

Übersetzung durch Eileen Flügel

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Stand: Die Übersetzung berücksichtigt die Änderung(en) des Gesetzes durch Artikel 12 des Gesetzes vom 25. Juni 2021 (BGBl. I S. 2154)

Version information: The translation includes the amendment(s) to the Act by Article 12 of the Act of 25 June 2021 (Federal Law Gazette I p. 2154)

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## **Act on Advisory Assistance and Representation for Citizens with a Low Income (Beratungshilfegesetz - BerHG)**

Advisory Assistance Act as published on 18 June 1980 (Federal Law Gazette I, p. 689), last amended by Article 12 of the Act of 25 June 2021 (Federal Law Gazette I, p. 2154)

### **Section 1 Conditions**

(1) Assistance for the exercise of rights outside court proceedings and in mandatory conciliation proceedings in accordance with section 15a of the Introductory Act to the Code of Civil Procedure (Gesetz betreffend die Einführung der Zivilprozessordnung) (advisory assistance) is granted upon application if

1. litigants cannot mobilise the necessary resources due to their personal and economic circumstances,
2. there are no other possibilities for assistance that litigants may reasonably be expected to use,
3. use of advisory assistance does not seem frivolous.

(2) The conditions of subsection 1 no. 1 have been met if assistance with court costs is to be granted to litigants under the provisions of the Code of Civil Procedure (Zivilprozessordnung) without them having to make a contribution to the costs. The possibility of being advised or represented by a lawyer free of charge or on the basis of a contingent fee agreement is not another possibility for assistance within the meaning of subsection 1 no. 2.

(3) Frivolity is deemed to exist if advisory assistance is to be claimed although litigants who may not claim advisory assistance on the basis of their personal and economic circumstances would refrain from obtaining legal advice or representation at their own expense upon due consideration of all the circumstances of the legal matter. In assessing frivolity, litigants' knowledge and abilities and their specific economic situation are to be taken into account.

### **Section 2 Subject of the advisory assistance**

(1) Advisory assistance consists of advice and, if necessary, representation. Representation is necessary if, following the provision of advice, litigants cannot assert their rights themselves in view of the scale, difficulty or significance of the legal matter for them.

(2) Advisory assistance under this Act is granted in all legal matters. In criminal law and regulatory offence law matters, only advice is granted

(3) Advisory assistance under this Act is not granted in matters in which the law of other States is applicable insofar as the matter has no connection with Germany.

### **Section 3** **Granting of advisory assistance**

(1) Advisory assistance is provided by lawyers and counsels who are members of a bar association. Within the scope of their respective authority to provide advisory assistance, it is also provided by

1. tax consultants and tax agents,
2. auditors and sworn certified accountants and
3. pension consultants.

It may also be provided by the persons specified in sentences 1 and 2 (consultants) in advisory centres established on the basis of an agreement with the *Land* judicial authorities.

(2) Advisory assistance may also be provided by a local court insofar as the matter can be appropriately dealt with by immediate information, reference to other possibilities for assistance or the acceptance of an application or a declaration.

### **Section 4** **Procedure**

(1) The local court in the district of which the litigants have their general place of jurisdiction decides on applications for advisory assistance. If litigants do not have a general place of jurisdiction in Germany, the local court in the district in which the need for advisory assistance occurs has jurisdiction.

(2) The application may be made orally or in writing; section 130a of the Code of Civil Procedure and statutory instruments issued on its basis apply accordingly. The situation for which the application for advisory assistance is being made must be indicated.

(3) The following documents must be included with the application:

1. a statement by litigants concerning their personal and economic circumstances, especially information concerning their marital status, profession, assets, income and expenditures, as well as the relevant evidence and
2. an assurance by litigants that they have not previously been granted advisory assistance concerning the same matter and have not been refused it by a court, and that no court proceedings are or were pending concerning the same matter.

(4) The court may demand that litigants substantiate their statements of fact, and in particular may also demand that a statutory declaration be made in lieu of an oath. It may make assessments; specifically, it may order the submission of documents and obtain information. Witnesses and experts are not to be heard.

(5) If, within a period set by the court, litigants fail to substantiate information they have provided regarding their personal and economic circumstances, or if they fail to answer certain questions or do not answer them to the satisfaction of the court, the court will refuse to approve advisory assistance.

(6) In cases where the application is made retroactively (section 6 (2)), consultants may demand, before the start of advisory assistance, that litigants furnish evidence of their personal and economic circumstances, and declare that they have not previously been granted advisory assistance concerning the same matter and have not been refused it by a court, and that no court proceedings are or were pending concerning the same matter.

### **Section 5** **Applicable provisions**

The provisions of the Act on Proceedings in Family Matters and in Matters of Non-contentious Jurisdiction (Gesetz über das Verfahren in Familiensachen und in den

Angelegenheiten der freiwilligen Gerichtsbarkeit – FamFG) apply to the proceedings accordingly unless this Act determines otherwise. Section 185 (3) and section 189 (3) of the Courts Constitution Act (Gerichtsverfassungsgesetz – GVG) apply accordingly.

### **Section 6 Certificate of eligibility**

(1) If the conditions for the provision of advisory assistance have been met and the matter is not dealt with by the local court, the local court issues litigants with a certificate of eligibility for advisory assistance by a consultant of their choice, giving a precise specification of the matter.

(2) If litigants contact a consultant directly for the purpose of obtaining advisory assistance, the application for the approval of advisory assistance may be made retroactively. In such a case, the application must be made no later than four weeks after the beginning of the advisory assistance activity.

### **Section 6a Revocation of approval**

(1) The court may revoke approval ex officio if the conditions for advisory assistance had not been met at the time of the approval and no more than one year has lapsed since the approval.

