

BILL

A BILL ENTITLED

Short title THE MEDIATION ACT, 2023

Being an Act to provide and facilitate the settlement of civil and commercial disputes through mediation, to establish

Mediation Centers throughout Sierra Leone; and to regulate the conduct of mediation proceedings.

Date of commencement. []

ENACTED by the President and Members of Parliament in this present Parliament assembled;

PART 1: - PRELIMINARY

Commencement. 1. This Act shall come into operation on such dates as the Minister may fix by order in a Statutory Instrument.

Scope and application. 2. (1) This Act shall not apply to –

- (a) an arbitration within the meaning of the Arbitration Act, 2022.
- (b) an employment-related dispute that falls under the remit of the Industrial court; and
- (c) any dispute relating to the payment of tax, customs and excise duties;

(2) Nothing in this Act shall be construed as replacing any mediation, arbitration or other dispute-resolution process which is provided for in any enactment

(3) Nothing in this Act shall be construed as permitting a mediation or arbitration process to negate any rights or avoid any obligations of the parties in respect of which the parties themselves are not free to decide under any enactment.

Interpretation

3. Unless the context otherwise requires –

“Board” means the governing board of the Center referred to in **section 7**;

“Center” means the Mediation Center established in **section 4**.;

“court” means the High Court or a magistrates’ court;

“dispute” means, subject to section 2, any civil or commercial dispute that could give rise or has given rise to civil proceedings;

“Fund” means the Mediation Fund established under **section 16**;

“institution” means a body or organization that is accredited by the Center to provide mediation services;

“mediation” means a voluntary process in which a mediator facilitates communication and negotiations between parties to assist the parties to reach a mutually acceptable agreement to resolve their dispute;

“mediator” means a neutral, qualified and impartial person accredited to conduct mediation and whose name is on the register of mediators maintained by the Center;

“Minister” means the Attorney-General and Minister of Justice;

**Independence
of the Center.**

5. Subject to the Constitution and unless otherwise provided in this Act and any other enactment, the Center shall not in the performance of its functions, be subjected to the direction or control of any person or authority.

**Objects and
functions of
the Center**

6. (1) The objects of the Center shall be to promote and facilitate the use and practice of mediation to settle disputes.

(2) For the attainment of its objects, the Center shall-

- (a) provide facilities for the settlement of disputes through mediation;
- (b) exercise any power for alternative dispute resolution conferred on it by parties to a dispute but shall not be involved in actual resolution of the dispute;
- (c) provide administrative and technical services in aid of mediation;
- (d) accredit mediators;
- (e) establish and enforce codes of ethics for mediators;
- (f) maintain a register of mediators;
- (g) accredit mediation training programs;

- (h) formulate standards for accreditation of mediation training programs;
- (i) provide for the initial training of mediators to ensure that mediation is conducted in an effective, impartial and competent manner;
- (j) encourage the Council of Paramount Chiefs to maintain a register of persons who wish to serve as mediators;
- (k) provide a list of mediators to persons who request for the services of such persons;
- (l) provide guidelines on mediation fees and expenses;
- (m) arrange for the provision of assistance to persons as it considers necessary;
- (n) investigate complaints against mediators and enforce disciplinary measures in accordance with prescribed Disciplinary Rules.
- (o) facilitate, promote and conduct research and training in, and issue publications on, all forms of alternative dispute resolution processes;

(p) set up such provincial, district, chiefdom and ward centers as it considers appropriate;

(q) do all such other things as may be necessary in furtherance of its objects.

**Governing
Body of the
Center.**

7. (1)The governing body of the Center shall be a Board.

(2) The Board shall be responsible for the formulation and implementation of policy for the Center.

(3) The Board shall comprise-

(a) a Chairman who is a Legal Practitioner of not less than fifteen years' standing;

(b) a representative of the Labour Congress;

(c) a representative of the Sierra Leone Chamber of Commerce;

(d) a representative of the Employers' Federation; and

(e) a representative of the Council of Paramount Chiefs.

