

Supreme Court Practice Directions (Amendment No. 1 of 2016)

Part II: General Matters

8. Operating hours of the Supreme Court

(1) The Supreme Court operates from 8.30 a.m. to 6.00 p.m. from Monday to Friday. However, various offices and counters within the Supreme Court have different operating hours.

(2) The Legal Registry of the Supreme Court (Level 2) is open from 9.00 a.m. to 5.30 p.m. from Monday to Thursday. On Friday, it is open from 9.00 a.m. to 5.00 p.m. ~~On Saturday, it is open from 9.00 a.m. to 12.30 p.m.~~

(3) The Commissioner for Oaths office (Level 3M) is open from 8.30 a.m. to 5.30 p.m. from Monday to Thursday. On Friday, it is open from 8.30 a.m. to 5.00 p.m. ~~On Saturday, it is open from 8.30 a.m. to 12.30 p.m.~~

Part III: Originating Processes and Documents

33. Substituted Service

(1) In any application for substituted service, the applicant should persuade the Court that the proposed mode of substituted service will probably be effectual in bringing the document in question to the notice of the person to be served.

(2) Two reasonable attempts at personal service should be made before an application for an order for substituted service is filed. In an application for substituted service, the applicant shall demonstrate by way of affidavit why he or she believes that the attempts at service made were reasonable.

(3) The applicant should, where appropriate, also consider other modes of substituted service, such as AR registered post or electronic means (including electronic mail or Internet transmission) in addition to or in substitution of substituted service by posting on doors or gates of residential and business premises.

(4) An application for substituted service by posting at ~~an residential~~ address or by AR registered post should contain evidence (for example, relevant search results from the Inland Revenue Authority of Singapore, the Singapore Land Authority, the Housing & Development Board or the Accounting and Corporate Regulatory Authority) that the person to be served is resident or can be located at the property.

(5) For the avoidance of doubt, substituted service by AR registered post is deemed to be effected when the postal service has delivered the document, or attempted to deliver the document (in cases where no one is present or willing to accept the document).

(6) If substituted service is by electronic mail, it has to be shown that the electronic mail account to which the document will be sent belongs to the person to be served and that it is currently active.

(7) An application for substituted service by advertisement (in one issue of the Straits Times if the person to be served is literate in English, or one issue of the Straits Times and one issue of one of the main non-English language newspapers where his language literacy is unknown) should only be considered as a last resort and should contain evidence that the person to be served is literate in the language of the newspaper in which the advertisement will be placed.

Part IIIA: Alternative Dispute Resolution

35B. Overview of Alternative Dispute Resolution (ADR) for civil cases

(1) This Part of the Practice Directions applies only to civil cases in the High Court and the Court of Appeal.

(2) It is the professional duty of advocates and solicitors to advise their clients about the different ways their disputes may be resolved using an appropriate form of ADR.

(3) The guidelines in Appendix I to these Practice Directions on advising clients about ADR shall apply.

(4) ADR should be considered at the earliest possible stage in order to facilitate the just, expeditious and economical disposal of civil cases. This is especially where ADR may save costs, achieve a quicker resolution and a surer way of meeting their client's needs.

(53) The attention of ~~counsel and~~ advocates and solicitors as well as all parties is drawn to Order 59, Rule 5(c) of the Rules of Court, which provides that:

The Court in exercising its discretion as to costs shall, to such extent, if any, as may be appropriate in the circumstances, take into account — ... the parties' conduct in relation to any attempt at resolving the cause or matter by mediation or any other means of dispute resolution ...

Advocates and solicitors should advise their clients on potential adverse costs orders for any unreasonable refusal to engage in ADR.

Part IV: Interlocutory Applications

42. *Mareva* injunctions and search orders

...

(6) On an *ex parte* application for either a *Mareva* injunction or a search order, an applicant may be required, in an appropriate case, to support his cross-undertaking in damages by a payment to be made into Court, ~~the provision of~~ a bond to be issued by an insurance company with a place of business within Singapore, a ~~banker's written~~ guarantee to be issued from a bank with a place of business within Singapore or a payment to the applicant's solicitor to be held by the solicitor as an officer of the Court pending further order.

