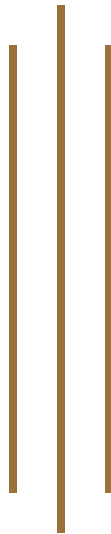


The Mediation Act, 2011 and Mediation Regulation, 2014



The English version of the Mediation Act, 2011 has been derived from the website of Nepal Law Commission (www.lawcommission.gov.np).

The English version of the Mediation Regulation, 2014 is an unofficial translation and this document was possible with the generous support of GIZ-ZFD.

Contents

The Mediation Act, 2011.....	1
The Mediation Regulation, 2014	15
SCHEDULE (The Mediation Regulation, 2014)	35

The Mediation Act, 2011

Date of Authentication and Publication

2068.1.26 (9 May 2011)

Act Number 2 of the Year 2068 (2011)

An Act made to provide for provisions on the procedure of mediation

Preamble: Whereas, it is expedient to provide for legal provision on the procedure of mediation to settle dispute through mediation in a speedy and simple manner, to make the process of dispute settlement less costly, to enhance the access of general public to justice and to maintain the interest and convenience of general public.

Now, therefore, be it enacted by the constituent Assembly pursuant to Sub-article (1) of article 83 of the Interim Constitution of Nepal.

Chapter 1 Preliminary

1. Short title and Commencement: (1) This Act may be called "Mediation Act, 2068.

(2) This Act shall come into force on such date and place as specified by the Government of Nepal by publishing a Notification in Nepal Gazette.

2. Definition: Unless the subject or context otherwise requires, in this Act;

(a) "Quasi-judicial body" means any other body other than a court authorized to try and dispose of a case.

(b) "Prescribed" or "as prescribed" means prescribed or as prescribed in the Rules framed under this Act.

(c) "Board/Council" means the Mediation Board/Council constituted pursuant to section 26.

(d) "Party" means party of a dispute and this term also includes plaintiff and defendant of a case

(e) "Certificate" means the certificate issued pursuant to Sub-section (1) of section 21 to act as a mediator.

(f) "Case" means a dispute which is *sub-judice* in an adjudicating body.

(g) "Adjudicating body" means a Court and this term also includes a quasi-judicial body.

(h) "Mediation" means a process to be followed to settle a dispute or case with the assistance of a mediator.

(i) "Mediator" means a mediator appointed pursuant to this Act who facilitates for negotiation between the mediation parties and motivates them in arriving at a voluntary agreement.

(j) "Local body" means Village Development Committee or Municipality.

Chapter 2

Settlement of Dispute through Mediation

3. Dispute may be settled through mediation: (1) In case, any agreement provides for the settlement of dispute through mediation, the dispute concerned with that agreement or a dispute arisen under that agreement shall be settled according to the procedure prescribed in the agreement, if any.

(2) Notwithstanding anything contained in Sub-section (1), in case, parties intend to settle a dispute through mediation which is *sub-judice* or not filed in any adjudicating body and such dispute may be settled through compromise (*Milapatra*) pursuant to prevailing law, the aforesaid dispute may be settled through mediation by following the procedure pursuant to this Act.

(3) In case, parties intend to settle a case which is *sub-judice* in an adjudicating body through mediation pursuant to Sub-section (2), the parties may submit an application to the concerned adjudicating body at any time, and upon the receipt of such application the adjudicating body shall issue an order to settle the dispute through mediation whether such case is *sub-judice* at any level.

(4) Where in any case *sub-judice* in an adjudicating body, the aforesaid body considers it appropriate to settle through mediation and the concerned parties are agreed, the adjudicating body may issue an order to settle such dispute through mediation.

(5) Notwithstanding anything contained in Sub-section (3) and (4), in case, it is deemed necessary to pronounce a decision on any issue which cannot be settled through mediation together with an issue which can be resolved through mediation the adjudicative body shall not issue an order to settle such dispute through mediation.

4. Appointment of the mediator: (1) In case, any agreement provides for a provision on the appointment of the mediator, appointment of the mediator shall be done as per the aforesaid provision, and in the absence of such provision mediator shall be appointed under this Act.

(2) While appointing a mediator pursuant to Sub-section (1), parties shall appoint the mediator by a mutual consent.

5. Number of the Mediator: (1) The number of the mediator shall be as specified in the agreement, if any, and in case, the agreement does not specify the number of the mediator, one or three mediators shall be appointed as per the consent of the parties.

(2) In case, parties are agreed to appoint one mediator such mediator shall be appointed by the consent of the parties and in case, parties are agreed to appoint three mediators, each party shall appoint one mediator and the third mediator shall be appointed either by the party themselves or by two mediators appointed by the parties, as the case may be.

(3) In case, there are three mediators, the third mediator shall act as a co-coordinator of the mediators.

6. Assistance may be sought for appointing the mediator: (1) In case, any agency which offers mediation service provides separate Rules or procedure for appointing the mediator, the parties may appoint mediator as per such Rules or procedure.

(2) A request may be made to an agency which offers mediation service by the parties themselves or as per the order of the court to recommend the name of the mediator for appointing the mediator pursuant to Sub-section (1).

(3) Upon the receipt of a request pursuant to Sub-section (2), such agency may, by considering the nature of dispute, the issue of mediation, the qualification, expertise and the capacity of the mediator to carry impartiality, and the nationality of the mediator in the context of international nature dispute, if any, recommend for the suitable person or appoint a person as a mediator.

(4) Notwithstanding anything contained elsewhere in this Section, in case, parties intend to take assistance from the local body for appointing mediator, the parties may seek assistance of the concerned local body.

(5) Local body shall, for the purpose of providing assistance pursuant to Sub-section (4), prepare a roster of the mediators who are eligible to be a mediator pursuant to this Act and shall provide assistance to appoint a suitable person as a mediator from its roster on the consultation of parties.

7. Mediator to be appointed by the adjudicating body: (1) Notwithstanding anything contained in Section 5 or 6, where the adjudicating body issues an order to settle a dispute through mediation pursuant to Sub-section (4) of Section 3 or the concerned parties fail to appoint the mediator pursuant to Section 5, the adjudicating body shall issue an order in the name of the concerned party to submit the name of the mediator within such period as specified by it.

(2) Upon the issuance of an order pursuant to Sub-section (1), the concerned party shall submit the name of the mediator to the adjudicating body within the prescribed period by the mutual consent of the parties and the adjudicating body shall appoint the person submitted by the parties as a mediator.

(3) In case, the parties fail to submit the name of mediator pursuant to Sub-section (2), the adjudicating body shall appoint such person as a mediator upon taking consent of the parties from among the persons eligible to be a mediator.

8. Appointment of the mediator in special circumstance: (1) In case, a person appointed as a mediator declines to provide mediation service, or fails to act as a mediator or resigns or dies or the post of the mediator falls vacant for any other reason, the vacancy shall be filled, within the time as consented the parties, by appointing the next mediator through the same process which was followed earlier.

(2) In case, a mediator cannot be appointed pursuant to Subsection (1), the appointment of mediator shall be made upon following the process as mentioned in Section 7.

9. An order to be issued for appointing the mediator: (1) Notwithstanding anything contained in this Chapter, while making settlement of a dispute through mediation pursuant to Sub-section (3) or (4), the concerned adjudicating body shall issue an order to appoint a mediator.

(2) While issuing an order to appoint a mediator pursuant to Subsection (1), the adjudicating body shall issue an order to appoint a person as a mediator from among the persons awarded certificate to act in the capacity of a mediator pursuant to Sub-section (1) of Section 21.

10. To notify for denial of rendering service as a mediator: In case, a person appointed as a mediator pursuant to this Act does not intend to act as a mediator shall notify in writing to that effect to the concerned adjudicating body within Seven days from the delivery of the notice of the appointment.

11. Mediator to notify: (1) In case, a mediator appointed pursuant to this Act is unable to conduct the mediation process in an independent and impartial manner due to the nature of the dispute or there exists a circumstance likely to give rise to a justifiable doubt as to his/her independence or impartiality, the mediator shall notify quickly in writing to that effect to the mediation parties and to the adjudicating body where the dispute was referred by the order of adjudicating body.

(2) A copy of the Notification notified pursuant to Sub-section (1) shall be recorded in the file of the concerned dispute.

12. Matters to be observed by the mediator: A mediator shall observe the following matters while discharging his/her duty as a mediator:

(a) To perform the duty related to mediation in an impartial manner.

(b) Not to perform an act with favouritism, bias or prejudice towards any party or to avoid conduct that gives the appearance of the same.

(c) Not to conduct mediation by creating fear or terror against a party or by misleading or inducing to a party.

(d) Not to have any financial transaction with a party until the dispute is resolved.

(e) Not to commit any act contrary to this Act or Rules framed there under in regard to mediation process.

(f) Not to make any economic transaction or not to do any other act and activity that falls under the conflict of interest in the course of mediation.

(g) To observe code of conduct in the course of mediation.

13. Mediators may be removed: (1) In case, it is found after the appointment of a mediator that he/she is not qualified to be a mediator pursuant to Section 22, the concerned parties themselves, or the agency or the adjudicating body from whom such mediator was appointed shall remove such mediator as quickly as possible.