**Term of
office of
members of
Board.**

8. (1)The Chairman and members of the Board shall be appointed by the President for a term of three years each, and after that shall be eligible for re-appointment but shall not hold office for more than two terms.

(2) A member of the Board may, by writing addressed to the President through the Minister, resign his office or a Board member may, for good cause, be removed from office.

(3) A member of the Board who is absent for three consecutive meetings of the Board without reasonable excuse shall cease to be a member of the Board.

(4) Where a person is appointed as Chairman or member to fill a vacancy in the Board, he shall hold office for the remainder of the term of the previous chairman or member, as the case may be, and shall subject to this Act, be eligible for re-appointment.

(5) The Chairman and members of the Board shall be paid such allowances as may be specified in their letters of appointment.

**Meetings of
the Board.**

9. (1) The Board shall meet at least once every three months for the dispatch of business at such time and place as the Chairman may determine.

(2) The quorum for a meeting of the Board shall be three.

(3) The Chairman shall preside at meetings of the Board and in the absence of the chairman, a member of the Board elected by the members present from among their number, shall preside.

(4) The Board may co-opt a person to advise it on any matter before the Board but such co-opted person shall not vote on any matter for decision by the Board.

(5) Subject to this Act, the Board shall regulate the procedure at its meetings.

**Committees
of the
Board.**

10. The Board may for the effective discharge of its functions establish committees consisting of members of the Board or non-members or both.

**Disclosure
of interest.**

11. (1) A member of the Board or of a Committee of the Board who has an interest in any matter under consideration by the Board shall disclose to the Board or Committee in writing the nature of that interest and shall not participate in the deliberations of the Board or the Committee or vote in respect of that matter.

(2) A person who fails to comply with subsection (1) shall cease to be a member of the Board or committee.

Secretariat.

12. (1) The Center shall be serviced by a Secretariat comprising an Executive Director and other staff, all of whom shall be appointed by the Board on such terms and conditions as the Board may determine.

(2) The Secretariat shall comprise such departments or divisions as the Board may establish for the effective performance of its functions.

**Executive
Director.**

13. (1) The Executive Director shall be a holder of at least a first degree from an internationally recognized institution with proven managerial and administrative experience.

(2) The Executive Director shall be the chief executive of the secretariat and the vote controller of the Center.

(3) Subject to the general control of the Board, the Executive Director shall be responsible for-

(a) the day-to-day administration and management of the affairs of the Center;

(b) supervising the work of other staff of the secretariat;

(c) The Executive Director shall be the Secretary to the Board;

(d) recording and keeping the minutes of meetings of the Board; and

(e) such other duties as the Board may direct.

Other staff of Secretariat

14. The other staff of the Secretariat shall comprise such professional, technical, administrative officers and support staff as may be appointed by the Board for the effective discharge of the functions of the Center.

Use of independent professionals and Experts.

15. The Board may hire, engage or retain the services of such professionals, experts and consultants as may be necessary for the effective performance of its functions.

PART III - FINANCIAL PROVISIONS

Funds of Center.

16.(1) There is hereby established a Mediation Fund for the Center.

(2) The funds of the Center shall consist of -

(a) monies appropriated by Parliament for purposes of the Center;

(b) grants, gifts, donations or bequests from sources within and outside Sierra Leone made to and accepted by the Center; and

(c) administrative fees generated by the Center in the performance of its functions.

(3) The funds of the Center shall be applied for-

- (a) payment of salaries of staff employed by the Center and the running cost of the Centre;
- (b) education of the general public on alternative dispute resolution;
- (c) research and studies relating to the functions of the Center;
- (d) human resource development for alternative dispute resolution, and
- (e) such other purposes as the Board in consultation with the Minister, may determine.

Accounts and Audit.

17. (1) The Secretariat shall keep proper books of account and records in relation to the funds of the Center in such form as the Auditor-General shall approve.

