

Austrian Mediation Act *
(Law on Mediation in Civil Law Matters)

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Section I.

General Provisions

Term

Article 1. (1) Mediation is an activity voluntarily entered into by the Parties, whereby a professionally trained neutral facilitator (Mediator) using recognised methods systematically encourages communication between the Parties, with the aim of enabling the Parties to themselves reach a resolution of their dispute.

(2) Mediation concerning civil law matters is mediation to resolve conflicts for which decisions the civil courts would be responsible.

Instrument of regulation

Article 2. (1) This Federal Law regulates the establishing of an Advisory Council for Mediation, the conditions and procedure for the registration of persons in the List of Registered Mediators, the maintaining of that List, the conditions and procedure for the registration of training institutions and courses for mediation in civil law cases, the maintaining of that List, the rights and obligations of the registered mediators as well as the suspension of limitation periods by mediation in civil law matters.

(2) This Federal Law does not interfere with the lawfully regulated rights and obligations of those persons belonging to freelance professions, even where the exercise is within the context of an employment relationship, nor does it interfere with the statutory regulated activities of employees of youth welfare organisations. The same applies to the requirements for the carrying out of the profession and the activities of the probation service in criminal cases as well as to the application of conflict regulators in out of court settlement of criminal offences as per article 90g Section 3 StPO and article 29a BewHG.

Terms

Article 3. (1) As far as in this Federal Law

1. reference is made to mediation, this shall mean mediation in civil law matters;
2. reference is made to a mediator, this shall mean the registered mediator (male or female);
3. gender-related terms only quoted in the male form shall refer to men and women equally.

(2) Where reference is made to a specified person at the time of the execution of this Federal Law the appropriate gender-related address shall be used.

Section II

Advisory Council (Beirat) for Mediation at the Federal Ministry of Justice

Establishment of the Advisory Council (Beirat)

Article 4. (1) To advise the Federal Minister of Justice in matters concerning mediation an Advisory Council shall be established.

(2) The Federal Minister of Justice shall nominate the members and substitute members for the period of five years. A repeated nomination is possible. In preparation for the nomination the Federal Minister of Justice shall obtain recommendations

1. for twelve members (substitute members) of representative associations in the field of mediation;
2. for a member (substitute member) of each of the following
 - a) from the Berufsverband Österreichischer Psychologinnen und Psychologen, of the Österreichischer Bundesverband für Psychotherapie as well as the Vereinigung der österreichischen Richter,
 - b) from the Minister for Education, Science and Culture (Bundesministerin für Bildung, Wissenschaft und Kultur), the Minister for Health and Women (Bundesministerin für Gesundheit und Frauen), the Minister for Social Security and Consumer Protection (Bundesminister für soziale Sicherheit, Generationen und Konsumentenschutz) as well as the Minister for Economics and Labour (Bundesminister für Wirtschaft und Arbeit),
 - c) from the Bundesarbeitskammer, Wirtschaftskammer Österreich, Österreichische Notariatskammer, Österreichischer Rechtsanwaltskammertag, Kammer der Wirtschaftstreuhänder as well as Bundeskammer der Architekten und Ingenieurkonsulenten;
3. for two members (substitute members) from the area of academic doctrine and research in the field of mediation of the Österreichische Rektorenkonferenz.

(3) Representative in terms of Section 2 subsection 1 is an association to which, taking into account its professional scope of functions, belong a significant number of members working in mediation, and which acts nationally or in a predominant part of the federal territory.

(4) The recommendations should, if possible, include those persons who have practical experience or theoretical skills in the field of mediation. To be considered is the representation of the needs of those who participate in mediation, or who are especially suitable.

Duties and Responsibilities of the Advisory Council (Beirat)

Article 5. The duties of the Advisory Council shall be

1. the discussion of issues and questions which have been submitted to it by the Federal Minister of Justice, as well as the giving of Statements of Opinion and the issuance of Expert Reports,
2. the participation in the passing of regulations pursuant to articles 29 and 30,

3. the participation in the procedure concerning registration of training institutions and courses (articles 24, 25 and 28) as well as

4. through its Board (Ausschuss), the participation in the procedure concerning registration in the List of Mediators (articles 12 to 14).

