

**BILL No. 18 of 2010**

**Tuesday 12<sup>th</sup> October, 2010**

**PARLIAMENT OFFICE  
Public Buildings,  
Georgetown,  
Guyana.**

**12<sup>th</sup> October, 2010.**

The following Bill which will be introduced in the National Assembly is published for general information.

**S. E. Isaacs,  
Clerk of the National Assembly.**



**BILL No. 18 of 2010**

**ALTERNATIVE DISPUTE BILL 2010**

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**A BILL  
Intituled**

**AN ACT to provide for the mediation of disputes as an alternative to litigation.**

**A.D. 2010**      **Enacted by the Parliament of Guyana:-**

**PART I**

**PRELIMINARY**

**Short title and  
commencement.**

**1. This Act may be cited as the Alternative Dispute Act  
2010 and shall come into operation on a date to be appointed by  
the Attorney General.**

**Interpretation.**

**2. (1) In this Act, unless the contrary intention appears-**

**“court” means -**

- (a) the Supreme Court of Judicature;**
- (b) the Magistrates Court;**
- (c) a tribunal prescribed by regulations;**

**“evaluator” means a person to whom a court refers a  
matter for neutral evaluation under this Act;**

**“mediation”, which includes conciliation, means a  
structured negotiation process in which the mediator, as  
a neutral and independent party, assists the parties to a  
dispute to achieve their own resolution of the dispute;**

**“mediation session” means a meeting arranged for the mediation of a matter under this Act;**

**“mediator” means a person to whom a court refers a matter for mediation under this Act;**

**“neutral evaluation” means a process of evaluation of a dispute in which the evaluator seeks to identify and reduce the issues of fact and law that are in dispute;**

**“neutral evaluation session” means a meeting arranged for the neutral evaluation of a matter under this Act;**

**“registrar” means the Registrar of the Supreme Court of Judicature.**

**“session” means the process of determining the rights of the parties prior to an award or decision of the mediator or evaluator.**

**(2) The evaluator’s role includes assessing the relative strengths and weaknesses of each party’s case and offering an**

opinion as to the likely outcome of the proceedings, including any likely findings of liability or the award of compensation.

## PART II

Application of  
the Act.

3. (1) Nothing in this Act is taken to prevent the parties to proceedings from agreeing to and arranging for mediation or neutral evaluation of any matter otherwise than in accordance with this Act.

(2) Parties to a dispute may, prior to the commencement of Court proceedings, agree to and arrange for mediation or neutral evaluation as they deem fit.

Referral by  
court.

4. (1) A court may, by order, refer a matter arising in proceedings before it (other than criminal proceedings) for mediation or neutral evaluation if the court considers the circumstances appropriate and whether or not the parties to the proceedings consent to the referral.

(2) The mediator or evaluator may, but need not be, a person whose name is on a list compiled under this Act.

(3) The parties to the proceedings may agree as to who is to be the mediator or evaluator for the matter but, in default of

agreement, the mediator or evaluator is to be the registrar or his nominee.

Withdrawal from mediation and neutral evaluation.

5. A party to a mediation session or neutral evaluation session may withdraw from the session at any time.

Costs of mediation and neutral evaluation.

6. (1) The remuneration of a mediator or evaluator is to be borne by the parties to the proceedings in such proportions as they may agree among themselves or, failing agreement, in equal shares or as otherwise directed by the court.

(2) Unless otherwise agreed by the parties or as directed by the court, the costs of a party of and incidental to the mediation or neutral evaluation are to be party's costs in the cause.

Agreements and arrangements arising from mediation sessions.

7. (1) A court may make orders to give effect to any agreement or arrangement arising out of a mediation session.

(2) This Act does not affect the enforceability of any other agreement or arrangement that may be made, whether or not arising out of a mediation session, in respect of any matter which is the subject of a mediation session.

List of mediators and evaluators.

8. (1) The Chancellor may compile a list of persons considered to be suitable to be mediators for the purposes this Act.

(2) The Chancellor may compile a list of persons considered to be suitable to be evaluators for the purposes of this Act.

(3) Different lists may be compiled for different types of matters or to take account of any other factors.

(4) A person may be included in a list under this section only if -

(a) the person consents to being included in the list; and

(b) the person agrees to comply with this Act.

(5) The Chancellor may amend or revoke any list compiled under this section for any reason that he considers appropriate.

(6) Without prejudice to the powers conferred upon the Chancellor aforesaid, the parties to any dispute, prior to or after the commencement of proceedings may choose a mediator or evaluator not identified on a list, as they deem fit.

Privilege.

9. (1) In this section, "mediation session" or "neutral evaluation session" includes any steps taken in the course of making

arrangements for the session or in the course of the follow-up of the session.

(2) Subject to subsection (3), the same privilege with respect to defamation as exists with respect to judicial proceedings and a document produced in judicial proceedings exists with respect to -

(a) a mediation session or neutral evaluation session; or

(b) a document or other material sent to, or produced to, a mediator or evaluator, or sent to, or produced to, a court or a registry of a court, for the purpose of enabling a mediation session or neutral evaluation session to be arranged.

(3) The privilege conferred by subsection (2) only extends to a document or other material produced -

(a) at a mediation session or neutral evaluation session; or

(b) as provided by subsection (2) (b); or

(c) for the disclosure or information as provided by section 10.



