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**Act on mediation in civil matters and confirmation of
settlements in general courts
(394/2011)**

Chapter 1 — General provisions

Section 1. *Scope of application*

- [1] This Act applies to mediation in civil matters and contested petitionary matters in general courts (*court mediation*).
- [2] The Act also provides for confirmation of enforceability of a settlement reached in out of court mediation.
- [3] The provisions on confirmation of enforceability of a settlement reached in out of court mediation apply also to a settlement reached in out of court mediation in a Member State of the European Union and in court mediation which is comparable to the procedure provided in chapter 2 of this Act. However, the provisions do not apply to a settlement reached in Denmark or to a settlement which does not pertain to a cross-border dispute as defined in Directive 2008/52/EC of the European Parliament and of the Council on certain aspects of mediation in civil and commercial matters.

Section 2. *Relationship to other provisions*

Should another Act contain provisions on mediation or on an issue connected with mediation that diverge from the provisions of this Act, said other provisions shall apply instead of this Act.

Chapter 2 – Court mediation

Section 3. *The objective of and preconditions for court mediation*

- [1] The objective of court mediation is an amicable resolution of the matter.

- [2] The precondition for court mediation is that the matter is amenable to mediation, and a settlement is appropriate in view of the claims of the parties.

Section 4. *Commencement of court mediation*

- [1] In a matter that is not pending in court proceedings, court mediation may be commenced on the application of a party or the parties to the dispute. The application shall be submitted in writing and indicate the subject-matter of the dispute and how the positions of the parties diverge. In addition, it shall indicate the grounds on which the matter is amenable to mediation. The application shall identify the parties and contain their contact details observing, in so far as appropriate, the provisions in chapter 5, section 2(2) of the Code of Judicial Procedure on an application for a summons. In the application it may also be requested that a certain judge at the court be appointed as mediator.
- [2] In a matter that is pending in court proceedings, court mediation may be commenced on the request of a party or the parties. The request may be made without formalities and it shall be submitted before the preparation of the case has been concluded.
- [3] The commencement of court mediation requires the consent of all parties. A request or application for mediation which has not been filed by the parties together shall be served on the other parties in a suitable manner, and they shall be reserved an opportunity to be heard on the request or application. The hearing may be conducted orally or in writing.
- [4] The court decides on the commencement of mediation.

Section 5. *Mediator and auxiliary*

- [1] A mediator shall be appointed to mediate in the matter. The mediator shall be a judge in the court where the matter is pending.
- [2] In order to secure the expertise necessary in the matter or otherwise to further the mediation, the mediator may with the consent of the parties have an auxiliary. The mediator appoints the auxiliary once the parties have accepted the nominee. The fee of the auxiliary shall be paid and his or her expenses shall be reimbursed by the parties.

Section 6. *Conduct of court mediation*

- [1] Court mediation shall proceed promptly, even-handedly and impartially.
- [2] The mediator shall hear the parties and consult with them. With the consent of the parties, also other persons may be heard and other information submitted.
- [3] The mediator may consult with a party without the other parties present, if all the parties consent to this.
- [4] The mediator decides, after consultation with the parties, on how the mediation shall otherwise be arranged.

Section 7. *Reaching a settlement*

- [1] The mediator shall assist the parties in their efforts to reach agreement and an amicable resolution.
- [2] On the request or with the consent of the parties, the mediator may make a proposal for an amicable resolution. The proposal may be based on what the mediator deems appropriate in view of what the parties have brought forward in the mediation.

Section 8. *Confirmation of a settlement*

The provisions on a settlement in pending court proceedings apply correspondingly to a settlement in court mediation and to confirmation of such a settlement. However, a settlement confirmed in court mediation may cover also issues not mentioned in the original claims of the parties.

Section 9. *Conclusion of court mediation*

- [1] Court mediation shall be concluded when:
 - (1) a settlement is confirmed in the matter or the parties notify the mediator that they have otherwise reached an agreement in the matter;
 - (2) a party notifies the mediator that he or she no longer wishes to have mediation in the matter; or
 - (3) the mediator decides after consulting with the parties that there is no justification for continuing the mediation.

