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Malaysia

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Efficiency/integrity

Winds of change over the past three years have seen a dramatic increase in the efficiency of the courts in Malaysia. The oft-quoted phrase of "The wheels of justice move but ever so slowly" is hardly heard nowadays. In fact, the pace of litigation has picked up so much that lawyers and judges are more concerned with maintaining their state of health to cope with the demands and stress brought about by such changes.

The key number is 9. It is now expected for a matter in the court of first instance to be concluded within 9 months. By 'conclusion' it is meant from the date of filing of the originating process up until full trial with a decision delivered; all within 9 months. Thereafter, it is also expected for any appeal to be disposed of within 9 months as well; a highly commendable standard.

The Chief Justice of Malaysia was also recently quoted in the press as having told all the judges and judicial commissioners that very soon they will be asked to declare all their assets. In this regard, he said the Judiciary will be working with the Malaysian Anti-Corruption Commission on the procedures to be put in place. It is believed that one of the requirements will be for the declaration of assets to be updated from time to time.

On a related note, with effect from January 2012, the quorum hearing any application for leave to appeal, as well as the substantive appeal in the Federal Court, the apex court of Malaysia, shall be a minimum of 5 judges instead of the usual 3. This is said to be in aid of transparency which is but part and parcel of integrity.

The Court of Appeal has also implemented several initiatives to expedite the disposal of appeals. These include increasing the number of sittings, setting up of a special panel hearing only interlocutory appeals and another hearing only appeals originating from the subordinate courts. The number of panels sitting in a month was increased from 12 to 20. According to figures recently released by the Chief Justice of Malaysia, these initiatives saw a significant increase in the disposal of appeals; from 5,935 in 2010 to 8,064 in 2011.

To ensure that the rapid processing in the High Court is not defeated by a slow appellate process a new special panel at the Court of Appeal is set up to hear only appeals from the New Commercial Courts of the High Court. Members of the panels rotate and are not assigned till the case is ready to be heard. This practice is aimed at reducing incidents, opportunities and allegations whereby lawyers may seek to influence judges' decisions or withdraw their cases so "favourable" panels can be obtained. In the High Courts, in 2011, the High Courts disposed of more than 100,000 civil cases. The efficiency is attributed to the set timelines for disposal of civil cases, namely 9 months for cases in New Commercial Courts and New Civil Courts of the High Court.

Set timelines were also implemented in the Subordinate Courts for the disposal of cases, namely 9 months for Sessions Court and 6 months for Magistrates' Court.

On the premise of keeping in line with inflation and to reduce case volume in the High Court, the monetary limit which determines the civil jurisdiction of the subordinate courts will also be increased in the near future, with the passing of the Subordinate Courts (Amendment) Act 2010. Sessions Courts

and Magistrates' Courts will have jurisdiction over civil claims of up to Ringgit Malaysia One (1) million and Ringgit Malaysia 100,000.00 respectively. A more controversial enactment will see the Sessions Court being conferred with the power to grant injunction, declaration, specific performance, rescission of contract, cancellation or rectification of instrument. However, an assurance has been given by the Chief Justice's office that only selected Sessions Court judges with adequate training and experience will be tasked with hearing such applications.

Launched in March 2011 was 'e-filing', a facility which enables parties to file cause papers online, dispensing with the need to file hard copies. For unrepresented parties and law firms which do not have the necessary facility, filing can also be done at a service bureau which is set up at major courts.

To further enhance the integrity of judges, audiovisual systems for recording hearings have been introduced in court. The recording can verify the merits of allegations made against judges. The recording of hearings also means discarding altogether the considerable delay caused by judges having to take long hand notes of proceedings whilst maintaining accurate records.

A single set of civil procedure rules ("Combined Rules of Court") for the High Court and the Subordinate Courts is expected to come into force by mid-year 2012. These rules are designed with the goal of streamlining and harmonising the existing two different sets of rules (one for the High Court and one for the Subordinate Courts) into one with the view to further enhancing the efficiency of the administration of justice.

To ensure judges perform efficiently, the Chief Justice requires them to submit daily and monthly reports on caseload movements. Periodic visits are made to courts to do surprise checks, and all judges are also given a series of targets, which include those for reducing backlogs and for resolving new cases within prescribed time limits. A permanent body to be known as the "Judicial Academy", specialised in training judges and judicial officers, is also in the midst of being set up.

Also, as part of the reforms, the courts have, with the issuance of court directives/circulars, tightened up some of the timeframes for lawyers to provide documents and taken other actions in the pre-trial (case management) stage to ensure that the pre-trial stage moves promptly into trial. This activism by the court to pro-actively manage a matter from the date of filing to its conclusion is a source of great stress for litigators especially those from smaller firms. It has also led to the more sought after and experienced counsel having to change their practice by reducing the number of cases undertaken at any one time in return for more briefs in the long run.

The setting up of specialised courts, namely the Admiralty Court in the Kuala Lumpur High Court, the Intellectual Property Court, and 14 Corruption Courts throughout the country, is part of the reforms sweeping the judiciary landscape in Malaysia. Specialised court sittings are implemented in the High Courts in the most congested districts, such as Kuala Lumpur, as well as in areas of law where a speedy trial is of crucial importance in the preservation of the integrity of evidence, such as in offences involving corruption, money laundering, immigration, narcotics, intellectual property, various banking offences, and claims in tort.

The initial goal of the said reform was to reduce backlog and accelerate the processing of new cases. After reviewing the Malaysian Judiciary, the World Bank published a report in August 2011 saying that pending cases in all courts had been reduced by approximately 66 percent.

The gist of the report can be seen from its introductory lines, as quoted below:

> *"The present study reviews a reform designed and implemented by the Malaysian Judiciary during the period from late 2008 to early 2011. Although conducted over a very short period, this reform has been able to produce results rarely reached even in programs lasting two or three times as long. It thus provides a counter-example to contemporary pessimism about the possibility of the judiciary improving its own performance. Moreover it did so in a country which faces many of the usual contextual obstacles said to have inhibited reform elsewhere. There are other examples of reform "successes" but they either involve very targeted, and often territorially limited experiments (see Walsh, 2010) or if accomplished on a broader scale were aided by circumstances not likely to be replicated elsewhere."*

To improve efficiency and to cut down on waiting time and transport costs, telephone and video

conferencing are now being implemented by stages throughout the whole of Malaysia for non-contentious matters in court proceedings. This is particularly useful where all that is required in such proceedings is to report to the court on compliance with directions or to secure hearing dates.

Enforcement of judgments/awards

The usual modes of enforcement of monetary judgments such as seizure of both immoveable and moveable property followed by sale by auction, garnishment of monies in credit in financial institutions or other creditors, bankruptcy, winding up and summoning debtors to be cross-examined as to their means of settlement are all available under the judicial process in Malaysia.

Applying for a charging order to levy a charge on the judgment debtor's securities in the form of shares in both listed and unlisted companies is sometimes used. The insolvency practice is well developed with appointments of receivers being a common mode of enforcement of debentures and dissolution of partnerships.

Perhaps the method feared by most of the disobeying parties is an order of committal. Where a judgment debtor wilfully disobeys the judgment or order, an order of committal may be made for contempt of court. It is an effective method of enforcement because it may lead to punishment by way of an imprisonment or fine.

In the case of arbitral awards, section 36 of the Arbitration Act 2005 (Act 646) provides that an award made by an arbitral tribunal pursuant to an arbitration agreement shall be final and binding on the parties and may be relied upon by any party by way of defence, set-off or otherwise in any proceedings in any court. Enforcement of the award, where the seat of arbitration is in Malaysia or an award from a foreign State, by calling in aid the court machinery to do so can be done. This is by way of an application in writing to the High Court for recognition by entry as a judgment in terms of the award or by action.

The author had occasion to successfully argue that an arbitral award is final and binding and is only needed to be registered as a judgment if the aid of the court machinery for enforcement is required. The provision relied upon then was section 17 of the Arbitration Act 1952 (Act 93) which was the precursor of section 36 of the current Arbitration Act 2005 (Act 646).

For foreign judgments, the First Schedule of the Reciprocal Enforcement of Judgments Act 1958 (Act 99) provides for their enforcement by way of registration in the High Court of Malaya and/or the High Court of Sabah and Sarawak provided the conditions stated in the Act are satisfied. The conditions are: (1) the country must have a reciprocal enforcement of judgment arrangement with Malaysia; these countries are the United Kingdom, Singapore, Hong Kong Special Administrative Region of the People's Republic of China, New Zealand, Republic of Sri Lanka (Ceylon) and India (excluding the State of Jammu and Kashmir, the State of Manipur, tribal areas of State of Assam, and scheduled areas of the States of Madras and Andhra) and Brunei Darussalam; (2) there must be a final judgment (notwithstanding that an appeal may be pending against it, or that it may still be subject to appeal) in a superior court in that country and for a definite sum of money; (3) the enforcement is carried out within 6 years from the date of judgment; and (4) the judgment should not be one relating to matrimonial matters, administration of the estates of deceased persons, bankruptcy, winding up of companies, lunacy or guardianship of infants, taxes, fines or penalties.

