

Übersetzung durch Ute Reusch.

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Stand: Die Übersetzung berücksichtigt die Änderung(en) der Verordnung durch Artikel 22 des Gesetzes vom 19. Februar 2016 (BGBl. I S. 254)

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Ordinance pursuant to section 57c of the Aviation Act on Conciliation in the Aviation Sector (Luftverkehrsschlichtungsverordnung - LuftSchlichtV)

Ordinance on Conciliation in the Aviation Sector of 11 October 2013 (Federal Law Gazette I, p. 3820), as last amended by Article 22 of the Act of 19 February 2016 (Federal Law Gazette I p. 254)

Based on the first sentence and the first half-sentence of the second sentence of section 57c of the Aviation Act as introduced by Article 1 no. 3 of the Act of 11 June 2013 (Federal Law Gazette I p. 1545), the Federal Ministry of Justice, in consultation with the Federal Ministry of Transport, Building and Urban Affairs, the Federal Ministry of Food, Agriculture and Consumer Protection and the Federal Ministry for Economic Affairs and Technology, issues the following Ordinance:

Chapter 1 Conciliation organised under private law

Section 1 Official recognition

(1) Bodies governed by private law may be officially recognised as conciliation bodies under section 57 (1) of the Aviation Act if the conciliation bodies, the conduct of the conciliation procedure and the regulation of fees meet the requirements of

1. sections 57 and 57b of the Aviation Act,
2. sections 2 to 16 (1) and (3) of this Ordinance,
3. sections 1 to 23, 34, 38 and 39 of the Consumer Dispute Resolution Act of 19 February 2016 (Federal Law Gazette I p. 254) and
4. those provisions of the statutory instrument issued under section 42 (1) of the Consumer Dispute Resolution Act which put the requirements of no. 3 in concrete terms.

(2) Conciliation bodies must notify the Federal Ministry of Justice and Consumer Protection of each change to their rules of procedure and to the regulation of fees at least two months before the change enters into force.

Section 2 Seat

Conciliation bodies must establish their seat in the Federal Republic of Germany.

Section 3

Composition and allocation of business

- (1) Conciliation bodies must comprise at least two conciliators. The conciliators represent each other.
- (2) Business is to be allocated before the start of each business year. It is permissible to change the allocation of business during the course of the business year only for an important reason.

Section 4

Conciliators

- (1) Conciliation is conducted by a conciliator.
- (2) Conciliators are appointed for at least four years. One of the conciliators is to be appointed as head of the conciliation body. Appointments require the approval of the advisory council. Re-appointment is permissible.
- (3) Conciliators must be qualified to hold judicial office and possess the specialist knowledge, skills and experience necessary to exercise the activities of a conciliator. Conciliators must be independent and must provide a guarantee of impartial conciliation. The independence and impartiality of the conciliators pursuant to the second sentence is, in particular, not guaranteed if they were employed over the course of the three years prior to their appointment by

1. one of the air carriers participating in the conciliation provided by that conciliation body or an affiliated enterprise or
2. an aviation industry interest group of which one of the air carriers participating in the conciliation provided by that conciliation body or an affiliated enterprise is a member or
3. an association protecting consumer interests in the aviation sector.

For the duration of their appointment conciliators may not take up any employment specified in the third sentence. They may also not take up any activity which might cast doubt on their independence and impartiality.

- (4) Conciliators are not bound by instructions. They may be dismissed only

1. if facts emerge which lead to the assumption that they can no longer exercise their conciliatory activities independently,
2. if they are prevented not only on a temporary basis from exercising their activities as conciliator or
3. for another important reason.

Dismissal requires the approval of the advisory council.

- (5) Conciliators must maintain confidentiality in respect of all matters which become known to them in the course of or on the occasion of their activities. This continues to apply after the end of their term of office. Conciliators must inform the parties involved about the extent of their obligations to maintain confidentiality.

Section 5

Fear of bias

- (1) Conciliators may not exercise their activities in respect of a dispute where there is reason to doubt their impartiality. Conciliators may continue to exercise their activities where they disclose to the parties involved those facts which might cast doubt on their impartiality and the parties involved expressly consent to them continuing their activities.
- (2) Further details are regulated in the rules of procedure (section 8).

