

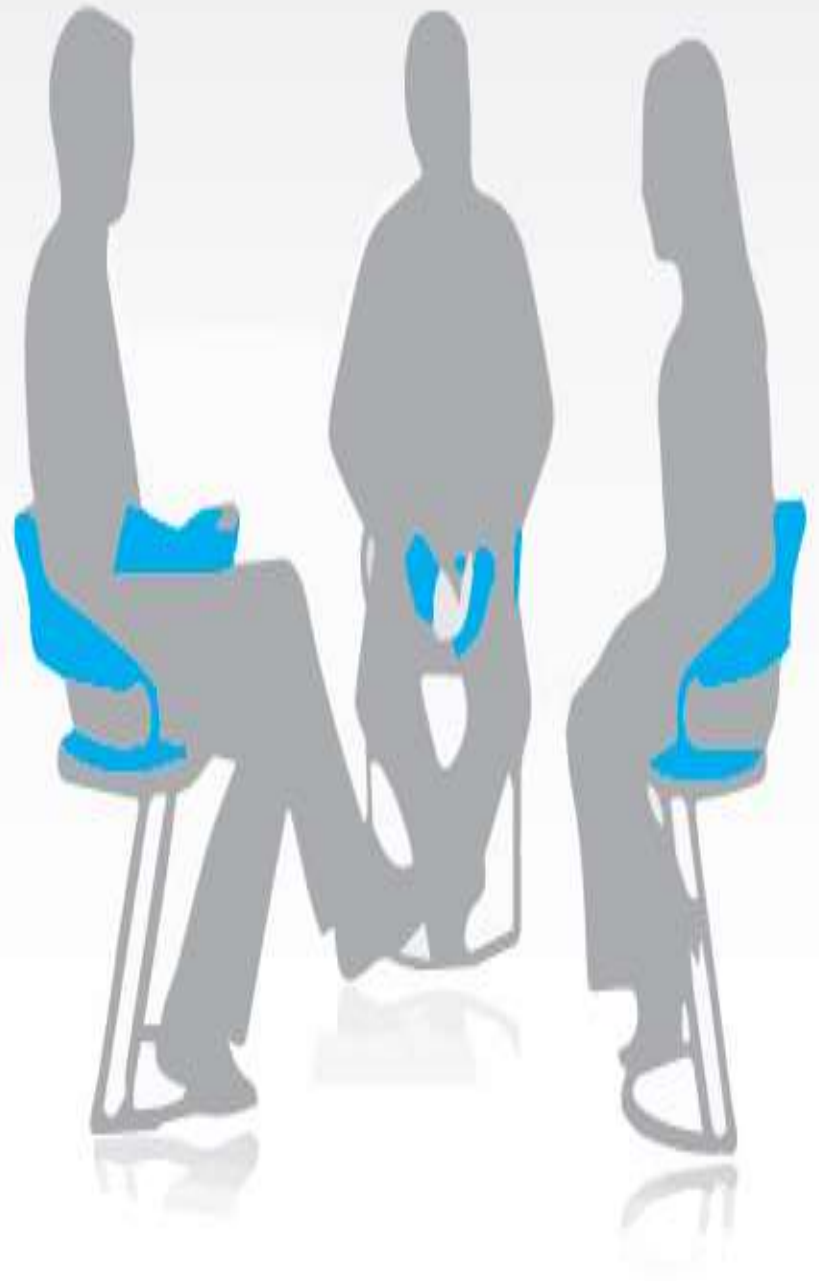


**Mediation as an Effective Alternate
Dispute Resolution Mechanism
in Disputes
MARIM SEMINAR 2017**

TOPICS

- ❖ What is Mediation?
- ❖ Types of Conflicts where Mediation is Suitable
- ❖ Adopting Mediation for Conflict Resolution
- ❖ Dispute Resolution Offered by Government Bodies for Employment Disputes
- ❖ Mediation Act
- ❖ The Malaysian Mediation Centre

What is Mediation?