(2) Consultants may apply for the approval to be revoked if litigants have obtained something on the basis of the advice or representation for which the advisory assistance was approved for them. An application may only be made if consultants

1. have not yet applied for remuneration for advisory assistance under section 44 sentence 1 of the Act on the Remuneration of Lawyers (Rechtsanwaltsvergütungsgesetz – RVG) and

2. have informed litigants in writing when accepting the mandate of the possibility of filing an application and of revocation of the approval as well as of the consequences for remuneration under section 8a (2).

The court must revoke the decision on the approval of advisory assistance after hearing litigants if the latter no longer meet the conditions for the approval of advisory assistance with regard to their personal and economic circumstances on account of what they have obtained.

### **Section 7 Legal remedy**

Only reminders serving as a legal remedy are permitted against a decision rejecting an application for the approval of advisory assistance or revoking approval ex officio or upon the application of a consultant.

### **Section 8 Remuneration**

(1) The consultant's remuneration is based on the provisions of the Act on the Remuneration of Lawyers applicable to advisory assistance. To this extent, a consultant who is not a lawyer is equivalent to a lawyer.

(2) Where advisory assistance is approved, this will have the effect that consultants may not assert claims to remuneration against litigants except for the fee for advisory assistance (section 44 sentence 2 of the Act on the Remuneration of Lawyers). This also applies in cases where applications are made retroactively (section 6 (2)) until a decision has been taken by the court.

### **Section 8a Consequences of the revocation of approval**

(1) If the approval of advisory assistance is revoked, the consultants' claim against the state treasury for remuneration remains unaffected. This does not apply if consultants

1. had knowledge or grossly negligent lack of knowledge of the fact that the conditions for the approval of advisory assistance had not been met at the time of the payment of advisory assistance, or

2. applied for the revocation of advisory assistance themselves (section 6a (2)).

(2) Consultants may demand remuneration from litigants in accordance with the general provisions if they

1. do not demand or retain any remuneration from the state treasury and

2. if they informed litigants of the possibility of the revocation of the approval upon accepting the mandate and of the resulting consequences for remuneration.

Insofar as litigants have already paid the fee for advisory assistance (no. 2500 of Annex 1 to the Act on the Remuneration of Lawyers), this is set off against the claim for remuneration.

(3) If the approval of advisory assistance is revoked because the personal and economic conditions were not met, the state treasury may demand from litigants the reimbursement of the amount paid by it to consultants and retained by them.

(4) If in the case of a retroactive application, advisory assistance is not approved, consultants may demand remuneration from litigants according to the general provisions if they informed them of this upon accepting the mandate. Subsection 2 sentence 2 applies accordingly.

## **Section 9**

### **Reimbursement of costs by the respondent**

A respondent who has the obligation to reimburse litigants' costs of asserting their rights is required to pay the remuneration for the consultant's work in accordance with the general provisions. The claim is to be devolved upon the consultant. This devolution may not be invoked to litigants' detriment.

## **Section 10**

### **Cross-border disputes**

(1) In the case of cross-border disputes as defined in Council Directive 2003/8/EC of 27 January 2003 to improve access to justice in cross-border disputes by establishing minimum common rules relating to legal aid for such disputes (OJ 2003 L 26, p. 41, OJ 2003 L 32, p. 15), advisory assistance is granted

1. for pre-litigation advice with a view to reaching an out-of-court settlement,

2. for support when making an application under section 1077 of the Code of Civil Procedure until the request has been received in the Member State where the place of jurisdiction is located.

(2) Section 2 (3) does not apply.

(3) For the transmission of applications for advisory assistance in cross-border disputes, section 1077 of the Code of Civil Procedure applies accordingly.

(4) The local court specified in section 4 (1) sentence 2 is the place of jurisdiction for incoming requests for advisory assistance in cross-border disputes. Section 1078 (1) sentence 2, section 1078 (2) sentence 2 and section 1078 (3) of the Code of Civil Procedure apply accordingly.

## **Section 10a**

### **Cross-border maintenance matters**

(1) In the case of maintenance matters provided for in Council Regulation (EC) No 4/2009 of 18 December 2008 (OJ L 7 of 10 January 2009, p. 1), advisory assistance is granted in

cases under Articles 46 and 47 (2) of that Regulation, regardless of litigants' personal and economic circumstances.

(2) The local court at the seat of the higher regional court in the district of which litigants have their habitual residence is the court of jurisdiction for outgoing applications for cross-border advisory assistance in maintenance matters under section 10 (1). For incoming requests, the court specified in section 4 (1) sentence 2 is the court of jurisdiction.

### **Section 11**

#### **Authorisation to issue statutory instruments**

The Federal Ministry of Justice and Consumer Protection, with the agreement of the Bundesrat, is authorised to introduce and prescribe the use of application forms for granting advisory assistance and paying the remuneration of consultants upon conclusion of the advisory assistance in order to simplify and standardise the procedure by means of a statutory instrument.

### **Section 12**

#### ***Länder* clauses**

(1) In the *Länder* Bremen and Hamburg, the public legal advisory services introduced take the place of advisory assistance under this Act if and insofar as the law of those *Länder* does not determine otherwise.

(2) In *Land* Berlin, litigants have the choice between using the public legal advisory services introduced there and advisory assistance under this Act, if and insofar as the law of *Land* Berlin does not determine otherwise.

(3) The *Länder* may determine by statute the exclusive competence of advisory centres to grant advisory assistance under section 3 (1).

(4) Persons who provide advice within the framework of public legal advisory services who have the qualification for judicial office are obliged to preserve secrecy in the same way as an instructed lawyer and, with the written consent of litigants, are entitled to obtain information from files and to view files.