

# **MEDIATION ACT**

*Prom. SG. 110/17 Dec 2004, amend. SG. 86/24 Oct 2006, amend. SG. 9/28 Jan 2011, amend. SG. 27/1 Apr 2011*

## **Chapter one. GENERAL PROVISIONS**

### **Scope of Application**

Art. 1. This Act shall regulate the relations connected with mediation as an alternative way of settlement of legal and non-legal disputes.

### **Concept of mediation**

Art. 2. Mediation shall be voluntary and confidential proceedings of out-of-court settlement of disputes whereas a third person – mediator assists the disputing parties to achieve settlement.

### **Subject of mediation**

Art. 3. (1) (suppl. - SG 27/11) Subject of mediation may be civil, commercial, labour, family and administrative disputes related to rights of consumers and another disputes between natural and/or legal persons, including transboundary.

(2) Mediation shall be performed as well as in the cases envisaged in the Penal Procedure Code.

(3) Mediation shall not be performed if by law or another legislation act a different way of settlement is stipulated.

### **Organisation of mediation**

Art. 4. Mediation shall be performed by natural persons. These persons may unite on order to perform the activity. Persons performing functions of jurisdiction within the system of the judicial authorities may not perform activity of mediation.

## **Chapter two. PRINCIPLES OF MEDIATION**

### **Voluntary and equality**

Art. 5. The parties shall have equal opportunities to participate in the mediation procedure. They participate voluntarily and may adjourn at any time.

### **Neutrality and impartiality**

Art. 6. (1) The mediator shall not demonstrate partiality and shall not impose a settlement of the dispute.

(2) All questions shall be settled amicably within the mediation procedure.

### **Confidentiality**

Art. 7. (1) (prev. text of Art. 07 - SG 27/11) The debates arising from the dispute shall be confidential. The participants in the mediation procedures shall keep in secret all circumstances, facts and documents which became known to them with the curse of procedure.

(2) (new - SG 27/11) The mediator may not be questioned as a witness regarding the circumstances disclosed to him by the participants and relevant for deciding on the dispute subject to the mediation, except with the explicit consent by the participant, who has disclosed them to him.

(3) (new - SG 27/11) Exceptions to the confidentiality of the mediation shall be allowed in the cases, where:

1. this is necessary for the needs of the penal proceedings or related to the protection of the public order;
2. there is need to ensure protection of children interests or prevent impingement on the corporal or mental inviolability of a certain person, or
3. the disclosure of the contents of an agreement, achieved as a result from mediation, is necessary to enforce and perform the said agreement.

### **Chapter three.**

## **LEGAL STATUS OF THE MEDIATOR**

### **General Requirements**

Art. 8. (amend. – SG 86/06) (1) Mediator may be only a legally capable person who meets the following requirements:

1. has not been convicted for crimes of general nature;
2. has graduated a training course for a mediator;
3. is not deprived of right to exercise a profession or activity;
4. (suppl. – SG 9/11) has a permission for permanent or long term residence in the Republic of Bulgaria, if the person is a foreign citizen;
5. is inscribed in the Unified Register of Mediators to the Minister of Justice.

(2) (In force from 01.01.2007) The requirement under para 1, item 4 shall not apply to citizens of the Member States of the European Union, of the other countries of the European Economic Area and of Switzerland.

(3) The Minister of Justice shall issue a certificate to the mediator for his/her entry in the Unified Register of Mediators.

(4) The Minister of Justice shall approve by an order the organizations, who train mediators. The terms and the manner of their approval, as well as the requirements for the training of mediators shall be set forth by an ordinance of the Minister of Justice.

(5) In case the person – candidate mediator, and the organization, applying for training mediators, do not meet the legal requirements, the Minister of Justice shall refuse by an order the entry in the Unified Register of Mediators, respectively the approval. The order may be subject to appeal before the Supreme administrative court following the procedure of the Administrative procedure code.

### **Unified Register of Mediators**

Art. 8a. (new – SG 86/06) (1) The Minister of Justice shall create and maintain Unified Register of Mediators.

(2) In the Unified Register of Mediators shall be indicated:

1. name, unified civil number (personal number of foreigner), citizenship, education, profession, additional specialisation in the sphere of mediation, the organization, where the person has been trained, command of foreign languages, address and telephone for contact and number of the mediator;
2. deletion and write-off of the mediator;
3. the organization where the mediator has been trained;
4. changes in the circumstances under art. 8, para 1, items 1, 3 and 4;

(3) The Unified Register of Mediators shall be public.

(4) A person, who has been entered in the Unified Register of Mediators, shall announce in writing before the Minister of Justice any changes in the circumstances subject to entry in 14-days term from their occurrence.

