



Model Mediation Clauses

Introduction

Parties that intend to use mediation to resolve their potential disputes under the Rules of the International Arbitration Court of the Czech Commodity Exchange on Out-of-Court Settlement of Disputes by Mediation (the “**Mediation Rules**”) should consider including one of the following mediation clauses in their contracts. The individual clauses cover various situations and needs, and differ, in particular, in the extent of the duty to take part in the potential mediation. In addition, when choosing a specific clause, it is suitable to take into account all the circumstances that might affect their enforceability under the applicable law.

It is, of course, up to the parties whether they will apply the selected clause in its model wording or whether they will modify it according to the specific circumstances. It is possible, for example, to specify the place of mediation, the language in which the negotiations will be held, or the number of persons who will act as a mediator in the mediation. Further, it is possible to further specify a manner of settlement of the dispute other than mediation (e.g. facilitation, conciliation, etc.). However, it must be borne in mind that, within such modifications, it is essential to avoid any modifications that would comprise ambiguous, imprecise and indefinite provisions, and thus prevent the creation of “pathological clauses”, which lead to procedural disputes. Such a situation could not only lead to unnecessary delays but, above all, increase the costs of the parties.

Mediation Clause A Duty to Consider Mediation

“x) In case of any dispute arising out of or in connection with this Agreement, the Parties agree that they shall first discuss the dispute and consider its referring to the Mediation Rules of the International Arbitration Court of the Czech Commodity Exchange. If the Parties fail to meet to discuss the dispute within [60] days of a written request for a meeting under the preceding sentence, or if the dispute is not resolved under the said Mediation Rules within [60] days of the submission of the Request for Mediation or of the submission of a Call to Initiate Mediation, or by some other deadline agreed by the Parties in writing, the Parties shall proceed under paragraph y).

y) Any and all disputes arising out of or in connection with this Agreement shall be finally resolved in accordance with the Rules of the International Arbitration Court of the Czech Commodity Exchange, which is a permanent arbitration court under Section 13 of Act No. 216/1994 Coll., on arbitral proceedings and enforcement of arbitral awards, by one or three arbitrators appointed in accordance with the Rules.”

Note: This mediation clause requires the parties to meet within 60 days, or by some other deadline that they determine, to discuss their dispute and its possible resolution by means of mediation. The parties are not directly obliged to initiate mediation.



If a Request for Mediation or a Call to Initiate Mediation has been submitted, the parties have 60 days or some other deadline on which they may agree to settle the dispute. Of course, the parties may later agree to extend this time limit within the mediation process.

Mediation Clause B Duty to Use Mediation

“x) In case of any dispute arising out of or in connection with this Agreement, the Parties agree that they shall first refer the dispute to proceedings under the Mediation Rules of the International Arbitration Court of the Czech Commodity Exchange. If the dispute is not resolved under the said Rules within [60] days of the submission of the Request for Mediation or of the submission of a Call to Initiate Mediation, or by some other deadline agreed by the Parties in writing, the Parties shall proceed under paragraph y).

y) Any and all disputes arising out of or in connection with this Agreement shall be finally resolved in accordance with the Rules of the International Arbitration Court of the Czech Commodity Exchange, which is a permanent arbitration court under Section 13 of Act No. 216/1994 Coll., on arbitral proceedings and enforcement of arbitral awards, by one or three arbitrators appointed in accordance with the Rules.“

Note: This clause requires the parties to initiate mediation as a duty that may be directly enforceable with regard to the applicable law, or indirectly enforceable, e.g. through a contractual penalty.

If a Request for Mediation or a Call to Initiate Mediation has been submitted, the parties have 60 days or some other deadline on which they may agree to settle the dispute amicably. Of course, the parties may later agree to extend this time limit within the mediation process.

This clause must be understood as an exception to the rule contained in Art. 13 (1) of the Mediation Rules.

Mediation Clause C Duty to Use Mediation with Possible Parallel Arbitration

“x) In case of any dispute arising out of or in connection with this Agreement, the Parties agree that they shall first refer the dispute to proceedings under the Mediation Rules of the International Arbitration Court of the Czech Commodity Exchange. If the dispute is not resolved under the said Rules within [60] days of the submission of the Request for Mediation or of the submission of a Call to Initiate Mediation, or by some other deadline agreed by the Parties in writing, the Parties shall proceed under paragraph y). Initiation of mediation under the Mediation Rules of the International Arbitration Court of the Czech Commodity Exchange does not prevent any of the parties to initiate an arbitration under paragraph y).

y) Any and all disputes arising out of or in connection with this Agreement shall be finally resolved in accordance with the Rules of the International Arbitration Court of the Czech Commodity Exchange, which is a permanent arbitration court under Section 13 of Act No. 216/1994 Coll., on arbitral proceedings and enforcement of arbitral awards, by one or three



arbitrators appointed in accordance with the Rules.”

Note: This clause differs from the previous one in that the initiation of mediation does not prevent the parties from initiating a parallel arbitration. This reflects the basic rule of the Mediation Rules as set out in Art. 13 (1) of the Mediation Rules.

Mediation Clause D MED-ARB

“Any and all disputes arising out of or in connection with this Agreement shall be finally resolved in accordance with the Rules of the International Arbitration Court of the Czech Commodity Exchange, which is a permanent arbitration court under Section 13 of Act No. 216/1994 Coll., on arbitral proceedings and enforcement of arbitral awards, by one arbitrator appointed in accordance with the Rules. The Parties further agree that after selecting or appointing a sole arbitrator, the latter may attempt to resolve the dispute amicably by means of mediation, where the Mediation Rules of the International Arbitration Court of the Czech Commodity Exchange shall apply analogously.

The sole arbitrator may not meet and negotiate with the Parties separately (Art. 7 (3) of the Mediation Rules).

Any amicable solution or settlement reached within the mediation shall be issued in the form of an arbitral award in conformity with Section 24 (2) of Act No. 216/1994 Coll., on arbitration proceedings and enforcement of arbitral awards.

If the dispute is not resolved under the said Mediation Rules within [60] days of the selection/appointment of the sole arbitrator, or by some other deadline on which the parties may agree in writing, the sole arbitrator shall continue in the arbitration under the Rules of the International Arbitration Court of the Czech Commodity Exchange. The Parties expressly declare that the very fact that the sole arbitrator has acted in the case as a mediator is not a ground for questioning his/her impartiality and independence.”

Note: Mediation Clause D enables the parties to use a hybrid MED-ARB procedure, where an impartial third person first acts as a mediator and, only if amicable solution to the dispute cannot be found, will this person hear and decide the matter him/herself as a sole arbitrator under the Rules of the International Arbitration Court of the Czech Commodity Exchange. By using this model clause, the parties grant an exemption from the rule contained in Article 10(1) of the Mediation Rules, which option is expressly foreseen by the Mediation Rules (Article 10(2)).