(2) In case, it is found that a mediator has committed any of the following acts by a complaint lodged by a party or the aforesaid matter comes in notice of the adjudicating body by any source, the adjudicating body may remove such mediator at any time:

(a) If he/she fails to fulfill the matter as referred to in Section 12.

(b) If he/she commits any act against the matter of dispute or party with an unfair or a fraudulent manner.

(c) If repetition of a mistake or irregularity is found in his/her act or activity or in the process of mediation.

(d) If he/she prolongs or delays the proceedings of mediation without a reasonable cause or shows reluctance in the proceedings of mediation.

(e) If he/she breaches the confidentiality of matters done in the course of mediation proceedings without the consent of the party which causes adverse effect on the interest of the party.

Chapter 3 Procedure Relating to Mediation

14. The proceeding of mediation to be commenced: (1) Where a party of a dispute, which is not filed in a court, serves a notice to another party or the concerned parties submit an application to the adjudicating body in connection with a dispute pursuant to Sub-section (3) of Section 3 or the adjudicating body issues an order to settle a dispute through mediation pursuant to Sub-section (4) of Section 3, it shall be deemed to have commenced the proceedings of mediation.

Provided that, the proceedings of community based mediation shall be commenced when a request is made to the community by the concerned party.

(2) Upon the commencement of the proceedings of mediation, any of the party shall submit the dispute to the mediator.

(3) Upon the commencement of the proceedings of mediation pursuant to Sub-section (1), except as otherwise provided in this Act no adjudicating body shall interfere in such case until the disposal of the mediation proceedings.

15. Procedure relating to the settlement of dispute: (1) The procedure relating to the settlement of a dispute through mediation shall be as prescribed by the parties.

(2) In case, parties agree to settle a dispute through mediation by following Rules or procedure framed by an agency which offers mediation service, such dispute shall be settled through mediation by following such Rules or procedure.

(3) While making settlement of a dispute as so ordered by the adjudicating body, the dispute shall be settled through mediation as per the procedure made or ordered by the adjudicating body, if any.

(4) In the absence of the procedure or Rules pursuant to Subsection (1), (2) or (3), the mediator shall specify an appropriate procedure by considering the nature of the dispute and the desire of the parties to settle the dispute promptly, and the dispute shall be settled accordingly.

(5) While fixing procedure pursuant to Sub-section (4) it shall be, *inter alia*, set out the following procedure:

(a) To produce own claim and reply by the parties before the mediator.

(b) To hold separate or joint meeting with the parties.

(c) To seek any information or evidence or document from the parties.

(d) To provide access to the information, evidence or document sought pursuant to Clause (c) to the other party.

(e) To seek alternative grounds for mediation from parties for resolving the dispute

(6) Notwithstanding anything contained elsewhere in this Section, the Board may frame and promulgate a model procedure for resolving the dispute.

16. Settlement of a dispute: (1) While following the procedure pursuant to Section 15, in case, parties are agreed for mediation, the mediator shall prepare the document to that effect and cause to put signature of the parties in such document along with his/her signature.

(2) A copy of the document as referred in to Sub-section (1) shall be provided to each party.

(3) It shall be deemed to have been settled a dispute after the preparation of document as referred to in Sub-section (1).

(4) In case, parties are agreed for mediation in the dispute pursuant to Sub-section (3) or (4) of Section 3, the mediator shall produce the concerned parties along with the document of mediation before the adjudicating body.

(5) Upon the receipt of the document of mediation pursuant to Sub-section (3), the adjudicating body shall give effect to the mediation pursuant to the prevailing law.

(6) Notwithstanding anything contained in the prevailing law, no fee shall be charged while making mediation pursuant to Sub-section (5).

(7) Notwithstanding anything contained in the prevailing law, while making mediation where a quasi-judicial body has imposed imprisonment or a fine or both, the concerned competent court may issue an order to remit or reduce such imprisonment or fine as per necessity.

17. The proceedings of mediation to be terminated: The proceeding of mediation shall be terminated in the following circumstances;

(a) If parties do not agree for mediation while following the procedure of mediation pursuant to Section 15.

(b) If parties do not appear before the mediator on such date specified by the mediator.

(c) If the proceeding of mediation fails to move ahead due to the absence of a party on such date as specified by the mediator for holding meeting between the parties.

(d) If the parties agree with the term and conditions of mediation and the document of mediation is prepared.

18. Report to be submitted : (1) A mediator appointed pursuant to Subsection (3) or (4) of Section 3 shall submit a report to the adjudicating body within Seven days in the conditions mentioned in Clauses (a), (b) or (c) of Section 17.

(2) Upon the receipt of the report pursuant to Sub-section (1), the adjudicating body shall hear and dispose of such case pursuant to law.

(3) Where a time frame is specified for mediation and the document of mediation is not produced within Ten days from the expiry of such specified date pursuant to Sub-section (1) of Section 16 or the report pursuant to Sub-section (1) is not submitted, the adjudicating body shall hear and dispose of such case pursuant to law.

19. Restriction to hear a dispute: A person who has rendered mediation service in a dispute pursuant to this Act, shall not be eligible to work as a lawyer, arbitrator or judge in the same case.

Chapter 4

Provision Related to Certificate of Mediator and Regulation thereof

20. Application to be submitted for certificate: (1) A person, who intends to work as a mediator for the purpose as referred to in Sub section (4) of Section 3 or Sub-section (2) of Section 9, shall make an application to the Board in such format as prescribed.

(2) While making an application to the Board pursuant to Subsection (1), the applicant shall submit his/her copy of his/her citizenship certificate and the documents which show that he/she meets the requirement to be a mediator.

21. Provision related to certificate: (1) Upon making an inquiry in to the application submitted pursuant to Section 20, in case, the Board is satisfied to issue a certificate, the Board shall issue the certificate of mediation in such format as prescribed.

(2) The certificate issued pursuant to Sub-section (1) shall be valid for a period of Three years and such certificate may be renewed as prescribed.

(3) In case, a person to whom mediation certificate was awarded does not meet required qualification as mentioned in Section 22 to be a mediator, or such person commits fraud or forgery while discharging his/her duty as a mediator, the Board shall cancel the certificate of such mediator by fulfilling the prescribed procedure.

(4) Certificates issued pursuant to prevailing law before the commencement of this Act, shall be deemed to have issued pursuant to this Act.

22. Qualification of mediator: (1) The following person shall be eligible to be a mediator;-

(a) A Nepali citizen,

(b) Attained Twenty Five years of age,

(c) Completed at least a Bachelor Degree from a recognized academic institution,

(d) Completed a mediation training for a period as prescribed,

(e) Having sound mind,

(f) Not convicted by a court in a criminal charge involving moral turpitude,

(g) Has not been adjudged bankrupt,

(h) Not removed from the roster of mediators due to the commission of an act contrary to this Act.

(2) Notwithstanding anything contained in Clauses (b), (c) and (d) of Sub-section (1), where the parties themselves choose a person as a mediator who is literate and attained Twenty Five years of age shall be eligible to be a mediator for such party despite the fact that such person does not hold a mediation training.

(3) Notwithstanding anything contained in Clause (a) of Subsection (1), while resolving a dispute involving a foreign person or a dispute connected with a contract done with a foreign person, there shall be no bar to appoint a foreign citizen as a mediator.

23. Provisions relating to the agency which offers mediation services: (1) A corporate body which is registered under the prevailing law with an objective to provide mediation service to

party under this Act, intends to implement such objective shall make an application to the Board in prescribed format by setting out the following matters:

- (a) Name and registration number of the corporate body.
 - (b) Name of officials of the corporate body.
 - (c) A copy of mediation procedure or Rules framed by the agency to settle a dispute.
 - (d) The place where the agency intends to provide mediation services to the parties.
- (2) Upon making an inquiry into the application and document submitted pursuant to Sub-section (1), if the Board is satisfied that mediation procedure or Rules framed and other details submitted by the applicant are suitable, the Board shall give approval to the applicant to provide mediation service to the party upon collecting fee as prescribed.

24. Roster of mediators to be maintained: (1) An agency which has received approval pursuant to Sub-section (2) of Section 23, shall maintain and make public the roster of persons eligible to be a mediator who facilitates for resolving a dispute.

(2) It shall be set out, *inter alia*, the qualification, experience and contact address of the person included in the roster pursuant to Subsection (1)

(3) Parties may, subject to mediation procedure or Rules framed by the concerned agency, choose a mediator from the roster maintained pursuant to Sub-section (1).

25. Mediation procedure or Rules requires approval: (1) A corporate body established under the prevailing law for rendering mediation service to settle a dispute may frame mediation Rules or procedure.

(2) Mediation procedure or Rules framed pursuant to Sub-section (1) shall come in to force after being approved by the Council.

