



**OPENING SPEECH  
BY THE RIGHT HONOURABLE THE CHIEF JUDGE OF  
SABAH AND SARAWAK  
TAN SRI DATO' ABANG ISKANDAR BIN ABANG HASHIM  
AT THE  
INAUGURAL INTERNATIONAL JUDICIAL DISPUTE  
RESOLUTION NETWORK (JDRN) MEETING**

**“COURT- ANNEXED MEDIATION” – MALAYSIAN  
EXPERIENCE”**

**18 MAY 2022 | ZOOM | 7:00 PM**

Assalamualaikum, Good Evening and Good morning to all.

1. The Honourable the Chief Justice Sundaresh Menon, Chief Justice of Singapore, Host country for this Inaugural JDRN Meeting;
2. Head of Delegations from JDRN Founding Members; and
3. Ladies and Gentlemen.

On behalf of The Right Honourable the Chief Justice of Malaysia and the Malaysian Judiciary, I would like to extend our heartfelt

appreciation to the Singapore Judiciary, in particular Chief Justice Sundaresh Menon for initiating the idea to establish this JDRN and for inviting the Federal Court of Malaysia to be one of the founding members of this auspicious network amongst the judicial institutions worldwide. May I also offer my hearty congratulations to the host country for successfully organising this online meeting by bringing together all nine (9) founding members.

## **INTRODUCTION**

[1] Mediation practice in Malaysia has come quite a long way since its embryonic days in the mid-1990s.<sup>1</sup> Today, mediation forms a core component in the Malaysian judicial system where it provides an alternative to litigating parties to resolve their dispute without having to go through the court trial process to completion.<sup>2</sup>

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<sup>1</sup> Cecil Abraham, *Alternative Dispute Resolution*, 20 *Asian Bus. L. Rev.* (1998).

<sup>2</sup> YAA Tan Sri Arifin Bin Zakaria, Chief Justice, Malay., *Speech at the Opening of the Legal Year 2012* (Jan. 14, 2012) (transcript available in <http://www.kehakiman.gov.my/sites/default/files/document3/Penerbitan%20Kehakiman/KetuaHakim.pdf>)

[2] At present, mediation is formally conducted at the High Courts and the Subordinate Courts. Specific guide for mediation for the Court of Appeal and the Federal Court has not been prescribed, although parties are at liberty to get their cases mediated pending the disposal of the appeal.

### **THE PROGRESS OF COURT ANNEXED MEDIATION**

[3] Historically, judicial officers and judges of the High Courts have informally conducted mediation. This was done by proposing a settlement to the parties through mediation process at the case management stage. For unsuccessful mediated cases, they will be swapped among peers to continue with trials. Though informally practiced, the success rate was relatively high.

[4] A serious step was undertaken in 2010, when the 1<sup>st</sup> Practice Direction No.5 was issued by the Chief Registrar's Office on the direction of the Chief Justice to officially establish Court

Annexed Mediation (“CAM”) in the court’s system. Since then, judicial officers and judges were readily adopting and advocating use of mediation as a mode of case settlement.

[5] Mediation has then developed progressively and Practice Directions were issued from time to time to support mediation. They included Practice Direction No. 2 Year 2013 and Practice Direction No. 4 of 2016.

[6] The 2016 Practice Direction was issued to supplement mediation as contained in the amended Rules of Court 2012 (ROC) by the introduction of Order 34 rule 2(1A) and Order 34 rule 2(1B). These provisions give CAM the statutory force.

[7] At present, Practice Direction by the Chief Justice No.2 Year 2022 is the only authoritative guide superseding and revoking the 2010, 2013 and 2016 Practice Directions. In the 2022 PD,

mediation was allowed to be conducted at registered institutions and by parties-appointed private mediator.

- [8] For the purpose of overseeing the practice of mediation in courts throughout Malaysia, a Mediation Department was established in 2016 by the Office of the Chief Registrar Federal Court of Malaysia. Currently, there are fourteen (14) Mediation Centres located at the capital cities in each state in Malaysia with permanent mediators. At other court locations places without permanent mediators, mediation have will be conducted by certified judicial officers on a rotational basis.

### **TRAINING FOR MEDIATORS**

- [9] Since 2010, various mediation courses have been organised to equip judges and judicial officers with mediation skills. These courses were either conducted by Senior Judges on a periodical basis or jointly organised with other institutions namely Judicial and Legal Training Institute, Malaysia

Mediation Centre (MMC) and Asian International Arbitration Centre (AIAC). Prominent judges and mediation experts from abroad were also invited to conduct courses in Malaysia. Many of the courses organised provide accreditation to the judges and judicial officers and as of now there are 70 accredited mediators amongst judges and judicial officers.

### **HOW AND WHEN MEDIATION TAKES PLACE**

[10] Briefly, mediation by court can be done at any stage of the proceedings at the trial courts level before any decision is made. Mediation can also be conducted even if the cases have proceeded to the appeal stage.

[11] In term of the case type for mediation, the ROC mandates all running down cases to be subjected to mediation. Others are at the choice of the parties; or by a judge who may refer the parties to mediation if he identifies an issue that can be resolved through mediation.

[12] Before the Covid-19 pandemic, mediation was usually conducted physically, but during the pandemic and until present time, mediation is conducted both physically and online. A specific standard operating procedure for online mediation is in place.

[13] The 2022 Practice Direction allows the parties to choose whether to have the mediation led by a Judge or by any registered institutions or by private mediators as agreed by the parties. Except for judge-led mediation which is free-of-charge, the parties bear their own cost for mediation conducted by any registered institution or by a private mediator.

[14] The status and progress of the case mediated must be updated with the court and a case management date shall be

fixed not later than a month from the date the case is referred to mediation.

[15] If the mediation is completed – successful or otherwise, the parties must inform the court as soon as possible within 2 weeks from the completion date of the mediation.

[16] All communication, disclosure or admission during mediation is without prejudice and considered private and confidential.

### **HOW LONG CAN A CASE BE ADJOURNED FOR MEDIATION?**

[17] The 2022 PD does not specifically provide for an answer. That would be on case to cases basis. However, for the Subordinate Courts, the Practice Direction No.2 of 2017 fixes a timeline when a case must be disposed – 6 or 9 months for civil cases and 12 months for criminal cases. That guides the limitation for adjournment.



[18] As for the High Courts, although there is no specific direction as applicable to the Subordinate Courts, it's been an unwritten policy and practice for judges at the High Court to dispose civil cases within 9 months and for *Muamalat* cases in 6 months.

### **WHAT LIES AHEAD FOR COURT ANNEXED MEDIATION?**

[19] At present, a task force led by a judge of the Federal Court has been constituted for the purpose of drafting a detailed guide / module on mediation and its process, to be referred to and used by judges and judicial officers.

[20] In particular, the task force is exploring the implementation of mandatory pre-action mediation conducted by bodies approved by the Malaysian Judiciary for all running down cases before these cases can be commenced in court. I note

that Germany, among others, has already in place a pre-trial conciliation regime.

## **CONCLUSION**

[21] The Malaysian Judiciary has always been advocating and promoting mediation as an alternative dispute resolution – and that is by giving mediation a statutory force in the Rules of Court 2012, which is guided and directed by a specific Practice Direction. It is also looking for new mechanisms that can be enhanced the efficacy of the mediation as an effective dispute settlement mechanism and thereby further improving access to justice.

[22] On that note, let me finally wish everyone a successful virtual meeting. My brother judge Dato' Lim Chong Fong and I look forward to a meaningful meeting these two coming days.

Thank you.