

Act LV of 2002

on Mediation

In order to facilitate the out-of-court settlement of civil disputes, Parliament has adopted the following Act:

Chapter I

GENERAL PROVISIONS

Objective

Section 1.

(1) The objective of this Act is to offer an alternative for natural and other persons to settle their disputes arising in connection with personal and property rights where the parties are not bound by statutory provision.

(2) This Act shall not apply to other mediation and conciliation proceedings governed under specific other legislation, nor to mediation within an arbitration proceeding.

(3) Mediation under this Act shall not be applied in cases governed under Chapters XVI-XVIII, XX, XXI, XXIV and XXV of Act III of 1952 on the Code of Civil Procedure (hereinafter referred to as 'CPC'). The cases governed under Chapter XV of the CPC can only be resolved by court decision in terms of the validity, the existence or non-existence of a marriage as well as the annulment or dissolution of a marriage.

Mediation Defined

Section 2.

Mediation is a special non-litigious procedure conducted according to this Act to provide an alternative to court proceedings in order to resolve conflicts and disputes where the parties involved voluntarily submit the case to a neutral third party (hereinafter referred to as 'mediator') in accordance with Subsection (1) of Section 1 in order to reach a settlement in the process and lay the ensuing agreement down in writing.

Responsibilities of Mediators

Section 3.

Mediators shall be responsible for mediating negotiations between the parties to the best of their abilities in an unbiased and conscientious manner in order to reach an agreement in conclusion of the process.

Chapter II

MEDIATORS

Register of Mediators, Requirements and Conditions

Section 4.

The Ministry of Justice (hereinafter referred to as 'Ministry') shall maintain a register of mediators (hereinafter referred to as 'register'), also containing the names of legal persons and unincorporated business associations employing mediators (hereinafter referred to as 'legal persons').

Section 5.

(1) Upon request any natural person who satisfies the following criteria must be admitted to the register:

- a) have a degree in higher education and at least five years experience in the respective field,
- b) have no prior criminal record,
- c) to whom Subsection (2) does not apply and for whom there are no other legal reasons for disqualification.

(2) No natural person who is under guardianship or conservatorship or who is otherwise incapacitated can be admitted to the register [Subsection (1) of Section 14, Subsection (1) of Section 15 and Section 17 of Act IV of 1959 on the Civil Code (hereinafter referred to as 'Civil Code')].

(3) Upon request any legal person who satisfies the following criteria must be admitted to the register:

- a) have the activity of mediation registered in the charter document, and
- b) have a member, employee or subcontractor who is licensed to engage in professional mediation (hereinafter referred to as 'employee') and whose license to engage in professional mediation has not been suspended.

The Register

Section 6.

(1) The register shall contain

- a) the natural person's surname and forename,
- b) the natural person's date and place of birth and mother's name,
- c) the number of the natural person's diploma or certificate in proof of his education or qualification, the date of issue and degree of the diploma or certificate, and the duration of experience in the respective field,
- d) the date of admission into the register and the number of the relating resolution,
- e) the date of commencement, suspension and termination of mediation activities,
- f) the foreign language indicated by the natural person in which he is able to conduct mediation procedures,

- g) the natural person's field of expertise, as indicated in the application,
- h) office address,
- i) the address of the legal person indicated by the natural person in whose employment he is engaged in professional mediation or the address of the location in which he conducts mediation activities if it differs from the registered address of the legal person,
- j) the natural person's office contact (mailing address, phone and fax numbers and e-mail address),
- k) the natural person's residential address (mailing address, phone and fax numbers and e-mail address),
- l) the natural person's work address (mailing address, phone and fax numbers and e-mail address),
- m) membership in a professional association, including the name of the association, and
- n) the number of the natural person's mediator license.

(2) The register shall also contain

- a) the legal person's name,
- b) the legal person's corporate headquarters,
- c) the name of the court or other authority where the legal person is registered (hereinafter referred to collectively as 'authority') and the registration number,
- d) the particulars listed under Subsection (1) of the legal person's employee referred to in Paragraph b) of Subsection (3) of Section 5,
- e) the address of the location in which it conducts mediation activities if it differs from the registered address of the legal person, and
- f) the date of admission into the register and the number of the relating resolution.

(3) With the exceptions set out in Paragraphs b), k) and l) of Subsection (1) of Section 6, the register is treated as public information, accessible on the Ministry's website.

(4) The Ministry shall also publish the public information specified in legal regulation in the Legal Journal [Igazságügyi Közlöny].

Section 7.

