

LAW No 192 of 16 May 2006  
on mediation and organisation of the profession of mediator  
EMITTER: THE PARLIAMENT  
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Text translated by COMPANIA DE INFORMATICA NEAMTJ for the legislative software LEX EXPERT

It must be specified that the only text which shall produce legal effects is the text in the Romanian language.

The text was updated by the legislative software LEX EXPERT on the basis of the modifying statutory instruments, published in the Official Gazette of Romania, Part I, until 29 June 2013.

Basic act  
#B: the Law No 192/2006

Modifying statutory instruments  
#M1: the Law No 370/2009  
#M2: the Government Ordinance No 13/2010  
#M3: the Law No 202/2010  
#M4: the Law No 76/2012  
#M5: the Law No 115/2012  
#M6: the Government Emergency Ordinance No 90/2012  
#M7: the Government Emergency Ordinance No 4/2013  
#M8: the Law No 214/2013  
#M9: the Government Emergency Ordinance No 80/2013

The amendments and additions brought by the above-mentioned statutory instruments are written in *Italics*. The statutory instrument that makes the amendment or the addition is indicated before each amendment and addition, as #M1, #M2 etc.

#CIN

NOTES:

1. The Decision of the Mediation Council No 5/2007 approved the Regulation of organisation and functioning of the Mediation Council.

2. The Decision of the Mediation Council No 12/2007 approved the Mediator's training standard.

#B

The Romanian Parliament adopts this Law.

CHAPTER 1  
General provisions

#M1

ART. 1

(1) Mediation represents a way of amicable settlement of conflicts, with the support of a third party specialised as a mediator, in terms of neutrality, impartiality, confidentiality and with the free consent of the parties.

#B

(2) Mediation relies on the trust which the parties invest in the mediator, as a person capable to facilitate negotiations between them and to provide them with support for the settlement of the conflict, by reaching to a mutually convenient, efficient and durable solution.

#M6

ART. 2\*)

(1) Unless the law provides otherwise, the parties, natural or legal persons, shall be bound by the obligation to attend the information session on advantages of mediation, including, if necessary, after the onset of a trial before

the competent courts, in order to settle this way the conflicts on civil, family, criminal matters, as well as on other matters, under the terms provided by law.

(1<sup>1</sup>) The proof of attendance in the information session on advantages of mediation shall be given by an informative certificate issued by the mediator that has made the information. If one of the parties expresses in writing the refusal to attend the information session, does not respond to the invitation provided in Article 43 (1) or does not appear at the date set for the information session, a minutes shall be prepared, which shall be enclosed to the court file.

(1<sup>2</sup>) The court shall dismiss the request for summons as inadmissible in case the applicant does not meet his obligation to attend the information session on advantages of mediation, prior to filing the request for summons, or after the onset of the trial by the time limit set by the court for this purpose, for disputes arisen on matters provided in Article 60<sup>1</sup> (1) a) - f).

#M8

(1<sup>3</sup>) The carrying out of the information procedure on advantages of mediation may be performed by the judge, prosecutor, legal adviser, lawyer, notary, in which case it shall be attested in writing.

(1<sup>4</sup>) The services provided according to the provisions of paragraphs (1) and (1<sup>1</sup>) shall be free of charge, being forbidden to charge fees, duties or any other amounts, regardless of the title under which they might be requested.

#B

(2) The provisions of this Law shall also be applicable to conflicts in the field of consumers' protection, in case the consumer invokes the existence of injury as a result of having purchased defective products or services, of failure to comply with the contract clauses or with the securities provided, of existence of certain abusive clauses included in the contracts concluded between the consumers and the economic operators or of infringement of other rights provided by the national law or the European Union law in the field of consumers' protection.

(3) The natural persons or legal persons shall have the right to settle disputes among them by mediation both outside and within the required amicable conflict settlement procedures provided by law.

(4) The strictly personal rights, such as those concerning the status of the individual, as well as any other rights which the parties may not, by law, enjoy under a convention or by any other way permitted by law may not be subject to mediation.

(5) In any convention relative to the rights that the parties may enjoy, they may bring a mediation clause, whose validity shall be independent from the validity of the contract to which they are parties.

#CIN

\*) 1. According to Article VI of the Government Emergency Ordinance 4/2013 (#M7), the provisions of paragraph (1<sup>2</sup>) of Article 2 of the Law No 192/2006 shall enter into force on 1 August 2013.

2. According to Article III of the Government Emergency Ordinance 90/2012 (#M6), as amended, the provisions of Article 2 (1<sup>2</sup>) of the Law No 192/2006, referring to the sanction of inadmissibility of the request for summons, shall only apply to trials that begin after 1 August 2013.

#B

ART. 3

The mediation services shall be provided equally for all persons, with no distinction as to race, skin colour, nationality, ethnic origin, language, religion, gender, opinion, political adherence, property or social origin.

ART. 4

(1) Mediation represents an activity of public interest.

(2) When exercising its powers, the mediator does not have decision power as regards the contents of the understanding reached by the parties, but he may advise them to examine the lawfulness thereof, according to Article 59.

ART. 5

(1) Mediation may take place between two or more parties.

(2) The parties shall have the right to freely choose their mediator.

(3) Mediation may be performed by one or more mediators.

#M1

ART. 6

Judicial and arbitration bodies, as well as other authorities with jurisdictional powers shall inform the parties on the possibility and on the advantages of using the mediation procedure and shall advise them to resort to this recourse in order to settle conflicts between them.

#B

CHAPTER 2

## Profession of mediator

### SECTION 1

#### Acquiring, suspension and cessation of the capacity of mediator

#M5

##### ART. 7

The persons who meet all the following conditions may become mediators:

#B

- a) they have full capacity of exercise;
- b) they have university education;

#M1

- c) they have at least 3-year length of service;

#B

- d) they are fit, medically speaking, to pursue this activity;
- e) they enjoy a good reputation and have not been finally convicted for an offence committed by ill intention, likely to prejudice the prestige of the profession;

#M1

- f) they have graduated from mediator training courses, under the terms of the law, or a post-university master-based programme in the field, accredited according to the law and endorsed by the Mediation Council;

#B

- g) they have been authorised as mediators, under the terms of the law.

