

# ALTERNATIVE DISPUTE RESOLUTION ACT

## DISCLAIMER

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Pursuant to Article 82 paragraph 1 item 2 of the Constitution of Montenegro and Amendment IV paragraph 1 to the Constitution of Montenegro, the Parliament of Montenegro of the 26th convocation, at the Fifth sitting of the First Ordinary (Spring) session in 2020, on 16 July 2020, has passed the:

## ALTERNATIVE DISPUTE RESOLUTION ACT<sup>1</sup> \*

### I. BASIC PROVISIONS

#### Scope of the Act Article 1

This Act shall govern alternative dispute resolution in civil relations (hereinafter referred to as: alternative dispute resolution) by mediation, Early Neutral Assessment and other alternative dispute resolution methods, in compliance with internationally recognized standards.

#### Exceptions

#### Article 2

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<sup>1</sup>Official Gazette of Montenegro, No. 077/20 of 29.07.2020

\* This Law is harmonised with the Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters.

This act shall not be applied to the procedure of amicable dispute resolution before an arbitrator and on the disputes for which exclusive jurisdiction of a court or any other body is stipulated.

**Definition of Alternative Dispute Resolution  
Article 3**

Alternative dispute resolution means the resolution of disputes with participation of a third neutral person assisting the parties to solve their dispute before or after judicial or any other proceedings are initiated.

**Centre  
Article 4**

As a holder of public authorities, the Centre shall do expert tasks related to mediation, Early Neutral Assessment and other alternative dispute resolution methods, as well as the tasks of encouraging and improving accessibility of alternative dispute resolution (hereinafter referred to as: "the Centre").

**Principles  
Article 5**

Alternative dispute resolution is based on the principle of voluntariness. Parties that participate in the alternative dispute resolution procedure shall act in line with the principles of conscientiousness and honesty. In the alternative dispute resolution procedure parties are treated in line with the principles of equality and fairness. Alternative dispute resolution procedure is confidential unless this Act requires otherwise.

**Attempt at Amicable Dispute Resolution  
Article 6**

Whenever possible the parties shall try to resolve their dispute amicably before court proceedings or any other proceedings are initiated. Amicable dispute resolution referred to in paragraph 1 of this Article shall include alternative dispute resolution and negotiations of the parties aimed at resolution of the dispute without participation of a neutral third party.

**Use of Gender Sensitive Language  
Article 7**

Terms and expressions used herein for natural persons in male gender shall include the same terms and expression in female gender.

**II MEDIATION**

**Definition  
Article 8**

Mediation is the procedure where parties endeavour to solve their dispute amicably with the support of one or several mediators.

## **Mediator Article 9**

Mediator is the person that conducts the mediation procedure and assists the parties to reach settlement without any authority to impose binding solution, and is issued a licence for work according to this Act.

## **Voluntary Nature of Mediation Article 10**

Parties participate in the mediation procedure on a voluntary basis.

## **Agreed Mediation Article 11**

Parties can undertake in a contract to attempt to solve any specific dispute or all disputes that might arise from certain legal relations (contractual clause) by mediation before initiating court proceedings.

Unless a dispute referred to in paragraph 1 of this Article is solved in mediation, the party can lodge a claim and initiate a dispute before the competent court.

## **Obligation to Attempt Dispute Resolution through Mediation Article 12**

Before initiating court proceedings the party that intends to initiate the proceedings shall go to the Centre with an intention to try to solve the dispute in mediation procedure, while both parties in the dispute are obliged to attend the first meeting with a mediator in the following:

- disputes stipulated as small value claims according to the law governing civil proceedings;
- disputes for damages arising from insurance contracts if one of the parties is an insurance company;
- disputes for which special law stipulates the obligation to do so.

In the case referred to in paragraph 1 of this Article and in the case where court refers the parties to the first meeting with a mediator, the Centre shall, in line with Article 15 of this Act, appoint a mediator to hold the first meeting unless the parties have previously already appointed the mediator.

In the first meeting the mediator shall inform the parties of the advantages of solving their dispute in mediation and issue a certificate confirming their attendance at the first meeting.

In the first meeting with the mediator, parties may conclude mediation agreement aimed at attempting to solve their dispute amicably or they may choose a mediator from the register of mediators referred to in Article 48 of this Law with whom they will conclude a mediation agreement aimed at attempting to solve their dispute amicably.

## **Inviting parties to the first meeting with a mediator Article 13**

If the parties that are mandatorily referred to the first meeting with the mediator fail to address the Centre within eight days from the day of receiving the decision on referral to

the first meeting with the mediator, the Centre shall invite the parties and their proxies, if any, according to the rules on servicing documents in person, to attend the first meeting with the mediator, unless otherwise stipulated by a special law.

If one or both parties, in spite of being duly invited, fail to accept the invitation of the Centre to attend the first meeting with the mediator, and fail to justify their absence, the mediation shall be considered unsuccessful.

### **Mediation Agreement Article 14**

Parties that intend to solve their dispute in the mediation procedure shall conclude a mediation agreement.

Mediation agreement shall be concluded in written form and shall contain the following: names, surnames, i.e. titles of the parties, addresses of their permanent or temporary residence, i.e. registered office, type of dispute, name and surname of the mediator and the rules for his appointment, deadline for completing mediation, as well as a note that the parties will try to solve their dispute in the mediation procedure.

Mediation agreement can be used by the parties to define rules for mediation in line with the alternative dispute resolution principles.

