

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

Rules of Procedures & Forms

Bhutan National Legal Institute Motithang, Thimphu

1. Preamble

Whereas Article 21(1) of the Constitution of the Kingdom of Bhutan 2008 (Constitution) mandates the Judiciary to "safeguard, uphold, and administer justice fairly and independently without fear, favour, or undue delay in accordance with the Rule of Law to inspire trust and confidence and to enhance access to justice";

And whereas Section 168 of the Alternative Dispute Resolution Act of Bhutan 2013 (ADR Act) allows the disputing parties to pursue negotiated settlement at any stage of the court proceedings;

And whereas Section 150 of the Civil and Criminal Procedure Code 2001 (CCPC) allows the Courts to refer for negotiated settlement of a civil cases at any stage of the proceedings;

And whereas Section 30 of the CCPC empowers the Supreme Court and the High Court to make rules and regulations for the purpose of giving effect to the provisions of the Code;

And whereas the Hon. President of the Bhutan National Legal Institute and the Chief Justice of the Supreme Court of Bhutan directed the Institute to frame Rules of Procedures and Forms for the referral of the civil cases by the courts as well as opting of the court-annexed mediation services by the parties.

Wherefore, the Institute has framed the following Rules of Procedures and Forms to regulate and guide the operation of the Court-Annexed Mediation Units and management of disputes which come before the Units.

2. Short title

2.1. These rules will be referred to as the Rules of Procedures for the Court-Annexed Mediation System of the Judiciary of the Kingdom of Bhutan 2019.

3. Definition

- 3.1. In these rules unless the context indicates otherwise:
 - (a) 'Alternative dispute resolution' means a process, in which an independent and impartial person assists parties to attempt to resolve the dispute between them, either before or after commencement of litigation;
 - (b) 'Dispute' means the subject matter of litigation between the parties or an aspect thereof;
 - (c) 'Jabmi' means a legal representative of the parties;
 - (d) 'Litigant' means a party to litigation;
 - (e) 'Litigation' means a process of taking legal action in the court of law;
 - (f) 'Mediation' means the process by which a third party, a mediator, assists the parties to resolve the dispute between them by facilitating discussions between the parties, assisting them in identifying issues, clarifying priorities, exploring areas of compromise and generating options in an attempt to solve the dispute;
 - (g) 'Mediator' means a person selected, by the parties or by a court, to mediate a dispute between the parties.

4. Objectives

- 4.1. The main objectives of Court-Annexed Mediation are to:
 - (a) Enhance access to justice;
 - (b) Promote restorative justice;
 - (c) preserve relationships between litigants which may become strained or destroyed by the adversarial nature of litigation;

- (d) Facilitate an expeditious and cost-effective resolution of dispute between the litigants; and
- (e) strengthen community vitality and enhance the Gross National Happiness.

5. Application

- 5.1. These rules shall apply to:
 - (a) Referral of dispute to the Court-Annexed Mediation Unit (CMU) by a Judge after the commencement of litigation but prior to the pronouncement of judgment; and
 - (b) The voluntary submission of dispute to the Court-Annexed Mediation Unit by the parties after commencement of litigation but prior to judgment.

6. Establishment of Court-Annexed Mediation Unit

- 6.1. There shall be Court-Annexed Mediation Unit established all the courts of Bhutan for the purpose of effective delivery of the mediation services in the Judiciary.
- 6.2. The Unit shall operate under the administration of a particular court.

7. Referral to mediation

- 7.1. A civil case may be referred to mediation:
 - (a) by any party after commencement of litigation but prior to judgment; or
 - (b) by a judge at any time after the commencement of litigation if a judge believes that there is good reason for doing so.
- 7.2. All civil cases shall be considered appropriate for referral to mediation in the discretion of the court, giving consideration

to such facts as the subject matter of the case, the amount in controversy, the complexity of the case, the number of parties, the interest of the parties in pursuing mediation, the availability of mediation, and the likelihood of settlement by mediation.