Meetings of the Advisory Council (Beirat)

Article 6. (1) The Federal Minister of Justice shall act as chairman of the Advisory Council and shall summon it to meetings. At such meetings he may be represented by a civil servant of the Federal Ministry of Justice.

(2) The meetings of the Advisory Council shall not be public. A quorum is established if at least half the members are present. The chairman shall not have voting rights.

(3) The Advisory Council shall make its decisions by simple majority. In the event of an equality of votes a recommendation or application shall be dismissed. On the passing of a resolution of the Advisory Council, the voting members in the minority shall have the right to add their opinion to the resolution in writing.

(4) The activity of the members of the Advisory Council is honorary. They are entitled to reimbursement of necessary cash expenditure including the costs for travelling and accommodation appropriate to Gebührenstufe 3 of the Reisegebührenvorschrift 1995, BGBl. No. 133.

The Board (Ausschuss) for Mediation

Article 7. (1) The Advisory Council (Beirat) shall, from its members who are entitled to vote for the period of five years, elect a Board (Ausschuss) consisting of five members together with substitute members, as well as nominate a chairman and his substitute. The period of office ends with the appointment of a new Board. If a member or its substitute member has resigned, the Board shall elect a substitute for the rest of the period of office.

(2) The chairman shall summon the members of the Board to the meetings at the request of the Federal Minister of Justice. article 6 Section 2, first and second sentence, as well as Section 3 shall apply. The members are entitled to reimbursement of their expenses appropriate to their activities (article 30).

Section III

The List of Mediators

Maintenance of the List

Article 8. The Federal Minister of Justice shall maintain a List of Mediators. In the list shall be shown the first and last name, date of birth, the identification of the other profession of the mediator, his professional address and his academic title. If the mediator gives his professional field of activity or his professional fields of activities, these shall also be included in the list. The List of Mediators shall be published electronically in an appropriate way.

Requirements for Registration

Article 9. (1) Entitled to registration in the List of Mediators is any person who proves that

1. he is over the age of 28,
2. he is professionally qualified,
3. he is trustworthy and
4. he has taken out professional liability insurance in accordance with article 19.

(2) The applicant for registration shall identify in his application the premises at which he practises mediation.

Professional Qualification

Article 10. (1) Professionally qualified is any person who, on the basis of appropriate training (article 29) is in possession of knowledge and skills of mediation and who is also familiar with its legal and psychosocial basic principles. The training shall be completed in training courses and practical workshops of those institutions, including the universities, which the Federal Minister of Justice has registered in the list of training institutions for mediation in civil law matters.

(2) The assessment of the professional qualification shall take into account the knowledge gained by and the level of completion of qualification of the members of specified professions, in particular Psychotherapists, Clinical Psychologists and Health Psychologists, Lawyers, Notaries, Judges, State Prosecutors, Accountants, Civil Engineers, Consultants, Social Workers, Management Consultants, or Secondary School Teachers, in the course of their own training and their professional practice and which may assist in their practice of Mediation.

Application for Registration

Article 11. (1) The procedure for registration in the List of Mediators is initiated on the basis of the written request of the applicant to the Federal Minister of Justice. The application shall provide the information required by article 8.

(2) The requirements of articles 9 and 10 are to be evidenced by appropriate documents, such as references, confirmations and professional certificates. The trustworthiness of the applicant, in so far as it is not a legal requirement of the other professional activity of the applicant, is to be proven by a criminal records statement, which is no older than three months, and which confirms that there has been no conviction which might lead to doubts as to the reliability of practice as a mediator.

(3) In the application shall be included a description of previous professional activities as well as the training undertaken to become a mediator, including a list of the institutions where the training has been completed.

