

**CHARTER OF ADHESION  
TO THE COLLABORATIVE LAW PROCESS**

**Article 1: Object of this charter**

The lawyers adhering to this charter shall respect its principles during their intervention in the capacity of collaborative lawyer.

**Article 2: Definition**

Collaborative law is a voluntary and confidential process to settle conflicts by negotiating with at least four individuals, i.e. representatives of the parties involved in a dispute as principal negotiators and their respective lawyers counseling and assisting them.

The client shall give the collaborative lawyer an exclusive mandate limited to assisting and counseling him in the negotiations to reach an amicable agreement.

The collaborative lawyer shall prioritize the exchange of views and the settlement of the dispute with honesty, bargaining and confidence in order to minimize as much as possible any negative consequences (of an economic, social, emotional and other nature) for the parties and persons implicated in the conflict.

The process aims at resolving disputes respectfully and reaching satisfactory and balanced agreements taking the requirements and interests of each party into account and, in family matters, in the best interest of the children concerned by the agreements.

**Article 3: Preliminary remarks**

During the first consultation, the collaborative lawyer shall inform the client of the advantages of this process while explaining his role and in particular his obligation to withdraw from the case if negotiations fail.

The collaborative lawyer shall ensure that the client correctly understands the process and provide him with a copy of this charter. If the client approves this process, the collaborative lawyer shall record such approval in writing.

The collaborative lawyer, duly mandated by his client, shall contact counsel for the other party proposing to initiate the collaborative law process, which implies that this lawyer has received collaborative process training and adheres or accepts to adhere to this charter.

During such contact, the collaborative lawyers shall mutually agree on the following points:

- the venue of the first meeting, it being understood that if the lawyers agree to hold the meetings in their offices, they ensure to respect a rotation,
- the date and duration of the first meeting,
- the agenda thereof, prioritizing urgent matters,
- the manner of drafting and the contents of the minutes of the meetings which shall remain confidential. In principle, these minutes shall contain the points on which the parties agree, the information or documents to compile by each one as well as the date, the venue and the agenda of the next meeting.

During the first meeting, the parties and advisers shall determine the issues to be resolved, possible priorities and the manner in which to proceed in the context of the process.

The parties and advisers shall sign a collaborative law process participation protocol mentioning the applicable principles, particularly the obligation to suspend any proceedings during the process and the lawyers' withdrawal if the process should fail.

#### **Article 4: Lawyers' role and obligations**

Agreeing to participate in the collaborative law process implies the suspension of any proceedings during the process.

The collaborative lawyer shall assist only one party in the process. He shall not intervene for several parties unless they have common interests.

The lawyer advises his client as to his rights and obligations. He also explains to him the conduct of the meetings and the role of everyone involved.

Although the lawyers share a common commitment to the collaborative law process, each lawyer remains the adviser of his client(s).

The collaborative lawyer shall intervene totally independently.

The collaborative lawyers shall ensure that each party can freely express its interests, requirements, objectives and suggestions and seek to understand those of the other parties.

Once the collaborative law participation protocol is signed, the role of the advisers shall be limited to the context of this process, meaning they can no longer represent one or the other party during legal proceedings opposing them.

#### **Article 5: Rights and obligations during the process**

The lawyers shall ensure that all communications are constructive and respectful. They have a common objective, i.e. that their clients reach an amicable agreement without recourse or threatening recourse to legal proceedings.

The collaborative lawyers shall also ensure that their client(s) establish a complete file containing information useful for the resolution of the conflict.

During the process no aggressive measure or unilateral heritage disposal act shall be initiated such as, but not limited to: recourse or threatened recourse to legal proceedings, signing an agreement binding the other party, disposal of common assets, moving or appropriation of goods, abusive withdrawal of funds from bank accounts, affixing of seals, seizure, etc.

#### **Article 6: Confidentiality – professional secrecy**

Unless otherwise agreed to by the parties in writing:

- Documents shall be transmitted exclusively through the advisers during the collaborative law process and marked "confidential – collaborative law". These documents are strictly confidential. They may not be produced outside the collaborative law process except by the party which legally owned them before embarking on the process; this confidentiality does not include documents the parties can obtain by legal means;

- The advisers shall keep confidential documents in their file and not transmit a copy thereof to their client who may however consult them in their offices or during collaborative law meetings.

The contents of the negotiations are confidential. The parties shall not mention them and produce documents furnished in the context of the process except for the minutes and agreements which, once signed by the parties and collaborative lawyers, are regarded as official documents.

The documents, data, reports which may relate to specialized intervening third parties in the context of the process shall also be kept confidential unless otherwise agreed in by the parties in writing.