- [2] The mediator shall notify the parties of the conclusion of the mediation on the basis of paragraph (1)(2) or (1)(3).
- [3] When mediation is concluded on the basis of paragraph (1)(2) or (1)(3) in a matter that is also pending before the court, the court proceedings in the matter shall be resumed in accordance with the provisions on civil procedure.

Section 10. *Matters concerning the status and rights of a child*

- [1] In respect of matters that concern the status and rights of a child, maintenance payable to a child, child custody and the right of access are amenable to court mediation. Court mediation shall be carried out so that the interests of the child are ensured. When considering whether a settlement may be confirmed, the court shall take due note of the provisions of the Child Custody and Right of Access Act (361/1983) and the Child Maintenance Act (704/1975).
- [2] A confirmed settlement in a matter referred to in paragraph (1) shall be considered equivalent to a court order or judgment in such a matter.

Section 11. *Jurisdiction*

- [1] Jurisdiction over court mediation shall lie with the court that has jurisdiction over the matter for the purposes of court proceedings.
- [2] The court is competent in a matter relating to the commencement of court mediation and to mediation in the composition in which the court decides on preparation of a case.

Section 12. *The openness of court mediation*

Mediation, the documents relating to mediation, and the openness of mediation are subject, as appropriate, to the provisions of the Act on the Publicity of Court Proceedings in General Courts (370/2007). However, a session referred to in section 6(3) of this Act where the mediator consults with only one of the parties shall be closed to the public. At the request of the parties, also other parts of the mediation shall be closed to the public, if the due course of the mediation or some other weighty reason does not require that the proceedings

be open.

Section 13. *Confidentiality obligation*

The mediator and his or her auxiliary may not reveal what they have learned regarding the mediated matter, unless the person benefitting from the confidentiality obligation consents to disclosure, or otherwise is provided by law.

Section 14. *Disqualification of the mediator*

[1] The provisions on the disqualification of a judge apply to the disqualification of the mediator and his or her auxiliary.

[2] The mediator shall not adjudicate in the same case.

Section 15. *Representation of the parties*

[1] The representation of the parties in court mediation shall be governed by the statutory provisions on the exercise of a party's right to be heard in court.

[2] The right of a party to counsel or representation by an attorney, as well as the qualification of counsel and attorneys, shall be governed by the provisions on counsel and attorneys in civil proceedings. However, in order to further the mediation, the mediator may on a justified reason supplied by a party allow a person to serve as counsel or attorney even if that person does not have a degree referred to in chapter 15, section 2 of the Code of Judicial Procedure, provided that he or she is not bankrupt and that his or her legal competency has not been restricted.

Section 16. *Privilege*

In any later proceedings, a party may not without the consent of the other party refer to representations made by the other party in the interests of settlement.

Section 17. *Prohibition of appeal*

A court order on the commencement of mediation, on the rejection of a request for mediation, or on the conclusion of mediation shall not be subject to appeal.

Chapter 3 – Confirmation of enforceability of a settlement reached in out of court mediation

Section 18. *Out of court mediation*

- [1] For the purposes of this Act, “out of court mediation” refers to a structured process conducted on the basis of an agreement, rules or another similar arrangement and in which the parties to a civil matter voluntarily seek on their own to solve their conflict amicably with the assistance of a mediator.
- [2] The provisions of this Act do not apply to a process in which the mediator as an expert makes decisions or recommendations for settlement of the dispute regardless of whether or not said decisions or recommendations are binding on the parties.
- [3] In paragraph 1 above:
- [1) a “civil matter” refers to a civil or commercial matter that is amenable to settlement;
 - [2) a “mediator” refers to a person trained in mediation and who conducts mediation tasks either privately or in the service of an organisation that provides mediation services;
 - [3) a “settlement” refers to a written agreement, done in out of court mediation, which has been signed by the parties to the civil matter and the mediator has confirmed with his or her signature.
- (4) An agreement done in the course of out of court mediation in a matter relating to child custody, right of access or maintenance payable to a child may not be confirmed enforceable according to the procedure provided for in this chapter.

