

Assistance in filing an application for the institution of out-of-court conciliation proceedings at CenaCom GmbH

Note

If you intend to institute mediation proceedings that are not subject to an effect that suspends the running of the statute of limitations in accordance with Section 204(1) No. 4 BGB (German Civil Code), instituting proceedings by way of a formal petition for conciliation is not required.

The completion instructions can not claim to be exhaustive. It is therefore strongly advised to take account of the current law on conciliation procedure, in particular the Federal Supreme Court. These can be found here: www.bundesgerichtshof.de

Box 1: Addressee

The recipient of the original application for the institution of out-of-court conciliation proceedings is CenaCom GmbH in D-76135 Karlsruhe in the capacity of state recognised conciliation authority.

Box 2: Number of pages of the conciliation application

Please state the total number of pages that are part of the conciliation application here, including the number of pages of Annexes. By doing so you will help us to review the extent to which the submitted documents are complete.

Box 3: Fax

If you send the conciliation application to us by fax before sending it by post, it is absolutely necessary that you place a cross in this box. Please also enter the date on which you send the fax alongside it. By doing so, you will help us group together the documents in a file.

Box 4: Applicant

In box 4 please state who is filing the conciliation application. If the applicant is a single person (e.g. private individual registered trained retail salesman), please enter the name and residential address of the private individual or the name/company name and address of the registered office (street, house number, postal code and location) of the trained retail salesman. If the applicant is a legal person (e.g. GmbH, AG, association or foundation) or a partnership (e.g. OHG, KG), please enter the company name and address of the registered office (street, postal code and location). Please also state a member of the management granted the power of representation.

In the case of a partnership under the Civil Code (GbR), in addition to the name of the company and its registered office, please state the name and address (street, house number, postal code and location) of at least one shareholder granted the power of representation.

If the conciliation application is being filed by several persons jointly, please enter the names and addresses (street, house number, postal code and location) of all persons or the company names and addresses of the registered offices of all companies. Please use an Annex page in that respect. Entering the communication data (telephone, fax and e-mail) promotes swift communication where necessary.

Box 5: Representative of applicant

As a matter of principle, the conciliation application may be filed without representation by a lawyer. If the conciliation application is filed by a lawyer, tax consultant or other representative of the applicant, please enter the name/law firm of the representative and the address of the registered office (street, house number, postal code and location). Stating the communication data (telephone, fax and e-mail) promotes swift communication where necessary.

Box 6: Application for the institution of out-of-court conciliation proceedings

A further-reaching, specific application – comparable with demand for relief – is not required for instituting out-of-court conciliation proceedings.

Box 7: Party to the proceedings/respondent

In this box please enter the party against whom the conciliation application is directed or who is to take part in the conciliation proceedings. If the respondent is a single person (e.g. private individual registered trained retail salesman), please enter the name and address of the private individual or the name/company name and address of the registered office (street, house number, postal code and location) of the trained retail salesman.

If the respondent is a legal person (e.g. GmbH, AG, association or foundation) or a partnership (e.g. OHG, KG), please enter the company name and address of the registered office (street, postal code and location) and – if known – the legal representative.

In the case of a partnership under the Civil Code (GbR), in addition to the name of the company and its registered office, please state the name and address (street, house number, postal code and location) – if known - of at least one shareholder granted the power of representation.

If the conciliation application is directed against several respondents, please enter the names and addresses (street, house number, postal code and location) of all persons or the company names and addresses of the registered offices of all companies. Please use an Annex page in that respect. Stating the communication data (telephone, fax and e-mail) promotes swift communication where necessary.

