

**REGULATION FOR ORGANIZATION OF
THE ALTERNATIVE BANKING DISPUTE
RESOLUTION CENTRE,
AND FOR FUNCTIONING OF THE STEERING BOARD**

**RECAST 1
approved pursuant to
the Resolution dated 13.07.2016
of the Steering Board**

Contents

Chapter I - General Provisions	2
Chapter II - Duties	3
Chapter III - Organization.....	4
Steering Board	4
Director	7
Conciliator	8
Chapter IV - Funding of the ADR Center	11
Chapter V - Final Provisions	12

Chapter I - General Provisions

Art. 1.

- (1) The Alternative Banking Dispute Resolution Centre, hereinafter referred to as the ADR Center, is an independent non-governmental apolitical, not-for-profit legal entity of public interest established under the *Government Ordinance no. 38/2015 on alternative resolution of disputes between consumers and traders*, published in the Official Gazette, Part I, no. 654 of 28.08.2015. The ADR Center is established and functions under this Regulation.
- (2) The registered office of the ADR Center is in Romania, City of Bucharest, str. Sevastopol nr. 24, District 1. The logo of the ADR Center is ABDRC.
- (3) The ADR Center's mission is to arrange resolution, following ADR procedures, of the disputes between consumers, as such are defined under art. 2 item 2 of the *Government Ordinance no. 21/1992 on consumer protection*, recast, as subsequently amended and supplemented, and traders the business of which is regulated, authorized and supervised/monitored by the National Bank of Romania, as well as the branches of traders which pursue business in the Romanian territory in the banking field.

Art. 2.

- (1) The ADR Center is the single banking dispute alternative resolution entity which arrange and manage ADR procedures further which the parties are proposed or, as the case may be, imposed a solution.
- (2) The procedures managed and arranged by the ADR Center interfere with neither the mediation procedure regulated under the *Law no. 192/2006 on mediation and organization of mediator profession*, published in the Official Gazette, Part I, no. 441 of 22.05.2006, as subsequently amended and supplemented, nor the provisions of the *Government Ordinance no. 27/2002 regulating the petition settlement activity*, as approved with amendments and supplements under the *Law no. 233/2002*.

Chapter II - Duties

Art. 3.

- (1) The main duty of the ADR Center consists in organization of, management of and monitoring resolution under ADR procedures of domestic or international disputes stemming from services agreements concluded between consumers and the traders reference is made to in art. 1 para. (3).
- (2) The disputes are deemed international when the consumer's domicile or habitual residence is on the territory of another state of the European Union or the European Economic Area, as well as the on territory of the Swiss Confederation at the time when the services agreement is executed with a trader having Romanian nationality or which pursues business on the Romanian territory.
- (3) Consumers may submit the dispute to the ADR procedures managed by the ADR Center provided they can prove they have already attempted to contact the trader to discuss the complaint, or sought to have the dispute resolved directly with the trader in question.
- (4) Organization and alternative dispute resolution are regulated under the ADR Procedural Rules concluded with proposing a solution, and the ADR Procedural Rules concluded with imposing a solution

Art. 4.

The ADR Center has the following additional duties:

- a) to determine the conditions to be met by the natural person who wishes to be included in the List of Conciliators;
- b) to approve inclusion in the List of Conciliators of the persons who meet the predefined conditions, having reviewed the documents submitted in this respect and their individual competences;
- c) to provide information about the ADR procedures applied by the Center to the parties;
- d) to provide, further to the parties' request, on a durable medium, information about the ADR procedure and the documents due to be submitted by the parties;
- e) to managed a website, and keep such permanently updated so as to allow smooth access of the parties to the information about the ADR procedures;
- f) to allow the consumer to submit the complaint both online, and in writing, on

- paper, or on another durable medium, as applicable;
- g)** to foster the exchange of information and documents between the parties in connection with the dispute, by electronic means or by mail, as applicable;
 - h)** to cooperate with other ADR entities for resolution of cross-border disputes;
 - i)** to cooperate with other relevant ADR entities by exchanging information about the resolved disputes, monitoring the progress in their resolution, and to regularly exchange good practices in connection with resolution of cross-border and domestic disputes;
 - j)** to provide to the competent authority information about the resolved disputes, as well as any other information requested in connection with the resolution thereof;
 - k)** to report to the competent authority, every two years, information about:
 - the number of disputes received and the types of complaints to which they refer to;
 - the percentage of the discontinued ADR procedures, and the causes of such discontinuations;
 - the average time taken to resolve the disputes received;
 - the problems which more frequently formed the subject matter of the disputes;
 - an evaluation of the effective cooperation within the cross-border networks of ADR entities;
 - l)** to publish on its website and, upon request, on a durable medium, annual activity reports which contain the information laid-down under art. 7 para. (2) of the Government Ordinance (GO) no. 38/2015;
 - m)** to deliver, further to the request of conciliators or persons who pursue this capacity, professional training on alternative banking dispute resolution matters.