8. Duties of the judge prior to referral of the cases to CMU

- 8.1. The judge shall explain to all parties the purpose of alternative dispute resolution, the meaning, objectives and benefits of mediation, including costs, time and relationships.
- 8.2. The judge shall inform the parties that they may be assisted by Legal Representatives/Jabmis of their choice at their own cost.
- 8.3. The judge shall instruct the Registrar of the Court to conclude the Consent to Mediate, and accordingly, forward to the mediator:
 - (a) Order of Referral;
 - (b) Copy of Consent to Mediate Form;
 - (c) Copies of all the documents that the parties have submitted to the court except the copy of evidence and witnesses testimonies.

9. Procedure for referral to mediation by litigants

- 9.1. Any party may, after the commencement of trial but prior to judgment, request the court to refer the dispute to mediation.
- 9.2. Upon this *sua sponte* or motion of the party, an Order of Referral may be entered by the Court pursuant to Rule 8(3) of these Rules.
- 9.3. Following the entry of an Order of Referral, the parties shall participate in the Court-Annexed Mediation as set forth in these Rules

- 9.4. The mediators and the parties are duty bound to abide by the terms and conditions set out in the Order of Referral.
- 9.5. The Court shall adjourn the proceedings in accordance with Section 168 of the ADR Act and Section 150.2 of the CCPC during the time of mediation.

10. Procedure for referral to mediation by the court

- 10.1. A court may, during the commencement of any hearing but before judgment, direct the parties to submit to mediation and refer the dispute to the Court-Annexed Mediation Unit.
- 10.2. At any stage of the judicial proceedings, if the parties consent, they may request the Court to refer the dispute to the Court-Annexed Mediation Unit.
- 10.3. The Judge may then refer the matter pending in the Court to Court-Annexed Mediation Unit by entering an Order of Referral vide Rule 8(3) of these Rules.
- 10.4. Following the entry of an Order of Referral, the parties shall participate in the Court-Annexed Mediation as set forth in these Rules.
- 10.5. The mediators and the parties shall abide by the terms and conditions set out in the Order of Referral.
- 10.6. The Court shall adjourn the proceedings in accordance with Section 168 of the ADR Act and Section 150.2 of the CCPC during the mediation of the disputes.

11. Conduct of mediation session

- 11.1. Unless otherwise ordered by the Court, the first mediation session shall be held within five (5) days of the date of entry of the Order of Referral.
- 11.2. When the date, time and place of the initial mediation session

have been agreed upon, the mediator shall send written confirmation of the date, time and place to all parties as well as of any other requirements of the mediation.

- 11.3. At least three (3) days prior to the commencement of the mediation session, if the parties have not submitted any written documents to the Court, each party shall present to the mediator a brief, written summary of the dispute containing a list of issues as to each party, unless the mediator has requested a different procedure to be followed.
- 11.4. The summary shall include the facts, issues, opinion on liability, all damage and injury information, and any offers or demands regarding the settlement. Names of all participants and their relationship to the parties in the mediation shall be disclosed to the mediator in the summary.
- 11.5. If the parties filling the summary of the dispute wishes its contents to remain confidential, she/he should advise the mediator in writing at the same time the summary is delivered to the mediator.
- 11.6. Mediation shall be completed within four (4) weeks of the first mediation session unless extended by order of the court upon the request of the parties or the mediator.

12. Attendance in mediation session

- 12.1. If a party is a public entity, that party shall be deemed to appear at a mediation session by the physical presence of:
 - (a) A representative of the party with full authority to negotiate on behalf of the party and to recommend settlement to the appropriate decision-making body; and
 - (b) The the party's counsel of record.

