



**Institution of Court-Annexed Mediation System  
Judiciary of the Kingdom of Bhutan**

**Mediators Accreditation Standards  
(MAS)**

**Bhutan National Legal Institute  
Motithang, Thimphu, Bhutan**

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## Chapter 1 Introduction

### 1.1 Purpose

The Judiciary promotes quality, consistency and accountability of Accredited Court-Annexed Mediators. The success of mediation as an effective method of dispute resolution greatly depends on the professionalism of mediators and their adherence to high ethical standards. To fulfill this purpose, the Bhutan National Legal Institute in collaboration with the Royal Court of Justice, Supreme Court of Bhutan presents these standards for the Accreditation of the Mediators.

### 1.2. Structure of the Mediators Accreditation Standards

The Mediators Accreditation Standards comprises of the following:

- (i) Chapter 1 – Application of MAS and the role of mediators;
- (ii) Chapter 2 – Approval Standards which specify the training, assessment, personal qualities and experience required of a MAS accredited mediator and for their renewal of accreditation;
- (iii) Chapter 3 – Practice Standards which specify the minimum practice and competency requirements of a MAS accredited mediator;
- (iv) Chapter 4 – Mediator Accreditation Committee (herein after referred to as ‘the Committee’) which accredits mediators according to this MAS;
- (v) Chapter 5 – The Register of Accredited Mediators (the Register) which is the authoritative list of MAS accredited mediators; and
- (vi) Chapter 6 – The Mediator Standards Board (herein after referred to as ‘the Board’) which oversees the MAS.

### 1.3 Application

These Standards shall apply when a person is seeking accreditation in relation to, and in conducting mediation processes as provided in Rule 21.2 of the Court-Annexed Mediation Rules of the Judiciary of the Kingdom of Bhutan 2019.

## 1.4 Role of Mediators in a Mediation Process

A mediator uses the knowledge, skills and ethical principles referred to in Chapter III, Section 3.10 of the MAS to assist participants to make their own decisions in relation to disputes, conflicts or differences among them.

## Chapter 2 Approval Standards

### 2.1 Application

2.1.1. The Approval Standards apply to any person seeking accreditation (an applicant) and to a mediator who is already accredited under the MAS.

2.1.2. The Approval Standards:

- (a) specify the training, assessment, personal qualities and experience required of a MAS accredited mediator and for their renewal of accreditation;
- (b) should be read in conjunction with the Practice Standards as provided under Chapter III.

### 2.2 Approval Requirements for Accreditation

2.2.1 An applicant must be of good character and possess appropriate personal qualities and experience to conduct a mediation process independently, competently and professionally. An applicant must produce:

- (a) a character reference, which is not older than three months from the date from when it was written.
- (b) a proof of Bhutanese Citizenship.
- (c) a valid Security Clearance.
- (d) a statement of oath or affirmation by the applicant that the applicant:

1. has not been disqualified from any type of professional practice;

2. does not suffer from a mental illness or a severe or profound intellectual disability; and
  3. has not been convicted of a crime involving fraud of dishonesty or violence, or has not been convicted of a crime where the sentence was imprisonment without the option of a fine.
- (e) proof that the applicant has successfully fulfilled training requirement referred to in this MAS.

2.2.2 An applicant must have completed a training program which at least meets the requirements set out in Section 2.2.3 and must have met the assessment requirement set out in Section 2.2.4 within 6 months preceding the formal notification to the applicant of assessment as competent.

2.2.3 The training requirements are:

- (a) A training course of a minimum of 40 hours in duration which may be conducted as a single course or in modules over a period of up to 24 months;
- (b) The content of the course shall be approved by the Board from time to time, and shall include the knowledge, skills and ethical principles articulated in the Practice Standards;
- (c) A training team of at least two trainers in which the principal trainer has more than three years' experience as a MAS accredited mediator and/or as a trainer; and
- (d) Each trainee to be observed performing the role of mediator by trainers in simulated mediations, and provide feedback that they have observed.

2.2.4 The assessment requires:

- (a) the Committee to be the assessor for the purpose of accreditation, and responsible to assess and evaluate the eligible requirement of the applicant;

- (b) the assessor to observe, at a minimum, the applicant performing the role of a mediator in a simulated mediation training of at least one hypothetical case scenarios;
- (c) assessor to assess the assessment criteria reflecting the knowledge, skills and ethical principles articulated in the Practice Standards; and
- (d) assessor to assess other criteria as set by the Committee.