Appendix A

7.

Para 42(1)(b)

Injunction Prohibiting Disposal of Assets Worldwide

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[CASE NO.]

Between

[Intended] Plaintiff

And

[Intended] Defendant

BEFORE THE HONOURABLE JUSTICE _____ IN CHAMBERS

INJUNCTION PROHIBITING DISPOSAL OF ASSETS WORLDWIDE

IMPORTANT:- NOTICE TO THE DEFENDANT

- (a) **This order prohibits you from dealing with your assets up to the amount stated. The order is subject to the exceptions stated at the end of the order. You should read all the terms of the order very carefully. You are advised to consult a solicitor as soon as possible. You have a right to ask the Court to vary or discharge this order.**
- (b) **If you disobey this order you will be guilty of contempt of Court and may be sent to prison or fined.φ**

φ The notice is not a substitute for the endorsement of a penal notice.
[] Relevant information to be inserted.

THE ORDER

An application was made today [date] by counsel for the plaintiff, [] to Justice [] by way of ex-parte summons no. [] of []. Justice [] heard the application and read the affidavit(s) of [name] filed on [date].

As a result of the application IT IS ORDERED by Justice [] that:

Disposal of assets

1. (a) The defendant must not:
 - (i) remove from Singapore any of his assets which are in Singapore whether in his own name or not and whether solely or jointly owned up to the value of [\$]; or
 - (ii) in any way dispose of or deal with or diminish the value of any of his assets whether they are in or outside Singapore whether in his own name or not and whether solely or jointly owned up to the same value.
- (b) This prohibition includes the following assets, in particular:
 - (i) the property known as [] or the net sale money after payment of any mortgages if it has been sold;
 - (ii) the property and assets of the defendant's business known as [] (or carried on at []) or the sale money if any of them have been sold; and
 - (iii) any money in the accounts numbered [] at [].
- (c) If the total unencumbered value of the defendant's assets in Singapore exceeds [\$], the defendant may remove any of those assets from Singapore or may dispose of or deal with them so long as the total unencumbered value of his assets still in Singapore remains not less than [\$]. If the total unencumbered value of the defendant's assets in Singapore does not exceed [\$], the defendant must not remove any of those assets from Singapore and must not dispose of or deal with any of them, but if he has other assets outside Singapore, the defendant may dispose of or deal with those assets so long as the total unencumbered value of all his assets whether in or outside Singapore remains not less than [\$].

Disclosure of information

2. The defendant must inform the plaintiff in writing at once of all his assets whether in or outside Singapore and whether in his own name or not and whether solely or jointly owned, giving the value, location and details of all such assets. The information must be confirmed in an affidavit which must be served on the plaintiff's solicitors within [] days after this order has been served on the defendant.

EXCEPTIONS TO THIS ORDER

3. This order does not prohibit the defendant from spending [\$] a week towards his ordinary living expenses and also [\$] a week [or a reasonable sum] on legal advice and representation. But before spending any money, the defendant must tell the plaintiff's solicitors where the money is to come from.
4. This order does not prohibit the defendant from dealing with or disposing of any of his assets in the ordinary and proper course of business. The defendant shall account to the plaintiff [state interval] for the amount of money spent in this regard.
5. The defendant may agree with the plaintiff's solicitors that the above spending limits should be increased or that this order should be varied in any other respect but any such agreement must be in writing.

EFFECT OF THIS ORDER

6. A defendant who is an individual who is ordered not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.
7. A defendant which is a corporation and which is ordered not to do something must not do it itself or by its directors, officers, employees or agents or in any other way.

THIRD PARTIES

Effect of this order

8. It is a contempt of Court for any person notified of this order knowingly to assist in or permit a breach of the order. Any person doing so may be sent to prison or fined.

