調解及爭議解決手冊

Mediation & Dispute Resolution Handbook

第二版
Second Edition

Publishing Organization
出版機構:

Joint Mediation Helpline Office
聯合調解專線辦事處

Funding Organization
資助機構:

「中小企業發展支援基金」撥款資助
Funded by SME Development Fund

工業貿易署
Trade and Industry Department

"Any opinions, findings, conclusions or recommendations expressed in this material/ event (or by members of the Project team) do not reflect the views of the Government of the Hong Kong Special Administrative Region, Trade and Industry Department or the Vetting Committee of the SME Development Fund and the Dedicated Fund on Branding, Upgrading and Domestic Sales (Organisation Support Programme)."

出版

聯合調解專線辦事處

國際標準書號：978-988-14354-0-8

©2015 聯合調解專線辦事處
版權所有，未經有關之版權所有人書面批准，任何圖文不得全部或局部轉載、翻印或翻譯，違例者必究。

Publisher

Joint Mediation Helpline Office

ISBN: 978-988-14354-0-8

©2015 Joint Mediation Helpline Office
All rights reserved. No part of this publication may be reproduced or transmitted in any form or by any means, electronic or mechanical, including photocopying and recording, or by any information storage or retrieval system without prior written permission of the copyright owner.

前言

提升香港作為亞太區主要國際法律及解決爭議服務中心的地位，一直是香港特別行政區政府（“特區政府”）堅定的政策。在特區政府、司法機構、法律界和其他持份者過去十年的共同努力下，調解現時已成為爭議解決領域的一個重要組成部份。

聯合調解專線辦事處（“調解辦”）於2009年首次出版《爭議解決　調解手冊》，向有興趣使用調解服務的人士提供各項實用資訊和指引，深受調解界和公眾的歡迎。

今年，調解辦出版《調解手冊》第二版，旨在向讀者介紹調解界別的重要新發展，當中包括於2013年1月1日生效，為在香港進行調解提供法律框架的《調解條例》（第620章）。手冊最新版以簡單淺白的方式，提供實用的指引，讓讀者得知如何妥善採用和有效進行調解程序，並闡釋在調解過程中調解員及律師的角色，以及他們如何促成爭議各方達成和解。

本人希望在此向調解辦義務顧問及創會主席陳炳煥先生表示衷心感謝。他在過去多年一直領導調解辦，致力推動使用香港調解服務以解決本地及國際糾紛。《調解手冊》第二版付梓出版，調解專線主席文志泉先生及其他作者亦功不可沒，本人同樣謹此摯誠祝賀。

我深信《調解手冊》第二版會繼續成為調解服務使用者及調解員書架上的常備參考書籍。

律政司司長
袁國強資深大律師
2015年7月

Foreword

Enhancing Hong Kong's position as a leading centre for international legal and dispute resolution services in the Asia Pacific region has been the steadfast policy of the Hong Kong Special Administrative Region Government ("HKSARG"). Through the joint efforts of the HKSARG, the Judiciary, the legal profession and other stakeholders, mediation has now become an important part of the dispute resolution landscape in Hong Kong.

The Joint Mediation Helpline Office ("JMHO") first published the "Mediation and Dispute Resolution Guide" ("the Guide") in 2009 for the purpose of providing useful information and practical guidelines to parties who are interested in using mediation services. The Guide was well received by the mediation community and the public.

This year, JMHO publishes this new edition to update readers with key developments in the mediation sector, including the Mediation Ordinance (Cap. 620), which came into effect on 1 January 2013 and which provides a statutory framework for the conduct of mediation in Hong Kong.

This new edition of the Guide provides practical guidance, in a user-friendly format, on how best to approach and effectively conduct mediation. It also explains the role of a mediator and a lawyer and how they can assist the parties in reaching settlement during the mediation process.

I would like to thank Mr Chan Bing Woon, the Honorary Adviser and Founding Chairman of JMHO for his commitments over the years in leading JMHO to promote the effective use of mediation services in resolving local and international disputes. I also wish to congratulate Mr Antony Man, Chairman of JMHO and the other contributing authors for their efforts in publishing the Guide.

This new edition of the Guide will certainly remain a useful addition to the bookshelves of end-users and practitioners of mediation services alike.

Rimsky Yuen, SC
Secretary for Justice
July 2015

編輯序

《調解及爭議解決手冊》是一本為用家而寫的書籍，於2009年出版，在律政司司長領導的調解工作小組所舉辦的「調解為先承諾書」招待會首次向公眾派發，至今已接近六年。這幾年調解在香港發展迅速，在服務供應、法律框架及調解員規管各方面均有很大變化，因此決定發行第二版，以更新和增補內容。

與第一版相同，第二版同樣以十三篇文章作主要內容，解答用家就談判、調解及訴訟等不同爭議解決辦法的常見問題，而且內容更深入。第二版著重以宏觀思維和全盤策略（第1篇），協助用家分析不同爭議解決辦法，如溝通（第2篇）、訴訟（第3-4篇）、調解（第5-7篇）等的利弊。若當事人欲以調解解決爭議，手冊亦有論述如何為進行調解作出適切準備（第8-9篇），以及相關的策略和談判技巧，以應付各種潛在困難（第10-12篇）。手冊最後以達成和解協議須注意的事項為總結（第13篇）。讀者可按各自需要，閱讀有關篇章。手冊另有精選文章，介紹近年調解在不同領域的發展。

小冊子因篇幅所限只能集中討論如何應付調解及解決爭議時的各項疑難，但綜合各學者及調解員多年來的經驗，調解或談判最大的對手不是另一方當事人，而是自己。很多時調解及協商沒有結果，是因為當事人沒有看到本身的需要和問題。有些人因過去發生的種種事情而諉過於人，忽略了自己對爭議的責任；有些人則相反過於怪責自己，忽略本身的需要。面子、期望、憂慮及憤怒取代了理性思考，而焦點過度集中於爭議本身令當事人忽略了現實情況。有些人甚至會因對方與自己持不同意見而認為對方與己為敵，形成偏見，繼而針鋒相對，斷絕往來。因此要有效使用本小冊子解決爭議，當事人必須先調整自己的心態：

第一、撫心自問切身關注何在。爭議之發生往往非出於人意。因此無論怪責自己或別人均不能有助解決難題，反而令自己「鑽牛角尖」。更積極的方法是了解甚麼驅使自己對事情執著，從根本的人性需要了解自己，學習甚麼可以放下，甚麼需要擇善固執。執著固然容易使問題陷入僵局，但勉強自己遷就別人亦只會是埋下計時炸彈，當日後稍有衝突便會隨時爆發。

第二、籌劃替代方案。無論對方合作與否，自己都應該作好兩手準備，在無需對方合作的情況下自行解決問題。事關問題解決不了，最終受苦的將會是自己。作為最終承擔問題後果的人，必須做好各項準備，這亦有助減少心理和情緒負擔。況且替代方案的好與壞，往往是衡量在調解及協商中是否接受對方提議的基準。

第三、活在當下。帶着昨日的煩惱與明日的憂慮是沒有辦法解決今天的問題。當事人需要了解現實情況，什麼才是現在實質而有效的解決方法。

第四、轉換角度。舉例說：某人逛街時看見喜歡的鑽錶，因價格太高，便對自己說：「這錶太貴了，我負擔不起。」可是另外一人看到同一隻鑽錶，卻想：「這錶雖然昂貴，但我如何才可以負擔得起呢？」同一處境，不同的看法，前者因問題而卻步，後者卻充滿可塑性。創造思考空間在解決爭議上同樣重要，而且自己的思維模式只有自己才可改變。

第五、和而不同。無論對方的意見怎樣與自己不同，保持尊重及以禮待人。當我們尊重別人的時候，別人才更有理由去尊重我們，溝通才不致中斷。

第六、有來有往、留有餘地。協商中一方不斷苛索不願讓步，是沒有可能取得進展。更有效是透過交換條件達致各取所需。即使己方略佔上風，但俗語有云「有風唔好駛盡鯉」。在長期的關係中，雙方有來有往才是長遠獲益的關鍵。由於這需要很大的克制能力，即使很多人明白箇中道理，在爭議解決中卻鮮有做到。

爭議解決這課題，是很多人窮畢生精力去鑽研的學問。上述六點是William Ury在最新著作“Getting to Yes with Yourself”中的論述，筆者認為知易行難。即使如此，筆者也是不斷從日常生活及錯誤中汲取教訓，為自己及身邊的人締造一個和平的環境。與各讀者共勉之！

聯合調解專線辦事處
義務助理秘書（任期至2015年7月）
陳慶生大律師

Preface

This Handbook is written for users of mediation services. It was first published in 2009 and distributed at the "Mediate First" Pledge Reception hosted by the Working Group on Mediation led by the Secretary for Justice. Since then, the development of mediation has leapfrogged, with significant changes in aspects such as service provision, legal framework, and regulatory regime. The 2nd edition is therefore published to update and augment the contents of the Handbook.

Similar to the 1st edition, the 2nd edition contains 13 chapters as its core contents. It seeks to answer users' questions on different dispute resolution processes. The 2nd edition places more emphasis on the strategic considerations in dispute resolution (Chapter 1). It assists users to understand the merits of different processes, including communication (Chapter 2), litigation (Chapters 3 – 4) and mediation (Chapters 5 – 7). Where one chooses to resolve disputes through mediation, the Handbook provides information on preparation (Chapters 8 – 9), as well as strategies and skills for tackling difficult situations (Chapters 10 – 12). The concluding chapter summarizes the points to note when drafting a settlement agreement (Chapter 13). Readers may refer to the relevant chapters according to their needs. Selected articles are also included to introduce the development of mediation in recent years.

Due to limited space, the Handbook focuses mainly on strategies to tackle problems arising from mediation. Collective wisdom of scholars and mediators, however, indicates that the biggest hurdle in mediation or negotiation is not the counterparty but ourselves. Quite often, fruitless mediation or negotiation is a result of our failure to see our needs and problems. Parties who blame others usually ignore their shared responsibilities to the dispute. In contrast, people who blame themselves too much often neglect their own needs. Ego, high hopes, anxiety and anger supplant rationality, and focusing excessively on the dispute itself may deprive our ability to discern reality. Some people even regard the other party as an enemy for holding a different opinion, followed by prejudice, agony and relationship breakdown. In view of all these, readers should have first adjusted their mindset before they can benefit from this Handbook.

First, ponder what concerns us most. Disputes are rarely anticipated and blaming brings us nowhere but deadlock. A more proactive approach is to identify what underpins our insistence on a matter, understand our inner-self in terms of basic human needs, learn what to let go and what to uphold as matters of principle. While stubbornness may lead to an impasse, giving in to others reluctantly may well be planting a seed of revenge which may be triggered by the tiniest conflict in the future.

Second, seek alternative solutions. We should always be prepared to seek alternatives to negotiation as we will be ultimately responsible for all consequences if the negotiation fails. Getting prepared will not only reduce our psychological and emotional burdens, alternative solutions may also form the basis for assessing whether to accept a proposal made during mediation or negotiation.

Third, live in the present. Living under yesterday's frustration and worries about the future cannot solve today's problems. We have to be realistic and consider solutions which are practical and effective at the moment.

Fourth, reframe the picture. Take an example of a person shopping around and finds an expensive diamond watch which he likes. He said to himself, "It's too expensive. I cannot afford it." Another person sees the same diamond watch but thinks differently, "How can I afford this expensive watch?" Under the same circumstance, different perspectives bring different results: the former stops thinking altogether whereas the latter enjoins possibilities. Creating room of thoughts is equally important in dispute resolution and our mindset can only be adjusted by ourselves.

Fifth, pay due respect. Regardless of different opinions held, showing respect for others is the only way to encourage reciprocal respect and keep the communications going between the parties.

Sixth, give and take, refrain from bullying. It is impossible to make progress in negotiation or mediation if a party continuously makes harsh demands and no concessions. A more effective approach is to address each other's needs by making conditional offers. Reciprocation is the key to achieving long-term benefits. Hence, even when we have an upper hand, it is not wise to over-power the other party. This requires a high level of self-restraint and is rarely achieved even though the notion is widely accepted.

Dispute resolution is a subject which many people spend their whole lives studying. The six principles above are discussed by William Ury in his book "*Getting to Yes with Yourself*". I believe that they are easier said than done. That said, like everyone, I need to learn hard lessons repetitively from mistakes in order to make peace with our loved ones. May all of us strive to improve.

Oscar Tan
Assistant Honorary Secretary
Joint Mediation Helpline Office
(Terms of service until July 2015)

鳴謝

《調解及爭議解決手冊》第二版能夠順利出版，實有賴社會各界對調解行業的鼎力支持。首先要感謝律政司司長袁國強資深大律師在百忙之中抽空為調解手冊撰寫《序言》，還有陳炳煥律師 — 本辦事處的榮譽顧問及律政司司長領導的調解督導委員會轄下的公眾教育及宣傳小組委員會主席，強烈建議出版調解手冊的第二版，讓更多調解同業和用家受惠。

是次編寫調解手冊的作者均是來自不同的專業界別、司法機構、消費者委員會、學術界及香港主要調解服務機構的調解員，他們寶貴的知識及經驗，豐富了調解手冊的內容。我謹此衷心感謝所有參與編寫的作者。與此同時，亦感謝辦事處同事及助理義務秘書陳慶生先生協助策劃和落實編輯工作。

最後，特別鳴謝香港政府「專業服務發展資助計劃」提供的財政支援，及各個非牟利機構和政府部門提供的最新調解服務資訊，使調解手冊的製作得以順利完成。

聯合調解專線辦事處主席
文志泉先生

Acknowledgment

The successful publication of the second edition of "Mediation & Dispute Resolution Handbook" hinges on the enormous support in the community towards the mediation industry. We would like to first express our gratitude to the Secretary for Justice, Mr. Rimsky Yuen Kwok-keung, SC, JP for writing a "Foreword" for this Handbook in the midst of his busy schedule. Sincere thanks should also be devoted to Mr. Chan Bing Woon, SBS, JP, the Honorary Advisor of Joint Mediation Helpline Office (JMHO) and the chairman of the Public Education and Publicity Sub-committee of the Steering Committee on Mediation chaired by the Secretary for Justice, for strongly recommending us to publish the second edition of the Handbook, so as to enable more mediation professionals and users to benefit from it.

The authors of this Handbook come from various professional bodies, the Judiciary, Consumer Council, the academic sector, and mediators of major mediation services providers. Their valuable knowledge and experience enrich the content of this Handbook. I would like to hereby express my heartfelt gratitude to all authors for this Handbook. At the same time, I would like to take this opportunity to express my appreciation to colleagues of JMHO and Mr. Oscar Tan, Assistant Honorary Secretary, for their assistance in planning and implementing the editing works.

Last but not the least, I wish to give special thanks to the Professional Services Development Assistance Scheme (PSDAS) established by the Hong Kong SAR Government for providing financial support, as well as various non-profit making organizations and government departments for providing the latest information concerning their mediation services, all of which have procured the successful publication of this Handbook.