2.2.5 An applicant who meets the requirements of this MAS will be accredited for two years.

## 2.3 Accreditation Renewal Requirements

2.3.1 An accredited mediator seeking renewal of accreditation must provide evidence to the Committee that within two years preceding application for renewal they have been conducting mediations and have engaged in Continuing Legal Education (CLE) as provided under this MAS.

2.3.2 A mediator must have conducted at least 25 hours of mediation, co-mediation or conciliation within the two-year cycle.

2.3.3. A mediator who has not met the requirement in Section 2.3.2 must attend a supplementary training, coaching and/or assessment as the MAS considers necessary in addition to the CLE required in Section 2.3.4 below, to address the shortfall.

2.3.4 A mediation must undertake CLE of at least 25 hours that contributes to the knowledge, skills and ethical principles contained in the Practice Standards.

2.3.5 A mediator who does not meet in full the requirements set out in Section 2.3.4 due to health or career circumstances must take sufficient supplementary CLE to meet the requirements before renewal of accreditation can be granted.

2.3.6 There is no registration fee at the time of accreditation or during the time of renewal of accreditation unless otherwise specified by the amendment of this MAS.

- 2.3.7 A mediator must meet the requirements within two months of the due date for renewal of accreditation or their accreditation automatically lapses.
- 2.3.8 CLE hours relied upon for any one renewal of accreditation must not be used for any subsequent renewal of accreditation.

## 2.4 Leave of Absence

- 2.4.1 A mediator seeking leave of absence on the basis of health, career or other special circumstances must provide evidence to the Presiding Judge of a particular Court of the circumstances upon which, and the period for which, leave is being sought. The Presiding Judge may grant or refuse the request, or grant it subject to conditions, having regard to the circumstances.
- 2.4.2 Where leave of absence is granted, the Presiding Judge shall submit the report of the same, in writing, to the Committee.
- 2.4.3 Where leave of absence is granted for a period of 12 months or less the Committee must remove the mediator's name from the Register for the period of leave and extend the due date for renewal of that mediator's accreditation by an amount equivalent to the period of leave.
- 2.4.4 Where leave of absence is granted for a period greater than 12 months, the Committee must remove the mediator's name from the Register and that mediator must comply with the requirements of Section 2.6 of this MAS in order to have their accreditation reinstated.

## 2.5 Suspension

- 2.5.1 Where a mediator is significantly non-compliant with the Practice Standards or violates the ethical conduct of this MAS, the Presiding Judge of a particular Court shall, without delay, notify the Committee of the details of a mediator.
- 2.5.2 Where the notice under Section 2.5.1 has been received, the Committee may, subject to the requirements of procedural fairness, suspend the mediator's accreditation and, having regard to the circumstances, specify any conditions that must be met by that mediator prior to seeking reinstatement of accreditation.

- 2.5.3 The Committee must, without delay, notify the Presiding Judge of the details of a mediator whose accreditation is suspended and remove that mediator's name from the Register.
- 2.5.3 The suspended mediator must comply with the requirements of Section 2.6 of this MAS in order to have their accreditation reinstated.

## 2.6 Reinstatement of Accreditation

- 2.6.1 An applicant seeking re-instatement after a period of leave of absence or lapsed or suspended accreditation, must:
- (a) disclose the date from which they were first granted accreditation and specify the period of leave of absence or the date upon which their accreditation lapsed or was suspended.
  - (b) meet the approval requirements set out in Sections 2.2.1 above.
  - (c) provide evidence to the Committee that they have met the accreditation renewal requirements described in Section 2.3 above in the two years immediately prior to seeking re-instatement.
  - (d) where the practice requirements in Section 2.3.2 or Section 2.3.3 have not been met, undertake supplementary practical training, coaching and/or assessment, as approved by the Committee to address the shortfall.
  - (e) provide evidence to the Committee that any conditions imposed at the time of suspension or grant of a period of leave of absence have been met prior to seeking re-instatement.
- 2.6.2 Accreditation will be re-instated from the date upon which the Committee accesses the applicant as having satisfied the requirements of Section 2.6.1.
- 2.6.3 Reinstatement of accreditation in terms of Section 2.6.2 cannot be granted more than once in every two years.



## Chapter 3

### Practice Standards

#### 3.1 Application

- 3.1.1 These Practice Standards apply to all the Accredited Mediators.
- 3.1.2 The Practice Standards:
- (a) Specify the minimum practices and competency requirements of the Committee accredited mediator; and
  - (b) Inform participants and others about what they can expect of the mediation process and of the Committee accredited mediator.
- 3.1.3 Where a mediator practices under a legislative framework and there is a conflict between a provision of the Practice Standards and a provision of that framework, the legislative framework will override the Practice Standards to the extent of any inconsistency.