Section 6

Advisory council

(1) Conciliation bodies must maintain an advisory council in which the interests of business enterprises and consumers are represented. The advisory council must comprise equal numbers of

1. representatives of the air carriers participating in the conciliation provided by that conciliation body or their aviation industry interest groups and
2. representatives of those associations protecting consumer interests in the aviation sector.

(2) The advisory council may include other persons appointed by the conciliation body, in particular representatives of the Federal Government, of the German Bundestag and of the *Länder* if it is ensured that the advisory council comprises equal numbers of representatives of the air carriers participating in the conciliation provided by that conciliation body as well as their aviation industry interest groups and representatives of those associations protecting consumer interests in the aviation sector. The total number of representatives of the air carriers participating in the conciliation provided by that conciliation body and of their aviation industry interest groups and the representatives of those associations protecting consumer interests in the aviation sector may not be less than the number of the other members of the advisory council.

(3) Persons other than those referred to in the second sentence of subsection (1) and in subsection (2) may also be members of the advisory council of an intermodal conciliation body. Decisions on conciliation in the aviation sector pursuant to section 4 (2), third sentence, and the third sentence of subsection (4) and pursuant to section 8 (2) must be taken by a majority of the advisory council members with voting rights pursuant to subsections (1) and (2).

(4) The members of the advisory council are appointed for at least four years. Re-appointment is permissible.

Section 7

Office

Conciliation bodies must establish an office. Section 4 (5), first and second sentence, applies *mutatis mutandis* to all those persons who are employed in the office.

Section 8

Rules of procedure

(1) Conciliation bodies must adopt rules of procedure setting out details in respect of the requirements made of the conciliation body and of the conciliation procedure under the provisions of

1. sections 57 and 57b of the Aviation Act,
2. sections 9 to 16 (1) and (3) of this Ordinance,
3. sections 4 to 23, 34, 38 and 39 of the Consumer Dispute Resolution Act and
4. those provisions of the statutory instrument issued under section 42 (1) of the Consumer Dispute Resolution Act which put the requirements of no. 3 in concrete terms.

(2) The rules of procedure require the approval of the advisory council.

Section 9

Report

Conciliation bodies must draw up and publish an annual report of their activities. The Federal Ministry of Justice and Consumer Protection is to be sent a copy of the report without delay after publication.

Chapter 2

Procedure for conciliation organised under private law and for official conciliation

Section 10

Procedural principles

- (1) The language to be used in the conciliation procedure is German, unless the conciliation body, the passenger and the air carrier reach agreement in an individual case on using another language.
- (2) Statements submitted in conciliation procedures, in particular the conciliation request and other communications by the parties involved or the conciliation body, require text form. The parties involved may submit statements and supporting documents electronically to the conciliation body. If the parties involved do not submit statements and supporting documents electronically to the conciliation body, they must, upon the request of the conciliation body, submit them in duplicate. The conciliation body may transmit statements and supporting documents to the parties involved electronically if it has provided access thereto.
- (3) The parties involved may be represented in the conciliation procedure. Upon the request of the conciliation body, a written power of attorney must be presented. The parties involved may not be obliged to be represented in the conciliation procedure.

Section 11

Applying to the conciliation body

- (1) When applying to a conciliation body passengers must state the facts of the case and the claim and must enclose the necessary supporting documents. Passengers must, further, demonstrate that there is a dispute in respect of claims pursuant to section 57b (1) of the Aviation Act, that they have asserted the claim directly against the air carrier and the claim was refused by the air carrier or the claim was neither recognised nor rejected by the air carrier and more than two months have elapsed since the claim was brought.
- (2) The conciliation body shall confirm receipt of the conciliation request to the passenger.
- (3) If the conciliation body has not been applied to in the proper manner or the information or supporting documents required pursuant to subsection (1) has not been submitted, the conciliation body shall inform the passenger thereof and request submission of the required information or supporting documents within a period of three weeks of applying to the conciliation body. This also applies where there is evidence to suggest that the conciliation body cannot be applied to under section 57b (2) of the Aviation Act. The period referred to in the first sentence may be extended. Where the missing information or supporting documents are not provided within the time limit, the conciliation request will be deemed to have been withdrawn. The conciliation body shall inform the passenger that no conciliation procedure is to be conducted.