Different Alternate Dispute Resolution Mechanisms

Litigation & Arbitration

- Parties present case and decision/award is made by 3rd party

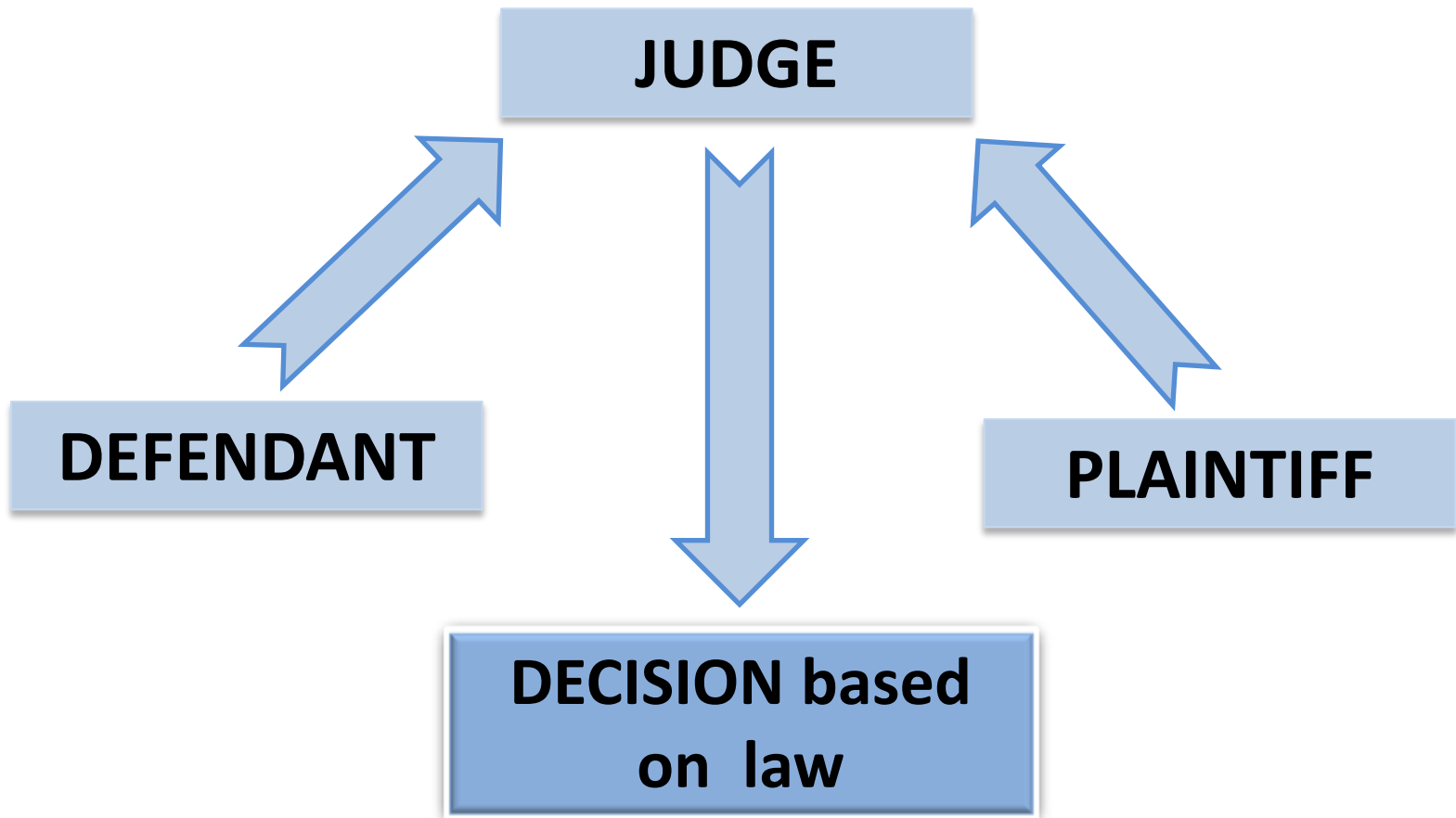
Conciliation, Early Neutral Evaluation

- The conciliator/evaluator will try to resolve a dispute and such a third party can offer an opinion (binding or otherwise)

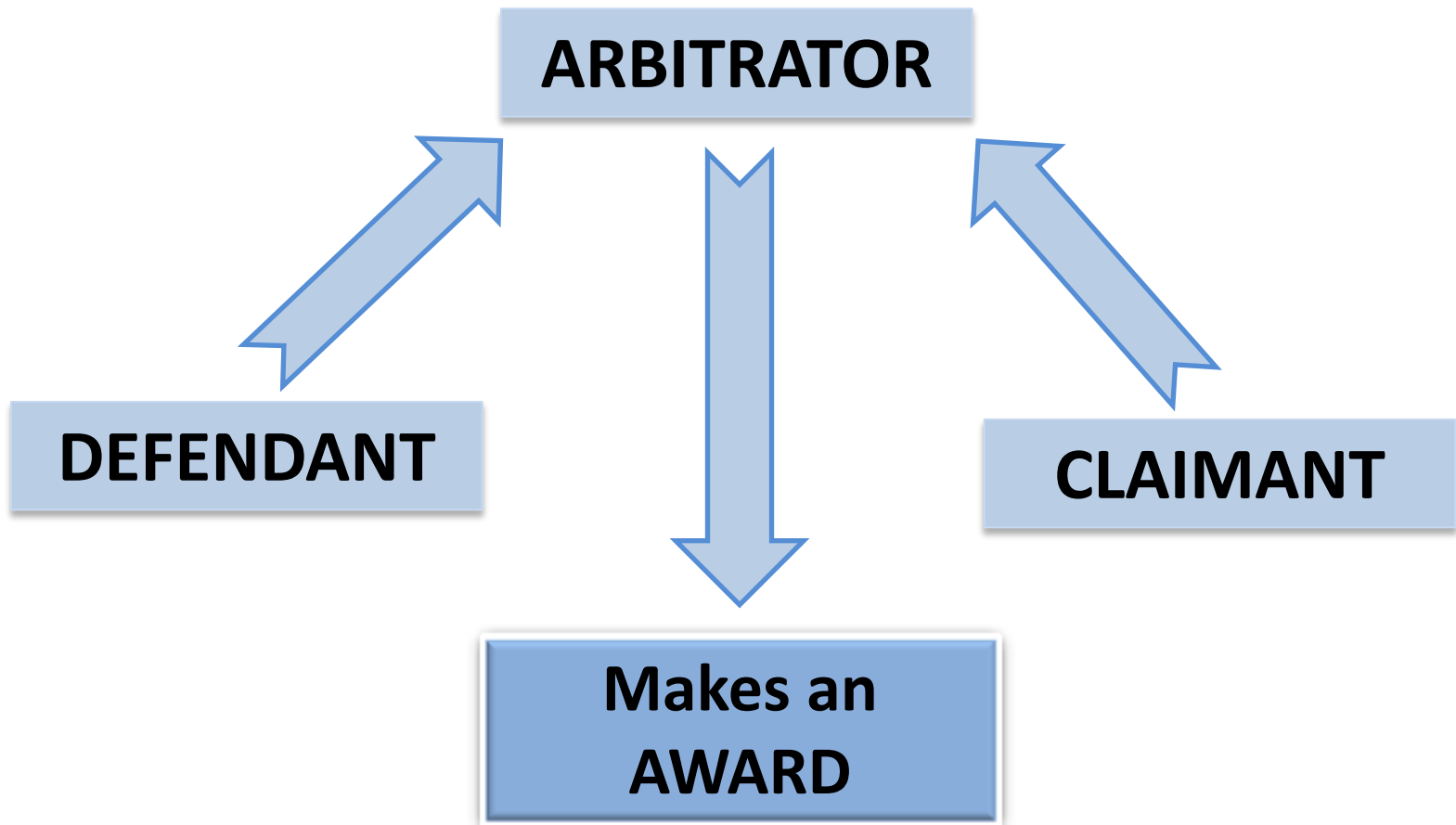
Mediation

- The mediator will facilitate mutually acceptable resolution of dispute i.e. parties decide

