

KUALA LUMPUR COURT MEDIATION CENTRE
COURT – ANNEXED MEDIATION

INTRODUCTION

There are many models of mediation. The court-annexed mediation program is a free mediation program using judges as mediators to help disputing parties in litigation to find a solution. It is a service provided by the judiciary as an alternative to a trial which is a win-lose proposition. The Kuala Lumpur Court Mediation Centre is established to run this pilot project.

This court-annexed mediation program will be integrated with the court process to ensure mediation is available to all litigants. It may also be mandated as part of the civil litigation process since it is provided at no cost to the parties and nothing is lost by attempting to mediate a resolution.

ADVANTAGES OF COURT-ANNEXED MEDIATION

- 1) A court ordered mediation requires the parties and their lawyers to commit to the mediation process. By having to undergo the mediation session under the court authority, parties will have no option but to make good use of the time allocated, try to communicate and break down barriers between them. In some cases, reluctant parties become active participants once they are convinced that a win-win solution is workable and that they still

maintain their rights to proceed to trial if mediation fails. Even if a case is not settled by mediation, the mediator can at least help parties to communicate to find partial solutions or agreements to reduce the number of issues that need to be resolved in court, thus saving time and expense.

- 2) Sometimes litigants do not offer settlement because they are reluctant to admit that they might have weakness in their case. The uncompromising parties may be able to be convinced if they hear assessment of their case directly from a judge who points out the case weaknesses and reiterate what their lawyers may have told them initially. This can help litigants to revise their thinking, reassess the risks of not agreeing and move toward agreement.
- 3) The mediation proceedings are not limited to what is legally relevant. The parties can discuss wider issues to work out a solution. If mediation is successful, parties can avoid the stress of trial, save costs and time while keeping valuable personal or commercial relationships intact.

MEDIATION PROCEDURES

The mediation procedures at the Mediation Centre are as follows:

1) Order of Referral:

The High Court and the Sessions Court in Kuala Lumpur, either on its own motion or upon the request of any party, make an Order of Referral to the Mediation Centre of any action that has been instituted in the civil court which is suitable for mediation. An Order

of Referral may be made at the pre-trial case management or at any stage of the proceedings.

2) Mediation Agreement

Once parties agree to mediate, each of the parties shall complete the Mediation Agreement as in “Form 1”.

3) Scheduling:

A mediation session shall be fixed before a mediator not later than one (1) month from the date the case is referred to the Mediation Centre.

4) Attendance:

All sessions of mediation must be attended by the parties or their representatives who have actual authority to settle the action along with their solicitors.

5) Conduct of mediation sessions:

The mediation session is flexible. The sessions may be as diverse as the judges and parties involved:

- (a) Joint sessions or caucus: The mediation sessions can be conducted in single joint sessions or a mixture of joint and private sessions.
- (b) The mediator may conduct one or more sessions of mediation.
- (c) There are no formal rules of evidence or procedures to be complied during the mediation. The parties and the mediator may discuss the ways to proceed in the mediation to tailor

the process according to the wishes of the parties and the subject matter of the disputes.

- (d) Unless agreed to by the parties, the Judge hearing the case should not be the mediating Judge.

6) Duration

Except with the agreement of the Court, all mediation must be completed no later than three months from the date the case is referred for mediation.

7) Settlement agreement:

Any settlement that is reached by the parties becomes a judgment of the Court. If the settlement agreement includes withdrawal or dismissal of the action, the parties shall file appropriate notice of discontinuance.

8) Adjournment:

The Judge is not precluded from granting extension of time or stay of proceedings of the civil action to facilitate the conduct of mediation.

9) No Agreement

Where mediation fails to resolve the dispute, the Court shall be informed immediately of the outcome and the Court shall give further directions as the Court deems fit.

10) Confidentiality:

All disclosures, admissions and communications made in a mediation session shall be confidential and privileged. 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.

11) Withdrawal:

Any party may at any time withdraw from mediation if the party no longer wishes to continue with mediation.