(1) Natural persons and the employees of legal persons shall become entitled to engage in professional mediation as of the date on which the natural person or the legal person is officially admitted in the register.

(2) Professional mediation may only be performed by employees of legal persons who have been admitted in the register.

(3) The employee of a legal person licensed to engage in professional mediation shall not accept any instructions with respect to such activities from any member or executive officer of the legal person.

Application for Registration

Section 8.

(1) Applications for registration shall be submitted to the Ministry.

(2) All applications must contain the information listed under Subsections (1) and (2) of Section 6, save the ones listed in Paragraphs d), e) and n) of Subsection (1) of Section 6 and in Paragraph f) of Subsection (2) of Section 6. Documents to verify the requirements set out in Paragraphs c), f) and m) of Subsection (1) of Section 6 as well as the registration of the legal person shall be attached with the application (certificate of incorporation issued within the previous three months and the charter document or official copies of these).

(3) The Ministry shall invite any applicant whose application is incomplete to supply the missing information within 30 days, in which case the deadline specified in Subsection (1) of Section 22 shall be extended accordingly.

(4) The Minister of Justice shall reject the application if, on the basis of the data and information supplied therein, the applicant may not be admitted to the register for lacking the requirements set out by law or if the applicant failed to supply any missing information within the time limit referred to in Subsection (3).

Section 9.

(1) Upon admission of a mediator in the register, the Ministry shall issue a license to certify that the person in question is authorized to act as a mediator.

(2) The license of a natural person who is admitted in the register as an employee of a legal person shall also contain the name of the legal person in question.

Suspension of Mediation Activities

Section 10.

(1) Natural persons shall be allowed to suspend their activities as mediators.

(2) A natural person wishing to suspend his activities shall notify the Ministry 30 days in advance to record the suspension in the register.

(3) A natural person may apply for suspension only if he is not currently engaged in any ongoing mediation process.

(4) The Ministry shall indicate the termination of suspension in the register when so notified by the natural person in question.

Cancellation from the Register

Section 11.

(1) A natural person shall be removed from the register if

- a) the requirements set out in Subsection (1) of Section 5 cease to be satisfied following admission to the register or if it is discovered subsequently that they did not exist at the time of admission,
- b) permanently disabled to fulfill the duties of a mediator,
- c) ordered to be removed by the Minister of Justice,
- d) requested by the natural person himself, or
- e) he dies.

(2) A legal person shall be removed from the register if

- a) ordered by the authorities,
- b) the requirements set out in Subsection (3) of Section 5 are no longer satisfied,
- c) the mediation activities of all employees licensed to engage in professional mediation are suspended,
- d) ordered to be removed by the Minister of Justice,
- e) requested by the legal person itself.

(3) A natural person or a legal person may request to be removed from the register only if not currently engaged in any ongoing mediation process.

Section 12.

(1) A natural person or a legal person, once removed from the register, shall conclude any ongoing mediation process within eight days following receipt of the resolution therefor and shall settle accounts with the parties involved.

(2) The Ministry shall revoke the mediator license of a natural person within eight days following delivery of the resolution on his removal from the register, and the natural person affected shall surrender the license upon the Ministry's request.

Mediators' Obligation to Participate in Further Training, Report Changes, Keep Records and Supply Data

Section 13.

Natural and legal persons shall be required to report any and all changes in their particulars as registered to the Ministry within 15 days of the effective date of such changes.

Section 14.

(1) All mediators (or the legal persons employing mediators) shall be required to keep records of all mediation processes, each case numbered in sequence in chronological order beginning at the first of the year.

(2) The records shall indicate

a) the date when the mediation process commenced,

b) the name (corporate name) and residence (corporate) address of the parties and the nature of the dispute,

c) the date of signing the agreement if the mediation process was successful or the date of termination of the mediation process if it was unsuccessful,

d) whether a legal representative (attorney in fact) took part in the process and, if yes, the name and contact information of such legal representative, and

e) the amount of fees and expenses charged in the process.

Section 15.

All mediators (or the legal persons employing mediators) shall be required to disclose information to the Ministry by 31 January on the number of mediation processes conducted during the previous year, the number of agreements reached, the number of unsuccessful processes (with the reasons indicated) and the types of disputes.

Section 16.

In the event the Ministry discovers any discrepancies in connection with reporting changes, keeping records or with data disclosure obligations during its routine inspection, the Ministry shall order the party concerned to remedy the situation within 30 days. This deadline may be extended once by an additional 30 days.

Chapter III

CONTROL OF MEDIATORS

Inspections

Section 17.

