

Übersetzung durch Eileen Flügel.

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Stand: Die Übersetzung berücksichtigt die Änderung(en) des Gesetzes durch Artikel 140 der Verordnung vom 31. August 2015 (BGBl. I S. 1474)

Version information: The translation includes the amendment(s) to the Act by Article 140 of the Regulation of 31 August 2015 (Federal Law Gazette I, p. 1474)

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

Advisory Assistance Act as published on 18 June 1980 (Federal Law Gazette I, p. 689), last amended by Article 140 of the Regulation of 31 August 2015 (Federal Law Gazette [Bundesgesetzblatt] I p. 1474)

### **Section 1**

(1) Assistance for the exercise of rights outside court proceedings and in mandatory conciliation proceedings pursuant to Section 15a of the Introductory Act to the Code of Civil Procedure (Gesetz betreffend die Einführung der Zivilprozessordnung) (advisory assistance) shall be 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, use of which can be expected from the litigant,
3. use of advisory assistance does not seem frivolous.

(2) The prerequisites of paragraph 1 (1) have been met if assistance with court costs is to be granted to the litigant under the provisions of the [German] Code of Civil Procedure (Zivilprozessordnung) without him having to make a contribution to the costs. The possibility of being represented or advised by an attorney free of charge or on the basis of a contingent fee agreement is not another possibility for assistance within the meaning of paragraph 1 (2).

(3) Frivolity shall be deemed to exist if advisory assistance is claimed, although a litigant who does not claim advisory assistance would desist from obtaining legal advice or representation at his own cost, upon having judiciously assessed all circumstances of the legal matter. In assessing frivolity, the applicant's knowledge and abilities and his specific economic situation shall be taken into account.

### **Section 2**

(1) Advisory assistance consists of advice and, if necessary, representation. Representation is necessary if, following the provision of advice, the litigant cannot assert his rights himself in view of the extent, difficulty or significance of the legal matter for him.

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

(3) Advisory assistance pursuant to this Act shall not be granted in matters in which the law of other states is applicable insofar as the matter has no connection with Germany.

### **Section 3**

(1) Advisory assistance shall be provided by attorneys and counsels who are members of a bar association. Within the scope of their respective authority to provide advisory assistance, it shall also be 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 the first and second sentences above (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**

(1) The local court in the district of which the litigant has his general place of jurisdiction shall decide on applications for advisory assistance. If the litigant does not have a general place of jurisdiction in Germany, the local court in the district in which the need for advisory assistance occurs shall have jurisdiction.

(2) The application may be made orally or in writing. The situation for which the application for advisory assistance is being made shall be indicated.

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

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

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

(5) Should, within a period set by the court, the litigant fail to substantiate information he has provided regarding his personal and economic circumstances or should he fail to answer certain questions or not answer them to the satisfaction of the court, the court shall refuse to approve advisory assistance.

(6) In cases where the application is made retroactively (Section 6 (2)) the consultant may demand before the start of advisory assistance that the litigant furnish evidence of his personal and economic circumstances, and declare that he has not previously been granted advisory assistance concerning the same matter or been refused it by a court, and that no court proceedings are or were pending concerning the same matter.

### **Section 5**

The provisions of the [German] 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) shall apply to the proceedings mutatis mutandis, unless this Act determines otherwise. Section 185 (3) and Section 189 (3) of the [German] Courts Constitution Act (Gerichtsverfassungsgesetz - GVG) shall apply mutatis mutandis.

### **Section 6**

(1) If the prerequisites for the provision of advisory assistance have been met and the matter is not dealt with by the local court, the local court shall issue the litigant with a certificate of eligibility for advisory assistance by a consultant of his choice, giving a precise specification of the matter.