Chapter 5

Constitution, Functions, Duties and Powers of the Council

26. Constitution of the Board: (1) There shall be a Board to be known as the Mediation Board for performing the function of regular reform, modification, regulations and control of the mediation procedure and the Board shall consist of the following members:

- (a) A sitting judge of Supreme Court designated by the Chief of Justice on the recommendation of the Judicial Council -Chairperson
- (b) Secretary, Ministry of Law and Justice -Member
- (c) Secretary, Ministry of Local Development -Member
- (d) Deputy Attorney General, Office of the Attorney General -Member
- (e) General Secretary, Nepal Bar Association -Member
- (f) A person designated by the Board from among the representative organizations working in the field of industry and commerce -Member
- (g) Two Women designated by the Board from among the women working as a mediator or the representatives of the agency involved in mediation or working in the field of mediation - Member
- (h) Two persons with at least a woman designated by the Board from among the representatives of social workers and civil society -Member
- (i) Registrar, Supreme Court -Member-secretary

27. Functions, duties and powers of the board: Save as provided elsewhere in this Act, the board shall have the following function, duties and powers;

- (a) To conduct or cause to conduct various programmes which promote mediation to settle dispute.
- (b) To provide suggestion to the Government of Nepal for simplification of mediation procedure and for making reform in prevailing law for wide use of such procedure.
- (c) To approve the curricula of the training to be given to the mediators and to specify the agency which conducts such training.
- (d) To monitor and evaluate the institutional capacity of the agency which provides mediation service and the quality of training.
- (e) To cause to conduct training and interaction programme for the enhancement of the expertise of the mediators.
- (f) To prepare the framework of permanent structure in local level for community based mediation and to recommend the Government of Nepal for its implementation.
- (g) To monitor or cause to monitor the act and activity of a mediator.
- (h) To cause to inquire into the matter whether the mediator has abided by the code of conduct or not and to take action where the code of conduct is violated.
- (i) To perform any other act related to mediation.

28. Procedure relating to meeting: (1) The meeting of the board shall be held at such date, time and place as designated by its Chairperson.

(2) The presence of more than fifty percent of the total number of the members of the board shall make quorum for holding a meeting of the board.

(3) The meeting shall be presided over by the chairperson of the board and in his/her absence a meeting shall be presided over by a member selected by the members from among themselves.

(4) The opinion of the majority of the members shall prevail over the meeting and in case of a tie the person who chairs the meeting shall give his/her casting vote.

(5) The member-secretary shall authenticate the decisions of the board.

(6) The other procedures relating to the meeting of the board shall be as determined by the board itself.

29. Mediation monitoring committee: These shall be a mediation monitoring committee as prescribed to monitor the act and activity relating to mediation at local level.

30. Mediation Fund: (1) There shall be a mediation fund under the board to perform necessary work for conducting mediation activities in an efficient manner.

(2) The following money shall be deposited in the fund pursuant to Sub-section (1);

(a) Money obtained from the Government of Nepal.

(b) Money obtained from foreign government, national or foreign person or organization.

(c) Money collected by the Council while giving approval to the agencies which provide mediation service.

(d) Money obtained from other source.

(3) Before accepting money as referred to in Clause (b) of Sub-section (2) from a foreign Government, person or organization, the board shall take approval from the Government of Nepal.

(4) The money obtained pursuant to Sub-section (2) shall be deposited in an account of a commercial bank.

(5) The operation of account opened pursuant to Sub-section (4) shall be conducted by the chief of the secretariat of the board and an employee designated by the board.

31. Use of Fund: The money deposited in the fund pursuant to Section 30 shall be used for the following purposes.

(a) To implement the decision made by the board.

(b) To run the secretariat of the board.

(c) To reform, modify and simplify the mediation procedure.

(d) To conduct mediation training and seminar.

32. Account and audit: (1) The account of the board shall be maintained in a format followed by the Government of Nepal.

(2) The board shall cause to audit the account of the board as per prevailing law.

(3) The final audit of the board shall be done by the Auditor-General.

Chapter 6

Provisions Relating to community mediation

33. Community based dispute settlement: (1) Any dispute which may be settled through mediation pursuant to this Act, may be settled even by community based mediation.

(2) The concerned community may, in order to facilitate to settle a dispute pursuant to Sub-section 1, prepare a panel of mediators after or before arisen of a dispute.

(3) The following person may be included in the panel prepared pursuant to Sub-section (2);

(a) Respected persons in local community.

(b) Persons designated by community organization working at local level.

(c) Local social worker.

(d) Teacher or professor working in local school or college.

(4) While making panel pursuant to Sub-section (3) the representative of women shall be insured in a suitable number as per necessity.

34. Community mediation: (1) There shall be mediators as may be required to facilitate for resolving disputes through community based mediation.

(2) The mediators as referred to in Sub-section (1) shall provide assistance to parties for resolving disputes.

(3) While providing assistance to parties pursuant to Sub-section(2), mediator shall motivate parties to reach to a consensus, to conclude an agreement which is acceptable for the both parties and not to take the settlement of disputes done through community based mediation as a win or loss.

(4) Non-governmental organization working at local level may provide technical and other assistance, as may be required, to community based mediator for resolving disputes.

(5) Meeting of the concerned community members shall frame necessary procedure for the purpose of resolving dispute through community based mediation.

(6) The result of the settlement of dispute done through mediation may be recorded in writing in the local body.

(7) Other provisions relating to the settlement of disputes done through community based mediation shall be as prescribed.

35. Training and other technical service to be provided: (1) The concerned District Development Committee, Village Development Committee and Municipality may provide necessary technical service to community based mediator to settle dispute through community based mediation.

(2) The Government of Nepal may mobilize national or local level nongovernmental or community based organization as per necessity to develop the expertise of community based mediator and to provide essential training for such mediators.

Chapter 7 Miscellaneous

36. Duty of the parties: It shall be the duty of party to appear before the adjudicating body or mediators, as the case may be, on such date, place and time specified by the adjudicating body or mediator, as the case may be, and to take part in the proceedings of mediation.

37. The process of mediation to be confidential: Except as otherwise provided by the parties or the prevailing law, all process relating to mediation shall remain confidential.

38. Inadmissibility of evidence: Notwithstanding anything contained in the prevailing law, any views expressed by a party in the course of mediation proceedings shall not be accepted as an evidence in a case in which such party stands as plaintiff or defendant.

39. Result of mediation to be mandatory: In case, a dispute is settled through mediation pursuant to this Act, the result thereof shall be mandatory for the parties and the concerned parties shall execute mediation.

40. Execution of mediation: (1) Notwithstanding anything contained in the prevailing law, the concerned party shall execute the mediation which took place in regard to a dispute pursuant to Sub-section (3) or (4) of Section 3 within thirty five days from the date of mediation.

(2) In case, the concerned party does not implement the mediation within the date as referred to in Sub-section (1), the concerned affected party may submit an application to the body concerned with the matter of mediation for the implementation of such mediation.

(3) Upon receipt of the application pursuant to Sub-section (2), such body shall implement such mediation as per the prevailing law.

41. A Role of facilitator to be played: (1) A mediator shall, while resolving dispute, assist parties in an independent and impartial manner to resolve dispute in a friendly manner.

(2) While providing assistance pursuant to Sub-section (1) a mediator shall be guided by integrity, objectivity, fair treatment and the principles of justice by considering the rights and obligation of parties, commercial practices and usage if it is a commercial type of dispute as well as custom, practice and recognized values adopted by the community if a dispute is to be resolved through the community based mediation.

(3) While providing assistance to settle dispute pursuant to this Act, a mediator shall not play the role of a judge, arbitrator or legal advisor rather the mediator shall play only the role of facilitator.

42. Information not to be disclosed by mediator: A mediator shall not disclose any information given by the party or any substance or fact known to him/her in the course of mediation proceeding which causes adverse impact on the interest of party. Provided that, this Section shall not create any bar to disclose anything known to him/her in a criminal offence before a competent court.

43. Fee: (1) A mediator may accept fee from parties by not the crossing the amount as prescribed in the consent of both parties for providing mediator service.

(2) In the absence of consent pursuant to Sub-section (1) a mediator shall be entitled to obtain fee as prescribed by the board.

44. Action not to be taken against mediator: No legal action shall be taken against a mediator for any act and activity done by him/her in the course of discharging his/her duty as a mediator in good faith

45. Delegation of power: The board may delegate some of its powers to a body or authority as it deems necessary.

46. Case may be referred to local body for mediation: (1) Notwithstanding anything contained elsewhere in this Act, nothing in this Act shall create any obstacle to settle a dispute through arbitration pursuant to Local Self Governance Act, 2055. Provided that, the court or the quasi-judicial body may refer a *sub-judice* case to a local body for mediation as it deems necessary in the consent of concerned party and the local body before the commencement of Section 33 and 101 of the Local Self Governance Act, 2055.

(2) Upon the receipt of the case pursuant to Sub-section (1), the concerned local body may conduct mediation between parties by adopting separate procedure as may be required.

47. Code of conduct may be framed and enforced: The Board may frame and enforce a code of conduct to be followed by the mediators.

48. Power to frame Rules: The Government of Nepal may frame necessary Rules to implement the objectives of this Act.

The Mediation Regulation, 2014

Published by
Government of Nepal
Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs
in Nepal Gazette on March 03, 2014

Notice 1

As the Government of Nepal has promulgated enforcement of the Mediation Act 2011 with effect from April 14, 2014, exercising the power granted by Sub-section (2) of Section 1 of the said Act, the notice shown below is published.