Mr. Antony MAN
Chairman of the Joint Mediation Helpline Office

早期發展

調解早於80年代已在香港植根，當時天主教香港公教婚姻輔導會開創婚姻調解服務。及至1990年，當時的工務局在香港國際機場核心工程的標準合約中規定，如有索賠個案應先進行調解。此舉促使往後的政府工程合約加入調解條款。

司法機構的推動

其後，司法機構於2004年的民事司法制度改革報告書中，建議可在法庭程序中引入調解機制，使法庭在合適的情況下，鼓勵各方採用包括調解在內的另類排解糾紛程序，並為有關程序提供便利。此後，司法機構成立了工作小組，研究推行不同範疇的調解試行計劃。到2010年，司法機構頒布了適用於大部分民事訴訟的《實務指示31 — 調解》。

特區政府的推動

行政長官在2007-08年度《施政報告》中，宣布成立一個由律政司司長領導的跨界別工作小組，在「規管框架」、「培訓和資格評審」以及「宣傳和公眾教育」三方面審視及計劃調解服務的發展。小組於2010年完成工作報告和建議，並頒布《香港調解守則》，為調解員訂立專業操守。

工作小組的任期完結後，律政司司長成立了調解專責小組跟進工作小組的建議，包括推動於2013年實施的《調解條例》。

到2013年，律政司司長成立了新的調解督導委員會，進一步司長就提倡和發展調解服務作出研究及建議。

民間調解服務的發展

調解先導計劃

在過去10年，民間組織先後推出不同範疇的調解先導計劃，例如「新保險索償調解試行計劃」(2007)、小額建築爭議試行計劃(2008)、測量爭議調解及仲裁計劃(2009)、《土地（為重新發展而強制售賣）條例》調解先導計劃(2011)等，鼓勵市民認識及使用調解服務。

金融糾紛調解中心

2008年，雷曼迷債事件促使香港金融管理局委託香港國際仲裁中心成立《雷曼兄弟相關投資產品爭議調解及仲裁計劃》，協助投資者及分銷銀行透過調解及仲裁程序解決爭議。計劃的成功促使金融糾紛調解中心於2012年成立，專責處理金融機構與投資者之間的金錢糾紛。

聯合調解專線辦事處

為迎合需求，八所在香港提供調解服務的專業團體於2010年7月成立聯合調解專線辦事處（辦事處），在非牟利基礎上，為有意使用調解服務的各方當事人提供一站式的調解轉介服務。辦事處位於高等法院大樓內，扮演重要的中央轉介角色。

香港調解資歷評審協會有限公司

此外，業界因應調解工作小組的建議，自發成立了調解員資格評審組織 — 香港調解資歷評審協會有限公司（"調評會"），訂立劃一的調解員資格評審標準，以確保調解員的質素。

總結

香港調解業雖在近年急速發展，但相對外地而言，仍屬早期發展階段，因此十分有賴政府支持業界面對各項挑戰。

前首席法官李國能於2007年的一次調解會議中提到：

"要成功發展調解服務，調解員的質素至為關鍵。調解員的質素越高，取得成功的機會也越大。隨著通過調解而達成和解協議的成功率增加，使用調解來解決糾紛的情況也會增多，調解服務會更趨普及。"

展望將來，調解業必須維持國際水平的服務質素，甚至促請政府成立法定監管機構，讓調解在香港得到可持續的發展。

作者：陳炳煥律師，銀紫荊星章，太平紳士 — 聯合調解專線辦事處榮譽顧問及創會主席、律政司司長轄下調解督導委員會公眾教育及宣傳小組委員會主席

Early Development

Mediation took root in Hong Kong as early as in the 1980s. At that time, the Hong Kong Catholic Marriage Advisory Council pioneered marriage mediation service. In 1990, the then Public Works Department stipulated in the standard contract for the Hong Kong International Airport Core Project (ACP) that all claims should be resolved by way of mediation first. This action prompted all government construction works contracts to include a mediation clause thereafter.

Promotion by Judiciary

Later, the Judiciary proposed in its 2004 report on the civil justice reform that a mediation mechanism should be introduced into court procedures, so that a court may, where appropriate, encourage all parties to adopt alternative dispute resolution procedures including mediation, and to facilitate the conduct of such procedures. Subsequently, the Judiciary set up a working group to study how mediation pilot schemes may be introduced in different areas. In 2010, the Judiciary promulgated Practice Direction 31-Mediation, which is applicable to most civil actions.

Promotion by HKSAR Government

The Chief Executive announced in the 2007-2008 Policy Address the establishment of a cross-sector working group (Working Group) headed by the Secretary for Justice to review and map out plans for the development of mediation services in three aspects, namely regulatory framework, training and accreditation, and publicity and public education. The Working Group released a report with recommendations in 2010 and promulgated the Hong Kong Mediation Code as the professional standard for mediators.

Upon the end of the Working Group's service term, the Secretary for Justice set up a Mediation Task Force to follow up on the recommendations made by the Working Group, including the enactment of the Mediation Ordinance.

In 2013, the Secretary for Justice set up a new Steering Committee on Mediation to study and recommend how to further promote and develop mediation service.

Development of Civilian Mediation Service

Mediation Pilot Schemes

In the past 10 years, non-governmental organizations have from time to time launched various mediation pilot schemes, for example, the New Insurance Mediation Pilot Scheme (2007), Pilot Scheme for Mediation of Low Value Construction Disputes (2008), Surveying Dispute Mediation and Arbitration Scheme (2009) and Pilot Mediation Scheme under the Land (Compulsory Sale for Redevelopment) Ordinance (2011) etc, in order to encourage members of the public to get familiar with and use mediation services.

Financial Dispute Resolution Centre

In 2008, the Lehman Brothers Minibonds incident prompted the Hong Kong Monetary Authority to commission the Hong Kong International Arbitration Centre to establish the Lehman Brothers-

related Investment Products Dispute Mediation and Arbitration Scheme, to assist investors and distributing banks to reach settlement through mediation and arbitration. The success of the scheme has led to the establishment of the Financial Dispute Resolution Centre in 2012, which is dedicated to resolving monetary disputes between financial institutions and investors.

Joint Mediation Helpline Office

To meet the need of the public for mediation services, eight professional bodies in Hong Kong providing mediation services jointly set up the Joint Mediation Helpline Office (JMHO) in July of 2010 in view of the need for the same. On a non-profit basis, JMHO provides one-stop mediation referral service to all parties interested in mediation. JMHO is located at the High Court Building and plays an important role in centralizing mediation referral service.

The Hong Kong Mediation Accreditation Association Limited

Following the recommendations of the Working Group, the mediation industry took the initiative to establish the Hong Kong Mediation Accreditation Association Limited (HKMAAL) as a mediator accreditation body to set uniform accreditation standards for mediators to ensure their quality.

Summary

Although the mediation sector in Hong Kong has been expanding rapidly in recent years, it is still at an early stage of development compared with other countries. Hence, it is important for the government to support the industry to face the challenges ahead.

The Former Chief Justice, The Hon Andrew Kwok-nang Li indicated at a Mediation Conference in 2007:

"The quality of mediators is of crucial importance to the successful development of mediation. The better the quality of the mediators, the greater the prospect of achieving success. With increasing success in mediating satisfactory settlements, the greater will be the use of this method of dispute resolution. It is hoped that a snowball effect will develop."

Looking forward, the mediation sector needs to maintain its service quality on par with the international standard, or to take a further step to urge the government to set up a statutory regulatory body for mediators so as to allow mediation a sustainable development in Hong Kong.

Author: Mr. CHAN Bing Woon, SBS, JP – Honorary Advisor and Founding Chairman of Joint Mediation Helpline Office, Chairperson of the Public Education and Publicity Sub-committee of the Steering Committee on Mediation chaired by the Secretary of Justice

目錄

Table of Contents

第一篇　紛爭

- **為何處理紛爭需要事先計劃？**
- **要妥善處理紛爭，需要考慮甚麼因素？**
- **怎樣評估及增加個人解決紛爭的勝算？**

日常與人相處[1]，大家或因價值觀、情感、利益、制度或對事情的不同理解而出現紛爭，從而對家庭、工作及個人生活造成困擾。若果處理不善，甚至導致家庭破裂，失去工作，錯失商機。

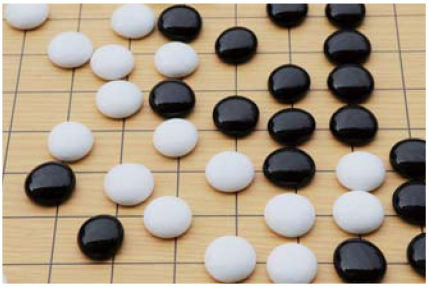
不想在紛爭中成為輸家，關鍵在於對形勢作出研判，定立解決爭議的全盤策略。

利害得失

紛爭只是人生一隅，當事人應該衡量甚麼只是一時得失，甚麼才是對自己至關重要。如果認為親子關係重要，因孩子一時反叛而體罰，是明智嗎？傷害感情之餘更有機會惹上官非。若認為公司長遠利益重要，應否因客戶投訴便立即讓步定下先例？為了一時之氣頂撞上司同事，因而影響日後工作，又是否划算？健康欠佳，已屆退休之齡，是否值得為十數萬元投資損失動輒興訟？若果需要對方妥協方可解決問題，何以現階段就反目成仇？這些看似簡單的問題，卻往往因當事人「火遮眼」被擱在一旁，繼而作出違背初衷、損害大局的決定。

爭議成因

處理爭議前應先分析爭議的成因，才可對症下藥（見表1）。情感上的需要難以用物質解決；結構上的問題不能治標不治本；利益分配問題不是靠拉關係解決，觀點與觀感的分歧不是單



靠游說便可改變對方；藥石亂投只會令衝突升級，無助解決問題。

風險成本

處理爭議的變數很多，當事人應衡量自己能否應付。如果選擇將爭議訴諸法庭，能否應付曠日持久的壓力或敗訴時的訟費？若以權力迫使對方妥協，對方會否伺機報復？若選擇與對方協商，如對方違反協議，又或協議也不能徹底解決問題，還有什麼補救方法？

1. 如父母、配偶、子女、上司、下屬、同事、客人、鄰居、朋友等不同關係

情理依據

爭議往往是由一連串的矛盾引發。矛盾升級前，當事人應及早了解自己及對方的權利和關注所在，作為引導事態發展的框架，或作爭議發生後應對的依據。面對商業及工作上的潛在爭議，當事人亦需順應人情世故，避免衝突過份升溫，錯失談判的機會。

量力而為

解決爭議須花費時間、精力和資源。因此當事人必須評估財務資源是否充足，能花在處理糾紛的時間又是否充裕；若果要與對方談判，要考慮溝通技巧是否熟練，家人朋友能否提供情緒支援；訴訟時能否找到可靠的律師或顧問等，方可量力而為。

解決紛爭的關鍵在於理性思考和善於審時度勢。計劃愈周詳，愈能應付變數，反之風險越大。故此每遇紛爭，必先準備作全盤計劃。

表1：爭議的成因及解決方法

爭議的成因	解決方法
I. 關係衝突 • 意氣之爭 • 誤解或成見 • 缺乏溝通	採用能達至以下目標的爭議解決平台： • 讓情緒得到有效疏導 • 讓當事人在有規則和秩序的環境下進行溝通 • 增加溝通次數與質素
II. 價值觀衝突 • 生活方式 • 宗教 • 意識形態	改變處事的思維： • 避免將自己的價值觀加諸在問題及對方身上 • 求同存異 • 尋求雙方信任及具影響力的人介入
III. 結構性衝突 • 一方長期操控和分配資源 • 外在環境因素使各方當事人的權力不均	• 促進角色互換/換位思考 • 建立共同決策的平台 • 資源再分配 • 以協商代替行使權力決策
IV. 利益衝突 • 程序 • 心理 • 物質	• 專注各方的關注，而非立場 • 以客觀標準尋求解決方案 • 找出可擴大選擇範圍的方法 • 找出可滿足各方所需的方法
V. 缺乏資訊 • 對資訊持不同理解/意見 • 以不同方式評核資訊	• 建立一致的標準，以收集及評核數據 • 就數據的重要性取得共識 • 聽取第三方專家的意見，以突破困局

作者：文志泉先生 — 聯合調解專線辦事處主席

第二篇　溝通

- **溝通對解決紛爭起甚麼作用？**
- **怎樣進行有效的溝通？**
- **溝通的障礙是甚麼？**
- **調解員怎樣協助爭議雙方溝通？**

兩人在人多擠迫的地方無心碰撞，結果大打出手；一宗本可道歉了事的交通意外卻因口角而報警收場，皆因爭議者內心憤憤不平之故。當爭議者怒火中燒而惡言相向，對方耐不住挑釁而反唇相譏，衝突便陷入惡性循環。要在對立中打破僵局讓對方合作，方法便是「有效溝通」。

溝通目的在於設法了解對方及讓對方明白自己的意見，因此務必理性進行，不可因受到挑釁而作情緒化的反應。以下的「三步曲」是簡單務實的溝通之法：

(1) 停一停：所謂靜而後能思，面對衝突者不應立刻反駁，要爭取時間思考，勿被負面情緒控制，避免惡言相向和意氣用事。
(2) 想一想：無論談判或調解，必須先明白目標所在，然後想清楚那種方法最有效，溝通才會有方向。
(3) 談一談：理性地表達個人感受，有禮貌地提出要求，透過溝通各取所需。

協助爭議者解決紛爭的溝通技巧林林總總，以下是可以把討論納回正軌的基本手法：

(1) 聆聽及覆述：積極聆聽並覆述聽到的事實及想法以表示你明白。
(2) 反映感受：講出對方的感受及表現同理心，如：「我明白你好唔開心…」
(3) 確認及鼓勵：欣賞參與者的勇氣及努力，鼓勵彼此保持理性對話，如：「非常感謝你們的出席…我明白每人都對這事件有不同的關注…」
(4) 表述共同目標：向對方重申雙方希望達到的目標，如：「我們都希望和平解決這個難題…」
(5) 撮要及邀請協商：將發言者的內容簡述，邀請參與者提出達成協議之要求，如：「讓我們一起平心靜氣聽一聽對方的觀點，再討論下一步點做？」

無論對方如何惡意攻擊，只要重覆上述策略，即可避免火上加油，但爭議者或參與調解者須切記不要在言詞中「加油添醋」，挑釁對方；也不要作出攻擊性的身體語言（見右表）；及不要動輒借助外力試圖壓倒對方，如報警、找友人「助陣」或要脅發律師信等。這些外在勢力不一定讓對方屈服，卻往往斷絕溝通及引來對方更大的反擊。

若衝突升級至雙方無法溝通的僵局，應尋求受訓的調解員協助。調解員既不會判斷是非對錯，也不會協助某一方壓倒對方，是中立的。他們善於鼓勵雙方客觀描述事情和問題，將時、地、人、事科學化地順序說出，促進信息的交流。此外調解員善於運用說話重構技巧(reframing)扭轉負面的對話，將雙方劍拔弩張的言詞中性化，也能把討論焦點從「過去的對錯」轉化到「將來的解決方案」。

