



JDRN PRESENTATION ON MEDIATION IN MALAYSIA:

**MEDIATION PRACTICES IN CIVIL, COMMERCIAL AND
CONSTRUCTION DISPUTES**

**BY: JUSTICE LIM CHONG FONG
COURT OF APPEAL JUDGE
28TH OCTOBER 2024**

ORDER 34 (2) RULES OF COURT 2012

Pre-trial case management when directed by the Court (O. 34, r. 2 (2))

(2) At pre-trial case management, the Court may consider any matter including the possibility of settlement of all or any of the issues in the action or proceedings and require the parties to furnish the Court with such information as it thinks fit, and the appropriate orders and directions that should be made to secure the just, expeditious and economical disposal of the action or proceedings.



COURT-ANNEXED MEDIATION

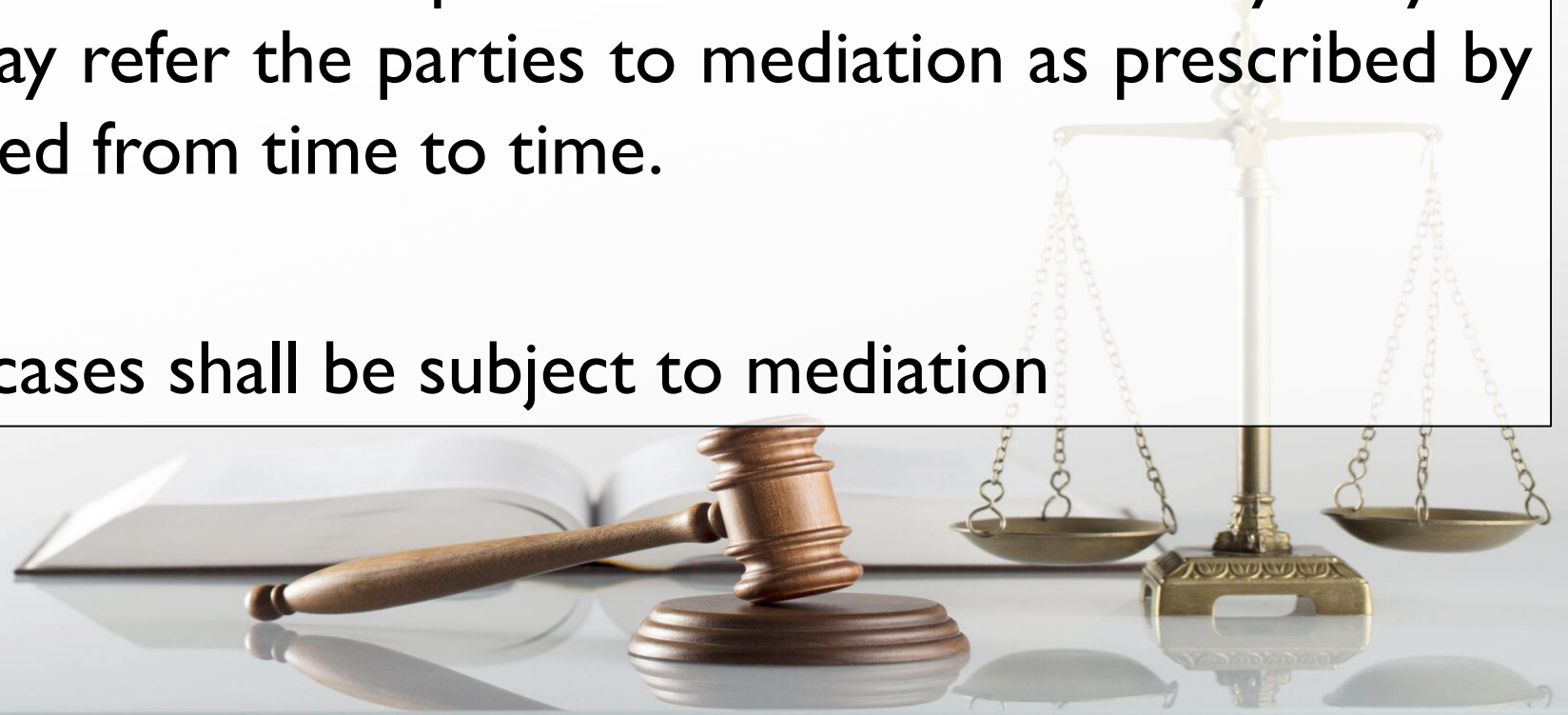
- ☐ Core component of court process
- ☐ Order 34 rules 2 (IA) & (IB) ROC 2012
- ☐ Practice Direction No. 2 of 2022
- ☐ Judges, Registrars and Others as mediators
- ☐ Alternative to trial



