

# MEDIATION ACT

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## MEDIATION ACT

Promulgated, State Gazette No. 110/17.12.2004, amended and supplemented, SG No. 86/24.10.2006, supplemented, SG No. 9/28.01.2011, amended and supplemented, SG No. 27/1.04.2011

### Chapter One GENERAL DISPOSITIONS

#### Scope of Application

**Article 1.** This Act regulates the relationships associated with mediation as an alternative method of resolution of legal and non-legal disputes.

##### Notion of Mediation

**Article 2.** Mediation is a voluntary and confidential procedure for out-of-court resolution of disputes, whereby a third party mediator assists the disputants in reaching a settlement.

##### Subject of Mediation

**Article 3.** (1) (Supplemented, SG No. 27/2011) Subject of mediation may be civil, commercial, labour, family and administrative disputes related to consumer rights, and other disputes between natural and/or legal persons, including when they are cross-border disputes.

(2) Mediation shall furthermore be conducted in the cases provided for in the Criminal Procedure Code.

(3) Mediation shall not be conducted if a law or another statutory instrument provides for another procedure for conclusion of an agreement.

##### Organization of Mediation

**Article 4.** Mediation shall be implemented by natural persons. Such persons may associate for the purpose of implementing of the activity. No persons performing functions of administration of justice in the judiciary system may carry out mediation activities.

### Chapter Two PRINCIPLES OF MEDIATION Voluntary Recourse and Equal Treatment

**Article 5.** The parties shall have equal opportunities to participate in a mediation process. They shall participate in the process of their own free will and may withdraw at any time.

##### Neutrality and Impartiality

**Article 6.** (1) A mediator shall not display partiality and shall not impose a resolution of the dispute.

(2) Within a mediation process, all questions shall be resolved by mutual agreement between the parties.

##### Confidentiality

**Article 7.** (1) (Previous Article 7, SG No. 27/2011) Discussions in connection with the dispute shall be confidential. The participants in a mediation process shall be bound by the obligation to respect the

confidentiality of all circumstances, facts and documents as have come to the knowledge thereof in the course of the process.

(2) (New, SG No. 27/2011) Mediators may not be interrogated as witnesses regarding circumstances which have been confided to them by mediation participants and which are relevant to the resolution of the dispute that is the subject of the mediation, unless having received the explicit consent of the confiding party.

(3) (New, SG No. 27/2011) An exception to mediation confidentiality is allowed where:

1. this is necessary for the purposes of criminal proceedings or in relation to the protection of public order;
2. this is required in order to ensure the protection of the best interests of children or to prevent harm to the physical or psychological integrity of a person; or
3. disclosure of the content of the agreement resulting from mediation is necessary in order to implement or enforce that agreement.

## Chapter Three

### LEGAL STATUS OF MEDIATOR

#### General Eligibility Requirements

**Article 8.** (Amended, SG No. 86/2006) A mediator may be only a legally capable person who meets the following requirements:

1. has not been convicted for criminal offenses at public law;
2. has successfully undergone a course for mediators
3. has not been deprived of the right to exercise a profession or conduct an activity;
4. (Supplemented, SG No. 9/2011) has a permit for long-term or permanent residence in the Republic of Bulgaria, in the event the person is a foreign national;
5. has been entered in the Uniform Register of Mediators with the Minister of Justice

(2) (Effective as from the date of entry into force of the Treaty concerning the Accession of the Republic of Bulgaria to the European Union) The requirement under paragraph 1, item 4 does not apply to nationals of member-states of the European Union, the other states from the European Economic Area and Switzerland.

(3) The Minister of Justice shall issue a certificate to the mediator ascertaining his/her entering in the Uniform Register of Mediators.

(4) The Minister of Justice shall approve by issuing an order the organizations which deliver training to mediators. The terms and conditions for their approval, as well as the requirements for mediation training are to be defined in an ordinance of the Minister of Justice.

(5) In the event a person, applying for mediator and an organization, applying to deliver training for mediators, do not meet the statutory requirements, the Minister of Justice shall issue an order to refuse, respectively approve, their entering in the Uniform Register of Mediators. The order may be appealed before the Supreme Administrative Court following the procedure of the Administrative Procedure Code.

#### Uniform Register of Mediators

**Article 8a.** (New, SG No. 86/2006) (1) The Minister of Justice creates and maintains the Uniform Register of Mediators

(2) The following is entered in the Uniform Register of Mediators:

1. name, personal identification number (personal number of a foreign national), citizenship, education, profession, additional specialization in the field of mediation, the organization which has trained the mediator, foreign language skills, address and telephone for contacts and number of the mediator;
2. deletion and striking off the mediator;
3. the organization where the mediator was trained
4. changes in the circumstances under Article 8, paragraph 1, item 1, 3 and 4.

(3) The Uniform Register of Mediators is public.

(4) A person entered in the Uniform Register of Mediators shall declare in writing to the Minister of Justice any changes in the circumstances, subject to entering in the Register, within 14 days after they occur.