- 12.2. Where a juristic person or a firm or a partnership or a company is a party to mediation proceedings such entity must be represented by an official from that juristic person, firm or partnership or company, who must be duly authorised to represent the entity, to conclude a settlement and sign a settlement agreement on behalf of such entity.
- 12.3. With respect to parties who are not public entities, unless otherwise stipulated by all parties or ordered by the Court, a party shall be deemed to appear at a mediation session if all of the following persons are physically present:
 - (a) The party or a representative of an insured party having full authority to negotiate on behalf of the party; and
 - (b) The party's counsel of record, if any.
- 12.4. If a party fails to appear at mediation session without good cause, the Court upon motion may impose sanctions against the party failing to appear. Such sanctions may include an assessment against the party failing to appear of the jabmis' fees incurred by the other parties in preparing for and attending the mediation session and other cost incurred for preparing and attending the mediation session.

13. Role and functions of mediator

- 13.1. At the commencement of mediation, the mediator must inform the parties of the following:
 - (a) The purposes of mediation and its objective to facilitate settlement between the parties;
 - (b) The mediator's facilitative role as an impartial mediator who cannot make any decisions of fact or law and who cannot determine the credibility of any person participating in the mediation;
 - (c) The inquisitorial nature of such proceedings;

- (d) The rules governing the mediation;
- (e) That all discussions and disclosures, whether oral or written, made during mediation are confidential and inadmissible as evidence in any court, tribunal or other forum, unless the discussions and disclosures are recorded in a settlement agreement signed by the parties;
- (f) That the mediator may during the mediation session encourage the parties to make full disclosure if in the opinion of the mediator such disclosure may facilitate a resolution of the dispute between the parties;
- (g) That no party may be compelled to make any disclosure, but a party may make voluntary disclosures with the same protection referred to in sub Rule 13.1 (e);
- (h) That he or she will assist to draft a settlement agreement if the dispute is resolved; and
- (i) If the dispute is not resolved, the mediator will refer the dispute back to the court, informing him or her that the dispute could not be resolved.
- 13.2. The mediator may, during the course of the mediation, speak privately to one or more of the parties outside the presence of other parties.
- 13.3. The mediator may during the course of the mediation, permit the parties and their counsels to confer privately at any time.
- 13.4. In every mediation the mediator must, within five (5) days of the conclusion of the mediation process, submit a report to the Court regarding the outcome of the mediation.
- 13.5. A mediator may postpone a mediation session if the parties agree.
- 13.6. The mediator may adjourn the mediation session at any time

but he/she shall confirm in writing to all parties the date, time, and place of reconvening.

14. Suspension of time limits pending mediation

14.1. The time limits prescribed by the CCPC for any step to be taken by any litigant shall be suspended from the time of issuing of Order of Referral to mediate till the conclusion of the mediation proceedings.

15. Termination of mediation

- 15.1. Mediation may be terminated on the grounds provided by Section 178 of the ADR Act.
- 15.2. Upon the motion of any party, the Court may enter an order of termination of the mediation at any time upon showing good cause.

16. Settlement Agreements

- 16.1. Mediation shall be considered to have been completed only upon the happening of one of the following events:
 - (a) The entry of the parties into a written settlement agreement;
 - (b) Certification by the mediator that the mediation has been concluded without the parties reaching any agreement; or
 - (c) Entry of an order by the Court, upon the motion of any party, terminating the mediation for good cause shown.
- 16.2. In the event of a settlement being reached, it shall be reduced to writing and signed by each of the parties and the mediator.
- 16.3. Following execution of the written settlement agreement by the parties and the mediator, they shall file Report to the Court (CAM Form 4).

- 16.4. Upon receipt of the Report, the Court shall pronounce a written judgment based on the terms, conditions and decisions stipulated in the Settlement Agreement.
- 16.5. The judgment based on the settlement agreement shall be final and binding and no appeal shall lie against it unless the agreement contravenes laws.

17. Partially settled disputes

17.1. Should any aspect of a dispute between the parties remain unsettled, the unresolved issues may be litigated upon by the parties.