Chapter III - Organization

Art. 5.

Steering Board

- (1)** The overall management of the ADR Center is provided by the Steering Board.
- (2)** The Steering Board is formed of five members, one each designated by: The National Consumer Protection Authority, the Romanian Bank Association, the National Bank of Romania and the associations of consumers which meet the conditions provided under art. 32 and art. 33 of the Government Ordinance no.

21/1992, recast, as subsequently amended and supplemented, as well as one independent member selected by the other 4 appointed members.

- (3)** The members of the Steering Board have a 5-year office which is renewable once.
- (4)** The natural person who meets the following conditions is eligible to be appointed as member in the Steering Board:
- a)** is a Romanian citizen, a citizen of another Member State of the European Union or belongs to the European Economic Area, or is a citizen of the Swiss Confederation;
 - b)** has full capacity of exercise;
 - c)** has graduated legal higher education, as evidence by a recognized bachelor's degree;
 - d)** enjoys a good reputation, masters adequate knowledges and has appropriate experience to perform the duties entrusted to them;
 - e)** has not been convicted under a final judgment for property-related crimes by infringing trust, corruption offences, embezzlement, misrepresentation, tax evasion, the crimes provided under Law no. 656/2002 on prevention and sanctioning money laundering, and instituting measures to prevent and fight against terrorism financing, recast, as subsequently amended and supplemented, or for other offences committed with intent, for which the laws provides for a penalty with imprisonment of at least 3 years.
 - f)** has not been convicted under a final court judgment, for perpetration of an offence other than those under letter e);
 - g)** is independent from both the appointing authority and those which selected them, as well as from any of the traders referred to under art. 1 para. (3).
- (5)** The office of a member of the Steering Board comes to an end:
- a)** on expiry of a term which has not been renewed;
 - b)** by resignation;
 - c)** in case of death;
 - d)** further to a prohibition decided by a court of law;
 - e)** due to a final indisposition, meaning unavailability for more than 120 consecutive days;
 - f)** on the date when the conviction judgment for perpetration of an offence remains final;
 - g)** when this is revoked by the designated or selecting pursuant to the provisions of the Government Ordinance no. 38/2015.

- (6)** In the case provided under para. (4), letter f), should such conviction occur during the term of the office, the member of the Steering Board is revoked by the appointing authority and, respectively, the four members of the Steering Board, in case of the independent member selected by them.
- (7)** Should one of the offices in the Steering Board become vacant during the term of that office, the member of the Steering Board in question is replaced following the same procedure as in case of appointment or selection thereof, as applicable, with such replacement covering the remaining term of that office.

Art. 6.

- (1)** The Steering Board carries out its activity in plenary sessions, and meets at least once a month or whenever necessary.
- (2)** The Steering Board is called at the initiative of its Chairman or that at least three of its members.
- (3)** The meeting quorum is of at least three members for the meeting to be valid.
- (4)** Resolutions are with the votes of the majority of members present. In the case provided under art. 8 letters a), d) and f), resolutions are adopted unanimously, and in the cases provided under letters b), c) and e), resolutions are adopted with the vote of four members of the Board.

Art. 7.

The Steering Board adopts binding resolutions.

Art. 8.

The Steering Board has the following duties:

- a)** to adopt the Regulation for organization of the Alternative Banking Dispute Resolution Center and for functioning of the Steering Board, as well as any amendments thereto;
- b)** to adopt the procedural rules for alternative dispute resolution;
- c)** to lay down the criteria for acceptance or rejection of the dispute examination applications;
- d)** to decide on and amend the selection criteria for the members of the Body of Conciliators;
- e)** to validate and approve listing of conciliators in the List of Conciliators;
- f)** to determine the income and expenditure budget and approve the staffing, the organizational structure of the ADR Center, the organization and functioning regulation, as well as the internal regulation;

- g)** to communicate its point of view on matters in connection with the relations between consumers and traders upon the request of:
- the President's Administration and the Government of Romania;
 - Parliamentary commissions, senators and deputies;
 - authorities and institutions of the central and local public administration;
 - professional organizations and employers' associations;
 - consumer protection organizations;
 - courts of law and prosecutor's offices.
- h)** to draw up an annual activity report, which report is adopted in the plenary session of the Steering Board, and is published on the website of the ADR Center, and submitted Competent Authority.