##### ART. 8

(1) The persons that meet the conditions provided in Article 7 shall be authorised as mediators by the Mediation Council, after payment of an authorisation fee, in an amount that shall be established by the regulation provided in Article 17 (2).

#M2

(2) The citizens of the Member States of the European Union, of the European Economic Area or of the Swiss Confederation, holding a qualification document in the profession of mediator, obtained in one of these states, shall acquire, within the context of the right of establishment, access to the profession in Romania, after recognition of these documents by the Mediation Council, according the Law No 200/2004 on recognition of diplomas and professional qualifications for regulated professions from Romania, as amended and supplemented.

(3) The qualification document obtained in the profession of mediator in another state than Romania or in a Member State of the European Union, of the European Economic Area or of the Swiss Confederation by the persons provided in paragraph (2) shall be recognised under the conditions provided in paragraph (5), which shall apply accordingly. If the skills and knowledge do not correspond to the qualification requirements provided by the Romanian law, the Mediation Council shall also consider the professional expertise acquired by the applicant and it may request from him to produce evidence that he meets all these requirements.

(4) The provisions of paragraphs (2) and (3) shall also apply to Romanian citizens, holding qualification document in the profession of mediator, obtained in a Member State of the European Union, of the European Economic Area or of the Swiss Confederation, where applicable, in a third country.

#B

(5) The citizen of a third country, who has graduated from mediator training courses abroad or that has acquired the capacity of mediator abroad and wishes to permanently carry on the mediation activity in Romania, shall be allowed access to the profession under the following terms:

a) presents the education title, together with the equivalation certificate issued by the Ministry of Education and Research;

b) presents the contents of the training curriculum covered, including the duration of training and, as applicable, the documents attesting that the capacity of mediator has been acquired. The Mediation Council shall evaluate the contents of the training curriculum presented, including the duration of training, by comparing the knowledge and skills certified by these documents to the requirements of the Romanian law, and it shall decide, if necessary, on access to the profession. The conditions of equivalation or compensation of qualification, in case the certified knowledge and skills do not correspond to the qualification requirements provided by the Romanian law, shall be established by the regulation provided in Article 17 (2).

(6) The foreign mediator may pursue occasionally in Romania the mediation activity, as supply of services, pursuant to the document certifying his lawful pursuit of this profession in the state of origin or of provenance, being excepted

from the authorisation and registration requirements provided by law, however, being bound by the obligation to notify by a written notice the Mediation Council with regard to the pursuit of this activity.

#M2

(7) The citizens of other states of the European Union, of the European Economic Area or of the Swiss Confederation, holding a qualification document in the profession of mediator, obtained in one of these States or in Romania, shall acquire the capacity of mediator in Romania, under the conditions provided in paragraphs (2) - (6).

#M1

(8) The citizens provided in paragraph (7), who have acquired the capacity of mediator in Romania, may pursue permanently the activity of mediation in one of the Member States of the European Union and of the European Economic Area, if acquiring this capacity is not regulated in these states, based on the document certifying his lawful pursuit of this profession in Romania.

(9) For the mediators authorised under the terms of Articles 7 and 72 (2), the qualification document certifying the acquiring of the professional competences as a mediator shall be issued by the Mediation Council under the terms established by the training standards in the field of mediation.

#M2

(10) In case it is necessary to check the documents submitted in view of obtaining authorisation, it may also be achieved through the Information System within the domestic market, under the law.

#M2

ART. 8<sup>1</sup>

(1) An authorisation shall be issued to the applicant within maximum 30 calendar days as from the date of ascertaining that all requirements set forth by the law and by the regulation provided in Article 17 (2) are complied with.

(2) The time limit may only be extended once, for a period of maximum 15 calendar days. The validity of the originally submitted documents shall not be affected by this extension. The extension of the authorisation time limit, as well as the extension of this extension shall be properly reasoned and shall be notified to the applicant before the expiry of the initial time limit.

(3) In case the applicant does not meet the conditions provided by this law or the request filed by the applicant is not accompanied by attesting documents, the Mediation Council shall notify the party concerned the reasoned denial of authorisation or, as applicable, the necessity to bring additional evidence required by the law.

(4) The decision of denial, or the decision for withdrawal of the mediation authorisation may be challenged before the competent law court, in compliance with the procedure provided by the Law on administrative disputed claims No 554/2004, as amended and supplemented.

#M1

ART. 9

(1) The professional training of mediators shall be provided by means of professional training courses held by training providers and by accredited higher education institutions.

(2) The professional training courses and programmes shall be authorised by the Mediation Council in compliance with the professional training standards in this field, elaborated by this council.

(3) The structure of the professional training course shall be drawn up by according to the provisions concerning adult training.

(4) The Mediation Council shall issue all documents certifying the professional competence of mediators.

#M5

ART. 10

The institutions and the other legal persons that hold, according to Article 9, professional training programmes of mediators shall be entered by the Mediation Council on a list, that shall be made available to the parties concerned at its headquarters, of the law courts and of the local public administration authorities, as well as at the headquarters of the Ministry of Justice and on its website.

#M1

ART. 11

(1) The Mediation Council shall be entitled to check how the courses are organised and held and how the initial and continuous training courses are applied and may request, if necessary, withdrawal of authorisation, according to the training standards in the field of mediation and to the procedures elaborated by the Mediation Council.

#B

(2) Withdrawal of authorisation and expiry of the period for which it has been granted shall lead to the removal from the list provided in Article 10.

ART. 12

(1) The authorised mediators shall be enlisted in the Roll of mediators, drawn up by the Mediation Council and published in the Official Gazette of Romania, Part I.

