SPEECH BY

THE RIGHT HONOURABLE
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AT THE 4TH MEETING OF THE INTERNATIONAL JUDICIAL DISPUTE RESOLUTION NETWORK (JDRN)

MONDAY, 26 JANUARY 2026

MANILA

SESSION 4: CHIEF JUSTICES' PANEL AND DISCUSSION ON:

"The vital role of Judicial Dispute Resolution in the effective and efficient administration of justice and whether this raises any concerns if appeals are pending."

Thank you to both the Chair and the Co-Chair,

Chief Justices, Head of Delegations and Founding Members of the JDRN,

Distinguished delegates and members who attended this meeting in person and virtually,

Ladies and Gentlemen.

[1] As we have heard from Chief Justice Alexander G. Gesmundo, Judicial Dispute Resolution raises important concerns when appeals are pending—issues that are not dissimilar to, and in many respects the same as, those we encounter.

[2] In Malaysia, court-annexed mediation for the trial courts was formalised in 2010. Since then, four Practice Directions have been issued, the most recent in 2022. This latest directive permits mediation at any stage of the proceedings, including cases that have progressed to the appeal stage.

[3] As for the Court of Appeal and the Federal Court, their Rules do not expressly provide for mediation. Nevertheless, beginning in late 2023, following a meeting between the President of the Court of Appeal and its judges, the then President issued an oral directive under Rule 77 of the Rules of the Court of Appeal, encouraging judges to refer suitable and appropriate cases to mediation.

[4] Since then, between 2024 and 2025, we saw a steady increase in the number of cases referred to mediation. As at December 2025, 52 appeals had been registered, of which 37 were successfully resolved, 10 proceeded to full hearing, and 5 remain pending—reflecting a success rate of approximately 71%. In contrast, in 2025, the Federal Court registered and successfully resolved only two mediation cases, both involving family-related appeals.

[5] When we look at the trend in cases referred to mediation, a clear pattern emerges. Commercial and contractual disputes, family-related matters, tort and defamation cases make up the bulk of matters successfully resolved through mediation, whether at the trial stage or the appellate stage.

[6] Given that our current legal framework on mediation remains largely voluntary—save for running-down matters where mediation is mandated before trial—we have identified mediation as a critical area for reform under the *Judicial Blueprint* which I outlined in my recent address at the Opening of the Legal Year. We are firmly committed to strengthening court-annexed mediation by according it statutory force.

[7] This includes introducing clear and specific provisions within the Rules of the appellate courts, so that mediation is no longer viewed merely as an optional convenience, but as an integral and structured component of the justice system.

[8] From our experience with mediation at the appellate level, the greatest challenge lies in the parties' attitudes and their readiness to engage in the process. This is entirely understandable, as a party who has succeeded at trial may feel vindicated by the outcome and therefore be less inclined to compromise.

[9] For these reasons, I observe that not all cases are suitable for mediation at the appellate level—particularly at the apex court, where appeals often involve constitutional questions or matters of broad public importance that require authoritative judicial determination. This is why careful identification of suitable cases for mediation is so critical. It is not just a procedural step—it plays a decisive role in determining whether mediation is likely to succeed.

[10] Another critical concern is the individual judge-mediator. Their skill, experience, and ability to facilitate mediation can significantly influence the outcome. Of course, we cannot overlook the potential for bias, as the appeal record is available and a judge may already have formed certain views about the case. However, our data shows

that the appeals successfully mediated were handled by experienced judge-mediators who have conducted mediation across a variety of cases. This demonstrates that the judge's ability to guide parties toward agreement are just as important as the parties' willingness to mediate. I acknowledge that while training can enhance these qualities, the individual factor cannot be ignored. Just as parties must have the right attitude for mediation, the selection of a suitable judge-mediator is equally critical, because not every judge possesses the necessary skills to steer an appeal toward settlement.

[11] Another challenge we sometimes encounter is when a party changes their mind after a mediation that was initially successful. This happens when a party who had agreed to a settlement later reconsiders before it is formally recorded. Such situations are frustrating, as they reverse the progress made, waste valuable judicial time, and highlight how fragile a mediated agreement remains until it is properly finalised and documented.

[12] It is also equally important to address issues of timeline and delay in the context of judicial dispute resolution at the appellate level. This is necessary to dispel any perception that mediation may be deployed as a tactical device—for instance, to delay the enforcement of trial judgments, particularly money judgments.

[13] Accordingly, any framework for appellate-level judicial dispute resolution must incorporate defined timelines, structured processes and effective judicial oversight, so that efficiency and fairness remain paramount. Thus, where JDR does not result in settlement, the appeal should be restored to the hearing list without delay, with minimal disruption to the court's timetable.

[14] And last, but certainly not least, as with any new initiative, scepticism is natural and must be addressed. This is no different for JDR at the appellate level. Some may ask: if a case could not be successfully mediated at the trial stage, why attempt mediation at the appeal stage? After all, costs have been incurred, and time has been spent.

[15] Such negative thinking must be challenged. I would think that at the appellate stage, mediation can be more focused as, by this point, the dispute has already been subjected to a judicial filter at the trial court. The parties' understanding of the facts is more nuanced and the issues are more clearly defined and confined. This makes the path toward settlement much clearer and more realistic.

[16] To achieve this, continuous education, awareness, and a change of mindset are essential, so that both practitioners and parties recognize the value and practicality of mediation even at this advanced stage.

[17] Before I conclude, I would like to quote Joseph Grynbaum, a notable international mediator, who aptly observed that *"An ounce of mediation is worth a pound of arbitration and a ton of litigation."* That observation rings true. Our experience has shown that, regardless of the level of court or the stage of proceedings, settlement through mediation or JDR consistently delivers greater savings—whether in terms of cost, time, energy, or the preservation of relationships.

[18] Against this backdrop, I remain confident and optimistic that the challenges associated with judicial dispute resolution during pending appeals are not beyond our capacity to address. Those concerns are both manageable and capable of being effectively resolved.

[19] I am hopeful that, following this meeting, we will be able to formulate and develop a clear and practical framework that will guide the implementation of judicial dispute resolution at the appellate stage, hence strengthening efficiency, promoting fairness, and enhancing confidence in our justice system.

Thank you.