Notice 2

The Mediation Regulation 2014

Exercising the power granted by Section 48 of the Mediation Act 2011, the Government of Nepal has, in consultation with the Supreme Court, framed the following rules:

Chapter 1 Preliminary

1. **Short title and commencement:** (1) The name of these rules is 'The Mediation Regulations 2014'.
(2) This regulation shall come into force from the date the Act will be enforced.
2. **Definition:** Unless the subject or context requires an alternative meaning, in these regulations:
 - (a) 'Court' refers to the Supreme Court, Appellate Court and District Court.
 - (b) 'Act' refers to the Mediation Act 2011.
 - (c) 'Mediation Monitoring Committee' refers to the Mediation Monitoring Committee pursuant to Rule 51.
 - (d) 'Mediators roster' refers to the roster of mediators pursuant to Rule 6.
 - (e) 'Organization(s) involved in mediation work' refers to those organization(s) that have been approved by the [Mediation] Council, pursuant to Rule 48, to carry out mediation work.
 - (f) 'Community' refers to those communities that have been formed by gatherings of local communities to settle disputes through the community-based mediation mechanism, pursuant to Section 33 of the Act.

Chapter 2

Provisions pertaining to Mediators Roster

- 3. Soliciting applications for enlisting as mediators:** (1) For the purpose of drawing up a mediators roster, an adjudicating body, local body or an organization involved in mediation work may solicit applications from persons desirous of enlisting themselves as mediators.

(2) For the purpose of soliciting applications pursuant to Sub-rule (1), the adjudicating body, local body or the organization involved in mediation work shall post a notice stipulating a period of thirty days for submitting applications in the specified format shown in Schedule 1 in the notice board of its office.

(3) The adjudicating body, local body or the organization involved in mediation work may publish the notice pursuant to Sub-rule (2) in a nearby public liaison office, a venue or a national or local-level newspaper.
- 4. Submitting applications for enlisting:** (a) A person who desires to be enlisted as a mediator shall submit an application to an adjudicating body, local body or an organization involved in mediation work in the format shown in Schedule 2 within the deadline stipulated in Rule 3 (2). Women shall be encouraged to apply to enlist as mediators pursuant to Sub-rule (1).
- 5. Application may be submitted any time for enlisting as mediators:** Notwithstanding anything contained in Rules 3 and 4, if persons who are eligible to act as mediators pursuant to the Act desire to enlist as mediators, they may submit an application, disclosing the reasons for not being able to submit an application in the format shown in Schedule 2 to an adjudicating body, local body or an organization involved in mediation work within the stipulated period.
- 6. Drawing up a mediators roster:** (1) If, upon examination of applications received pursuant to Rule 4 or 5, the applicant, having been found eligible to become a mediator pursuant to the Act, is found appropriate to be enlisted on the mediators roster, the authorities or officials shown below, on behalf of the adjudicating body, local body or the organization involved in mediation work, shall take a decision to enlist the applicant as a mediator:

 - (a) In the case of the Supreme Court, an official designated by the said Court;
 - (b) In the case of an Appellate Court, a full court of the said Court;
 - (c) In the case of the District Court with only one District Judge, the District Judge concerned and in the case of the District Court with more than one District Judge, a full court of that Court;
 - (d) In the case of other authorities or institutions other than the official or authorities mentioned in paragraphs (a), (b) or (c), the chief of the authorities or institution concerned.

(2) Upon a decision being taken to enlist an applicant pursuant to Sub-rule (1), the adjudicating body, local body or the organization involved in mediation work shall enlist the name of such applicant in the roster pursuant to Schedule 3.

(3) Upon a decision being taken to enlist an applicant pursuant to Sub-rule (1), the adjudicating body, local body or the organization involved in mediation work shall publish a notice by posting it in the notice board of its office.

(4) Upon enlisting the name of the mediator pursuant to this rule, the adjudicating body, local body or the organization involved in mediation work shall notify the mediator concerned about it.

(5) The mediators roster drawn up by the adjudicating body prior to the commencement of this rule shall be deemed to have been drawn up pursuant to this regulation.

- 7. Organizations involved in mediation work may be enlisted:** If an organization involved in mediation work desires to enlist as a mediator pursuant to this chapter, the provisions of this chapter, including required alterations, shall also apply in the case of such organization vis-à-vis submission of application by such organization for approval and granting of approval.
- 8. Oath:** A person who has been enlisted as a mediator pursuant to this chapter shall take an oath in the format pursuant to Schedule 4 before an official shown below:
- (a) In the case of the Supreme Court, an official designated by the said Court;
 - (b) In the case of the Appellate Court, the chief judge of the said Court;
 - (c) In the case of the District Court with only one District Judge, the District Judge concerned and in the case of the District Court with more than one District Judge, senior-most judge of the said Court;
 - (d) In the case of other authorities or institution other than the official or authorities mentioned in paragraphs (a), (b) or (c), the chief of the authorities or institution concerned.
- 9. Updating the mediators roster:** The adjudicating body, local body or the organization involved in mediation work shall update the mediators roster every year.
- 10. Removing a mediator's name from the roster:** (1) The name of a mediator shall be removed from the mediators roster in the following circumstances:
- (a) If the mediator submits an application that her/his name be removed from the roster;
 - (b) If the mediator is convicted in a criminal case involving moral turpitude;
 - (c) If the certificate of the mediator is revoked pursuant to Sub-section (3) of Section 21 of the Act;
 - (d) If the mediator doesn't renew her/his certificate within the stipulated period;
 - (e) If the organization involved in mediation work is dissolved under a prevailing law;
 - (f) If the licence of the organization involved in mediation work is revoked pursuant to Rule 50;
 - (g) If the mediator has died.

(2) Upon a decision being taken to remove a mediator's name from the roster pursuant to sub-rule (1), the adjudicating body, local body or the organization involved in mediation work shall publish a notice by posting it in the notice board of its office.

11. Making available mediators roster: If an adjudicating body or organization involved in mediation work seeks to see the mediators roster drawn up by another adjudicating body or an organization involved in mediation work, such roster shall be made available to the authorities or organization seeking to see it.

Chapter 3

Pertaining to Mediation of Case filed with an Adjudicating Body

- 12. An order for mediation based on a party's application may be issued:** (1) If parties to a case that has been filed with an adjudicating body desire to settle the case through the process of mediation, they may submit an application to the adjudicating body in the format shown in Schedule 5, with these details, at any time.
- (2) If an application pursuant to Sub-rule (1) has been submitted by only one of the parties, the adjudicating body shall seek consent from the other party on the issue of whether or not it desires to go for the process of mediation.
- (3) Based on the application received pursuant to Sub-rule (1) or the consent of the party pursuant to Sub-rule (2), if both parties seem desirous of settling the case through the process of mediation, the official shown below may issue an order pursuant to Schedule 6 to settle the case through the process of mediation:
- (a) In the case of the Supreme Court and Appellate Court, Registrar;
 - (b) In the case of the District Court, *Shrestedar* [registrar of a lower court];
 - (c) In the case of other adjudicating bodies, head of that body;
 - (d) Notwithstanding anything contained in Sub-rule (3), in the case of cases in the list of cause list, any order for settling the case through the process of mediation shall be issued only by the bench of the adjudicating body concerned.
- 13. Adjudicating body may issue an order to settle the case through mediation process:** Notwithstanding anything contained in Rule 12, if the adjudicating body deems it appropriate to settle a case that has been filed with it through the process of mediation and, if the parties consent, the adjudicating body may issue an order pursuant to Schedule 6 to settle such case through the process of mediation.
- 14. Order may be re-issued to settle a case through mediation process:** Even in circumstances when a case that had been once referred for settlement through the process of mediation pursuant to Rule 12 or 13 has not been settled through the process of mediation, the adjudicating body, if it deems it reasonable and if the parties to the case consent, may issue an order for the second time to settle such a case through the process of mediation.
- 15. Time limit may be prescribed for settling cases through the process of mediation:** While issuing an order referring any case to the process of mediation pursuant to Rule 12, 13 or 14, the official or adjudicating body issuing such an order may prescribe either one or more than one mediation session that must take place within a time limit of up to three months, taking into consideration the complexity of the subject-matter of dispute, number of parties involved in the case, nature of the matter under dispute and the reasonable time it takes to mediate.

- 16. Counseling to be offered to parties to settle dispute through mediation:** (1) Upon both parties to the dispute presenting themselves, the adjudicating body shall offer necessary counseling to encourage them to settle their dispute through mediation.
(2) For the purpose of offering counseling pursuant to Sub-rule (1), the adjudicating body may assign counselors, as required.
- 17. Summoning parties:** (1) Prior to issuing an order pursuant to Rule 12, 13 or 14 to settle a dispute filed before the adjudicating body, in case of disputes in which an attorney has been appointed, the adjudicating body may summon parties to the dispute through the attorney to elicit the views of the disputing parties.
(2) Notwithstanding anything contained in Sub-rule (1), if a party to a dispute has issued a separate letter of attorney for concluding mediation, the adjudicating body may conclude mediation through such attorney pursuant to this Regulation.
- 18. Appointment of mediator by parties to the dispute:** (1) Upon issue of an order to settle the dispute filed before an adjudicating authority through mediation, parties to the dispute shall appoint mediators, no more than three in number, from among the persons shown below:
(a) Mediators enlisted with the adjudicating body to oversee the case concerned;
(b) Persons who have received certificate as mediators pursuant to Section 21 of the Act.
(2) Notwithstanding anything contained in Sub-rule (1), if the parties themselves propose a person as mediator, even a person who has not received training in mediation and who does not have the certificate may be appointed as mediator.
(3) Notwithstanding anything contained in paragraph (a) of Sub-rule (1), in respect of the cases filed with the Supreme Court and Appellate Court, if the parties desire, even persons enlisted in the mediators roster of the District Court concerned may be appointed as mediators.
(4) If the parties select an organization involved in mediation work to act as a mediator pursuant to Sub-rule (1) and if such an organization has provision for separate regulations or procedures for the appointment of mediators, the parties shall appoint a mediator in accordance with such regulations or procedures.
(5) Notwithstanding anything contained in Sub-rule (1), if the parties select an organization involved in mediation work as the facilitator of the mediation and request such body to recommend the name of a mediator, the adjudicating body may recommend the name of a mediator from among the mediators enlisted with it.
(6) While recommending the name of mediators pursuant to Sub-rule (5), an organization involved in mediation work shall recommend the name of a suitable person pursuant to Sub-section (3) of Section 6 of the Act.
(7) If the parties consent to appoint one mediator, the mediator shall be appointed on the consent of both parties and if three mediators have to be appointed, either of the parties shall appoint a mediator each and either both the parties or both the mediators who have been appointed thus shall appoint the third mediator.
(8) If three mediators have been appointed, the third mediator shall act as convener.