Where the foreign judgment sum is expressed in a foreign currency, the judgment shall be registered as if it were a judgment sum in Malaysian currency, at the exchange rate prevailing as at the date of the judgment of the original court. In addition to the principal sum payable under the judgment of the original court, any interest which, by the law of the country of the original court, becomes due under the judgment up to the time of registration, is also enforceable. Judgment shall also be entered and registered for reasonable costs of and incidental to registration.

For foreign countries not listed under the First Schedule of the aforesaid Reciprocal Enforcement of Judgments Act 1958 (Act 99), the judgment creditor has to institute fresh proceedings to first secure a judgment. This the judgment creditor can do summarily by filing an originating summons supported by an affidavit exhibiting the foreign judgment in order to obtain a summary judgment enforceable in Malaysia. This is based upon the provisions of section 8 of this Act 99 which provides that the foreign

judgment shall be recognised in any court in Malaysia as conclusive between the parties thereto in all proceedings founded on the same cause of action and may be relied on by way of defence or counter-claim in any such proceedings.

Privilege and disclosure

One of the most important procedural steps in the preparation of any matter involving dispute resolution is the marshalling of relevant facts. The power of the courts to order discovery in aid of this process is very extensive subject generally to the two main limitations of national security and solicitor-client confidentiality besides express statutory prohibitions, an example of which can be found in section 138 of the Income Tax Act 1967 (Act 53). The underlying and fundamental criteria to seek discovery of any evidence is relevance. So long as it can be shown that the evidence sought is relevant and available, discovery will be ordered. Unlike some jurisdictions, it has been held that illegally obtained evidence is admissible so long as it is relevant.

In Malaysia, the common law right of privilege against self-incrimination has been expressly taken away by section 132 of the Evidence Act, 1950 (Act 56) which provides as follows:

"*132. Witness not excused from answering on ground that answer will criminate*

(1) A witness shall not be excused from answering any question as to any matter relevant to the matter in issue in any suit, or in any civil or criminal proceeding, upon the ground that the answer to that question will criminate or may tend directly or indirectly to criminate, him, or that it will expose, or tend directly or indirectly to expose, the witness to a penalty or forfeiture of any kind, or that it will establish or tend to establish that he owes a debt or is otherwise subject to a civil suit at the instance of the Government of Malaysia or of any State or of any other person.

(2) No answer which a witness shall be compelled by the court to give shall subject him to any arrest or prosecution, or be proved against him in any criminal proceeding, except a prosecution for giving false evidence by that answer.

(3) Before compelling a witness to answer a question the answer to which will criminate or may tend directly or indirectly to criminate him the court shall explain to the witness the purport of subsection (2)."

Where the party refuses to obey a court order for discovery, the court may dismiss the action, strike out the defence, or give judgment in default of discovery and make any such order as it thinks just. Furthermore, the defaulting party or his advocate and solicitor may be liable to committal for contempt of an order of court.

Where a document is disclosed on discovery, there is an implied undertaking by the party to whom the document is disclosed not to use the document for any purpose otherwise than in the proceedings. Discovery is nevertheless limited to documents which are or have been in the party's possession, custody or power and relating to any matter in question between the parties.

More importantly, certain documents, though relevant, are privileged from being produced, as prescribed by section 121 to section 132 of the Evidence Act 1950 (Act 56). The more important ones are listed below. First, judges cannot be compelled to answer any questions as to his conduct as judge or as to anything which came to his knowledge in court as judge. Second, a married person cannot be compelled to disclose marital communication unless the person who made it consents, except in suits between married persons. Third, no person shall be permitted to produce any unpublished official records relating to affairs of state, or to give any evidence derived therefrom, except with the permission of the officer concerned who is in turn subject to the control of a Minister or Chief Minister. Fourth, a public officer cannot be compelled to disclose communications made to him in official confidence when the disclosure is contrary to the public interest. Fifth is legal professional communication. Under this privilege, an advocate, cannot, without the client's express consent: (1) disclose communications made to him in the course and for the purpose of his employment as such advocate by or on behalf of his client; (2) state the contents or condition of any document with which he has become acquainted in the course and for the purpose of his employment; or (3) disclose any advice given by him to this client in the course and for the purpose of his professional employment.