Section 12

Inadmissibility of conciliation

- (1) Where a conciliation body is applied to in respect of a dispute which is not subject to conciliation pursuant to sections 57 to 57b of the Aviation Act or conciliation by that conciliation body, the conciliator shall refuse the conciliation. If another conciliation body can be applied to in respect of the dispute, the conciliation body shall pass the conciliation request to the other conciliation body and notify the passenger thereof.
- (2) The conciliator shall refuse the conciliation if the conditions of section 57b (2) of the Aviation Act are met.
- (3) The conciliator may refuse the conciliation if the conditions of section 57b (3) of the Aviation Act are met.
- (4) The notifications of refusal referred to in the first sentence of subsection (1) and in subsections (2) and (3) are to be briefly and clearly reasoned. The conciliation body shall inform the passenger of the refusal within three weeks of having learned of the reason leading to refusal of the conciliation.

Section 13

Conciliation procedure

(1) Where conciliation is not refused pursuant to section 12, the conciliation body shall forward the conciliation request to the air carrier. The air carrier may comment within a period of four weeks. The passenger is to be notified of that fact. The conciliation body may require the air carrier to provide additional information and documents within a period of a further two weeks. A conciliation body governed by private law may stipulate in its rules of procedure that the periods referred to in the second and fourth sentences are to be reduced from four weeks to two weeks.

(2) If the air carrier does not comment within the periods referred to in the second and fourth sentences of subsection (1), the conciliator shall make a proposal pursuant to section 14 (1) and (2) as the file stands.

(3) The conciliation body shall forward to the passenger any comments which the air carrier submits. The passenger may respond within a period of two weeks. If it is clear from the air carrier's comments that the conciliation request is not sufficiently substantiated, the required supporting documents have not been furnished or the conditions for refusing the conciliation under section 12 (1) to (3) are met, the conciliation body shall indicate this to the passenger when forwarding the air carrier's comments. The period referred to in the second sentence may be extended to enable the passenger to make additional submissions.

(4) If the air carrier declares in its comments that it plans to meet the demand, the conciliation body shall notify the passenger that the conciliation procedure is thereby disposed of.

(5) The procedure under subsections (1) to (4) may be dispensed with if it is already clear from the passenger's submissions that the claim is manifestly unfounded. In such cases the conciliation procedure is concluded upon notification being given to the passenger; the notification is to be briefly and clearly reasoned. Section 12 (4), second sentence, applies *mutatis mutandis*.

(6) As soon as no further information and documents are required (receipt of the full complaints file), the conciliation body shall notify the parties involved thereof.

Section 14

Conciliation proposal

(1) The conciliator shall make a conciliation proposal based on the submissions made by the parties involved, taking account of the supporting documents presented. The conciliation proposal must be in line with applicable law and must be suited to settling the dispute between the parties involved in an appropriate manner. The conciliation proposal may also consist of notification that the claim asserted is fully valid or not valid. It may also contain a recommendation as to whether and to what extent further costs which did not arise for the conciliation body are to be borne by the parties involved.

(2) The conciliation proposal is to be briefly and clearly reasoned.

(3) The conciliation proposal is to be transmitted to the parties involved ninety days following receipt of the full complaints file. The conciliation body may extend this time limit in the case of particularly difficult disputes or with the consent of the parties involved. The parties involved are to be informed of the time limit having been extended.

(4) The parties involved are to be informed when the conciliation proposal is transmitted of the possibility of accepting the proposal, of the time limit under section 15 (1) and the form of the acceptance, as well as of the fact that they are not obliged to accept the proposal and that if both parties involved do accept the conciliation proposal it has a binding contractual effect. The passenger must, in addition, be informed of the fact that, if both parties involved accept the proposal, the originally asserted claim may no longer be successfully asserted in court. Further, they must be informed that if one of the parties involved does not accept the proposal they are entitled to take recourse to the courts.

