities.

§ 9. Conciliation fee

(1) The parties to conciliation proceedings pay the conciliator a previously agreed-upon fee for the conciliator's services in conducting the proceedings and to cover the related costs. The conciliator may require the parties to make an advance payment towards the conciliation fee.

(2) The parties to conciliation proceedings are jointly and severally liable for payment of the agreed-upon fee to the conciliator or the legal person mentioned in subsection 1 of § 2 of this Act. Unless they agree otherwise, the parties are not required to reimburse one another's costs.

(3) When conciliation proceedings are conducted as part of court proceedings, any subsequent distribution of costs between the parties to such proceedings is governed by the provisions of the Code of Civil Procedure.

§ 10. Liability

(1) The conciliator and the legal person mentioned in subsection 1 of § 2 of this Act are held jointly and severally liable for any harm caused by negligent or intentional breach of the requirements provided by Chapters 2 and 3 of this Act.

(2) The conciliator and the legal person mentioned in subsection 1 of § 2 of this Act are not liable for any harm suffered by a party to conciliation proceedings as a result of an unfavourable agreement concluded in the course of the proceedings or for any harm suffered by a party to proceedings as a result of not having concluded an agreement, except where such harm is caused by a breach of the requirements of the proceedings by the conciliator or by the legal person mentioned in clause 1 of § 2 of this Act.

(3) Any agreement which derogates from subsections 1 and 2 of this section to the detriment of a party to conciliation proceedings is void.

Chapter 3 COURSE OF CONCILIATION PROCEEDINGS

§ 11. Beginning and end of conciliation proceedings

(1) Conciliation proceedings begin when parties to those proceedings have reached an agreement to refer the dispute to a conciliator and conciliation proceedings have been opened by the conciliator. Conciliation proceedings are also deemed to have begun in the situation provided for by the first sentence of subsection 2 of this section.

(2) Where the court has directed the parties to take the case to a conciliator, the conciliator may, on an application of a principal party, act in accordance with subsections 3 and 4 of § 12 of this Act in order to establish the willingness of the other party to participate in conciliation proceedings. The conciliator may also act in this manner if the party concerned has not been directed to them by the court.

(3) Conciliation proceedings are deemed to have ended when:

- 1) the parties reach an agreement in the course of the proceedings;
- 2) a party manifests its volition to discontinue the proceedings;

3) the conciliator discontinues the proceedings in situations mentioned in subsection 4 or 5 of this section.

(4) The conciliator may discontinue conciliation proceedings only for a valid reason, primarily when the likelihood of the parties reaching an agreement is low or where, all things considered, and taking into account the interests of the parties, the conciliator cannot be expected to continue the proceedings, or where the nature of the case makes it unsuitable for conciliation proceedings.

(5) Where a person has been granted financial aid by the State to pay for the services of a conciliator, the conciliator may declare conciliation proceedings to have ended when at least three months have elapsed from the beginning of proceedings.

§ 12. Certificate of unsuccessful conciliation proceedings

(1) On an application of a party to conciliation proceedings, the conciliator issues a document which states that conciliation proceedings have been unsuccessful (hereinafter, 'certificate').

(2) The certificate is issued when conciliation proceedings are deemed to have ended by virtue of clauses 2 and 3 of subsection 3 of § 11 of this Act.

(3) On an application of a party who has been directed to the conciliator by the court, the conciliator issues the certificate also when:

- 1) the conciliator has been approached by one of the principal parties;
- 2) the conciliator has done everything in their power to inform the other principal party of the proposed conciliation proceedings, and has transmitted to that party a notice regarding the time and place of conciliation negotiations;
- 3) the other principal party announces that they do not intend to participate in the proceedings or, without a valid reason, does not appear for conciliation negotiations or otherwise demonstrates its unwillingness to participate in proceedings by their conduct.

(4) The notice mentioned in clause 2 of subsection 3 of this section is transmitted to the other party by registered letter to the address stated by the party who approached the conciliator, or to an address known to the conciliator.

§ 13. Reaching an agreement

(1) Where the parties to conciliation proceedings request this, the conciliator draws up a written conciliation agreement which is signed by the conciliator and the parties.

(2) Where the parties to conciliation proceedings request this, the notary who conducted the proceedings authenticates the conciliation agreement following the rules provided by the Notarisation Act.