Section 19. *Content of a settlement*

An settlement submitted for confirmation of enforceability shall indicate

- [1) the parties to the settlement;
- [2) the matter subject of the settlement;
- [3) the contents of the settlement;
- [4) the mediator.

Section 20. *Confirmation of enforceability of a settlement*

- [1] The district court may confirm all or part of a settlement reached in out of court mediation enforceable. Proceedings shall be commenced by a written application submitted to the district court office.
- [2] The application may be submitted by the parties to the settlement together or, with the explicit consent of the other parties, by one or more of the parties.
- [3] The application shall contain the request of the applicant for confirmation of the settlement and the grounds on which the court has jurisdiction, if jurisdiction is not otherwise apparent from the application or the documents appended thereto. The application shall further provide, as appropriate, the information referred to in chapter 5, section 2(2) and (3) of the Code of Judicial Procedure.
- [4] The application shall be accompanied by:
 - (1) the agreement on a settlement;
 - (2) if necessary, a certified translation in Finnish or Swedish of the agreement on a settlement, unless the court grants an exception to this ;
 - (3) if necessary, the written consent of the other parties to confirmation of the settlement;
 - (4) a copy of the written agreement on mediation or a similar statement showing that the mediation process was in compliance with section 18(1).

Section 21. *Jurisdiction*

A settlement referred to in this chapter may be confirmed enforceable by the district court for the place where a party to the settlement is domiciled or habitually resident. If none of the parties is domiciled or habitually resident in Finland, the District Court of Helsinki has jurisdiction.

Section 22. *Publicity of documents*

The provisions of the Act on the Publicity of Court Proceedings in General Courts apply, as appropriate, to the publicity of documents issued in proceedings for the confirmation of enforceability of a settlement reached in out of court mediation and to the publicity of an agreement on a settlement.

Section 23. *Estoppel to confirmation of a settlement*

A settlement may not be confirmed enforceable if it is contrary to law or clearly unreasonable or if it violates the right of a third party. A settlement may not be confirmed if it cannot be enforced as provided in the Enforcement Code (705/2007).

Section 24. *Appeal*

A decision on the confirmation of enforceability of a settlement reached in out of court mediation is subject to appeal as provided in respect of appeal of a judgment of the court in question.

Section 25. *Court mediation in another European Union Member State*

The provisions on confirmation of enforceability of a settlement reached in out of court mediation shall apply as appropriate also to a settlement reached in another European Union Member State in a court mediation procedure comparable to the procedure in chapter 2 of this Act.

Section 26. *Proceedings*

The provisions of chapter 8 of the Code of Judicial Procedure on the consideration of petitionary civil matters shall otherwise apply to the consideration of a matter regarding confirmation of enforceability of a settlement.

Chapter 4 – Common provisions

Section 27. *Mediation costs*

[1] The parties shall bear their own costs arising from court mediation.

[2] A party may not, in proceedings concerning a matter that has been under mediation, claim the opposing party for costs that has arisen from court mediation or out of court mediation.

Section 28. *Charges*

The provisions of the Act on Service Charges in Courts and Certain Judicial Authorities (701/1993) apply to the charges to be collected for the consideration, in accordance with this Act, of an application or request for mediation or confirmation of enforceability of a settlement.

Section 29. *Entry into force and transitional provisions*

[1] This Act enters into force on 21 May 2011.

[2] This Act repeals the Act on Court-annexed Mediation (663/2005).

[3] The provisions in force at the time this Act enters into force apply to court mediation that is pending when this Act enters into force. The provisions on confirmation of enforceability of a settlement reached in out of court mediation apply to settlements reached after the entry into force of this Act.