(2) The Roll provided in paragraph (1) shall include the following data:

- a) the full name of the mediator;
- b) his business office;
- c) the main training of the mediator, the institution where he trained and the titles obtained after graduation;
- d) the mediation area he is specialised in;
- e) the duration of practical expertise in the mediation activity;
- f) the foreign language he can speak when carrying on mediation;
- g) the membership in a professional association in the field of mediation, as well as in other organisation, as the case may be;
- h) the existence of a reason for suspension.

(3) The Mediation Council shall be required to regularly update at least once a year the Roll of mediators and to make it available to the parties concerned at its headquarters, of the courts of law, of the local public administration authorities, as well as at the headquarters of the Ministry of Justice and on its website.

#M1

(4) The profession of mediator shall be practised only by the person who has acquired the capacity of authorised mediator, under the terms of the law.

(5) Practising the profession of mediator by persons who have not acquired the capacity of authorised mediator, under the terms of this Law, shall be an offence and shall be sanctioned according to the criminal law.

#B

ART. 13

Practising the profession of mediator shall be compatible with any other activity or profession, except for incompatibilities provided by special laws.

ART. 14

(1) The exercise of the capacity of mediator shall be suspended:

- a) in case of an incompatibility provided by law; in this case, the mediator shall be required to give notice in relation to this incompatibility to the Mediation Council, within 3 days;
- b) a written request made by the mediator;
- c) as a disciplinary sanction, under the terms laid down in Article 39 (1) c).

(2) The exercise of the capacity of mediator shall be suspended de jure, in case a measure of taking the mediator into preventive custody has been ordered, until the settlement of the criminal proceedings, according to the law.

ART. 15

The capacity of mediator shall cease:

- a) on demand, by written waiver of the mediator;
- b) by death;
- c) in case the mediator does no longer meet the conditions provided in Article 7 a) and d);
- d) as a disciplinary sanction, under the terms laid down in Article 39 (1) d);
- e) in case of a final conviction for committing by ill-intention an offence, which makes him unworthy of practising this profession.

ART. 16

(1) Suspension, as well as cessation of the capacity of mediator shall be ordered or, where applicable, ascertained by the Mediation Council.

(2) In case the capacity of mediator ceases, his name shall be removed from the Roll of mediators.

#M2

ART. 16<sup>1</sup>

As concerns the authorisation procedures and formalities, as well as practising the profession of mediator, the provisions of this Law shall be supplemented by the provisions of the Government Emergency Ordinance No 49/2009 on freedom of establishment of service providers and freedom to provide services in Romania.

#B

SECTION 2

Mediation Council

ART. 17\*)

(1) In order to organise the mediation activity the Mediation Council shall be established as an autonomous body with legal personality, of public interest, with the headquarters in Bucharest.

(2) Mediation Council shall be organised and shall function according to the provisions of this Law, as well as of its regulation of organisation and functioning.

#M5

(3) The Mediation Council shall be made of 9 full members and 3 alternate members, elected by direct and secret ballot by the mediators with voting rights, under the terms provided in the Regulation of organisation and functioning of the Mediation Council.

(4) The mandate of the Mediation Council is 4 years.

#M1

(4<sup>1</sup>) Revocation of the Mediation Council or of any of its members can be made at the initiative of one quarter of the number of authorized mediators, the decision being adopted by a majority of half plus one of the number of authorized mediators.

#B

(5) The cases where the capacity of member of the Mediation Council ceases while in office, as well as the revocation procedure shall be laid down in paragraph (2).

#M1

(6) Only authorized mediators who fulfil the conditions laid down in Regulation of organization and functioning of the Mediation Council can be part of the Mediation Council.

(7) Mediation Council shall hold office until the new mediation council takes over the office.

#CIN

\*) According to Article III of the Law 115/2012 (#M5), the provisions of Article 17 (4) shall also apply to mandates in office at the date of entry into force of the Law No 115/2012 (#M5).

#M5

ART. 18\*)

(1) The Mediation Council shall elect a chairman and a vice-president and shall appoint from among its members a permanent commission, which shall prepare the works of the Mediation Council. The mandate of the members of the commission is 2 years.

#M1

(2) The structure of the Mediation Council includes a technical secretariat, consisting of a number of persons established by the organization chart and approved by the Mediation Council.

#B

(3) The structure and powers of the commission provided under paragraph (1) and of the technical secretariat provided in paragraph (2) shall be established by the regulation provided in Article 17 (2).

(4) For the activity performed, the members of the Mediation Council shall be entitled to a monthly allowance, under the terms laid down in the regulation pursuant to Article 17 (2).

#CIN

\*) According to Article III of the Law 115/2012 (#M5), the provisions of Article 18 (1) shall apply to mandates in office at the date of entry into force of the Law No 115/2012 (#M5).

#B

ART. 19

(1) The Mediation Council meets monthly or whenever necessary, convened by its chairman.

#M5

(2) The meetings of the Mediation Council shall be held in the presence of at least 7 members and shall be public meetings, unless the members agree otherwise.

#M1

(3) \*\*\* Repealed

(4) In exercising its powers, the Mediation Council shall adopt decisions by the vote of a majority of its component members.

#B

(5) To the works of the Mediation Council there may be invited to participate persons in any other institution or professional bodies, whose consultation is required for taking measures or for adoption of decisions by the Mediation Council.

