

**Code of Conduct
for the Mediation Centre and the Mediation Proceedings
at the Croatian Insurance Bureau**

I. GENERAL PROVISIONS

Article 1

This Code of Conduct governs the establishment, organisation and constitution of the Mediation Centre (hereinafter MC) as well as the mediation proceedings taking place at the Croatian Insurance Bureau (hereinafter CIB).

Article 2

Definitions

For the purpose of this Code of Conduct the following terms shall apply:

'Mediation' means a process in which the parties to a dispute attempt to reach an agreement on the settlement of their dispute with the assistance of a mediator, who has no authority to impose any binding solution on them.

'Mediator' means one or more persons who conduct mediation in compliance with the parties' agreement.

'Parties to the mediation' may be insured persons, policyholders i.e. beneficiaries to the insurance contract, parties who suffered damage and insurance undertakings.

Article 3

Terms for operation

The Croatian Insurance Bureau shall provide for the terms for operation of the Mediation Centre and the mediator at its premises, whereby it shall on behalf of the mediator, organise, provide and conduct specialised, administrative and financial tasks.

Article 4

Competence

Mediation defined by this Code of Conduct represents one way of an amicable dispute resolution between insurance undertakings and participants and between the insurance undertakings themselves.

Mediation defined by this Code of Conduct shall be conducted in disputes arising from insurance contracts and claims settlement relations based on insurance contracts i.e. arising from the law, on the rights of the damaged parties, insureds or insurance undertakings.

Article 5
Initiation of a mediation procedure

Mediation shall be initiated by a mediation proposal submitted by one or more parties as in compliance with the Mediation Act.

The mediation proposal shall be submitted to the Mediation Centre in written, whereby the latter shall forward the proposal to the opposite party, which is given 15 days from the date of despatch to send its reply to the proposal.

Both parties to the dispute must agree to the mediation procedure.

If the opposite party does not respond within the period of 15 days from the date of receiving the proposal, it shall be understood that the respective party does not agree to the mediation proposal.

Article 6
Mediation Agreement

Any person that according to Article 2 of this Code of Conduct may be a party to the mediation, may sign the Mediation Agreement with an insurance undertaking, based on the provisions of this Code of Conduct.

The Mediation Agreement may also be signed between insurance undertakings.

By signing the Mediation Agreement the parties to the mediation agree that from the date of the signature and in the course of the mediation process, the parties shall not initiate any legal proceedings at court or any arbitration, except if inevitable in the sense of preserving their rights.

II. FUNDAMENTAL PRINCIPLES OF THE MEDIATION PROCEDURE

Article 7
Confidentiality

Unless otherwise agreed by the parties, the mediator and the persons involved in conducting the mediation process shall be subject to a duty to keep all information relating to the mediation proceeding confidential, except where disclosure is required by the law or where it is necessary in order to implement or enforce that agreement.

In arbitral, judicial or any other proceedings the persons involved in conducting the mediation process shall be subject to a duty not to propose evidence or submit any other proof regarding:

- the fact that one of the parties had proposed or accepted mediation,
- the parties' statements of facts or proposals made during mediation proceedings;
- admission of claims or facts made in the course of mediation proceedings if such admissions and observations are not a constituent part of the settlement;
- documents prepared solely for the purpose of mediation proceedings, unless it is stipulated by law that their communication is necessary in order to implement or enforce the Mediation Agreement;
- the parties' willingness to accept the proposals made during mediation proceedings;
- other proposals made during mediation proceedings.

Article 8 Principal of orality

The mediation procedure shall be conducted orally and no written records shall be kept.

Article 9 Principle of urgency and cost efficiency of the procedure

The mediation process is carried out as urgently as possible, without any delays and with reduced costs.

The parties to the mediation are invited to the procedures orally, by e-mail, telephone, facsimile or ordinary mail.

In the appointment of the place and date of the meeting the possibilities and preferences of the parties as well as the principle of urgency and cost efficiency are taken into consideration.

Article 10 Cooperation between the parties to mediation and the mediator and the definition of facts

The parties to the mediation shall be obliged to cooperate in good faith during the mediation procedure.

The parties to the mediation shall be obliged to make use of the rights granted in the mediation procedure in a fair way.

The parties to the mediation shall be obliged to attend the mediation meetings in person or empower another person to represent him/her in the mediation proceedings.

In the course of the mediation proceedings, the mediator may meet with the parties jointly or with each of the parties privately. Should the mediator communicate in written with one party, the opposite party shall instantly be supplied with a copy of the written communication. Any communication with respect to the dispute which took place with only one party shall be communicated to the other party without delay.

Should the mediator gain knowledge of facts relating to the case from one party, the mediator is entitled to communicate it to the other party who shall give his/her position on that.

Article 11 Principle of disposability at will

The parties to the mediation shall participate in the mediation proceedings by their free will at any phase of the procedure.

The mediator shall make efforts in the dispute as long as the parties to the procedure make progress in achieving a settlement and as long as mediation is to proceed without undue delay and hesitations.

Otherwise the mediator may terminate the mediation proceeding.

The decision on termination of the respective mediation proceeding shall be brought by the mediator, generally after the parties to the mediation had been given the opportunity to express their comments or objections to that.

Article 12 Principle of efficiency

If establishing that the parties to the mediation, mutually accepting concessions, are willing to bring the dispute to an end and to determine their rights and obligations, the mediator can draft a possible settlement and present it to the parties to the mediation.

In the event that the parties to the mediation have reached a solution to the dispute and are willing to bring the dispute to an end and to determine their rights and obligations, they shall agree upon the dispute resolution or sign a written settlement agreement.

