



# Mediation in Malaysia: The Law and Practice



LexisNexis

Mohammad Naqib Ishan Jan  
Ashgar Ali Ali Mohamed

**DR PUTERI NEMIE BT JAHN KASSIM**  
Associate Professor  
Ahmad Ibrahim Kulliyyah Of Laws  
International Islamic University  
Malaysia

# **MEDIATION IN MALAYSIA: THE LAW AND PRACTICE**

**MOHAMMAD NAQIB ISHAN JAN**

LLB (HONS) (IIUM), MCL (IIUM)  
PHD (IIUM)

HEAD OF RESEARCH MANAGEMENT UNIT (AIKOL)  
ASSOCIATE PROFESSOR,

AHMAD IBRAHIM KULLIYYAH OF LAWS (AIKOL)  
INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA (IIUM)

**ASHGAR ALI ALI MOHAMED**

LLB (HONS), MCL (IIUM)

LLM (HONS) (NZ), PHD (BUSINESS LAW)

ADVOCATE AND SOLICITOR (NON-PRACTISING)

ASSOCIATE PROFESSOR

AHMAD IBRAHIM KULLIYYAH OF LAWS (AIKOL)  
INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA (IIUM)

## MEMBERS OF THE LEXISNEXIS GROUP WORLDWIDE

Malaysia	LexisNexis Malaysia Sdn Bhd† (formerly known as Malayan Law Journal Sdn Bhd) T1-6, Jaya 33, 3 Jalan Semangat Seksyen 13, 46100 Petaling Jaya Selangor Darul Ehsan, MALAYSIA
Australia	LexisNexis Butterworths, Chatswood, NEW SOUTH WALES
Austria	LexisNexis Verlag ARD Orac GmbH & Co KG, VIENNA
Benelux	LexisNexis Benelux, AMSTERDAM
Canada	LexisNexis Canada, Markham, ONTARIO
China	LexisNexis China, BEIJING
France	LexisNexis SA, PARIS
Germany	LexisNexis Deutschland GmbH, MUNSTER
Hong Kong	LexisNexis Hong Kong, HONG KONG
India	LexisNexis Butterworths Wadhwa Nagpur, Gurgaon, HARYANA
Italy	Giuffre Editore, MILAN
Japan	LexisNexis Japan, TOKYO
New Zealand	LexisNexis NZ Ltd, WELLINGTON
Poland	Wydawnictwo Prawnicze LexisNexis Sp, WARSAW
Singapore	LexisNexis Singapore, SINGAPORE
South Africa	LexisNexis Butterworths, DURBAN
United Kingdom	LexisNexis Butterworths Tolley, LONDON and EDINBURGH
USA	LexisNexis Dayton, OHIO

©LexisNexis, a division of Reed Elsevier (Singapore) 2008 Pte Ltd  
2010

All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, including photocopying and recording, without the written permission of the copyright holder, application for which should be addressed to the publisher. Such written permission must also be obtained before any part of this publication is stored in a retrieval system of any nature.

The Publisher, authors, contributors and endorsers of this publication each excludes liability for loss suffered by any person resulting in any way from the use of, or reliance on this publication.

†Company No 76125-H  
ISBN 978-967-5371-84-4



Printed in Malaysia by Percetakan Anda Sdn Bhd

Accessibility .....	181
Publicity .....	182
Conclusion .....	182

## **PART VIII**

### **Mediation in Environmental and Land Disputes**

#### **Chapter 11**

#### **Alternative Dispute Resolution for Resolving Land Use and Environmental Disputes in Malaysia**

INTRODUCTION .....	187
Evolution of Alternative Dispute Resolution in Malaysia .....	189
Types of Alternative Dispute Resolution Methods ....	190
Overview of Evolution of Land Use and Environmental Dispute Resolution in Malaysia .....	193
Comparative Overview of Use of Alternative Dispute Resolution in Resolving Land Use and Environmental Disputes .....	196
Rationale for Proposing Alternative Dispute Resolution for Resolving Land Use and Environmental Disputes .....	200
Proposals for Malaysia .....	201
Way Forward – Directions for Incorporation of Alternative Dispute Resolution for Resolving Land Use and Environmental Disputes .....	206
Conclusion .....	210

## **PART IX**

### **Mediation in Labour Disputes**

#### **Chapter 12**

#### **Conciliation and Mediation of Labour Disputes in Malaysia: With Reference to Unfair Dismissal Claims**

INTRODUCTION .....	221
UNFAIR DISMISSAL CLAIM: THE LEVEL OF ITS SETTLEMENT .....	223
CONCILIATION MEETING AT INDUSTRIAL RELATIONS DEPARTMENT (IRD) .....	225

## CHAPTER 11

# ALTERNATIVE DISPUTE RESOLUTION FOR RESOLVING LAND USE AND ENVIRONMENTAL DISPUTES IN MALAYSIA

by

AINUL JARIA MAIDIN & INTAN SYAHRINA

*The true function of a lawyer is to unite parties driven asunder*  
Mahatma Gandhi

## INTRODUCTION

The complexity of land use and environmental disputes poses challenges to the courts due to multiple parties, issues, technical and scientific intricacies. The traditional method of settling land use and environmental disputes through litigation imposes burdens on those lacking financial and political resources and further drains valuable assets such as time and other resources.<sup>1</sup> The courts are not able to meet the demands of land use and environmental conflicts due to the multiplicity of issues involved. Thus, it is necessary to identify alternatives to litigation that might prove effective compared to litigation in a court where there is limited expertise to decide on the complex technical and scientific issues characteristic of land use and environmental disputes.<sup>2</sup>