ORDER 34 RULES 2 (IA) & (IB) RULES OF COURT 2012

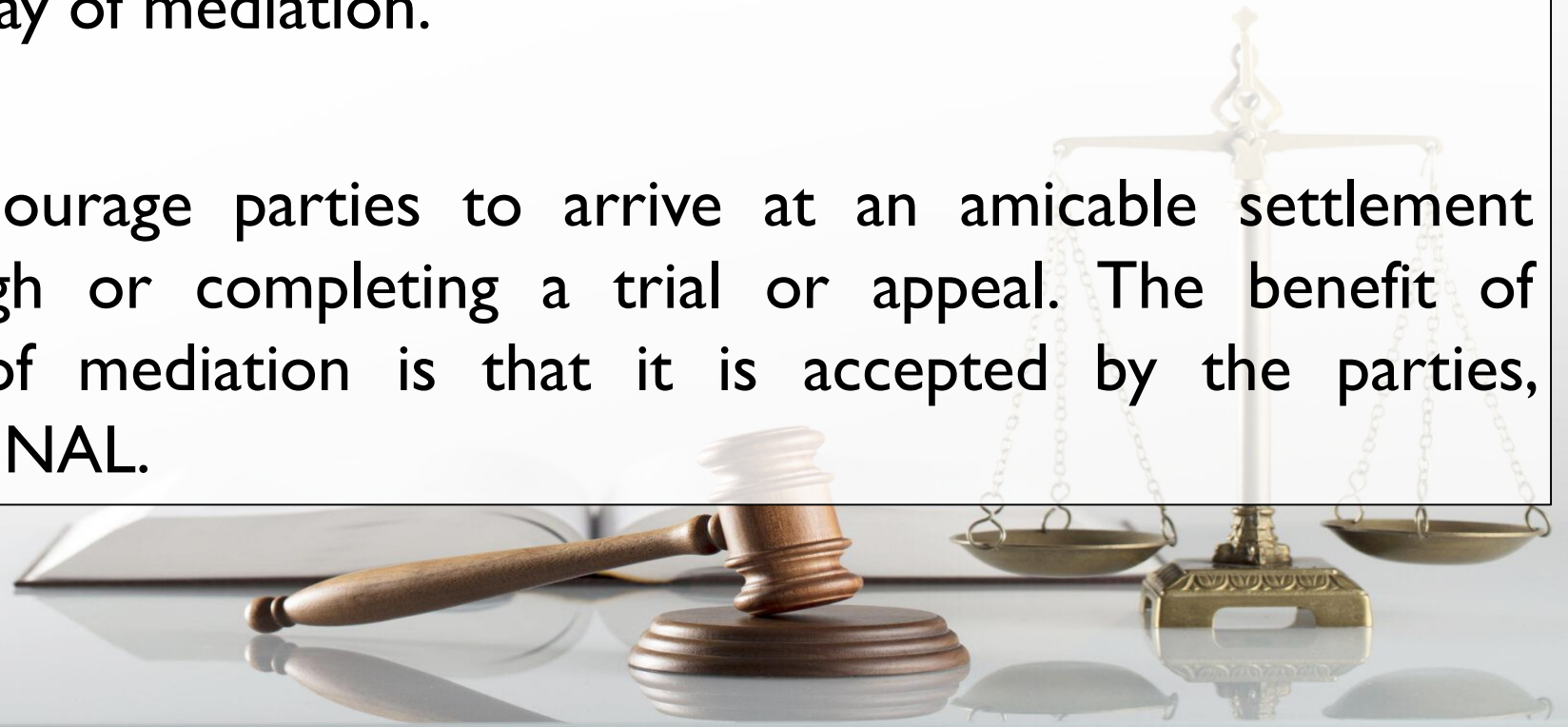
(IA) If a judge of the High Court identifies that an issue arising in the action on proceeding between the parties can be resolved by way of mediation, the judge may refer the parties to mediation as prescribed by practice directions issued from time to time.

(IB) All running down cases shall be subject to mediation



PRACTICE DIRECTION NO. 2 OF 2022

- ❑ Effective 1 April 2022, all Courts may at the pre-trial case management stage give directions that the parties facilitate the settlement of the matter before the court by way of mediation.
- ❑ **Objective** – to encourage parties to arrive at an amicable settlement without going through or completing a trial or appeal. The benefit of settlement by way of mediation is that it is accepted by the parties, expeditious and it is FINAL.