LITIGATION



ARBITRATION



CONCILIATION

RESOLUTION

CONCILIATOR

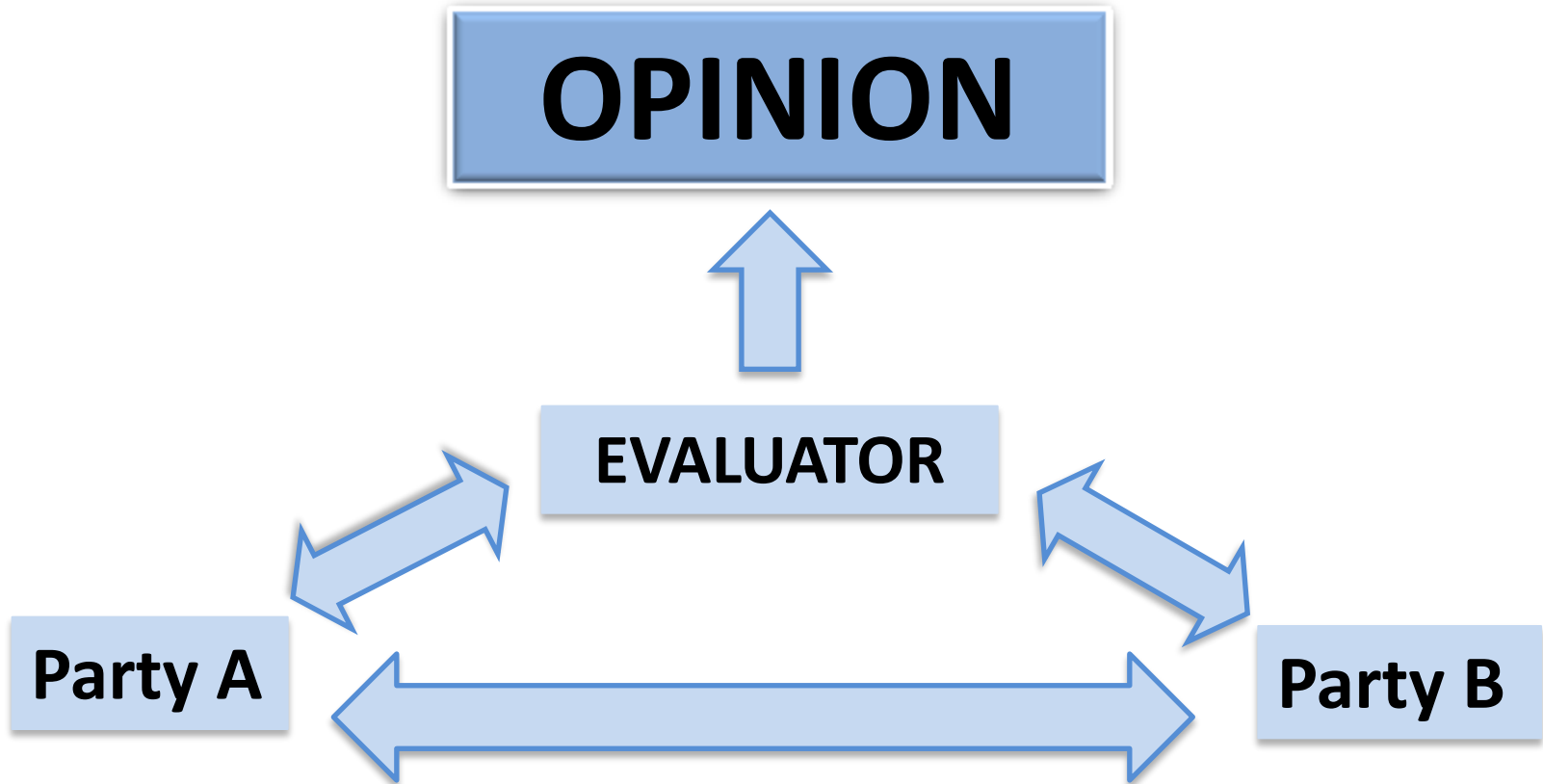
Precedent Justice

Party A

Objective Fairness

Party B

EARLY NEUTRAL EVALUATION



MEDIATION

SETTLEMENT

MEDIATOR

Disputant

issues – needs, options, interests

Disputant

Disputant

Ace Consultants Sdn.Bhd. provided tax & auditing services to a large development (Sumo). Sumo has been served with a tax penalty of RM800K for late filing. Sumo says its Ace's fault as Ace filed 2 years late. Ace says its Sumo's fault because Sumo was slow in providing details. Ace also contends that Sumo is primarily responsible for their own tax filing and it is not for Ace to chase Sumo.

Ace is covered by insurance.

Chan has filed a case against Superwonderful Developer Sdn.Bhd. for misrepresentation, breach of warranty – he bought an penthouse with 4 car park lots. The lots were outlined in the sale and purchase agreement. On taking keys he found that 1 of the car park lots were locked in and this means that when he parks 1 car in that lot, he has to reverse 1 car out before he can move in. To him this is a defective lot.

Superwonderful Developer Sdn.Bhd says nothing can be done. Strata titles has been applied for. Chan was shown the lot in the sale and purchase agreement. Chan says that plan was not with him when he signed agreement, lawyers cheated and inserted later.