ART. 20

The Mediation Council shall have the following main powers:

#M1

a) to promote the mediation activity and represent the interests of the authorized mediators in order to ensure the quality of mediation services, according to the provisions of this Law;

#B

b) to develop mediation training standards, based on best international practices on this matter;

#M1

c) to authorise initial and continuous training programmes, as well as specialization programmes for mediators;

d) to draw up and update a list of training providers who have obtained authorization;

e) to authorise mediators, as provided by this law and by the procedure established in the Regulation of organization and functioning of the Mediation Council;

#M2

e<sup>1</sup>) to cooperate through the Information system within the domestic market, with the competent authorities of the other Member States of the European Union, European Economic Area and the Swiss Confederation, in order to ensure control of mediators and of the services they provide, in accordance with the provisions of the Government Emergency Ordinance No 49/2009;

#B

f) to draw up and update the Roll of authorized mediators;

g) to keep records of authorized mediators offices;

h) to monitor compliance with the training standards in the field of mediation;

#M1

i) to issue documents certifying the professional qualifications of mediators;

#B

j) to adopt the Code of ethics and professional conduct of authorised mediators, as well as rules for their disciplinary liability;

k) to take measures to comply with the provisions included in the Code of ethics and professional conduct of authorised mediators and to apply rules for their disciplinary liability;

l) to make proposals to supplement or, if applicable, to correlate legislation on mediation;

m) to adopt rules on its organization and functioning;

#M5

m<sup>1</sup>) to organize elections for the next mediation council and to elaborate procedures for holding elections. The procedure for holding of elections shall be initiated 6 months before the mandate of the Mediation Council in office on that date expires;

#M1

n) to perform any other duties provided by law.

#B

ART. 21

The Mediation Board shall cover the costs incurred by organization and functioning from its own revenues, as follows:

a) the fees from authorization of mediators;

b) the donations, sponsorships, grants and other sources of income, received under the law;

c) the proceeds from the sale of its own publications;

d) the amounts arising from fines imposed as disciplinary sanctions;

e) other amounts arising from the activity of the Mediation Council, established by regulation.

CHAPTER 3

Organization and pursuit of the activity of mediators

ART. 22

(1) The mediators may pursue their activity within a professional civil society, an office where one or more associated mediators with corresponding auxiliary staff may work, or in a non-governmental organisation, in compliance with the conditions provided by the law.

(2) The mediator or associated mediators, who hold an office, may employ translators, lawyers, other professional staff, and administrative and service staff required by the mediation activity.

#M1

(3) While practising their profession, the authorised mediators can be employed under an individual labour contract only in the forms set out in Article 22 (1).

#B

ART. 23

While pursuing their activity, the authorized mediators shall be required to keep their own archive and books, as well as financial and accounting records.

#M1

ART. 24

The mediators shall form local and national professional associations, aimed at representing their professional interests and protecting their status, and may join international professional associations under the law.

#B

CHAPTER 4

Rights and obligations of the mediator

SECTION 1

Rights of the mediator

ART. 25

The mediator shall have the right to inform the public about the pursuit of his business, in compliance with the principle of confidentiality. The conditions under which the mediator may advertise his profession shall be established by regulation.

ART. 26

(1) The mediator shall be entitled to receive payment of a fee established by negotiation with the parties and to the refund of costs incurred by mediation.

(2) The fee must be reasonable and consider the nature and object of the conflict.

#M3

(3) For the activity of information and counselling of the parties with regard to the mediation procedure and its advantages, performed according to the law prior to the conclusion of the mediation contract, the mediator can not claim any fee.

#B

ART. 27

(1) Each mediator shall have the right to apply its own model of organization of the mediation procedure, in compliance with the provisions and principles stated in this Law.

#M1

(2) The mediator shall have the right to refuse acceptance of a case, being bound by the obligation to advise and guide the parties to choose a different mediator.

#B

ART. 28

(1) The professional registered office of the mediator shall be inviolable.

(2) Searches at the professional registered office of the mediator may be ordered only by a judge and shall be conducted by the prosecutor or by the criminal investigation body, as provided in the Criminal Procedure Code.

SECTION 2

Obligations of the mediator

ART. 29

(1) The mediator shall be required to give any explanations to the parties with regard to the mediation activity, so that they understand the purpose, limitations and effects of mediation, mostly as concerns the relations subject to the conflict.

(2) The mediator shall ensure that mediation takes place in respect for freedom, dignity and privacy of the parties.

ART. 30

(1) The mediator shall have the duty to make all arrangements so that the parties reach a mutually convenient agreement within a reasonable time.

(2) The mediator must conduct the mediation process in an unbiased manner and provide a permanent balance between the parties.

ART. 31

The mediator shall be bound by the obligation to refuse to take a case, if he is aware of any circumstances that would prevent them from being neutral and impartial, as well as if it finds that the rights in question may not be subject to mediation, according to Article 2.

ART. 32

The mediator shall keep confidentiality on the information that he becomes aware in the course of his mediation activity, as well as on the documents prepared or that have been handed over to him by the parties during mediation, even after his office has ceased.

ART. 33

(1) The mediator shall be required to observe the rules of ethics and respond, in compliance with Article 32, to requests made by the judicial authorities.

(2) The mediator must inform the Mediation Council of any change in the terms mediation, which make it necessary to update the mentions referred to in Article 12 (2).

ART. 34

The mediator shall be required to permanently improve the knowledge and techniques of mediation, by attending, to this end, training courses, under the terms established by the Mediation Council.

ART. 35

The mediator shall be required to return the documents that have been entrusted to him by the parties during the mediation procedure.

ART. 36

The mediator may not represent or assist any party in judicial proceedings or arbitration proceedings having as object the conflict under mediation.

ART. 37

(1) The mediator can not be heard as a witness in relation to the facts or acts that he became aware of during the mediation procedure. In criminal cases the mediator may be heard as a witness only if it has obtained the prior, express and written consent of the parties and, where appropriate, of the other parties concerned.

(2) The status of witness takes precedence over that of mediator, as regards the facts and circumstances of which he was aware before becoming a mediator in that case.

(3) In all cases, after being heard as a witness, the mediator may no longer conduct mediation in that case.

### SECTION 3

#### Liability as a mediator

ART. 38

Disciplinary liability of the mediator shall be engaged for the following misconducts:

- a) breach of the obligation of confidentiality, impartiality and neutrality;
- b) refusal to provide answers to requests made by the judicial authorities, in the cases stipulated by law;
- c) refusing to return the documents entrusted to the parties in conflict;
- d) representing or assisting one of the parties in judicial proceedings or arbitration proceedings having as object the conflict under mediation;
- e) committing any other acts that affect professional integrity.