Where the parties have concluded a mediation agreement, the procedure before The competent court may not be initiated before the parties have tried to solve the dispute through mediation.

If the dispute is not solved through the mediation procedure, parties can lodge a claim to the competent court and initiate the court proceedings.

When initiating the proceedings the party shall submit to the court the proof that they attempted to resolve the dispute through mediation.

### **Appointing a Mediator Article 15**

If the parties in their mediation agreement have not appointed a mediator, the Centre shall appoint the mediator complying with the order of mediators from the register referred to in Article 48 of this Act.

If the mediation procedure requires particular expertise and experience, the Centre can appoint a mediator regardless of the order referred to in paragraph 1 of this Article.

Particular expertise and experience referred to in paragraph 2 of this Article shall be assessed on the basis of completed trainings and the number of resolved cases in the mediation procedure in the field related to the matter of dispute the mediation procedure is initiated for.

### **Commencement of Mediation Procedure Article 16**

Mediation procedure shall be considered commenced at the time when the mediator and the parties sign the mediation agreement or when the mediator appointed on the basis of the mediation agreement or decision of the Centre accepts to conduct mediation by giving his written consent in a separate document, unless otherwise defined by law or mediation agreement.

### **Effects of Mediation on Statute of Limitation and Prescription Periods Article 17**

Initiating mediation procedure and addressing the Centre with an intention to solve a dispute through mediation in cases referred to in Article 12 paragraph 1 of this Law shall cease the lapse of time for the purposes of initiating court or other proceedings as well as for the statute of limitation related to the subject matter of mediation.

If in the cases referred to in Article 12 paragraph 1 of this Law the procedure of mediation does not commence, the cessation of the lapse of time referred to in paragraph 1 of this Article shall be in effect until the mediator issues a certificate to the parties confirming their participation in the first meeting with the mediator.

If the procedure of mediation commences the cessation of the lapse of time referred to in paragraph 1 of this Article shall be in effect until the finalization of the mediation procedure.

### **Mediator's Duties Article 18**

Mediator shall have the duty to conduct the mediation procedure in a neutral, professional and purposeful manner, treating the parties and their proxies in a fair and impartial way, in line with the Code of Ethics of Mediators and rules according to which the mediation is conducted.

Mediator shall be liable for any damage he inflicts on the party intentionally or through gross negligence, in line with general rules of liability for damage.

### **Mediator's Recusal Article 19**

Mediation shall not be conducted by the mediator:

- who, as an authorised person for conducting administrative procedure, a judge, arbitrator, or an attorney-at-law, participated in the dispute that is subject to mediation or in any other dispute that preceded or arose from the same legal relation or is related to it;
- who has a personal interest in the dispute that is subject to mediation or is in a personal, family or business relation with any of the parties in the dispute;
- in relation to whom there are any circumstances that can cast a doubt on his fairness and impartiality in relations to the parties.

Mediator shall immediately inform the parties and the Centre of any facts or circumstances referred to in paragraph 1 of this Article.

If, after learning of the facts and circumstances referred to in paragraph 1 of this Article, the parties state that they agree that the mediator that the facts and circumstances refer to should continue conducting the mediation procedure, a written note shall be made thereof by the mediator who will then continue conducting the mediation.

The note referred to in paragraph 3 of this Article shall be signed by the mediator and the parties.

### **Conducting the Mediation Procedure Article 20**

Mediator shall conduct the mediation procedure in a manner that he considers appropriate, in line with the mediation agreement and this Act, taking into account the circumstances of the case.

Unless the parties agree otherwise:

- 1) mediator shall be authorized to meet each of the parties separately;
- 2) mediator can disclose data and information he receives from one party to the other party if the former gave its explicit consent that certain data or information can be disclosed to the latter;
- 3) each party may withdraw from further participation in the mediation procedure at any stage;
- 4) mediator can take part in drafting the settlement.

### **Possibility to Use Evidence in Other Proceedings Article 21**

Statements and evidence proposed by the party or submitted by the party in the mediation procedure shall not be considered in the court, arbitration or any other proceedings, if they refer to:

- 1) the fact that one of the parties proposed or accepted mediation;
- 2) the fact that the party within the mediation accepted one or several disputable requests or facts, unless such acceptance was a constituent part of settlement;
- 3) other statements of facts or proposals of the parties given in the mediation procedure;
- 4) documents composed solely for the purposes of mediation;
- 5) willingness of the parties to accept proposals of other parties or mediator within the mediation;
- 6) other proposals given within the mediation procedure.

As an exception, the evidence referred to in paragraph 1 of this Article may be used in court proceeding, arbitration procedure or any other procedure:

- 1) if producing of those evidence is necessary for the protection of public order, under the terms and in the scope required by the law, or
- 2) if it is required for voluntary or forced enforcement of settlement.

Unless the parties have agreed otherwise, no mediator and no person participating in the mediation procedure in any capacity shall be obliged to testify in court, arbitration, or any other procedure related to the facts and data that stem from the procedure of mediation or are connected with it.

### **Termination of Mediation Procedure Article 22**

Mediation procedure is terminated:

- 1) by conclusion of a settlement before the mediator;
- 2) at the expiry of deadline for settlement defined in the mediation agreement, or in the law if the settlement is not concluded by such a date;
- 3) by a written declaration on withdrawal from mediation, unless after such a withdrawal at least two parties declare that they wish to continue the mediation procedure;
- 4) by a mediator's notification suspending the procedure, if the mediator is of the opinion that further efforts to reach a settlement are no longer purposeful.

