



Practice Direction No. 1 of 2021

Use of Alternative Dispute Resolution for Matters Involving Family Law Disputes

1. Mediation Directed by Court

(1) In any divorce proceedings under the Dissolution of Marriage Act (Cap. 165 of the Laws of Brunei), the Court may order that parties attend mediation to encourage parties to resolve the matter amicably and assist parties in reaching an agreement or to narrow the issues in contention.

(2) It is the professional duty of advocates and solicitors to advise their clients about mediation. Mediation should be considered at the earliest possible stage in order to facilitate an amicable resolution of the dispute.

(3) Where the Court has made an order under section 1(1), the parties concerned shall comply with it.

2. Mandatory Mediation Conducted by Court for Child Related Proceedings

(1) A court before which any divorce proceedings under the Dissolution of Marriage Act (Cap. 165 of the Laws of Brunei) are being heard shall, where the proceedings involve such classes of persons (being persons with any child or children to the marriage below 18 years of age) and if the court considers that it is in the interests of the parties and their children, order the parties to attend mediation conducted by such person as the court may appoint, at any stage in the proceedings.

(2) Notwithstanding section 2 (1) the court may, in any case where it considers that it may not be in the interests of the parties or their children to attend mediation, dispense with an order requiring such mediation.

(3) Where the court has made an order under section 2 (1), the parties concerned shall comply with it.

(4) Notice(s) of attendance for mandatory mediation sessions with location or online platform details will be sent to the plaintiff and defendant in the divorce proceedings. Attendance by the parties and parties' respective counsel is compulsory.

(5) Counsel and parties are required to attend a Family Dispute Resolution Conference ("FDR Conference") before a Registrar after the filing of the Petition for a preliminary discussion of the issues relating to the child or children of the marriage. The purpose is to crystallise the issues on matters relating to the child or children and to agree on mutually convenient dates for the parties to attend mediation. Counsel and parties are expected to come prepared to discuss all issues relating to or impacting the child or children. Directions may be given in relation to the filing and exchanging of relevant documents and/or proposals and any unresolved issue relating to the divorce (including any ancillary issues such as the question of maintenance or the division of matrimonial assets) may also be discussed.

(6) A Mediation date will be given to the parties and counsel at the FDR Conference if appropriate for the case. It is important that parties attend on the dates given and use the opportunity to discuss and resolve the issues with the help of a Mediator. Counsel and parties are to prepare a Summary for Mediation in Form 1 in Appendix A to these Practice Directions prior to the mediation for submission and discussion during the mediation together with all relevant documents as may be directed by the Court.

(7) For nullity, divorce, judicial separation proceedings, where interim judgment or judgment for judicial separation has been granted, any agreement reached by the parties at any time may be recorded as a consent order by the Judge sitting as a Judge in Chambers upon confirmation of the terms by the parties and/or counsel. Where interim judgment or judgment of judicial separation has not been granted, the agreement will be formally recorded by the Judge and directions will be given for the setting down of the divorce on an uncontested basis on an expedited basis.

(8) For all other proceedings not covered by sub-paragraph (7) above, any agreement reached will be recorded as a consent order by the Judge sitting as a Judge in Chambers upon the confirmation of the terms by the parties and/or counsel.

(9) The court may dispense with the attendance of the parties at mediation if it deems that it is not in the interest of the parties concerned to do so (e.g. where family violence has been committed or where care and protection orders are involved in the case).

(10) Counsel should advise his/her client of the consequences of non-attendance.

(11) Mediation will be conducted on a without prejudice basis. All communications made in the course of mediation will be treated in strict confidence and will not be admissible in any court unless otherwise stipulated by law. If the dispute is not resolved at the mediation session, the Judge or Registrar will give the necessary directions to enable the case to proceed to trial.

(12) Where there is a disagreement between the parties on the terms of the agreement which were recorded at mediation, either party may write in to court for a clarification before the Judge.

3. Mediation Conducted by the Court for Non-Child Related Proceedings

(1) For non-child related proceedings, the court may order parties to attend mediation.

(2) Where the court has made an order under section 3 (1), the parties concerned shall comply with it and parties and counsel must attend all mediation sessions.

(3) Parties and their counsel are to prepare a Summary for Mediation in the prescribed format in Form 1 in Appendix A to these Practice Directions prior to the mediation for submission and discussion during the mediation, together with all relevant documents as may be directed by the Court.

(4) For nullity, divorce, judicial separation proceedings, where interim judgment or judgment for judicial separation has been granted, any agreement reached by the parties at any time may be recorded as a consent order by the Judge sitting as a Judge in Chambers upon confirmation of the terms by the parties and/or counsel. Where interim judgment or judgment of judicial separation has not been granted, the agreement will be formally recorded by the Judge and directions will be given for the setting down of the divorce on an uncontested basis on an expedited basis.

(5) For all other proceedings not covered by sub-paragraph (4) above, any agreement reached will be recorded as a consent order by the Judge sitting as a Judge in Chambers upon the confirmation of the terms by the parties and/or counsel.

(6) Mediation will be conducted on a without prejudice basis. All communications made in the course of mediation will be treated in strict confidence and will not be admissible in any court unless otherwise stipulated by law. If the dispute is not resolved at the mediation session, the Judge or Registrar will give the necessary directions to enable the case to proceed to trial.

(7) Where there is a disagreement between the parties on the terms of the agreement which were recorded at mediation, either party may write in to court for a clarification before the Judge.



DATO SERI PADUKA STEVEN CHONG

CHIEF JUSTICE

2 December 2021

APPENDIX A

FORM 1

SUMMARY FOR MEDIATION

_____ (Petitioner) vs _____ (Respondent)
(Title as in action)

Party Filing this Summary: Petitioner / Respondent*

A. CHILDREN ISSUES:

No of Children: _____

Age of Children: _____

(1) **Custody**

State what this party wants regarding custody: Sole / Joint*

(2) **Care and Control**

State which party to be awarded care and control: Petitioner / Respondent*

(3) **Access**

(a) State what this party wants regarding access if:

(i) he / she* is the parent with care and control

(ii) he/she* is not the parent with care and control

(b) Proposed handover venue and person to hand over the children:

B. DIVISION OF MATRIMONIAL ASSETS:

(1) **Matrimonial Home**

Address of matrimonial home: _____

Current value: _____

(Estimated Value/Valuation Report Value)

Outstanding loan amount: _____

(2) Direct financial contributions towards purchase, mortgage, renovations, property tax, conservancy, maintenance, repairs: _____

(3) Indirect contributions:
State other payments made (e.g. towards household bills, groceries, children's expenses): _____

(4) Length of marriage: _____ years _____ months

(5) Proposal for Division: _____

(6) Other Assets
State other assets and nature of claim: _____
State what percentage or monetary amount or claim this party wants as regards above assets: _____

C. MAINTENANCE

State occupation: _____

State income (nett): _____

(1) Maintenance of children
State expenses and amount claimed/proposed: _____

(2) Maintenance of wife
State expenses and amount claimed/proposed: _____

(3) Maintenance of incapacitated husband
State expenses and amount claimed/proposed: _____

D. OTHER ISSUES (IF ANY)