總結而言，良好的溝通技巧，特別是聆聽、提問及重構技巧，對於談判和調解很有幫助。這些技巧能幫助爭議各方明白彼此的關注和利益，而且有助互相理解和促進關係，令事件更易解決。

溝通時應該做和不應做的事：

不應該做的事：
1. 惡言相向
2. 怒目而視
3. 緊繃面部
4. 以手指向對方
5. 撓起雙手
6. 撐腰
7. 拍檯
8. 拋擲東西
應該做的事：
1. 停一停
2. 想一想
3. 正面表達信息
4. 表現同理心
5. 釋出善意
6. 重申共同目標
7. 重構負面為正面
8. 著眼未來

作者：黃成榮教授 — 香港城市大學應用社會科學系教授

第三篇　律師

- **律師在解決爭議中的角色是甚麼？**
- **律師在調解的角色是甚麼？**
- **律師如何提供「替代式解決方案」服務？**
- **訴訟時怎樣與律師一起處理案件，提高解決爭議的「勝算」？**

律師分為事務律師與訟務律師（大律師），兩者經常緊密合作，各司其職，維護當事人的利益。事務律師向當事人提供初步法律意見、發律師信、傳訊令狀、整理證據、會晤證人等。在有需要時，事務律師會轉聘大律師作進一步法律研究或對較專門的案件提供法律意見，大律師代表當事人在聆訊或非正審申請中進行抗辯或陳詞，務求說服法官，當中主要的工作包括：草擬狀書、研究法律典據、搜集相關案例、分析呈堂證據及擬備證人供詞、準備在審訴時的提問及盤問證人的策略。

若當事人有意進行調解，律師有責任向當事人解釋調解的性質和程序。在調解前，事務律師為當事人分析問題的癥結、理解其關注事項、研究個案情理上的依據、對形勢作出研判、發掘談判空間、協助當事人構思不同的解決方案，以及向當事人介紹調解員，並為當事人準備及整理調解所需的文件。若預算許可，當事人可轉聘大律師，就和解範圍及金額尋求進一步意見。

調解會議中，有些律師採取積極的態度，特別在複雜的個案中，例如工程或商業糾紛，律師代表當事人解釋案件細節；有些律師或許採取不干預態度，減少在調解會議的參與，以免影響當事人的決定。除了在會議期間提供法律意見，律師亦會協助草擬和解協議書，以他們的法律專業知識加強協議書的執行性。

至於當事人，如果想增加解決爭議的「成功率」，應該：

(1) 與律師保持良好的「伙伴」關係，提供足夠資料給律師分析；
(2) 請律師評估訴訟所需的費用及時間；
(3) 請律師分析個案的形勢；

(4) 向律師查詢有關「替代式解決方案」的服務（見下表）；
(5) 要求律師分析各種方法的利弊和成本，以及最適合自己個案的解決方法；
(6) 如果決定進行調解，應該要求律師解釋調解的程序及調解前的準備工作。

替代式解決方案一覽表

替代式解決方案	服務提供者
1. 無損權益的談判	律師
2. 專業調解	調解員
3. 仲裁	仲裁員
4. 專家裁斷	相關行業專家／律師
5. 審裁	審裁員／律師

作者：楊文聲律師 — 香港調解會主席

第四篇　訴訟

- **訴訟過程是怎樣的？**
- **訴訟有甚麼利弊？**
- **爭議者透過訴訟可得到甚麼？**
- **訴訟與調解有甚麼關係？**

法治是香港的核心價值。為了利便解決爭議和確保在訴訟各方達致公平，民事訴訟須依循既定的民事程序規則進行。過程包括律師從當事人聽取指示，蒐證，向對方發律師信，擬備狀書及入稟令狀，出席法庭案件管理會議，披露文件，擬備證人供詞（包括專家證人報告），審前覆核，排期審訊，提交書面陳詞及庭審。法庭作出判決後，敗訴的一方可依法申請上訴。

訴訟雙方在不同階段亦可按程序上的需要作多於一次的非正審申請，例如申請延期提交法庭文件、披露特定文件、增減原告或被告、將案件剔除或剔除狀書或證人供詞中不符合規定的內容（如訴訟保密權保護下的資料）及修改狀書等。如另一方反對該些申請便很大機會要排期聆訊。在這些非正審申請中敗訴的一方同樣亦可依法申請上訴。因此一宗案件很多時可曠日持久、且可能花費甚鉅。（見表一：非正審申請的典型案例）

訴訟雖然所費不菲，但雙方均享有程序公義，可公開及充分地向獨立的法官陳述案情及理據。法官會根據證據、法例和案例作出判決，為案件作出了結。此外，當原告入稟法院時，被告往往必須回應，否則很大機會被判敗訴。而敗訴方也必須執行法庭的命令。判決中的重要法律原則也可以成為案例作日後法官及仲裁員裁決的參考依據。法庭判決中常見的濟助有以下幾種：

(1) 金錢賠償
(2) 強制性（禁制性）濟助
(3) 強制履行／履行義務令（包括履行合約、轉移業權、公共職責等）
(4) 頒令公司清盤、強制股權轉讓
(5) 聲明（例如澄清法律觀點，令雙方長遠合作關係有更清晰的指引）

訴訟有利亦有弊。當事人需要了解訴訟的風險及變數，方可避免嚴重後果。訴訟前準備是否充足，審訊期間證人的表現，律師的陳詞等均是不確定因素。當事人面對訴訟時往往也承受到很大的財政和心理壓力。一般來說，敗訴的一方（包括非正審申請）需支付勝訴一方的堂費（即律師費）。若

敗訴一方不服判決上訴，所消耗的金錢及時間便會進一步飆升。

善於全盤計劃的人懂得在訴訟中尋求和解的時機，以免勞神傷財。司法機構於2010年頒布調解實務指示31，要求當事人在適用範圍內考慮進行調解。拒絕調解的一方若沒有合理解釋，法庭可在判決時向該方作出不利的訟費命令。這措施不但給予雙方管理訴訟風險的契機，而且在調解中，雙方可按訴訟的預計結果作為談判的指標，從而促成雙方提出或接受和解方案。

表一：非正審申請的典型案例

Hong Kong Polytechnic University and Others v. Next Magazine Publishing Ltd and Another (HCA 3238/1995)

背景：1994年，香港理工大學、其校長及一名講師控告辯方的壹傳媒及其撰文記者誹謗。

1994年	案件入稟高等法院；
1995年5月	原告申請剔除辯方的部分抗辯；
1995年10月	辯方申請將理工大學從原告人名單中剔除；
1996年3月	辯方申請將理工大學校長從原告人名單中剔除；但申請被駁回後，辯方提出上訴；
1996年初	原告申請要求辯方披露文件，辯方拒絕；
1996年	法庭要求辯方上呈有關文件，以裁定該文件是否需要及應如何作出披露；
1996年底	法庭將理工大學從原告人名單中剔除。原告不服上訴；
1997年	法庭推翻「剔除理工大學作為原告人」的原判；同年，主審官去世，案件仍未開始正審。

★ 三年來法庭只肯定了兩件事：
1. 理工大學及其校長是合法的原告人，可以提出訴訟；
2. 壹傳媒的抗辯書需要修改。

★ 案件最後庭外和解。

資料提供：香港大學法學院陳文敏教授

作者：蘇國良大律師 — 聯合調解專線辦事處義務秘書

第五篇　調解

- **調解是甚麼？**
- **怎樣知道個案是否適合調解？**
- **爭議者在調解中有何權利？**
- **調解和政府部門的調停有何分別？**

調解是訴訟以外解決爭議的有效方法，由爭議各方自願進行，當中以「促進式調解」最為廣泛採用，由中立調解員協助爭議各方建立溝通、瞭解爭議的焦點、協調討論及談判，以尋求共同接受的解決方案。如當事人在調解中達成和解協議，一般會簽署有法律約束力的《經調解的和解協議》作實。而按香港法例第620章《調解條例》的規定，調解通訊內容需要保密。

當事人在調解中達成的和解方案，一般具靈活性和切合當事人利益，甚至是法院無法命令的。曾有知識產權爭議以授權協議作和解方案。有法官在審理案件時亦論述：「有技巧的調解員，很多時都能促成雙方滿意的解決方案，超出了律師和法庭的能力。」[1]

調解適合處理涉及當事人情緒、複雜關係、名譽，多項利益等的爭議。除

1. Dunnet v Railtraek Plc [2002] EWCA Civ 303, § 14

了以下個別事宜不適用外，所有糾紛均可調解：

(1) 需獲法庭指令或解釋，如禁制令等

(2) 當事人精神狀態不適合或沒有簽訂合約的能力

(3) 涉及太多當事人，如公眾事件

(4) 涉及刑事罪行，如家庭暴力、性暴力等（復和調解除外）

在香港，調解程序及調解員受《調解條例》及《調解守則》約束，以保障當事人的權利，包括：

(1) 自願參與及終止調解

(2) 委任合適及沒有利益衝突的調解員

(3) 獲得公平的對待

(4) 獲得充份的資訊

(5) 自願提出方案及自主作決定

(6) 調解通訊按法例保密，除法庭另有規定外，不會作呈堂證供

調停和調解

調停是指在行使法定權利而出現糾紛時為達成和解而進行的商討過程，受相關法例[2]規範。調停屬自願性質，也是免費的，調停員是由法例訂明的獲受權人士委任，當事人並沒有選擇的權利。調停員並沒有裁判權，不能判決誰是誰非。他們協助爭議雙方探討問題癥結，解釋有關法例的規定，使雙方在考慮情、理、法三方面後，找出彼此可接受的解決方法。但如果發覺有涉嫌觸犯法例的事件，調停員可以轉介個案到相關的政府部門作出調查和跟進。

2. 如《勞資審裁處條例》、《殘疾歧視條例》或《殘疾歧視（調查及調停）規則》

作者：羅偉雄先生 — 香港和解中心會長

第六篇　調解人選

- **調解員擔任甚麼角色？**
- **在哪裡可找到認可調解員？**
- **如何挑選合適的認可調解員？**
- **調解會議有哪些人參與？**
- **可否有非當事人的陪同人士在場？**

調解員是調解過程的管理人，負責主持會議，並在不就爭議事項作裁決的情況下，協助爭議各方有效溝通，找出爭議點；探求和擬訂解決方案，並達成協議。作為中立、獨立及不偏不倚的第三方，調解員會以積極及開放的態度，協助各方以務實及協作的思維，共同創造爭議各方均能夠接受的解決方案。

現時香港有多個專業機構或團體提供認可調解員名冊供市民參考及選擇，例如由業界主導成立的調解員資格評審組織香港調解資歷評審協會（「調評會」）。另外，位於香港金鐘高等法院之聯合調解專線辦事處[1]亦提供一站式調解轉介服務，包括提供免費諮詢以及轉介有意使用調解服務的人士至調解服務機構。

當事人在選擇調解員時，一般會考慮調解員的背景、資歷、經驗、收費、語文能力等因素。必須注意的是，調解員一般不會提供任何專業意見或裁決（如法律意見），而是透過調解程序及技巧促進當事人溝通、協商、及在考慮各項因素後作出知情決定。因此當事人應彈性地按不同個案的背景、性質及需要，選擇一位適合的調解員，例如是否需要某種專業資格、溝通技巧、談判風格及個人態度來配合處理個別紛爭。

調解著重直接對話與溝通，讓當事人在調解員的協助下，互相了解對方的困難和關注，從而一起發掘共同接受的方案解決問題；因此當事人的出席

1. 辦事處由香港八所專業團體組成：香港調解會、香港大律師公會、香港律師會、特許仲裁學會（東亞分會）、香港仲裁司學會、香港建築師學會、香港測量師學會及香港和解中心

對調解尤其重要。如當事人是法人團體，其代表須持有有效授權，確保有足夠權力協商及在最後簽署協議文件。此外亦要注意他們的談判經驗、技巧及風格是否能配合調解員解決問題，而不是找出誰對誰錯，把調解變成法庭以外的另一個戰場。

調解程序保密，並且有條理，但過程有彈性，並非像法庭般拘謹，目的是讓當事人心平氣和地進行會議。因此在諮詢各方當事人後，法律顧問、專家或其他對解決事情有幫助的人士（例如家人、同事或朋友等…）亦可參加調解會議，在有需要時作為諮詢對象或提供情緒支援（例如長者需要老伴或子女陪同方可安心參與調解及作最後決定）。只要對調解有幫助，不影響由當事人主導決策的原則，調解員是非常鼓勵陪同人士參與的。但所有與會人士必須簽署保密協議，以確保保密精神得以尊重。

作者：方欣欣小姐 - 聯合調解專線辦事處調解顧問

第七篇　調解過程

- **甚麼是制度化調解？**
- **制度化調解有甚麼好處？**
- **參與制度化調解有甚麼需要留意？**

顧名思義，制度化調解與「制度」一詞關係密切。這意味著高透明度的調解制度會從個案受理準則，調解會議的程序、收費、到調解所需的標準文件皆有明文規定。

金融糾紛調解中心（下稱「調解中心」）提供的「金融糾紛調解計劃四小時調解」（下稱「調解計劃」）正是制度化調解的好例子。調解計劃主要服務香港的金融機構及其個人客戶，為指定範疇內[1]的金融糾紛提供調解及仲裁服務。調解計劃是一套有系統及有效率處理金錢爭議的糾紛解決機制，所有調解計劃內之金融機構成員必須參與本調解計劃，在這計劃下，金融機構的個人客戶毋須擔心金融機構拒絕參與調解。

調解計劃以四小時內處理爭議為原則，因此充份的準備工作是必須的。一般來說，調解中心職員都會先與調

1. 如港幣五十萬元以下，涉及實則金錢損失的爭議等等。詳見個案受理準則指引：(http://www.fdrc.org.hk/tc/doc/FDRS_Guidelines_on_Intake_Criteria_of_Cases_tc.pdf)

解雙方會面，以瞭解雙方對爭議的觀點、爭議背後各自的立場及利益，以及對調解員的要求，以便為雙方甄選適合的調解員。在委任調解員後，調解中心會將相關之文件交予調解員細心瞭解，亦會安排調解員與爭議雙方會面，以釐清文件中未有記載之細節及讓調解員與雙方建立良好之互動及互信關係，為四小時調解會議作好準備。至於調解過程，除了有時間限制外，與一般調解相似。調解員會分別以共同會面及保密的個別會面，協助爭議雙方溝通和尋求解決方案。

參與調解人士一般都真誠希望爭議能夠得到解決。一套清晰及公開的制度不單能令使用者清楚預期調解所需要的時間、金錢及文件，從而減低使用者對調解的焦慮及對程序公平與否的疑慮，亦可使雙方聚焦於處理爭議事項，以祈達成處理糾紛最理想的方案。