(1) The Ministry shall have powers to conduct scheduled or random inspections ex officio or at the request of one of the persons affected by a mediation process (the parties, an expert or other third persons heard in the mediation process) to control the operations of registered natural and legal persons (on this Chapter hereinafter referred to as 'mediator') related to mediation.

(2) The Ministry shall notify the mediator in writing concerning the inspection.

Where an inspection is conducted pursuant to a report, the Ministry shall attach a copy of the report with the notification and invite the mediator to submit a statement of verification within 30 days. This deadline may be extended once by an additional 30 days.

(3) The mediator's failure to submit a statement of verification shall have no bearing on carrying out the procedure.

Section 18.

(1) The inspection shall be conducted by an employee of the Ministry as designated in its Organizational and Operating Regulations (hereinafter referred to as 'investigating officer').

(2) Any person who

a) is not qualified to act as a mediator [Subsection (1) of Section 25],

b) is an employee or director of the same legal person that employs the mediator under investigation or is employed by a legal person that is affiliated with the legal person that employs the mediator under investigation or with any other party involved (Civil Code, Section 685/B), and

c) is a relative of the mediator under investigation (or of the member, employee or executive of the legal person involved) (Civil Code, Paragraph b) of Section 685].

may not function as an investigating officer.

(3) The investigating officer must immediately report the existence of any grounds for his disqualification.

Section 19.

(1) When an investigation is conducted upon request, the mediator (or the employee acting as a mediator in the name of a legal person) and, if necessary, the director of the legal person must be granted a personal audience. In ex officio proceedings, the mediator must be granted a personal audience at his request.

(2) The investigating officer shall file a report on the personal interview, which is to be signed by the mediator, the investigating officer and the recorder.

(3) The mediator shall have the right to involve a legal representative in the investigation proceedings. The mediator and legal representative shall have the right to inspect the documents at any time.

(4) If the mediator fails to appear in the personal interview and fails to offer a proper excuse, the investigating officer shall conduct the proceeding. If the mediator offers a proper excuse, the investigating officer shall reschedule the hearing and notify the mediator in writing accordingly. If the mediator once again fails to appear at the personal interview, whether excused or not, the investigating officer shall conduct the proceeding.

Section 20.

(1) Upon conclusion of the investigation, the investigating officer shall forward the case to the Minister of Justice to tender a decision.

(2) If the investigation finds no proof of any breach of duty, the Minister of Justice shall terminate the proceeding.

(3) If according to the findings of the investigation the mediator is found guilty of negligence or breach of duty, the Minister of Justice shall warn the mediator to abide by the relevant statutory provisions.

(4) Any mediator who is found guilty of repeated or severe violation of his legal obligations or who fails to abide by the relevant statutory provision after warning shall be removed from the register by order of the Minister of Justice.

Section 21.

If a legal person is removed from the register by order of the Minister of Justice, the Ministry shall notify the natural person employed by the legal person in question as a mediator, who is otherwise not affected by the investigation, that, in order to remain in the register following the cancellation of the legal person and to continue to engage in professional mediation, he is required to notify the Ministry within 30 days concerning

a) the name of the organization to which he intends to transfer as a member or employee to continue his activities, or

b) his intention to carry on as a natural person, or

c) his request to suspend the activities.

Remedy

Section 22.

(1) The Minister of Justice shall adopt a resolution as to whether to approve or reject an application for admission in the register, and on the registration of changes within 30 days from the date of submission of the application, or within 30 days following receipt of the case under Subsection (1) of Section 20. This deadline may be extended once by an additional 30 days.

(2) The decisions adopted under Subsection (1) may not be appealed; however, natural persons or legal persons may request judicial review of the resolution - with the exception of resolutions pertaining to admission or, at the request of the natural person or the legal person, cancellation - within 30 days following receipt. The court shall resolve such matters in non-litigious proceedings. Unless otherwise provided by law or otherwise implied by the non-litigious nature of the proceedings, the provisions of the CPC shall duly apply to such review proceedings.

(3) The review under Subsection (2) shall be conducted by the Municipal Court of Budapest and shall be resolved within 60 days following submission of the request. The court shall overturn any resolution it finds illegal and, when appropriate, order new proceedings.

Chapter IV

THE MEDIATION PROCESS

Commissioning a Mediator

Section 23.

(1) Upon agreement in the selection of a mediator, the parties shall invite the natural or legal person selected in writing. If necessary, the parties may invite more than one natural person or legal person at the same time.

(2) Upon receipt of the invitation, the legal person shall notify the employee selected to mediate the case.