Settlement concluded before the mediator shall be signed by the parties and the mediator. If a party has submitted the declaration referred to in paragraph 1 item 3 of this Article, the mediation procedure shall be considered terminated after the other party and the mediator have received that declaration.

If mediation is terminated by suspension referred to in paragraph 1 item 4 of this Article, the mediation procedure shall be considered terminated at the time when both parties have received the notification of suspension.

After the mediation procedure is terminated, the mediator shall promptly inform the Centre of the activities that were undertaken and of the outcome of the procedure, while the Centre shall inform the court thereof.

### **Binding Nature of the Settlement Article 23**

Settlement concluded before a mediator shall bind the parties that concluded it. Obligations from the settlement referred to in paragraph 1 of this Article shall be met by the parties within the period set in the settlement.

### **Settlement concluded in the dispute for which no court proceedings were initiated Article 24**

Settlement concluded before a mediator in a dispute where no court proceedings have been initiated, i.e. in a dispute where the court proceedings ended in a withdrawal of the claim, shall become an enforceable enactment after being confirmed by the competent court, i.e. after a notarial deed is composed in line with the law regulating activities of notaries.

The mediator shall deliver the settlement referred to in paragraph 1 of this Article to the Centre that will promptly submit it to the competent court for confirmation.

Confirmation of settlement referred to in paragraph 1 of this Article shall be done by a single judge of the court with jurisdiction by affixing a certificate on the settlement.

Such certificate shall contain: administrative insignia of the case, name and registered office of the court, note that the settlement concluded before the Centre is thereby confirmed and the date on which the settlement was concluded, insignia of the Centre's case, date of issuance of the confirmation, signature of the judge and the seal of the court.

The court with jurisdiction shall inform the Centre that the requirements for issuing of the certificate referred to in paragraph 3 of this Article are not met, i.e. the notary shall refuse to make a notarial deed on settlement:

- 1) if the contents of the settlement is contrary to public order;
- 2) if the settlement is not allowed for the subject matter of the dispute;
- 3) if the contents of the settlement is unenforceable.

The settlement referred to in paragraph 1 of this Article may be refuted only by a claim, in line with the law regulating civil procedure.

### **Settlement concluded in the dispute in relation to which court proceedings were initiated Article 25**

The settlement before a mediator in the mediation procedure where the court referred the parties to mediation shall be concluded in a written form.

The mediator shall promptly deliver the settlement referred to in paragraph 1 of this Article to the Centre that will deliver the settlement to the court.

### **Costs**

## **Article 26**

Mediator shall be entitled to remuneration for work and compensation of costs he had in relation to the mediation procedure.

Unless the parties have agreed otherwise and unless the law has stipulated otherwise, each party shall bear its own costs, while the joint costs for remuneration for the work of the mediator and compensation of the costs that the mediator had in relation to the mediation procedure shall be covered by the parties in equal parts.

The parties that are not exempt from paying the costs of mediation shall pay to the Centre the advance amount for joint costs referred to in paragraph 2 of this Article.

The amount of remuneration for the work of the mediator and compensation of costs referred to in paragraph 1 of this Article shall be set by the Government of Montenegro (hereinafter referred to as: the Government).

## **Exemption from the Obligation of Paying the Costs Article 27**

The parties that are exempt from the obligation of paying the costs of court proceedings according to the special law shall also be exempt from covering the costs referred to in Article 26 paragraph 2 of this Law.

In the case referred to in paragraph 1 of this Article and in the case of mediation in divorce disputes and other disputes related to family relations according to the law regulating family relations, as well as in the disputes where Montenegro is the defendant, the costs referred to in Article 26 paragraph 2 of this Law shall be covered from the budget of Montenegro.

In the disputes where the defendant is the Capital, Historic Capital or a municipality, the costs referred to in Article 26 paragraph 2 of this Law, shall be covered from the budget of the Capital, Historic Capital or the municipality.

## **Mediation with International Element Article 28**

Mediation with international element means mediation where one of the parties, at the beginning of the mediation procedure, has permanent or habitual residence in terms of the law regulating international private law (hereinafter: habitual residence), i.e. registered office outside of Montenegro.

Provisions of this Act shall apply to mediation referred to in paragraph 1 of this Article, unless the parties have explicitly agreed to conduct the procedure in line with the legislation of another state and with participation of the mediators authorized to conduct mediation in line with the legislation of such other state.

If the mediation with an international element is conducted according to the rules of another state, the concluded settlement shall acquire the capacity of an enforceable document according to this Act or the provisions of applicable law of another state under the conditions of reciprocity.

## **Mediation in Cases of Cross Border Dispute Article 29**

Mediation in case of cross-border dispute means mediation where one of the parties, at the beginning of the procedure, has permanent or habitual residence, i.e. registered



office in the European Union Member State. In the procedure referred to in paragraph 1 of this Article, conducting the mediation, the mediator shall take into account the provisions of the European Union instruments on mediation in civil and commercial matters.

### **III EARLY NEUTRAL ASSESSMENT**

#### **Definition Article 30**

Early Neutral Assessment of a dispute is the procedure where, on the basis of the parties' agreement, a dispute evaluator gives his assessment of the facts and law elements of their dispute.

#### **Dispute Evaluator Article 31**

Dispute evaluator is the person that conducts the procedure of Early Neutral Assessment of dispute on a licence for work issued according to this Act.

