

CODE OF PROCEDURE

CenaCom® GmbH

Center for Applied Conflict Management – State approved conciliation authority –

Status: 26th Oktober 2016

Preamble

CenaCom GmbH – Centrum for Applied Conflict Management – is a government-recognised conciliation authority and offers comprehensive services geared towards the out-of-court settlement of disputes. These procedural rules provide for the legal and parties' views of the involved parties as part of arbitration / mediation proceedings, conciliation hearings or other, comparable proceedings (hereinafter referred to as the "Proceedings"). The parties may enter into regulations to the contrary at any time and in writing. The version that is up-to-date at the start of the Proceedings shall apply provided the involved parties do not specify anything to the contrary.

Section 1 Scope

- (1) CenaCom is a state approved conciliation authority according to Section 794, paragraph 1, no. 1 German Civil Procedure Code (ZPO).
- (2) Execution may be levied based on the agreements recorded by the conciliation authority.
- (3) Statutes of limitations are suspended according to and in the scope of the legal regulations of Sections 203 et seq. German Civil Code (BGB).
- (4) The procedure is permitted in all cases in which the parties can settle a dispute themselves according to the law.

Section 2 Principles of the proceeding

- (1) The proceeding is personally directed by a CenaCom mediator in accordance with the provisions of these rules of procedure and arranged in agreement with the parties involved. It is not a formal judicial or arbitration proceeding.
- (2) The proceeding is personally directed by a CenaCom mediator in accordance with the provisions of these rules of procedure and arranged in agreement with the parties involved. It is not a formal judicial or arbitration proceeding.
- (3) The mediator shall be guided in his activity solely by the identifiable interests of the parties involved and the applicable legal situation. The mediator's task is to promote cooperative negotiations between the parties involved. He shall promote the settlement of dispute in any manner he believes to be appropriate and shall support the parties involved to find a solution to the conflict that is satisfactory for both sides. For this purpose, he can develop non-binding proposals or alternatives to resolve the dispute and present them to the parties together or individually.
- (4) The mediator and his assistant are obliged to maintain secrecy with regard to all procedural facts and circumstances. The mediator and his assistant may not be questioned in court or any other place as a witness regarding the events of the proceeding. The mediator and his assistant shall avail himself of his existing rights to refuse to give testimony.

Section 3 Initiating the proceeding, application fee

- (1) The proceeding is initiated at the request of a party.
- (2) The petition may be filed with the conciliation authority in writing (including by facsimile) or verbally for dictation.
- (3) The petition must contain the following details to be deemed valid:
 - (a) The name and addresses of the parties as required for a summons.
 - (b) A brief description of the matter in dispute and the designation of the claim that is also signed by the party making the petition, or by its authorised representative, in their own hand.
- (4) In the case of written petitions, the number of copies required for the service is to be stated. In the event that the copies are lacking, the Petitioner shall be required to subsequently provide these following a request by the conciliation authority and reimburse the conciliation authority for the costs incurred in that respect.
- (5) Upon receipt of the petition, a petition fee shall apply that immediately falls due for payment (including a disbursement flat-rate etc.) and is payable by any party filing a petition without a repayment claim irrespective of whether or not negotiations are entered into. The petition fee shall be reduced if the petition is withdrawn prior to the issue and forwarding of the announcement.
- (6)a) Bringing about the announcement for up to three respondents is deemed settled by way of the petition fee in accordance with Section 3 (5) sentence 1. From

the fourth Respondent, the petition fee increases for each additional Respondent.

(b) In each case two domestic service attempts for the purpose of an announcement are deemed settled by way of Section 3 (5) sentence 1. Each additional domestic service attempt increases the petition fee. Additional fees shall be payable for each service abroad.

(7) If several applicants who are not married or not in a community of heirs petition for conciliation, the petition fee in accordance with Section 3 (5) sentence 1 shall apply separately to each applicant.

Section 4 Determining an appointment

- (1) If the proceeding has been initiated through an application in accordance with Section 3, paragraph 2 and the other party is ready for the proceedings, the mediator shall determine a prompt hearing date and venue, if possible following consultation with all parties involved.
- (2) The parties shall receive the rules of procedure with a request for approval. The opposing party shall receive a copy of the application in accordance with Section 3, paragraph 2.
- (3) Upon determining an appointment, a procedural fee shall be due immediately corresponding to the charge fee for a half-day meeting, in accordance with Section 12, paragraph 1a). In cases of oral proceedings, fees will be deducted in accordance with Section 12, paragraph 1a).