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

#### **Section 6a**

(1) The court can repeal the approval *ex officio* if the prerequisites 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) The consultant can apply for the repeal of the approval if the litigant has obtained something on the basis of the advice or representation for which the advisory assistance was approved for him. An application may only be made if the consultant

1. has not yet applied for remuneration for advisory assistance pursuant to Section 44 first sentence of the German Law on the Remuneration of Attorneys (Gesetz über die Vergütung der Rechtsanwältinnen und Rechtsanwälte - RVG) and

2. has informed the litigant in writing when accepting the mandate of the possibility of filing an application and repealing the approval and of the consequences for remuneration pursuant to Section 8a (2).

The court shall repeal the decision on the approval of advisory assistance after hearing the litigant if the latter no longer meets the prerequisites for the approval of advisory assistance with regard to his personal and economic circumstances on account of what he has obtained.

#### **Section 7**

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

#### **Section 8**

(1) The consultant's remuneration is based on the provisions of the Law on the Remuneration of Attorneys that are applicable to advisory assistance. To this extent, a consultant who is not an attorney is equivalent to an attorney.

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

#### **Section 8a**

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

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

2. applied for the repeal of advisory assistance themselves (Section 6a (2)).

(2) A consultant may demand remuneration from the litigant in accordance with the general provisions if he

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

2. if he informed the litigant of the possibility of the repeal of the approval upon accepting the mandate and of the resulting consequences for remuneration.

Insofar as the litigant has already paid the fee for advisory assistance (no. 2500 of Annex 1 to the Law on the Remuneration of Attorneys), it shall be set off against the claim for remuneration.

(3) If the approval of advisory assistance is repealed because the personal and economic prerequisites were not met, the state treasury may demand from the litigant the reimbursement of the amount paid by it to the consultant and retained by him.

(4) If in the case of a retroactive application, advisory assistance is not approved, the consultant may demand remuneration from the litigant according to the general provisions if he informed him of this upon accepting the mandate. Paragraph 2 second sentence shall apply mutatis mutandis.

### **Section 9**

If the opposing party has the obligation to reimburse the litigant's costs of asserting his rights, it is required to pay the remuneration for the consultant's work in accordance with the general provisions. The claim shall be devolved upon the consultant. This devolution cannot be invoked to the litigant's detriment.

### **Section 10**

(1) In the case of cross-border disputes pursuant to 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 pursuant to Section 1077 of the Code of Civil Procedure until the request has been received in the Member State in which the court is situated.

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

(3) For the transmission of applications for advisory assistance in cross-border disputes, Section 1077 of the Code of Civil Procedure shall apply mutatis mutandis.

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

### **Section 10a**

(1) In the case of maintenance matters pursuant to Council Regulation (EC) No 4/2009 of 18 December 2008 (OJ L 7 of 10.1.2009, p. 1), advisory assistance shall be granted in cases pursuant to Articles 46 and 47 (2) of this Regulation regardless of the personal and economic circumstances of the applicant.

(2) The local court at the seat of the Higher Regional Court in the district of which the claimant has his habitual residence is the court of jurisdiction for outgoing claims for cross-border advisory assistance in maintenance matters pursuant to Section 10 (1). For incoming applications, the court specified in Section 4 (1) second sentence is the court of jurisdiction.

### **Section 11**

The Federal Ministry of Justice and Consumer Protection, with the agreement of the Bundesrat, shall be 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 regulation.

### **Section 12**

(1) In the Länder Bremen and Hamburg, the public legal advisory services introduced shall 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, the litigant has 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 pursuant to Section 3 (1).

(4) Advisors of the public legal advisory services who have the qualification for judicial office are obliged to preserve secrecy in the same way as an instructed attorney and, with the written consent of the person seeking advice, are entitled to obtain information from files and to view files.

### **Section 13**

If a claim for advisory assistance was filed before 1 January 2014 or if the advisory assistance was granted before 1 January 2014, this Act shall be applied in the version applicable until 31 December 2013.

### **Section 14**

#### **Entry into force**

This Act, with the exception of Section 14, shall come into force on 1 January 1981. Section 14 shall come into force on the day after its promulgation.