#### **Early Neutral Assessment Agreement Article 32**

Parties that intend to resolve their dispute in the Early Neutral Assessment Procedure shall conclude an Early Neutral Assessment Agreement. Early Neutral Assessment Agreement shall be concluded in a written form and shall contain: names and surnames, i.e. titles of the parties, addresses of their permanent or temporary residence, i.e. registered office, type of dispute, name and surname of the dispute evaluator, or the rules on the basis of which the dispute evaluator is to be appointed.

#### **Appointing a Dispute Evaluator Article 33**

Unless the parties appoint a dispute evaluator in their Early Neutral Assessment Agreement, a dispute evaluator shall be appointed by the Centre following the order in the register of dispute evaluators referred to in Article 48 of this Act.

#### **Commencement of the Procedure Article 34**

Early Neutral Assessment procedure shall be considered commenced after the parties and dispute evaluator have signed Early Neutral Assessment Agreement or after the dispute evaluator appointed on the basis of the Early Neutral Assessment Agreement or decision of the Centre has accepted to conduct the Early Neutral Assessment of the dispute by issuing a separate written statement.

#### **Conducting the Procedure of Early Neutral Assessment Article 35**

Dispute evaluator shall conduct the procedure of Early Neutral Assessment in the manner he considers appropriate, in line with the Early Neutral Assessment Agreement and this Act, taking into account the circumstances of each specific case.

Unless the parties agree otherwise:

- 1) the first meeting shall be conducted in the presence of the parties and their representatives, i.e. proxies;
- 2) dispute evaluator shall ensure that the parties and their representatives, i.e. proxies can use a joint meeting to make oral presentation of all the facts and evidence related to disputable relations subject to the Early Neutral Assessment;
- 3) within the period that may not exceed 15 days from initiating Early Neutral Assessment procedure, the parties shall deliver to the dispute evaluator their written statements and evidence regarding all the facts related to the disputable relationship that is subject to assessment;
- 4) each party may withdraw from further participation in the Early Neutral Assessment procedure at any stage.

### **Assessment Article 36**

On the basis of written statements of the parties and submitted evidence, as well as on the basis of the facts and evidence presented in the joint meeting, dispute evaluator shall compose a n elaborated neutral assessment of the facts and legal elements of the disputable relation that is subject to Early Neutral Assessment.

Dispute evaluator shall compose the assessment referred to in paragraph 1 of this Article in written form and deliver it to the parties within 30 days from the day of the joint meeting. Upon request of any of the parties, dispute evaluator shall schedule a meeting with the parties where he will present and reason orally the assessment referred to in paragraph 1 of this Article.

Assessment referred to in paragraph 1 of this Article may be the basis for concluding a settlement before the dispute evaluator.

In the case referred to in paragraph 4 of this Article, the settlement concluded before the dispute evaluator shall acquire the capacity of an enforceable enactment in the manner referred to in Article 24 paragraph 1 of this Act.

### **Costs Article 37**

Dispute Evaluator shall be entitled to remuneration for work and compensation of costs he had in relation to the Early Neutral Assessment procedure.

Unless the parties have agreed otherwise and unless the law has stipulated otherwise, each party shall bear his/her own costs, while the joint costs of remuneration for the work of the dispute evaluator and compensation of the costs that he had in relation to the Early Neutral Assessment procedure shall be covered by the parties in equal parts.

The parties shall pay to the Centre the advance for the costs referred to in paragraph 2 of this Article.

The amount of remuneration for the work of dispute evaluator and compensation of costs referred to in paragraph 1 of this Article shall be set by the Government.

### **Appropriate Application Article 38**

Provisions of Article 18 and 19 of this Act shall apply accordingly to the duties and

recusal of dispute evaluator.

## **IV MEDIATORS AND DISPUTE EVALUATORS**

### **Requirements for Granting Licence to Mediators Article 39**

Licence for the work of mediators shall be granted to the person:

- 1) who holds Montenegrin nationality or nationality of a Member State of the European Union;
- 2) who holds the VII1 level of educational qualification;
- 3) who has general health capacity;
- 4) who has minimum five years of work experience in the jobs where the VII1 level of education qualification is required;
- 5) who completed a training programme for mediators;
- 6) who has not been convicted of any offence which makes him unworthy of conducting mediation;
- 7) who has not been imposed security measure which involved prohibition to take up occupation, perform activity or duty;
- 8) against whom no criminal proceedings are conducted for the criminal offence for which prosecution is initiated ex officio.

The training referred to in paragraph 1 item 5 of this Article shall be implemented by the Centre.

The Centre shall issue a certificate on completed training referred to in paragraph 1 item 5 of this Article.

The program of training referred to in paragraph 1 item 5 of this Article, the manner of implementing the training and the template for the certificate on completed training shall be stipulated by the Ministry.

### **Requirements for Granting of the Licence to Dispute Evaluators Article 40**

Licence for the work of dispute evaluators shall be granted to the person:

- 1) who holds Montenegrin nationality or nationality of a Member State of the European Union;
- 2) who passed the judicial exam and has minimum 15 years of work experience in the field of law after passing the judicial exam, or who is a full-time professor of the Law Faculty in the subjects in the field of civil law;
- 3) who has general health capacity;
- 4) who completed a training for dispute evaluator;
- 5) who has not been convicted of an offence which makes him unworthy of conducting Early Neutral Evaluation;
- 6) who has not been imposed any security measure that involved prohibition to take up occupation, perform activity or duty;
- 7) against whom no criminal proceedings are conducted for the criminal offence for which prosecution is initiated ex officio.