The same prohibition extends to interpreters and the clerks or servants of the advocate. However, these prohibitions cease to apply when: (1) the communication was made in the furtherance of any illegal purposes; or (2) the advocate had observed any fact showing any crime or fraud has been committed since the commencement of his employment.

It has been held that professional reports secured in aid of preparing for dispute resolutions are similarly protected by legal professional privilege even though the report may be one made by a medical doctor.

Costs and funding

In the litigation field in Malaysia, no party can recover any costs except pursuant to an order of the court to that effect, be it oral or written. The general rule is that costs follow the event i.e. it is normally awarded to the victor. An exception to this general rule is when there is evidence of the winning party's misconduct in the conduct of the proceedings such as deliberate suppression of material facts. The court will also make no order as to costs (each party is to bear its own costs) if the successful party delayed in raising issues which should have been raised before or at commencement of the trial thereby causing the opponent to incur unnecessary expenses in proceeding with the trial. The same is true when relevant authorities or a legal point which could have been successfully relied upon by the successful party was not brought to the attention of the court of first instance.

Costs awarded by the court have been on the rise. The general rule of thumb is that the costs recoverable is about one third that payable to one's own solicitor. With the view to cutting down the time taken for taxation (assessment) of costs, the courts from the subordinate courts right up to the apex court, the Federal Court, have been awarding lump sum orders for costs at the time of the delivery of decisions. Although there are some seven guidelines in quantifying costs, it is observed that the quantum awarded is, to a large extent, dependent upon the standing and seniority of the counsel appearing, as well as the complexity of the matter at hand, followed by the quantum of the subject matter of dispute.

As for the professional charges which an advocate and solicitor is entitled to recover (assuming the client disputes the amount) from his client, the costs can be ordered to be taxed even if there is a prior written agreement on the same. There is, however, a timeline of six months and, subject to special circumstances being shown, up to 12 months from the date of delivery of the bill of charges to petition such a challenge. Taxation of a solicitor's bill is proceeded with on the basis that, save for getting up/professional fees, all costs will be allowed except those that are of an unreasonable amount or that have been unreasonably incurred.

Certain statutory provisions, which further limit the court's discretion as to costs, also exist. For example, section 44(1)(a)(i)-(iii) of the Arbitration Act 2005 (Act 646) provides that, unless otherwise agreed by the parties, the proper forum for an award of costs in arbitration is the arbitration tribunal which may also award such costs to be paid as between the solicitor and client. Besides that, section 220(1) of the Companies Act 1965 (Act 125) provides that the petitioner (other than the company or the liquidator) shall, at his own cost, prosecute all proceedings in the winding-up until a liquidator has been appointed. The liquidator shall reimburse the petitioner, out of the assets of the company, of the taxed costs incurred by the petitioner in the winding up proceedings. All proper costs, charges and expenses of and incidental to the winding up, including the remuneration of the liquidator, shall be payable out of the assets of the company in priority to all other claims.

Litigation funding is still largely an alien concept in Malaysia. A pure contingency fee arrangement is prohibited by section 112 of the Legal Profession Act, 1976 (Act 166). The author had sat in an *Ad Hoc* Committee to Review the Legal Profession Act wherein it was proposed that the legal profession be allowed to have conditional fee arrangements modelled after the South African Contingency Fees Act (No. 66 of 1997). These proposals have as yet to be enacted. In the interim, the Bar Council of Malaysia is said to have made rules to allow for some contingency fee arrangements in the practice areas of Personal Injury and Industrial Relations. Whether such rules can overcome the statutory provisions in the aforesaid section 112 is still moot. However, there is at present a High Court authority which had allowed recovery by a law firm of legal charges based upon a hybrid formula made up of a fixed retainer plus a percentage of the additional compensation recoverable.

Interim relief

A wide range of injunctive reliefs such as *Anton Piller*, *Mareva*, *Fortuna, anti-suit*, *quia timet* prohibitory, mandatory and *Erinford* injunction orders are available under the Malaysia legal system. The jurisdiction of the High Court to grant injunctions, be it temporary or perpetual, stems from Chapter IX of the Specific Relief Act 1950 (Act 137) and paragraph 6 of the Schedule to the Courts of Judicature Act 1964 (Act 91). It is to be noted that currently only the High Courts have the jurisdiction to grant any form of injunction. Although, the recently enacted Subordinate Courts (Amendment) Act 2010 has increased the jurisdiction of the Sessions Court (to deal with claims of up to Ringgit Malaysia One (1) million) and has also conferred jurisdiction upon the Sessions Court to grant injunctive reliefs, it has not yet come into force. These amendments are, however, expected to come into force in mid-2012.