- 19. Appointment of mediator by the adjudicating body:** (1) Notwithstanding anything contained in Rule 18, in a case where the Court has passed an order to settle a dispute through mediation pursuant to Rule 13, if the parties fail to appoint a mediator, the adjudicating body may appoint a person who is deemed suitable from among the mediators on the roster of mediators.
- (2) If, in the course of appointing a mediator pursuant to Sub-rule (1), the adjudicating body requests an organization involved in mediation work to send the name of a person to act as mediator, the organization shall send the name of a suitable person pursuant to Sub-rule (4) or (5) of Rule 18.
- 20. To issue an appointment letter to the mediator:** (1) Upon appointment as mediator pursuant to Rule 18, the parties concerned shall issue an appointment letter to the mediator in the format shown in Schedule 7 and notify the adjudicating body about it.
- (2) The adjudicating body shall issue an appointment letter pursuant to Sub-rule (1) to the mediator appointed by the adjudicating body pursuant to Rule 19.
- (3) Upon appointment of a mediator, the adjudicating body shall maintain documentation about it in the format shown in Schedule 8.
- 21. Mediator to be re-appointed:** If the mediator who has received an appointment letter pursuant to Rule 20 informs about her/his desire to not act as mediator as per Section 10 of the Act, if a mediator is removed pursuant to Section 13 of the Act or if a mediator dies, the parties or the adjudicating body shall again appoint another mediator by fulfilling the procedure laid down in Rules 18 or 19.
- 22. Furnishing to the mediator:** Upon receipt of information about appointment of a mediator pursuant to Sub-rule (1) of Rule 20 or upon appointment of a mediator by the adjudicating body pursuant to Rule 19, the adjudicating body, in order to settle the filed case through mediation, shall send the parties to mediators.
- 23. Procedure of mediation:** (1) The date, time and venue for holding discussions between the parties shall be determined with mutual consent between the parties and the mediator.
- (2) Prior to discussing the subject-matter of the case, the mediator shall inform the parties about the subjects shown below:
- (a) The relevant provisions of the Act and these regulations;
 - (b) The procedures to be adopted in the mediation process;
 - (c) That it is the responsibility of the parties to reach a consensus and conclusion and that the role of the mediator is only that of a facilitator;
 - (d) The parties are required to disclose all facts honestly in order to understand the actual subject-matter of the case;
 - (e) The proceedings of the mediation are to be kept confidential and the subject matter should be kept confidential by the mediator and the parties;

- (f) The parties can withdraw from the process of mediation any time;
- (g) Other required matters.

(3) In relation to the settlement of the case through the mediation process, in addition to the matters laid down in Sub-section (5) of Section 15 of the Act, the mediator shall adopt, or order the adoption of, the matters shown below:

- (a) Each party is to be given equal opportunity to speak adequately on matters related to the case;
- (b) Use respectful language and not to interrupt while the other party is speaking;
- (c) Summon any knowledgeable person concerned with the case with the consent of both parties;
- (d) Carry out observation or site inspection of the boundaries of the land.

(4) The mediator may use the telephone, video conference or other appropriate communication mediums in the process of mediation.

(5) The mediator shall make all efforts justifiable under the law as far as possible to settle the case through mediation by holding necessary meetings for discussion with the parties.

24. Extending the duration for mediation: (1) In the course of carrying out mediation-related work, if the mediation work cannot be accomplished within the period specified by the adjudicating body and adequate possibility for mediation between the parties is seen, the mediator, after obtaining the consent of the parties, may submit an application to the adjudicating body requesting extension of period for achieving mediation.

(2) If, upon an examination of an application received pursuant to Sub-rule (1), the mediator's request seems justifiable, the adjudicating body may grant an extension of a reasonable period without exceeding the period pursuant to Rule 15.

25. Submission of documents related to mediation: (1) While following the procedure of mediation pursuant to Rule 23, if the parties consent to settle their case through the process of mediation, the mediator may prepare a settlement paper in the format shown in Schedule 9.

(2) Upon preparation of a paper pursuant to Sub-rule (1), the mediator shall obtain the signatures of the parties on the paper and sign it herself/himself and forward the paper, along with the parties, to the adjudicating body.

(3) Upon receipt of an application for mediation pursuant to Sub-rule (2), the adjudicating body shall issue an order for the preparation of an agreement paper based on the settlement paper and the settlement should be reached between the parties.

26. Extending of assistance for preparing the paper: If the mediator seeks assistance in preparing an agreement application and agreement paper pursuant to Rule 25, the adjudicating body shall extend assistance of a related paid legal practitioner or the District Legal Aid Committee.

27. Case to be proceeded with and concluded if mediation does not take place: (1)

While adopting the procedure of mediation pursuant to Rule 23, if the parties do not consent to reach agreement, if the parties do not present themselves before the mediators on the date specified by the adjudicating body or if the mediation process cannot move forward because of the parties remaining absent on the date specified by the mediator, the mediator shall submit a report pursuant to Schedule 10 to the adjudicating body within seven days of such date.

(2) Upon receipt of a report pursuant to Sub-rule (1) or based on Sub-section (3) of Section 18 of the Act, the adjudicating body shall proceed with the case and settle it as per the law.

Chapter 4

Pertaining to Mediation of Disputes not filed with Adjudicating Body

- 28. Mechanism may be chosen to settle dispute:** If parties desire to settle a dispute that has not been filed with an adjudicating body through mediation, they may choose any one of the mechanisms shown below:
- (a) an organization involved in mediation work,
 - (b) Local body,
 - (c) Community.
- 29. Application may be filed to settle dispute:** (1) Parties who desire to settle their dispute through an organization involved in mediation work or a local body shall submit an application to such organization or local body in the format shown in Schedule 11 for this purpose.
- (2) If the application pursuant to Sub-rule (1) has been submitted by only one of the parties, the organization involved in mediation work or local body shall summon the other party to the dispute, that did not submit an application, within seven days.
- (3) In case the other party to the dispute does not present itself within the period pursuant to Sub-rule (2) or, even if present, does not agree to settle the dispute through the process of mediation, the organization involved in mediation work or the local body shall take the decision that the action initiated to resolve the dispute has come been terminated.
- 30. Appointing mediators:** (1) If both parties to the dispute consent to settle the dispute pursuant to Rule 29, the organization involved in mediation work or the local body shall instruct the parties to appoint no more than three persons from the mediators roster drawn up by the said organization or local body.
- (2) Notwithstanding anything contained in Sub-rule (1), in case the organization involved in mediation work or the local body has made provisions for separate regulations or procedures in relation to the appointment of mediators, the parties may appoint mediators pursuant to such regulations or procedures.
- (3) If the parties request the organization involved in mediation work or the local body to appoint mediators, such an organization or body shall appoint suitable persons as mediators by considering the nature of the dispute and the subject of mediation, qualifications for being mediator, skills and capacity to act impartially.
- (4) If a mediator has not performed with integrity or if the conditions mentioned in Section 13 of the Act apply in the case of the mediator, the parties concerned, the organization involved in mediation work or local body may remove such mediator any time.
- (5) If a mediator who has been appointed pursuant to Sub-rule (1) or (2) refuses to act as mediator, is unable to work as mediator, tenders resignation, has died or is removed pursuant to Sub-rule (4) or if the post of mediator falls vacant due to any reason

whatsoever, another person shall be appointed as mediator through the same process as the said mediator.

(6) Other provisions pertaining to appointment of mediator shall be in accordance with Sub-rules (6) and (7) of Rule 18.

31. Procedure for settling disputes: (1) If the parties consent to settle their dispute in accordance with the regulations framed or procedures adopted by the organization involved in mediation work or a local body, the mediator shall settle the dispute in accordance with the said regulations or procedure.

(2) If the parties do not consent to settle their dispute according to the regulations or procedure pursuant to Sub-rule (1), the dispute shall be settled in accordance with the procedure deemed appropriate by the mediator with the consent of the parties by considering, among other things, the nature of the dispute.

(3) The mediator shall fix, jointly with the parties, the date, venue and time for holding discussions for mediation.

(4) Pursuant to Sub-rule (1) or (2), on the first day of mediation fixed by the mediator, the parties shall submit in writing the differences between them and the matters they desire to resolve and shall also furnish a copy of it to the other party.