Article 13 Conclusion of the mediation

The mediation may end:

a) by settlement of the dispute,

- b) by the decision of the mediator to terminate mediation, after consultation with the parties, to the effect that further efforts at mediation are no longer justified,
- c) by a written declaration of the parties addressed to the mediator, to the effect that the mediation proceedings are terminated
- d) by a written declaration of a party to the other party or parties and to the mediator, to the effect that the mediation proceedings are terminated, unless the mediation procedure, even after the withdrawal of one party, involved two or more parties who are willing to continue the mediation process,
- e) if a settlement has not been reached within 60 days since the commencement of the mediation process, or within any other time limit agreed by the parties.

Article 14 Settlement agreement

A settlement agreement signed in the mediation proceeding shall be an enforcement title if it contains an obligation to perform an act over which the parties may reach a settlement and if it contains the obligor's statement on immediate authorisation of enforcement (an enforcement clause).

The parties may also agree that the settlement agreement shall be drawn up in the form of a notarial act, a court settlement, or an arbitral award based on the settlement.

Article 15 Conflict of interests

The mediator shall not be engaged at any of the parties in respect of a dispute that is the subject of the mediation proceeding.

In the event that no settlement has been reached the mediator shall not act in the dispute as an arbitrator or judge.

By signing the declaration of confidentiality the parties to the mediation are committed that they shall not propose the mediator as a witness in court or arbitration proceedings.

Article 16 Costs

Mediation proceedings costs include:

- a) mediator's fees to the amount determined every year by the decision of the Management Board of the CIB
- b) travel and other material expenses of the mediator
- c) administrative costs relating to mediation proceedings, which are borne by the CIB

Mediator's fees and other expenses are borne by the insurance undertaking which initiated i.e. accepted the proposal for the mediation process.

In case that the mediation proceeding takes place between the insurance undertakings, the mediation proceedings costs referred to in paragraph 2 of this Article shall be equally shared by the parties.

Each party to the mediation shall bear his or her own costs, unless otherwise agreed by a written settlement agreement.

Article 17

Parties to the mediation proceedings and their efficiency

Party to the mediation may be any natural and legal person as in compliance with Article 77 of the Civil Procedure Act.

The mediator shall take account whether the party to the mediation is fully legally competent and capable of participating in mediation proceedings in a meaningful way.

Parties to the mediation who are not at capacity to use mediation shall be represented by a legal representative.

A minor who is not fully legally competent is considered as only restrictedly at capacity to use mediation and that to the limits to which his/her legal capacity is recognised or shall be represented by a person in accordance with the Family Act.

The parties to the mediation may perform procedural actions either personally or through their authorized representative, who shall be obliged to present his/her proxy for the mediation proceedings.

Article 18

Language in the mediation proceedings

The mediation proceedings are held in the Croatian language.

The parties to the mediation and the mediator may decide the language in which the mediation will take place. If the parties cannot decide upon the language but speak different languages, the mediation proceeding shall take place in Croatian.

In case that one of the parties to the mediation does not understand Croatian he/she shall engage an interpreter to his/her own costs.

III. MEDIATORS

Article 19 List of mediators

The Mediation Centre at the CIB shall compile its list of mediators from a line of professionals who have been adequately trained.

Beside the persons from paragraph 1 of this Article, mediators may be determined among judicial experts who have affirmed themselves through their scientific or professional work or their public activities.

The Management Board determines the initial list of mediators which can later on be supplemented by the Managing Director of the CIB.

The list of mediators shall be administered at the CIB.

The mediator shall be appointed in relation to mediation proceedings by the Mediation Centre at the CIB.

The parties to the mediation may, on mutual agreement, choose a mediator from the respective list of the Mediation Centre.

As soon as the mediator has been notified on his/her appointment for a mediation procedure, he/she shall determine the date for the mediation within a period of 15 days from the date of receipt of the notification.

Article 20 Exception of the mediator

The parties to the mediation may propose the appointment of a new mediator in case of the existence of justified reasons for the exception of the judge pursuant Article 71 of the Civil Procedure Act.

The Mediation Centre at the CIB shall decide on this proposal.

The mediator may initiate his exception for the same reasons.

IV. ORGANISATION OF THE MEDIATION CENTRE

Article 21

The Managing Director of the CIB shall coordinate the activities of the Mediation Centre.

The Centre shall be operated by the Secretary who shall be appointed by the Managing Director of the CIB from among the Bureau's staff.

The Centre's Secretary shall perform administrative tasks necessary for the activities of the Centre and shall present to the Management Board of the CIB the annual business report of the Mediation Centre.

V. TRANSITIONAL AND FINAL PROVISIONS

Article 22

Expert services of the CIB and of insurance undertakings shall supply data and information on mediation proceedings to persons which have legal interests in the mediation proceedings.

Article 23

The provisions of the Mediation Act (Official Gazette NN 18/2011) shall apply to the mediation proceedings in an appropriate way.

Article 24

This Code of Conduct shall be brought by the Management Board of the CIB.

On the date of the entry into force of this Code of Conduct the former Code of Conduct for the Mediation Centre and the mediation proceedings at the Croatian Insurance Bureau as of 29th March 2007, shall cease.

This Code of Conduct for the Mediation Centre and the mediation proceedings at the Croatian Insurance Bureau shall enter into force on the 21st April 2011.

Zagreb, 21st April 2011

President of the Management Board
of the Croatian Insurance Bureau

Damir Zoric, DSc