Verification of Requirements

Article 12. (1) The Federal Minister of Justice shall first verify, on the basis of the application and its attachments, whether the requirements of article 9 Section 1 subsection 1, 3 and 4 and Section 2 concerning the applicant have been complied with, and whether the documents and certificates necessary for the verification of the requirement in accordance with article 10 are included with the application. If necessary he shall summon the applicant to submit additional

documents within a reasonable time limit. The unjustified non-compliance with this summons amounts to a withdrawal of the application.

(2) If the requirement of article 10 is obviously not met, then the Federal Minister of Justice may obtain an opinion from the Board of Mediation.

(3) The Federal Minister of Justice and the Board may summon the applicant to a hearing. The unjustified non-compliance with the summons amounts to a withdrawal of the application.

Registration

Article 13. (1) Those persons who fulfil the requirements for registration in the List shall be registered by the Federal Minister of Justice for the period of five years, with the date of the end of the period being identified. Persons not meeting the requirements shall be informed by formal Decision that they shall not be included in the List.

(2) The mediator may, at the earliest one year and at the latest three months, before termination of the registration period, apply in writing for the continuation of the registration for another ten years. He remains registered in the List until the decision concerning the request filed in due time is made known. Renewed applications to continue the registration for a period of a further ten years are admissible.

(3) In the application for continuation of the registration the mediator shall demonstrate his further training (article 20). The registration shall be maintained if the professional qualification is guaranteed by attendance at further training programmes and if none of the other requirements of article 14 apply. To verify the requirements of continuance of the registration the Federal Minister of Justice may confer with the Board.

Removal from the List

Article 14. (1) The Federal Minister of Justice shall, if necessary after obtaining an opinion from the Board for Mediation, by a formal Decision remove the mediator from the List if he becomes aware that a requirement of article 9 has ceased to be met or has not been confirmed, the mediator has not attended to his duties in accordance with article 20 or he has despite warnings grossly or repeatedly violated his duties.

(2) Furthermore, the mediator shall be removed from the list in the case of his resignation, his decease or because of the expiration of the time limit (article 13).

(3) In the case of a removal the previous registration shall be kept on the record.

Section IV

Rights and obligations of registered Mediators

General rights and obligations

Article 15. (1) Whoever is registered in the List of Mediators is

1. entitled to the designation “registered mediator”;
2. obliged to carry this designation when practising mediation.

(2) The mediator shall not receive or promise reimbursement, nor have it guaranteed to him, for the provision or recommendation of persons for mediation. Legal acts which violate this prohibition are void. Payments arising out of such legal dealings may be reclaimed.

Obligations towards the Parties

Article 16. (1) A person who himself is or has been party, party representative, counsellor or decision-making body in a conflict between the parties, may not act as a mediator in the same conflict. Likewise, a mediator may not represent, advise or decide in a conflict which makes reference to the mediation. However, after the end of the mediation with the approval of all affected parties he may act within the scope of his other professional competences to implement the result of the mediation.

(2) The mediator may only act with the approval of the parties. He shall clarify to the parties the character and the legal consequences of mediation in civil law matters and execute this to the best of his knowledge, in person, directly and impartially towards the parties.

(3) The mediator shall refer the parties to counselling needs, particularly in respect of legal issues which result in the context of the Mediation, as well as refer to the form required for the drawing up of the result of the mediation in order to ensure the implementation thereof.

Article 17. (1) The mediator shall document the beginning, the circumstances which indicate whether the mediation procedure has been properly followed, as well as the end of the mediation. As the beginning of the mediation, the date on which the parties agreed to resolve the conflict by mediation shall be the applicable date. The mediation ends if one of the parties or the mediator no longer wishes to proceed or if a result is obtained.

(2) On request of the parties the mediator shall in writing record the result of the mediation as well as the steps necessary for the implementation.

(3) The mediator shall keep his records for at least seven years after the termination of the mediation. On request of the parties he shall deliver a true copy of the records to them.

Secrecy, Confidentiality

Article 18. The mediator is obliged to secrecy about the facts which he has become aware of in the course of the mediation or which have otherwise become known. He shall deal with documents provided or delivered to him in the course of the mediation confidentially. The same applies to the supporting staff of the mediator as well as to persons who act for a mediator, under his direction in the course of a practical training.