PRACTICE DIRECTION NO. 2 OF 2022

Modes of Mediation

- ☐ Judge-led mediation
- ☐ AIAC, MMC, SIDREC, MCS, AMS and other approved body
- ☐ By a mediator agreeable by both parties.



PRACTICE DIRECTION NO. 2 OF 2022

Judge-led Mediation (see Annexure C)

- ☐ Judge hearing case should not be the MJ – except when parties agree.
- ☐ Judge should pass case to another judge court officer to mediate.
- ☐ If mediation fails, case goes back to original Judge to hear case.
- ☐ MJ should not see parties without their lawyer's presence unless (i) parties agreed or (ii) parties not represented.
- ☐ May be conducted physically or virtually
- ☐ If mediation is successful, MJ to record consent judgment - *immediately, forthwith and straightaway.*



PRACTICE DIRECTION NO. 2 OF 2022

Institutional Mediation (see Annexure D)

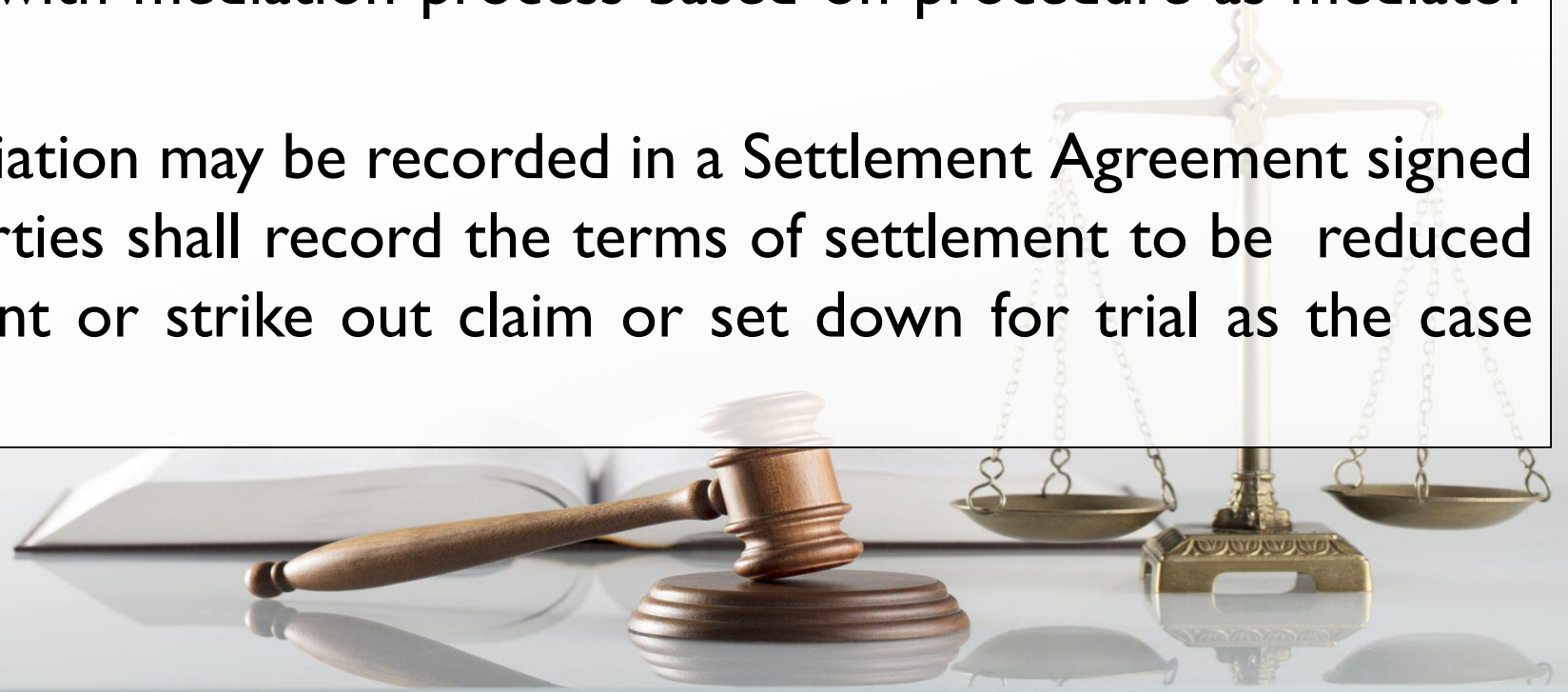
- ☐ Direct solicitors to write to Institution to refer matter for mediation;
- ☐ Mediator to conduct mediation based on Mediation Rules of the Institution;
- ☐ Record consent judgment, strike out claim, or set case down for trial, as the case may be.