18. No settlement agreement

- 18.1. If the parties have reached no agreement and the mediator concludes that further mediation would not be likely to result in agreement, they shall complete CAM Form 4 and submit the report to the Court.
- 18.2. Based on the Report, (CAM Form-4) the Court shall resume adjudication of the case in accordance with the CCPC.

19. Fees and Charges

19.1. Except for the applicable Court fees and charges, the Court-Annexed Mediation services shall be free of cost.

20. Confidentiality

- 20.1. All oral and written communications with the mediator at any time, other than executed settlement agreements, shall be deemed confidential and privileged in accordance with Section 169 of the ADR Act.
- 20.2. All such communications shall be exempt from discovery and is 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.

20.3. There shall be no stenographic or audio or video recording of the mediation proceedings.

21. Mediator Qualifications

- 21.1. The Court-Annexed Mediation Unit shall maintain a list of mediators who have been trained and certified by the Institute.
- 21.2. The mediator shall comply with such general standards as may, from time to time, be established and promulgated in writing by the Institute. The Institute may, from time to time, and in consultation with the Supreme Court of Bhutan, revise these Rules to ensure continued legal education for all court-certified mediators.

22. Mechanism for Reporting

- **23. 22.1** The Court shall report the number of cases referred to the mediation to the Supreme Court and the Institute or the calendar year not later than the first day of January of the next calendar year.
 - 23.1. The report shall contain the type of case and the outcomes of the mediation and include, whether:
 - (a) Settled;
 - (b) Not settled; or
 - (c) Partially settled.

24. Forms

- 24.1. The following forms shall be used in conjunction with Court-Annexed Mediation:
 - (a) Form 1: Parties Request for Judicial Mediation Form
 - (b) Form 2: Judicial Referral to Mediation Form
 - (c) Form 3: Consent for Judicial Mediation Form

- (d) Form 4: Judicial Mediation Report Form
- (e) Form 5: Judicial Mediation Settlement Agreement Form

25. Evaluation

- 25.1. The Court shall collect information regarding the effectiveness of the mediation program.
- 25.2. To facilitate this activity, mediators shall provide the Jabmis or parties present with Evaluation Forms at the end of each mediation session.
- 25.3. The Jabmis and/or parties shall complete the Forms and and return to Court-Annexed Mediation Unit.
- 25.4. Similarly, mediators shall complete Evaluation Form and submit to the Court-Annexed Mediation Unit after the mediation.
- 25.5. Other forms may be promulgated by the Institute in consultation with the Courts to aid in reporting on or evaluating the mediation process as may be required from time to time.