Effect of this order outside Singapore

9. The terms of this order do not affect or concern anyone outside the jurisdiction of this Court until it is declared enforceable or is enforced by a Court in the relevant country and then they are to affect him only to the extent they have been declared enforceable or have been enforced UNLESS such person is:
 - (a) a person to whom this order is addressed or an officer or an agent appointed by power of attorney of such a person; or
 - (b) a person who is subject to the jurisdiction of this Court; and

- (i) has been given written notice of this order at his residence or place of business within the jurisdiction of this Court; and
- (ii) is able to prevent acts or omissions outside the jurisdiction of this Court which constitute or assist in a breach of the terms of this order.

Assets located outside Singapore

10. Nothing in this order shall, in respect of assets located outside Singapore, prevent any third party from complying with:
- (a) what it reasonably believes to be its obligations, contractual or otherwise, under the laws and obligations of the country or state in which those assets are situated or under the proper law of any contract between itself and the defendant; and
 - (b) any orders of the Courts of that country or state, provided that reasonable notice of any application for such an order is given to the plaintiff's solicitors.

Set-off by banks

11. This injunction does not prevent any bank from exercising any right of set-off it may have in respect of any facility which it gave to the defendant before it was notified of the order.

Withdrawals by the defendant

12. No bank need enquire as to the application or proposed application of any money withdrawn by the defendant if the withdrawal appears to be permitted by this order.

[SERVICE OUT OF THE JURISDICTION AND SUBSTITUTED SERVICE]

13. (a) The plaintiff may serve the writ of summons on the defendant at [] by [mode of service].
- (b) If the defendant wishes to defend the action, he must enter an appearance within [] days of being served with the writ of summons.]

UNDERTAKINGS

14. The plaintiff gives to the Court the undertakings set out in Schedule 1 to this order.

DURATION OF THIS ORDER

15. This order will remain in force until the trial or further order.

VARIATION OR DISCHARGE OF THIS ORDER

16. The defendant (or anyone notified of this order) may apply to the Court at any time to vary or discharge this order (or so much of it as affects that person), but anyone wishing to do so must inform the plaintiff's solicitors.

NAME AND ADDRESS OF PLAINTIFF'S SOLICITORS

17. The plaintiff's solicitors are:
[Name of lawyer(s) having conduct of action or charge of matter.]
[Name of law firm.]
[Address of law firm.]
Tel: [Telephone number.]
Fax: [Facsimile number.]
Ref: [File reference of law firm.]

[INTERPRETATION OF THIS ORDER

18. (a) In this order references to "he", "him" or "his" include "she" or "her" and "it" or "its".
- (b) Where there are 2 or more defendants then (unless the context indicates differently):
- (i) References to "the defendants" mean both or all of them;
 - (ii) An order requiring "the defendants" to do or not to do anything requires each defendant to do or not to do the specified thing; and
 - (iii) A requirement relating to service of this order, or of any legal proceedings, on "the defendants" means service on each of them.]

Dated this [] day of [], [].

Registrar.

SCHEDULE 1

Undertakings given to the Court by the plaintiff

1. If the Court later finds that this order has caused loss to the defendant, and decides that the defendant should be compensated for that loss, the plaintiff shall comply with any order the Court may make.
- ~~2.~~ The plaintiff, in respect of any order the Court may make pursuant to para (1) above, will:
 - ~~(a)~~ on or before [date] provide to the defendant security in the sum of [\$] by causing [payment to be made into Court / a bond to be issued by an insurance company with a place of business within Singapore / a written guarantee to be issued from a bank with a place of business within Singapore / payment to the plaintiff's solicitor to be held by the solicitor as an officer of the Court pending further order]*; and
(*Delete where appropriate)
 - ~~(b)~~ cause evidence of the provision of security to be extended to the defendant immediately after the security has been put up.]
- ~~23.~~ As soon as practicable the plaintiff shall [issue and] serve on the defendant [a] [the] writ of summons [in the form of the draft writ produced to the Court] [claiming appropriate relief] together with this order.
- ~~34.~~ The plaintiff shall cause an affidavit to be sworn and filed [substantially in the terms of the draft affidavit produced to the Court] [confirming the substance of what was said to the Court by the plaintiff's solicitors].
- ~~45.~~ As soon as practicable the plaintiff shall serve on the defendant a copy of the affidavits and exhibits containing the evidence relied on by the plaintiff.
- ~~56.~~ Anyone notified of this order will be given a copy of it by the plaintiff's solicitors.
- ~~67.~~ The plaintiff shall pay the reasonable costs of anyone other than the defendant which have been incurred as a result of this order including the costs of ascertaining whether that person holds any of the defendant's assets and if the Court later finds that this order has caused such person loss, and decides that such person should be compensated for that loss, the plaintiff will comply with any order the Court may make.
- ~~8.~~ If this order ceases to have effect, the plaintiff will immediately take all reasonable steps to inform in writing anyone to whom he has given notice of this order, or who he has reasonable grounds for supposing may act upon this order, that it has ceased to have effect.
- ~~79.~~ The plaintiff shall not without the leave of the Court begin proceedings against the defendant in any other jurisdiction or use information obtained as a result of an order of the Court in this jurisdiction for the purpose of civil or criminal proceedings in any other jurisdiction.
- ~~810.~~ The plaintiff shall not without the leave of the Court seek to enforce this order in any country outside Singapore [or seek an order of a similar nature including orders conferring a charge or other security against the defendant or the defendant's assets].]