ART. 39

(1) Disciplinary sanctions shall apply in relation to the seriousness of the offence and shall consist of:

- a) written reprimand;
- b) fine of ROL (RON) 50 to ROL (RON) 500;
- c) suspension of the capacity of mediator for a period from one month to 6 months;
- d) cessation of the capacity of mediation.

(2) The limits of the fine set out in paragraph (1) b) shall be regularly updated by the Mediation Council, depending on inflation rate.

ART. 40

(1) Any party concerned may refer a matter to the Mediation Council, in writing and against signature, in connection with the any of the misconducts as referred to in Article 38.

(2) The misconduct shall be investigated not later than 60 days from the date of referral, by a disciplinary commission consisting of one member of the Mediation Council and 2 representatives of the mediators, appointed by drawing lots from the Roll of mediators. The members of the disciplinary commission shall be appointed by decision of the Mediation Council. It shall be mandatory to invite the party concerned for hearing. The mediator under investigation shall be entitled to be informed on the contents of the file and to formulate his defence. In case of failure to appear, a minutes signed by the members of the commission shall be prepared, showing that the mediator was invited and did not attend on the fixed deadline.

(3) The investigation file with the proposal of imposing a sanction or not to impose disciplinary sanctions shall be forwarded to the Mediation Council, which shall decide on the disciplinary liability of the mediator, within 30 days.

ART. 41

(1) The decision of the Mediation Council to impose sanctions provided in Article 39 (1) may be challenged before the competent administrative court, within 15 days after notification.

(2) The action filed according to paragraph (1) shall suspend the enforcement of the challenged decision.

(3) The decision imposing a fine provided in Article 39 (1) b), that became final under the law, shall be enforceable order. The payment default of this fine within 30 days from the date when the decision imposing the sanction becomes final shall bring about to the suspension de jure from the capacity of mediator, until payment of the amount.

ART. 42

Civil liability of the mediator may be engaged, under the civil law, for any injuries, caused in breach of his professional obligations.

## CHAPTER 5

### Mediation procedure

#### SECTION 1

##### Procedure prior to conclusion of the mediation procedure

#M1

ART. 43

(1) The parties to the conflict may appear together before the mediator. If only one party is present, the mediator, upon request thereof, shall address a written invitation to the other party, for the purpose of information and acceptance of mediation, setting a deadline not later than 15 days. The invitation shall be sent whatever means that provide acknowledgment of receipt of the text. The applicant shall supply the mediator with the data necessary to contact the other party.

(2) If it is impossible for any of the convened parties to appear, the mediator may set, upon request, a new date for the purpose of information and acceptance of mediation. If acceptance of mediation is given, the conflicting parties and the mediator shall sign the mediation contract.

(2^1) In trials and applications on civil and commercial matters, before filing a request for summons, the parties may seek settlement of the dispute by mediation.

(3) If one of the parties explicitly refuses mediation in writing or does not respond to the invitation referred to in paragraph (1) or fails to appear twice in a row at the dates set for signing the mediation contract, the mediation shall be considered unaccepted.

#B

(4) The mediator may make any additional legal arrangements deemed necessary for inviting the parties to mediation, in accordance with the provisions of this Law.

ART. 44

(1) It shall be forbidden to hold mediation sessions before the conclusion of the mediation contract.

#M1

(2) The mediation contract shall be concluded between the mediator, on one hand, and the parties to the conflict, on the other hand.

#B

#### SECTION 2

##### Mediation contract

#M1

ART. 45

The mediation contract must include, under the sanction of nullity, the following clauses:

#B

a) the identity of the parties to the conflict or, where appropriate, of their representatives;

#M1

b) the reference to the type or object of the conflict;

c) a statement of the parties that they have been informed by the mediator with regard to mediation, to its effects and applicable rules;

d) the obligation of the mediator to keep the confidentiality and the parties' decision on confidentiality, where appropriate;

#B

- e) the commitment of the parties to the conflict to comply with the rules applicable to mediation;
- f) the obligation of the parties to the conflict to pay the proper fee to the mediator and the expenses made by the mediator during the mediation in the interest of the parties, as well as the modalities of forwarding and paying these amounts, including in case of waiving mediation or failure of proceedings, as well as the share of the parties, considering, where appropriate, their social situation. Unless otherwise agreed, these amounts shall be borne equally by the parties;
- g) the understanding of the parties about the language used to conduct mediation;

#M1

- h) the number of copies in which the contract is going to be drafted in case it is written, corresponding to the number of signatories to the mediation contract;
- i) the obligation of the parties to sign the minutes drawn up by the mediator, regardless of final results of mediation.

#B

ART. 46

- (1) The mediation contract can also provide other clauses, under the law.
- (2) Under the sanction of absolute nullity, the mediation contract may not include clauses contrary to law or public order.
- (3) If, during the mediation procedure, unexpected expenses arise, incurred in the interest of the parties and with their consent, an annex to the mediation contract shall be enclosed.

ART. 47

- (1) The mediation contract shall be concluded in writing, under the sanction of nullity. It shall be signed by the parties to the conflict and the mediator and shall be drawn up in as many originals as many signatories.
- (2) The parties to the conflict may give a special power of attorney to another person, under the law, to conclude the mediation contract.

ART. 48

The mediation contract shall be an enforcement order in respect of the parties' obligation to pay the outstanding fees due to the mediator.

ART. 49

The period of prescription of the right of action for the disputed right subject to mediation shall be suspended from the date of signing the mediation contract, by the end of the mediation procedure in any of the ways provided by this Law.

### SECTION 3

#### Conducting mediation

ART. 50

- (1) Mediation is based on the cooperation between parties and on the use, by the mediator, of certain specific methods and techniques based on communication and negotiation.
- (2) The methods and techniques used by the mediator must only serve the legitimate interests and objectives pursued by the parties to the conflict.
- (3) The mediator may not impose a solution on the parties to the conflict under mediation.