(3) The invitation shall indicate:

a) the name or corporate name of the parties, their residence or corporate address, or place of abode,

- b) the name of the natural person or the corporate name of the legal person invited to mediate,
- c) the name and address of any representative involved,
- d) the subject of the dispute, and
- e) the foreign language the parties intend to use in the process.

(4) The invitation shall contain the parties' statement of their agreement to seek a resolution for their dispute by way of a mediation process.

Section 24.

(1) The invited natural person or the employee acting in the name of a legal person, following consultation with the director of the legal person, shall communicate his acceptance or rejection in writing within eight days following receipt of the invitation. Acceptance of the invitation shall constitute the right of the invited natural person or the employee acting in the name of a legal person to function as the mediator in the mediation process.

(2) The mediator may not accept the invitation if there is any conflict of interest as specified in Subsection (1) of Section 25 or may reject it if he is unable to accept the invitation for any other reason.

Conflict of Interest

Section 25.

(1) A mediator may not handle a case in which

- a) he represents one of the parties,

b) he is a relative of either party under Paragraph b) of Section 685 of the Civil Code,

c) he is employed by a legal person that is affiliated with either of the parties (Civil Code, Section 685/B),

d) he is employed by either of the parties, whether by contract of employment, under subcontract agreement or by way of membership,

e) he is involved in the case in any other way or if he is biased.

(2) The mediator must notify the parties if he represented either of them within the preceding five years or if he was employed by either of them whether by contract of employment, under subcontract agreement or by way of membership within the preceding five years. Unless otherwise agreed by the parties upon the above-specified notification, the mediator may not handle the case.

(3) Unless otherwise agreed by the parties, a person who participated in a mediation process whether in the capacity of the mediator, a representative or an expert as well as a mediator under suspension in the litigation on the same subject as the mediation process, or originating from the underlying contract or other relationship, may not act as

a) an arbitrator,

b) a representative of either party, or

c) an expert.

Confidentiality

Section 26.

(1) Unless otherwise prescribed by law, mediators must handle any and all data and information obtained in a mediation process in strict confidentiality.

(2) Mediators shall remain under the obligation of confidentiality following termination of professional mediation activities.

Remuneration of Mediators

Section 27.

(1) Mediators shall be entitled to remuneration for their services and shall be compensated for all substantiated expenses; they shall also have the right to request advance payments for fees and expenses.

(2) The fee for any given case shall be subject to negotiation between the parties and the natural person or legal person mediator.

Commencement of the Mediation Process

Section 28.

(1) If the mediator accepts the invitation, he shall send the parties a statement of acceptance, as stipulated in Subsection (1) of Section 24, inviting the parties to the first mediation hearing and informing them of their right to obtain representation.

(2) The representative may be a person of legal age and legal capacity or a legal counsel acting under a power of attorney. The parties or, if the party is a legal person, the authorized representative must appear together in person at the first mediation hearing and for the conclusion of the agreement.

(3) The mediator shall hold the mediation hearing in the place indicated in the register as the official location of mediation activities or at some other location subject to the parties' approval.

Section 29.

Where either of the parties fails to appear in the first mediation session, the mediator shall not start the mediation process.

Section 30.

(1) The mediator in the first mediation session shall inform the parties

a) of the basic principles of mediation and the major stages of mediation negotiations,

b) of the process effectively leading to an agreement,

c) of the costs of the process,

d) of the confidentiality requirement encumbering the mediator and expert who is involved,

e) of the option that parties may agree on the confidentiality to which they are subject,

f) of the mediator's obligation to present only those legal materials and facts that directly pertain to the case, where it is so warranted by the nature of the case,

g) of the contents of Subsection (4) of Section 32 and Subsection (3) of Section 35.

(2) If in the first mediation session the parties invariably request continuation of the mediation process, it shall be recorded in writing signed by both parties and the mediator. This statement shall also contain an agreement between the parties and the mediator on the terms of advances and the payment of the costs and expenses involved in the process, which shall also cover rescission and termination, and it may

also contain the parties' agreement on confidentiality and any other issue they deem necessary.

(3) Unless agreed otherwise, each party shall bear the costs of his participation in the process (e.g., travel) as well as the costs incurred in connection with hearing any person at his request. Unless there is an agreement to the contrary, the parties shall cover the fees and costs of the mediator and the expert, if any, in equal proportions.

Section 31.

(1) Signing the statement referred to in Subsection (2) of Section 30 shall constitute commencement of the mediation process.