(5) If the parties seek time for presenting their claims or arguments pursuant to Sub-rule (4), the mediator shall grant time not exceeding fifteen days.

(6) While presenting a claim or argument pursuant to this rule, all documents related to the dispute and any evidence and proof in support of or against such documents shall be furnished.

(7) If the parties desire to validate any matter with a person knowledgeable about the dispute, the party concerned shall herself/himself produce such person before the mediator.

(8) While adopting the process pertaining to mediation pursuant to this act, the mediator, after obtaining the consent of the parties, may apply the procedure pursuant to Sub-section (5) of Section 15 of the Act and Sub-rules (2) and (3) of Rule 23, with necessary alterations.

32. Effecting mediation: (1) While adopting the procedure of mediation pursuant to Rule 31, if the parties consent to reconcile, the mediator shall prepare a document of settlement in the format prescribed in Schedule 9 and obtain signatures of the parties on that document and also sign it herself/himself.

(2) The mediator shall make available a copy of the document prepared pursuant to Sub-rule (1) to each of the parties.

(3) Upon preparation of the document of settlement pursuant to Sub-rule (1) and upon the parties signing it, the dispute is deemed to have been settled and the procedure of mediation shall come to an end.

33. Submission of report: A report shall be submitted to the organization involved in mediation work or the local body, if mediation has taken place between the parties, within seven days, along with documents, including the agreement paper, and if

mediation has not taken place, disclosing the reasons for not reaching agreement, filled in the format shown in Schedule 10.

- 34. Issuing certificate, if mediation has not taken place:** If mediation has not taken place between the parties through the procedure followed pursuant to Rule 31, the mediator shall, as evidence, issue a certificate to the effect that the dispute could not be settled through mediation.
- 35. Safe maintenance of documents:** (1) The organization involved in mediation or the local body shall keep the documents of mediation, reports and other documents obtained pursuant to Rule 33 safe in its office.
(2) The organization involved in mediation shall keep record of the result of the dispute settled through mediation in writing at the local body concerned.
(3) The organization involved in mediation or the local body may destroy or shred the papers related to mediation other than the agreement paper and mediation report after sixty days of receiving the report from the mediator.
- 36. Time limit for mediation:** While settling disputes through mediation pursuant to this section, the organization involved in mediation or local body shall settle the dispute within sixty days of appointment of a mediator in the case of civil suits and within thirty days in the case of criminal cases.

Chapter 5

Special Provisions pertaining to Community Mediation

- 37. Formation of groups of mediators by the community:** (1) For the purpose of carrying out necessary work in relation to the settlement of disputes that can be settled by a community, under a prevailing law through a community-based mediation mechanism, the community shall form a group of mediators composed of persons pursuant to Sub-section (3) or (4) of Section 33 of the Act before initiating mediation work and it shall notify the local body about it.
- (2) While forming a mediators' group pursuant to Sub-rule (1), the community shall give priority to those local persons who have received training of the duration stipulated in Rule 46.
- (3) The community shall maintain a mediators roster in the group pursuant to Sub-rule (1) and update it every year.
- 38. Submission of application to the community to settle dispute:** (1) A party desirous of settling a dispute that has not been filed with an adjudicating body through the community may submit an application to a nearby community in the format prescribed in Schedule 11.
- (2) If any party, without submitting an application in writing pursuant to Sub-rule (1), orally requests the community, the community shall record the application in writing and obtain the thumb impression of the applicants on the application.
- (3) If only one of the parties submits an application to settle a dispute pursuant to Sub-rules (1) and (2), the other party to the dispute shall be requested to present themselves before the community within seven days.
- (4) If the other party to the dispute has not presented themselves within the period pursuant to Sub-rule (3) or even if they have presented themselves but do not consent to settle the dispute through the process of mediation, the community shall take the decision that the action started in relation to settling the dispute has come to an end.
- 39. Appointment of mediator:** The parties shall appoint persons, not exceeding three in number, from among the persons listed on the roster drawn up by the community pursuant to Rule 37.
- (2) If the parties have not been able to appoint mediators pursuant to Sub-rule (1), or if the parties themselves request the community to appoint a mediator, the community may appoint a suitable person as mediator from among the persons listed on the roster, considering the subject-matter of dispute.
- (3) While appointing mediators pursuant to Sub-rule (2), persons, not exceeding three in number, shall be appointed after obtaining consent of the parties.
- (4) If either or both parties to the dispute are women, and if the parties request, while appointing more than one mediator for any dispute, a minimum of one woman shall be appointed as mediator as far as is possible.

(5) Other provisions pertaining to the appointment and removal of mediators shall apply, with necessary alterations, as stipulated in Sub-rules (3), (4), (5) and (6) of Rule 30, including in the case of the community.

40. Procedure of community mediation: (1) If the community has laid down a procedure in relation to the settling of disputes through mediation, the mediator shall settle disputes in accordance with that procedure.

(2) If the community has not laid down a procedure pursuant to Sub-rule (1), the mediator shall settle disputes in accordance with the procedure framed according to the consent of the parties.

(3) While adopting the process for settling of disputes in accordance with this chapter, if the parties consent, the procedure pursuant to Sub-rules (3), (4), (5), (6), (7) and (8) may be applied, with necessary alterations.

(4) Provisions of Rules 32, 33, 34 and 35 pertaining to preparation of a mediation paper between parties, submission of a report to the community, issuing a certificate in case of non-settlement of a dispute and keeping documents safe, shall apply, with necessary alterations, even in respect of mediation to be effected by the community.

41. Time limit: The task of mediation pursuant to this chapter shall be settled within thirty days of appointment of the mediator.

42. Office: The community may make provision for an office and employees to assist in the task of mediation.

Chapter 6 Concerning Certificate of Mediator

- 43. Provisions pertaining to certificate:** (1) Persons desirous of working as mediator for the purpose stipulated in Sub-section (1) of Section 20 of the Act shall submit an application in the format prescribed in Schedule 12 for obtaining a certificate.
(2) If, upon an examination of the application received pursuant to Sub-rule (1), it seems reasonable to award a mediator's certificate to the applicant, the Council may award the certificate in the format prescribed in Schedule 13.
- 44. Renewal of certificate:** (1) Those mediators who desire to renew their certificates shall submit an application to the Council for renewal of their certificate, with the details shown below, at least a month before the expiry of the certificate.
(a) The [serial/reference] number of the case or dispute in which she/he was appointed as mediator;
(b) Details of the case or dispute she/he was able or unable to settle as mediator;
(c) If she/he is affiliated to any organization involved in mediation work, renewal details of such organization.
(2) If, upon examination of the application received pursuant to Sub-rule (1), it seems reasonable to renew the mediator's certificate, the Council may charge a fee of Rs five hundred in lieu of renewal and renew such certificate for a period of three years.
- 45. Procedure for cancelling certificates:** (1) If, on the basis of any of the criteria mentioned in Sub-section (3) of Section 21 of the Act, the certificate awarded to any mediator has to be revoked, the Council shall provide an opportunity to the mediator concerned to clarify by granting her/him a time limit of twenty-one days.
(2) If the clarification submitted pursuant to Sub-rule (1) is not found satisfactory, the Council may cancel the certificate awarded to such mediator.
(3) The Council shall notify the mediator concerned about the fact of cancellation of the mediator's certificate pursuant to Sub-rule (1).
- 46. Provisions regarding training:** To work as a mediator, the candidate shall have received at least forty hours of training from the approved or stipulated organizations.
(2) The provisions pertaining to training organization shall be as stipulated by the Council.

Chapter 7

Concerning Approval of Organizations Involved in Mediation Work

- 47. Submission of application for approval:** The organizations desirous of effecting mediation between parties pursuant to Section 23 of the Act shall submit an application in the format shown in Schedule 14 for approval.
- 48. Granting of approval for mediation:** (1) If, upon examination of applications received pursuant to Rule 47, it seems reasonable to grant approval to the applicant to carry out mediation work, the Council shall charge a fee of Rs one thousand and grant approval in the prescribed format shown in Schedule 15.
- (2) While granting approval pursuant to Sub-rule (1), the Council shall grant approval to, among others, the procedure or regulations framed by the applicant organization.
- 49. Duration for working on mediation:** (1) The organizations involved in mediation work shall be entitled to involvement in mediation-related work for three years from the date of receiving approval pursuant to Rule 48.
- (2) If an organization involved in mediation work is desirous of working for a period exceeding the period prescribed in Sub-rule (1), it shall submit an application to the Council, disclosing the reasons shown below, no less than a month before the expiry of the said period.
- (a) Description of the case or dispute settled by her/his organization;
 - (b) Description of the case or dispute that could not be settled by her/his organization;
 - (c) Description of the fee received in lieu of settling the case or dispute;
 - (d) Description of renewal of organization;
 - (e) Description of the mediators registered with her/his organization.
- (3) If, upon an examination of the application received pursuant to Sub-rule (1), it seems justified to extend the duration of working on mediation, the Council may charge a fee of five hundred rupees and extend the duration for three years.
- (4) If an organization involved in mediation work is desirous of extending the duration again, such an organization may fulfill the process laid down in this regulation and take initiative for extending the duration every three years.
- (5) Notwithstanding anything contained elsewhere in this Regulation, if an organization involved in mediation work has not been able to renew itself pursuant to a prevailing law, such an organization shall not be entitled to carry out mediation-related work.
- 50. Cancellation of approval:** (1) The Council may cancel the approval granted to an organization involved in mediation work pursuant to Rule 48 in the circumstances shown below:
- (a) If it is found not to be abiding by the procedures or the regulations approved by the Council;

- (b) If the duration is not extended within the period pursuant to Rule 49;
 - (c) If it does not abide by the instructions issued by the Council or Mediation Monitoring Committee;
 - (d) If it has not submitted the report to be submitted pursuant to Rule 58 for three consecutive years;
 - (e) If it works beyond the jurisdiction assigned to it;
 - (f) If it is dissolved in accordance with a prevailing law;
 - (g) If it is involved in any other work in contravention of the Act or regulation.
- (2) Before cancelling the approval granted to the organization involved in mediation work, the Council shall provide it with an opportunity to clarify by giving a time limit of twenty-one days.
- (3) The Council shall publish the notice of cancelling the approval granted to the organization involved in mediation work in a national-level daily newspaper.