Furthermore, the parties may not request any testimony from the lawyers or third parties who intervened in the context of the process as to elements directly or indirectly relating to the process.

In case of counsel succession for the same party and solely in the context of pursuing the collaborative law process, the succeeded lawyer shall hand over his file of confidential documents and ensure that all documents transmitted are expressly marked "confidential – collaborative law".

However, in case of adviser succession when the collaborative law process has ended, the adviser who intervened as collaborative lawyer shall not transmit any files as they are covered by the confidentiality of the process.

#### **Article 7: Intervention of third parties**

Experts, consultants, mediators or any other specialized third parties shall be chosen by mutual agreement between the parties for reports, input or neutral objective advice. They shall proceed in a spirit of fairness and dialogue.

Unless otherwise agreed between the parties in writing, the counsels shall recall the confidentiality principle when sending their joint letter to the third party/parties chosen by the parties. An annex to the collaborative law protocol shall be drafted and signed during the intervention of third parties.

Upon termination of the process, the intervening third parties cannot be called to testify and all documents and information regarding their intervention are confidential unless otherwise agreed by the parties in writing.

#### **Article 8: Counsel succession during the process**

If one of the parties wishes its adviser to withdraw from the process but intends to pursue it with the help of another counsel, it shall immediately inform the other party thereof in writing. An amendment to the collaborative law protocol shall be signed with the new counsel as soon as possible and at the latest within 30 days of the withdrawal of the former adviser, failing which the other party may deem that the process has ended.

If one of the advisers withdraws from the process, he shall immediately inform his client and counsel for the other party thereof. If the party whose lawyer withdraws decides to pursue the process, it shall notify the other party of its intent through its newly appointed lawyer. The new lawyer shall sign the collaborative law protocol as soon as possible and at the latest within 30 days of the withdrawal of the former counsel, failing which the other party may deem that the process has ended.

## **Article 9: Conclusion and withdrawal from the process**

9.1. The collaborative lawyer shall be obliged to withdraw from the process if his client requests him to do so. Furthermore, he may withdraw from the process at any time.

9.2. Collaborative law shall be discontinued, notably:

- if the process is used for inappropriate, in particular delaying purposes,
- if the conduct of the parties or one of them is incompatible with the process,
- if one of the parties has intentionally retained or distorted data (excluding calculation errors or an unintentional inconsistency),
- if one of the parties refuses to respect the understandings,
- if no understanding can be reached within a reasonable delay.

The collaborative lawyer withdrawing or ending the process shall notify immediately the other counsel(s) thereof in writing.

He does not have to state the reasons for his withdrawal.

If one of the parties to the process withdraws, all collaborative lawyers shall cease their intervention. The same applies to collaborators, associates or lawyers working with the collaborative lawyer.

If the process should fail, the collaborative lawyer shall provide his client at his request with a list of lawyers practicing in the area of litigation.

## **Article 10: Understandings**

The parties may at any time during the process agree on a provisional, definitive, total or partial understanding. This understanding shall be drafted by the advisers and signed by the parties and lawyers.

The signed understanding may be produced in court.

Counsels shall warn the parties that in case of withdrawal from the process the understandings shall continue to apply until either a new understanding or a court ruling unless such understanding has been negotiated based on incorrect elements intentionally supplied by one or the other of the parties.

The collaborative lawyers shall take all useful measures to have the understandings approved by a court at the parties' request.

## **Article 11: Obligation of collaborative lawyer training**

As of 1 January 2018, to be approved as collaborative lawyer, the lawyer shall undergo basic training of two days (level I: 15 hours) provided by AVOCATS.BE. He should also undergo an additional two-day training (level II: 15 hours), provided by AVOCATS.BE, within 24 months of his level I basic training.

However, ombudsmen approved by the Federal Commission of Mediation are exempt from attending the first half-day of the additional two-day training within 24 months.

Having undergone the 15-hour level I basic training and documenting such effective training, the lawyer can sign this collaborative law charter with his local professional body and be listed as collaborative lawyer.

Failing to document above-mentioned training, the lawyer cannot (or no longer if he fails to attend additional training within 24 months) appear or act as collaborative lawyer.

The collaborative lawyer shall attend the number of additional training hours determined

by AVOCATS.BE to maintain his approval as collaborative lawyer.

Continued training shall be organized by AVOCATS.BE or under its auspices by local Orders with prior approval of the training programme and the instructors by AVOCATS.BE.

The lawyers approved as collaborative lawyer before 1 January 2018 shall remain approved after such date and subject to additional training the duration of which shall be determined by AVOCATS.BE.