(5) When a requirement of Article 8, paragraph 1, item 1, 3 and 4 is no longer met, the Minister of Justice issues an order for deletion of the mediator in the Uniform Register of Mediators. The order may be appealed before the Supreme Administrative Court following the procedure of the Administrative Procedure Code.

(6) The procedure for entering in, striking off and deletion from the Uniform Register of Mediators is determined by the ordinance as per Article 8, paragraph 4.

(7) The information under paragraph 2, item 1 concerning the personal identification number (personal number of a foreign national) shall be submitted under the terms and conditions provided for by the Personal Data Protection Act.

## **Fees**

**Article 8b.** (New, SG No. 86/2006) The Ministry of Justice shall charge a fee for entering in the Uniform Register of Mediators and for approval of organizations which train mediators, to an amount set with a tariff, adopted by the Council of Ministers.

## **Rules of Mediator Conduct**

**Article 9.** (1) (Supplemented, SG No. 86/2006) A mediator shall act in good faith in compliance with the law, good morals, and the procedural and ethical rules of mediator conduct. These rules shall be determined in the ordinance under Article 8, paragraph 4

(2) A mediator shall accept to conduct the procedure solely if able to guarantee his or her own independence, impartiality and neutrality.

## **Mediator's Obligations and Liability**

**Article 10.** (1) A mediator may not give legal advice.

(2) During the process, a mediator shall be obligated to comply with the opinion of each of the disputants.

(3) A mediator shall withdraw from the process upon occurrence of any circumstances as would cast doubt on the independence, impartiality and neutrality thereof.

(4) A mediator may not communicate to the other participants in the process any circumstances concerning solely one of the disputants without the consent of the said disputant.

(5) A mediator shall not be liable if the parties fail to reach a settlement.

(6) A mediator shall not be liable for non-performance of the agreement.

## **Chapter Four**

### **MEDIATION PROCESS**

#### **Initiation of Process**

**Article 11.** (1) A mediation process shall commence on the initiative of the disputants, with each of the said disputants having the right to propose resolution of the dispute through mediation.

(2) (New, SG No. 27/2011) The beginning of a mediation process shall be the date on which the parties have reached an explicit agreement to commence such a process, and when no explicit agreement is available the beginning of the mediation process shall be the date of the first meeting of all participants with the mediator.

(3) (Renumbered from Paragraph 2, SG No. 27/2011) A proposal for resolution of the dispute through mediation may furthermore be made by the court or another competent authority whereto the dispute has been referred for settlement.

(4) (Renumbered from Paragraph 3, SG No. 27/2011) The consent of the parties to resolution of a possible future dispute therebetween through mediation may furthermore be stipulated as a clause of a contract.

Effect of the mediation process beginning on the limitation period

**Article 11a.** (New, SG No. 27/2011) No limitation period shall run while the mediation process is ongoing.

## **Participants**

**Article 12.** (1) A mediation process shall be implemented by one or more mediators selected by the parties.

(2) (Supplemented, SG No. 86/2006) The disputants shall participate in the process personally or through a representative. Authorization shall be made in writing.

(3) Lawyers, as well as well as other specialists, may likewise participate in a mediation process.

## **Mediator's Steps**

**Article 13.** (1) Prior to conduct of the process, the mediator shall inform the parties of the essence of mediation and of the consequences thereof and shall require the written or oral consent of the said parties to participation.

(2) (Amended, SG No. 27/2011) The mediator shall be obligated to indicate all circumstances as may give rise to reasonable doubt in the parties as to the impartiality and neutrality of the mediator, including the cases when the mediator is a person:

1. who is a spouse or a relative in a direct line to an unlimited degree and collaterally up to and including the fourth degree, or to the third degree of affinity, of any of the parties or their representatives;
2. who lives in de facto marital cohabitation with any party to the dispute that is the subject of the mediation;
3. who has been a representative or an agent of any party to the dispute that is the subject of the mediation;
4. in respect of whom there are other circumstances that cause reasonable doubt as to the mediator's impartiality.

(3) (New, SG No. 27/2011) A mediator shall sign a statement of impartiality for each process which has been assigned to him/her and shall present it to the parties to the dispute. The statement of impartiality shall contain, inter alia, a reference to the circumstances under Paragraph 2.

(4) (Renumbered from Paragraph 3, SG No. 27/2011) In the course of the process, the essence of the dispute shall be clarified, the mutually acceptable options of solutions shall be specified, and the possible framework of an agreement shall be outlined.

(5) (Renumbered from Paragraph 4, SG No. 27/2011) Upon performance of the said steps, the mediator may schedule separate meetings with each of the parties, with due respect for the equal rights thereof to participation in the process.

### **Grounds for Suspension of Process**

**Article 14.** (1) Mediation shall be suspended:

1. by common agreement between the parties, or at the request of one of the parties;
2. upon the death of the mediator;
3. in the cases provided for in Article 10 (3) herein.