8.

Para 42(1)(c)

Injunction Prohibiting Disposal of Assets in Singapore

IN THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[CASE NO.]

Between

[Intended] Plaintiff

And

[Intended] Defendant

BEFORE THE HONOURABLE JUSTICE _____ IN CHAMBERS

INJUNCTION PROHIBITING DISPOSAL OF ASSETS IN SINGAPORE

IMPORTANT:- NOTICE TO THE DEFENDANT

- (a) **This order prohibits you from dealing with your assets up to the amount stated. The order is subject to the exceptions stated at the end of the order. You should read all the terms of the order very carefully. You are advised to consult a solicitor as soon as possible. You have a right to ask the Court to vary or discharge this order.**
- (b) **If you disobey this order you will be guilty of contempt of Court and may be sent to prison or fined.φ**

[] Relevant information to be inserted.

φ This notice is not a substitute for the endorsement of a penal notice.

THE ORDER

An application was made today [date] by counsel for the plaintiff, [] to Justice [] by way of ex-parte summons no. [] of []. Justice [] heard the application and read the affidavit(s) of [name] filed on [date].

As a result of the application IT IS ORDERED by Justice [] that:

Disposal of assets

1. (a) The defendant must not remove from Singapore in any way dispose of or deal with or diminish the value of any of his assets which are in Singapore whether in his own name or not and whether solely or jointly owned up to the value [\$].
- (b) This prohibition includes the following assets, in particular:
 - (i) the property known as [] or the net sale money after payment of any mortgages if it has been sold;
 - (ii) the property and assets of the defendant's business known as [] (or carried on at []) or the sale money if any of them have been sold; and
 - (iii) any money in the accounts numbered [] at [].
- (c) If the total unencumbered value of the defendant's assets in Singapore exceeds [\$], the defendant may remove any of those assets from Singapore or may dispose of or deal with them so long as the total unencumbered value of his assets still in Singapore remains not less than [\$].

Disclosure of information

2. The defendant must inform the plaintiff in writing at once of all his assets in Singapore whether in his own name or not and whether solely or jointly owned, giving the value, location and details of all such assets. The information must be confirmed in an affidavit which must be served on the plaintiff's solicitors within [] days after this order has been served on the defendant.

EXCEPTIONS TO THIS ORDER

3. This order does not prohibit the defendant from spending [\$] a week towards his ordinary living expenses and also [\$] a week [or a reasonable sum] on legal advice and representation. But before spending any money, the defendant must tell the plaintiff's solicitors where the money is to come from.
4. This order does not prohibit the defendant from dealing with or disposing of any of his assets in the ordinary and proper course of business. The defendant shall account to the plaintiff [state interval] for the amount of money spent in this regard.
5. The defendant may agree with the plaintiff's solicitors that the above spending limits should be increased or that this order should be varied in any other

respect but any such agreement must be in writing.