制度化調解既提供了一個清晰及公正的調解程序，餘下的便是當事人自我調節心態，令調解得以順利進行。須知「寸步不讓」、「真理在我手」、「妖魔化對手」等心態無助於解決爭議。樂意及細心聆聽對方說話，以開誠態度處理要求及以理性對待憤怒情緒，往往能令當事人發現處理事件的新視角，從而解決爭議。

一般調解過程流程圖

雙方簽署同意調解協議書

↓

調解員個別約見雙方及收集資料

↓

調解員客觀評估個案

↓

調解員安排共同會議
及訂立議事規則

↓

雙方進行談判及創造方案
必要時與調解員單獨會面

↓

達成和解及草擬調解協議書
或終止調解

作者：王素芳女士 — 金融糾紛調解中心副行政總裁（任期至2015年4月30日）

第八篇　調解顧問

- **調解中需要聘請其他顧問嗎？**
- **甚麼是「調解指導」？**
- **甚麼是中立評核和仲裁？**
- **甚麼是專家裁斷？**
- **如何發揮「混合式服務」的好處？收費多少？**

爭議者可因應糾紛的性質和個人需要，就家事、離婚、商務或工程等不同種類的調解，尋求社工、律師、會計師、測量師、工程師等專業人士的輔助。提供這種「調解指導」服務的專業人士，是由爭議者自資聘請以輔助自己，故此他們從旁觀者眼中被視為不中立。

然而在調解開始後，爭議雙方可共同聘請一名訴訟律師提供「中立評核」服務，就個案的法律觀點作出非約束性的裁斷，給雙方作為調解談判的參考。同樣地，如個案涉及一些工程或技術上的問題，如樓上樓下的漏水問題，爭議雙方亦可共同聘請一名專家提供「專家裁斷」服務，尋找問題的根源及建議解決方法。這兩種服務的主要優點，在於雙方無須各自聘請專家以及無須就兩份專家報告的差異互相爭拗，浪費時間和金錢。

仲裁是一種法律程序，當中爭議者同意將案件交由仲裁員而非法庭審理並作出裁決。仲裁裁決對當事人有約束力，並在極例外的情況下方可提出反對。裁決書的地位類似法庭的判決，並可強制執行。

「中立評核」或「專家裁斷」是可以與「調解」及「仲裁」混合使用，達至以下的好處：

(1) 迅速地解決基本事實的爭拗；

(2) 就無法在短時間內達成共識的事項給予裁斷，以解決迫切的問題；

(3) 節省調解的時間和費用；

(4) 讓雙方更能準確評估風險及作出預算；

(5) 增加達成和解協議的機會；

(6) 把和解協議轉成仲裁裁決，確保雙方執行，保障雙方。

爭議者可循以下方式使用「調解－仲裁」混合式服務：

(1) 如雙方沒有商業合約關係，爭議者可透過書面達成仲裁協議；

(2) 如雙方無法就仲裁員的委任達成共識，可經由香港國際仲裁中心指派一名仲裁員；仲裁員收費將不高於每小時HK$6,000；

(3) 在雙方同意下，仲裁員可擔任調解員的角色，為雙方進行調解；

(4) 爭議雙方亦可另委一名調解員進行調解；

(5) 當雙方達成和解協議後，可由仲裁員按照協議條款作出仲裁裁決；

(6) 如雙方未能達成和解，可續由仲裁員審理案件，並作出仲裁裁決；

(7) 若其中一方未能履行仲裁裁決，另一方可向法庭申請執行裁決；

(8) 法庭執行裁決前只須審視仲裁員在法律觀點和操守上有否出錯，卻無須重新審理案件。

爭議雙方可按需要選用不同的服務組合，並同時享有調解過程中自主決定和解方案的優點以及由法庭執行仲裁裁決的保障。

作者：陶榮教授 — 特許仲裁學會（東亞分會）前任主席

第九篇　調解準備

- **爭議者如何就個別案件進行調解諮詢？**
- **何時適合調解？**
- **調解前需要作甚麼準備？**

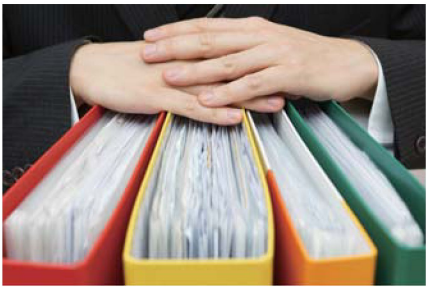
當事人需要作充分準備方可增加調解的成功率。調解的準備可分為以下三個階段，當事人可向調解服務機構、律師或個別調解員進行個別諮詢。

替代方案的準備

調解不成功的原因普遍是當事人對自己一方的案情過於看高，又或低估爭議拖延的風險，認為無需要和另一方妥協。若調解不成功，雙方便有機會訴諸法庭。因此在爭議開端，當事人便應作兩手準備，一方面保持與對方溝通，另一方面諮詢法律意見，蒐集相關證據和文件，並透過書信與對方釐清爭議事項、涉及的事實和爭議金額等。同時，當事人亦應該向律師了解若案件需要訴諸法庭的話，所需的時間及法律費用，及有可能面對的訴訟風險等。這樣不但可以增加自己對案件的掌握，降低訴訟風險，亦可讓對方了解其案情的弱點，以及己方已對訴訟有充分準備，促使雙方認真考慮庭外和解或調解。

安排調解時的準備

調解的時機非常重要，若雙方態度強硬或沒有足夠資料決策，便會增加調解的難度。因此當事人需要考慮何時以及如何進入調解程序。一般來說，當事人可直接邀請對方調解，或在入稟法院後，根據實務指示31向對方提請調解。無論以何種方式，當事人需就調解員的人選、調解的地點、時間表、時數及費用作準備，同時要考慮雙方未能就上述事宜達成共識時的替補方案，例如由中立機構作出相關安排[1]。入稟法院後，當事人亦可透過非正審申請或向法庭索取指示為調解製造有利條件[2]。可是司法程序有利有弊，且牽涉費用，當事人務必諮詢法律意見。



調解前的準備

當爭議雙方清晰理解調解程序及其目標，以及有誠意和心理準備與對方溝

1. 詳細資料可參考本小冊子《第六篇 • 調解人選》。
2. 例如要求對方披露指定的文件、要求進行聯合估價、作出「附帶條款和解提議」及「附帶條款付款」等。

通和協商，便可為進行調解作以下準備：

(1) 搜集資料讓自己對類似個案的賠償額和解決方案有基本概念；

(2) 擬備事件陳述書，列出爭議背景和關注事項，有助於調解時有系統地進行商議；

(3) 了解自己及對方的觀點、需要和困難；

(4) 尋求雙方的共同目標；

(5) 預設多個對方及自己均可接受的方案，作幾手準備；

(6) 預算自己可接受的協議範圍；

(7) 列出哪些事情需要調解員協助；

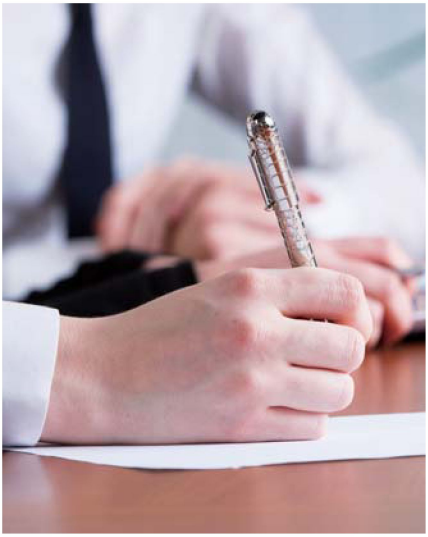
(8) 簽署所須文件，包括同意調解協議書和授權書等。

作者：黎業鴻大律師 — 聯合調解專線辦事處董事（香港建築師學會代表）

第十篇　真誠參與調解

- **甚麼是「真誠參與調解」？**
- **如何避免惡意或敷衍性質的調解？**
- **調解條例下的保密原則是甚麼？**
- **調解員如何協助當事人真誠參與調解？**

根據實務指示31規定，參與調解各方須出席最少一次由調解員主持的實質會議，即「最低參與程度」的要求。然而，即使達到最低參與程度，並不代表雙方真誠參與調解。有時候口頭表示自己有誠意和解，卻在調解會議中堅持固有立場，拒絕接受意見及方案；又或只敷衍2、3小時重申立場，這亦不算是真誠參與調解。



調解當事人

調解過程中，當事人須投放充分時間作討論、聆聽對方看法及感受、了解對方對事情的觀點及關注，以及積極與對方討論，這些都可令對方感到自己解決問題的誠意。當事人處理爭議的心態也反映其參與調解的誠意。爭議發生後，當事人往往擁有其固有想法（例如：對方必須向我作出賠償或道歉），但如果以開放的態度，暫時放下立場，聆聽對方的想法及建議，嘗試多角度思考問題，往往能鼓勵對方以同樣態度參與調解。

法律代表或顧問

有些律師企圖在調解會議中向另一方取得一些從未披露的資訊。他們有的是為了推進調解的討論，但有的卻為了尋找新證據以協助日後的訴訟，造就不利對方的形勢。後者非但有違調解宗旨，亦破壞雙方互信基礎。為了約束這種行為，調解條例規定除了得到所有涉及該調解的人士同意（即調解各方，調解員及作出調解通訊[1]的人）、或是公眾可得的資料、或在一些

1. 根據香港法例第620章《調解條例》第2(1)條，調解通訊是指為調解的目的或在調解過程中而(a)說出的任何說話或作出的任何行為；(b)擬備的任何文件；或(c)提供的任何資料，但不包括調解協議，亦不包括經調解的和解協議。

特別的情況外[2]，任何人皆不得向第三者披露調解相關通訊。

「真誠參與調解」適用於當事人及其代表律師或顧問身上。為了協助當事人真誠參與調解，調解員在會議前會嘗試調整當事人及其代表律師或顧問的心態及思維，包括解釋調解過程、原則及目的，如調解會議應由當事人直接對話及討論，不應提出一些錯誤引導對方的資料等。在準備調解時，調解員亦會嘗試了解爭議的始末、各當事人的關係及關注事項（請參見本小冊子第九篇）。當事人及其代表律師或顧問應與調解員充分合作，製造有利提升和解機會的氣氛。若當事人在調解中說出一些不符事實的資訊或不願透露若干資料，調解員會利用單獨會面探討背後原因及商討如何推進調解進程，務求促成雙方真誠地達至和解。

2. 詳見調解條例第8-10條

作者：冼伽妤律師 — 聯合調解專線辦事處董事（香港調解會主席 — 任期至2015年7月）

第十一篇　調解策略

- **調解中會出現甚麼困局？**
- **如何善用調解及應付困難情況？**
- **怎樣提升調解的效果？**

進行調解會議時出現僵持是常見的情況。 那時候，爭議雙方均可能已作出一定程度的讓步，但是距離雙方達成和解仍有一點差距。有些爭議雙方因各種因素而累積了很多負面情緒，導致雙方非理性地堅持自己的立場。又或雙方對某爭議事項的權利、利益等的執著，在缺乏客觀資料及持平意見的情況下，沒有對事件作出全盤的考慮，導致當事人不作出相讓。

遇到上述情況時，當事人須緊記當初選擇以調解解決紛爭的初衷，別讓困境影響和解的部署，並借助調解員的專業技巧突破困局，以下是一些分享。

與調解員作出配合

調解員是擔當調解會議的管理人，其職責包括協助雙方編訂會議議題，然後進行商議。若雙方未能就某一議題達成共識，調解員或會建議雙方暫時將該議題擱置，而選擇討論另一個議題。這時，雙方應配合調解員的協助，以免糾纏於不能進退的困局中。若雙方在其他議題上取得進展，往往有利於雙方找出突破該困局的方法。

尋求專業意見

面對偏見或雙方各執一詞時，當事人可以參考客觀資料及諮詢專業意見，例如詢問法律意見和查閱專家報告等[1]。因此，當事人應在參加調解會議前，妥善準備所需資料，或預先通知有關專業人士開會的日期及時間，以便其在調解會議中可以及時聯絡該專業人士，馬上作出諮詢，使事情的討論得以繼續。若當事人在會議前準備

1. 雙方就同一事情可能取得不同的法律、專家或第三者的意見，這是很常見的。當事人參與調解會議時必須保持開放態度，處理不同的意見。

嚴重不足，便需考慮另訂調解會議日期。

處理心理因素

若困局是基於非理性的反應，或對事情的執著，與其效果不顯地重覆游說對方，可以改為聆聽對方的論點、作換位思考及向對方釋出善意，讓對方感受到自己的誠意。此外，亦可借助調解員的溝通技巧，從多角度處理爭議；又或要求小休，讓雙方有減壓的空間。

為提升調解的效果，當事人可考慮採用以下一些方法：

(1) 設想多項不同的解決方案；

(2) 放眼將來，探討如何在往後讓事情向雙贏方面發展；

(3) 保持真誠及開放的態度，彈性考慮接受各種解決爭議的方案；

(4) 細心聆聽對方的說話，從而理解事情背後對方的隱衷、看法和感受，這對設計解決方案，及於何時提出自己的和解方案有很大的幫助；

(5) 配合調解員的提問，因其提問能協助當事人以多角度思考，分析自己於該個案中最好及最壞的替代方案，從而作出明智決定。

作者：黃吳潔華律師 — 聯合調解專線辦事處董事（香港律師會代表）

第十二篇　談判

- **調解的談判和一般的談判有甚麼分別？**
- **調解時如何與對方進行協商達到各得其所？**
- **調解時需要作出什麼讓步才不會損害自身的利益？**
- **應以甚麼作為基礎決定是否接受某一和解方案？**

調解是一個由第三者協助的談判過程

以對話解決衝突糾紛總比對抗好，但當談判陷入困局時，便須由第三者協助突破談判困局。

談判的底線

很多人習慣按權力和權利進行談判，他們在談判前預定一條可以接受的底線，然後採取不同策略去達到最有利的結果。這些策略包括：吹噓恐嚇、罷工抗命，開天殺價、黑面白面、打悲情牌等，祈望對方因恐懼或擔心而讓步妥協。這些人在談判過程中亦會引用對自己有利的權利基礎、權威、案例、法規和政策等，令對方或第三者接受自己是最合情、合理、合法的。

「底線談判」的好處是不須要作太多準備，一廂情願地定下底線便可進行談判。但當遇到實力相當的對手時，這類談判最理想的結果是互相妥協，最壞情況卻是各不相讓、兩敗俱傷。假如一方在壓力下被迫接受條款，一刻的平息只是等待報復機會的到來。因此這類談判用於解決沒有延續關係的衝突個案，如保險索償個案尚且可以；但對於一些關係密切的當事人，例如股東、同事，家庭成員之間的糾紛，商業合約履行等，無論是以權力施壓或法庭裁決，雙方關係定必受損。