#### 3.2 The Mediation Process

- 3.2.1 A mediator uses the knowledge, skills and ethical principles referred to in Section 3.10 of the MAS to assist parties to make their own decisions in relation to disputes, conflicts or differences among them.
- 3.2.2 Mediation is a process that promotes self-determination of the parties where with the support of a mediator, the parties:
- (a) communicate with each other, exchange information and seek understanding;
  - (b) identify, clarify and explore interests, issues and underlying needs;
  - (c) consider their alternatives;
  - (d) generate and evaluate options;
  - (e) negotiate with each other; and
  - (f) make their own decisions.

3.2.3. A mediator does not evaluate or advise on the merits of, or determine the outcome of disputes.

### 3.3 Conducting Mediation: Preliminary Session

3.3.1 In the preliminary session the mediator must ensure that parties are provided with basic mediation procedures including:

- (a) a description of mediation and the steps involved including the use of joint sessions, separate sessions and shuttle negotiations;
- (b) explanation of advantage of mediation in terms of time, expense and cost;
- (c) information on how to provide feedback or lodge a formal complaint in relation to the mediator; and
- (d) any other information which are relevant for the conduct of mediation session.

3.3.2 Besides Section 3.3.1, the Preliminary Session includes:

- (a) assessing whether mediation is suitable and whether variations are required (for example, using an interpreter or a co-mediation model in culturally and linguistically diverse communities or introducing safeguards where violence is an issue).
- (b) explaining to participants the nature and content of any agreement or requirement to enter into mediation including consent, and confidentiality if required.
- (c) identifying who is participating in the mediation and to what extent participants have authority to make decisions.
- (d) assisting participants to prepare for the mediation meeting including consideration of any advice or information that may need to be sought and/or exchanged.
- (e) referring parties, where appropriate, to other sources of information, advice or support that may assist them.

- (f) informing parties about their roles and those of advisors, support persons, interpreters and any other attendee.
- (g) advising parties about how they or the mediator can suspend or terminate the mediation.
- (h) confirming each participant's agreement to continue mediation.
- (i) deciding venue, timing and other practical issues.

### 3.4 Conducting Mediation: The Mediation Sessions

- 3.4.1 The mediation session will ordinarily include a joint session of the parties in which the parties communicate directly with each other through mediator to identify, clarify and explore interests, issues and underlying needs. The mediation session may also include separate sessions and shuttle negotiations.
- 3.4.2 A mediator may adjourn the mediation session at any time and conduct the mediation over multiple meetings and in different locations.
- 3.4.3 In accordance with the Court-Annexed Mediation Rules of the Judiciary of the Kingdom of Bhutan 2018, the mediation session may conclude whether or not the parties have reached an agreement.

### 3.5 Conducting Mediation: Suspension or Termination

- 3.5.1 A mediator may consider the mediation to be no longer suitable or productive, and suspend or terminate if:
  - (a) a party is unable or unwilling to participate or continue in the mediation;
  - (b) a party is misusing the mediation;
  - (c) a party is not engaging in the mediation in good faith;
  - (d) the safety of one or more parties may be at risk; or
  - (e) on the grounds provided by Section 178 of the ADR Act of Bhutan, 2013.

- 3.5.2 A mediator should, where possible, advise of their intention to suspend or terminate the mediation.
- 3.5.3 The mediator where appropriate should encourage the parties to consider alternative procedures for achieving resolution while terminating the mediation.

### 3.6 Power and Safety in Mediation

- 3.6.1 A mediator must be alert to changing balances of power in mediation and manage the mediation accordingly.
- 3.6.2 A mediator must consider the safety and comfort of participants and where necessary take steps, which may include:
  - (a) agreeing guidelines to encourage appropriate conduct;
  - (b) activating appropriate security protocols;
  - (c) using separate sessions, communication technology or other protective arrangements;
  - (d) having a party's friend, representative or professional advisor attend mediation meetings;
  - (e) providing parties with information about other services or resources; or
  - (f) suspending or terminating the mediation with appropriate steps to protect the safety of participants.

### 3.7 Procedural Fairness and Impartiality

- 3.7.1 A mediator must conduct the mediation in a fair, equitable and impartial way, without favouritism and bias.
- 3.7.2 A mediator must identify and disclose any potential grounds of bias or conflict of interest before the mediation, or that emerge at any time during the process.
- 3.7.3 A mediator must not mediate cases involving conflict of interest without the informed consent of the parties, unless the mediator is of the view that the conflict would not impair his or her impartial conduct of the process.