EFFECT OF THIS ORDER

6. A defendant who is an individual who is ordered not to do something must not do it himself or in any other way. He must not do it through others acting on his behalf or on his instructions or with his encouragement.
7. A defendant which is a corporation and which is ordered not to do something must not do it itself or by its directors, officers, employees or agents or in any other way.

THIRD PARTIES

Effect of this order

8. It is a contempt of Court for any person notified of this order knowingly to assist in or permit a breach of the order. Any person doing so may be sent to prison or fined.

Set-off by banks

9. This injunction does not prevent any bank from exercising any right of set-off it may have in respect of any facility which it gave to the defendant before it was notified of the order.

Withdrawals by the defendant

10. No bank need enquire as to the application or proposed application of any money withdrawn by the defendant if the withdrawal appears to be permitted by this order.

[SERVICE OUT OF THE JURISDICTION AND SUBSTITUTED SERVICE

11. (a) The plaintiff may serve the writ of summons on the defendant at [] by [mode of service].

(b) If the defendant wishes to defend the action he must enter an appearance within [] days of being served with the writ of summons.]

UNDERTAKINGS

12. The plaintiff gives to the Court the undertakings set out in Schedule 1 to this order.

DURATION OF THIS ORDER

13. This order will remain in force until the trial or further order.

VARIATION OR DISCHARGE OF THIS ORDER

14. The defendant (or anyone notified of this order) may apply to the Court at any time to vary or discharge this order (or so much of it as affects that person), but anyone wishing to do so must inform the plaintiff's solicitors.

NAME AND ADDRESS OF PLAINTIFF'S SOLICITORS

15. The plaintiff's solicitors are:

[Name of lawyer(s) having conduct of action or charge of matter.]

[Name of law firm.]

[Address of law firm.]

Tel : [Telephone number.]

Fax : [Facsimile number.]

Ref : [File reference of law firm.]

[INTERPRETATION OF THIS ORDER

16. (a) In this order references to "he", "him" or "his" include "she" or "her" and "it" or "its".
- (b) Where there are 2 or more defendants then (unless the context indicates differently):
- (i) References to "the defendants" mean both or all of them;
 - (ii) An order requiring "the defendants" to do or not to do anything requires each defendant to do or not to do the specified thing; and
 - (iii) A requirement relating to service of this order or of any legal proceedings on "the defendants" means service on each of them.]

Dated this [] day of [], [].

Registrar.

SCHEDULE 1

Undertakings given to the Court by the plaintiff

1. If the Court later finds that this order has caused loss to the defendant, and decides that the defendant should be compensated for that loss, the plaintiff shall comply with any order the Court may make.
- ~~2.~~ The plaintiff, in respect of any order the Court may make pursuant to para (1) above, will:
 - ~~(a)~~ on or before [date] provide to the defendant security in the sum of [\$] by causing [payment to be made into Court / a bond to be issued by an insurance company with a place of business within Singapore / a written guarantee to be issued from a bank with a place of business within Singapore / payment to the plaintiff's solicitor to be held by the solicitor as an officer of the Court pending further order]*; and
*(*Delete where appropriate)*
 - ~~(b)~~ cause evidence of the provision of security to be extended to the defendant immediately after the security has been put up.]
- ~~23.~~ As soon as practicable the plaintiff shall [issue and] serve on the defendant [a] [the] writ of summons [in the form of the draft writ produced to the Court] [claiming appropriate relief] together with this order.
- ~~34.~~ The plaintiff shall cause an affidavit to be sworn and filed [substantially in the terms of the draft affidavit produced to the Court] [confirming the substance of what was said to the Court by the plaintiff's solicitors].
- ~~45.~~ As soon as practicable the plaintiff shall serve on the defendant a copy of the affidavits and exhibits containing the evidence relied on by the plaintiff.
- ~~56.~~ Anyone notified of this order shall be given a copy of it by the plaintiff's solicitors.
- ~~67.~~ The plaintiff shall pay the reasonable costs of anyone other than the defendant which have been incurred as a result of this order including the costs of ascertaining whether that person holds any of the defendant's assets and if the Court later finds that this order has caused such person loss, and decides that such person should be compensated for that loss, the plaintiff will comply with any order the Court may make.
- ~~8.~~ If this order ceases to have effect, the plaintiff will immediately take all reasonable steps to inform in writing anyone to whom he has given notice of this order, or who he has reasonable grounds for supposing may act upon this order, that it has ceased to have effect.

