

26 July 2012: German law on mediation comes into force

After months of political struggle, Germany passed a new law to promote mediation and other forms of alternative dispute resolution ("**Mediation Law**").

Main objectives of the Mediation Law

The Mediation Law implements EU-Directive no. 2008/52/EG. It has the following main objectives:

- To improve common awareness of mediation as an alternative to litigation.
- To reduce the number of pending court cases and to accelerate justice.
- To create transparency regarding quality standards for mediators.
- To provide the parties with a legal framework for mediation proceedings.

Main provisions of the Mediation Law

The Mediation Law contains, inter alia, the following provisions:

- Every statement of claim submitted to a state court shall now state whether or not the parties are open to mediation or other forms of alternative dispute resolution.
- Judges are to propose alternative ways of resolving the dispute. They may for instance suggest referring the case to (a) a (private) mediator or (b) a so-called "conciliation judge" (*Güterichter*), i.e. a court judge, who can also use mediation techniques. The litigation is stayed during such conciliation or mediation proceedings.
- Prior to the new Mediation Law, mediators did not have to meet specific educational standards. Anyone could bear the title of a "mediator". The Mediation Law only partially changes this situation. Still, anyone can label him-/herself a "mediator". However, to go by the label of "certified mediator", aspirants now have to pass at least 120 hours of intensive training. Hence, the new label "certified mediator" guarantees a basic level of qualification in mediators.
- Enforceability of settlement agreements reached through mediation can be attained, inter alia, by way of recording the settlement before a German court or a notary public.
- The statute of limitation is suspended during mediation proceedings.
- Mediators have a statutory obligation of secrecy.
- Court costs are reduced in case of settlement.

Outlook

With this new piece of legislation, mediation in Germany is finally on the rise. The Mediation Law will enhance the popularity of mediation and promote its recognition. There are numerous mediation associations providing codes of procedures and offering assistance in finding the right mediator. Such associations are the local Chambers of Commerce (*Industrie- und Handelskammern*), the Federal Association of Mediators (*Bundesverband Mediation*) and the Royal Institute of Chartered Surveyors (RICS), just to name a few. Arbitration institutions such as the International Chamber of Commerce (ICC) and the German Institution of Arbitration (*Deutsche Institution für Schiedsgerichtsbarkeit*) also offer mediation services.

Clifford Chance features a unique Global Mediation Group, teaming up lawyers experienced in mediation, including qualified mediators, across its extensive international network. Thus, Clifford Chance is in a position to provide advice on initiating and conducting mediation proceedings and indeed mediators all over the world.

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