Contents

1 WHAT IS MEDIATION? 1
   How is mediation practised in the UK? ........................................... 2
   Advantages and disadvantages of mediation ..................................... 5
   Why is mediation successful? .......................................................... 11
   Some mediation providers in the UK .............................................. 12

2 SUITABILITY OF THE CASE FOR MEDIATION 15
   Suitability ......................................................................................... 16
   Timing ................................................................................................. 16
   Case factors favouring mediation ....................................................... 17
   Factors possibly militating against mediation .................................... 23

3 ARRANGING A MEDIATION 25
   Client agreement .............................................................................. 26
   Getting the other side to agree to mediation ...................................... 30
   Selecting the mediator ..................................................................... 36
   Length of the mediation ................................................................... 38
   Venue for the mediation ................................................................... 39
   Costs ................................................................................................. 40
   Checklist for arranging a mediation .................................................. 40

4 BEFORE THE MEDIATION 43
   Preparation for the representative ................................................... 44
   Preparation with the client .................................................................. 52
   The position statement ..................................................................... 58
   The mediation agreement (also known as ‘the agreement to mediate’)  59
   Guidance for your conduct in a mediation ........................................ 60
5  AT THE MEDIATION  65
   The opening statement at the joint session ........................................67
   Exploration in private sessions .........................................................69
   Negotiation .....................................................................................71
   Bridging the hard gap and some mediation techniques .......................74
   Techniques ....................................................................................75
   Drawing up heads of terms or a consent order ....................................77

6  AFTER THE MEDIATION  81
   The case settled at mediation .............................................................82
   The case did not settle .....................................................................83
   Use of information or documents gained at a mediation .......................83
   Was an agreement reached at mediation? .........................................87
   Bad faith negotiating at mediation ....................................................87

7  MEDIATION IN DIFFERENT SECTORS  89
   Employment and workplace mediation ..........................................90
   Workplace mediation .......................................................................90
   Employment mediation ....................................................................92
   Shareholder, company and partnership disputes ................................93
   Construction ..................................................................................94
   Financial services ..........................................................................96
   Mediation in family disputes ..........................................................96
   Community mediation ......................................................................98
   Mediation in education ....................................................................100
   Commercial litigation ......................................................................101
   General litigation ..........................................................................102
   Personal injury ................................................................................103
   Clinical negligence ..........................................................................105
   Probate and inheritance claims .......................................................106
   Mediation in other jurisdictions ......................................................107
# APPENDICES

<table>
<thead>
<tr>
<th>Appendix</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>POSITION STATEMENT</td>
<td>109</td>
</tr>
<tr>
<td>2</td>
<td>MEDIATION AGREEMENT</td>
<td>113</td>
</tr>
<tr>
<td>3</td>
<td>TOMLIN ORDER</td>
<td>117</td>
</tr>
<tr>
<td>5</td>
<td>CHECKLISTS – ARRANGING A MEDIATION, PREPARATION WITH THE CLIENT, GUIDELINES FOR BEHAVIOUR AT THE MEDIATION</td>
<td>135</td>
</tr>
<tr>
<td>6</td>
<td>CIVIL PROCEDURE RULES (CPR)</td>
<td>139</td>
</tr>
<tr>
<td>7</td>
<td>PRACTICE DIRECTION 31 (HONG KONG)</td>
<td>143</td>
</tr>
<tr>
<td>8</td>
<td>KODEKS POSTĘPOWANIA CYWILNEGO (POLAND)</td>
<td>149</td>
</tr>
<tr>
<td>9</td>
<td>USEFUL INFORMATION</td>
<td>155</td>
</tr>
</tbody>
</table>