Para 35C

Response to ADR Offer

Case Reference No:	
Date :	
Details of Respondent(s):	Plaintiff/ Defendant/ Third Party/ Others (please state)*_____

The Respondent(s) are willing to attempt mediation/neutral evaluation/others (please state)*

The Respondent(s) are unwilling to attempt mediation/neutral evaluation/others (please state)* for the following reasons:*

Please state detailed reasons for unwillingness to attempt ADR.

The Respondent(s) are willing to accept the following proposals of the Applicant(s):

Please state proposals of the Applicant(s) being accepted

The Respondent(s) have the following counter-proposals:

Please state counter-proposals, e.g. possible dates for the ADR session, reference to particular ADR body, appointment of particular ADR practitioner, venue, etc.

* Delete as appropriate

This is to certify that:

- i. ☐ my solicitor has explained to me the available Alternative Dispute Resolution (ADR) options;
- ii. ☐ I am aware of the benefits of settling my case by ADR; and
- iii. ☐ I have been advised and understand that the Judge may take the view that ADR is suitable for my case, and that any unreasonable refusal on my part to resolve this matter via mediation or other means of ADR may then expose me to adverse costs orders pursuant to Order 59 Rule 5(c) of the Rules of Court,

“The Court in exercising its discretion as to costs shall, to such extent, if any, as may be appropriate in the circumstances, take into account the parties’ conduct in relation to any attempt at resolving the cause or matter by mediation or any other means of dispute resolution”

Signature of Respondent(s):

Name:

Date:

<u>Name of Respondent(s):</u>	
<u>Signature of Respondent(s):</u>	
<u>Name of Counsel (if applicable):</u>	
<u>Law Firm (if applicable):</u>	
<u>Signature of Counsel (if applicable):</u>	

APPENDIX I

Para 35B(3)

GUIDELINES FOR ADVOCATES AND SOLICITORS ADVISING CLIENTS ABOUT ADR

1. WHAT ARE THE ALTERNATIVES TO LITIGATION?

- 1.1 MEDIATION
- 1.2 NEUTRAL EVALUATION
- 1.3 EXPERT DETERMINATION
- 1.4 CONCILIATION

2. CHOOSING THE MOST SUITABLE ADR PROCESS

- 2.1 Consider with your client what your client wants to achieve, and then advise which route would be quicker, most economic and most likely to achieve the objective, and then seek the consent of the other party or parties to that course.
- 2.2 NEUTRAL EVALUATION If the matter requires specialised legal or technical expertise then appointing a neutral with that necessary expertise to give either a binding or non-binding evaluation may be a better way of cutting to the point and informing all parties what the probable outcome may be. This can then form the basis for negotiation or mediation.
- 2.3 EXPERT DETERMINATION If the dispute turns on an expert's opinion, and each side's expert holds a different view, then appointing a third party expert to give an expert determination, again either binding or non-binding as your client prefers, will often clarify the issue and provide a basis for resolution by negotiation or mediation.
- 2.4 CONCILIATION If the dispute involves a breakdown in a commercial or personal relationship, notably a workplace dispute, then conciliation is probably the best route to resolution.
- 2.5 MEDIATION All disputes, regardless of the basis for them, their nature or their provenance are capable of resolution through mediation provided all disputants are willing to seek resolution if they can. The Advocate and Solicitor's duty is to explain the advantages of mediation, the mediation process itself, and what might be achieved over and above what remedies are available through the courts. The attached comparison table might assist in explaining the advantages and disadvantages to your clients.