Chapter 8 Miscellaneous

51. Mediation Monitoring Committee: (1) There shall be formed a monitoring committee as shown below in every district to monitor the task and functions related to mediation at local level:

(a) District Judge	Convener
(b) President of District Development Committee or, in her/his absence, Local Development Officer	Member
(c) Representative of the adjudicating body in the district designated by District Judge	Member
(d) Secretary, District Bar Unit	Member
(e) Two persons nominated by the Mediation Monitoring Committee, including a woman, representing the organization involved in mediation work in the district concerned and the enlisted mediators	Member
(f) Registrar, District Court	Member Secretary

(2) The tenure of the nominated members pursuant to Sub-rule (1) shall be two years.

(3) Notwithstanding anything contained in Sub-rule (2), if a nominated member does not discharge her/his official duties honestly or if her/his work performance is found unsatisfactory, the Monitoring Committee may relieve her/him of her/his duties any time.

However, before relieving her/him thus, she/he shall be offered to clarify herself/himself.

(4) The procedure of the Mediation Monitoring Committee, including that for meetings, shall be as determined by the said committee itself.

52. Functions, duties and rights of Mediation Monitoring Committee: The functions, duties and rights of the Mediation Monitoring Committee shall be as shown below:

- (a) To monitor, or cause to monitor, from time to time the process adopted by a mediator or an organization in relation to the settlement of disputes through mediation in the district;
- (b) If, in the course of monitoring, or causing the carrying out of monitoring, pursuant to paragraph (a), an instruction has to be issued to a person, agency or institution involved in monitoring, to issue necessary instructions;

(c) To submit a report of the monitoring carried by herself/himself to the Council every year.

53. Remuneration of mediator: (1) Mediators shall be entitled to receive remuneration pursuant to Schedule 16 in lieu of working on mediation-related work.

(2) Both parties shall bear the remuneration pursuant to Sub-rule (1) equally.

54. Abiding by the code of conduct: Mediators shall abide by the code of conduct framed by the Council pursuant to Section 47 of the Act.

55. Case may be referred to a local body for mediation: (1) While referring a case that is *sub judice* to the local body for mediation pursuant to the proviso of Section 46 of the Act, the court or quasi-judicial body shall stipulate a period not exceeding three months.

(2) While referring a case to the local body pursuant to Sub-rule (1), summons shall be served also on the parties.

(3) If a local body receives a case for mediation pursuant to Sub-rule (1), it shall entrust the parties to appoint a mediator from among those on the mediators' roster available at its office and order commencement of the process of mediation.

(4) If the parties consent to settle their dispute through the mediator within the period pursuant to Sub-rule (1), the local body shall refer the parties, along with the mediation paper, to the Court or quasi-judicial body by stipulating a date and, if mediation cannot take place between the parties, the local body shall refer the parties, along with the report pursuant to Schedule 10, disclosing the reasons for mediation not taking place, to the court or quasi-judicial body.

(5) If it has not been possible to settle the case through the local body within the period pursuant to Sub-rule (1), or if no report is received within that period, the Court or quasi-judicial body shall commence action and settlement of the case pursuant to a prevailing law after fifteen days of the end of such period.

56. Local body may extend necessary assistance: The local body may extend necessary assistance to the community and the organization involved in mediation work in the tasks of settling disputes through mediation pursuant to the Act and this regulation.

57. Maintaining documentation and data: (1) The adjudicating body shall maintain documentation of the case referred to it for mediation in the format shown in Schedule 17.

(2) The adjudicating body shall maintain the data of the cases settled through the process of mediation on a monthly and annual basis.

58. Submission of report: The adjudicating body, the organization involved in mediation work, local body or community shall present the report on the work and actions taken by it in relation to mediation during the year to the Council within thirty days of the end of the fiscal year.

- 59. Delegation of authority:** The adjudicating body may delegate part of the power vested in it pursuant to this regulation to any authorities or body, as required.
- 60. To be carried out upon commencement of the mediation process:** In the case of those cases in which the process of mediation was initiated pursuant to a prevailing law before commencement of the Regulations and that have not been settled, nothing contained in this regulation shall be deemed to impede settlement of the remaining action as per such law.
- 61. Alteration or addition or deletion may be done in Schedule:** The Ministry of Law, Justice, Constituent Assembly and Parliamentary Affairs, in consultation with the Supreme Court, may introduce necessary alterations or additions or deletions in the Schedules of the Regulation.

SCHEDULE

SCHEDULE: 1

(Related to Sub-rule 2 of Rule 3)

Notice Format for soliciting application for enlisting as mediators

.....**Court/Office/Organization**

Notice

Subject: On enlisting as mediator

This notice is published for those interested individuals who have taken mediation training and who wants to enlist their name in this court/office/organization as a mediator or for those mediation council approved organizations working on mediation to submit application within 30 days of the date of this notice publication.

The application form can be received by contacting this court/office/organization.

From

Court/Office/Organization
Seal

Court/Office/Organization

Signature:

Name:

Designation:

Date:

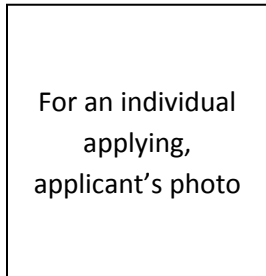
SCHEDULE: 2

(Related to Sub-rule 1 of Rule 4 and Rule 5)

Application format for getting enlisted as mediator

To,

.....



Subject: Request to be enlisted as mediator

I/This organization would like to submit this application in order to get enlisted in the court/office/organization as a mediator.

1. For an individual,
 - a) Name:
 - b) Address:
 - c) Date of birth:
 - d) Occupation:
 - e) Area of expertise:
 - f) Language:

Language	Speaking	Reading	Understanding	Listening

- g) Academic qualification:

S.N.	Qualification	Division	Institution	Year

h) Trainings related to mediation

S.N.	Training Details	Training Duration	Training		Name of training organization
			From	Till	

i) Experience

S.N.	Experience Details	Name of the office	Duration		Remarks
			From	Till	

j) Area of expertise

- i) Family Law
- ii) Business Commercial Law
- iii) Contract Law
- iv) Criminal Law
- v) Other

k) Available Time

- i) Appropriate time for mediation work:
- ii) Inappropriate time for mediation work:

2. For organization working in mediation

- a) Organization's Name:
- b) Address:
- c) Date of approval for conducting mediation related activities:
- d) Validity of organization:
- e) Working area of the organization:
- f) Details of the organization executives

S.N.	Name	Designation	Address

g) Number of enlisted mediators in the organization:

h) Details of the enlisted mediators in the organization:

S. N.	Name	Address	Contact Number	Occupation	Area of Expertise	Training	Language Skills	Experience	Academic Qualification

i) Experience on mediation:

3. For other information, please explain:

4. Above information is correct and true. If it is held to be false then as per law I am prepared to bear any consequences.

Applicant

Stamp seal of the
organization working in
mediation

Signature:

Name:

If organization, name of the organization:

Date:

Documents enclosed:

1. Copy of Mediator's Certificate
2. Copy of Nepali citizenship card
3. Copy of Academic Qualification Certificate
4. Copy of Mediation training Certificate
5. In case of organization working in mediation,
Copy of mediation council approval for doing activities on mediation
6. In case of organization, Copy of the organization registration and renewal certificate
7. If individual, passport size photo of mediator

SCHEDULE: 3

(Related to Sub rule 2 of Rule 6)

Format of Mediators' Roster

a. For individual,

S.N.	Name of Mediator	Address	Area of Expertise	Language	Experience	Education	Photo	Remarks

b. For organization working in mediation

S.N.	Name of the organization	Address	Official's Name	Working areas	Date of Approval	Number of enlisted mediators in the organization	Enlisted Mediators'		
							Name, Address	Area of expertise, Language Skills, experience, Education	Photo

SCHEDULE: 4

(Related to Rule 8)

Format of Oath

I in the name of lord/ truthfully faithfully, I take the oath that during the mediation process I will not discriminate, maintain confidentiality and impartiality, and will work with the respect and devotion to the law and the justice process. I will honestly accomplish the given responsibility by completely following Mediation Act 2011, Mediation Regulation 2014 and the code of conduct that mediators should follow.