Liability Insurance

Article 19. (1) The mediator shall conclude professional liability insurance with an insurer who is entitled to carry on business operations in Austria to cover any claims for damages which result from his activity and shall maintain it during the period of his registration in the List of Mediators.

(2) For the insurance contract the following must apply:

1. Austrian law must be applicable;
2. A minimum insurance cover for each insurable matter shall be EUR 400,000;
3. The exclusion or a time limitation of the continuing liability of the insurer is not permissible.

(3) The insurers are obliged to notify the Federal Minister of Justice unbidden and immediately of any circumstance which means/or may mean a termination or restraint of the insurance cover or an aberration from the original insurance certificate, and they shall provide information about such circumstances on demand of the Federal Minister of Justice. The mediator shall at all times be capable of evidencing the existence of the liability insurance.

Continuing Education

Article 20. The mediator shall appropriately undertake continuing professional education, of at least fifty hours within a period of five years and evidence this to the Federal Minister of Justice every five years.

Notification duties

Article 21. The mediator shall notify the Federal Minister of Justice immediately of any change of circumstances which concern his registration in the List of Mediators. The registration shall be changed accordingly.

Section V

Suspension of time limits

Article 22. (1) The beginning and the proper continuation of the mediation by a registered mediator suspends the application of the start and running of the statute of limitations as well as other time limits concerning rights and claims which are affected by the mediation.

(2) The parties may agree in writing that the suspension also includes other claims which exist between them and which are not affected by the mediation. If the mediation affects rights and claims of family law the suspension then covers all mutual claims, or other perceived rights and claims at family law the parties may have against each other, even without a written agreement, insofar as the parties do not agree otherwise in writing.

Section VI

Training Institutions and Courses

Maintaining of the list of training institutions and courses

Article 23. The Federal Minister of Justice shall maintain a list of training institutions and courses in the area of mediation in civil law matters. The list shall be published electronically in an appropriate way. Out of date entries may be deleted from the electronic publication.

Registration in the list

Article 24. (1) The procedure for registration of a training facility or course for mediation in civil law matters shall be made on the basis of the written request of the applicant to the Federal Minister of Justice. The application may also refer to sections or particular areas of training.

(2) The applicant shall identify the content of the training, the quantity and qualification of the training personnel and the financing of the facility or the course. With regard to a training facility it shall be proven that the sustainability of the training activity is guaranteed.

(3) If the achievement of the training goals is guaranteed on the strength of the evidence of the applicant, as well as, in the case of a training facility, the sustainability of its activity, the Federal Minister of Justice shall, if necessary after consultation with the Advisory Council, register the training facility or course in the list for the period of a maximum of five years. Applicants who do not fulfil these requirements shall be informed of the refusal of the registration by formal Decision.

Article 25. (1) A training facility may, at the earliest one year and at the latest three months before expiry of the period of registration, in writing, request the maintenance of the registration for a further ten years. It shall remain registered in the list until the formal Decision concerning the application, filed on time, is made. Renewed applications to maintain the registration for a further ten year period are admissible.

(2) The registration shall be maintained if from the reports (article 27) of the training facility it is shown that the suitability is further guaranteed and none of the requirements of article 28 apply. In order to verify the requirements of the continued maintenance of the registration the Federal Minister of Justice may consult the Advisory Council.

Certificates

Article 26. The registered training institutions and the organisers of registered courses shall issue certificates concerning the achievement of the training goals.

Obligation to report

Article 27. The registered training institutions in order to prove the sustainability of their activity shall in writing report to the Federal Minister of Justice, at the latest by 1st of July of each year, on the extent, the contents and the success of the training over the past year.

Removal from the list of training institutions and courses

Article 28. (1) The Federal Minister of Justice shall remove a training institution or course from the list by formal Decision, if necessary by obtaining an opinion from the Advisory Council, if he is notified that one of the requirements of registration has ceased to apply or has not been met, the training goals have not in principle been met, issued certificates are repeatedly grossly incorrect, a training institution despite warning violates its obligation to report or if the sustainability of its activity is not guaranteed.