ART. 51

Mediation usually takes place at the headquarters of the mediator. If necessary, mediation may take place in other places agreed by the mediator and by the parties to the conflict.

ART. 52

- (1) The parties to the conflict shall have the right to be assisted by a lawyer or by other persons, under conditions mutually agreed upon.
- (2) During mediation the parties may be represented by other persons that can give ordering acts, under the law.

ART. 53

The defences formulated by the parties to the conflict during mediation, by the persons referred to in Article 52 and Article 55 (1), as well as by the mediator shall have a confidential nature to third parties and can not be used as evidence within judicial proceedings or arbitration proceedings, unless the parties agree otherwise or the law provides otherwise. The mediator shall draw the attention of persons who attend mediation under Article 52 on the obligation of confidentiality and may request them to sign a confidentiality agreement.

ART. 54

(1) If, during mediation, a situation likely to affect its purpose, the neutrality and impartiality of the mediator arises, he shall be required to notify the parties about it, which shall decide on continuation or termination of the mediation contract.

#M1

(2) The mediator shall have the right to end the mediation procedure, acting according to Article 56, which shall apply accordingly. In this case, the mediator shall be required to return a part of the fee, under the terms established in the mediation contract.

#B

ART. 55

(1) Should difficult or controversial legal issues or any other issues from a specialised field arise in the conflict subject to mediation, the mediator, with the parties' consent, may request the opinion of a specialist in that field.

(2) When asking for an opinion of an expert outside his office, the mediator shall only point out controversial issues, without disclosing the identity of the parties.

#### SECTION 4

##### Closing the mediation procedure

ART. 56

(1) The mediation procedure shall close, as appropriate:

- a) by reaching an agreement between parties as a result of settlement of the conflict;
- b) by ascertaining the failure of mediation by the mediator;
- c) by filing the mediation contract by one party.

(2) Where the parties have only reached a partial understanding, as well as in the cases referred to in paragraph (1) b) and c), any party may resort to the competent law court or arbitration court.

ART. 57

When closing the mediation, in any of the cases referred to in Article 56 (1), the mediator shall draw up a minutes to be signed by the parties, either in person or by a representative of such, and by mediator. Each party shall receive an original duplicate of the minutes.

#M1

ART. 58

(1) When the parties to the conflict have come to an understanding, a written agreement may be drawn up, which shall include all the clauses on which they have agreed and that is worth the same as a document under private signature. Typically, the agreement shall be drafted by the mediator, unless the parties and the mediator agree otherwise.

#B

(2) The understanding that the parties have come to must not include provisions affecting law and public order, the provisions of Article 2 being applicable.

(3) The understanding that the parties have reached may be affected, according to the law, by the terms and conditions.

#M5

(4) If the conflict under mediation concerns the transfer of ownership on immovable property, as well as other rights in rem, partitions and inheritance cases, under the sanction of absolute nullity, the mediation agreement drawn up by the mediator shall be presented to the notary public or to the court, so that they examine, pursuant to the mediation agreement, their substance- and form-related requirements by means of procedures provided by law and to issue an authentic act or a judgment, as applicable, in compliance with the legal proceedings. The mediation agreements shall be checked in respect of compliance with the conditions of substance and form, while the notary public or the law court, as the case may be, may bring on them any appropriate amendments and supplements with the parties' consent.

(4<sup>1</sup>) The mediator shall also be bound by the obligations set out in paragraph (4) where the mediation agreement establishes, modifies or extinguishes any rights in rem on immovable property.

#M1

(5) The obligation referred to in paragraph (4) shall apply in all cases where the law requires, under the sanction of nullity, fulfilment of substance and form-related conditions.

(6) Where the law requires that the conditions of publicity be fulfilled, the public notary or the law court shall request registration of the authenticated contract, or of the judgment, respectively, in the Land Register.

#M5

ART. 59

(1) The parties may request authentication from the notary public of their understanding, under the terms of the law and in compliance with the legal procedures.

#M6

(2) The parties to the mediation agreement may go to court to request, in compliance with the legal proceedings, to give a decision to legalize their understanding. Competence shall lay with the court in whose jurisdiction any of the parties have their domicile or residence or, where appropriate, the head office or the court of first instance in whose jurisdiction is located the place where it has been signed mediation agreement. The decision whereby the court consents on the understanding between parties shall be delivered in the Council Hall and shall be an enforcement order under the law. The provisions of Article 438 - 441 of the Law No 134/2010 of the Civil Procedure Code, republished, as amended, shall apply accordingly.

#M8

(3) The document drawn up by the notary public according to paragraph (1) and to Article 58 (4) and (4<sup>1</sup>), whereby the understanding included in the mediation agreement is authenticated, shall have the power of a writ of execution.

#M5

ART. 59<sup>1</sup>

If the mediation agreement refers to an inheritance case and has occurred before issuing the certificate of inheritance, competence lays with notary public, under the law.

#M9

ART. 59<sup>2</sup>

The request addressed to the court concerning the delivery of a judgment that legalizes the understanding of the parties arising from the mediation agreement shall be taxed according to the law.

#B

ART. 60

(1) At any stage of the mediation procedure, any of the parties to the conflict shall have the right to terminate the mediation contract, by informing in writing the other party and the mediator.

(2) The mediator shall take note of the unilateral termination of the mediation contract and, within 48 hours of the receipt of information, it shall draw up a minutes on closing the mediation procedure.

(3) If one of the parties to the conflict does no longer appear for mediation, without termination of the mediation contract under paragraph (1), the mediator shall be required to make all necessary arrangements to determine the real intention of the party concerned and, where appropriate, to continue or to close the mediation procedure.