DEFINITION OF MEDIATION

A Neutral, Impartial and Independent Third Party:-

- facilitates and assists resolution of parties dispute;
- through a structured process by assisting them systematically to:-
 - Isolate the issues in dispute, develop options;
 - reach mutually acceptable resolutions, which accommodate the interests of all parties

Styles of Mediation

The mediator is in charge of the process, while the parties are in charge of the outcome.

Facilitative

An evaluative mediator assists the parties in reaching resolution by pointing out the weaknesses of their cases, and predicting what a judge or jury would be likely to do. An evaluative mediator might make formal or informal recommendations to the parties as to the outcome of the issues.

Evaluative

In transformative mediation, the parties structure both the process and the outcome of mediation, and the mediator follows their lead.

Transformative

WHEN IS MEDIATION SUITABLE?



Where Mediation is Suitable



Benefits of Mediation

“ REDUCTION OF RISK”

-Parties have full say over the final result and are in the position to decide on the outcome.

Parties work together in the process and not against each other.

Parties can maintain, restore or rebuild their relationship.

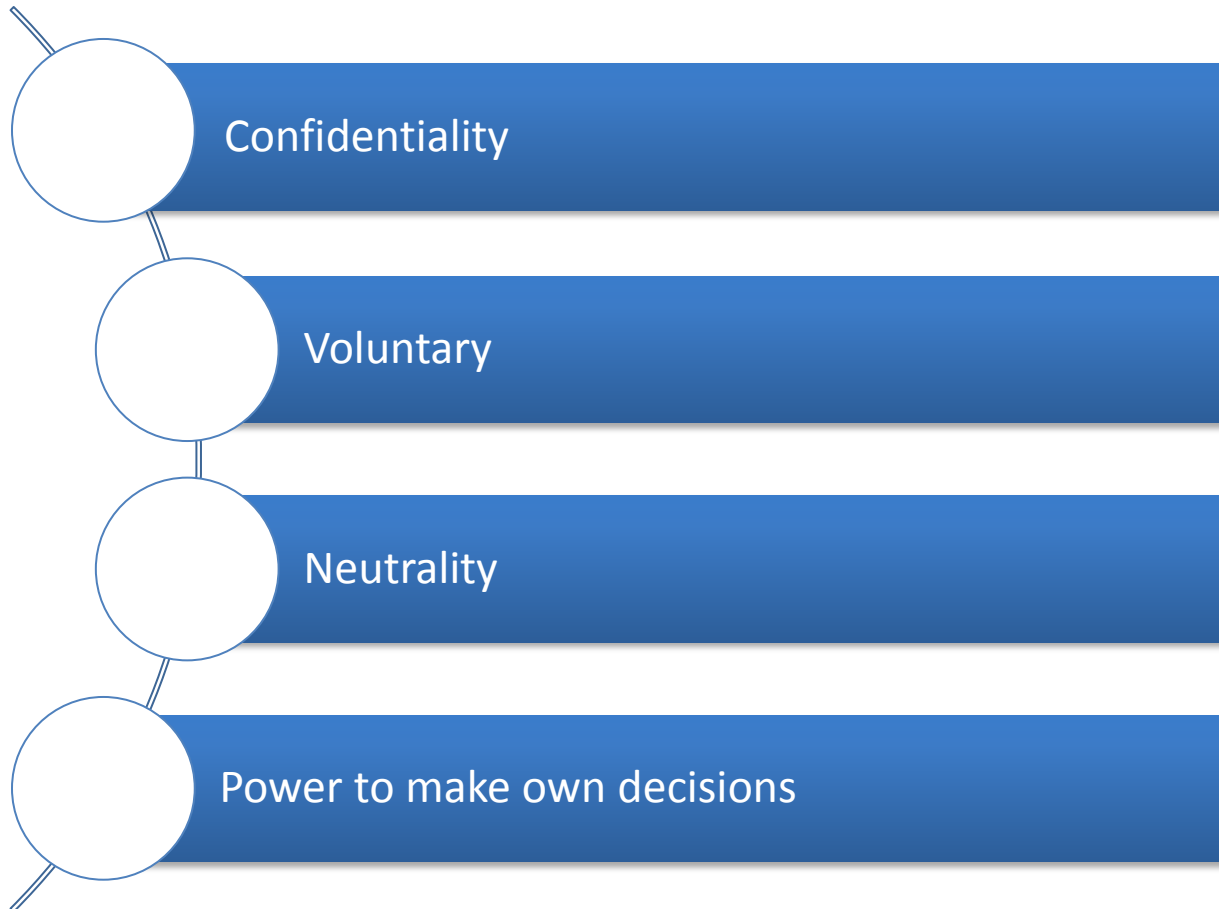
Costs

Informal

Confidential

AIM is to find a win-win solution where the relationship can continue and where parties are prepared to act in good faith