PRACTICE DIRECTION NO. 2 OF 2022

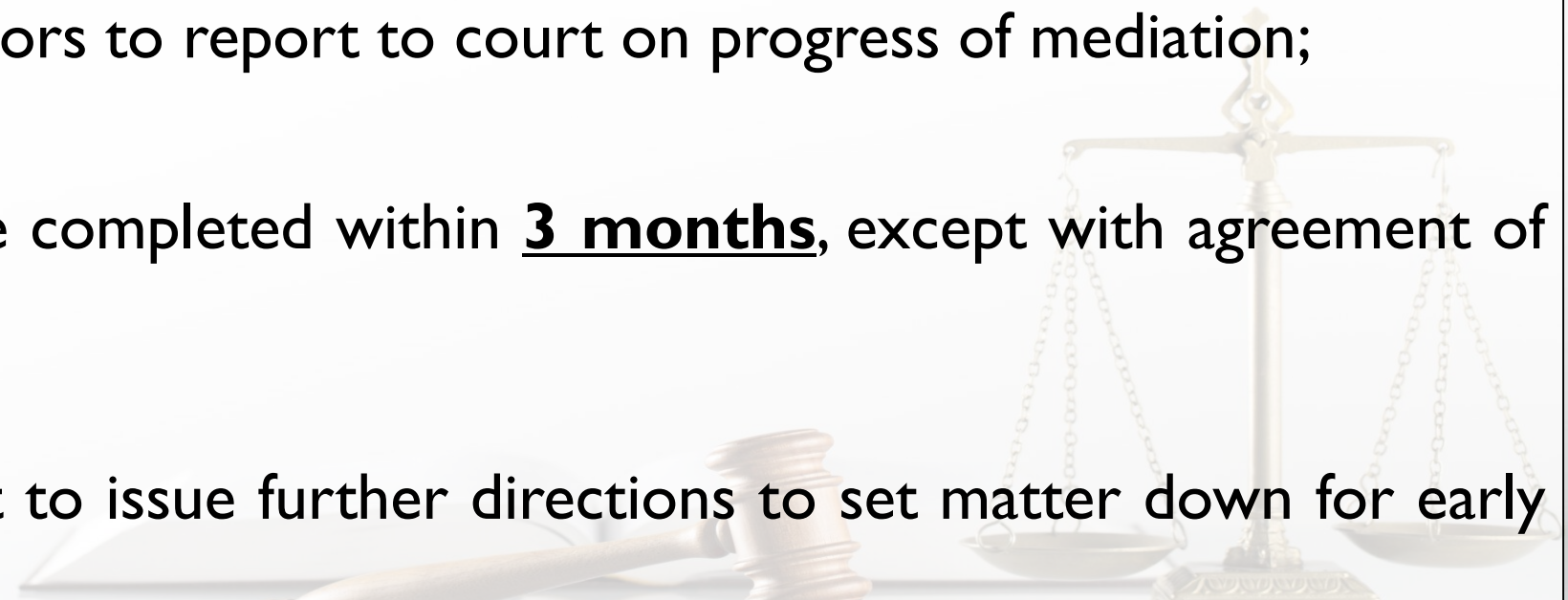
Mediator Agreed by both Parties (see Annexure E)

- ☐ A qualified and experienced mediator may be chosen by the parties;
- ☐ Mediator to proceed with mediation process based on procedure as mediator deem fit;
- ☐ Any settlement at mediation may be recorded in a Settlement Agreement signed by parties and then parties shall record the terms of settlement to be reduced into a consent judgment or strike out claim or set down for trial as the case may be.



PRACTICE DIRECTION NO. 2 OF 2022

Time Limit for All Mediation Process

- ☐ Court should fix a CM date of not more than 1 month from date case referred to mediation for solicitors to report to court on progress of mediation;
 - ☐ All mediations must be completed within 3 months, except with agreement of Court.
 - ☐ If mediation fails, court to issue further directions to set matter down for early trial.
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JUDGE LED MEDIATION APPROACHES



MEDIATION TECHNIQUE

Solutional

**Participation of
solicitors**

Causus/Conference

**Listening, Probing,
Suggesting**

**Frequency of
Meeting**

Consent Judgment

RESOLUTION

Ultimately, when each of the parties is able to voice their opinion, listen to each other's perspective, compromise, and agree on a solution, everyone feels good about the outcome.





THANK YOU