Section 15

Conclusion of conciliation

(1) The conciliation proposal may be accepted within four weeks of receipt by the parties involved.

(2) After expiry of the time limit under subsection (1), the conciliation body shall notify the parties involved of the outcome. The procedure is concluded upon the making of this notification.

(3) Where no settlement is reached, the notification referred to in subsection (2) is to be designated as a certificate of an unsuccessful attempt at a settlement within the meaning of section 15a (3), third sentence, of the Act concerning the Introduction of the Code of Civil Procedure. The names of the parties involved are to be stated.

Chapter 3 Further provisions

Section 16 Simplified procedure

(1) Conciliation bodies governed by private law may provide in their rules of procedure that they will send the air carrier a conciliation proposal when forwarding the conciliation request pursuant to section 13 (1), first sentence, which is based on the submissions made by the passenger and in all other respects meets the requirements of section 14 (1) second to fourth sentence, and (2). If such a conciliation proposal is sent to the air carrier, the conciliation body shall notify the passenger of this fact, enclosing the conciliation proposal, as soon as the air carrier has commented pursuant to section 13 (1), second sentence.

(2) The official conciliation body may send the air carrier a conciliation proposal when forwarding the conciliation request pursuant to section 13 (1), first sentence, which is based on the submissions made by the passenger and in all other respects meets the requirements of section 14 (1), second to fourth sentence, and (2). If such a conciliation proposal is sent to the air carrier, the conciliation body shall notify the passenger of this fact, enclosing the conciliation proposal, as soon as the air carrier has commented pursuant to section 13 (1), second sentence.

(3) Section 14 (4), first and second sentence, and section 15 (1) and (2), first sentence, apply mutatis mutandis to simplified procedures under subsections (1) and (2). Where a settlement is reached, the conciliation procedure is concluded. Otherwise, the conciliation procedure is continued.

Section 17 Verification procedure

(1) To provide proof that the conditions for payment of a fee pursuant to section 57 (5) of the Aviation Act are met, conciliation bodies shall draw up an overview of the number and outcomes of conciliation cases covering a period of two years following their official recognition and commencement of conciliation. Those conciliation procedures in which, according to the conciliation proposal, the claim was fully or partially valid and those in which, according to the conciliation proposal, the claim was not valid are to be listed separately.

(2) Where this overview shows that in more than half of all the cases brought before the conciliation body in the period referred to in the first sentence of subsection (1) the claims were, according to the conciliation proposal, not valid, the conciliation body may apply to the Federal Office of Justice for the finding that the proof required under section 57 (5), first sentence, of the Aviation Act has been provided. The overview referred to in subsection (1) must be enclosed with the request.

(3) The Federal Office of Justice shall examine whether the proof referred to in section 57 (5), first sentence, of the Aviation Act has been furnished and, where necessary, shall request the conciliation body to provide additional information and documents.

Section 17a Relationship with the Consumer Dispute Resolution Act

Section 57d of the Aviation Act applies in respect of the relationship between the provisions of this Ordinance and the provisions of the Consumer Dispute Resolution Act and the statutory instruments issued under section 42 (1) of that Act.

Chapter 4
Final provisions

Section 18
Transitional provision

(1) Section 6 (1), second sentence, (2) and (3) is only applicable as from 9 July 2015 to bodies governed by private law which had already been officially recognised by the Federal Government as conciliation bodies in the aviation sector before 1 November 2013.

(2) The provisions of this Ordinance which were amended and introduced on the basis of Article 22 of the Act to Transpose the Directive on Alternative Dispute Resolution for Consumer Disputes and to Implement the Regulation on Online Dispute Resolution for Consumer Disputes of 19 February 2016 (Federal Law Gazette I p. 254) do not apply to claims arising before 1 April 2016.

Section 19
Entry into force

This Ordinance enters into force on 1 November 2013.