Art. 9

- (1)** The Steering Board is run by a Chairman elected from the Board's members, for a 1-year term.

Art. 10.

- (1)** The operational management of the ADR Center is provided by a Director appointed by the Steering Board. The Director is an employee of the ADR Center.
- (2)** The Director represents the ADR center in relations with third parties.

Art. 11

Director

- (1)** The Director has the following duties:
- a.** to see that the resolutions of the Steering Board are implemented;
 - b.** to provide operational management of the ADR Center and carry out the duties determined by the Steering Board under the director's job description;
 - c.** to send meeting notices to the members of the Steering Board, further to the request of the Chairman or that at least three members of the Steering Board, and to prepare the meetings of the Board;
 - d.** to prepare the reports and other documents due to be approved by the Steering Board;
 - e.** to conclude employment agreements with the staff of the ADR Center, and to determine the remuneration thereof;
 - f.** to conclude the agreements required for performance of the current activity of the ADR Center with third parties, subject to the value limits set by the Steering

Board;

- g.** to notify the Steering Board of any situations which demand modification of the List of Conciliators;
- h.** to arrange preparation of collections of solutions, and submit such for clearance by the Steering Board for publication;
- i.** to procure acquisition of foreign documentation, regulations, case law and doctrine regarding alternative dispute resolution, in view of supporting professional training of Conciliators;
- j.** to deliver, upon request, professional training courses to the persons pursuing a conciliator career;
- k.** to carry out any other duties assigned by the Steering Board to support of smooth management of the ADR Center;

Art. 12

Conciliator

- (1) The disputes referred to the ADR Center are examined by conciliators.
- (2) Conciliators remunerated in a way that is not linked to the outcome of the ADR procedure;

Art. 13

The natural person who meets the following conditions may be a conciliator and included in the List of Conciliators kept by the ADR Center:

- a)** has full capacity of exercise;
- b)** has legal or economic background, as evidence by a recognized bachelor's degree;
- c)** is a citizen of Romania or of a Member State of the European Union, the European Economic Area, or the Swiss Confederation;
- d)** has a good reputation, expertise in the financial and banking sector, and proves at least 10 years of experience in practicing a legal (or economic) activity;
- e)** is independent from all the parties to a dispute, and is not, either directly or indirectly, remunerated by them, and it not in any divergent or biased positioned against any of them at the time of appointment.

Art. 14

- (1)** Conciliators validated by the Steering Board are included in the List of Conciliators and are required to inform the ADR Center, through its Director, of occurrence of

any event liable to impair fulfilment of any of the conditions under art. 13, as well as to incidentally give raise to any cause of incompatibility or conflict of interests with the parties to a dispute they were assigned for.

(2) The conciliator who:

- a)** has already rendered a solution under which the dispute between the two parties was resolved;
- b)** served as witness, expert, arbitrator, prosecutor, judge, attorney, magistrate, assistant, or mediator in a dispute between the two parties;
- c)** themselves, their spouse, relatives or next-of-kin up to the fourth degree were remunerated by one of the parties during a 3-year previous period;
- d)** themselves, their spouse, relatives or next-of-kin up to the fourth degree are relative or next-of-kind with the consumer who is party to the dispute;
- e)** themselves, their spouse, relatives or next-of-kin up to the fourth degree are shareholders of, or sit as members in the executive bodies of the trader, is incompatible with resolution of a given dispute, regardless the choice of procedure.

(3) The persons in the List of Conciliators commit not to work for the trader or a professional organization or business association of which the trader is a member, under an employment agreement, for a period of 3 years after their position in the ABDRC has ended.

(4) The person in the List of Conciliators, designated or appointed in a dispute in which the parties have opted for the ADR procedure concluded with imposing a solution, acquires the capacity of arbitrator in the respective dispute.

Art. 15

(1) All the conciliators included in the List kept by the ADR Center form the Body of Conciliators.

(2) The Body of Conciliators debates on the briefings of the ADR Center on the activity carried out, discusses the special legal issues occurred in dispute resolution, and articulates opinions in connection therewith.

(3) The Conciliators are randomly designated from the List of Conciliators in the ADR procedure with proposed solution.

(4) In the ADR procedure with imposed solution, with the Arbitral Tribunal formed of one single arbitrator, the consumer shall propose the arbitrator and the alternate arbitrator from the List of Conciliators, and the trader may either accept or refuse

them, with the procedure being resumed until the agreement of the parties is reached.