(2) (Supplemented, SG No. 86/2006) If mediation is conducted while a proceeding is pending, the parties shall forthwith inform the competent authority of the suspension of the mediation process.

### **Grounds for Termination of Process**

**Article 15.** (1) A mediation process shall be terminated:

1. upon reaching a settlement;
2. by mutual agreement between the parties;
3. upon withdrawal of one of the parties;
4. upon the death of a disputant;
5. upon dissolution of a disputant if a legal person.
6. (new, SG No. 27/2011) upon expiration of 6 months from the beginning of the process.

(2) The agreement of the parties to the termination of the dispute must be expressed clearly and unequivocally.

(3) Upon termination of a mediation process, a pending proceeding that has been suspended shall be resumed in accordance with the provisions of the law.

## **Chapter Five**

### **AGREEMENT**

#### **Form and Content**

**Article 16.** (1) (Previous Article 16, supplemented, SG No. 27/2011) The form and content of the agreement shall be determined by the parties. The form may be oral, written, or written with a notarization of the parties' signatures. A written agreement shall state the place and date whereat the said agreement was reached, the names of the parties and the addresses thereof, the points of agreement, the name of the mediator, and the date under Article 11(2) and shall bear the signatures of the parties.

(2) (New, SG No. 27/2011) The parties may include a liability clause in the agreement governing any cases of defaulting on the obligations laid down therein.

### **Effect of Agreement**

**Article 17.** (1) The agreement shall be binding solely on the disputants and may not be held adverse to any persons who did not participate in the process.

(2) (Amended, SG No. 86/2006) The agreement shall be binding on the parties solely in respect of the points of agreement therebetween.

(3) (New, SG No. 86/2006) Null shall be an agreement which contradicts or evades the law, as well as an agreement which is in conflict with the morals.

### **Making an agreement enforceable**

**Article 18.** (New, SG No. 27/2011) (1) Any agreement concerning a legal dispute within the meaning of Article 1 of this Act reached in a mediation process shall have the effect of a court settlement and shall be subject to approval by regional courts in Bulgaria.

(2) The competent court shall approve the agreement, once acknowledged by the parties, if it does not contradict the law or the principles of morality. The court shall hear the opinion of the prosecutor, if the latter is involved as a party to the process.

## **ADDITIONAL PROVISION** **(New, SG No. 27/2011)**

**§ 1.** (New, SG No. 27/2011) Within the meaning of this Act, a "cross-border dispute" shall be:

1. One in which at least one of the parties is domiciled or habitually resident in a Member State other than that of any other party on the date on which:

(a) the parties agree to use mediation after the dispute has arisen; or

(b) an invitation is made to the parties by a court to which the case has been referred to the effect that they are to use mediation for resolving the dispute.

2. One in which judicial proceedings or arbitration following mediation between the parties are initiated in a Member State other than that in which the parties were domiciled or habitually resident on the date referred to in paragraph 1.

For the purposes of paragraphs 1 and 2, domicile shall be determined in accordance with Articles 59 and 60 of Regulation (EC) No 44/2001 of 22 December 2000 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters.

## **TRANSITIONAL AND FINAL PROVISIONS**

**§ 1a.** (Renumbered from § 1, SG No. 27/2011) Within six months after the entry of this Act into force, the Minister of Justice shall adopt mediator training standards, Procedural and Ethical Rules of Mediator Conduct, and shall establish and maintain a Uniform Register of Mediators.

**§ 2.** The implementation of this Act shall be entrusted to the Minister of Justice.

This Act was passed by the 39th National Assembly on the second day of December in the year two thousand and four, and the Official Seal of the National Assembly has been affixed thereto.

TRANSITIONAL AND FINAL PROVISIONS to the Amendment and Supplement Act to the Mediation Act

(SG No. 86/2006)

§ 7. The persons who have been entered in the Uniform Register of Mediators have to ascertain with the due documents before the Ministry of Justice, within 6 months of the coming of this act into effect, that they meet the requirements of Article 8, paragraph 1, item 1, 3 and 4. The same term applies for filing of applications for entering in the Register of Mediators of persons who meet the requirements of Article 8, paragraph 1, item 1 - 4 and who have been trained as mediators in the country or abroad prior to the entering of this act in effect.

§ 8. The Minister of Justice shall issue the ordinance under Article 8, paragraph 4 within three months after the entering of this act in effect.

§ 9. The Council of Ministers shall adopt the tariff under Article 8b within three months after the entering of this act in effect.

§ 10. Paragraph 1 concerning Article 8, paragraph 2 shall enter into effect as of the date of accession of the Republic of Bulgaria to the European Union.

ADDITIONAL PROVISION to the Amendment and Supplement Act to the Mediation Act

(SG No. 27/2011)

§ 11. This Act transposes the requirements laid down in Directive 2008/52/EC of the European Parliament and of the Council of 21 May 2008 on certain aspects of mediation in civil and commercial matters (OJ L 136/3, 24.5.2008)