Oath taken by

Signature:

Name:

Date:

Seal:

Oath given by

Signature:

Name:

Designation:

Office:

Date:

SCHEDULE: 5

(Related to Sub rule 1 of Rule 12)

Format of Application for resolving a dispute

To,

.....

.....

Subject: Request for resolving dispute by mediation

I would like to inform thatdispute/case having as the first party/applicant and as the second party/ defendant is proceeding at Since I/we want to resolve the case through mediation process, I/we would like to request for the necessary arrangement for the case to be resolved through mediation process.

The information disclosed here in the application is correct and true. If it is found incorrect and false, I will bear legal consequences.

Applicant's

Signature:

Name:

Date:

SCHEDULE: 6

(Related to Sub rule 3 of Rule 12 and Rule 13)

Format for Order given for resolving dispute/case through mediation

Order from,

.....

.....

Order

Year..... Case no.

.....Applicant

First /Second party/Defendant/Appellant

Against

..... First/Second party/ Defendant/Appellant

Case

.....dispute/case having as the first party/defendant/applicant and as the second party/ defendant is in pending at and since party has requested to resolve the case through mediation process/ it was felt that it is appropriate to send the case for mediation and both the parties of the case have agreed to go in mediation process, this case is referred for the mediation process. Remaining under Mediation Act 2011 and Mediation Regulation 2014, the mediation process should end within days from the date of mediator's appointment.

Signature:

Year Month Day.....

SCHEDULE: 7

(Related to Rule 20)

Format of Mediators' Appointment

To,

.....

.....

Subject: Appointment Letter of Mediator

In order to resolve thecase with
as the first party/applicant and as the second party/ defendant which has
been registered in court/ office, and since I/we/the party have not appointed any
mediator, this court/ office appoints you as a mediator for the case.

Appointing party/official

Signature:

Name:

(If court/office, mention designation and name
of the office)

Date:

SCHEDULE: 8

(Related to Sub rule 3 of Rule 20)

Format for the documentation of the appointment of mediator

S.N.	Disputing Parties Name	Case/Dispute	Date of the order for the case referral for mediation	Name of mediator appointed by the body looking at the case	Signature of the disputing parties

(For the official appointing the mediator)

Signature:

Name:

Date:

SCHEDULE: 9

(Related to Sub rule1 of Rule25 and Sub rule 1 of Rule 32)

Format of Settlement Document

- a) Name of the Mediator:
 - i.
 - ii.
 - iii.
- b) Name of the disputing party and Address:
 - i.
 - ii.
 - iii.
- c) Case/Dispute number:
- d) Case/Dispute Name:
- e) Witnesses:
 - i.
 - ii.
 - iii.
- f) Short description of the case/dispute:

- g) Terms and conditions of the settlement of case/dispute:

Signature of the first party:

Signature of the second party:

Name:

Name:

This is to certify that the case/ dispute have been resolved as per the Mediation Act 2011 and Mediation Regulation 2014 with the above mentioned agreement conditions.

.....

.....

.....

Signature

Signature

Signature

Mediator

Mediator

Mediator

SCHEDULE: 10

(Related to Sub rule 1 of Rule 27, Rule 33 and Sub rule 4 of Rule 55)

Format of Report submitted by mediator

Submitted to

Report

I/we have been appointed in/...../..... as a mediator for mediating case/ dispute with as the first party/ applicant and as the second party/ defendant and through the discussion with the parties the mediation was done/ forreason the mediation process could not go further, thus on this behalf I/we would like to submit this report.

Parties:

1. Signature:

Name:

2. Signature:

Name:

Mediator's:

1. Signature:

Name:

2. Signature:

Name:

3. Signature:

Name:

Enclosed documents:

- 1.
- 2.
- 3.

Date:Year.....Month.....Day

SCHEDULE: 11

(Related to Sub rule 1 of Rule 29 and Sub rule 1 of Rule 38)

Format of the Application submitted by Organization working on mediation, local body or community for resolving dispute

To,

.....
.....

Subject: Request for resolving dispute by mediation

This is to inform that I/we are interested to resolve dispute as specified by organization/body/office, thus I/we would like to submit this application requesting to resolve dispute through mediation.

1. Disputing parties:

a) Name:

Address: District:..... VDC/Municipality:..... Ward no.....

Village/Tole:..... Contact no.:

Email: Fax:

b) Name:

Address: District:..... VDC/Municipality:..... Ward no.....

Village/Tole:..... Contact no.:

Email: Fax:

2. Short description of dispute/case:

.....
.....
.....
.....

3. Witnesses:

i.

ii.

4. Enclosed documents

i.

ii.

Applicant's:

a. Signature:

Name:

b. Signature:

Name:

SCHEDULE: 12

(Related with Sub rule 1 of Rule 43)

Format of the Application for Mediator's Certificate

To,
The Mediation Council
Kathmandu

Subject: Application for The Mediator's Certificate

This is to inform that I want to work as a mediator, hence I would like to request for the Mediator's Certificate and provide you the following information.

1. Name:
2. Address:

Permanent

District: VDC/Municipality: Ward No.:
Village/ Tole: Phone No.: Fax No.:
E-Mail:

Temporary

District: VDC/Municipality: Ward No.:
Village/ Tole: Phone No.: Fax No.:
E-Mail:

3. Date Of Birth:
4. Education:

S.N.	Academic Qualification	Division	Academic Institution	Year

5. Mediation Training:

S.N.	Description of Training	Organization	Duration	Remarks

6. Experience:

S.N.	Working Organization	Designation	Duration	Remarks

7. Area of Expertise:

- i. Civil:
- ii. Business & Commerce:
- iii. Criminal:
- iv. Family:
- v. Others:

8. Language:

S.N.	Speaking	Reading	Understanding	Writing

All the above information is true, and if found false, I will bear legal consequences.

Enclosed Documents:

1. Photocopy of Nepalese Citizenship Certificate,
2. Photocopy of Academic Certificate disclosing age,
3. Photocopy of Mediation Training Certificate.

.....

Signature of
Applicant

SCHEDULE: 13

(Related to sub-rule 2 of rule 43)

Format of Mediation Certificate

To,

.....

.....

Address: Permanent:

Temporary :

Mediator's Certificate

According to the Mediation Act, 2011 and Mediation Regulation, 2014, you are provided with this certificate to work as a mediator as per the decision made by Mediation Council, dated.....



Handing over the mediation certificate

Official:

Signature:

Name:

Post:

Office's stamp:

Date:

Details for renewal (last page)

S.N.	Date of renewal	Validity of the certificate	Fee for renewal	Renewal Official	Organization's stamp

SCHEDULE: 14

(Related to rule 47)

Format of Application for seeking approval to conduct mediation

To,

The Mediation Council,
Kathmandu

Subject: Seeking approval to conduct mediation

This organization has interest to work in the field of mediation, thus has presented this application for receiving an approval with all of the detailed descriptions.

1. Organization's Name
2. Organization's registration number and date:
3. Address of the organization:
4. Validity of the organization's renewal:
5. Details of the organization's executive:

S.N.	Name	Designation	Address

6. Main objectives of the organization:
7. Place for conducting mediation by the organization:

I certify the descriptions, if found guilty will bear consequences.

Stamp/Seal
of the organization

Application from the organization's side

Signature:

Name:

Designation:

Date:

Enclosed documents:

1. Copy of the organization's registration certificate,
2. Copy of the organization's constitution,
3. Copy of the organization's regulation/curriculum that has been developed to resolve the disputes

SCHEDULE: 15

(Related to sub-rule 1 of rule 48)

Format of Approval to conduct mediation

To,

.....

.....

Approval to conduct mediation

According to the Mediation Act, 2011 and Mediation Regulation, 2014, your organization is provided with the approval to work on mediation as per the decision made by Mediation Council, dated.....

The place for such mediation work will be



Handing over the mediation certificate

Official:

Signature:

Name:

Post:

Organization's stamp:

Date:

Details for renewal (last page)

S.N.	Date of renewal	Validity of the organization	Fee for renewal	Renewal Officer	Office's stamp

SCHEDULE: 16

(Related to Sub-rule 1 of Rule 53)

Remuneration for mediators

1. Mediator may receive remuneration as per the following if both of the parties agree:
 - a) NRs. 500 (maximum) if the dispute is resolved via community mediation mechanism
 - b) NRs. 10,000 (maximum) if the dispute is resolved by other mechanisms except community mediation
2. If more than one mediator is hired, all of the mediators will receive remuneration mentioned in sub-section (a) proportionately.

SCHEDULE: 17

(Related to Sub-rule1 of Rule 57)

Case documentation format for mediation

S.N.	Case No.	Name of the first party	Name of the second party	Case	Date provided for mediation	Name of the mediator	Duration provided	Date when discussion ended	Output of the mediation agreement	Main points agreed	Date of agreement	Remarks

As permitted by,

Bhesh Raj Sharma

Secretary, the Government of Nepal

“सामुदायिक मेलमिलाप सेवा, समुदायलाई दिन्छ टेवा ”



Community Mediators' Society Nepal (CMS-N)

Arun Thapa Chowk, Jhamsikhel, Lalitpur, Nepal

Contact no.: 977 01 55 29 115

Email: cmsnep@gmail.com

Website: <http://cms-nepal.org/>