- (5) In the ADR procedure with imposed solution, the Arbitral Tribunal formed of 3 arbitrator, each party designates one arbitrator and one alternate arbitrator from the List of Conciliators, and the two arbitrators will designate the umpire. Any of the parties may object to the arbitrator/alternate arbitrator selected by the other party, or to the umpire.
- (6) The conciliators included in the List of Conciliators may be objected to pursuant to the ADR procedural rules adopted by the Steering Board.
- (7) Removal of a conciliator from the list is decided by the Steering Board:
 - a) at the request of the conciliator;
 - b) in case of the conciliator's death;
 - c) when the conciliator is subject to a prohibition for legal incapacity;
 - d) when the conciliator has been finally convicted for any offence;
 - e) when the conciliator has become incompatible;
 - f) when the conciliator is unavailable for a period of more than 120 consecutive days.

Art. 16

- (1) Review and resolution the disputes referred to the ADR Center are done, as the case may be, by one or more persons included in the List of Conciliators, as per the understanding between the parties, and conclude with rendering of a decision/award according to the Center's Procedural Rules. Conciliators are designated to resolve the application randomly.
- (2) While organizing and managing the ADR procedures, the Steering Board must refrain from interfering in, or influencing in any way the conciliators vested with resolution of a dispute, while rendering the solution by these.

Art. 17

When reviewing and resolving disputes, conciliators apply the procedural rules adopted by the Steering Board for each of the ADR procedures falling within the competence of the ADR Center.

Art. 18

- (1) The ADR Center is served by a Procedural Secretariat formed of conciliation or

arbitration assistants, led by a chief procedure assistant.

- (2)** The Procedural Secretariat operates under the regulation proposed by the Director and approved by the Steering Board.
- (3)** The chief procedure assistant has the duty to provide to the litigants and, in particular, to the consumer all the information regarding the selected ADR procedure, as well as the complaint filed, the documents to be filed, the procedural timelines and the categories of disputes which may be rejected from examination by the ADR Center, namely:
 - a)** disputes regarding a case a final court judgment or arbitral award has already been rendered for;
 - b)** disputes brought up without the consumer-claimant having previously attempted to contact the trader concerned to discuss the complaint, or sought, as a first step, to settle the disagreement directly with the trader;
 - c)** disputes which have already been examined by the ADR Center;
 - d)** disputes brought up by consumer after the expiry of the 1-year term from occurrence of the event which triggered the dispute, or the date when the conciliator submitted the complaint to the trader party to the agreement.
 - e)** a dispute which is frivolous or vexatious;
 - f)** disputes which fall outside the competence of the ADR Center, pursuant to art. 21 of the Government Ordinance no. 38/2015.

Chapter IV - Funding of the ADR Center

Art. 19

- (1)** The current activity of the ADR Center is funded as follows:
 - a)** from contributions of the traders operating in the financial and banking field referred to under art. 1 para. (3);
 - b)** from own revenues generated from the consultancy rendered, upon request, to interested natural persons or legal entities, other than the parties to the dispute;
 - c)** from the amounts charged for delivering professional training to the interested persons;
 - d)** from the amounts charged for other services rendered upon request;
 - e)** from legacies, sponsorships or donations.
- (2)** The ADR Center's dispute review and resolution procedure is free of charge only

for the consumer who is party to the dispute.

Art. 20

The financial resources of the ADR Center are aimed to cover for the expenses incurred with:

- a) wages paid to the employed staff of the Center;
- b) payments made to the members of the Steering Board;
- c) organization and resolution of disputes;
- d) fees paid to the members of the Body of Conciliators involved in resolution of a dispute as determined by the Steering Board and payable in the beginning of the procedure.

Chapter V - Final Provisions

Art. 21

- (1) The Steering Board, the Director, the procedure assistants, the employed staff of the ADR Center and the conciliators involved in resolution of a dispute have the duty to keep confidential the respective dispute in all respects.
- (2) The ADR Center procures that processing of personal data is done in compliance with the provisions of Law no. 677/2001 on protection of persons in respect of processing of personal data and free circulation of such data, published in the Official Gazette, Part I, no. 790 of 12.12.2001, as subsequently amended and supplemented, as well as the Order no. 72/2002 laying down specific measures and procedures to ensure a satisfactory level of the rights of the persons whose personal data is subject to processing, issued by the Ombudsman, published in the Official Gazette, Part I, no. 449 of 26.06.2002.

Art. 22

This Regulation is supplemented by the binding provisions of the Government Ordinance no. 38/2015, and those of the applicable legislation in effect.

Art. 23

- (1) This Regulation was approved, in its second version, in the meeting of the Steering Board of 13.07.2016, and comes into force on 10.08.2016.
- (2) This Regulation, the two categories of Procedural Rules, the Rules on expenses,

and the List of Conciliators are published on the website www.csalb.ro.