

ANNEX IV

PRACTICE DIRECTION NO. 4 OF 2016 PRACTICE DIRECTION ON MEDIATION*

1. The Chief Justice of Malaysia hereby directs that with effect from **15 July 2016**, all Judges of the High Court and its Deputy Registrars and all Judges of the Sessions Court and Magistrates and their Assistant Registrars may, at the pre-trial case management stage as stipulated under **Order 34 Rule 2 of the Rules of Court 2012**, give such directions that the parties facilitate the settlement of the matter before the court by way of mediation.

The term “Judge” in this Practice Direction includes a Judge or Judicial Commissioner of the High Court, Judge of the Sessions Court, Magistrate or a Registrar of the High Court.

2. Objective

- 2.1 The objective of this Practice Direction is to encourage parties to arrive at an amicable settlement without going through or completing a trial or appeal. The benefit of settlement by way of mediation is that it is accepted by the parties, expeditious and it is final.
- 2.2 This Practice Direction is intended to be only a guideline for settlement. The Judge and the parties may suggest or introduce any other modes of settlement so long as such suggestions or directions are acceptable to the parties.
- 2.3 Advocates and Solicitors shall cooperate and assist their clients in resolving the dispute in a conciliatory and amicable manner.

3. When to suggest

Judges may encourage parties to settle their disputes at the pre-trial case management or at any stage, where prior to, or even after a trial has commenced. It can even be suggested at the appeal stage. A settlement can occur during any interlocutory application, for example at an application for, summary judgment, striking out or at any other stage.

4. Types of cases

The following are examples of cases which are easy to settle by mediation, for example:

- (a) Claims for personal injuries and other damages due to road accidents or any other tortious acts because they are basically monetary claims;
- (b) Claims for defamation;
- (c) Matrimonial disputes;
- (d) Commercial disputes;
- (e) Contractual disputes; and
- (f) Intellectual Property cases.

* In effect 15 July 2016. Official translation.

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5. Modes of Mediation

5.1 Mediation may be in the following modes:

- (a) by Judge-led mediation;
- (b) by Kuala Lumpur Regional Centre for Arbitration; or
- (c) by other mediators agreeable by both parties.

5.2 If a Judge is able to identify issues arising between the parties that may be amicably resolved, he should highlight those issues to the parties and suggest how those issues may be resolved.

5.3 The Judge can request to meet in his chamber in the presence of their counsel, and suggest mediation to the parties. If they agree to the mediation then the parties will be asked to decide whether they would wish the mediation to be the judge-led, by Kuala Lumpur Regional Centre for Arbitration or by other mediators agreeable by both parties.

5.4 The procedure in **Annexure A** will apply to a judge-led mediation and the procedure in **Annexure B** will apply to an institutional mediation under the auspices Kuala Lumpur Regional Centre for Arbitration and the procedure in **Annexure C** will apply if it is referred to other mediators agreeable by both parties.

6. General

6.1 Agreement to Mediate

When the parties agree to mediate, each of the parties shall complete the mediation agreement as in **Form 1**.

6.2 Confidentiality

All disclosures, admissions and communications made under a mediation session are strictly “without prejudice”. Such communications do not form part of any record and the mediator shall not be compelled to divulge such records or testify as a witness or consultant in any judicial proceeding, unless all parties to both the Court proceedings and the mediation proceedings consent to its inclusion in the record or to its other use.

6.3 Results of Mediation

(a) A return date of not more than one (1) month from the date the case is referred to mediation, shall be fixed for parties to report to the Court on the progress of mediation; and in the event the mediation process has ended, the outcome of such mediation;

(b) Where mediation fails to resolve the disputes, the Court shall, on the application of either of the parties or on the Court’s own motion, give such directions as the Court deems fit; and

(c) Except with the agreement of the Court, all mediation must be completed not later than three months from the date the case is referred for mediation.

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7. Revocation

The Practice Direction No. 5 of 2010 is revoked.

8. Savings

Any proceedings pending or commenced under Practice Direction No. 5 of 2010 before the coming into operation of this Practice Direction, shall be continued and concluded under Practice Direction No. 5 of 2010 and for this purpose it shall be treated as if that Practice Direction had not been revoked.

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ANNEXURE A - JUDGE-LED MEDIATION

1. Unless agreed to by the parties, the Judge hearing the case should not be the mediating judge. He should pass the case to another judge. If the mediation fails then it will revert to the original judge to hear and complete the case.
2. The procedure shall be in the manner acceptable by both parties.
3. Unless agreed to by the parties, the Judge will not see the parties without their lawyers' presence except in cases where the parties is not represented.
4. If the mediation is successful, the Judge mediating shall record a consent judgment on the terms as agreed to by the parties.

ANNEXURE B - INSTITUTIONAL MEDIATION UNDER THE AUSPICES OF
KUALA LUMPUR REGIONAL CENTRE FOR ARBITRATION

1. If parties wish to seek an amicable settlement of the dispute by mediation in accordance with the Kuala Lumpur Regional Centre for Arbitration (KLRCA) Rules of Mediation presently in force, upon the direction of the court, the Plaintiff's solicitor shall, within seven (7) calendar days notify in writing to the KLRCA.
2. Upon receiving such notification, KLRCA shall then proceed with the mediation process as provided for under the KLRCA Mediation Rules that is presently in force.

ANNEXURE C - MEDIATION BY OTHER MEDIATORS AGREEABLE BY BOTH
PARTIES

1. Mediator
 - 1.1 A mediator may be chosen from the list of certified mediators furnished by the Malaysian Mediation Centre ("MMC") set up under the auspices of the Bar Council, or any other mediator chosen by the parties.
 - 1.2 Such a mediator shall facilitate negotiation between the parties in the dispute and steer the direction of the mediation session with the aim of finding a mutually acceptable solution to the dispute.
 - 1.3 If the parties so desire the[y] may appoint more than (1) mediator to resolve their dispute.
 - 1.4 Any mediator so chosen by the parties may agree to be bound by the MMC Code of Conduct and the MMC Mediation Rules, or not at all.
2. Procedure

If parties agree that they be bound by the MMC Mediation Rules, upon direction of the Court, the Plaintiffs solicitor shall, within seven (7) calendar days notify in writing to

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the MMC. Upon receiving such notification, MMC shall then proceed with the mediation process as provided under the MMC's Mediation Rules.

3. Settlement Agreement

Any agreement consequent upon a successful mediation may be reduced into writing in a Settlement Agreement signed by the parties but in any case the parties shall record the terms of the settlement as a consent judgment.

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FORM 1

AGREEMENT TO MEDIATE

Case No.: -----
Name of Judge/Mediator: -----
Parties: Plaintiff: -----
 Defendant: -----
 Third Party: -----
Mention/Hearing Date: -----

We, the solicitors representing the abovementioned parties hereby consent to refer this matter for mediation for the purpose to reach an amicable settlement and to the satisfaction of all parties.

We also agree that all disclosures, admissions and communications made under a mediation session are strictly “without prejudice”. Such communications do not form part of any record and the mediator shall not be compelled to divulge such records or testify as a witness or consultant in any judicial proceeding, unless all parties to both the Court proceedings and the mediation proceedings consent to its inclusion in the record or to its other use.

(Plaintiff’s Solicitor’s Signature)

(Defendant’s Solicitor’s Signature)

(Third Party’s Solicitor’s Signature)

Dated: