

# **CODE OF RULES ON MEDIATION IN DOMESTIC AND CROSS-BORDER CONSUMER DISPUTES OF THE MEDIATION CENTRE OF THE SLOVENIAN INSURANCE ASSOCIATION**

## **I. GENERAL PROVISION**

### **Article 1 Subject of the Code**

This Code sets out rules of mediation in domestic and cross-border consumer disputes by the Mediation Centre (hereinafter: the MC) of the Slovenian Insurance Association (hereinafter: the SIA), the criteria to be fulfilled by mediators, the manner of appointing mediators in specific mediation procedures, and rules regarding the prevention of conflicts of interest.

Terms used in the masculine grammatical form apply neutrally to both male and female genders.

## **II. RULES OF MEDIATION**

### **Article 2 Purpose of these rules**

These rules of mediation are binding on all mediators included on the list of mediators of the MC (hereinafter: the list of mediators).

The purpose of these rules of mediation is to strengthen the reputation and integrity of the MC and the mediators included on the list of mediators, and assure that mediators on the list of mediators act and behave ethically.

### **Article 3 General responsibility**

Mediators must act fairly and impartially, in good faith and with due diligence in relation to the parties to a procedure. Mediators may not impose their own interests at the expense of the interests of the parties to a procedure.

Mediators may not express any prejudice in relation to the parties to a procedure, they must be reasonably available when requested by the parties, and must ensure that the parties are informed about the mediation procedure in which they are participating.

Mediators shall be autonomously liable for the damage in relation to the parties to a procedure, where such damage was caused by the performance of his/her duties in mediation procedure. SIA is not liable for the damage caused by the performance of the duties of mediators in mediation procedure.

#### Article 4 Competence of a mediator

A mediator must be competent and knowledgeable in mediation. A mediator must meet the criteria regarding competence and knowledge set out in this Code, and must continuously update their knowledge.

A mediator must attend at least one education or training in the areas of mediation per year. A mediator, who not attend at least one education or training in the areas of mediation in the period of two years, can be excluded from the list of mediators.

A mediator must decline mediation in matters for which he does not have relevant competence. Upon request, a mediator discloses information concerning their professional experience and competence to the parties.

A mediator without practical experience as regards the performance of mediation procedure must carry out at least three observations or co-mediation in mediation procedure.

#### Article 5 Impartiality of a mediator and prevention of conflicts of interest

A mediator must act neutrally, independently and impartially, meaning he must treat the parties to a procedure equally. A mediator must avoid participation and further participation in a procedure if he thinks or gives the impression that his participation may represent a conflict of interest. If there are any circumstances that may, or may be seen to, affect a mediator's independence or give rise to a conflict of interest, the mediator must disclose those circumstances to the parties before acting or continuing to act in the mediation. Such circumstances include:

- any personal or business relationship with one or more of the parties;
- any financial or other interest, direct or indirect, in the outcome of the mediation;
- the mediator, or a member of his firm, having acted in any capacity other than a mediator for one or more of the parties;
- the mediator has been performing other work for the SIA that is not connected with the mediation.

In the circumstances referred to in the preceding paragraph, the further course of the procedure depends on the parties. The parties may request that the mediator be excluded, and appoint another mediator in accordance with Article 11 of this Code. A mediator may continue to conduct the mediation upon the explicit consent of the parties, and if he is certain of being able to carry out the mediation with full independence and neutrality and while ensuring complete impartiality.

#### Article 6 Confidentiality of the mediator's work

A mediator must keep confidential all information arising out of or in connection with the mediation, including the fact that the mediation is to take place or has taken place. Any information or facts disclosed in confidence to a mediator at separate meetings by one of the parties must not be disclosed to the other parties without permission, unless consented to by the party that provided such information or facts.

In judicial, arbitration or any other similar proceedings, a mediator may not present as evidence, refer to or give testimony on any of the following:

- the fact that a party to the procedure was willing to take part in mediation,
- documents drawn up solely for the purpose of mediation,
- opinions or proposals of the parties in respect of reaching a settlement,
- statements or admissions made by the parties in the course of mediation,
- proposals presented by the mediator,
- a party's willingness to accept a proposed solution.

Information referred to above may only be disclosed or used in judicial, arbitration or any other similar proceedings for the purpose of evidence under the conditions and to the extent required by law (Criminal Procedure Act, Civil Procedure Act, General Administrative Procedure Act, Act on Arbitration, Act on Mediation in Civil and Commercial Matters) in particular on grounds of public policy or insofar as necessary for the implementation or enforcement of a settlement, otherwise such information is treated as an inadmissible fact or evidence.

By signing a confidentiality declaration, the parties agree they will not propose the mediator as a witness in a judicial, arbitration or any other similar proceedings.