- 3.7.4 A mediator must support parties to reach agreements freely, voluntarily, without undue influence and on the basis of informed consent.
- 3.7.5 A mediator must provide parties with appropriate opportunities to speak, to be heard by one another in the mediation, and to articulate their respective interests, issues and underlying needs.
- 3.7.6 A mediator must ensure, so far as practicable, that the parties have had sufficient time and opportunity to access sources of advice or information necessary for their decision making.
- 3.7.7 A mediator must encourage and support negotiations that focus on the parties' respective interests, issues and underlying needs, and must encourage parties to assess any proposed agreements accordingly and with reference to their long-term viability.

### **3.8 Ethical Code and Professional Relations**

- 3.8.1 A mediator must mediate only where they have the competence to do so.
- 3.8.2 A mediator must not use information obtained in mediation for personal gain or advantage.
- 3.8.3 A mediator must adhere to the ethical code or standards prescribed by the professional organisation or association of which he is a member or by whom he is employed.
- 3.8.4 A mediator should encourage parties to consider the interests of any vulnerable stakeholders.
- 3.8.5 A mediator should encourage parties to obtain other professional support when appropriate but should refrain from recommending the services of particular individuals or firms.
- 3.8.6 A mediator should extend professional courtesy to other professionals engaged by the parties.
- 3.8.7 A mediator should, where possible, engage in professional debriefing, peer consultation and mentoring of less experienced mediators.

### 3.9 Confidentiality

- 3.9.1 A mediator must respect the agreed confidentiality arrangements relating to parties and to information provided during the mediation, except:
- (a) with the consent of the party to whom the confidentiality is owed;
  - (b) where non-identifying information is required for legitimate research, supervisory or educational purposes;
  - (c) when required to do otherwise by law;
  - (d) when permitted to do otherwise by ethical guidelines or obligations; or
  - (e) when reasonably considered necessary to do otherwise to prevent an actual or potential threat to human life or safety.
- 3.9.2 Before holding separate sessions with different parties, a mediator must inform participants of the confidentiality which applies to these sessions.
- 3.9.3 In accordance with the Section 169 of the ADR Act of Bhutan, 2013 and Rule 20 of the Court-Annexed Mediation Rules of the Judiciary of the Kingdom of Bhutan, 2018:
- (a) all oral and written communications with the mediator at any time, other than executed settlement agreements, shall be deemed confidential and privileged.
  - (b) all such communications shall be exempted from discovery and inadmissible as evidence in any action or proceeding. However, evidence that is otherwise admissible or subject to discovery does not become inadmissible or protected from discovery solely by reason of its use in a mediation session.
  - (c) there shall be no stenographic or audio or video recording of the mediation proceedings.
- 3.9.4 A mediator must take care to preserve confidentiality in the storage and disposal of written notes and records of the

mediation and must take reasonable steps to ensure that administrative staff preserve such confidentiality.

- 3.9.5 With a party's consent, a mediator may discuss the mediation, or any proposed agreement, with that party's advisor or with third parties.

### 3.10 Knowledge, Skills and Ethical Principles

- 3.10.1 A mediator must have the knowledge and skills, and an understanding of the ethical principles, as outlined below:

**(a) Knowledge of:**

- (i) the nature of conflict, including the dynamics of power and violence.
- (ii) ways of managing conflicts – spectrum of ADR mechanisms.
- (iii) fundamental principles of mediation and its advantages.
- (iv) preparation for mediation and assessing suitability.
- (v) communication patterns in mediation.
- (vi) cross-cultural issues.
- (vii) the principles, stages and functions of the mediation process.
- (viii) the roles, functions and qualities of mediators.
- (ix) the roles and functions of support persons, lawyers and other professionals in mediation.
- (x) the law relevant to mediators and to the mediation process.
- (xi) writing settlement agreements.
- (xii) leadership and team work in mediation.

**(b) Skills to:**

- (i) prepare for and dispute diagnosis in mediation.
- (ii) conduct and management of the mediation process.
- (iii) communicate, including listening, questioning, reflecting, reframing, summarising, and observing as required for the conduct of mediation.
- (iv) facilitate negotiation and problem-solving.
- (v) brainstorm and understand the underlying needs and generate options.
- (vi) move from positions to interest.
- (vii) manage high emotion, power imbalances, impasses and violence.
- (viii) control mediation processes.
- (ix) use separate meetings.
- (x) test the proposed reality outcomes in light of parties' interests, issues, underlying needs and long-term viability.
- (xi) facilitate the recording of the outcome of the mediation.