Box 8: Justification (Condition: German law is applicable)

If the conciliation application is to lead to an effect that suspends the running of the statute of limitations in accordance with Section 204(1) No. 4 BGB, on the one hand it is to safeguard the preconditions of the conciliation regulations of CenaCom and on the other the asserted claim must be sufficiently described in detail in the conciliation application. Therefore, please state the circumstances involving the party's life and the application that you wish to assert against the respondent. As a matter of principle, the respondent must be able to establish the claim asserted against him that continues to apply irrespective of the passage of time. This may be stated in key words. This is intended to place the respondent in a position to review whether or not he should agree to proceedings with the applicant. He must review the conciliation application and, where applicable, be able to prepare his own documents for the proceedings. The effect that suspends the running of the statute of limitations of a conciliation application in the following legal proceedings is conditional on the fact that the claim asserted in the conciliation proceedings is also the subject matter of the legal action. An undetermined conciliation application does not suspend the running of the statute of limitations.

By way of presenting the matter in dispute, the mediator is to be placed in a position to make an initial assessment of the conflict and the escalation level.

For applications on account of defective capital investment consultancy, it holds:

An application for conciliation inhibits barring by limitation of claims on account of defective capital investment consultancy pursuant to § 204 subsection 1 no. 4 German Civil Code if the following preconditions have been fulfilled:

- the specific capital investment must have been designated,
- the subscription sum must be stated,
- the (approximate) consultancy period is to be stated,
- the course of the consultancy is to be at least roughly sketched out and
- the objective of the proceedings being aimed for is to be circumscribed at least to such a scope that a conclusion of the nature and the scope of the claim being pursued is possible for the opposing party and the conciliation office.

(cf. German Supreme Court, degree of 18 June 2015, III ZR 189/14, 191/14, 198/14, 227/14 and degree of 20.08.2015, III ZR 373/14)

It may be worthwhile seeking legal advice in an individual case when wording a conciliation application. As a result of their obligation to maintain absolute neutrality and partiality towards all parties, the employees of CenaCom cannot and may not give you any support with regard to wording a conciliation application.

In capital investment law, comprehensive court rulings have, in the meantime, been promulgated regarding the content requirements for a conciliation application. You will find a selection of rulings on our pages at <http://www.cenacom.com/quetestelle/rechtsprechung.html>.

You may use additional pages to justify the conciliation application. Please state the number of used pages.

Box 9: Monetary value of the claim

You can also file the conciliation application if you are unable, or do not wish, to quantify the claim in detail at present. However, insofar as you can and wish to quantify the value of your claim or your claims, please enter such a figure. The conciliation application only suspends the running of the statute of limitations regarding the requested amount.

Box 10: Number of copies of conciliation application including potential Annexes

CenaCom retains the original copy of the conciliation application. We forward a copy of the conciliation application to the respective respondent (disclosure of the conciliation application). Therefore, please enclose with the conciliation application the required number of copies of the conciliation application and potential Annexes for each number of respondents, and enter in this box the number of copies of the conciliation application. By doing so you will help us to establish the extent to which the submitted documents are complete.

Box 11: Annexes

When justifying the conciliation application, you can cite contractual documents and previous written correspondence etc. This makes it easier for both the applicant and the mediator to allocate and classify the facts in dispute. Please place the appropriate crosses in the respective boxes, and state the nature of the documents. To that end you can also use additional pages by stating the number.

Box 12: Signature

Please sign the conciliation application using the civil name if you are an applicant or representative. If the applicant is a company the person authorised to represent is to sign here. In the case of several applicants, the application is to be signed by at least one application authorised to sign. Uncertainty can be avoided by repeating your signature in block capitals.

Notes on payment (see cost overview)

You may enclose

- a cheque made out for the application fee (cost overview G-KA-1) with the conciliation application.

If you wish to pay the application fee

- by bank transfer or cash payment via a domestic or foreign bank,

please only pay the application fee once you have received the corresponding invoice stating the application fee from us. The application fee can only be allocated to the conciliation application if the above instructions are followed. Any other action delays the processing of the conciliation application. Please state the respective reference for the conciliation proceedings when transferring the application fee. Following receipt of your conciliation application at CenaCom, a file will be opened, the conciliation application will be formally reviewed and the basic data will be gathered. You will receive confirmation of receipt of the conciliation application in good time.