

COMMERCIAL MEDIATION

INFORMATION FOR COMPANIES

Commercial mediation is a method of alternative dispute resolution through which a neutral third party (mediator), as a facilitator and without decision-making power, helps the disputing parties reach a voluntary, consensual and interest-oriented solution to their dispute through negotiation.

It focuses on the personal and economic interests of the parties rather than the individual legal positions. The mediation process therefore differs substantially from judicial proceedings.

Commercial mediation is available through IHK's own mediation centre (IHK-MediationsZentrum). The MediationsZentrum has competency for disputes arising within companies (intra-company), between companies (Business-to-Business) and between retailers and customers – including at an international level.

GENERAL QUESTIONS

What does the IHK-MediationsZentrum do?

The Team at the MediationsZentrum

- advises on alternate dispute resolutions pathways
- provides master clauses for the mediation process
- offers a modern procedural process for commercial disputes
- supports, where appropriate, the initiation of the mediation process
- appoints competent and neutral commercial mediators

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- administers the mediation process
- upon request, provides appropriate rooms for meetings
- issues enforceable settlement agreements.

What are the benefits?

- Mediation is flexible in its conduct and is far less time and cost intensive than a formal proceeding. On average, the duration of a mediation is 10 hours.
- The business relationship of the parties is preserved through the jointly reached solution.
- Trade secrets and possible loss of reputation are not put in the public arena.
- An officially appointed and sworn expert can act as a co-mediator and contribute their expertise to the process.
- At the request of the parties, the IHK as a recognised Conciliation Office can issue an enforceable instrument on the result, so that there is legal certainty for the parties.
- The process may be terminated early when at least one party so requests. In this case, legal proceedings can still progress.

What are the possible disadvantages?

- A mediation process is not the correct pathway when addressing or determining a fundamental legal issue. A formal court process is required for this purpose.
- The mediation process is also unsuitable to bring about a solution when there is an apparent lack of willingness by a party to reach amicable settlement (delay tactics, fishing expedition).

Who are the Mediators?

The MediationsZentrum has its own pool of commercial mediators. These mediators are professionals from the main occupational groups with specific industry experience and, in some cases, specialisation. They have also demonstrated the completion of mediation training approved by the IHK and meet other qualification requirements set by the IHK (for example, legal knowledge, sound financial circumstances, as well as the guarantee of impartiality and independence).

HOW IS THE MEDIATION PROCESS INITIATED?

Agreement

Firstly there must be an agreement between the parties that the dispute will be resolved out of court using mediation. In this regard, the parties from the very beginning of their business activity included an applicable mediation clause in their agreement, or a mediation agreement is subsequently made at a later date.

The MediationsZentrum has appropriate model agreements available (Webcode: 0202AAF).

Application

To initiate the mediation process, at least one of the parties lodges an application with the MediationsZentrum, which includes the main details of the parties to the dispute, a brief description of the dispute, and the requirements of the mediator.

Commencement of the mediation process

The process commences after the application and an agreement contained in a clause and/or agreement between all parties to settle out of court, and the advance costs, have been received.

HOW IS THE MEDIATOR SELECTED?

1. The parties can select the mediator themselves according to their requirements. If required, the MediationsZentrum can advise in the search for a suitable mediator.
2. If the parties so request, the MediationsZentrum will propose suitable commercial mediators for selection.
3. When the parties request a direct appointment, or they are not able agree, the MediationsZentrum will appoint a mediator taking into account any requirements of the parties.

DURING AND COMPLETING THE PROCESS

Mediation Contract

The details of the process are governed by the Rules of Procedure, which shall be binding on the parties and the mediator (Webcode: 0202AAF).

The mediator enters into a mediation agreement with the parties. The MediationsZentrum has an appropriate model contract available. The mediation process then commences.

Stay of Legal Disputes

From the commencement until the completion of the proceedings the parties shall not file any legal action. If the parties have already initiated legal proceedings at the time of commencement of the mediation, the parties must stay those legal proceedings for the duration of the mediation.

Suspension of Limitation Periods

In addition, the limitation period for claims the subject of the mediation is paused during the mediation process.

Final Agreement

The agreement reached between the parties is recorded in writing and signed by the parties and the mediator. The latter prepares a formal final agreement, regarding which the MediationsZentrum will issue a corresponding enforceable instrument at the request of the parties.

HOW MUCH DOES A MEDIATION PROCESS COST?

The costs of the process (Costs) comprise of a one-time process fee for the MediationsZentrum together with the mediator's fee calculated on an hourly basis (refer to the Cost Structure for details). The Costs are borne equally between the parties, and each party shall bear its own costs, unless otherwise agreed.

Example Calculation

In accordance with the Cost Structure of the IHK-MediationsZentrum, a mediation with a value of 100,000 EUR, held at the premises of the IHK and with a time allocation of 10 hours for the mediator (including preparation and follow-up), costs, for example, 2,070.00 EUR (net, plus VAT if applicable):

1. Processing fee of the MediationsZentrum 200.00 EUR

2. Mediator's fee (10x175 EUR)	1,750.00 EUR
postage, secretarial fees of the Mediator	20.00 EUR
3. Room hire	100.00 EUR
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	2,070.00 EUR