(2) Commencement of the mediation process means the discontinuation of the limitation period. Regarding the limitation period, Subsections (1) and (2) of Section 327 of the Civil Code shall apply if the mediation process is successful and Subsection (2) of Section 326 of Civil Code shall apply if not.

The Mediation Process

Section 32.

(1) The mediator shall hear the opinion of both parties in the mediation process and ensure equal treatment for all parties. In this stage, the parties shall present their case supported by any documentary evidence they may have.

(2) Unless otherwise stipulated, the parties shall be required to appear in person in the first and all subsequent mediation sessions.

(3) Subject to agreement of the parties concerned, the mediator may conduct the mediation process with all parties present or by hearing the parties separately.

(4) The mediator may convey any information received from one of the parties to the other party for reply, unless the party supplying the information expressly forbids the mediator to convey it to the other party.

Expert Participation in a Mediation Process

Section 33.

(1) The mediator may request the assistance of an expert subject to approval by the parties. Any person of sufficient expertise in the subject may participate as an expert if accepted by the parties. Experts shall be subject to the same rules regarding conflict of interest and confidentiality as the mediator.

(2) The expert shall communicate his acceptance or rejection in writing to the mediator within eight days following receipt of the invitation, including a statement declaring that he is impartial and unbiased in the case.

(3) The expert shall produce a written opinion upon studying the documents supplied within 30 days following receipt of the invitation. This deadline may be extended once if so agreed by the parties. If permitted by the parties, the expert may also attend mediation sessions.

(4) Experts shall be entitled to remuneration and shall be compensated for expenses.

Involvement of Third Parties in the Mediation Process

Section 34.

At the request of the parties, the mediator may interview other persons in the mediation process who have knowledge of the circumstances of the case.

Conclusion of the Mediation Process

Section 35.

(1) A mediation process is deemed concluded

a) on the day the settlement is signed,

b) on the day on which one of the parties informs the other party and the mediator of his withdrawal from the mediation process,

c) on the day on which the parties unanimously declare in front of the mediator their request to close the mediation process, or

d) after the end of the fourth month following the signing of the statement, unless otherwise agreed by the parties.

(2) The mediator shall record the settlement made in the presence of the parties in the language selected for the mediation process and shall supply a copy of the settlement document to each of the parties. The settlement document shall be signed by the mediator and by the parties at the same time.

(3) Where the mediator of a mediation process is a legal advisor, a notary public or an attorney, the mediator shall not be permitted to prepare a legally binding document on the basis of the written settlement, nor shall he be entitled to endorse such document in his capacity as a legal advisor or attorney.

(4) If the settlement contains any error concerning a name or number, or any calculation error or other similar typographical error, the mediator - if requested by both parties - shall make the necessary corrections within 15 days following receipt of the request.

Section 36.

(1) An agreement made in conclusion of the mediation process shall have no bearing in terms of the parties' right to seek a solution for their dispute in court or by way of arbitration.

(2) Unless otherwise prescribed by law and unless otherwise agreed by the parties, the following shall be inadmissible in court or arbitration proceedings initiated after the mediation process:

a) any statement or recommendation made during the mediation process by a party in connection with a potential solution for the dispute, and

b) any statement of acceptance or disclaimer made by a party in the mediation process.

Section 37.

(1) Upon conclusion of the mediation process, the mediator shall settle accounts with the parties.

(2) The mediator (or the legal person employing the mediator) shall, if required to issue invoices, issue an invoice for fees and expenses (prepayments) or, if not so required, issue a receipt upon payment.

Section 38.

(1) The mediator (or the legal person employing the mediator) shall be required to retain the statement in proof of the commencement of the mediation process, the settlement agreement or the closing statement of an unsuccessful procedure (with the reason indicated) for a period of ten years following conclusion of the procedure.

(2) If requested and paid for by the parties, the mediator may supply simple copies of the documents during the retention period.

Chapter IV

CLOSING PROVISIONS

Entry into Force and Transitional Provisions

Section 39.

This Act shall enter into force on the 90th day following promulgation.

Authorizations

Section 40.

The Minister of Justice is hereby authorized to decree

- a) the rules for issuing mediator licenses and the requirements concerning the content and form of such licenses,
- b) the detailed rules pertaining to the register.

Amendments

Section 41.

(1)

(2)

(3)

Section 42.

Section 43.

Section 44.

After this Act has been in force for two years, the Government shall submit a report to Parliament summarizing the practical experiences of mediation operations, the impact of introducing this facility and whether a mediator training course is necessary.

English translation copyright by KJK-KERSZÖV, 2003