關注式談判

關注式談判是很多調解員採用的談判方式，調解員的角色是協助爭議雙方發掘他們底線或要求背後的原因，從而協助他們了解自己及對方的真正需要、以及各自排列，取捨各種需要。例如在商業糾紛中，一方因另一方未能履行合約而要求賠償時，調解員在協助他們討論賠償金額的合理性之餘，還會兼顧他們的其他需要，如事件的公平處理、過程中被尊重、盡快回復心境平靜等。關注式談判不是權力的比拼，而是交換雙方各自關注的事項。例如違約方可向對方道歉，作出適量金錢補償，並承諾日後履行合約的方式。

關注式談判的解決方案是由當事人共同決定。方案雖不是最理想，但一定是雙方可接受的。因此這類談判之先決條件是雙方自願對話，合作創造解決方案和表達對不同解決方案的意見，大家以求同存異的態度去解決問題，而不再是敵對地爭取自己的底線。

作者：鄭會圻先生 — 香港調解學院院長

第十三篇　和解

- **和解協議需具備什麼元素？**
- **和解協議是否具法律效力？**
- **對方不遵守協議可怎麼辦？**
- **應由誰起草協議書？**
- **律師在和解中的角色是什麼？**

當雙方經調解達成和解時，必須將協議內容詳細以書面記錄，並由雙方簽署作實。為確保雙方遵守所達成之協議，必須留意下列事項。

(1) 爭議者應自行按需要決定協議內容，不應在壓力下（包括調解員不恰當的施壓）達成和解，導致事後反悔，因此如有需要，爭議雙方可要求有充份時間考慮，擇日簽署協議書。

(2) 爭議者應在整個調解過程中與對方保持良好的溝通，除了避免雙方有任何誤解，更可建立長遠的合作關係，雙方不遵守協議的機會因而減低。

(3) 爭議者與調解員草擬協議書前應一起核實協議內每項條文的可行性，確保爭議雙方能切實履行協議書的承諾。

(4) 協議書的內容宜盡量詳細，例如甲方同意退回款項予乙方，應列明金額及貨幣單位、付款日期及是否分期繳付、付款地點、以現金或其他方式支付等，以避免因協議細節不清而阻礙、甚至不能執行協議。

(5) 如雙方均有律師代表，可協議由其中一方的律師草擬和解協議書，再由對方律師審議，最後經雙方律師修正及確認後，由雙方簽署作實。

(6) 如雙方沒有律師代表，可協議由調解員草擬和解協議書，再由雙方審議及簽署。不論協議書由誰草擬，應盡可能以中性及清晰易明的文字表達，避免對協議書內容或其含意有所誤會，從而產生新的爭議。

(7) 和解協議書可加插一項條款，要求雙方如在執行協議時有任何困難，須盡早聯絡處理個案的調解員，協助雙方落實協議，以避免執行的困難發展成新的爭議，以至訴諸法律行動，這對雙方均無益處；反之，在這情況下讓調解員介入，調解員可利用先前調解雙方爭議的經驗，以及與雙方建立的關係居中斡旋，更有助解決問題。

(8) 和解協議書是一份具法律效力的文件，等同雙方訂立的合約，雙方有法律上的責任履行合約條款。如一方毀約，另一方有權向對方採取法律行動，但這已有違調解的原意。若要協議具備法庭直接執行的效力，可考慮採用「調解－仲裁」混合式服務。

作者：莊龍五先生 — 消費者委員會處理投訴及諮詢部總主任

家事調解及建築物管理調解

蕭詠儀律師，太平紳士
聯合調解專線辦事處董事（香港仲裁司學會代表）

家事調解

家事調解是為正在分居或離婚的夫婦而設的一個解決爭議方法，旨在透過專業家事調解員，以中立、持平的第三者角色，協助雙方當事人以和平理性的方式，就分居或離婚後的安排達成協議。調解範疇可包括分居安排、子女生活安排、撫養權、子女生活費、子女探訪、配偶贍養費、婚姻居所及財產分配安排等。而當事人可以在離婚訴訟開始前或進行中的任何階段展開調解程序。

因為離婚不只是一樁取消婚約的法律程序，而是一個充滿複雜情緒及心理衝突的家庭問題，所以透過家事調解，經專業家事調解員的協助，雙方往往能處理情感上的問題，降低對立和敵意，從而達致互諒互讓的雙贏協議。藉著父母的溝通和合作，子女可減低因父母分離所造成的創傷和衝擊，雙方可促使合作履行父母的職責，因而促進良好的親子關係及有助各方重建新生活。

建築物管理調解

建築物管理調解為大廈各方的持份者提供一個和平理性的方式，解決多層大廈複雜的糾紛。調解範疇可包括違例建築物、漏水、管理費及維修費用的攤分或管理委員會的委任等建築物管理糾紛。當事人可以在土地審裁處聆訊之前考慮進行調解。

使用調解解決建築物管理的問題可以節省訴訟時所花費的時間和金錢。此外，各方當事人將來可能仍然有合作或相處的機會，而符合雙方要求的調解協議可使雙方維持和諧關係，有助減少將來發生爭議。

如當事人需要尋求有關家事調解服務或建築物管理調解服務，可透過以下的途徑：

- 聯絡司法機構的家事調解統籌主任辦事處或建築物管理調解統籌主任辦事處[1]；
- 向家事法庭或土地審裁處查詢；
- 向調解服務機構（見第92頁「調解服務機構一覽表」）查詢；
- 諮詢律師、社工等專業人士意見。

1. 司法機構於2000年推行家事調解試驗計劃，並設立調解統籌主任辦事處。由於試驗計劃成效顯著，司法機構決定在計劃完成後繼續維持調解統籌主任辦事處的運作。其後，司法機構於2008年實行建築物管理調解試驗計劃，並成立了建築物管理調解統籌主任辦事處。以上兩個統籌主任辦事處主要負責舉辦調解講座及協助當事人尋求調解服務。

司法機構調解資訊中心

林雪兒
司法機構高級調解事務主任

解決爭議之選擇

常常收到訴訟人提問：為甚麼司法機構要鼓勵調解呢？法庭不是幫助訴訟人解決糾紛嗎？其實，解決爭議並非只有訴訟這個途徑。調解也是一種選擇。法庭鼓勵訴訟人考慮以調解解決爭議，並非為了減輕法庭工作量，而是讓爭議各方在符合經濟效益的前提下，及早尋求一個滿意的解決方案，減少不必要的延誤。

民事司法制度改革

在民事司法制度改革下，《高等法院規則》和《區域法院規則》的基本目標之一，是為各方當事人在訴訟開展之前或之後，就彼此爭議達成和解提供便利。如果爭議得以和解，各方便無須進行審訊，節省了時間和訟費。

調解資訊中心的目標和運作

為了配合民事司法制度改革，以及鼓勵訴訟人嘗試以調解方式達致和解，司法機構特別設立了「調解資訊中心」，免費提供與法庭有關的調解資訊供當事人考慮，協助訴訟各方了解調解的性質和功能，以及指出申請有關服務的途徑。

調解講座用處何在？

雖然「調解」比以往更為大眾所認識，但仍有不少人未能掌握調解過程及自己在當中的角色。因此，為提升當事人的信心及參與調解的誠意和動機，調解資訊中心每週均舉辦免費調解講座，解答當事人的疑問，釋除他們對參與調解的疑慮、減低抗拒心態、並且在正式參與調解前作更好的準備。大部分曾參與講座的市民均對講座給予正面意見[1]。

由於司法機構須保持獨立和不偏不倚，司法機構的職員不會直接提供調解服務。若各方當事人同意，可共同委任一位司法機構以外的獨立專業調解員，接受調解服務。

1. 由2010年1月至2014年12月期間，調解資訊中心共收到超過1,500份意見表，當中有89%的參加者認為，中心開辦的「調解講座」能增加他們對調解的認識。另外，有97%參加者表示，若他們有親友遇上同類事情的時候，會推介他們先參加此類調解講座。

案件中誰是「主角」？

很多訴訟人認為自己是「打官司」過程中的主角，覺得自己有道理最終必能贏得「官司」，也期望從中給予對方一個教訓。但他們卻沒有想到，當事人在訴訟中須按法庭程序辦事，並沒有多大彈性。而「打官司」的最終結局，未必就如他們的「如意算盤」。事實上，當事人所付出的金錢、時間、精神壓力等，往往比得到的還多！

另一方面，調解的主角並非調解員，而是參與調解的當事人。因為能否達至雙贏，需要雙方願意放下成見，才可一起去創造滿意的局面。

是「強者」還是「弱者」？

有訴訟人問：主動向對方提出調解是否「示弱」的表現呢？答案當然不是。參與調解的人需要面對與自己對峙的另一方，須承擔某程度的壓力，要克服這個心理關口殊不容易。所以願意參與調解的人，都是作出了勇敢的決定，嘗試找出解決方案的人。調解要成功，雙方必須嘗試把「對」與「錯」放下。說實話，能把「對」與「錯」放下的人，是願意把目光放得更遠，不計前嫌的君子。只有「強者」才能夠放下「對」與「錯」，選擇尊重他人意見，以調解促進彼此融洽。

香港調解資歷評審協會有限公司

白仲安律師，銀紫荊星章，員佐勳章，太平紳士
香港調解資歷評審協會有限公司主席

香港調解資歷評審協會有限公司(「調評會」)於2012年8月28日成立，旨在成為香港最優質的調解資歷評審機構。它是一個由業界主導成立的非法定組織，履行香港調解員的資歷評審及紀律處分兩項職能，同時也為調解訓練課程制定標準，致力確保調解員的專業水平。

調評會的成立

自2008年由時任律政司司長黃仁龍資深大律師GBM, JP領導的跨界別調解工作小組成立後，香港的調解業發展迅速。當時，愈來愈多在港執業的調解員從不同的評審機構取得資格，引起工作小組對調解員培訓及資歷評審的關注。小組於2010年出版的報告反映了成立單一評審機構的期望，認為可確保調解員的質素、統一標準及建立公眾對調解服務的信心。

有見及此，律政司司長進一步成立了「調解專責小組」及其轄下的「資格評審和培訓組」。由於當時沒有相關法例，因此建議成立一個由業界主導的非法定資歷評審機構，而該建議也得到律政司及司法機構的支持。調評會由下列創會成員成立：

- 香港大律師公會
- 香港國際仲裁中心
- 香港和解中心
- 香港律師會

過往於調解員評審方面備有良好紀錄的資歷評審機構也能申請成為調評會的會員機構，條件是須放棄其本身的評審機制。

職能及信念

調評會在2013年4月開始運作，作為一個純監管及制訂標準的機構，並具備紀律處分權力。其長遠目標是成為香港單一的調解員資歷評審機構。

調評會的角色是評審調解業界人士的專業水平，包括綜合和家事調解員、家事調解監督(「監督」)和調解評核試的評核員。在評審調解訓練課程方面，調評會集合了資深的導師、評核員及從業員，以其豐富經驗為業界訂立統一的評審準則。調評會亦會定期檢討《香港調解守則》，旨在向調解員提供道德操守的指引。

調評會最新發展

至今，除4名創會成員外，已再有7個機構加入調評會成為會員機構。而截至2015年5月22日，調評會共有2,097名認可調解員，其中有1,820名綜合調解員、228名家事調解員及49名監督。在相關名冊上亦有45名評核員和4名首席評核員。就認可調解員的數量來說，調評會已成為香港最大的調解評審機構。此外，調評會現正向所有其認可的調解員推薦專業彌償保險。

自2013年7月起，已有113個調解訓練課程獲得調評會認可。而為評核綜合調解員能力水平而設的第二階段評核試則舉行了21屆、合共639次評核，平均合格率為52%。此外，由調評會與司法機構合辦的家事調解監督試驗計劃(「試驗計劃」)已於2014年7月啟動，讓受培訓的家事調解員(「學員」)在指導下處理轉介個案，以完成家事調解員的第二階段評核。截至2015年5月22日，調評會已有28名監督及28名學員參加此試驗計劃。

展望將來

調評會將繼續擴大其會員機構、調解員和導師的基礎，並將：

1) 邀請尚未加入調評會的資歷評審機構申請加入調評會；

2) 聯繫尚未向調評會提交其調解訓練課程作第一階段評核的課程提供者；及

3) 完成其有關紀律處分和處理投訴的程序。

總結

調評會有着令人鼓舞的開端，惟許多工作尚待處理。面對未來更多挑戰，調評會的工作務必周詳並具透明度，以締造一個更健全的監管機制。

調解費用

陳慶生大律師
聯合調解專線辦事處助理義務秘書
（任期至2015年7月）

調解的成本及費用是當事人考慮是否進行調解的重要因素。一般來說，調解牽涉的費用有以下3類：

調解員費用

很多人認為調解員是免費或以低收費提供調解服務，其實不然。調解員一般具備其他專業背景，如律師、建築師、測量師等。因此，即使年資較淺的調解員，若擁有其他資歷，其收費亦可達每小時港幣$1,500 - $2,500；資深調解員則每小時收取港幣$3,000 - $3,500；海外的調解員收費甚至高達每小時港幣$8,000。

調解員的費用一般由雙方簽署同意調解協議書後才開始計算，有關費用包括調解員準備個案、約見個別當事人及進行調解會議的時間。

雖然私人執業調解員收費不便宜，但成功達成全面協議的案件一般只需5個小時，平均每宗個案調解費用為港幣$17,000元[1]，可見調解的整體收費仍遠低於訴訟。

若當事人有財務困難，或爭議涉及的金額很低，可尋求非牟利團體的義務／受資助的調解服務（收費一般介乎每小時港幣$0－$1,200）。但當事人的入息／案件種類需要符合一定條件方可享有此類調解服務。當事人可參見附表及向有關機構查詢。

顧問費用

當事人可按個別需要衡量是否聘請顧問在調解過程中提供協助，如律師、測量師，會計師或工程師等。他們的收費視乎情況而定，一般介乎每小時港幣$3,000 - 6,000，或按每節會議收取港幣$10,000 - $20,000。當事人必須與顧問作個別商討。

場地費用及行政費

只要雙方同意，調解會議可選擇在商務中心會議室、律師事務所、當事人的辦公室內或仲裁／調解中心進行。行政費用方面，部份調解服務機構會有少量收費作為相關行政工作的費用。當事人可參見附表及向有關機構查詢。

調解屬於專業服務，收費在所難免。若當事人希望節省開支，應該盡量配合調解員，提供足夠的資料及以合作的態度參與其中。相關內容可細閱本手冊第十一篇之「調解策略」。

1. 資料來源：2011年呈交原訟法庭的調解報告書報告摘要
(http://mediation.judiciary.gov.hk/tc/figures_and_statistics.html#msfcjrrc)