(2) The books of accounts of the Center shall be audited by the Auditor-General or by an auditor appointed by him, within three months after the end of each financial year.

(3) The financial year of the Center shall be the same as the financial year of the Government.

Annual Reports.

18. (1) The Executive Director of the Center shall within three months after the end of each financial year, submit for the approval of the Board, an annual report of the activities and the operations of the Center for that year.

(2) The Annual Report shall include-

- (a) statistical data on mediation, provided that the information shall not reveal the identity or parties or enable the particular circumstances of the dispute to be identified; and
- (b) a copy of the report of the Auditor-General on the audit.

(3) The Board shall submit the approved Annual Report to the Minister, not later than six months after the end of the year to which it relates.

(4) The Minister shall, within one month after receipt of the annual report, submit the report to Parliament with a statement that he considers necessary.

(5) The Board shall submit to the Minister any other reports which the Minister may require.

PART IV - MEDIATION OF DISPUTES

Submission to mediation.

19. (1) A party to a dispute may, with the consent of the other party, submit the dispute to mediation by a mediator agreed by the parties.

(2) A submission to mediation may be made in writing, telephone, or other form of verbal communication, fax, telex, e-mail or any other electronic mode of communication and shall briefly state the nature of the dispute.

(4) A submission to mediation through telephone, or any other verbal mode of communication shall, unless the parties agree otherwise, be confirmed in writing

and shall state the names, addresses including e-mail addresses, if any, and telephone numbers of the parties and in brief, the nature of the dispute.

**Commencement
of mediation.**

20. (1) A mediation proceeding shall commence when the other party accepts the invitation for mediation.

(2) An acceptance of an invitation for mediation may be in writing, telephone, or other form of verbal communication, fax, telex, e-mail or other mode of electronic communication.

(3) An acceptance by telephone or any other verbal means, shall be confirmed in writing but a failure to confirm an acceptance in writing shall not invalidate mediation proceedings.

(5) Failure by the other party to accept the invitation to mediation within fourteen days after receipt of the invitation or within the period of time specified in the invitation shall be considered to be a rejection of the invitation to mediation.

**Number of
mediators.**

21. (1) Unless the parties agree otherwise, there shall be one mediator.

(2) where there is more than one mediator, the mediators shall act jointly.

**Appointment
of mediator.**

22. (1) The parties shall appoint a mediator to assist them in the mediation.

(2) Parties may request the assistance of a suitable institution or person in the appointment of a mediator.

(3) In recommending a mediator, the institution or person shall have regard to the neutrality, independence and

impartiality of the proposed mediator, and take into consideration the background of the parties.

**Disclosure
by
mediator.**

23. (1) A person appointed mediator shall before accepting the appointment, disclose any circumstance relating to that person that may affect his impartiality as mediator, including a financial or personal interest in the outcome of the mediation.

(2) A mediator shall promptly disclose to the parties any circumstance that arises during the mediation which is likely to affect his impartiality as mediator including a financial or personal interest in the outcome of the mediation.

(3) Parties to a mediation may replace a mediator who makes a disclosure under subsections (1) or (2).

**Role of
mediator.**

24. (1) A mediator shall in a neutral, independent and impartial manner, facilitate and encourage communication and negotiation between the parties and, assist and advise the parties to arrive at a neutral acceptable settlement of the dispute.

(2) A mediator shall be guided by principles of objectivity, fairness and justice, giving consideration to, *inter alia*, the rights and obligations of the parties, the usages of trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.

(3) A mediator shall inform the parties that-

(a) their continued participation in mediation is voluntary;

(b) they may withdraw from the process at any time with or without explanation;

(c) it is for the parties to determine the outcome of the mediation proceedings;

(d) they may be accompanied during the mediation proceedings by any person as they deem appropriate;

(e) mediation expenses shall not be contingent on the outcome of the proceedings;

(f) advise any party not having a legal representative or other professional adviser to consider seeking independent advice, whether legal or otherwise, prior to signing a settlement agreement; and

(g) ensure that parties are aware of their rights to seek and obtain independent legal advice, prior to signing any settlement agreement.