Section 5 Personal appearance of the parties

- (1) The parties should appear in person at the scheduled appointment.
- (2) A party may send a representative to the proceedings, provided that he is capable of clarifying the state of affairs and expressly authorised to conclude a settlement. Trading companies and legal persons may be represented by authorised agents, provided that full power of attorney and decision-making authority are demonstrably granted. Parents as legal representatives of their children may represent each other procedure-related written submission of power of attorney documents.
- (3) Each party may consult counsel in the proceeding (legal counsel, solicitor). The mediator should be informed of this prior to the start of the proceeding.

Section 6 Procedure

- (1) The proceeding is not open to the public unless the mediator and the parties have expressly made different arrangements.
- (2) The proceeding is oral and shall not be prepared by briefs. It will be conducted in one appointment. If the proceeding is interrupted, a prompt appointment shall be agreed at the same time, in order to be continued.
- (3) Witnesses and experts, brought to the appointment by the parties at their cost, can be consulted, submitted documentation shall be taken into account. An inspection can be made with the approval and in the presence of all parties.

Section 7 End of the proceeding

The proceedings shall end within the meaning of Section 204(2) BGB (German Civil Code) if one of the facts stated under a. to f. applies:

- a) If the conflict is conclusively resolved by way of an agreement,
- b) If all parties of one side state the procedure has failed,
- c) If the mediator states the procedure has failed due to a lack of prospects of success,
- d) If a party fails to pay the petition fees (Section 3(5)) or the requested cost advances in full or in part within a period of two weeks following a written warning issued by the conciliation authority,
- e) If the Respondent has not issued a statement or has rejected the proceedings following the announcement of the petition for conciliation the Respondent within three months,
- f) If the petition is withdrawn,

and such a fact is specified by the conciliation authority in writing.

Section 8 Agreement, protocol

- (1) A protocol shall be created at the request of a party about the agreement or failure of the attempt to reach an agreement.
- (2) The protocol must contain:
 - a) Name and residence of the mediator,
 - b) location and time of the proceeding,
 - c) name and addresses of the parties, legal representatives, authorised agents and counsel,
 - d) the object of the dispute,
 - e) the agreement of the parties or statement about the failure of the attempt to reach an agreement.

Section 9 Copy and storage

- (1) On request, the mediator shall issue the parties or their legal successors with a copy of the protocol.
- (2) The mediator shall store the original copy of the protocol and the remaining documents for five years upon completion of the proceeding.

Section 10 Enforcement

- (1) Enforcement shall take place based on the recorded agreement in accordance with Section 794, paragraph 1, no. 1 ZPO
- (2) The local court in 76131 Karlsruhe is responsible for the enforcement clause.

Section 11 Legal proceedings

- (1) The parties involved shall acknowledge that initiating proper legal proceedings may jeopardise the success of the proceeding. They therefore agree that the enforceability of objective conflict claims by agreeing to these rules of proceeding are excluded until completion of the proceeding. Initiating a judicial summary proceeding shall remain excluded provided that this is necessary to maintain right.
- (2) Initiating ordinary court proceedings is permitted as far as expiry of the statutory limitation periods would lead to a loss of rights.
- (3) Mandatory arbitration proceedings (e.g. Section 15a German Law Concerning Initiating the Civil Procedure Code - EGZPO) are not excluded by paragraph 1.

Section 12 Cost and Fees

- (1) CenaCom shall receive the following fee for its activity as mediator:
 - a) On the first day of proceedings each party shall pay a proceedings fee for 1 half-day meeting (2 x 90 minutes plus a break) or 1 whole day meeting (4 x 90 minutes plus three breaks)
 - b) From the second proceedings day the parties shall be required to pay as joint and several debtors a proceedings fee based on hourly rates with consideration given to the amount in dispute
 - c) With regard to preparation and follow-up work, all parties shall be required to pay as joint and several debtors an hourly fee with consideration given to the amount in dispute in each case plus the statutory turnover tax. This also applies to written proceedings. Depending on commercial significance and the complexity of the case, the above mentioned standard fees can be modified. The parties can make an internal arrangement for different cost agreements.
- (2) If the agreed hearing appointment does not take place, the fee shall be the rate for one hour, in accordance with paragraph 1b), provided that the hearing is not cancelled up to 6 pm three working days before the meeting
- (3) On closing an agreement, there will be an extra judicial settlement fee corresponding to the German Law on Attorney Legal Fees (RGV). This also applies if the parties reach an agreement outside of the proceeding after the hearing has begun. In special cases, the settlement fee can be reduced or abated by CenaCom.
- (4) Expenses and travel costs shall be reimbursed in accordance with the RVG regulations.

