



SEMINAR ON FAMILY MEDIATION PRACTICE 2025

**HIS HONOUR JUDGE IVAN WONG
PRINCIPAL FAMILY COURT JUDGE**

21 October 2025

Mediated Settlement Agreement

Basic Principles

- Parties should understand some basic principles

Basic Principles

- Full and frank disclosure of financial situation
- *Goddard-Watts v Goddard-Watts* [2023] EWCA Civ 115, [2023] 4 WLR 20

Basic Principles

- Court will not and cannot rubber-stamp:
section 7, MPPO
- Court is to **make order(s)** in the disposal of parties' ancillary relief claim under sections 4, 5, 6, 6A and 17, MPPO upon divorce.

Basic Principles

- Terms of settlement contained in preambles of a court order \neq court orders

Basic Principles

- Court has limitations:
section 9, 10 and 25 of MPPO

Basic Principles

- Court order should be succinct, simple and clear leaving no room for further argument for execution and enforcement

Basic Principles

- Want to Achieve “Finality”?
- What does “finality” mean?

Full and Final Settlement? Clean Break?

Basic Principles

- Possible to Achieve Finality?

Basic Principles

- Any finality on ancillary relief of child of the family?
- *MB v KB* [2007] 2 FLR 586

Basic Principles

- Any finality on the arrangement of child of the family?
- Re B (Minors)(Care Proceedings: Issue Estoppel) [1997]
1 FLR 285
- An Order to take effect in the future?

Basic Principles

- Could a periodical payment order be varied?
Section 11, MPPO.

Basic Principles

- Agreement to agree?

Basic Principles - Examples

- Parties agree to have the former matrimonial home sold at a time and price to be agreed by both parties

Basic Principles - Examples

- Parties agree to have the former matrimonial home sold at a price to be agreed by both parties

Basic Principles - Examples

- Parties agree to have the former matrimonial home sold at a price to be agreed by both parties when the child of the family reaches the age of 18

Basic Principles - Examples

- The father agrees to pay all reasonable living expenses of the child of the family / all reasonable tuition fees and related expenses of the child of the family

Basic Principles - Examples

- Parties agree to discuss openly and amicably with each other on the welfare and education of the child of the family

Basic Principles - Examples

- Parties agree not to bad mouth the other side in front of the child of the family

How to Achieve Finality?

- Is there a court order (under section 4, 6, 6A and 17, MPPPO) disposing of the ancillary relief matters?

- Does the Mediated Settlement Agreement contain terms to that effect? Eg dismissal of all ancillary relief claims? Is it possible to have such a term?
- Eg What if the petitioner's petition and Form A claim for a full range of ancillary relief but at the end the court is only invited to make a periodical payment order?

- Do the terms (even if they are unambiguous and in certain terms) require continuous management over a long period of time? Are they antithesis to finality?
- For example: parties agree to have the former matrimonial home to be sold at a price to be agreed by both parties when the child of the family reaches the age of 18 (What if the child is only 3 years old?)

Acknowledgement and Agreement and Undertakings

- Terms especially those terms that parties would invite the court to accept as undertakings must be certain and unambiguous leaving no room for argument.

- Some agreement and acknowledgement may not be legally enforceable

- Eg the parties agree and undertake to each other that they will not “bad-mouth” the other side in front of the child of the family

- The parties agree and acknowledge that they will discuss and consult with each other on upbringing especially the choice of schools of the child of the family

- The parties agree with each other that they will use their best endeavours to communicate with each other on matters relating to the upbringing of the child of the family

- Can this be accepted as an undertaking?

- What about agreement or acknowledgement?

- Parties may ask himself/herself:

Will this term of agreement or acknowledgment a good recipe for future quarrels or even litigation?

- If the answer is yes, why this agreement or acknowledgment is to be included?

- Court would not accept undertakings in respect of acts already performed or to make a will on agreed contents.
- Why?

Enforcement of Undertakings

- May take longer time than enforcement of a simple order
- Normally by way of committal
- Mainland courts and non-common law jurisdictions may not recognize undertakings
- So where possible, terms to be made orders of court

**Does the Agreement really
dispose of the ancillary matter
or is it only a procrastination?**

- Eg a child is of tender age. The father agrees to transfer the matrimonial home to the child upon reaching the age of majority.

- Or sale of the property upon the child reaching age of 18 (a Mesher Order)?

See *LYL v CPL* [2016] 4 HKLRD 283

What terms could be made by way of orders of the court?

- Court is not a rubber stamp

- Court's power is limited

- Court may make orders under sections 3, 4, 5, 6, 6A & 17, Matrimonial Proceedings and Property Ordinance, Cap 192 (MPPO)

- The orders under sections 4, 5, 6 & 6A are for the benefit of the parties having regard to the provisions under section 7.

- What about: Transfer of the former matrimonial home to a child of the family upon reaching the age of majority?

- How could this be for the benefit / maintenance of the child or is this just a provision for future inheritance?
- What are the issues / problems that the parties want to resolve?

- The answer has to be found in section 7(2), MPPO

- Does the child have any interest in the property before the transfer?
- How could the child's interest be protected before the transfer?

- Any difference if the child is of tender age or if the child is an adult?

Some Scenarios

1st Scenario

- Parties owned former matrimonial home (FMH) as joint tenants
- Value agreed at \$5 million
- Parties have a child, aged 9 years old
- Husband agrees to have his interest in FMH (agreed at \$2.5 million) transferred to wife within one month after the grant of decree absolute
- The transfer is to be **treated** as a lump sum paid by the husband for the maintenance of the child up to age of majority or upon completion of a first full-time bachelor degree
- In reality there will not be any payment of money from the wife to the husband.
- What kind of order(s), **if any**, the court could make?

1st Scenario

I am not aware of any such order having been made by the court

2nd Scenario

- An agreement term that stipulates that the parties shall sell their property at a set price or a price agreed by both parties. If the market value decreases later and the parties cannot reach an agreement on the adjusted selling price, what application can they submit to the court to resolve the dispute?
- Liberty to apply?
- See: *TTK v NPS* [2025] HKFC 68

- Can the order be varied to transfer of property order / one buys another share?
- Section 11, MPPO

Other Considerations

- Not all the terms of the Mediated Settlement Agreement may be made orders of court
- Only those that the court could make orders under sections 4, 5, 6, 6A and 17, MPPO
- Therefore, a Mediated Settlement Agreement may not be the **mirror** of court orders

- Do not attach the Mediated Settlement Agreement to the Consent Summons!

- Please refer to the Written Presentation given at “*Seminar on Consent Summons on Ancillary Relief and Care Arrangements for Children*” at Family Court’s webpage (under Guides to Family Court Proceedings)

Maintenance Dispute after Decree Absolute

- In arrear of maintenance cases and at the same time there is an application for variation, how does the court calculate what the payer still owes the payee? Should it use the new or old amount multiplied by the months owed or are there other computation methods?

- Answer: It depends, each case depends on its own facts.
- See: - FCMC 5851/2014
(date of Judgment: 27/8/2020)
- FCMC 16504/2014
(date of Judgment: 8/11/2019)

- What action can a payee take in a case where the payer failed to make payment for years?

- Section 12, MPPO
(Leave to sue for arrears over 12 months)
- Hurdle is high: *CSL v WWK*,
CACV 278/2003 (Date of Judgment: 25/2/2004)
- *K v K*, HCMC 2/2004, [2005] HKFLR 299

- Judgment Summons is the last resort
- Has the payee considered other enforcement methods, such as charging orders, stop orders, garnishee proceedings, prohibition orders, etc?

Thank you