(4) The mediator may at any stage of the mediation proceedings make proposals for settlement of the dispute.

(5) Proposals made under subsection (4) need not be in writing and need not be accompanied by a statement of the reasons for them.

**Cooperation
of parties
with
mediation.**

25. The parties shall in good faith cooperate with the mediator and in particular, shall endeavour to comply with requests

by the mediator to submit written materials, provide evidence and attend meetings among other things.

Conduct of mediation.

26. (1) The parties and the mediator shall, having regard to the nature of the dispute, seek to complete mediation proceedings as quickly as possible.

(2) The mediator may conduct the mediation proceedings in such manner as he considers appropriate, taking into account the circumstances of the case, the wishes the parties may express, including a request by a party that the mediator hear oral statements and the need for a speedy settlement of the dispute.

(3) The mediator may request each party to submit to him a further written statement of his position and the facts and grounds in support of it, supplemented by any documents and other evidence that the party thinks appropriate.

(4) Each party shall send to the other party, copies of statements and other documents submitted to the mediator under this section.

(5) As soon as practicable following appointment, the mediator shall, in consultation with the parties, establish a timetable for the submission by each party, to the mediator, and to the other party, of-

(a) a statement summarizing the background of the dispute;

(b) the parties interests and contentions, in relation to the dispute;

(c) the present status of the dispute;
and

(d) such other information as the party considers necessary for the purposes of the mediation, and in particular, to enable the issues in dispute to be identified.

(6) At any stage of the mediation proceedings, the mediator may request a party to provide such additional information as the mediator considers useful.

(7) A party may at any time submit to the mediator for consideration by the mediator only, written information which he considers to be confidential, and the mediator shall not, without the written authorization of that party, disclose the information to the other party.

(8) A mediator may, where necessary and if the parties agree to pay the expenses, obtain expert advice on a technical aspect of the dispute.

(9) A request for the services of an expert may be made by the mediator or by one party with the consent of the other party.

(10) A mediator may end the mediation whenever the mediator is of the opinion that further mediation between the parties will not help to resolve the dispute between the parties.

(11) A mediator may withdraw from mediation proceedings but shall give the parties reasons for withdrawal.

Representation or assistance in mediation.

27. (1) A party to a mediation may be assisted by a legal practitioner, an expert or any other person chosen by the party in the mediation proceedings.

(2) A party shall communicate in writing to the mediator and the other party, the name, address and extent of the authority of any representative or assistant, that the party chooses, prior to the assistant's attendance at the mediation proceedings.

Termination of appointment of mediator,

28. (1) The appointment of a mediator may be terminated by either party if –

(a) circumstances exist that give rise to justifiable doubts as to the mediator's impartiality or independence;

(b) the mediator is found to have a financial or personal interest in the dispute;

(c) the mediator is found to have obtained his appointment fraudulently;

(d) the mediator is unable to perform the functions of a mediator;

(e) the mediator, without reasonable excuse fails to commence work in the mediation proceedings within the period agreed with the parties; or

(f) the mediator without reasonable excuse, fails to operate within the ground rules of the mediation proceedings.

(2) In the event of the death or resignation of a mediator or termination of a mediator's appointment pursuant to subsection (1),

another mediator shall be appointed in accordance with this Act.