調解服務收費一覽表

調解服務收費				
	登記費／申請費	調解員	草擬調解協議書	行政費
司法機構				
• 家事調解統籌主任辦事處	提供免費調解轉介服務，而調解員費用請參閱下列「私人執業調解員」收費			
• 建築物管理調解統籌主任辦事處	提供免費調解轉介服務，而調解員費用請參閱下列「私人執業調解員」收費			
非牟利機構一般調解服務			*(以下費用是每方當事人需支付的金額)*	
• 聯合調解專線辦事處	不適用	調解會議每小時$1,000 - $2,000及會議前準備工作$2,500 - $5,000	不適用	$1,000
• 金融糾紛調解中心	$200	申請人：$1,000 - $2,000 金融機構：$5,000 - $10,000 (以每宗個案計算－4小時會議)	不適用	不適用
家事調解服務（離婚）			*(以下費用是每方當事人需支付的金額)*	
• 香港家庭福利會	$100	每小時$0 - $600	不適用	$0 - $600
• 香港公教婚姻輔導會－婚姻調解服務處	$100	每小時$0 - $500	不適用	不適用
• 香港明愛－家事調解服務	$50	每節$50 - $600(約2.5 - 3.5小時)	$50 - $600	不適用
• 基督教宣道會沙田堂社區服務中心	不適用	每小時$400	$1,500	
• 香港聖公會輔導服務處家事調解服務	不適用	每小時$500	不適用	不適用
• 循道衛理楊震社會服務處旺角綜合家庭服務中心－離婚調解服務	不適用	每小時$0 - $800	不多於$800	
• 復和綜合服務中心	不適用	每小時$500 - $800	不適用	不適用
私人執業調解員			*(以下費用是每方當事人需支付的金額)*	
	不適用	每小時$750 - $4,000	不適用	不適用
場地收費				
私營場地			*(以下收費以每間會議室計算，由調解各方平均分擔)*	
• 一般商業中心會議室	最低收費每小時$200 - $300			
• 酒店會議室／宴會廳(3 - 4星)	每4小時$1,600 - $2,400			
• 香港國際仲裁中心會議室	每4小時$1,500 - $2,500			
• 金融糾紛調解中心	每4小時$1,100 - $1,500			
社區場地			*(以下收費以每間會議室計算，由調解各方平均分擔)*	
• 市區一站通社區調解會議場地(只限建築物管理、重建、維修、工程等爭議個案)	每小時$48(義務調解員可獲費用豁免)			

* 以上收費以港幣計算

** 上述收費只供參考，有關最新服務收費請向相關機構查詢

- **Why should we plan in advance when resolving disputes?**
- **What should we take into consideration if we wish to resolve disputes properly?**
- **How should we evaluate and increase the chance of success in resolving disputes?**

In our daily encounter with people, disputes may arise due to differences in beliefs, feelings, competing interests, structural problems or different interpretation of facts, thereby causing disruptions to our family, work and daily routines. Failure to handle disputes properly may even lead to a breakdown in family relationship, loss of employment or commercial opportunities.

If we do not want to lose out entirely, it is paramount to make an assessment of the situation and devise an overall strategy to resolve the dispute.

Cost/ Benefit Analysis

Handling disputes is only a small part of our lives. Parties should consider what concerns them most in life and weigh it against any short term gain or loss. For instance, if one considers that the relationship with children as the most important, is it wise to impose physical punishment for their occasional rebellious acts, which will not only impair the relationship but may also lead to a criminal prosecution? If one considers the company's long-term interest as the most important, is it desirable to make instant concession when facing customers' complaints and thereby setting a bad precedent? If one offends his/her superior or colleagues out of a fit of pique, how might that affect future relations? If one is of poor health or approaching retirement age, should a lawsuit be initiated because of loss of money? If the problem can be resolved only with the

other party's cooperation, why antagonize them at the outset of the dispute? These questions may seem to be straightforward, but parties to a dispute overlook them in anger and make decisions contrary to their original intention and to the detriment of the overall situation.

Causes of Disputes

It is necessary to first analyze the causes of a dispute before handling it in order to prescribe the correct solution (see Table 1 for details). This is because emotional needs cannot be satisfied by substantive means; structural problems cannot be resolved by dealing only with the external symptoms; conflicting interests cannot be resolved by exploiting relationship between parties; and divergent viewpoints and perceptions cannot be reconciled by persuasion alone. To adopt a misplaced solution will only escalate the conflict, and is not conducive to solving the problem.

Risk Assessments

There are a lot of variables when handling a dispute. Parties involved should evaluate whether they can cope with them. If a dispute is brought before the court, can they handle the pressure and expenses resulted from prolonged litigation or losing the lawsuit? If a party has been coerced to compromise, will they retaliate later? In case parties choose to negotiate with each other, what will be the fall back solution if the other party reneges on the agreement or if the problem recurs despite the initial agreement?

Emotional and Rational Grounds

A dispute is often a result of a series of conflicts. Before the conflicts escalate, parties should seek to understand each other's rights and concerns which may serve as a framework to contain the situation or as a basis to cope with the dispute when it becomes inevitable. In potential workplace or commercial disputes parties should also deal sensitively with people/ relationship to avoid premature escalation of conflict, which may jeopardize any subsequent negotiation.

Act within one's means

Resolving disputes consumes a lot of time, energy and resources. Therefore disputants should assess their means whether they have the financial resources and time to handle a dispute. If negotiation is intended, are the parties equipped with the necessary communication skills? Is there any emotional support from family members or friends? Are the lawyers or counsel retained at the time of litigation reliable? These are some of the considerations that can help parties reckon their means and act within it.

The key to dispute resolution is to think rationally and make a good assessment of the situation. The more detailed the plan is, the more one is capable of coping with variables, or otherwise the higher the risk. Therefore whenever one encounters a dispute, the first step is always to plan comprehensively.

Table 1: Causes of Disputes and Solutions

Causes of Disputes	Solutions
I. Relationship Conflicts • Emotional conflict • Misunderstanding or Prejudice • Lack of communication	Adopt a dispute resolution platform which can achieve the following targets: • Effective venting of emotion • Enable parties concerned to communicate with each other under well-regulated and orderly circumstances • Improve quantity and quality of communication
II. Value Conflicts • Beliefs and ways of life • Religion • ideology	Change mindset: • Refrain from imposing one's own value on the problems and the counterparty • To agree to disagree • Look for a person who is trusted by both parties and of good standing in the opinion of both parties to intervene
III. Structural Conflicts • One party unequally owns, controls and distributes resources for a long period • External environment rendering it impossible for each party to the dispute to have equal power	• Step into the other party's shoes / Think from the other party's perspective • Set up joint decision-making platform • Substitute power-based decision making with negotiation
IV. Conflicts of Interest • Procedural • Emotional • Substantial	• Focus on interests, not position • Use objective criteria in order to look for solutions • Find ways to expand choices • Find ways to satisfy each party's needs
V. Lack of Information • Having different understanding or interpretation of the data • Evaluating information in different ways	• Establish agreed method and criteria for evaluating the data. • Reach a consensus on importance of the data • Seek expert's opinion to make a breakthrough

Author: Mr. Antony Man, Chairman of Joint Mediation Helpline Office

- **What role does communication play in dispute resolution?**
- **How to communicate effectively?**
- **What hinders communication?**
- **What should a mediator do to assist disputing parties in communicating with each other?**

Two persons jostling in a crowded place turned into a tussle. A traffic accident which might otherwise be settled with an apology developed into a heated argument and ended up in police intervention. All these similar incidents are attributable to the outburst of anger. When one swears at another out of fury, the one being sworn at may feel provoked and fight back, hence forming a retaliatory cycle. In order to break through the cycle and foster cooperation, "effective communication" is the key.

The objective of communication is to promote mutual understanding. It requires the parties to be rational and refrain from reacting emotionally even when provoked. The following "3-step approach" is a simple and practical way of achieving this:

(1) Stay calm: calmness enables careful consideration. Those encountering conflicts should not react to the situation; take the time to think and do not let negative emotions takeover so as to avoid arguing and acting in a fit of rage.
(2) Think twice: no matter if it is a negotiation or mediation, one should understand his/her goal and consider what would be the most effective means to achieve the ends, which serves to give communication a clear direction.

(3) Talk it out: express your feelings in a rational way; ask politely; give and take through communication.

There are many communication techniques which may assist parties in resolving their disputes. The following are fundamental techniques to bring a discussion on track:

(1) Listening and paraphrasing: listen actively to the other party and paraphrase the facts and views heard from the other party to show your understanding.
(2) Reflection of feeling: name the other party's feelings and express empathy. For example: "I can see that you are unhappy about the situation".
(3) Acknowledging and encouraging: show appreciation for the other party's courage and effort; encourage them to keep up with a rational dialogue. For example: "I am grateful for your participation; and I understand that every person has different concerns in connection with this matter. "
(4) Goaling: repeat the goal that both parties want to achieve. For example: "All of us wish to solve this problem in a peaceful way."
(5) Summarizing and inviting: summarize the other party's statements; invite them to discuss ways to reach an agreement. For example: "Let us first listen to the other party's views; so that we may discuss the way forward."

Whatever malicious tactics the other party deploys, as long as we stick to the above strategy, we can avoid escalating the conflict. However, disputing parties or participants of mediation should bear in mind not to provoke the other side by adding fuel to fire, and should avoid offensive body language (see the table on the next page) or hastily draw external support to overpower the other party, such as reporting to the police, calling friends in support of further confrontation or threatening to take legal action, etc. It is least possible that these external supports would make the other party give in. More often than not, it will lead to communication breakdown and cause the other party to retaliate.

If conflict escalates to a deadlock where both parties are unable to communicate with each other, assistance from a well-trained mediator should be enlisted. The mediator is neutral and will not decide on who's right or wrong, or assist any party in overwhelming the other. A mediator is good at encouraging both parties to state the facts and issues objectively, and to set out the time, place, people, and events in a systematic and orderly manner, thereby promoting rational exchange of information. In addition, a mediator often makes good use of reframing skills to turn the negatives to positives; neutralizing offensive expressions, and shifting parties' paradigm from blaming to problem-solving, and from past to future-oriented.

In short, appropriate communication facilitates problem-solving. In particular, listening, questioning and reframing skills are conducive to negotiation and mediation. These communication skills not only help disputing parties understand each other's position and interests, it also help improve mutual understanding and relationship to make dispute resolution easier.

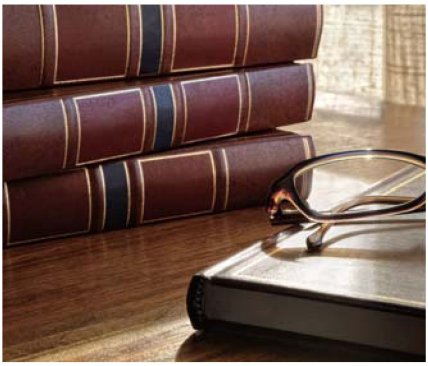
Do's and Don'ts in communication

What should not be done
1. Cursing
2. Stare with anger
3. Pull a long face
4. Point your finger towards the other party
5. Fold up both hands
6. Akimbo
7. Flap the table
8. Throw objects
What should be done
1. Stay calm
2. Think twice
3. Convey information in a positive way
4. Express empathy
5. Release good-will
6. Repeat common goal
7. Reframe the negative into the positive
8. Focus on future

Author: Professor Dennis S W Wong, Department of Applied Social Sciences, City University of Hong Kong

- What is the role of lawyer in dispute resolution?
- What is the role of lawyer in mediation?
- How does lawyer provide ADR[1] services?
- How to work with lawyer during litigation to increase the chance of resolving disputes?

Lawyers are classified into solicitors and barristers (counsel), both collaborate closely from time to time, each focusing on their respective duties to protect a client's interests. A solicitor provides the client with initial legal advice, writes demand letters, issues writs, collates evidence, interviews witnesses, etc. If necessary, a solicitor may instruct counsel to conduct further legal research or give legal opinion for specialised cases. Counsel advises or makes submissions on behalf of a client in hearings or interlocutory applications with the intent to convince the judge. Counsel's main duties include: drafting pleadings, researching legal principles, relevant legislations and cases, analyzing evidence to be adduced in court, settling witness statements, and preparing questions and strategies to cross examine witnesses at trial.



If a party wishes to attempt mediation, his or her lawyer has the responsibility to explain the nature and the process of mediation. Before mediation, a solicitor shall analyze the gist of the problem, comprehend the client's concerns, study the merits and grounds of the case, explore room for negotiation, assist the client in formulating resolution, introduce mediators to the client, as well as prepare and organize documents required for mediation for the client. If budget permits, the client may seek counsel's opinion on the scope and the amount of settlement.

During a mediation meeting, some lawyers may take a proactive approach and explain the details of the case on behalf of their client (especially in more complicated cases, such as construction or commercial disputes), whereas some lawyers may choose not to intervene so as to avoid influencing the client's decision. In addition to providing legal advice during mediation

1. ADR refers to Alternative Dispute Resolution.

meetings, lawyers may also assist in drafting settlement agreement using their professional legal knowledge to enhance the enforceability of such agreements.

If a party wishes to increase the chance of resolving a dispute, he or she should:

(1) Maintain a good working relationship with the lawyers, and provide them with sufficient information for analysis;
(2) Request the lawyers to assess the costs and time for the lawsuit;
(3) Request the lawyers to analyze the merits of the case;
(4) Consult the lawyers about services on "Alternative Dispute Resolutions" (see table below);
(5) Request the lawyers to analyze the pros and cons and the costs of various solutions, and the most suitable resolution for the particular case;
(6) If mediation is attempted, request the lawyers to explain the process of mediation and the pre-mediation preparation.

An overview of Alternative Dispute Resolution

Alternative Dispute Resolution	Service Provider
1. Without Prejudice Negotiation	Lawyer
2. Mediation	Mediator
3. Arbitration	Arbitrator
4. Expert Determination	Expert in Relevant Industry /Lawyer
5. Adjudication	Adjudicator/Lawyer

Author: Mr. Yeung Man Sing, Chairperson of Hong Kong Mediation Council

- What are the procedures of litigation?
- What are the pros and cons of litigation?
- What can a disputing party get from litigation?
- What is the relationship between litigation and mediation?

The Rule of Law is a core value of Hong Kong. In order to facilitate dispute resolution and ensure fairness for each party in litigation, a civil lawsuit is required to proceed in accordance with the established civil procedural rules. The procedures include: a lawyer receiving instructions from a client, collating evidence, issuing legal letters to the counterparty, preparing statement of claims and writs, attending court's case management conferences, discovery, preparing witness statements (including expert witness reports), conducting pre-trial reviews, setting down a case for trial, filing written submissions and attending court hearings. After the court has issued a verdict, the losing party may appeal in accordance with the law.

Both parties in litigation may make more than one interlocutory application where necessary at different stages of a proceeding, such as applying for time extension to submit court documents, specific discovery, adding or removing certain plaintiffs or defendants, dismissing a case or striking out certain contents in a statement of claim or witness statements due to non-compliance with certain requirements (such as information under protection of legal privilege), and amending statement of claims, etc. If the counterparty opposes such applications, time will be fixed for the applications to be heard. In these

interlocutory applications, the losing party may also appeal in accordance with the law. Thus a lawsuit may last for a long time and incur significant expenses (Table 1: A typical case concerning interlocutory applications).

