

ภาคผนวก ญ.

Mediation Act (Mediationsgesetz: MediationsG)

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Mediation Act of 21 July 2012 (Federal Law Gazette I, p. 1577), as last amended by Article 135 of the Statutory Instrument of 31 August 2015 (Federal Law Gazette I p. 1474)

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Section 1 Definitions

- (1) Mediation is a confidential and structured process in which the parties strive, on a voluntary basis and autonomously, to achieve an amicable resolution of their conflict with the assistance of one or more mediators.
- (2) A mediator is an independent and impartial person without any decision-making power who guides the parties through the mediation.

Section 2 Process; tasks of the mediator

- (1) The mediator shall be selected by the parties.
- (2) The mediator shall satisfy himself that the parties have understood the basic principles of the mediation process and the way in which it is conducted, and that they are participating in mediation voluntarily.
- (3) The mediator's obligations shall be equal vis-à-vis all parties. He shall promote communication between the parties and shall ensure that the parties are integrated into

the mediation process in an appropriate and fair manner. He can conduct separate discussions with the parties subject to agreement thereto by all the parties.

(4) Only with the consent of all parties can third parties become involved in mediation.

(5) The parties can terminate mediation at any time. The mediator can terminate the mediation, especially when he is of the opinion that autonomous communication or settlement between the parties is not to be anticipated.

(6) In the event that a settlement is reached by the parties, the mediator shall make efforts to ensure that they conclude the agreement in awareness of the underlying circumstances and that they understand the content of the agreement. He shall inform those parties participating in mediation without availing themselves of specialist advice of the possibility of having the agreement examined by external advisers if necessary. Subject to the parties' consent, the settlement reached can be recorded in the form of a final agreement.

Section 3 Disclosure obligations; limitations on practice

(1) The mediator shall disclose all circumstances to the parties which could impede his independence or impartiality. If such circumstances exist he shall be permitted to act as a mediator only if the parties explicitly agree thereto.

(2) A person who has acted in the same matter for one of the parties prior to the mediation shall not be permitted to act as a mediator. The mediator shall also not be permitted to act in the same matter for either of the parties either during or subsequent to mediation.

(3) A person shall not be permitted to act as mediator if another person who is part of the same professional cooperative or office-sharing arrangement has acted for one of the parties in the same matter before the mediation. Such a person shall also not be permitted to act for either of the parties in the matter either during or subsequent to mediation.

(4) The restrictions contained in subsection 3 shall not apply in individual cases where the parties involved, having been given comprehensive information, give their consent, and where this does not conflict with considerations relating to the administration of justice.

(5) The mediator shall be bound to provide the parties with information about his professional background, his training and his experience in the field of mediation if they so request.

Section 4 Duty of confidentiality

The mediator and the persons involved in conducting the mediation process shall be subject to a duty of confidentiality unless otherwise provided by law. This duty shall relate to all information of which they have become aware in the course of performing their activity. Notwithstanding other legal provisions regarding the duty of confidentiality, this duty shall not apply where

1. disclosure of the content of the agreement reached in the mediation process is necessary in order to implement or enforce that agreement,
2. disclosure is necessary for overriding considerations of public policy (ordre public), in particular when required to avert a risk posed to a child's well-being or to prevent serious harm to the physical or mental integrity of a person, or
3. facts are concerned that are common knowledge or that are not sufficiently significant to warrant confidential treatment.

The mediator shall inform the parties about the extent of his duty of confidentiality.

Section 5 Initial and further training of the mediator; certified mediator

(1) The mediator himself shall be responsible for ensuring that, by virtue of appropriate initial training and regular further training, he possesses the theoretical knowledge and practical experience to enable him to guide the parties through mediation in a competent manner. Suitable initial training shall impart the following in particular:

1. knowledge about the fundamentals of mediation as well as the process and framework conditions therefor,
 2. negotiation and communication techniques,
 3. conflict competence,
 4. knowledge about the law governing mediation and the role of the law in mediation,
- and
5. include practical exercises, role play and supervision.

(2) A person shall be permitted to call himself a certified mediator if he has completed initial training as a mediator in fulfilment of the requirements of the statutory instrument pursuant to section 6.

(3) Certified mediators shall undergo further training in accordance with the requirements of the statutory instrument pursuant to section 6.

Section 6 Authorisation to issue statutory instruments

The Federal Ministry of Justice and Consumer Protection shall be authorised to enact by statutory instrument and without the approval of the Bundesrat more specific provisions on the initial training for certified mediators and on further training for certified mediators as well as on the standards applicable to initial and further training institutions. The statutory instrument pursuant to the first sentence can set out the following in particular:

1. more specific provisions on the content of initial training, within the framework of which the initial-training elements listed in section 5 subsection (1), second sentence, must be imparted, and on the practical experience required;
2. more specific provisions on the content of further training;
3. minimum learning hours for initial and further training;
4. intervals at which further training must be undergone;
5. requirements for teaching staff deployed in initial and further training institutions;
6. provisions stipulating that, and indicating how, an initial and further training institution shall certify participation in an initial and further training programme;
7. rules on the completion of initial training;
8. transitional provisions for persons who were already working as mediators prior to the entry into force of this Act.

Section 7 Academic research projects; financial support of mediation

(1) The Federation and the Länder can conclude agreements on academic research projects in order to ascertain the impact of financial support of mediation schemes for the Länder.

(2) Support can be granted within the framework of research projects upon application by a person seeking legal redress if, due to that person's personal and financial circumstances, the costs of mediation cannot, or can only partially, be paid, or can be paid only in instalments by that person, and the intended pursuit of legal action or legal defence does not appear to be vexatious. The court having jurisdiction for the proceedings shall decide on the application,

subject to the proviso that a research project is being conducted at this court. The decision shall be incontestable. The details shall be governed by the agreements reached between the Federal Government and the Länder pursuant to subsection (1).

(3) The Federal Government shall, after completion of the academic research projects, inform the German Bundestag of the experience gathered and the findings arrived at.

Section 8 Evaluation

(1) The Federal Government shall report to the German Bundestag by 26 June 2017 on the impact of this Act and the development of mediation in Germany, and on the situation of initial and further training for mediators, also taking into account the opening clauses for the Länder under the law governing costs. In particular, the report shall examine and appraise whether for reasons of quality assurance and consumer protection further legislative measures in the field of initial and further training for mediators are required.

(2) So far as the need for legislative measures becomes apparent from the report, the Federal Government shall propose such measures.

Section 9 Transitional provision

(1) Mediation in a civil matter, being offered at a court prior to 26 July 2012 and conducted during court proceedings by a judge with no decision-making power in the matter concerned, can continue to be conducted until 1 August 2013 with the designation (court mediator) used so far.

(2) Subsection (1) shall apply *mutatis mutandis* to mediation within the courts of administrative jurisdiction, of social jurisdiction, of fiscal jurisdiction and of labour jurisdiction.