§ 14. Enforceable title

(1) A conciliation agreement reached between the parties as a result of conciliation proceedings conducted by a conciliator mentioned in clauses 2 and 3 of § 2 of this Act is declared enforceable by the district court under § 627¹ of the Code of Civil Procedure, provided the agreement concerns a pecuniary claim. A conciliation agreement concerning a non-pecuniary claim is declared enforceable by the district court only if the parties to conciliation proceedings are in a position to make a compromise agreement concerning the subject matter of the dispute. The court does not approve conciliation agreements which concern disputes regarding the validity of residential lease contracts, their cancellation or vacation of residential premises.

(2) A conciliation agreement reached between the parties as a result of conciliation proceedings conducted by a person mentioned in clause 1 of § 2 of this Act may be declared enforceable by the district court under § 627² of the Code of Civil Procedure.

(3) A conciliation agreement reached between the parties as a result of conciliation proceedings conducted by a conciliator mentioned in clause 2 or 3 of § 2 of this Act concerning a property claim, together with the debtor's obligation to consent to immediate enforcement, is authenticated by the notary on an application of the parties following the rules provided by the Notarisation Act. The notary verifies whether the agreement was concluded as a result of conciliation proceedings.

(4) A conciliation agreement reached between the parties as a result of conciliation proceedings conducted by a conciliator mentioned in clause 2 or 3 of § 2 of this Act concerning a non-pecuniary claim, together with the debtor's obligation to consent to immediate enforcement, is authenticated by the notary only if the parties to conciliation proceedings are in a position to conclude a compromise agreement concerning the subject matter of the dispute. The notary verifies whether the agreement was concluded as a result of conciliation proceedings.

(5) A notary does not declare enforceable any conciliation agreements reached between the parties as a result of conciliation proceedings conducted by a conciliator mentioned in clause 2 or 3 of § 2 of this Act concerning disputes regarding the validity of residential lease contracts, their cancellation or vacation of residential premises. The notary verifies whether the agreement was concluded as a result of conciliation proceedings.

(6) Where a conciliation agreement is concluded at the time when the dispute is pending before the court, the parties to conciliation proceedings may, following § 430 of the Code of Civil Procedure, have the conciliation agreement approved by the court hearing the case as a compromise agreement.

§ 15. Limitation period

(1) Any conciliation proceedings provided for by this Act are regarded as pre-action proceedings mentioned in clause 4 of subsection 2 of § 160 of the General Part of the Civil Code Act.

(2) Any conciliation proceedings provided for by this Act are to be regarded as negotiations for the purposes of § 167 of the General Part of the Civil Code Act.

Chapter 4 NOTARIES AND ATTORNEYS-AT-LAW

§ 16. Notaries as conciliators

(1) A notary is registered as a conciliator by the Chamber of Notaries on a corresponding application of the notary. Information regarding notaries who are willing to act as conciliators is transmitted to the Minister in charge of the policy sector.

[RT I, 29.06.2014, 109 – entry into force 01.07.2014, in accordance with subsection 4 of § 107³ of the Government of the Republic Act as of 1 July 2014 the words ‘Minister of Justice’ are replaced with the words ‘Minister in charge of the policy sector’.]

(2) Information regarding notaries who act as conciliators is to be published by the Chamber of Notaries and the Ministry of Justice on their respective websites.

(3) In addition to this Act, the conduct of conciliation work by notaries, including any tangible liabilities entailed by such work, is subject to provisions of the legislation governing notaries’ professional activities.

(4) A notary may refuse to conduct conciliation proceedings. Where a notary has commenced conciliation, they may discontinue it only in situations provided for by law, including in the situations mentioned in subsections 4 and 5 of § 11 of this Act.

§ 17. Attorneys-at-law as conciliators

(1) An attorney-at-law may work as a conciliator within the meaning of this Act if they have filed a corresponding application with the Board of the Estonian Bar Association. Information regarding attorneys-at-law who are willing to provide conciliation services is transmitted to the Minister in charge of the policy sector. [RT I, 29.06.2014, 109 – entry into force 01.07.2014, in accordance with subsection 4 of § 107³ of the Government of the Republic Act as of 1 July 2014 the words ‘Minister of Justice’ are replaced with the words ‘Minister in charge of the policy sector’.]

(2) Information regarding attorneys-at-law who act as conciliators is to be published by the Estonian Bar Association and the Ministry of Justice on their respective websites.

(3) In addition to this Act, the conduct of conciliation work by attorneys-at-law, including any tangible liabilities entailed by such work, is subject to provisions of the legislation governing professional activities of attorneys-at-law.

§ 18. Oversight

(1) Oversight in respect of a notary’s work as conciliator is performed by the Minister in charge of the policy sector following the rules regarding oversight of notaries’ professional activities as set out in the Notaries Act and in the Notaries’ Disciplinary Liability Act.