The cost of litigation may be significant, but both parties are entitled to procedural justice and can openly and thoroughly narrate the events and merits of the case to an independent judge. Based on evidence, legislation and authorities, a judge will render a verdict and thereby conclude the case. Besides, when a plaintiff files a complaint to the court, the defendant is always required to respond, otherwise a verdict will very likely be rendered against the defendant. The losing party is also under a legal duty to comply with the court orders. Significant legal principles arising out of the verdict may also become precedent that can be referred to by judges and arbitrators in future court rulings. The followings are the usual reliefs the court may order:–

(1) Monetary compensation
(2) Injunction
(3) Enforcement/mandamus (including performance of contract, ownership transfer, public responsibility, etc)
(4) Winding-up or buying-out order (of shares)
(5) Declaration (e.g. clarifying legal views so as to give a clear guidance on long-term relationship between both parties)

Litigation cuts both ways. A party needs to understand the litigation risks and variables to avoid serious consequences. The adequacy of pre-litigation preparation, performance of witnesses during the trial, and a lawyer's submissions are attributable to the uncertainty of litigation. In the course of litigation, a party is very often subject to enormous financial and emotional stress. Generally speaking, the losing party (including in interlocutory applications) shall pay the costs (i.e. legal fee) for the winning party. If the losing party is not satisfied with the verdict and appeals, the money and time incurred will surge even further.

Litigants with meticulous planning would know the right moment for settlement during a trial to minimize financial loss and time cost. The Judiciary issued Practice Direction 31 on Mediation in 2010, requiring the litigants to consider mediation when applicable. If a party refuses to mediate without reasonable explanation, the court may impose an adverse costs order on that party. Not only does this measure provide both parties an opportunity to manage litigation risks, it also permits both parties to use the expected outcome of litigation as a benchmark for negotiation during mediation, thus facilitates both parties to propose or accept a settlement offer.

Table 1: A Typical Case Concerning Interlocutory Applications

Hong Kong Polytechnic University and Others v. Next Magazine Publishing Ltd and Another (HCA 3238/1995)

Background: In 1994, Hong Kong Polytechnic University, its president and one of its lecturers sued the defendants, Next Magazine and its journalist/writer for libel.

1994	The case was filed with the High Court;
May, 1995	The Plaintiffs submitted an application for striking out part of the Defendants' defence;
Oct, 1995	The Defendants submitted an application for removal of Hong Kong Polytechnic University as one of the Plaintiffs;
Mar, 1996	The Defendant submitted an application for removal of the president of Hong Kong Polytechnic University from the list of Plaintiffs; after the application was dismissed, the Defendants appealed;
Early 1996	The Plaintiff submitted an application for disclosure of documents by the Defendants, but the Defendants rejected the disclosure;
1996	The court ordered the Defendants to submit the requested documents to rule on whether those documents were necessary, and if so, the proper manner of disclosure;
End of 1996	The court ordered to remove Hong Kong Polytechnic University from the list of Plaintiffs. The Plaintiffs appealed;
1997	The court overturned the original decision to remove Hong Kong Polytechnic University from the list of Plaintiffs; in the same year, the presiding judge passed away and the trial had not yet started;

★ **Over the three years, the court just confirmed two things:**
1. **Hong Kong Polytechnic University and its president were proper plaintiffs, who could bring a lawsuit;**
2. **Next Magazine's Defence required amendment.**

★ **The case finally ended in an out of court settlement.**

Data provided by Professor Johannes Chan, Faculty of Law, University of Hong Kong in 2007

Author: Mr. Gary SOO, Honorary Secretary of Joint Mediation Helpline Office

Chapter 5: Mediation

- **What is mediation?**
- **How to assess whether a case is fit for mediation?**
- **What rights do parties have in mediation?**
- **What is the difference between mediation and conciliation by government departments?**

Mediation is an effective way of resolving disputes without going to the court. It is a voluntary process and will take place when all disputing parties agree. The "facilitative mediation" is the most frequently used approach among the others. It involves an independent third party - a mediator - who helps parties come to an agreement. The role of the mediator is to help the disputing parties rebuild communication, identify the issues in dispute and facilitate their constructive negotiation with a view to develop a solution to their disputes and to arrive at an outcome that both parties are happy to accept. The "mediated settlement agreement" signed by both parties, when an agreement is reached, is legally binding. Pursuant to the Mediation Ordinance (Chapter 620 of the Laws of Hong Kong), the content of mediation communications shall be kept confidential where the terms of discussion are not disclosed to any party outside the mediation.

Mediation is a flexible process that can be used to settle disputes with the outcome more capable of meeting the interests of both parties or even beyond what a court of law can provide. There was an intellectual property dispute which was

settled by way of a licensing agreement. A judge has once remarked, "Skilled mediators are now able to achieve results satisfactory to both parties in many cases which are quite beyond the power of lawyers and courts to achieve." [1]

Mediation is suitable for resolving disputes involving intense feelings, complex relationship, reputation, multiple interests, etc. All disputes can be resolved by mediation except for the following instances:

(1) A court order or interpretation is required, such as an injunction;
(2) A party does not have the mental capacity to sign an agreement;
(3) The number of parties involved is overwhelming, such as in a public incident;
(4) Criminal offenses are involved, such as domestic violence, sexual violence, etc. (except restorative justice).

In order to protect the rights of parties, the mediation process and the conduct of mediators in Hong Kong are regulated by the Mediation Ordinance and the Hong Kong Mediation Code respectively. Those rights include:

(1) Participation in and termination of mediation on a voluntary basis;
(2) Appointment of a suitable mediator who has no conflict of interest with parties;
(3) Entitlement to fair treatment;
(4) Entitlement to sufficient information;
(5) Proposing solutions voluntarily and decision-making at one's own discretion;
(6) Mediation communication be kept in confidence in accordance with the law, and cannot be adduced in court as evidence unless the court so ordered.

Conciliation and Mediation

Conciliation is a process to resolve disputes arising from the exercise of statutory rights regulated by relevant ordinances[2]. It is conducted on a voluntary basis and free of charge. A conciliator is appointed by an authorized person stipulated in the relevant ordinance instead of the parties. Conciliators have no adjudication power and cannot decide who is right or wrong. They help both parties explore the core problems, explain the requirements under relevant legislations, and facilitate both parties to reach a settlement agreeable to both parties in a case after taking all circumstances into consideration. However, if any suspected violation of law is noticed, the conciliator may refer the case to the relevant government department for further investigation and follow-up.

1. Dunnet v Railtraek Plc [2002] EWCA Civ 303, §14
2. e.g. Labour Tribunal Ordinance, Disability Discrimination Ordinance or Disability Discrimination (Investigation and Conciliation) Rules

Author: Mr. Francis Law, President of Hong Kong Mediation Centre

- **What is the role of mediator?**
- **How to find a mediator?**
- **How to choose a suitable accredited mediator?**
- **Who shall participate in a mediation meeting?**
- **Can a companion who is not a party to the mediation attend the meeting?**

As a manager of the mediation process, mediator is responsible for conducting the mediation meeting and, without adjudicating a dispute or any aspect of it, facilitates communication between the parties, identifies the issues in dispute, explores possible options in order for the parties to reach an agreement. As a neutral, independent and impartial third party, a mediator should take a proactive and open-minded attitude to facilitate the parties to create a mutually acceptable settlement agreement with a pragmatic and cooperative mindset.

Nowadays, there are many professional organizations or bodies in Hong Kong which provide different panel lists of accredited mediators for the general public's reference and selection, for example, the Hong Kong Mediation Accreditation Association Limited (HKMAAL), an industry-led mediator accreditation body. In addition, the Joint Mediation Helpline Office (JMHO)[1], located at the High Court Building in Admiralty, also provides one-stop mediation referral service, including free consultation and referral to mediation service organizations for parties who desire to utilize mediation services.

When choosing a mediator, parties usually take into consideration factors such as the mediator's background, qualification, experience, fees, language proficiency, etc. It should be noted that a mediator normally does not give any professional opinion or

1. The JMHO is incorporated by eight major professional organizations in Hong Kong: the Hong Kong Mediation Council, the Hong Kong Bar Association, the Law Society of Hong Kong, the Chartered Institute of Arbitrators (East Asia Branch), the Hong Kong Institute of Arbitrators, the Hong Kong Institute of Architects, the Hong Kong Institute of Surveyors and the Hong Kong Mediation Centre.

ruling (such as legal advice) but will make use of the mediation process and skills to facilitate parties' communication, negotiation and informed decision-making. Thus, parties should be flexible and choose a suitable mediator according to the background, nature and needs of each case, and consider whether specific professional qualifications, communication skills, negotiation styles and personal attitudes are required for handling certain disputes.

Mediation emphasizes direct conversation and communication. With the mediator's assistance, parties are able to understand each other's difficulties and concerns for the purpose of searching a mutually acceptable solution. Therefore, the attendance of the parties is particularly crucial to mediation. If a party is a corporate legal entity, its representative(s) shall have valid authorization and sufficient authority to negotiate and sign the agreement. In addition, attention should be paid in respect of their negotiation experience, so as to cope with the problem-solving attitude of the mediator rather than finding rights or wrongs and thereby treating mediation as the battlefield outside the court.

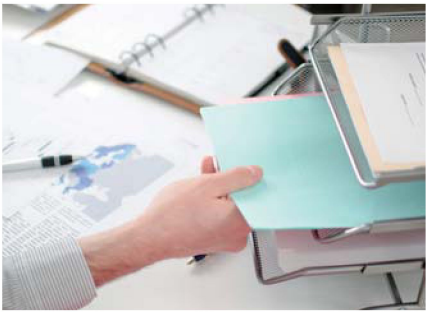
Mediation is a structural and confidential process, but it is also a flexible process unlike the court. It aims at letting the parties participate in the meeting in a calm and peaceful manner. After consulting with both parties, legal

advisers, expert or any other companies (e.g. family members, colleagues, friends, etc.) who may help resolve the problem can also participate in the mediation meeting, giving advice or emotional support whenever necessary (e.g. a senior only feels reassured to take part in the mediation and make a final decision with accompanying spouse or children). A mediator encourages such arrangements provided that it is conductive to mediation and does not impede the principle of self-determination by parties. However, all persons attending the mediation shall sign a confidentiality agreement to ensure that the principle of confidentiality is upheld.

Author: Ms. Cindy Fong, Mediation Consultant of Joint Mediation Helpline Office

- **What is institutional mediation?**
- **What are the advantages of institutional mediation?**
- **What should be noted when participating in institutional mediation?**

As its name suggests, "Institutional mediation" is closely related to the term "institution". It usually involves a highly transparent system clearly prescribing the criteria of accepting a case, procedures of a mediation meeting, fees and documentations required.



The "Four-Hour Mediation under the Financial Dispute Resolution Scheme" (the Scheme) operated by the Financial Dispute Resolution Centre (FDRC) is a good example of institutional mediation. The Scheme mainly provides services to financial institutions in Hong Kong and their individual clients. It provides mediation and arbitration services for financial disputes within a specified scope[1]. The Scheme is a systematic and effective dispute resolution mechanism for financial disputes, and financial institutions who are members of the Scheme are required to participate in it. Hence, individuals using the Scheme need not worry about financial institutions refusing to mediate.

Under the Scheme, all mediations are completed within four hours, and thus sufficient preparation is necessary. Normally, the FDRC officers will first meet both parties, seeking to understand their views on the dispute, positions, interests, and preferences on the mediator in order to facilitate appointment of a suitable mediator for the case. After appointing a mediator, FDRC will hand over relevant documents to the mediator for thorough study and also arrange a meeting between the mediator and each of the parties, to clarify any details that are not set out in the documents and to establish a good relationship and mutual trust between the mediator and the parties, so as to facilitate the four-hour mediation meeting. Regarding the mediation process, except for the time limitation, it is similar to a general mediation. The mediator will help both parties communicate and explore settlement proposals by holding joint

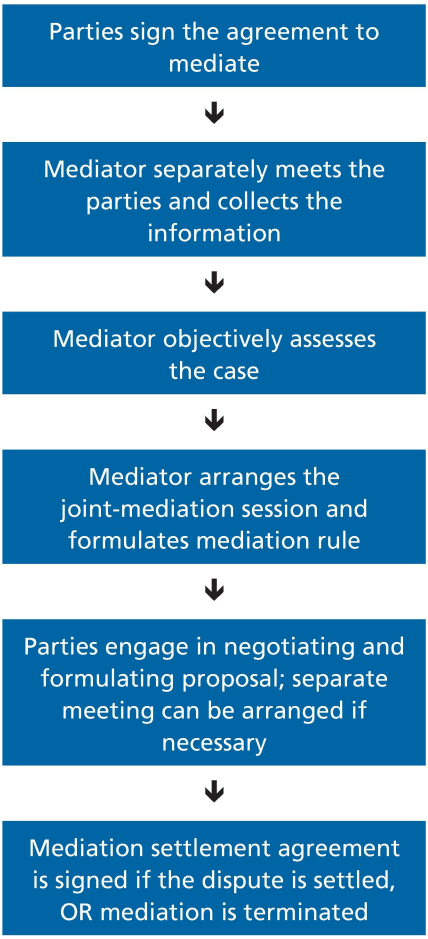
1. For instance, any disputes involved in an actual monetary loss not exceeding HKD 500,000.00, etc. Please refer to Guidelines on Intake Criteria of Cases for details: (http://www.fdrc.org.hk/en/doc/FDRS_Guidelines_on_Intake_Criteria_of_Cases_en.pdf)

meetings and confidential separate meetings respectively.

Generally speaking, most participants in mediation are sincere in terms of seeking to resolve a dispute. A transparent and open system not only enables the users to have a clear expectation on the time, money, and documents required for the mediation, it also reduces their anxiety and doubts towards the fairness of the mediation, and allows them to focus on handling the issues in order to reach the most desirable outcome.

While institutional mediation has already provided a clear and impartial mediation procedure, it remains for the parties to adjust their attitude to effectuate the mediation process. It is necessary for the parties to realize that "hard bargaining", maintaining an "I am always right" attitude, and "demonizing the other party" is not conducive to resolving a dispute. If parties can listen to each other genuinely and attentively, remain open and frank when handling requests, being rational in the midst of intense emotions, it will be more likely for them to discover new perspectives to handle the matters differently and thus resolving the dispute.

The Flowchart of General Mediation Process



Author: Ms. Ellen Wong, Deputy CEO, Financial Dispute Resolution Centre (terms of service until 30 April 2015)

- **Is it necessary to employ advisors in mediation?**
- **What is "mediation advocacy"?**
- **What is "neutral evaluation" and "arbitration"?**
- **What is "expert determination"?**
- **How to benefit from "hybrid process"? What is the charge?**

Parties may, according to the dispute nature and personal needs, seek help from professionals such as social workers, lawyers, accountants, surveyors, engineers, etc. in different types of mediation, for example, family affairs, divorce, business or construction projects, etc. The professionals who assist parties in mediation are employed by the party who requires their services at their own expense and thus are perceived not neutral from a bystander's point of view.