The training referred to in paragraph 1 item 4 of this Article shall be implemented by the Centre.

The Centre shall issue a certificate on completed training referred to in paragraph 1 item 4 of this Article.

The program of training referred to in paragraph 1 item 4 of this Article, the manner of implementing the training and the template for the certificate on completed training shall be stipulated by the Ministry.

### **Granting Licences to Mediators and Dispute Evaluators Article 41**

Application for licence for mediators, i.e. dispute evaluators, accompanied by proof of meeting requirements set out in Article 39 paragraph 1, i.e. Article 40 paragraph 1 of this Act shall be submitted to the Ministry, through the Centre.

The person who meets the requirements set out in Article 39 paragraph 1 of this Act, i.e. person who meets requirements set out in Article 40 paragraph 1 of this Act shall be granted mediator operating licence, i.e. dispute evaluator operating licence on the stipulated template.

Licences referred to in paragraph 2 of this Article shall be issued by the Ministry for a five-year period and they may be extended by the same period in accordance with this Act.

Licences referred to in paragraph 2 of this Article shall be issued within 15 days from the day of receiving the application referred to in paragraph 1 of this Article.

If the applicant for mediator licence does not meet the requirements stipulated in Article 39 paragraph 1 of this Act, i.e. if the applicant for dispute evaluator licence does not meet the requirements stipulated in Article 40 paragraph 1 of this Act, the Ministry shall render the ruling rejecting the application.

The template and contents of the licence for the work of mediators and licence for the work of dispute evaluators shall be stipulated by the Ministry.

### **Extension of Mediator's Licence Article 42**

Application for extension of mediator licence shall be submitted by the mediator to the Ministry through the Centre at the latest three months before expiry of validity period of the licence.

The Ministry shall decide on the application referred to in paragraph 1 of this Article on the basis of prior opinion obtained from the Centre within 15 days from the day of receiving the application.

In the opinion referred to in paragraph 2 of this Article the Centre shall state: the number of proceedings in which the mediator rejected to act, providing the reasons for rejection; the data on the conducted proceedings and the decisions rendered by the Ethics Committee for monitoring implementation of the Code of Ethics of Mediators and Code of Ethics of Dispute Evaluators and this Act (hereinafter referred to as: Ethics Committee) upon complaints submitted against that particular mediator; as well as other relevant data on the work of the mediator.

Mediator licence shall be extended if the mediator:

- meets the requirements stipulated in Article 39 paragraph 1 of this Act;
- had minimum 20 mediations conducted during the validity period of the licence and minimum 10 hours of professional development during a one year period, and
- obtains a positive opinion on his work from the Centre.

Along with the application referred to in paragraph 1 of this Article, the mediator shall submit proof of meeting the requirements referred to in Article 39 paragraph 1 items 1, 3 and 8 of this Act.

The Ministry shall refuse to extend the mediator licence if it establishes that the mediator does not meet the requirements set out in paragraph 4 of this Article.

## **Extension of Dispute Evaluator's Licence Article 43**

Application for extension of licence shall be submitted by the dispute evaluator to the Ministry through the Centre not later than three months before expiry of validity period of the licence.

The Ministry shall decide on the application referred to in paragraph 1 of this Article on the basis of prior opinion obtained from the Centre within 15 days from the day of receiving the application.

In the opinion referred to in paragraph 2 of this Article, the Centre shall list the number of proceedings in which dispute evaluator refused to proceed and the reasons for the refusals, as well as the data about the procedures conducted and decisions rendered by the Ethics Committee upon complaints submitted against that dispute evaluator, and other relevant data about the work of the dispute evaluator.

Dispute evaluator licence shall be extended if the dispute evaluator:

- meets the requirements stipulated in Article 40 paragraph 1 of this Act;
- obtains a positive opinion about his work from the Centre.

Along with the application referred to in paragraph 1 of this Article, the dispute evaluator shall submit proof of meeting requirements referred to in Article 40 paragraph 1 items 1,3 and 7 of this Act.

The Ministry shall refuse to extend dispute evaluator licence if it establishes that dispute evaluator does not meet requirements set out in paragraph 4 of this Article.

## **Reasons for Termination of Validity of Licence Held by Mediator and Dispute Evaluator Article 44**

Mediator licence, i.e. dispute evaluator licence shall cease to be valid:

- upon expiry of the period for which it was granted, i.e. extended;
- at the request of mediator, i.e. dispute evaluator;
- if it is established that at the time of granting the licence the mediator did not meet the requirements set out in Article 39 paragraph 1 of this Act, i.e. that dispute evaluator did not meet requirements set out in Article 40 paragraph 1 of this Act;
- if it is established that the mediator does no longer meet the requirements set out in Article 39 paragraph 1 items 1, 3, 6, 7 and 8 of this Act, i.e. that dispute evaluator does no longer meet the requirements set out in Article 40 paragraph 1 items 1, 3, 5, 6, and 7 of this Act;
- if Ethics Committee establishes that mediator or dispute evaluator violated provisions of the Code of Ethics for mediators, i.e. Code of Ethics for dispute evaluators or provisions of this Act, which significantly damages the level of standards of his professional conduct or that he conducted the mediation or Early Neutral Assessment of a dispute contrary to the principles of alternative dispute resolution.