(5) Where some of the requirements under art. 8, para 1, item 1, 3 and 4 drops out, the Minister of Justice shall issue an order, with which deletes the mediator from the Unified Register of Mediators. The order may be subject to appeal before the Supreme administrative court following the procedure of the Administrative procedure code.

(6) The manner of entry, write-off and deletion in the Unified Register of Mediators shall be determined by the ordinance under art. 8, para 4.

(7) The information under para 2, item 1 for the unified civil number (personal number of foreigner) shall be provided under the conditions of the Protection of Personal Data Act.

### **Fees**

Art. 8b. (new – SG 86/06) The Ministry of Justice shall collect fee for entry in the Unified Register of Mediators and for approving the organizations, which train mediators, in amount, determined by a tariff, adopted by the Council of Ministers.

### **Rules of behaviour of the mediator**

Art. 9. (1) (suppl. – SG 86/06) The mediator shall perform his activity diligently and observing the law, good morals, the proceedings and ethic rules of behaviour of the mediator. These rules shall be set forth by the ordinance under art. 8, para 4.

(2) The mediator shall accept to conduct the procedure only if he can guarantee his independence, impartiality and neutrality.

### **Obligations and responsibilities of the mediator.**

Art. 10. (1) The mediator shall not provide legal advices.

(2) During the procedure the mediator shall observe the position of each of the disputing parties.

(3) The mediator shall leave the procedure if circumstances generating doubt in his independence, impartiality and neutrality arise.

(4) The mediator may not announce to the other participants in the procedure circumstances which concern only one of the disputing parties without the consent of the party.

(5) The mediator shall not be responsible if parties do not achieve settlement.

(6) The mediator shall not be responsible for settlement being not executed.

## **Chapter four. MEDIATION PROCEDURE**

### **Opening of the procedure**

Art. 11. (1) The mediation procedure shall start by initiative of the disputing parties and each of them may make proposal for the settlement of the dispute by way of mediation.

(2) (new - SG 27/11) The commencement of the mediation procedure shall be deemed the day, in which the parties have explicitly agreed on its commencement, and where such agreement lacks - the day of the first meeting of all participants with the mediator.

(3) (prev. text of Para 02 - SG 27/11) Proposal to settle the dispute by way of mediation may be made as well by the court or other competent body to which the dispute have been referred to for settlement.

(4) (prev. text of Para 03 - SG 27/11) The consent of the parties to settle a future dispute by way of mediation may be set as a clause of an agreement.

### **Effect of the commencement of the mediation to limitation periods**

Art. 11a. (new - SG 27/11) No limitation period shall lapse during the mediation procedure.

## **Participants**

Art. 12. (1) A mediation procedure shall be performed by one or more mediators appointed by the parties.

(2) (suppl. – SG 86/06) The disputing parties shall participate in person or by e representative. The authorization shall be carried out in writing.

(3) In the mediation procedure may also participate attorneys-at-law as well as other experts.

## **Actions of the mediator**

Art. 13. (1) Before conduction of the procedure, the mediator shall inform the parties regarding the nature of the mediation and the consequences of it and shall require their written or oral consent for participation.

(2) (amend. - SG 27/11) The mediator shall envisage all circumstances which mat generate to the parties reasonable doubt concerning his impartiality and neutrality, including where the mediator is a person:

1. is a spouse or relative of direct lineage without restriction, of peripheral lineage up to fourth degree or relative-in-law up to third degree to any of the parties or its representative;

2. in cohabitation with a party to the dispute subject to mediation;

3. who has been a representative or proxy of a party to the dispute subject to mediation;

4. in respect of which there are other circumstances causing reasoned doubt to his impartiality.

(3) (new - SG 27/11) The mediator shall sign an impartiality declaration indicating the circumstances referred to in Para 2 for each procedure he is assigned to, and shall hand them to the disputing parties.

(4) (prev. text of Para 03 - SG 27/11) In the curse of the procedure the substance of the dispute shall be clarified, and amicably acceptable variants of settlements shall be clarified and the possible frame of agreement shall be drafted.

(5) (prev. text of Para 04 - SG 27/11) During the described actions the mediator may arrange separate meetings with each of the parties under observing their equal rights for participation in the procedure.

## **Grounds for suspended the procedure**

Art. 14 (1) The mediation shall be suspended:

1. by a mutual consent of the parties or by e request of one of the parties;

2. in case of death of the mediator;

3. in the cases envisaged in Art. 10, Para 3.

(2) (suppl. – SG 86/06) If the mediation is being performed during pending proceedings, the parties shall notify immediately the competent body of the suspension of the mediation procedure.