**(4) Evidence or anything said or any admission made in a mediation session or neutral evaluation session is not admissible in any proceedings before any court, tribunal or body.**

**(5) A document prepared for the purposes of, in the course of, or as a result of a mediation session or neutral evaluation session, or any copy of such a document, is not admissible in evidence in any proceedings before any court, tribunal or body.**

**(6) Subsections (4) and (5) do not apply with respect to any evidence or document -**

**(a) if the persons in attendance at, or identified during, the mediation session or neutral evaluation session and, in the case of a document, all persons identified in the document consent to the admission of the evidence or document;**

**(b) in proceedings instituted with respect to any act or omission in connection with**

which a disclosure has been made under section 10;

- (c) in proceedings instituted in respect of the commission of a fraud or an offence or the commission of an act that renders a person liable to a civil penalty;
- (d) in any circumstances where all parties involved in the relevant mediation session or neutral evaluation session agree to the waiver or the privilege; or
- (e) if the document was prepared to give effect to a decision taken or an undertaking given in a mediation session or neutral evaluation session.

Secrecy.

10.

A mediator or evaluator may disclose information obtained in connection with a mediation session or neutral evaluation session only in any one or more of the following circumstances -

- (a) with the consent of the person from whom the information was obtained;

- (b) in connection with the administration or execution of this Act or any other Act under which a mediation session or neutral evaluation session is conducted;**
- (c) if there are reasonable grounds to believe that the disclosure is necessary to prevent or minimise the danger of injury to any person or damage to any property;**
- (d) if the disclosure is reasonably required for the purpose of referring any party or parties to a mediation session or neutral evaluation session to any person, agency, organisation or other body and the disclosure is made with the consent of those parties for the purpose of aiding in the resolution of a dispute between those parties or assisting the parties in any other manner;**
- (e) in accordance with a requirement imposed by or under a law of Guyana**

(other than a requirement imposed by a subpoena or other compulsory process);

- (f) for the purpose of statistical analysis or evaluating the operation and performance of mediation and neutral evaluation processes.

Exoneration from liability for mediators and evaluators.

11. No matter or thing done or omitted to be done by a mediator or evaluator subjects the mediator or evaluator to any action, liability, claim or demand if the matter or thing was done in good faith for the purposes of a mediation session or neutral evaluation session under this Act.

Rules of court.

12. For the purposes of this Act, rules of court may be made.

Regulations.

13. The Attorney General may make regulations for the purposes of this Act.

# EXPLANATORY MEMORANDUM

This Bill seeks to provide for the mediation of disputes as an alternative to litigation.

## **PART I**

### **PRELIMINARY**

This Part provides for the short title and the commencement date, which is to be appointed by the Attorney General. It defines words used in the Act.

## **Part II**

**Clause 3** states that nothing shall prevent the parties to proceedings (not criminal proceedings) from agreeing to and arranging for mediation or neutral evaluation of any matter.

The clause provides for the appointment of a mediator or an evaluator who may, but need not be, a person whose name is on a list under this Act.

In default of agreement as to who the mediator or evaluator shall be, the mediator or evaluator shall be the registrar or his nominee.

**Clause 5** provides for the withdrawal of parties from mediation or neutral evaluation session at any time.

**Clause 6** provides for the costs of the mediation or evaluation to be borne by the parties according to agreed proportions, failing agreement in equal shares as directed by the court.

**Clause 7** provides for a court to make orders to give effect to any agreement as a result of a mediation session. This clause does not affect the enforceability of any other agreement that may be made, in respect of any matter which is the subject of a mediation session.

**Clause 8** provides that the Chancellor may compile lists of persons suitable to be mediators and evaluators. Different lists may be for different types of matters.

A person has to consent to be included in the list and agree to comply with this Act.

**Clause 9** deals with privilege in a mediation session or neutral evaluation session. The same privilege exists as in defamation with respect to judicial proceedings. The privilege extends to a document or other material produced at a mediation session or neutral evaluation session.

Except in certain specific cases, evidence given before a mediation session or evaluation session is not admissible before any Court, so also is a document prepared for the purpose of a mediation session or evaluation session.

But a document or any evidence is admissible under certain circumstances, for instance, where a person in attendance consents to the admission; in proceedings instituted in

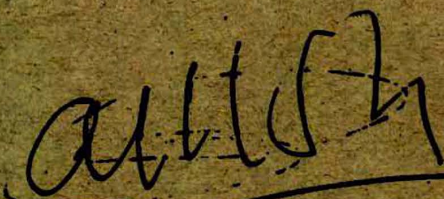
respect of a commission of a fraud; in circumstance in which all the parties in the mediation session or evaluation session agree to the waiver of the privilege.

**Clause 10** deals with secrecy and also states the instances where disclosure is permissible. It states that a mediator or evaluator may disclose information obtained in a mediation or evaluation session. The disclosure may be made; with the consent of the person from whom the information was obtained; if there are reasonable grounds to believe that the disclosure is necessary to minimise the danger or injury to any person or to any property; for the purpose of statistical analysis or evaluating the operation and performance of mediation and neutral evaluation processes.

**Clause 11** provides for exoneration from liabilities for mediators and evaluators.

**Clause 12** provides for rules of court to be made for purposes of this Act.

**Clause 13** provides for the Attorney General to make regulations for the purposes of this Act.



Attorney General and

Minister of Legal Affairs.