

**Groupe de travail sur la médiation dans le cadre du processus de Malte  
Questionnaire II**

*établi par le Bureau Permanent*

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**Working Party on Mediation in the Context of the Malta Process  
Questionnaire II**

*drawn up by the Permanent Bureau*

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**Identification**

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The Permanent Bureau kindly requests responses to the Questionnaire to be sent to < secretariat@hcch.net >.

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**ENFORCEABILITY OF MEDIATED AGREEMENTS**

1. Are there legal restrictions on the content of mediated agreements regarding family law matters in your country?

No

Yes. Please specify:

Both Yes for Civil and Syariah judicial systems.

Civil

The legal restriction on the content of mediated agreement regarding family law matters in the Civil Judicial System is the enforceability of the mediated agreement.

Syariah

Under the Syariah judicial system in Malaysia (which has jurisdiction only over Muslims), there are three types of mediation which are as follows:

- (i) mediation conducted by the Syariah Court which is known as "*Sulh Council*";
- (ii) mediation conducted by the Legal Aid Department;
- (iii) mediation conducted by a Syariah lawyer or any other person.

Unlike mediation conducted by the Legal Aid Department and mediation conducted by a Syariah lawyer or any other person, mediation through *Sulh Council* is part of the court process in the Syariah Court. On this note, the contents of mediated agreements that relate to family law matters shall be in line with the existing Syariah laws in Malaysia as well as the Islamic principles. As in the case of custody of a child, the mediated

	agreements shall not affect the welfare of the child.
2. Are mediated agreements in a family dispute involving children enforceable in your country without any additional formalities such as notarisations or approval by court?	<input checked="" type="checkbox"/> No for both Civil and Syariah judicial systems. <u>Syariah</u> A mediated agreement is not enforceable in the Syariah Court, unless the agreement is produced in the Syariah Court for the purpose of record and endorsement as a court order. <input type="checkbox"/> Yes
3. Can agreements mediated in your country in a family dispute involving children be approved by or registered with a court?  (If the answer is "No" please continue with question 4.)	<input checked="" type="checkbox"/> No for Civil judicial system <input checked="" type="checkbox"/> Yes for Syariah judicial system <u>Syariah</u> Mediated agreements in a family dispute involving children shall be produced before the Syariah Court for the purpose of record and endorsement as a court order, which is thereby enforceable in the Syariah Court. <input type="checkbox"/> Other. Please specify:
3. a) Is the agreement once approved by or registered with a court treated as a decision of that court?	<input checked="" type="checkbox"/> Yes for Syariah judicial system. <input type="checkbox"/> No <input type="checkbox"/> Other. Please specify:  <u>Syariah</u> Please refer to answers for question 2 and 3
3. b) What exact steps are needed to make a mediated agreement into a court order?	Please specify: <u>Syariah</u> 1. If the mediated agreement is a result of the <i>Sulh Council</i> in the Syariah Court, the mediated agreement will be produced to the judge by the Mediation Officer ( <i>Sulh Officer</i> ) who handles the mediation process, for the purpose of record and endorsement as a court order. 2. However, if the mediated agreement was achieved through other mediation processes such as by the Legal Aid Department or Syariah lawyers who acted on behalf of the parties in dispute, the mediated agreement will be inspected by the <i>Sulh Officer</i> . If the agreed terms and conditions are in line with the existing Syariah laws in Malaysia and

	<p>Islamic principles, the mediated agreement will be produced before the judge for the purpose of record and endorsement as a court order.</p> <p>3. If the agreed terms and conditions are contrary to the existing Syariah laws in Malaysia and Islamic principles, the <i>Sulh</i> Officer will call the parties to discuss the terms and conditions. If the parties come to an agreement which is in line with the existing Syariah laws in Malaysia and Islamic principles, the <i>Sulh</i> Officer will prepare a new agreement and will produce it before the judge to be recorded and endorsed as a court order.</p> <p>4. If an agreement cannot be achieved, the case will be forwarded before the Court for hearing and trial by the judge.</p>
3. c) Which court would be competent?	<p>Please specify:</p> <p><u>Syariah</u></p> <p>For Muslims, the Syariah Court will be the competent court.</p>
3. d) What are the costs for having a mediated agreement made into a court order in your country?	<p>Please specify:</p> <p><u>Syariah</u></p> <p>1. If the parties in dispute do not engage any Syariah lawyers in their case, the parties would only have to pay the registration fees. The fees depend on which State in Malaysia that the parties had filed their case. In average, the cost is normally in the region of RM10 to RM100.</p> <p>2. However, if the parties engage Syariah lawyers for their cases, the parties will have to pay the lawyer's fees.</p>
4. Are there any other method(s) by which a mediated agreement can be rendered enforceable in your country (e.g. by being notarised)	<p>Please specify:</p> <p>No other method(s) by which a mediated agreement can be rendered enforceable in your country for both Civil and Syariah Judicial System.</p>
4. a) What are the possible costs for this other method(s)?	<p>Please specify:</p> <p>Not applicable</p>

<p>5. Can agreements mediated in another country in a family dispute involving children be approved by a court or otherwise formalised in your country?</p>	<p><input checked="" type="checkbox"/> No for the Civil Judicial System</p> <p><input checked="" type="checkbox"/> Yes for Syariah Judicial System (Please refer to the answers for question No. 6 and 3.b))</p> <p><input type="checkbox"/> Other. Please specify:</p>
<p>5. a) If so, will the agreement mediated abroad be treated exactly as an agreement mediated in your country?</p>	<p><input checked="" type="checkbox"/> No for the Civil Judicial System</p> <p><input checked="" type="checkbox"/> Yes for the Syariah Judicial System</p> <p><input type="checkbox"/> Other. Please specify:</p>
<p>6. In what circumstances, if any, can an agreement which has been approved by or registered with a court abroad, be recognised and enforced in your country?</p>	<p>Please specify:</p> <p><u>Civil</u></p> <p>An agreement can be recognised and enforced if there is a specific provision under a specific law such as under the Malaysian Reciprocal Enforcement of Judgements Act 1958.</p> <p><u>Syariah</u></p> <p>An agreement which has been approved by or registered with a court abroad can be recognised and enforced in the Syariah court in Malaysia if both parties are Muslims and one of the parties is living or a resident of any State in Malaysia. In this regard, the agreement has to be produced before a <i>Sulh</i> Officer by filing a new case in the Syariah Court. Several procedures would also have to be followed by parties. (Please refer to the answer for question 3(b) regarding the exact steps required to make a mediated agreement into a court order).</p>
<p>7. What specific measures are available in your country for enforcing an agreement on child custody or contact?</p>	<p>Please specify:</p> <p><u>Civil</u></p> <p>None.</p> <p><u>Syariah</u></p> <p>For a Muslim, the terms and conditions in the agreement on child custody or contact must be in line with the existing Syariah laws in Malaysia and Islamic Law. An agreement on child custody and contact can only be enforced after the agreement is recorded and endorsed by the Syariah court. In this regard, if any party fails to comply with the order without reasonable excuse, the court may, on the application of the aggrieved party, make one or more of the following orders:</p> <p>(a) Enforcement of judgment to do an act;</p> <p>(b) Vary an order; or</p>

	(c) Notice to show cause/contempt of court.
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Thank you.