3. MEDIATION

- 3.1 The essential advantage for the client in mediation is that the client is an active partner in the process, takes part in fashioning the resolution, and has the final say on whether or not to accept the settlement.
- 3.2 Quintessentially, the sort of disputes which are ideal for resolution through mediation are:
 - 3.2.1 Commercial disputes in which the disputants have an ongoing relationship that needs to be preserved.
 - 3.2.2 Small value construction disputes where the costs and time involved in having the matter resolved through the courts is out of proportion to the sums at stake.
 - 3.2.3 Neighbourhood disputes over noise, boundaries, rights of way or user.
 - 3.2.4 Professional partnership disputes over dissolution or the respective rights of outgoing and remaining partners.
 - 3.2.5 Actions by liquidators in which the available assets are limited and likely to be consumed by the costs of the liquidators and litigation.
 - 3.2.6 Clinical and medical negligence cases where the victim needs to be heard in an environment which is less formal than a court room and where the medical professional may more easily apologise and explain.
 - 3.2.7 Most employment cases, including all forms of discrimination, in which the complainant and the defendant can confront each other in an informal environment which is less inhibiting than a tribunal or court.
 - 3.2.8 All types of claims where the costs of any proceedings are likely to equal or exceed the value of the claim.
- 3.3 This list is by no means exhaustive. Some foreign judicial statements suggest that cases involving fraud may not be suitable for mediation. However, fraud can be dealt with in mediation – not least because the process is confidential and ‘privileged’ plain talking often diffuses fraud allegations. Moreover, withdrawal of such allegations, as with all allegations made by litigants, is commonly a term of any settlement agreement.
- 3.4 If the case is a test case, or likely to set a judicial precedent for future cases, then mediation might not be suitable. However, it must be remembered that not every client would wish to fund litigation to establish a precedent, and very often a settlement resolves all the other pending cases. Mediation can deal with class actions.
- 3.5 Two popular reasons for litigating: ‘a matter of principle’; or ‘a desire for revenge or punishment’; are the very disputes which are better suited for mediation than litigation. ‘Principles’ are very expensive at law. Few litigants, seeking retribution, come away from a court

hearing satisfied. However bitter the dispute, it is likely to be resolved more permanently than a judgment given after a court hearing. 'Give and take' is infinitely better than 'All or Nothing'.

4. MEDIATION IS A PROCESS NOT A PERIOD OF TIME

- 4.1 Remember there is no 'right' time to mediate. The 'wrong' time to mediate is when the legal costs are disproportionate to the claim so that they are the issue in the mediation rather than the original dispute. Essentially, you need to know your client's case and the case of the other party(ies) sufficiently well to enable you to give advice and enable the mediator to assist both parties towards a resolution. If you are in doubt or cannot agree with the other party what needs to be disclosed, you may wish to seek further directions from the court to facilitate mediation.
- 4.2 Remember that mediation can be undertaken at any time and need not be concluded in a day.
- 4.3 To give your client the best chance of resolving the issue, decide with your client and the other side's legal representatives what is essential to know before the mediation: what documents might need to be disclosed; whether more details are required about the quantum being claimed; whether any expert evidence might be necessary to assist the mediator in his task.
- 4.4 It is the experience of some jurisdictions where mediation has been part of the legal landscape for decades that some disputes need more than one attempt at mediation before resolution is achieved. Even if settlement is not achieved, it is the invariable experience that issues are refined and often reduced during a mediation with the consequent saving of court time and costs for your client.

The following table is a simple guide to the essential differences between Litigation and Mediation as a means of resolving commercial disputes:

<u>Litigation</u>	<u>Mediation</u>
<u>Public – not confidential</u>	<u>Private – confidential</u>
<u>Protracted, and settlement often late in the process</u>	<u>Ought to occur at an early stage in the dispute leading to a cheaper quicker settlement</u>
<u>Formalistic: pleadings, disclosure and trial</u>	<u>Informal procedure: no pleadings, minimum disclosure</u>
<u>Limited to pleaded issues</u>	<u>Parties can raise whatever issues they wish to resolve</u>
<u>Exacerbates emotions</u>	<u>Allows genuine emotions to be expressed</u>
<u>Expensive for large commercial action</u>	<u>Each party can choose how much it wishes to spend</u>
<u>Loser often pays all the costs</u>	<u>Each party pays their own costs</u>
<u>Destroys any prospect of future relationships</u>	<u>Often creates better prospects of future relationships</u>