- Administrative assistance** **29.** In order to facilitate the conduct of mediation proceedings, the parties or the mediator, with the consent of the parties, may arrange for administrative assistance by a suitable institution or individual.
- Communication between mediator and parties.** **30.** The mediator may invite the parties to meet with the mediator and may communicate with them orally or in writing and may meet or communicate with the parties together or with each of them separately.
- Attendance at mediation.** **31.** Subject to this Act and the consent of the parties, a person who is not a party to the mediation shall not attend mediation proceedings.
- Disclosure of information** **32.** Except where a party gives information to the mediator subject to a condition of confidentiality, when the mediator receives factual information concerning the dispute from a party the mediator may disclose the substance of that information to the other party in order that the other party may have the opportunity to present any explanation which that other party considers appropriate.
- Confidentiality of mediation.** **33.** (1) Subject to this section, all information, including the settlement agreement relating to mediation proceedings shall be confidential and shall not be admissible as evidence in any court or other proceedings except confidentiality is expressly waived by the parties.
- (2) Notwithstanding subsection (1), confidentiality shall not apply-

- (a) where disclosure is necessary to implement or enforce a settlement agreement;
- (b) where disclosure is required by law;
- (c) where information is sought or offered in any proceedings relating to alleged negligence or misconduct of a mediator, legal practitioner or expert occurring during mediation proceedings, or on a complaint to a professional body concerning negligence or misconduct in mediation proceedings.

(3) Unless otherwise agreed by the parties, each person involved in the mediation shall on termination of the mediation, return to the other party who provided it, any statement, document or other material supplied by a party without retaining a copy.

Reference to mediation by Court.

34. (1) A Court before which an action is pending may, at any stage in the proceedings, if it is of the view that mediation will facilitate the resolution of the dispute or a part of the dispute, direct the parties to consider mediation of the dispute or that part of the dispute.

(2) Where the parties agree to submit the dispute or part of the dispute to mediation, the parties shall inform the court and the court shall refer the dispute to mediation accordingly.

(3) Where the parties fail to agree to submit the dispute or part of the dispute to

mediation, the parties shall inform the court and the court shall continue with the proceedings in the action.

(4) A party to an action before a court may, with the consent of the other party and at any time before final judgment is given, apply to the court on notice, to have the whole action or part of the action referred to mediation.

(5) A reference under subsections (2) or (4) shall state -

(a) the nature of the dispute;

(b) the monetary value of the claim, if any;

(c) the reasons for the reference; and

(d) the remedy sought, and shall have attached, copies of the pleadings and any other documents the court considers relevant.

(6) A reference under this section shall serve as a stay of proceedings of the court action.

(7) A reference by a court shall be addressed to the mediator appointed by the parties and shall specify the time within which a report on the reference shall be submitted to the court.

(8) Where a reference leads to settlement of the dispute or part of the dispute, the settlement agreement shall be recorded by the court and enforced as its judgment.

End of mediation.

35. (1) A mediation ends when –

- (a) the parties execute a settlement agreement;
- (b) the mediator terminates the mediation proceedings for non-payment of a deposit under **section 43**;
- (c) the mediator after consultation with the parties makes a declaration to the effect that the parties cannot resolve their dispute;
- (d) the parties jointly address a declaration to the mediator to the effect that the mediation is terminated;
- (e) a party makes a declaration to the mediator and the other party, at any time before executing a settlement agreement, to the effect that the mediation is terminated;
- (f) a party elects not to continue with the mediation; or
- (g) a party dies or becomes incapable of continuing with the mediation.

(2) A declaration under subsection (1) may be oral or in writing but where a declaration is not in writing, the mediator shall record the declaration.

(3) On termination of the mediation, the mediator shall-

- (a) promptly send to the Center and to the Court, if there was a reference under **section 34**, a notice in writing that the mediation is terminated and shall indicate the date of termination, whether or not the mediation resulted in a settlement of the dispute and if so,

whether the settlement was full or partial;

(b) send to the parties, a copy of the notice sent to the Center.

(4) The Center shall keep the notice of the termination of the mediation confidential and shall not, without the written authorization of the parties, disclose the existence or the result of the mediation, to any person.

Settlement agreement

36. (1) If the parties reach an agreement on settlement of the dispute, they may draw up and sign a written settlement agreement and if requested by the parties, the mediator may draw up or assist the parties in drawing up the settlement agreement.

(2) Upon signing the settlement agreement, the agreement shall be binding on the parties and persons claiming under or through them, respectively.