#M5

SECTION 5

Mediation in case of a dispute before the law courts

#M5

ART. 60<sup>1\*</sup>)

(1) In disputes that can, by law, be subject to mediation or to other alternative form of settlement of disputes, the parties and/or party concerned, as appropriate, shall be bound by the obligation to bring evidence that they have attended the information meeting on advantages of mediation, on the following matters:

a) in the field of consumers' protection, when the consumer invokes the existence of injury as a result of having purchased defective products or services, of failure to comply with the contract clauses or securities provided, of existence of certain abusive clauses included in the contracts concluded between the consumers and the economic operators or of infringement of other rights provided by the national law or the European Union law in the field of consumers' protection;

b) in matters of family law, in the situations provided in Article 64;

c) in the field of disputes concerning possession, setting borders, displacement of borders, as well as any other disputes regarding neighbouring relations;

d) in the field of professional liability in which professional liability may be engaged, malpractice cases, respectively, in so far as special laws do not cover any other procedure;

e) in labour disputes arising from the conclusion, performance and termination of the individual labour contracts;

#M6

f) in civil disputes whose value is less than ROL 50 000, excluding disputes for which an enforceable judgment opening insolvency proceedings has been ruled, actions referring to the trade register and cases in which the parties choose to resort to the procedure laid down in Articles 1.013 - 1.024 or that provided in Articles 1.025 - 1.032 of the Law 134/2010, republished, as amended;

g) in case of offences for which a withdrawal of prior complaint or reconciliation of parties removes criminal liability, after filing the complaint, if the perpetrator is known or has been identified, and the victim consents to participate in the information session together with the perpetrator; if the victim refuses to participate together with the perpetrator, the information session shall be conducted separately.

(2) \*\*\* Repealed

#CIN

\*) The date of entry into force of Article 60<sup>1</sup> is provided in Article II of the Law 115/2012 (#M5). The time limit laid down in Article II of the Law 115/2012 (#M5), relative to the entry into force of the provisions of Article 60<sup>1</sup> of the Law No 192/2006, was prorogued successively by Article II of the Government Emergency Ordinance No 90/2012 (#M6) and by Article VIII of Government Emergency Ordinance No 4/2013 (#M7).

According to Article VIII of the Government Emergency Ordinance No 4/2013 (#M7), the time limit relative to the entry into force of the provisions of Article 60<sup>1</sup> of the Law No 192/2006 has been prorogued as follows:

a) until the entry into force of the Law No 134/2010 on the Civil Procedure Code, republished, as regards the provisions of paragraph (1) a) - f);

b) until the entry into force of the Law No 135/2010 on the Criminal Procedure Code, as regards the provisions of paragraph (1) g).

#M6

ART. 60<sup>2</sup>

(1) The information procedure, also including the formalities for summoning the parties, may not exceed 15 calendar days. The provisions of Article 2.532 point 7 of the Law No 287/2009 of the Civil Code, republished, as amended, shall apply accordingly.

(2) Acceptance of attendance or attendance in the information session shall not be a recognition of the right at issue and would not interrupt the course of the period of prescription.

#M5

ART. 61

(1) In case the conflict was brought to justice, its settlement by mediation may take place at the initiative of the parties or at the proposal of any of them or on the recommendation of the court, concerning the rights which the parties may enjoy under the law. Mediation may have as subject settlement of all or part of the dispute. The mediator may not charge fees for informing the parties.

(2) At the end of the mediation procedure, the mediator shall, in all cases, provide the competent law court the mediation agreement and the minutes of closing of mediation, in the original or in electronic format if the parties have come to an understanding or just the minutes of closing of mediation in the situations provided in Article 56 (1) b) and c).

#B

ART. 62

(1) In order to conduct the mediation procedure, the examination of civil cases by the law courts or by the arbitration courts shall be suspended at the request of the parties, under the terms provided in Article 242 (1) point 1 of the Civil Procedure Code.

(2) The course of the term of prescription shall be suspended during the mediation, but no more than 3 months from the date of signing the mediation contract.

(3) The request for inclusion in the court's list of cases shall be exempt from the judicial stamp duty.

#M6

ART. 63

(1) In case the matter has been settled by means of mediation, the court shall deliver, at the request of the parties and in compliance with the requirements of law, a judgment, the provisions of Articles 438 - 441 of the Law No 134/2010, republished, as amended, being applied accordingly.

#M5

(2) At the same time with the ruling, the court shall, at the request of the party, the refund of the judicial stamp duty, paid for investing such court, except for the cases where the conflict settled by mediation is related to the transfer of ownership, the establishment of another right in rem on immovable property, partition and inheritance cases.

(2<sup>1</sup>) The law court shall not order refund of the judicial stamp duty paid for its investment, in case the conflict settled is related to an inheritance cause for which an inheritance certificate has not been issued.

#M1

(3) The expedient decision delivered according to this Law shall be enforceable order.

#B

## CHAPTER 6

Special provisions for mediation of conflicts

### SECTION 1

Special provisions relating to family conflicts

#M5

#### ART. 64

(1) Disagreements between spouses may be settled by mediation as regards:

- a) the continuation of marriage;
- b) the partition of joint assets;
- c) the exercise of parental rights;
- d) establishing the domicile of children;
- e) the contribution of parents to the children maintenance;
- f) any other disagreements arising in the relations between spouses regarding rights they may enjoy under the law.

(1<sup>^</sup>1) The mediation agreements concluded by the parties, in cases/conflicts which concern the exercise of parental rights, the parents' contribution to the children maintenance and establishing the children domicile, shall be presented in the form of an expedient decision.

#B

(2) The arrangement of spouses on dissolution of marriage and on the settlement of the aspects ancillary to divorce shall be filed by the parties with the court competent to rule on divorce.

#### ART. 65

The mediator shall ensure that mediation outcome is not contrary to the best interests of the child, shall encourage the parents to primarily consider the child's needs, and assuming parental responsibility, separation in fact or divorce does not actually impede its growth and development.

#### ART. 66

(1) Before the conclusion of the mediation contract or, where appropriate, during the procedure, the mediator shall make all arrangements in order to check whether there is an abusive or violent relationship between the parties and the effects of such situations are likely to influence mediation and decide whether, in such circumstances, the settlement by mediation is appropriate. The provisions of Article 54 shall apply accordingly.