## **Initiating the Procedure for Termination of Validity of Mediator Licence and Dispute Evaluator Licence Article 45**

Centre shall promptly inform the Ministry of the expiry of the period for which the mediator's licence, i.e. dispute evaluator's licence was issued, i.e. extended.

The request referred to in Article 44 paragraph 1 item 2 of this Act shall be submitted by mediator i.e. dispute evaluator to the Ministry through the Centre.

In case referred to in Article 44 paragraph 1 items 3, 4 and 5 of this Act the initiative for establishing the termination of validity of mediator's licence, i.e. dispute evaluator's licence can be submitted to the Ministry by the Centre, party in the procedure, representative or proxy of any of the parties.

The initiative referred to in paragraph 3 of this Article shall be reasoned.

### **Decision on Terminating Validity of Mediator's and Dispute Evaluator's Licence Article 46**

The decision terminating validity of mediator's licence, i.e. dispute evaluator's licence shall be rendered by the Ministry.

In case referred to in Article 44 paragraph 1 items 3, 4 and 5, the decision on terminating validity of the licence shall be rendered based on the prior opinion of the Centre, except in cases where the Centre submitted the initiative referred to in Article 45 paragraph 3 of this Act.

### **Judicial Protection Article 47**

Administrative dispute may be initiated against the decision on rejecting application for mediator's i.e. dispute evaluator's licence and application for mediator's or dispute evaluator's licence extension, as well as against the decision on termination of validity of the mediator's licence i.e. dispute evaluator's licence.

### **Registers Article 48**

Mediator who is granted the licence shall be entered into the register of mediators, while dispute evaluator who is granted the licence shall be entered into the register of dispute evaluators.

If a decision is rendered terminating the validity of mediator's or dispute evaluator's licence, the mediator, i.e. dispute evaluator that the decision refers to shall be deleted from the register of mediators, i.e. dispute evaluators.

The registers referred to in paragraph 1 of this Article shall be kept by the Ministry and posted on its website.

The registers referred to in paragraph 1 of this Article shall contain: names and surnames of mediators i.e. dispute evaluators, telephone numbers, e-mail addresses, numbers and dates of issuance of mediator's i.e. dispute evaluator's licence.

## **V SPECIAL RULES FOR ALTERNATIVE DISPUTE RESOLUTION IN CERTAIN FIELDS**

### **1. Alternative Resolution of Commercial Disputes Amicable Dispute Resolution Article 49**

In commercial disputes, except in those with international element, status disputes and disputes where party in bankruptcy is referred to civil proceedings, the party shall, prior to initiating civil proceedings, notify the other party of any essential elements of disputed

claims and shall afford the other party the opportunity to make a statement regarding his/her claim and take any appropriate actions to resolve dispute amicably.

## **2. Alternative Resolution of Labour Disputes**

### **Alternative Resolution of Individual Labour Disputes**

#### **Article 50**

Where an employee, according to the law that stipulates the duty to initiate procedure of amicable solution of a dispute which arises in exercising of employees' rights originating from employment or based on employment (hereinafter referred to as: individual labour dispute) applies to the Centre, the provisions of this Act referring to mediation shall apply to such procedure.

#### **Parties to Individual Labour Dispute**

#### **Article 51**

Parties to the individual labour dispute shall be the employee and the employer.

## **3. Alternative Resolution of Family Disputes**

### **Scope of Application**

#### **Article 52**

Mediation in disputes for divorce of marriage, and in other disputes related to family relations (hereinafter referred to as: family mediation) shall be conducted according to this Act and according to the law governing family relations.

#### **Special Duties of a Mediator**

#### **Article 53**

In the procedure of family mediation, a mediator shall:

- 1) give particular consideration to the protection of the best interests of the child;
- 2) give particular consideration, prior to the commencement and in the course of proceedings, to whether circumstances of the case give any indication of existence of domestic violence;
- 3) refer parties to marriage counselling or to another professional institution, or to a professional, for the purpose of resolving family issues that cannot be resolved in mediation.

Mediator is obliged to suspend the procedure of family mediation in all cases where, due to a suspicion of the existence of domestic violence, mediation would not be purposeful.

#### **Participation of a Child**

#### **Article 54**

In the course of family mediation proceedings, mediator may conduct an interview with the child regarding family relations that concern him, after having assessed that such an interview is appropriate given the age and capability of the child to understand its importance.

Where the child in judicial proceedings related to family relations has been assigned a person to provide support to the child according to the law regulating family relations, the mediator shall notify that person of the intention to conduct an interview with the child.

## **Exceptions to Confidentiality Article 55**

In the family mediation proceedings, the information which according to the law must be disclosed in order to prevent harm to be inflicted on physical or psychological integrity of the child or other family members shall not be deemed confidential.