Cornerstone of the Mediation Process



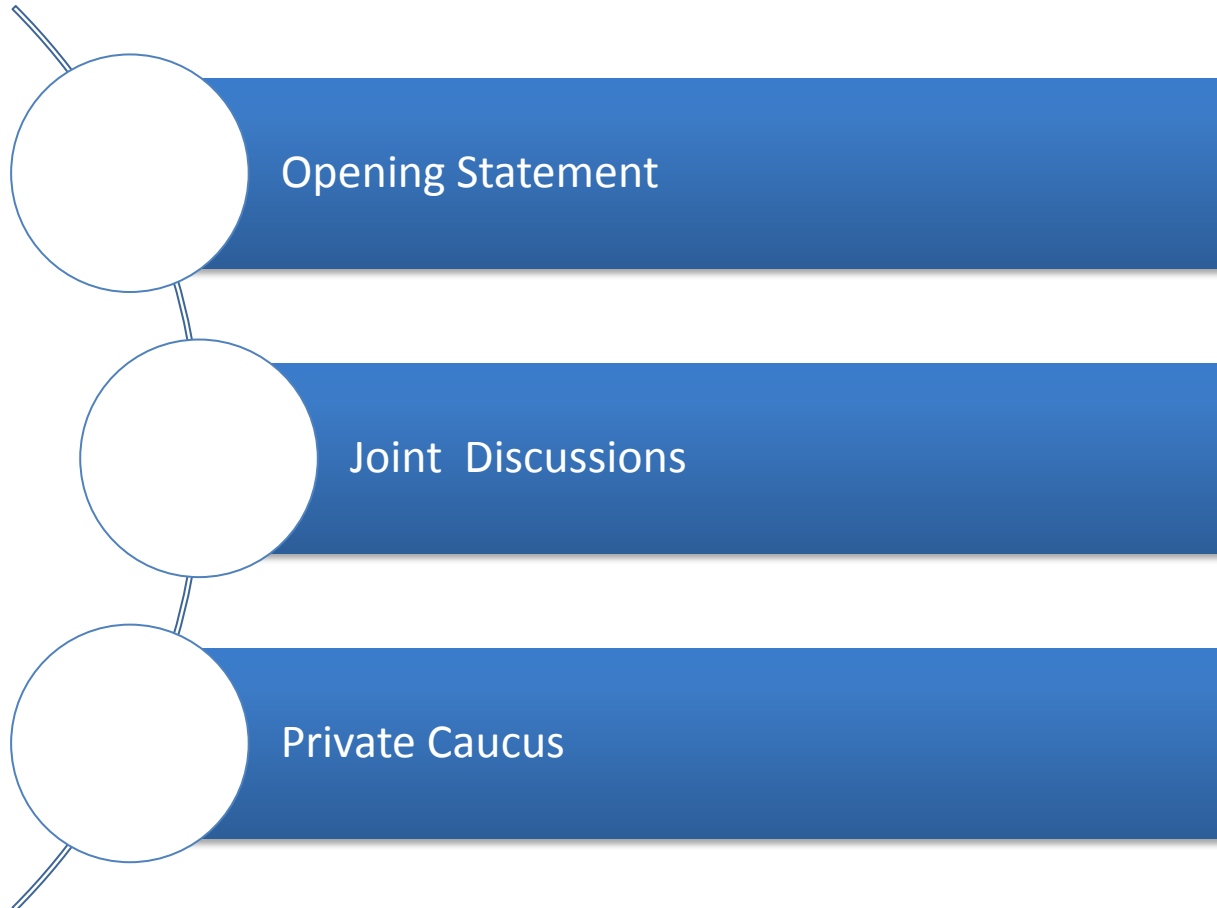
What Does a Mediator Do?

Mediators are trained to:-

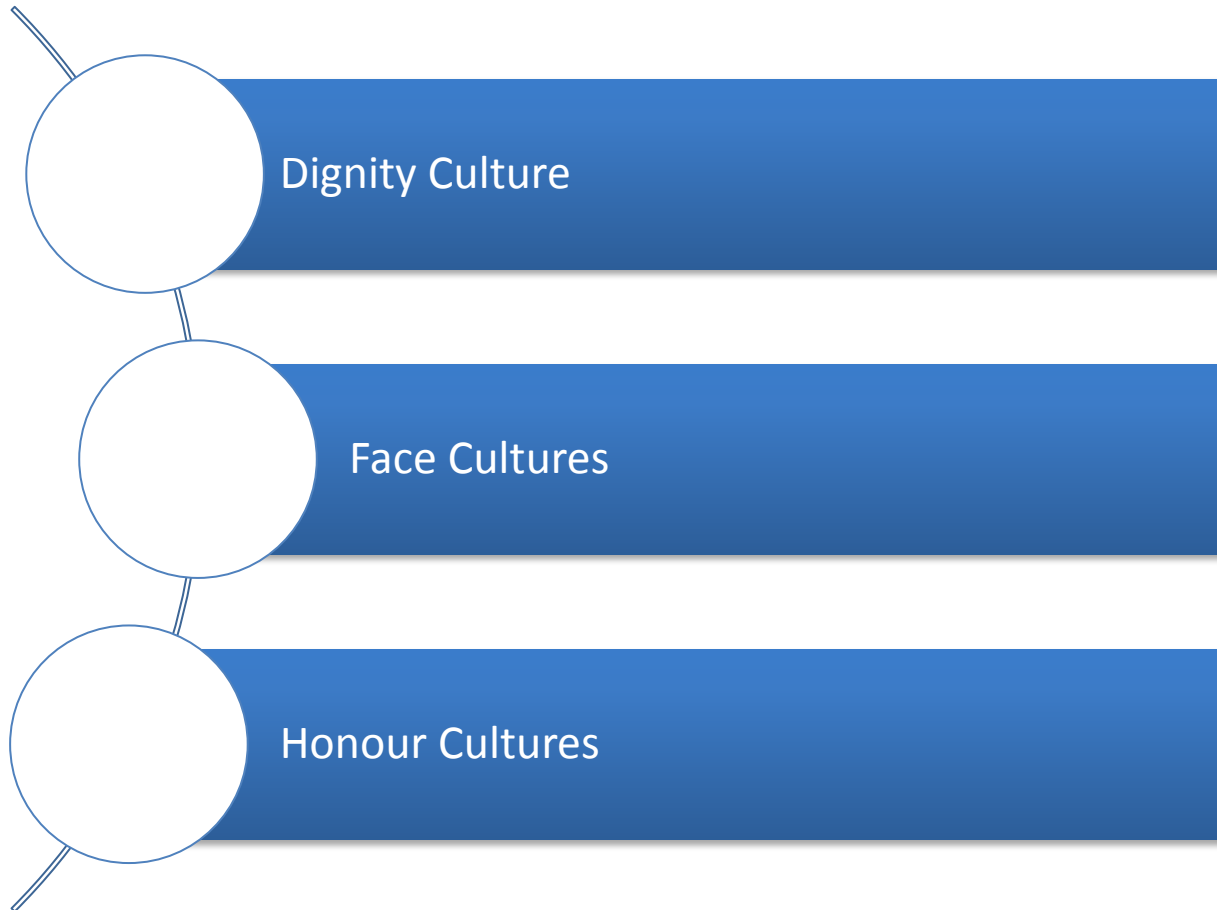
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- Encourage parties to communicate
 - Listen - verbal and non-verbal
 - Reframe/ Neutralize words
 - Analyze positions /interests /options
 - Elicit alternatives/options
 - Bring parties to a common ground
 - Find a win-win conclusion