#### Article 7 Incompatibility of functions

In case no settlement is reached, a mediator may not act in the dispute as an arbitrator or a judge.

#### Article 8 A mediator's role in conducting and co-designing the procedure

A mediator must ensure that the parties understand the characteristics of the mediation procedure and the role of the mediator and the parties to it.

A mediator must ensure the parties have understood and agreed with:

- the purpose, procedure and terms of the mediation,
- the role of the mediator and the parties,
- the duty of the mediator and the parties not to disclose confidential data.

A mediator must ensure that the parties have appropriate possibilities for cooperation, and must conduct the proceedings in an appropriate manner, taking the circumstances of the case into account, and must make sure that an acceptable level of interpersonal relations is maintained during the mediation, to prevent any abuse of rights in the mediation, as well as that the consumer is at all times aware that participation in the mediation and entering into a settlement is completely voluntary and depends solely on them.

A mediator takes all necessary steps to reach a settlement between the parties on the basis of the explicit and written consent of all the parties to the procedure, and for all the parties to understand the consequences and terms and conditions of the settlement reached. The mediator must, upon request of the parties and within the limits of his competence, inform the parties about how they can formalise the settlement and the possibilities for making the settlement enforceable.

### III. MEDIATORS

#### Article 9 The list of mediators

A list of mediators is kept by the MC.

Criteria for including mediators on the list of mediators, criteria for excluding mediators from the list of mediators, and the manner of establishing the list of mediators are governed by the Articles of Association and Organisation of the Mediation Centre of the Slovenian Insurance Association.

#### Article 10 Criteria for mediators

Mediators have legal knowledge acquired in valid study courses offering at least a second-level legal education, or legal qualifications obtained in study courses which according to the law governing higher education equal at least a second-level education, have passed professional training for mediators and obtained a certificate on professional training for mediators.

#### Article 11 Appointment of mediators in procedures

The parties to a procedure shall appoint a mediator from the list of mediators by mutual agreement. The parties may seek the assistance of the MC Secretary in connection with the appointment of a mediator, in particular:

- a party may request the MC Secretary to recommend suitable mediators,
- the parties may agree that a mediator is appointed by the MC Secretary.

In cases where the parties agree that a mediator is to be appointed by the MC Secretary, where the parties did not appoint a mediator by mutual agreement, and where a mediator has not been proposed by any of the parties, a mediator for the case at hand is appointed by the MC Secretary:

- primarily by the sequence of mediators included on the list of mediators,
- by exception, a mediator is appointed by the MC Secretary depending on the subject matter of the case.

The MC Secretary must do everything in his power, given the circumstances of the case, to appoint independent and impartial mediators; the MC Secretary may in particular not appoint a mediator with respect to whom the circumstances referred to in Article 5 of this Code exist; furthermore, the MC Secretary must inform the parties in advance that according to his knowledge the circumstances referred to in Article 5 of this Code exist with respect to a specific mediator.

#### Article 12 Exclusion of a mediator and prevention of conflicts of interest

The parties may also propose to exclude a mediator and appoint a new mediator if circumstances

exist that could affect or could be seen to affect the independence or impartiality of a mediator or give rise to a conflict of interest.

In the course of the procedure, a mediator must immediately disclose to the MC Secretary all circumstances that could affect or may be seen to affect his independence or impartiality or give rise to a conflict of interest with any party, and must propose to be excluded.

In the cases referred to in the first and second paragraphs of this Article, a new mediator is appointed in accordance with the provisions of the preceding Article.

The MC Secretary must do everything in his power, given the circumstances of the case, to appoint independent and impartial mediators; the MC Secretary may in particular not appoint a mediator with respect to whom the circumstances referred to in Article 5 of this Code exist; furthermore, the MC Secretary must inform the parties in advance that according to his knowledge the circumstances referred to in Article 5 of this Code exist with respect to a specific mediator.

#### **IV. FINAL PROVISIONS**

##### Article 13

Mediators on the list of mediators are obliged to act in compliance with the Constitution, binding international treaties, laws (in particular the Act on Out-of-Court Resolution of Consumer Disputes, Insurance Act and the Act on Mediation in Civil and Commercial Matters) and secondary legislation, the Rules on Mediation Procedures in Domestic and Cross-Border Consumer Disputes of the Mediation Centre of the Slovenian Insurance Association, this Code and general professional and ethical rules.

The SIA ensures that mediators on the list of mediators act in accordance with the preceding paragraph of this Article.

##### Article 14 Publication

This Code is published on the website of the SIA and at the business premises of the SIA.

##### Article 15 Validity of the Code

This Code is adopted by the Council of the SIA.

This Code enters into force on 1 of January 2018 and applies to all procedures requested after the day it enters into force.

Ljubljana, 16. November 2017

President of the SIA Council  
Andrej Slapar