## **VI CENTRE FOR ALTERNATIVE DISPUTE RESOLUTION**

### **Centre's Activities Article 56**

The Centre shall:

- 1) conduct expert and administrative tasks related to mediation, Early Neutral Assessment of disputes and other methods of alternative dispute resolution;
- 2) inform expert public and general public of the possibilities and advantages of alternative dispute resolution;
- 3) initiate adoption, i.e. amendment of legislation to ensure alignment with international standards in the field of alternative dispute resolution;
- 4) issue opinions on the work of mediators and dispute evaluators in the procedures for extension of mediator's i.e. dispute evaluator's licence;
- 5) monitor and evaluate the work done by mediators and dispute evaluators and submit reports to the Ministry thereon;
- 6) implement training for mediators and dispute evaluators, as well as for other persons that conduct other procedures of alternative dispute resolution and organize their specialization;
- 7) adopt Statute and Rulebook on internal organization and systematization, with the consent of the Ministry;
- 8) pass the Code of Ethics for mediators and Code of Ethics for dispute evaluators;
- 9) keep records of alternative dispute resolution, collectively and by individual types of proceedings;
- 10) receive complaints against the work done by mediators and dispute evaluators;
- 11) issue publications in the field of alternative dispute resolution and organise expert and scientific events in this field;
- 12) also perform other tasks set out by the law and general enactments of the Centre.

### **Activities of the Centre in other Fields where Alternative Dispute Resolution is Conducted Article 57**

Centre shall conduct expert and other tasks related to alternative dispute resolution in other fields, where that is stipulated in a special law.

Centre may conduct out-of-court resolution of consumer disputes under the conditions stipulated in the law governing consumer protection, and it can conduct other alternative dispute resolution procedures according to special law.

### **Status of the Centre Article 58**

The Centre shall have capacity of a legal person.



Head office of the Centre shall be in Podgorica.  
The Centre may have its organisational units outside of the place of its head office.

### **Centre's Bodies** **Article 59**

Centre's bodies shall be Management Board and Executive Director.

### **Management Board** **Article 60**

Management Board of the Centre shall have a chairperson and four members. Members of the Management Board shall include two representatives of the Ministry, judge of the basic court proposed by the Judicial Council, an attorney-at-law proposed by the Bar Association of Montenegro and a mediator proposed by Association of Mediators of Montenegro.

Chairperson and members of the Management Board of the Centre shall be appointed and dismissed by the Government upon the proposal of the Ministry, for a four-year period, and they can be re-appointed.

Chairperson and members of the Management Board are entitled to remuneration for their work, unless otherwise stipulated in a separate law.

### **Competences of the Management Board** **Article 61**

Management Board of the Centre shall:

- 1) adopt Statute and other general acts of the Centre;
- 2) establish the annual programme of work of the Centre and the financial plan;
- 3) adopt the annual report on work and the financial report of the Centre;
- 4) render decision on the amount of remuneration for the chairperson and members of the Management Board of the Centre, as well as for the work of the chairperson and members of the Ethics Committee and their deputies with prior consent of the Ministry;
- 5) appoint members of the Ethics Committee;
- 6) render decision on the amount of remuneration for the chairperson and members of the Ethics Committee and their deputies;
- 7) also perform other tasks stipulated in this Act and Statute of the Centre.

### **Executive Director of the Centre** **Article 62**

Executive Director of the Centre shall be appointed by the Government upon the proposal of the Minister of Justice.

Term of office of Executive Director shall be 5 years and he may be reappointed.

The person who, in addition to the general requirements for employment in state authorities, also meets the following requirements may be appointed to the position of Executive Director:

- 1) holds the VII 1 level of educational qualification – Law Faculty;
- 2) has minimum 10 years of work experience in the tasks requiring VII1 level of education qualification, of which minimum 3 years of experience in managerial positions.

## **Mandate of Executive Director of the Centre**

### **Article 63**

Executive Director of the Centre shall:

- 1) represent the Centre, manage and organise work at the Centre;
- 2) be held accountable for legality and quality of the work done by the Centre;
- 3) adopt enactment on internal organization and systematization;
- 4) propose enactments adopted by the management board;
- 5) prepare report on work and financial report of the Centre;
- 6) propose member to the Ethics Committee from among mediators;
- 7) propose the amount of remuneration for work of the chairman and members of the Ethics Committee, as well as for their deputies;
- 8) manage human and financial resources;
- 9) inform the public about the work done by the Centre;
- 10) issue certificates on completed training for mediators and dispute evaluators;
- 11) also perform other tasks stipulated by the Statute of the Centre.

## **Ethics Committee**

### **Article 64**

Ethics Committee shall be established to monitor implementation of the Code of Ethics for mediators and Code of Ethics for dispute evaluators.

Ethics Committee shall have a president and two members appointed by the Management Board of the Centre for the term of office of two years and they can be reappointed.

Chairperson and members of Ethics Committee shall have deputies.

President of the Ethics Committee and his deputy shall be nominated by the Judicial Council among judges of basic court, one member and his deputy shall be nominated by the Bar Association of Montenegro from among attorneys-at-law, while the second member and his deputy shall be nominated by Executive Director of the Centre from among mediators.

President and members of Ethics Committee from among judges and attorneys-at-law and their deputies may not function as mediators or dispute evaluators.

President and members of the Ethics Committee and their deputies are entitled to remuneration for their work in the amount determined by the Management Board of the Centre upon the proposal by Executive Director of the Centre.

## **Mandate of the Ethics Committee**

### **Article 65**

Anyone may file a complaint against the work of a mediator and dispute evaluator due to violation of the Code of Ethics for mediators, i.e. Code of Ethics for dispute evaluators and provisions of this Act.

The complaint referred to in paragraph 1 of this Article shall be submitted to the Ethics Committee through the Centre.

Ethics Committee shall act and decide upon the complaints referred to in paragraph 1 of this Article.