What Does a Mediator Do?

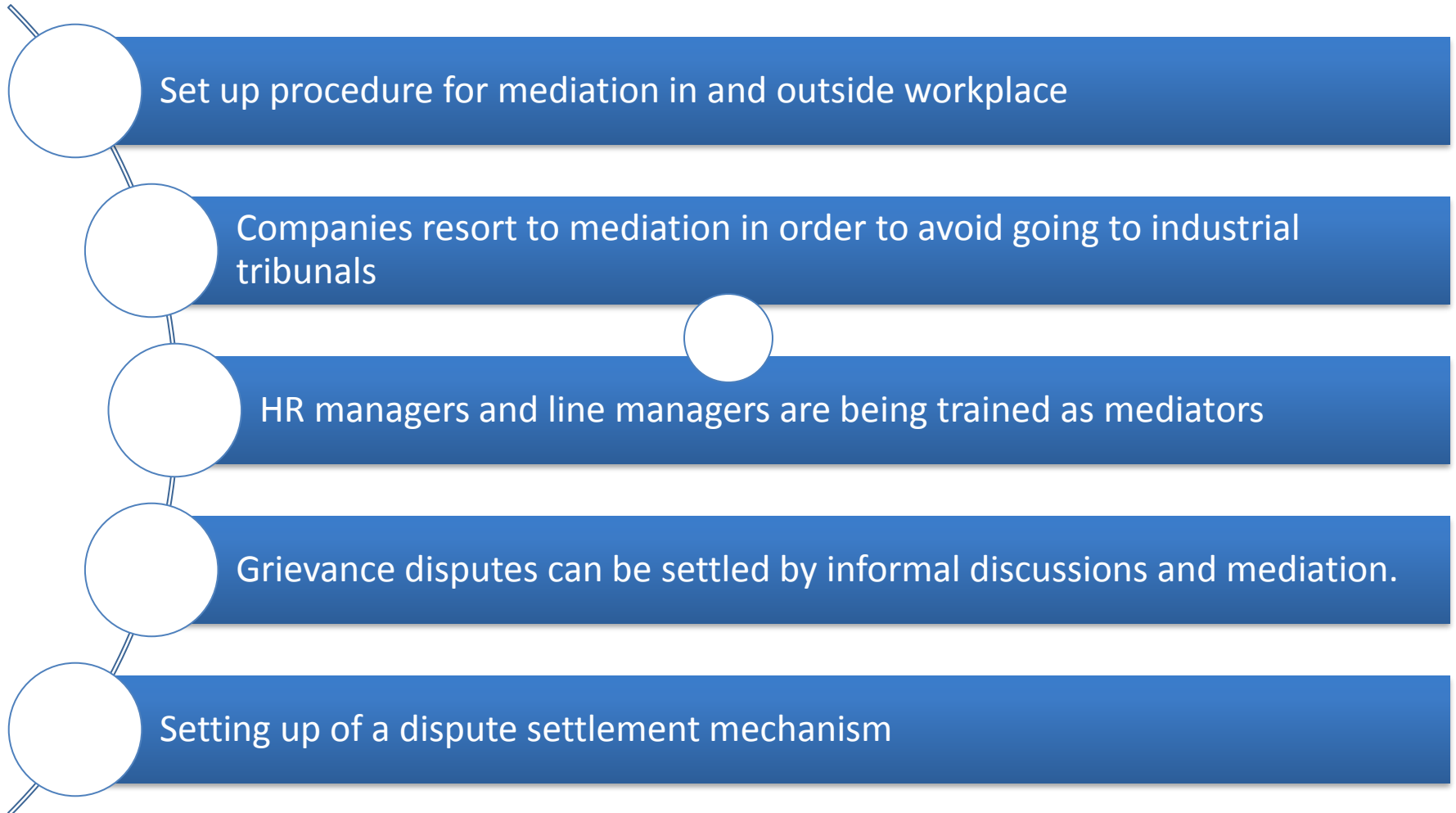
Mediators adopt a process -



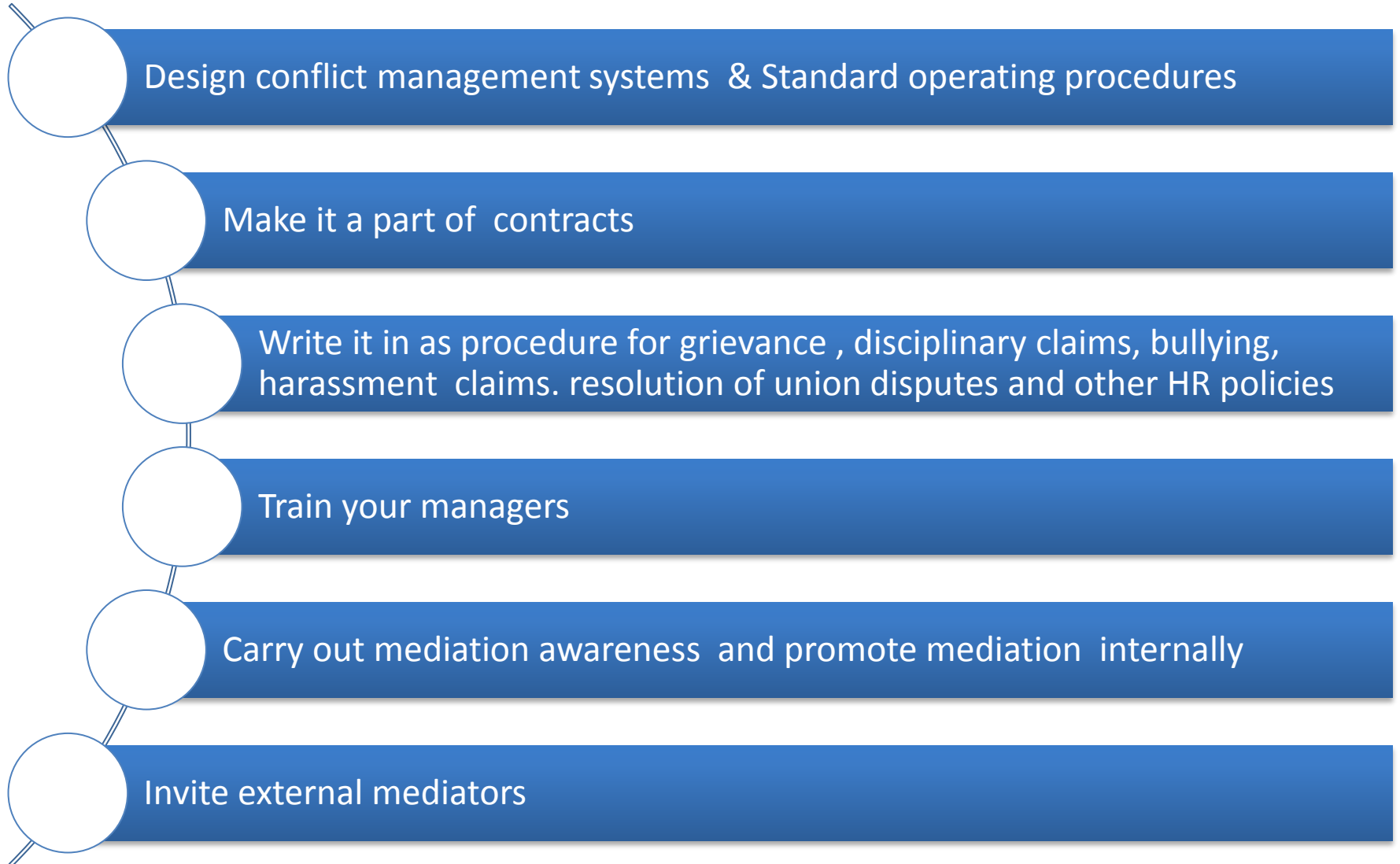
Overcoming Barriers



Trends



How Do You Incorporate Mediation in your job



DISPUTE RESOLUTION OFFERED BY GOVERNMENT BODIES FOR EMPLOYMENT DISPUTES



Current Practices By The Authorities

Court Directed Mediation

- Current Court Practices

Mediation Act

- Passed in 2012

Industrial Court

- Industrial Court Practice Note No. 3 of 2010
- Early Evaluation of Cases procedure introduced Mediation