- (5) The parties themselves shall be liable for the costs of their advisers and/or representatives.
- (6) In the event that only one party fails to appear at the hearing without cancelling in due time, this party alone shall pay the resulting fee as well as any other costs.
- (7) If there are several parties on one side, or one party with several persons, participating in the proceeding, this shall not lead to an increase in fees, provided that the parties involved do not make any different arrangements.
- (8) The amount of costs and fees in accordance with Section 3(5) to (7) and Section 12(1) VerfO (Code of Procedure) are based on the CenaCom cost overview (see Annex).

Section 13 Payment data, retainer, right of retention

- (1) Fees will be due upon completion of the proceeding, provided that no other regulation applies.
- (2) The mediator can make the proceeding hearing dependent on payment of a retainer. The mediator is entitled to discontinue his work if the parties have not fulfilled their obligation no later than two weeks upon being reminded. For proceeding meetings, the mediator may request retainers from the parties for up to four proceeding meetings.
- (3) Confirmation of the failure of the settlement attempt, as well as the copies and duplicates of the protocol may be retained until the due costs to the relevant party have been paid. The same applies to the arranging for enforceable copies.

Section 14 Reimbursement of the parties' expenses

Each party shall bear their own costs. Costs shall not be reimbursed unless the parties explicitly come to a different arrangement.

Section 15 Liability

- (1) Apart from cases of loss of life, physical injury or detrimental effects on health, liability on the part of CenaCom, its executive bodies and employees is limited to the violation of key contractual obligations, intent and gross negligence provided contractual relations are in place.
- (2) Liability on the part of CenaCom, its executive bodies and employees is excluded for acts, or the failure to act, on the part of the mediator. The mediator may agree with the parties on a limitation of its liability to an extent permitted by law.
- (3) In other respects, the statutory liability claims of a private law content against the conciliation authority are limited to € 1,000,000 for each event insured.

Section 16 Final provisions

- (1) If these rules of procedure are agreed after the conflict has occurred, the preceding legal effects stipulated in these rules of procedure shall begin with time of the agreement. A retroactive effect shall not apply.
- (2) If a provision of these rules of procedure should be ineffective, the other regulations shall remain effective. The ineffective provision shall be replaced with a legally permissible regulation which comes closest to the purpose of the invalid provision.
- (3) The regulations for the mediator shall apply when using a team or other co-mediators. Remuneration of a co-mediator shall differ from Section 12, 1a) from the first hearing day in accordance with Section 12, 1b).
- (4) These rules of procedure are subject to German law. In case of doubt, the German version of the code of procedure applies. Place of jurisdiction is Karlsruhe, Germany.

COST OVERVIEW

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Fee no.	Fee type	Basic fee plus VAT	Increase in basic fee plus VAT each at	Hourly fee plus VAT
G-KA-1	Petition fee for up to 3 respondents Section 3 (5) VerfO (German Code of Procedure)	200,00 €		
G-KA-2	Increase in the petition fee from the 4th respondent Section 3 (6)a VerfO		15,00 €	
G-KA-3	Servicing in Germany from 3rd service attempt Section 3 (6)b VerfO in each case		5,00 €	
G-KA-4	Additional fee for service abroad Section 3 (6)b VerfO		10,00 €	
G-KA-5	Reduced petition fee following withdrawal Section 3 (5) VerfO	100,00 €		
G-KA-6	Proceedings fee 1st day of proceedings (2 x 90 minutes) Section 12 (1)a VerfO	420,00 €		
G-KA-7	Proceedings fee 1st day of proceedings (4 x 90 minutes.) Section 12 (1)a VerfO	600,00 €		
G-KA-8	Hourly rate 2nd day of proceedings Section 12 (1)b VerfO to amount in dispute of € 100,000.00			300,00 € *
G-KA-9	Hourly rate 2nd day of proceedings Section 12 (1)b VerfO to amount in dispute of € 500,000.00			400,00 € *
G-KA-10	Hourly rate 2nd day of proceedings Section 12 (1)b VerfO in excess of amount in dispute of € 500,000.00			500,00 € *
G-KA-11	Settlement fee in accordance with RVG German Lawyers' Remuneration Act 1000 Procedural Provisions	Conditional on amount in dispute *		
G-KA-12	Disbursements and travelling expenses in accordance with RVG Part 7 Procedural Provisions		at cost *	

* To be passed on to the parties as joint and several debtors