**(c) Ethical Principles including:**

- (i) competence, integrity and accountability.
- (ii) professional conduct.
- (iii) self-determination and self-esteem.
- (iv) informed consent.
- (v) safety, procedural fairness and equity in mediation including withdrawing from or terminating the mediation process.
- (vi) impartiality including the avoidance of conflicts of interest.
- (vii) confidentiality, privacy and reporting obligations.
- (viii) honesty in mediators practice.



- 3.10.2 Where a mediator uses a blended process such as advisory or evaluative mediation or conciliation, which involves the provision of advice, the mediator must:
- (a) obtain consent from participants to use the blended process; and
  - (b) ensure that the advice is provided in a manner that maintains and respects the principle of self-determination.

### 3.11. Charging for Services

- 3.11.1 As provided under Rule 19 of the Court-Annexed Mediation Rules of the Judiciary of the Kingdom of Bhutan 2018, a Court-Annexed Mediation service may be free of cost.

### 3.12 Information and Promotion of Services

- 3.12.1 A mediator must accurately represent their qualifications and experience and how they conduct their mediations.
- 3.12.2 A mediator must not guarantee results or outcomes from the mediation process or make statements likely to create false expectations.

## Chapter 4 Mediator Accreditation Committee

### 4.1 Composition of Committee

- 4.1.1. There shall be minimum of three qualified members of the Committee duly appointed by the Board composed under the MAS to accredit the mediators.
- 4.1.2 The Director General of the Institute shall be a default member of the Committee who shall preside over the Committee.
- 4.1.3 The members of the Committee other than the Director General of the Institute shall hold office for the term of four years and may be eligible for reappointment for an additional term.
- 4.1.4 The Board may consider the following criteria while composing the Committee:

- (a) knowledge, skills and ethical principles of mediation and ADR processes.
- (b) the capacity and expertise to assess whether training, education, assessment and CLE undertaken by applicants for accreditation or renewal of accreditation meet the respective requirements specified in this MAS.
- (c) must have minimum of 5 years working experience in the relevant field.

## 4.2. Committee's Responsibilities

### 4.2.1 The Committee must:

- (a) assess whether the applicants' accreditation requirements as provided under this MAS are duly satisfied;
- (b) accredit, suspend, or reinstate the mediators in accordance with this MAS;
- (c) ensure that the list of mediators accredited by them under the MAS are updated in the Register;
- (d) notify the Board without delay of the details of each mediator who has been accredited, granted leave of absence or whose accreditation has been suspended by the Committee; and
- (e) not do anything which is not within these responsibilities without prior approval from the Board.

## Chapter 5 Court-Annexed Mediators Register

### 5.1 The Court-Annexed Mediators Register

5.1.1 The Court-Annexed Mediation Register is the authoritative list of all mediators accredited under the MAS which enables consumers, advisers and referring agents to:

- (a) check whether mediators are accredited, and
- (b) obtain details of the Committee that has accredited them.

5.2.1 The Committee shall update the particulars of all mediators accredited by them in the Register.

5.2.2 The particulars shall comply with the specifications issued from time to time by the Board.

5.2.3 The names of mediators who have not had their accreditation renewed within two months of their accreditation expiry shall no longer be included in the Register.

## Chapter 6

### Court-Annexed Mediation Standards Board

#### 6.1 Composition of the Board

6.1.1 The following shall be the members of the Court-Annexed Mediation Standards Board. The Members are:

- (a) The Chief Justice of Bhutan as the Chairperson;
- (b) The Director General of the Bhutan National Legal Institute as the Member Secretary.
- (c) A senior judge of the of the Appellate Courts;
- (d) As senior Lecturer/Trainer/Researcher of the Institute; and

6.1.2 The Board shall be responsible and accountable to the President of the Institute.

#### 6.2 Responsibilities of Board

6.2.1 The Board is responsible for the ongoing development, maintenance and review of the MAS and the Register. In particular, the Board:

- (a) may amend the MAS as required;
- (b) nominate, appoint, and compose the members of the Committee;
- (c) oversees the application of the MAS with a view to achieving consistency, quality and public protection regarding mediation services and mediation accreditation;
- (d) support, complement and encourage the Committee members in their efforts to meet their responsibilities in relation to the MAS;
- (e) promote progressive development in the training and accreditation of mediators and the quality of mediation services;

- (f) require records to be maintained of mediators who are accredited under the MAS; and
- (g) carry out such other functions and activities that are necessary or incidental to the above.