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SRI LANKA**

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SUPPLEMENT

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MEDIATION (AMENDMENT)

A

BILL

to amend the Mediation Board Act, No. 72 of 1988

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STATEMENT OF LEGAL EFFECT

Clause 2 : This clause replaces section 2 of the Mediation Board Act, No. 72 of 1988 (hereinafter referred to as the “principal enactment”) and the legal effect of the section as replaced is to make provisions to enhance the scope of the section.

Clause 3 : This clause amends section 6 of the principal enactment and the legal effect of the section as amended is to provide for the procedure of acceptance of applications, transfer of cases and related matters.

Clause 4 : This clause amends section 7 of the principal enactment and the legal effect of the section is –(a) to increase the monetary value of disputes falling within section 7 (1) (a) and section 7 (1) (d) of the principal enactment;(b) to introduce provisions to enable the Minister to fix monetary values by way of regulations; and(c) to make provisions consequential to the amendment made by clause 6.

Clause 5: This clause inserts new section 9A in the principal enactment and the legal effect of the section is to make provisions for a Mediation Board, to refer any application in respect of a dispute falling under the Mediation (Special Categories of Disputes) Act, No. 21 of 2003 to the Chairman of the Panel of Mediators appointed under the said Act.

Clause 6 : This clause replaces section 12 of the principal enactment and the legal effect of the section as replaced is to empower the Chairman or the Chief Mediator -(a) to issue to the disputants a certificate of non settlement, where no settlement is possible ; and (b) to issue a report to the Court , in the case of a dispute referred by any court, stating that it has not been possible to settle the dispute by mediation.

L.D.-O. 78 /2021

AN ACT TO AMEND THE MEDIATION

BOARD ACT, No. 72 OF 1988

BE it enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows: -

1. This Act may be cited as the Mediation Board (Amendment) Act, No..... of 2023. Short title

5 2. Section 2 of the Mediation Board Act, No. 72 of 1988 (hereinafter referred to as the principal enactment) is hereby repealed and the following new section substituted therefor:” Replacement
of section 2
of Act, No.
72 of 1988

10 "Appointment of Commission 2.(1) The President shall appoint a Commission consisting of five persons (hereinafter referred to as the “Commission”), two of whom shall be from among persons who have held judicial office in the Supreme Court or the Court of Appeal or the High Court established by Article 154P of the Constitution and three of whom shall be from among persons who –

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- (a) have not less than fifteen years of professional experience as Attorneys-at-law;
 - (b) have held posts of Class 1 officers in the Sri Lanka Administrative Service or in an All Island Service;
 - (c) are retired staff officers in the Public Service; or
 - (d) have held managerial level offices in the private sector possessing professional qualifications and experience in mediation or any other alternate dispute resolution process:

Provided however, in appointing members to the Commission the President shall ensure that the membership of the Commission shall reflect the pluralistic character of Sri Lankan society.

5 (2) No person who has reached the age of seventy years as at the date of appointment shall be appointed to the Commission.

10 (3) The President shall nominate as Chairman of the Commission one of the members who has held judicial office as referred to in subsection (1).

15 (4) The Chairman and Commissioners shall hold office for a period of three years unless any one of them earlier dies, resigns or is removed from office:

20 Provided however, that, if at the expiration of the period of office of the Chairman or the Commissioners the new members of the Commission have not been appointed, the Chairman and Commissioners holding office on the day immediately prior to such expiration, shall continue in office until the new members are appointed.

25 (5) The Chairman or any Commissioner vacating office upon the expiration of his term of office shall be eligible for re-appointment subject to subsection (2).

30 (6) (a) The Chairman or any Commissioner may resign from office by letter addressed to the President.

(b) The Chairman or any Commissioner who is absent without reasonable cause for three consecutive meetings of the Commission, the Commission may by

resolution of such Commission at a meeting endorsed by the President of which due notice has been given to such Chairman or Commissioner, be removed from office.

5 (c) The President may without assigning a reason remove the Chairman or any Commissioner from office.

10 (7) The Chairman or any Commissioner who has resigned or has been removed from office shall not be eligible for re-appointment.

15 (8) (a) Where any vacancy arises in the Commission, by reason of death, resignation or removal of the Chairman or any Commissioner, the President shall fill such vacancy having regard to the provisions of subsections (1), (2) and (3).

20 (b) Any person appointed to fill a vacancy arising from the death, resignation or removal of the Chairman or any Commissioner, shall hold office for the unexpired period of the term of office of his predecessor.

25 (9) Where a Commissioner becomes, by reason of illness or other infirmity or absence from Sri Lanka temporarily unable to perform the duties of his office, the President may appoint a fit person to act in his place for the period of such incapacity or absence, and where the Commissioner who is so incapacitated or absent from Sri Lanka is the Chairman of the Commission, the President shall appoint the other Commissioner who has held judicial office as referred to in subsection
30 (1), to act in his place until the resumption of duties by the Chairman of the Commission.

(10) The Chairman and the Commissioners shall be remunerated in such manner and at such rates as may be determined by the Minister with the concurrence of the Minister assigned the subject of Finance.

(11) Three members of the Commission including a member who has held judicial office as referred to in subsection (1) shall constitute the quorum for any meeting of the Commission and the Chairman or in the absence of the Chairman, the other Commissioner who has held judicial office as referred to in sub section (1), elected at the meeting from among themselves shall preside at such meetings of the Commission. The Commission may regulate its own procedure in regard to meetings of such Commission and the transaction of business at such meetings.

(12) No act or proceeding of the Commission shall be deemed invalid by reason only of any defect in the appointment of the Chairman or any Commissioner.”.