Private Mediation



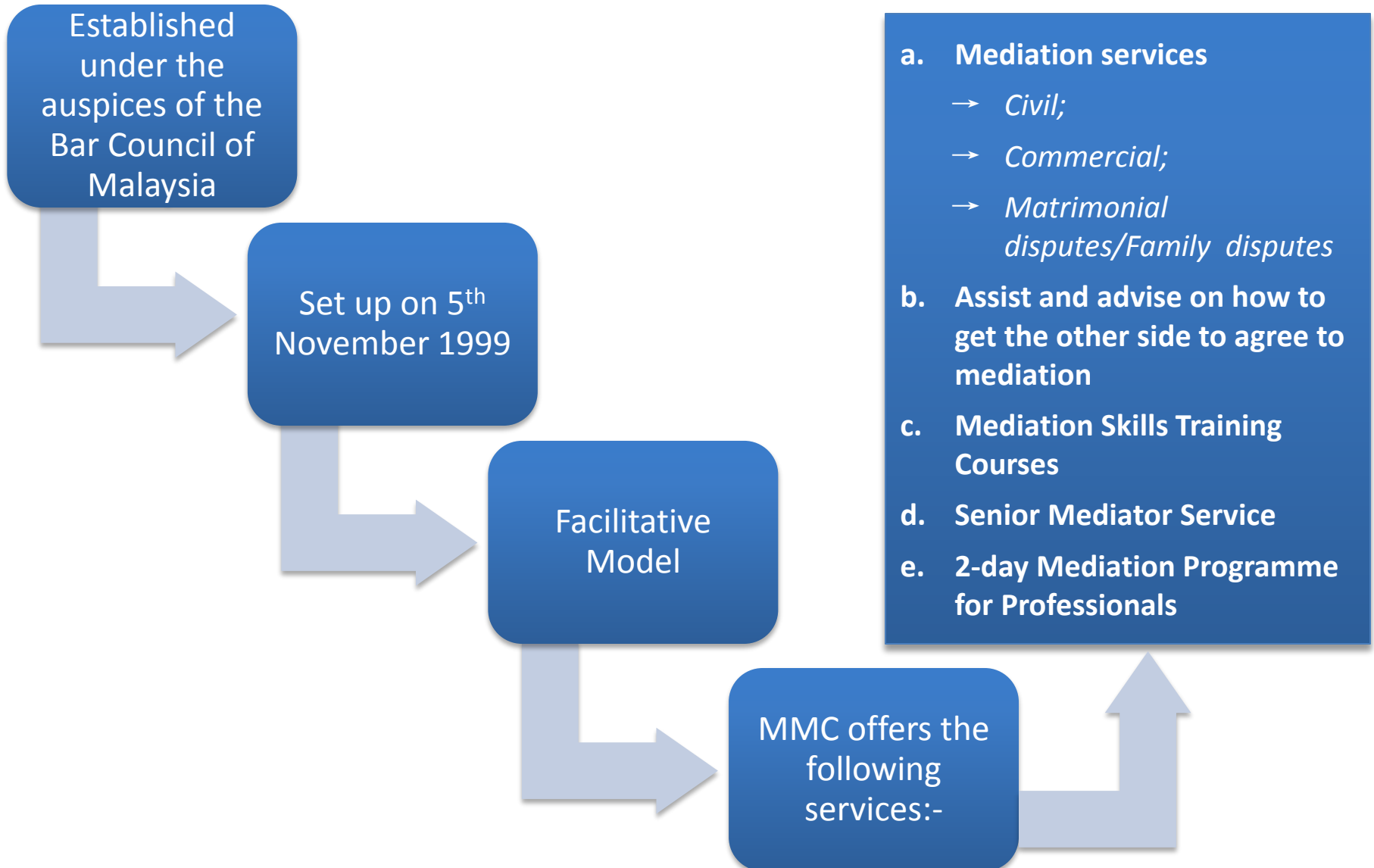
Organizations

Eg: Malaysian Mediation Centre, Kuala Lumpur Regional Centre for Arbitration, MMC

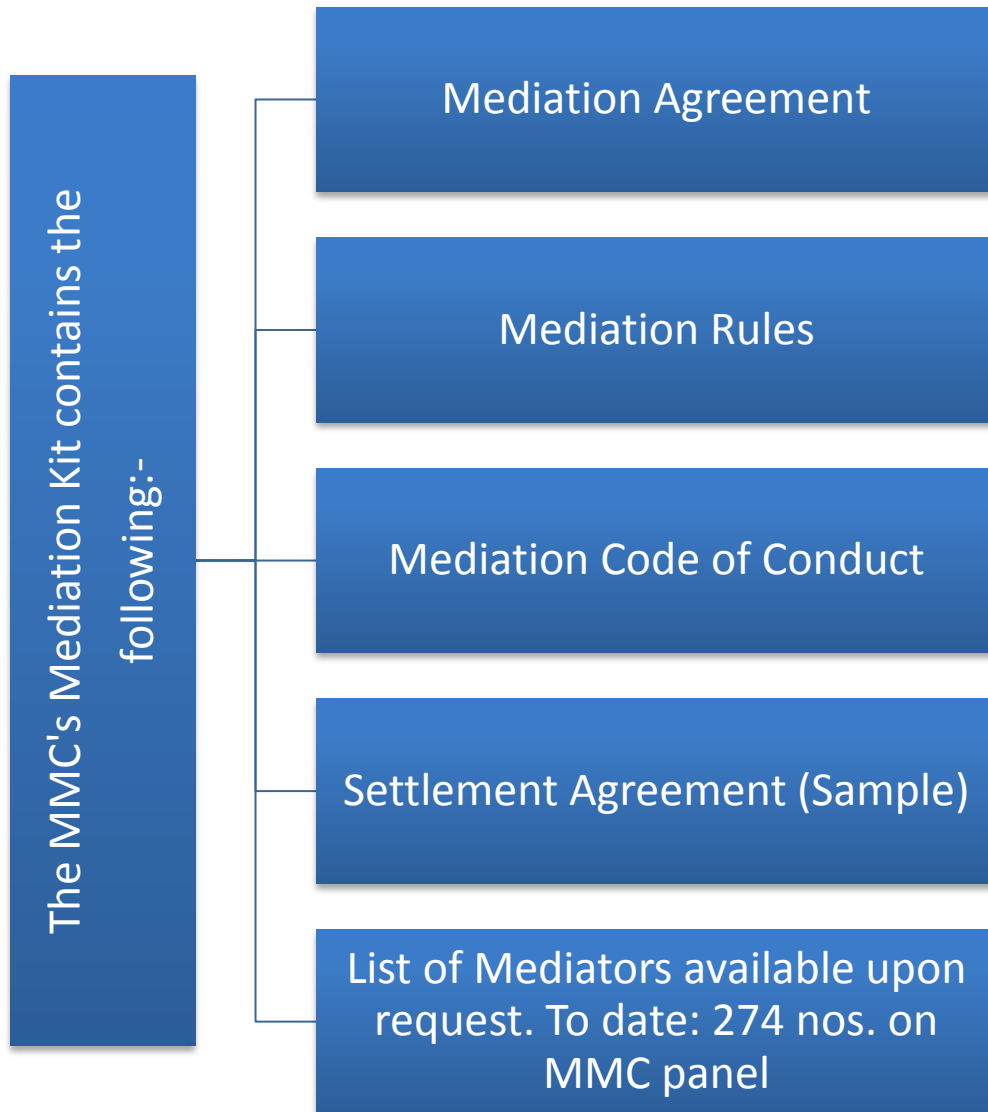
Individuals, Firms, Companies



Malaysian Mediation Center



Mediation Kit



Person in charge:

Md Faizal Mahat

Practitioners Affairs Division

Bar Council Malaysia

No. 15 Leboh Pasar Besar

50050 Kuala Lumpur

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Fax: 03-20316640

Mediation Act 2012



Covers private mediations (not court annexed)

Allows mediation to co-exist with civil action

Sets out procedure to initiate mediation, covers appointment and termination of mediators, conduct of mediation.

Mediation communication confidential and privileged



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