

Dispute resolution during a pandemic time

How to resolve disputes when the courts are not functioning? Where to go for help regarding a business dispute at this particular time? What about disputes which are already pending in court?

These and other questions are undoubtedly being asked by entrepreneurs at this difficult time for the economy and business.

Entrepreneurs also review their contracts in search of clauses related to force majeure or extraordinary situations. And since contracts are written for hard times, they will undoubtedly find such clauses in many contracts and apply them. The question remains, however, how to resolve disputes in a situation where the courts do not function and the parties have agreed to resolve possible conflicts by a competent common court. What should entrepreneurs whose cases already pending in the courts are being dismissed and (probably) will find themselves at the end of the queue in an already overloaded court system?

Of course, contracts may also include a clause for an arbitration court, the so-called arbitration clause, which allows bypassing the common court. The question arises, however, whether the arbitration courts - even if they are functioning - will be able to deal with the case? Considering the rather high formality of the arbitration procedure, it may transpire that at this particular time when entrepreneurs are currently operating, arbitration courts will not be able to proceed normally. Any dispute resolution by a court (common or arbitration) involves meetings of the parties, experts, witnesses during a hearing or court session, which requires the participation of at least a few people.

Of course, practice will show how far arbitral tribunals will be able to adapt to the situation. However, entrepreneurs who have a business dispute or whose dispute has just "become bogged down" in a common court may use other alternative dispute resolution methods. Any dispute can be resolved through commercial mediation, which in turn may prove to be quite an effective tool that can also be used during a pandemic.

Mediation as a remedy for difficult times

Commercial mediation has been experiencing a revival in Poland in recent years. Mainly the legislative environment for mediation, including a number of subsequent amendments to the law are aimed at encouraging entrepreneurs to mediate.



Mediation is a highly informalized method of resolving disputes in business, which, in addition, is several times cheaper than court proceedings or arbitration proceedings. Mediation can also be carried out using various means of distance communication (by video- or teleconference, or even in writing on-line). Mediation in participation with a mediator can be carried out without their direct contact, i.e. - at present - without a threat to their health.

No special contractual arrangement between the parties is needed to use mediation. Mediation can also take place without a specific referral to a court when the parties themselves decide to have mediation conducted by an independent mediator of their choice or by an independent, specialised mediation centre (so-called private mediation).

In fact, mediation can not only resolve an existing dispute, but can also "mediate" special contractual terms and conditions under special circumstances such as a pandemic. This may be important precisely in a situation where the parties concluding the contract did not foresee certain circumstances of their performance, such as introducing a state of epidemics or epidemic threat throughout the country. Such situations and states of emergency can often lead to a disruption of business relationships between the parties or make it temporarily impossible. If the parties did not provide for such a situation in the contract, they may find themselves in a business poop. Commercial mediation may be helpful in such a situation, which will allow the parties not only to clarify differences in the interpretation of the agreement or its execution, but also to arrange the relationship for the future.

Classic commercial mediation consists of the participation of an independent mediator in communication between the parties in a dispute. The parties, as it were, moderated by the mediator in the mediation proceedings, strive to find a solution which would be acceptable to both parties. The mediation process should therefore lead to a win-win situation.

Settlement agreement replaces judgment

Practice shows that a solution achieved by both parties with the help of a mediator through commercial mediation is usually implemented by them on a voluntary basis and no steps are necessary to force the parties to implement the settlement reached. It is worth remembering, however, that the settlement reached through economic mediation can be confirmed in court. In such a situation, the mediator or attorneys of the parties ask the court to set a special court hearing during which the settlement agreement is formally approved by the court, which becomes an enforcement order, and thus gains the value and legal force of the court judgment.

This approval of the settlement may also take place a few weeks or months after the conclusion of the settlement agreement before the mediator. Thus, the fact that the court does not act at the present time does not prevent the parties from resolving disputes by means of mediation and subsequent possible approval of the settlement reached by the court.

The same applies to disputes which are already pending between the parties in court. In a situation where it is not certain when the court will be able to proceed with the case anew, the parties may conclude an out-of-court settlement by private mediation by regulating the fate of the pending dispute accordingly (e.g. by deciding to withdraw the statement of claim and mutual abolition of court costs).

I am convinced that this is the most sensible solution in the current situation, especially if the parties want to settle the dispute quickly.



It is estimated that mediation is at least ten times cheaper than a court process. Perhaps it is precisely this current, exceptional situation which will contribute to a greater use of economic mediation in business and entrepreneurs will use this tool for dispute resolution more often.

Cost comparison: Court proceedings vs. private mediation within the International Mediation Centre (www.mcm.org.pl)

The value of the dispute: 3,000,000 PLN

Costs	Court proceedings	Mediation
Initial fee / registration*	200,000 PLN court fee	1,500 PLN registration fee
Cost of legal support* / Mediation costs**	appr. 120,000 PLN	Net 15,000 PLN (15 hours of mediation divided into the sessions)
Experts opinion	appr. 3,000 PLN	Not applicable
Bailiff execution	appr. 2,500 PLN	Not applicable
Sum of the main costs	appr. 325,500 PLN	16,500 PLN

***costs calculated on the basis of the World Bank's data published in Doing Business Report (Poland)*

*** mediation cost within the International Mediation Center*

I am at your disposal for further questions!



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