As far as interim injunctions are concerned, section 51(1) of the Specific Relief Act 1950 (Act 137) provides that temporary injunctions as such are to continue until a specified time, or until the further order of the court. An interim injunction binds the party against whom it is sought for a specific period of time pending the outcome of the suit and maintains the *status quo* of the parties until the issues in the main action have been decided, until it is set aside. An injunction which forbids the performance of an act is prohibitory, while an injunction which directs a party to do something is mandatory. As compared to an interim prohibitory injunction, the courts are more reluctant to grant interim mandatory injunction unless it is an unusually strong and clear case. The simple rationale is that granting the relief of an interim mandatory injunction is often equivalent to the granting of the primary relief sought in the main action.

Any party to a law suit may apply for an injunction at any stage of the proceeding, regardless of whether or not a claim for an injunction is included in that party's writ and statement of claim or counterclaim or third party notice. A defendant is also not prohibited from applying for an injunction in the absence of a counterclaim if the relief sought is incidental or arises from the relief sought by the plaintiff.

Section 54 of the Specific Relief Act 1950 (Act 137) categorises certain circumstances in which an injunction cannot be granted. These include a situation wherein an injunction is applied to stay a judicial proceeding pending at the institution of the suit in which the injunction is sought, unless such a restraint is necessary to prevent a multiplicity of proceedings. This provision has been held by the Court of Appeal to be the basis for what is commonly called an anti-suit injunction. The author has recently, in 2011, in the court of first instance (High Court), successfully secured an anti-suit injunction to prevent the plaintiff from continuing with the prosecution of similar proceedings in Germany as the plaintiff had already commenced a suit in Malaysia. The decision of the High Court was recently upheld on appeal by the Court of Appeal of Malaysia on 3rd February, 2012.

For civil proceedings instituted against the government, section 29(1)(a) of the Government Proceedings Act 1956 (Act 359) prohibits the grant of an injunction against the government. The same is true when granting an injunction against an officer of the government is tantamount to granting an injunction against the government.

In respect of the availability of a worldwide freezing order, there is one reported local case wherein the Court of Appeal upheld a worldwide *Mareva* injunction. In another case, the Court of Appeal held *"…the effect of the Mareva injunctions obtained by the plaintiffs is 'worldwide' and the proceeds of sale, if any, will still be caught by the injunctions even if the same were to be remitted to the Mareva defendants outside the territorial jurisdiction of Malaysia…"*. This decision implies that Malaysian courts do recognise the enforceability of worldwide *Mareva* injunctions.

International arbitration

Malaysia sees itself as an attractive hub for international arbitration due to a number of reasons. First and foremost, although Bahasa Malaysia or Malay is the national language of Malaysia and is the official language of the court; English is widely used. Malaysia prides itself as an English-speaking common law country. As such, parties from other common law countries would be pleased with the familiarity of the legal system. Malaysia is also a signatory to the United Nations Convention on the

Recognition and Enforcement of Foreign Arbitral Awards (also known as the New York Convention) since 1985. The Arbitration Act 2005 (Act 646) (applicable for both domestic and international arbitrations), which is primarily based on the United Nations Commission on International Trade Law (UNCITRAL) Model Law, is also in place in the country. The Kuala Lumpur Regional Centre For Arbitration ("KLRCA") was the first international arbitration centre to have adopted the 2010 version of the UNCITRAL rules with modifications (in order to speed up proceedings, enhance procedural efficiency and ensure the enforceability of the final award). There will also be an update on the KLRCA Rules in 2013 to cater for disputes in the maritime and shipping industry. To ensure that disputes involving smaller quantum (less than Ringgit Malaysia One (1) million) are able to be settled promptly within 120 days which can be extended by a further 20 days to 140 days; the KLRCA also introduced the Fast Track Rules 2010.

To further enhance the effectiveness of the resolution of construction disputes via adjudication, the Construction Industry Payment and Adjudication Bill ("CIPA") will be tabled in March 2012. Besides aiming to facilitate regular and timely progress payments, the CIPA will provide a mechanism for speedy dispute resolution through fast track arbitration, as well as providing remedies for the recovery of timely payments in the construction industry.

In the international arena, the KLRCA was recently successful in its bid with the International Council of Arbitration for Sport in Lausanne, Switzerland and, as at the 28th June 2011, it is the official host of an alternative hearing centre for the Court of Arbitration for Sport.