The complaint referred to in paragraph 1 of this Article shall contain the name and surname of mediator, i.e. dispute evaluator the complaint is submitted against and the description of the conduct of mediator, i.e. dispute evaluator that constitutes violation of the Code of Ethics and provisions of this Act.

In the procedure aimed at rendering the decision on whether the Code of Ethics for mediators, i.e. Code of Ethics for dispute evaluators and provision of this Act are violated, the Ethics Committee shall procure statements from the mediator, i.e. dispute evaluator the complaint is submitted against.

The manner of operation and decision-making of the Ethics Committee shall be stipulated in more details in its Rules of Procedure.

Rules of Procedure referred to in paragraph 6 of this Act shall be adopted by the Ethics Committee.

### **Judicial protection Article 66**

Administrative dispute may be initiated against decision rendered by Ethics Committee establishing violation of the Code of Ethics for mediators, i.e. Code of Ethics for dispute evaluators or provisions of this Act.

### **Staff Article 67**

Provisions of the law that regulate rights, duties and responsibilities of civil servants and state employees shall apply to the procedure for establishing employment relationship, rights, duties and responsibilities of employees at the Centre.

### **Financing Article 68**

The Centre shall be financed from the budget of Montenegro and from its own revenues.

### **Supervision Article 69**

Supervision of the work done by the Centre shall be exercised by the Ministry.

The Centre shall submit annual report on its work to the Ministry.

The report referred to in paragraph 2 of this Article shall contain data on meeting the Centre's obligations in the implementation of the strategic documents related to alternative dispute resolution; data on the conducted alternative dispute resolution proceedings; general assessment of the work done by mediators, dispute evaluators, and other persons conducting alternative dispute resolution proceedings, as well as the assessment of the state of affairs in the field of alternative dispute resolution and proposals for its improvements.

## **VII TRANSITIONAL AND FINAL PROVISIONS**

### **Transformation of the Centre for Alternative Dispute Resolution Article 70**

The current Centre for Mediation of Montenegro shall continue operating as the Centre for Alternative Dispute Resolution.

Centre for Alternative Dispute Resolution shall assume all the rights, duties and employees of the Centre for Mediation of Montenegro.

Centre for Alternative Dispute Resolution shall continue using the funds used by the Centre for Mediation of Montenegro by the day on which this Act comes into force, with the balance on that day.

### **Executive Director and Management Board of the Centre Article 71**

Executive Director and members of the Management Board of the Centre for Alternative Dispute Resolution shall be appointed within 60 days from the day of coming of this Act into effect.

Executive Director and Management Board of the Centre for Mediation of Montenegro elected in line with the Mediation Act (Official Gazette of the Republic of Montenegro 30/05 and Official Gazette of Montenegro 29/12 and 18/19) shall continue working by the time of election of the Executive Director and Management Board of the Centre for Alternative Dispute Resolution according to this Act.

### **Adoption of General Acts of the Centre Article 72**

Statute and Rulebook on internal organization and systematization of the Centre shall be adopted within two months from the day of entry of this Act into force.

### **Commenced Procedures Article 73**

Mediation procedures commenced before the day of entering of this Act into force shall be finalized according to the provisions of this Act.

### **Validity of Granted Licences Article 74**

Mediators that were granted mediator's licences according to the Mediation Act (Official Gazette of the Republic of Montenegro 30/05 and Official Gazette of Montenegro 29/12 and 18/19) shall be obliged to apply for mediator's licence according to this Act within 30 days from the day of coming of this Act into force.

The mediators referred to in paragraph 1 of this Article shall be recognized the training they completed according to Mediation Act (Official Gazette of the Republic of Montenegro 30/05 and Official Gazette of Montenegro 29/12 and 18/19).

Mediators that fail to apply for mediator's licence within the term set in paragraph 1 of this Article shall be deleted from the register of mediators.

Decision on deleting the mediators referred to in paragraph 3 of this Article from the register shall be rendered by the Ministry.

Mediators that applied for mediator's licence referred to in paragraph 1 of this Article shall continue working as mediators with the rights and duties of mediators stipulated in this Act until they obtain mediator's licence according to this Act.

### **Mediators in Criminal Matters Article 75**

Mediation in line with the Law on Treatment of Juveniles in Criminal Proceedings (Official Gazette of Montenegro 64/11 and 1/18) shall be conducted by mediators granted a licence according to the Mediation Act (Official Gazette of the Republic of Montenegro 30/05 and Official Gazette of Montenegro 29/12 and 18/19).

### **Adoption of Secondary Legislation Article 76**

Secondary legislation for implementation of this Act shall be adopted within three months from the day of entry of this Act into force.

Until adoption of the secondary legislation referred to in paragraph 1 of this Article, the secondary legislation adopted on the basis of the Mediation Act shall be applied (Official Gazette of the Republic of Montenegro 30/05 and Official Gazette of Montenegro 29/12 and 18/19), provided that they are not contrary to this Act.

### **Deferred Application Article 77**

Provisions of Article 29 of this Act shall apply from the day of accession of Montenegro to the European Union.

National of the European Union Member State may act as mediator or dispute evaluator in accordance with this Act from the day of accession of Montenegro into the European Union.

### **Repealing Previous Legislation Article 78**

On the day of entry into force of this Act, the Mediation Act (Official Gazette of the Republic of Montenegro 30/05 and Official Gazette of Montenegro 29/12 and 18/19) shall be repealed.

### **Entry into Force Article 79**

This Act shall enter into force on the eighth day following that of its publication in the Official Gazette of Montenegro.