(2) If, during mediation, the mediator becomes aware of any facts that jeopardise the growth and normal development of the child or seriously harm its best interests, must refer the matter to the competent authority.

### SECTION 2

Special provisions on mediation in criminal cases

#### ART. 67

(1) The provisions of this Law shall also apply accordingly in criminal cases involving offences for which, by law, the withdrawal of prior complaint or reconciliation of parties removes criminal liability.

(2) The injured party or the perpetrator can not be compelled to accept the mediation procedure.

#### ART. 68

(1) In criminal cases the mediation shall be conducted so that each party is secured the right to legal assistance and, if necessary, to the services of an interpreter. The minutes drawn up under this law, for closing the mediation procedure, must indicate whether the parties have benefited by the assistance of a lawyer and by the services of an interpreter or, where appropriate, to indicate that they have expressly waived these rights.

(2) In case of minors, the safeguards provided by law in order to conduct criminal proceedings shall be provided accordingly within the mediation procedure as well.

#### ART. 69

(1) In case the mediation procedure is conducted before the onset of the criminal proceedings and is finalised by reconciliation of the parties, the injured party may no longer refer the matter to the criminal prosecution body or, where appropriate, to the law court for the same offence.

(2) If the mediation procedure was initiated within the period provided by law for the filing the prior complaint, that time limit shall be suspended for the period of mediation. If the parties to the conflict have not reconciled, the injured party may file the prior complaint within the same time limit, which shall resume its course from the date when the minutes closing the mediation is drawn up, also considering the time elapsed before suspension.

#### ART. 70

(1) In case the mediation is conducted after the commencement of criminal proceedings, the criminal prosecution or, as applicable, the examination of the case shall be suspended, on the grounds of submission by the parties of the mediation contract.

(2) Suspension lasts until the mediation procedure is closed by any of the modalities provided by this Law, but not less than 3 months from the date of signing the mediation contract.

#M5

(3) \*\*\* Repealed

#B

(4) The criminal case shall be resumed ex officio, immediately after receipt of the minutes whereby it is established that the parties have not reconciled, or, in case it has not been communicated, upon the expiry of the time limit stipulated in paragraph (2).

#M5

(5) In order to solve the criminal cases pursuant to the agreement concluded as a result of mediation, the mediator shall be bound to forward to the judicial body the mediation agreement and the minutes of closing of mediation in the original and in electronic format if the parties have reached an agreement or just the minutes of closing of mediation in the situations provided in Article 56 (1) b) and c).

#M1

(6) The provisions of Article 61 (2) shall apply accordingly in case mediation is recommended by the judicial bodies.

#B

## CHAPTER 7

### Transitory and final provisions

#### ART. 71

(1) Within 4 months after date of entry into force of this Law, the Mediation Council shall be established, which shall elaborate the regulation on its organization and functioning, as well as the mediation training standards, which shall be published in the Official Gazette of Romania, Part I.

(2) In view of establishing the first mediation council, its members shall be appointed by mutual agreement by the legally-established organizations in the field of mediation, taking into account the cumulative criteria regarding length in time of the activity of the organization in this field according to the provisions of the statute, the number of specialized members, as well as the practical training and experience in mediation of the representatives of these organizations.

(3) The organization and functioning of the first mediation council, in the first year from the beginning of the activity shall be allocated from the state budget, through the budget of the Ministry of Justice, the funds related to the following categories of expenditure:

- a) the maintenance and operation costs;
- b) the salaries of its technical secretariat.

(4) After the expiry of one year from the date of establishing the Mediation Council, its funding shall be ensured under the terms of Article 21.

#### ART. 72

(1) Within one month after publication in the Official Gazette of Romania, Part I, of the Regulation on the organization and functioning of the Mediation Council, the mediator authorization procedure begins.

#M5

(2) The persons who have graduated from or who, on the entry into force of this Law, attend a mediators' training course in the country or abroad, if they meet the conditions laid down in Article 7 a) - e), may apply for authorization as a mediator, according to the conditions provided by this Law, being bound by the obligation to provide any document attesting the training curriculum covered. The Mediation Council shall decide to give authorization after evaluating the contents of the presented training curriculum, including the duration of training. The provisions of Article 8 (5) shall apply accordingly.

#B

#### ART. 73

(1) The provisions of this Law on mediation of conflicts shall become applicable within one month from the date of drawing up the Roll of authorized mediators.

#M1

(2) The provisions of this Law shall also apply to mediation of conflicts concerning the rights the parties may enjoy within labour conflicts.

#B

ART. 74

(1) The institutions and the other legal entities which, on the date of entry into force of this Law, have ongoing training courses for mediators may finalise these courses in accordance with the regulations in force at the time of onset of courses.

#M5

(2) \*\*\* Repealed

#M5

ART. 75

Lawyers, notaries public and members of other liberal professions that have acquired the capacity of mediator according to the provisions of this Law may carry on the mediation activity at the headquarters where they pursue their main business.

#CIN

NOTE:

We reproduce below the provisions of Article V and Article VI, as well as of the mention on the transposition of the Community rules in the Government Ordinance No 13/2010 (#M2).

#M2

"ART. V

Authorization of interpreters and translators, mediators, technical judicial experts and forensic experts shall be exempt from tacit approval procedure, as it is regulated by the Government Emergency Ordinance No 27/2003 on the tacit approval procedure, approved as amended and supplemented by the Law No 486/2003."

#M2

"ART. VI

The authorisation procedures and formalities for interpreters and translators, mediators, technical judicial experts and forensic experts can also be carried out through a single contact point, in accordance with the provisions of the Government Emergency Ordinance No 49/2009 on freedom of establishment for service providers and the freedom to provide services in Romania. The provisions of this Article shall apply from the date of operationalisation of the single contact point."

#M2

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"This Ordinance transposes the provisions of Directive 2006/123/EC of the European Parliament and of the Council of 12 December 2006 on services in the internal market, published in the Official Journal of the European Union, L Series No 376 of 27 December 2006."

#B

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