(2) Oversight in respect of an attorney-at-law’s work as conciliator is performed by the Estonian Bar Association and by the Minister in charge of the policy sector following the rules regarding oversight of professional activities of attorneys-at-law as set out in the Bar Association Act. [RT I, 29.06.2014, 109 – entry into force 01.07.2014, in accordance with subsection 4 of § 107³ of the Government of the Republic Act as of 1 July 2014 the words ‘Minister of Justice’ are replaced with the words ‘Minister in charge of the policy sector’.]

Chapter 5

PROCEEDINGS BEFORE A CONCILIATION BODY

§ 19. Conciliation body

(1) A conciliation body within the meaning of this Act is a unit which is provided for by legislation and is affiliated to an authority of the State or of a local authority and acts as a conciliator in the field mentioned in subsection 3 of § 1 of this Act.

(2) Where the legislation governing the activities of the conciliation body prescribes this, the rules of procedure provided by this Chapter apply to proceedings before the body. The rules apply without prejudice to special rules established by the legislation governing the activities of the body.

(3) The individual who conducts conciliation proceedings must observe § 3 of this Act.

(4) The confidentiality of conciliation proceedings is governed by § 4 of this Act.

§ 20. Approaching a conciliation body

(1) A person who approaches a conciliation body (hereinafter, 'the applicant') must do so in writing, stating:

- 1) the name, address and other contact information of the applicant;
- 2) the name, address and other contact information of the other party;
- 3) the facts of the dispute;
- 4) the applicant's request and the facts on which it is founded.

(2) Documentary evidence may be annexed to the application, including documents recording the course of any negotiations conducted so far with the other party, such as the other party's reply to the applicant's request.

(3) In the application, the applicant may put forward their own proposal for a conciliation agreement.

(4) Where the applicant acts through a representative, the representative's power of attorney must be annexed to the application.

§ 21. Rejecting an application

(1) The conciliation body rejects the application if:

- 1) the body does not have the power to deal with the dispute or
- 2) a judgment has entered into effect concerning the dispute.

(2) The applicant must be informed without delay of rejection of their application and of the reason for its rejection.

(3) Where an application does not include all of the information that is required, the conciliation body must give the applicant a time limit by which they are required to provide the missing information. If the applicant does not provide it within the time limit, the conciliation body may reject the case, notifying this to the applicant.

§ 22. Commencing conciliation proceedings

(1) After having accepted an application, the conciliation body, without delay, transmits a copy of the application to the other party and gives a reasonable time limit for the other party to provide a written reply. The written reply must include the other party's position in respect of the assertions included in the application and any conciliation proposals made.

(2) In situations and following the rules provided by law a conciliation body may order a party to participate in proceedings.

(3) The conciliation body must explain to the other party the facts related to the conciliatory character and legally binding effects of, as well as the duty to participate in, proceedings.

(4) In the reply, the other party may make proposals to resolve the dispute by way of entering a conciliation agreement.

(5) The conciliation body transmits a copy of the reply mentioned in subsection 1 of this section to the applicant. The applicant must inform the conciliation body within the established time limit whether they agree to the proposal which the other party has made to resolve the dispute.

(6) If the applicant and the other party agree to the proposal mentioned in subsection 3 of § 20 of this Act or in subsection 4 of this section, a written conciliation agreement between the parties is created by the conciliation body according to § 26 of this Act.

§ 23. Conciliation meeting

(1) If the applicant and the other party have not reached an agreement under subsection 6 of § 22 of this Act, the conciliation body arranges a conciliation meeting between the applicant and the other party or their representatives. A representative may participate in the meeting only if they have authority to execute a conciliation agreement on behalf of the party they represent.

(2) The conciliation body sets the time and place of the meeting and summons the applicant and the other party. If appearance at the meeting is mandatory, this and the consequences of failure to appear at the meeting must be explained in the summons. The meeting must be arranged within one month following the filing of the application. This time limit may be extended for a valid reason.

(3) At the reasoned request of a party, or in the presence of another valid reason, the time limit mentioned in subsection 2 of this section may be longer.

(4) Any meetings which take place during conciliation proceedings are closed meetings.

(5) A meeting is chaired by the person who has been appointed by the conciliation body and who hears the parties' assertions and acquaints themselves with any documents or other evidence presented in the case.

§ 24. Specialist witnesses and witnesses

(1) On an application of a principal party and provided that the conciliation body deems it necessary, an expert assessment may be commissioned from a specialist witness to clarify the facts of the dispute. The conciliation body may hear the view of the the other principal party concerning the application.