The recent amendment to the Arbitration Act 2005 (Act 646), which came into force on 1st July 2011, provides greater clarity in the law and gives reassurance to the disputants of the availability of interim measures and enforceability of arbitral awards made in Malaysia, in respect of domestic and international arbitrations. The greatest flexibility is given to international disputants as, although section 3 of the said Act generally excludes judicial intervention relating to international arbitrations, parties in an international arbitration may agree to opt into Part III of the Act (which provides for judicial interference), in whole or in part. The amended section 8 limits court intervention and reads as follows:

> "*8. Extent of Court Intervention*
> *No Court shall intervene in matters governed by this Act except where so provided in this Act*."

Furthermore, under section 39(1)(a)(ii) of the said Act, the determination of the validity of an arbitration agreement is to be decided under the laws of the State where the award was made and not necessarily under the laws of Malaysia.

Section 48 of the said Act also spells it out clearly that the KLRCA enjoys immunity in carrying out its functions. The KLRCA is neither a government department nor agency and therefore it enjoys full autonomy and remains neutral and independent.

In terms of arbitrators, the KRLCA boasts an impressive panel which has nearly 700 domestic and international arbitrators and mediators with diverse specialisation and qualifications.

Parties to a dispute would also want a cost-effective arbitration and they would be happy to find in Malaysia not only the relatively lower arbitration fees, but also living and logistics costs in the region. As it stands now Malaysia has a conducive legal infrastructure and environment. It is politically stable and has good physical infrastructure that complements arbitration.

With the aid of technology, costs for international arbitration can be reduced. The author was involved in an arbitration in 2011 (and continuing) where the International Court of Arbitration Rules applied with London as the seat of arbitration. The preliminary proceedings in London saw a witness from Malaysia being allowed to testify from Kuala Lumpur via Skype which did cut down on costs considerably and it is anticipated other witnesses will be testifying either via Skype or video conferencing in due course.

Mediation and ADR

The full support for mediation from the judiciary is evident by the existence of "court annexed mediation".

Mediation for civil and commercial cases pending in the High Court and Subordinate Courts was effected pursuant to the Mediation Practice Direction No. 5 of 2010 which came into force on 16 August 2010. The Practice Direction essentially provides that judges may invoke Rules of the High Court 1980 and Subordinate Courts Rules 1980 to give such directions that the parties facilitate settlement of the matter, pending before the court, by way of mediation. In Malaysia, two broad categories of mediation are available (parties would be asked by the hearing judge to pick either one), namely judge-led mediation and mediation by a parties-agreed non-judge mediator. Unless disputants otherwise agree, the hearing judge of the pending case will not be the mediation judge. Where the mediation fails to lead to an amicable settlement, the case will revert back to the hearing judge. On the other hand, where mediation does lead to an amicable settlement, parties shall sign a draft copy of the order setting out the agreed terms of the settlement. The mediation judge shall then proceed to record a consent judgment premised on the agreed terms.

As for mediation by a parties-agreed non-judge mediator, the parties are free to choose from the panel of certified mediators furnished by the Malaysian Mediation Centre of the Bar Council, the KLRCA or any other qualified mediator. Upon a successful mediation, agreement may be reduced into a settlement agreement as a record for a subsequent consent judgment.

In 2011, 2 cases were mediated at the Federal Court. In Malaysia, a settlement arrived in court annexed mediation will eventually take the form of a court order and would be enforceable as such. During the same period, 13 cases were settled through mediation at the Court of Appeal. The success is even more evident in the High Court and subordinate courts with about 50% of cases settled through mediation, out of 2,276 and 4,347 cases respectively. The fairly low figures of formal mediations is said to be attributed to the low awareness of citizens that settlements reached through mediation are similar to court orders in that the former are also enforceable by law, as well as the novelty of the concept of mediation. However, the judiciary has done its utmost to promote the use of mediation by setting up mediation centres in the court complexes of Kuala Lumpur and other major cities throughout the country.

Recently in 2011, a training course aimed to improve mediation skills amongst judges was conducted by Mr. Justice Gordon J. Low, a Senior Federal Judge of Utah, USA.

Currently, unlike certain countries, it is not a mandatory requirement for cases to be mediated before they are allowed to proceed to courts. One of the main criticisms against court annexed mediation is that the mediating judge (in court) tends to adopt an evaluative approach in a very formal setting as opposed to a facilitative approach in a more congenial setting. The facilitative approach is favoured by mediators practising under the auspices of the Malaysian Mediation Centre of the Bar Council of Malaysia.

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