## **Grounds for dismissing the procedure**

Art. 15 (1) The mediation procedure shall be dismissed:

1. with the achievement of agreement;

2. by the mutual consent of the parties;

3. in case of abandoning of the claim by one of the parties;

4. in case of death of a disputing party;

5. in case of dissolution of legal person – a disputing party;

6. (new - SG 27/11) upon expiration of 6 months from the beginning of the proceedings.

(2) The consent of the parties on the dismissing of the dispute shall be expressed clearly and unambiguously.

(3) If the mediation procedure is dismissed, the pending procedure which had been discontinued, shall be renewed following the stipulations of the law.

## **Chapter five.**

## **AGREEMENT**

### **Form and content**

Art. 16. (1) (prev. text of Art. 16, suppl. - SG 27/11) The content and the form of the agreement shall be defined by the parties. The form may be oral, written and written with notary certification of the signatures of the disputing parties. The written agreement shall contain the place and the data on which it is achieved, the names of the parties and their addresses, what they do agree upon, the name of the mediator, the date referred to in Art. 11, Para 2 and the signatures of the parties.

(2) (new - SG 27/11) In the agreement the parties may provide for liability for failure to perform the obligations provided for therein.

### **Effect of the agreement**

Art. 17. (1) The agreement shall bind the disputing parties only and may not be pleaded against third persons who have not participated in the procedure.

(2) (amend. – SG 86/06) The agreement shall bind the parties only for this for what they have agreed upon.

(3) (new – SG 86/06) An agreement, which contradicts or circumvents the law or infringes good morals, shall be invalid.

#### **Enforceability of the agreement**

Art. 18. (new - SG 27/11) (1) An agreement on a legal dispute in the sense of Art. 1 of the Act, achieved in the mediation proceedings, shall have the effect of a legal agreement and shall be subject to approval by the district courts in the country.

(2) The court shall approve the agreement after its confirmation by the parties, if not in breach of the law or the bona fide. The court shall hear the opinion of the prosecutor, if he has participated as a party to the case.

## **Additional provisions**

§ 1. (new - SG 27/11) In the sense of this Act "transboundary dispute" means also:

1. A dispute to which at least one of the parties has its residence or usual residence in a Member State other than the Member State of the residence or the usual residence of any of the other parties at the date, on which:

- a) the parties have achieved an agreement to use the mediation after the initiation of the dispute, or
- b) the parties have been invited by the court hearing the lawsuit to use mediation to settle the dispute.

2. Any dispute, in which following a mediation between the parties have been initiated judicial proceedings or arbitration in a Member State other than the one, in which the parties have their residence or usual residence at the date, referred to in Item 1.

For the purpose of Items 1 and 2 the residence shall be determined in compliance with Art. 59 and 60 of Council 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 concluding provisions**

§ 1a. (prev. text of § 1 - SG 27/11) Within 6 month period from this Act becomes effective, the Minister of the Justice shall adopt Standards of Training of Mediator, Procedure and Ethic Rules of Behaviour of the Mediator and shall establish and maintain Unified Register of the Mediators.

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

This Act is adopted by the XXXIX National Assembly on the 2nd of December 2004 and is affixed with the official seal of the National Assembly.

**Transitional and concluding provisions**  
**TO THE ACT ON AMENDMENT AND SUPPLEMENT TO THE MEDIATION ACT**  
**Transitional and concluding provisions**  
**TO THE LAW FOR AMENDMENT AND SUPPLEMENT TO THE LAW ON MEDIATION**

(PROM. – SG 86/06)

§ 7. In 6-months term from the entry into force of this Act the persons, who have been entered in the Unified Register of Mediators, shall certify by the respective documents at the Ministry of Justice that they meet the requirements of art. 8, para 1, items 1, 3 and 4. Within this term the persons, who satisfy the requirements under art. 8, para 1, items 1 – 4 and have been trained for mediators in the country or abroad prior to the entry into effect of this Act, may also submit applications for entering in the Unified Register of Mediators.

§ 8. The Minister of Justice shall issue the ordinance under art. 8, para 4 in three months term from the entry into force of this Act.

§ 9. The Council of Ministers shall adopt the tariff under art. 8b in three months term from the entry into force of this Act.

§ 10. Paragraph 1 concerning art. 8, para 2 shall enter into force from the date of entry into effect of the Treaty of Accession of the Republic of Bulgaria to the European Union.

**Transitional and concluding provisions**  
**TO THE ACT ON AMENDMENT AND SUPPLEMENTATION TO THE MEDIATION ACT**

(PROM. – SG 27/11)

§ 11. This Act transposes the requirements of 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 , 24/05/2008)