(2) Specialist witnesses and witnesses may be summoned to participate, and heard, in a conciliation meeting following the rules provided by subsection 1 of this section.

(3) Any specialist witness or witness costs must be paid by the parties in advance. Unless agreed otherwise, the costs are paid by the party on whose application the witness was summoned in the proceedings.

§ 25. Proposal to resolve the dispute and conclude a conciliation agreement

(1) If the principal parties do not reach an agreement during a conciliation meeting, the conciliation body may make a conciliation proposal to the parties, should it deem the making of such a proposal reasonable considering the facts of the dispute. The conciliation body must explain the content of the conciliation proposal to the parties.

(2) The proposal mentioned in subsection 1 of this section may also be made to the principal parties after a conciliation meeting has taken place. In this case, the conciliation body must announce during the meeting the time limit within which a conciliation proposal will be transmitted to the parties.

(3) If it is just and reasonable in light of the facts of the dispute and the circumstances of conciliation proceedings, the conciliation body may recommend in the proposed agreement that a principal party reimburse the other party's reasonable expert assessment, translation and witness costs which have been or are to be paid by that party.

(4) The conciliation body must explain to the principal parties the legal significance of approving the conciliation agreement mentioned in § 26 of this Act.

(5) The parties may within ten working days following the date of receiving the proposal or within a longer time limit set by the conciliation body respond to the proposal by either accepting or rejecting it. Failure to respond is regarded as rejection of the proposal.

(6) If the parties have not expressed their acceptance of the conciliation proposal within the time limit provided by subsection 5 of this section, the conciliation body concludes that agreement has not been reached and communicates this to the parties.

§ 26. Approving the conciliation agreement

Where the parties accept the conciliation proposal, the conciliation body approves the conciliation agreement and communicates it to the parties in writing by transmitting to them copies of the agreement.

§ 27. End of conciliation proceedings

(1) The conciliation body deems conciliation proceedings to have ended:

- 1) when a party declares to the conciliation body that it intends to discontinue proceedings;

2) when a party's conduct demonstrates an unwillingness to participate in proceedings, primarily when the party does not provide a written reply to the conciliation body within the set time limit, or fails to perform a required procedural operation without a valid reason or otherwise obstructs the conduct of conciliation proceedings;

3) in the situation mentioned in subsection 6 of § 25 of this Act;

4) in the situation mentioned in § 26 of this Act.

(2) Where conciliation proceedings end by virtue of clause 1 or 2 of subsection 1 of this section, the conciliation body informs the parties of the end of proceedings.

(3) Where a person has been ordered to participate in conciliation proceedings in a situation and according to the rules provided by law, such proceedings may not be ended under clauses 1 or 2 of subsection 1 of this section before the conciliation body has presented a conciliation proposal according to subsection 1 of § 25 of this Act.

§ 28. Performing the conciliation agreement

(1) A conciliation agreement approved by a conciliation body is binding on the parties and must be performed by them. The agreement must be performed within 30 days following the day when copies of the agreement were transmitted to the parties, unless a different time limit is stipulated in the agreement.

(2) If the conciliation agreement is not performed within the time limit mentioned in subsection 1 of this section, a party to the agreement may present the conciliation agreement that has been approved by a conciliation body to an enforcement agent for enforcement following the rules provided by the Code of Enforcement Procedure.

§ 29. Judicial remedies

(1) When conciliation proceedings have been discontinued or when the conciliation body has concluded that no agreement has been reached, the principal parties have a right to seek a judicial remedy.

(2) A principal party may contest, before the court, a conciliation agreement approved by the conciliation body if the conciliation body has committed a material breach of the rules of conciliation procedure and that breach has affected or could have affected the substance of the agreement.

(3) A petition for a declaration that a material breach of the conciliation procedure has been committed by the conciliation body may be filed with the district court that serves the area in which the conciliation body has its seat within 30 days following announcement of approval of the conciliation agreement. The petition is disposed of under the action-by-petition procedure.

(4) If the court finds that the conciliation body has committed a material breach of the rules of conciliation procedure, which has affected or may have affected the substance of the conciliation agreement, the agreement that was approved by the conciliation body is declared void and the principal party has a right to seek a judicial remedy as soon as the corresponding order has entered into effect.

Chapter 6 IMPLEMENTING PROVISIONS

§ 30. –§ 35. Sections amending other Acts. Omitted from translation.

§ 36. Entry into force of this Act

This Act enters into force on 1 January 2010.