3. Section 6 of the principal enactment is hereby amended by the insertion immediately after subsection (1) thereof, of the following new subsections: -

Amendment
of section 6
of the
principal
enactment

“(1A) There shall be an officer assigned to each Mediation Board area who shall be attached to the Divisional Secretariat of the respective Divisional Secretary’s Division. Such officer shall accept any application made to the Chairman of the Panel of Mediators appointed for any Mediation Board Area situated within such Divisional Secretary’s Division:

Provided however, for the purposes of maintaining the secrecy, such officer shall not open any such application unless he is authorized in writing to do so by the Chairman of the Panel.

5 (1B) (a) Notwithstanding the provisions of subsection (1), an application with regard to a dispute referred to in subsection (1), which has been made to the Chairman of the Panel of Mediators appointed for any Special Mediation Board Area under the provisions of the Mediation (Special Categories of Disputes) Act, No. 21 of 2003, may, if such Chairman so decides, be referred to the Chairman of the Panel of Mediators, appointed for the same area under this Act.

10 (b) An application referred to in paragraph (a) shall be deemed to be an application made in terms of subsection (1).”.

4. Section 7 of the principal enactment is hereby amended as follows:-

Amendment of section 7 of the principal enactment

15 (1) in paragraph (a) of subsection (1) of that section, by the substitution for the words “five hundred thousand rupees in value;” of the words “one million rupees in value;”;

20 (2) in paragraph (d) of subsection (1) of that section, by the substitution for the words “rupees five thousand,” of the words “rupees one hundred thousand,”;

25 (3) in subsection (1) of that section, by the substitution for the words and figures “the certificate of non-settlement referred to in section 14A”, of the words and figures “a report referred to in subsection (2) of section 12 or a certificate of non-settlement referred to in section 14A.”;

30 (4) by the insertion immediately after subsection (1) of that section, of the following new subsection:-

35 “(1A) The Minister may, from time to time, by regulations made under section 23 of this Act, amend the monetary value of the subject matter referred to in paragraphs (a) and (d) of subsection (1) .”.

5. The following new section is hereby inserted immediately after section 9 of the principal enactment and shall have effect as section 9A of that enactment: -

Insertion of section 9A in the principal enactment

5 "Reference of an application to the Chairman of the Panel appointed for any Special Mediation Board Area

10 9A. (1) Where an application with regard to a dispute falling under any category of disputes specified in an Order made under section 2 of the Mediation (Special Categories of Disputes) Act, No. 21 of 2003, has been referred to a Mediation Board constituted under section 9 of this Act, such Mediation Board shall *ex mero motu*, refer such application to the Chairman of the Panel of Mediators appointed for the same area under the provisions of the Mediation (Special Categories of Disputes) Act, No. 21 of 2003.

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20 (2) Notwithstanding the provisions of subsection (1), where-

(a) the Panel of Mediators has not been appointed under section 4 of the Mediation (Special Categories of Disputes) Act, No. 21 of 2003; or

25 (b) a Mediation Board constituted under section 9 fails to refer the application within a period of three months to the Chairman of the Panel appointed under the provisions of the Mediation (Special Categories of Disputes) Act, No. 21 of 2003, for the same Special Mediation Board Area ,

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35 such applicant shall be entitled to obtain a document to that effect from the Commission or to make an application to the Chairman of the Panel referred to in paragraph (b) of this subsection.

(3) The document obtained under subsection (2) shall be deemed to be a certificate of non-settlement issued under section 14A.

5 (4) Where the parties to the dispute have not objected in arriving at a settlement by initiating proceedings of the Mediation Board constituted under section 9, a certificate of non-settlement referred to in subsection (3) or a settlement reached in the proceedings under this Act, shall not be deemed to be invalid, only due to not making the application to the proper Panel of Mediators in terms of Mediation (Special Categories of Disputes) Act, No. 21 of 2003.”.

6. Section 12 of the principal enactment is hereby repealed and the following new section substituted therefor:-

Replacement of section 12 of the principal enactment

20 “Where no settlement is possible

12. (1) The Chairman or the Chief Mediator, shall issue to the disputants a certificate of non-settlement in the prescribed form signed by the Chairman or the Chief Mediator, in the case of an application made under section 6, as provided for in section 14A stating therein any of the following reasons for non-settlement:-

25 (a) where it is not possible to constitute a Board under section 9, due to the non-appearance by one of the disputants for two consecutive dates, after due notification or after the expiry of three months from the date of making the application, whichever occurs first; or

(b) upon a Board having been constituted under section 9, where-

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(i) the disputants do not agree to a settlement;

(ii) it is not possible to arrive at a settlement due to the absence, of one of the disputants after due notification; or

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(iii) one of the disputants requests the issuance of a certificate under section 14A after the expiry of three months from the date of making the application.

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(2) The Chairman or the Chief Mediator, shall issue a report in the prescribed form signed by the Chairman or the Chief Mediator, in the case of a dispute referred by any court under section 7 or 8, to such court stating that it has not been possible to settle the dispute by mediation and stating therein any of the following reasons for non-settlement:-

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(a) where it is not possible to constitute a Board under section 9, due to the non-appearance by one of the disputants for two consecutive dates, after due notification or after the expiry of three months from the date of making the application, whichever occurs first; or

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(b) upon a Board having been constituted under section 9, where-

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- (i) the disputants do not agree to a settlement; or
- (ii) it is not possible to arrive at a settlement due to the absence, of one of the disputants after due notification.”.

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7. For the avoidance of doubt, it is hereby declared that the persons holding office as the Chairman and Commissioners of the Commission on the day immediately preceding the date of operation of this Act shall continue to exercise and perform the powers and duties under that enactment until a Commission is appointed under section 2 of the principal enactment and shall from and after the date on which such Commission is appointed cease to hold office as such Chairman and Commissioners.

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8. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

Avoidance of doubt

Sinhala text to prevail in case of inconsistency