Annexure - 1

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DZONGKHAG COURT THIMPHU

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Annexure - 2

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Annexure - 3

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DZONGKHAG COURT THIMPHU

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DZONGKHAG COURT

Annexure - 4

ह्र्राप्यवाद्यिष्ट्रशामी तर्वे राज्य

ষ্ট্রপ্রস্থিয THIMPHU 🌏 रेतज.केंबे.पर्यंग्रे.तपु.खुश्व.ग्री.पर्यंश्रेश ROYAL COURT OF JUSTICE দ্রীমাঝাঝার বিশ্বর বিশ श्रुव लु खर ৰ্মনেশ্ৰীশ্ৰমাস্ক্ৰৰান্ত্ৰা उ नन्द्रास्द्रार्थियः कृते: न्नान्वर्धन्यते
हिस्तर्भियः कृते: न्नान्वर्धन्यते ब्रु.उ चीया. योचेत्राचीयाजात्रदरायच्चीयाजातार्दराश्चर यक्षाणीयालु म्रोक्याने दे विश्वयात्वया वस्या वस्याने विक्रमान्त्र हेन् प्रवास क्षेत्र विश्वयाने विक्रमाने ୨५० सदेः बर-वायेयाः धूर- हिससायर क्रिन् कृवाया बर-विश्ववाया वयन् क्रिया मति चर्णाया व्यवस्य श्रीया प्रविदान् स्थाया स्थाया विष् `ક્ર્યું.વર્ડ્- છેમ. ૧૮.તનું નાયા તવર્ય વધુ સંવય. નીયા તના નાયા નાયા તો માના કરાયા કરે છે. કર્યા કર્યા કર્યા ક गो र्रेन देंगियः 🔲 बर.पज्जीयान.लूरमार्ह्यान.र्जीय.क्रे. बर.पज्जीयान.याब.लुवा. खुनान.न्यर.सीप.लूरी 🔲 ४८.५म्बुचेबा.क.चेबा.बीच.लूर्यताजवा. ४८.५मुचेबा.बीच.तपु.चोष.लुचे. खुशवा.बर.सीवा.च.र-१ ४८.५मुचेबा.बीच.वा.सीवा.वा.सु. यादर र्नेदार्स्यः होस्याः विषयाः यथाः रह्ये प्रयोगः सर्हरः यादरः (वृ) 🔲 ४८.४ ग्रीयोश.योर.त्तर.श.ग्रीयो

કૂ્યાનાતપુ: કુંગ.શું. શ્રું કૂંગ..... બે.સદ્યા પર્સે ભૂરી

हुम:संय हूर:प्रया:द्विमग्रःग्री:यर्थरमा



DZONGKHAG COURT THIMPHU

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Annexure - 5

द्वभःसेची ह्र्यःप्यचःद्विभग्नःग्रीःपर्ययःग्री



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🌂 द्रवयः वृद्धवायते विक्रवयः ग्रीयदृद्धवा ROYAL COURT OF JUSTICE

ই্রিমঅ'অটি'র্হ'দেশ্রীশ্বাঅ'দেশ্রী'র্মৃশি'রূ'ম_(CAM-5)] বহ'দেশীশ'শার'রা।

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DZONGKHAG COURT THIMPHU

🌂 न्यत्यः वृद्ध्यायते विश्ववायीः त्रनुद्धाः । ROYAL COURT OF JUSTICE

श्र्यायवर् व्यास्त्राचारक्कित्वः क्षित्रक्षेत्रायवर् कुं.सूरी र्व्यूत्तर्थः चोषःस्त्रचार्य्युर्थःक्ष्ये सुःचोष्ट्रं रूपःचार्ट्रचेशः वर्षःवज्ञीचोशःज्ञूशःवर्डूशशःश्रेचशःवःश्चितःर्यः सुचाःचीःवहः ८्री श्रेत्त्वरःचोक्षेत्रःचरःवरक्षशःवद्वीरःषःशःचोर्ट्रचेशः चोषःवहूषःवर्ट्यःवरःचूर्यःत्वःचरःरूषः चोश्रयःविचाः

म्रे चर्यः यहुर्यः यहुः सम्यान्त्र प्रमान्यः सम्यान्त्र स्यान्त्र सम्यान्त्र सम्यान्त्य सम्यान्त्र सम्यान्त्र सम्यान्त्र सम्यान्त्र सम्यान्त्र सम्यान्य

चबुर. क्षेचा हुने खि.क्षेंद्रचार जहूर नी क्रम प्राप्त ने चारे द्वा क्षेंद्र शागुर चीय ताजश. चारेश क्ष्माचार खुचा जग जयाण चतु रुश ता र से तर्थ से खुचा रश से र क्षेट से तर्थ चाहेश ती. चार जहूर तर्पुत चार ने चार्र क्षेट क्षेचा हो। क्षा चार क्षेत्र आहेर क्षेत्र ने त्या हैर क्षेत्र चाहेश चाहेश क्षेत्र चाहेश चाहेश क्षेत्र चाहेश चाहेश

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<u> বিহ'বেশ্বীবাধ্য'ম</u>)