(2) Furthermore, a training facility or course shall be removed from the list in the case of withdrawal or the expiration of the time limit (article 25 Section 1).

(3) In the case of a removal the previous registration shall be kept on the record.

Section VII

Authorisation for issuance of a Regulation

Article 29. (1) The Federal Minister of Justice shall by Regulation stipulate the specific conditions for the training of mediators after consultation with the Advisory Council for Mediation. In the Regulation the training requirements may be differently defined dependant on the areas of professional expertise.

(2) The theoretical part, divided into specific training areas, shall contain 200–300 training units, the practical part shall contain 100–200 training units.

1. The theoretical part:

- a) An introduction to the history of problems and the development of mediation including their basic assumption and models;
- b) Procedural development, methods and phases of mediation with special regard to dispute-oriented and solution-oriented approaches;
- c) Basis of communication, in particular of communication-, problem- and negotiation techniques, the conduct of meetings and moderation with special regard to conflict situations;
- d) Conflict analysis;
- e) Practice areas of mediation;
- f) Theories of personality and psycho-social forms of intervention;
- g) Ethical problems in mediation, in particular the position of the mediator;
- h) Lega problems in mediation l, in particular relating to civil law, as well as legal problems in conflicts which are to be particularly considered for a mediation;

2. The practical part:

- a) Individual self-awareness and practical experience seminars to practise techniques of mediation through the use of role play, simulation and reflection;
- b) Peer group work;
- c) Case work and participation in practice supervision in the area of mediation.

(3) The training necessary for a professional group and the practical experience which has been acquired by its exercise shall be considered appropriately (article 10).

Article 30. The Federal Minister of Justice, after consultation with the Advisory Council, shall by Regulation define the appropriate reimbursement for the chairman and the members of the Board taking into account the outlay incurred in connection with their activity.

Section VIII

Criminal provisions

Article 31. (1) Any person who shall reveal or exploit facts in breach of his obligation of secrecy and confidentiality and thereby violates the legitimate interests of another person shall be liable for prosecution by the court with a term of imprisonment of up to six months or a fine of up to 360 daily unit rates.

(2) The offender shall not be prosecuted if the revelation or exploitation, with regard to the content and form, is justified due to public or legitimate personal interest.

(3) The offender shall only be prosecuted on demand of the person whose interest to maintain secrecy has been breached.

Article 32. In so far as the deed does not amount to an offence of a criminal nature, which falls within the jurisdiction of the courts, a breach of administration is committed, and is to be punished with a fine of up to EUR 3,500,

1. in the case where a person refers to himself as a registered mediator or uses a similar title which may confuse,

2. in the case where a person acts in breach of the provisions of articles 15 Sections 2, 16, 17, 19, 21 and 27.

Section IX

Final- and transitional provisions

Article 32. (1) This Federal Law, in so far as not otherwise defined below, comes into effect on 1 May 2004.

(2) Section II becomes effective on the date subsequent to the publication.

(3) Section VI becomes effective on 1 January 2004.

(4) Applications in accordance with article 11 may be submitted and approved as from 1 March 2004; the registration in the List becomes first effective as of 1 May 2004.

(5) Regulations arising out of this Federal Law may be enacted as from the date of publication, they become effective at the earliest from the date of the coming into effect of the appropriate provision.

Article 34. Any person who submits an application for registration in the List of Mediators not later than 30 December 2004 and who has attended a theoretical and practical training in mediation of a total of at least 200 training units which, even if not comprehensive, but nevertheless as regards content is to be considered of equal status to a training in accordance with article 29, shall be considered professionally qualified.

Article 35. (1) The Trade Licence Act (Gewerbeordnung) 1994, BGBl. No. 194/1994 shall not apply to the activity of registered mediators.

(2) As far as provisions of other Federal Laws are referred to in this Federal Law, they shall be applied in their valid version.

Article 36. The Federal Minister of Justice is entrusted with the execution of this Federal Law.V