(3) The mediator shall authenticate the settlement agreement and furnish a copy of the settlement agreement to each of the parties, the Center, and the Court, as the case may be.

Effect of settlement agreement.

37. (1) Where a settlement agreement is reached following a party initiated mediation, either party may apply to a court of competent jurisdiction to enforce the settlement agreement.

(2) Where a submission to mediation pursuant to **section 19** leads to a settlement agreement, the agreement has the same effect as an arbitral award.

(3) Where a reference to mediation pursuant to **section 34** leads to settlement of the dispute, the settlement agreement shall be recorded by the court and enforced as its judgment.

(4) Where a reference to mediation pursuant to **section 34** leads to partial settlement of the dispute, the settlement agreement shall be filed in the court and the court shall continue with the proceedings from the point where the reference was made.

(6) Where the reference does not lead to a settlement, the court shall continue with the proceedings from the point where the reference was made.

Role of a mediator in other proceedings.

38. Unless required by a court of law or authorized in writing by the parties, the mediator shall not act in any capacity whatsoever, otherwise than a mediator in any pending or future proceedings, whether judicial, arbitral or otherwise, relating to the subject matter of the dispute.

Resort to other proceedings.

39. The parties shall not initiate during the mediation proceedings, any arbitral, judicial or other proceedings in respect of a dispute that is the subject matter of mediation proceedings.

Admissibility of evidence in other proceedings.

40. The parties shall not rely on or introduce as evidence in arbitral, judicial or other proceedings, whether or not the proceedings relate to the dispute that is the subject of the mediation proceedings –

(a) views expressed or suggestions made by the other party in the mediation in respect of a possible settlement of the dispute;

(b) admissions made by the other party in the course of the mediation proceedings; or

(c) the fact that the other party had indicated that party's willingness to accept a proposal for settlement.

Exclusion of liability

41. A mediator shall not be liable for any act or omission in the discharge of the functions of a mediator unless the mediator is proved to have acted in bad faith.

Mediation expenses

42. (1) Unless the parties agree otherwise, the expenses of the mediation including the fees and expenses of –

(a) the mediator;

(b) any administrative assistance received;

(c) advisors and experts called; and

(d) any expenses incurred in connection with the mediation proceedings and settlement agreement, shall be borne equally by the parties.

(2) All expenses incurred by a party in connection with the mediation proceedings shall be borne by that party.

(3) The expenses and fees associated with mediation shall-

(a) be reasonable and proportionate to the importance and complexity of the issues in dispute and to the amount of work carried out by the mediator and other persons in connection with the mediation; and

(b) not be contingent on the outcome of the proceedings

Deposits.

43. (1) The mediator may request each party to deposit an equal amount as an advance for the mediation expenses which the mediator expects will be incurred.

(2) During the course of mediation proceedings, the mediator may request supplementary deposits in an equal amount from each party.

(3) If the required deposits are not paid in full by both parties within thirty days of the request, the mediator may suspend the proceedings or may make a written declaration of termination of the proceedings to the parties, effective on the date of that declaration.

(4) On termination of the mediation proceedings, the mediator shall render an account to the parties of the deposits received and shall return any unexpended balance to the parties or require the payment of any amount owing from the parties.

Effect of mediation on limitations periods.

44. In reckoning a period of time for the purposes of the Statute of Limitations Act, 1961, the period beginning on the day on which mediation commences and ending on the day which is thirty days after the end of mediation, shall be disregarded.

Regulations.

45. The Minister may, on the advice of the Board make Regulations by statutory instrument to prescribe for –

(a) mediation procedures;

(b) qualifications of persons who wish to be registered as mediators;

- (c) the parameters for the determination of fees of mediators;
- (d) research, education, training, as well as the standards to be attained in these with respect to mediation;
- (e) the functions of regional and other branch offices of the Center;
- (f) the role of the traditional leaders in achieving the purposes of this Act; and
- (g) matters generally to give effect to the provisions of this Act.

Made

this

day of

2023