Apart from advisors, parties to mediation may also jointly appoint a litigation lawyer to provide "neutral evaluation" service, i.e. to give a non-binding opinion to each party based on the merits of the case. The decision serves as a reference for the parties' negotiation at mediation. Similarly, if the case involves some engineering or technological problems, such as water seepage problems concerning multi-storey buildings, both parties may jointly employ an expert to provide "expert determination" service so as to determine the root cause of the problem and recommend a solution to it. The major benefit of these two services is that both parties need not each appoint an expert and argue over the

discrepancies between two expert reports, resulting in a waste of time and money.

Arbitration is a legal process by which the parties submit their dispute to an arbitrator instead of the court for determination. An arbitral award has a status similar to that of a court order and is legally binding on the parties to arbitration.

"Neutral evaluation" or "expert determination" can be used in conjunction with "mediation" and "arbitration" for the advantages below:

(1) Promptly resolve differences over facts;
(2) Render a decision on matters that consensus cannot be reached within a short period of time so as to solve other pressing issues;
(3) Save time and expenses;
(4) Enable both parties to assess risks more accurately to facilitate planning;
(5) Increase the chance of reaching a settlement agreement;
(6) Convert a settlement agreement into an arbitration award to ensure compliance and finality and safeguard their interests.

Parties can refer to the following steps for engaging in the "mediation–arbitration" hybrid process:

(1) If both parties do not have a business contractual relationship, parties can reach an arbitration agreement in writing;
(2) If both parties fail to reach a consensus on the appointment of an arbitrator, they can request the Hong Kong International Arbitration Centre to appoint one. The arbitrator's service fee shall be no more than HK$6,000 per hour;
(3) With the consent from both parties, the arbitrator may act as a mediator in the arbitration;
(4) Both parties may also appoint another mediator;
(5) After both parties have reached a settlement agreement, the arbitrator can render an arbitration award in accordance with the stipulated clause in the agreement;
(6) If both parties fail to reach a settlement, the arbitrator can proceed with the hearing and render an arbitration award;
(7) If one of the parties fails to comply with the arbitration award, the other party may apply to the court for enforcement;
(8) Before enforcing an arbitration award, the court shall only examine whether the arbitrator had erred in law or had misconducted one self, but not rehearing the case on its merits.

Both parties may choose a different combination of services depending on their needs and at the same time enjoy the benefit of retaining control over the settlement as in mediation and the protection of a legally binding award as in arbitration.

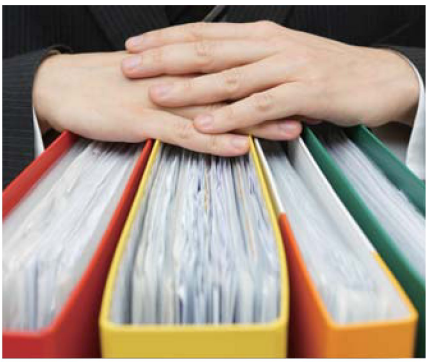
Author: Prof. Christopher To, Past-Chairman of Chartered Institute of Arbitrators (East Asia Branch)

- How can parties seek consultation on individual mediation case?
- When is the appropriate time for mediation?
- What preparation should be done before mediation?

A party should have sufficient preparation in order to increase the chance of success of mediation. Such preparation work can be divided into the three stages as indicated below. Parties may seek consultation from mediation service organizations, lawyers and mediator.

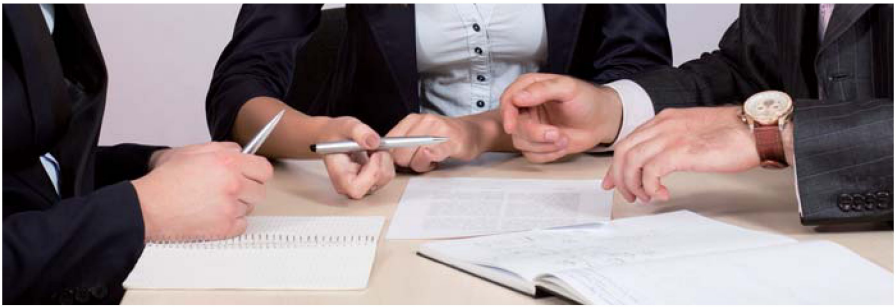
Prepare for Alternatives

A common reason why mediation could fail is that parties are sometimes over-confident in the merits of their case or that they underestimate the risks of prolonging a dispute, thinking that it is not necessary for them to make concession. When mediation does fail, parties may resort to litigation. It follows that parties should always prepare for alternatives at the outset of the dispute: to maintain communication with the other party on the one hand, and on the other, seek legal advice, collate evidence and related documents, clarify with the counterparty in writing as to what issues are in dispute, the facts and the monetary sum involved. In parallel, parties should also seek legal advice, estimate the potential legal expenses and the risks involved should the dispute end up in litigation. Not only will that enable parties to have a better gauge of their case and thereby reducing litigation risk, it will also let the other side realize their weaknesses, as well as the fact that one is well-prepared for litigation, thus enabling both parties to seriously consider an out-of-court settlement or mediation.



Preparation Work in Arranging Mediation

Timing is crucial for mediation. Mediation will become more difficult when parties are entrenched in hardline stance or lack information for decision-making. Therefore, parties need to consider when and how to enter into mediation. In general, a party may initiate mediation by writing directly to the other party, or by way of Practice Direction 31 after litigation has been commenced. In either case, parties have to make arrangement with regard to the appointment of mediator, the venue of mediation, the timeframe to conduct the mediation, the number of hours and the fees required. In case parties cannot agree to the above, alternatives such as requesting a neutral body to make



relevant arrangements have to be sought after[1]. During litigation, a party may also make interlocutory applications or seek directions from court to create favourable conditions for mediation[2]. However, as court proceeding entails both costs and risks, a party shall seek legal advice in this event.

Preparation for Mediation

When both parties have a clear understanding of the procedures and objectives of mediation, as well as having the sincerity and appropriate mindset to communicate and negotiate with each other, they can then take the following actions in preparation for mediation:

(1) Collect information to gauge the range of compensation and solutions in similar cases;

(2) Prepare a statement listing the background of the dispute and the issues of concerns which will enable the mediation to be conducted in a systematic manner;

(3) Seek to understand the views, needs and difficulties encountered by both parties;

(4) Seek common ground of both parties;

(5) Formulate various settlement proposals / offers acceptable to both sides;

(6) Estimate an acceptable scope of agreement;

(7) Enlist matters which require the assistance from the mediator;

(8) Sign the required documents, including Agreement to Mediate and the authorization letter.

Author: Mr. Alex Lai, Director of Joint Mediation Helpline Office (Representative of Hong Kong Institute of Architects)

1. For details, please refer to "Chapter 6 Participants of Mediation" of this Handbook.
2. For example, requesting the other party to disclose specific documents, requesting a joint evaluation, making a conditional settlement proposal and conditional payment proposal, etc..

Chapter 10: Good Faith Participation in Mediation

- What is 'participation in good faith' in mediation?
- How to avoid a bad faith or perfunctory mediation?
- What is the principle of confidentiality under the Mediation Ordinance?
- How can a mediator assist the parties in having good faith participation in mediation?

Pursuant to Practice Direction 31, each party participating in mediation shall attend at least one substantive meeting conducted by the mediator, i.e. the "minimum level of participation" requirement. However, even if such requirement is met, it does not necessarily mean that both parties have participated in the mediation in good faith. Sometimes, parties may verbally indicate their willingness to settle the dispute but remain positional throughout the mediation, refusing to consider any views or solutions, or merely spending hours reiterating their stance. This could not be regarded as good faith.

A Party in Mediation

During mediation, parties shall seek to understand each other's views and feelings by devoting sufficient time to listen and discuss actively with each other, so that one's sincerity can be felt by the other party. Likewise, parties' attitude in handling the dispute also reflects their sincerity in mediation. Since parties

usually have strong views in a dispute (e.g. the other party is liable for compensation or should offer an apology), if one can adopt an open-mind, put aside one's position temporarily, listen to the other party's ideas and suggestions, and try to consider the issues from different angles, one can often encourage the other party to adopt the same attitude to participate in mediation.

Legal Representative/Adviser

Some lawyers may attempt to obtain certain confidential information from the other side during the mediation meeting. Some did this for the purpose of facilitating negotiation, but others did it as a 'fishing expedition' to jeopardize the other side's case in future litigation. The latter not only defeats the purpose of mediation but also undermines mutual trust between the parties. In order to restrain such behaviour, the Mediation Ordinance requires that a person shall not disclose any mediation communication to a third party, unless with the consent of all persons involved in the mediation (namely each of the parties to the mediation, the mediator and the person who made the mediation communication[1]) or unless the disclosed information is already available to the public or under specific circumstances[2].

The notion of good faith participation applies to the parties as much as to their legal representatives/advisers. In order to assist parties to take part in mediation in good faith, a mediator will help parties and their legal representatives adjust their attitude and mindset prior to the mediation meeting by explaining to them the process, principles and objectives of mediation. For instance, parties to the dispute will be engaged in direct dialogue and negotiation, and that no party should make representation to mislead the other party. When preparing for the mediation, the mediator will also seek to understand the big picture of the dispute, the relationship between the parties and their respective concerns (please refer to Chapter 9 of this Handbook). Parties and their legal representatives/advisers should fully cooperate with the mediator to create an atmosphere conducive to reaching a settlement. If a party conveys information which the mediator knows are inconsistent with the facts, or that a party is reluctant to disclose certain information during mediation, the mediator will hold separate meetings with the party to explore the reasons behind and discuss with the party on how to make progress, with a view to facilitate both parties to reach a settlement in good faith.

1. In accordance with Mediation Ordinance, Chapter 620, Section 2 (1), mediation communication refers to (a) anything said or done; (b) any document prepared; or (c) any information provided, for the purpose of or in the course of mediation, but does not include an agreement to mediate or a mediated settlement agreement.
2. For details, please refer to Mediation Ordinance, Chapter 620, Sections 8-10.

Author: Ms. Jody Sin, Director of Joint Mediation Helpline Office (Chairperson of Hong Kong Mediation Council – Terms of service until July 2015)

- What kind of difficulties may arise in mediation meetings?
- How to cope with the difficulties in mediation meetings?
- How to enhance the effectiveness of mediation?

It is a not unusual that deadlocks occur during mediation sessions. At that point of time, both parties may have already made concessions but there are still some differences between the parties which need to be dealt with before an agreement can be reached. Some disputing parties, for various reasons, may have built up substantial negative emotion which may cause them to become positional. Occasionally, parties insist on their rights and interests in relation to certain issues, but they may not have objective information and/or opinion to make an informed decision, thus leading to a deadlock.

When facing a deadlock, parties should not lose sight of their original intent to resolve the dispute through mediation, nor let the predicament influence their negotiation strategy. They may also enlist the mediator's professional assistance to break through the deadlock. Here are a few points for sharing.

Cooperating with the Mediator

The mediator assumes the role of a moderator and provides assistance to the parties in conducting the meeting, such as setting an agenda for the meeting, and facilitating negotiations between the parties. When the parties cannot reach consensus on one of the issues, the mediator may suggest shelving that issue and move on to discuss another issue. In this situation, the parties should cooperate with the mediator so as to avoid being entangled in a deadlock. If the parties are able to make progress on other issues, the parties will often be able to find ways to get out of the deadlock subsequently.

Seeking Professional Advice

When the parties have prejudice against each other or maintain a strong stance, they may seek for objective information and professional advice to facilitate their decision-making process, such as obtaining legal advice and expert reports, etc.[1] Therefore, before participating in a mediation meeting, all relevant information and advice on the case should have been obtained. Advisors should also be notified of the date and time of the mediation meeting in advance, so that they may be contacted for immediate consultation when needed during the mediation session. If it transpires that

1. It is common that the legal, expert or third-party opinion over the same subject obtained by the parties may be different. A party should have an open mind to handle different opinions when participating in a mediation meeting.

preparation is substantially inadequate, the mediation meeting may be adjourned and rescheduled.

Dealing with Psychological Factors

If a deadlock arises out of irrational reaction or obstinacy, instead of trying to persuade the other party to accept a particular view repeatedly, you can try listening to the other party's views, looking at the matter from the perspective of the other party, and expressing willingness to understand the view of the other party. These efforts will allow the other party to feel your sincerity in the negotiation process. In addition, you may enlist the mediator's skills to deal with the dispute from different angles. Mediation is a flexible process, you may also request for a short break to relieve stress.

To improve the effectiveness of mediation, a party may consider taking the following steps:

(1) Formulate a number of different options to resolve the dispute amicably;
(2) Be future-focused and explore ways to achieve a win-win solution;
(3) Be sincere, open and flexible when considering different options to settle the dispute;
(4) Actively listen to the other party so as to understand the other party's underlying concerns, views and feelings. Then you will be in a better position to formulate proposals for settlement and to determine the appropriate time to make your offers;
(5) Answer the mediator's questions frankly. These questions from the mediator can usually assist you to consider the issues from different perspectives, so that you may devise the best and worst alternatives to negotiation, in order to make the best decision for yourself.

Author: Mrs. Cecilia Wong, Director of Joint Mediation Helpline Office (Representative of the Law Society of Hong Kong)

- What are the differences between 'mediated negotiation' and ordinary negotiation?
- How to negotiate during mediation in order to achieve optimal result?
- How to make concessions without giving in one's interests during mediation?
- What is the basis for deciding whether to accept a settlement proposal?

Mediation is a negotiation process assisted by a third party

Resolving conflicts and disputes through dialogue is always more preferable than confrontation. But if a negotiation is at an impasse, it is necessary to enlist the assistance from a third party for a breakthrough.

Bottom Line in Negotiation

Many people are accustomed to power-based or right-based negotiation. They usually set a bottom line before negotiation and then adopt different tactics to achieve the most favourable outcome. These tactics, including boasting or bluffing, going on a strike, defying orders, highball/lowball, good cop/bad cop, or winning sympathy by pretending to be miserable, etc., are used with a hope to get the other party to compromise out of fears and worries. During negotiation, these people also invoke rights, powers, precedents, laws, policies, etc. in their favour to convince the other party or a third party to accept that they are plausible, reasonable and legitimate.

The advantage of 'bottom line negotiation' is that a party can proceed with the negotiation by simply setting a bottom line unilaterally without the need to prepare much. However, when parties are negotiating at an arm's length, this approach of negotiation may at best produce a compromise; but at worst, may result in a lose/lose outcome to the detriment of the parties. If one party is coerced into accepting a term of settlement, the truce is nothing more than having the coerced party waiting for the right moment to revenge. Hence, this kind of negotiation may only be used to resolve conflicts which are 'one-off' in nature, such as insurance claims. However, for disputes involving parties with close relationship, such as shareholders, colleagues and family members, or those related to the performance of long-term commercial contracts, if the resolution is reached by imposition of power, pressure or a court order, the relationship between the parties will inevitably be impaired.

Interest-Based Negotiation

Interest-based negotiation is an approach adopted by many mediators. A mediator

assists parties in exploring issues underpinning their bottom lines or positions, so as to foster mutual understanding of their respective needs, and to prioritize them so that exchange of offers may become possible. Take a commercial dispute as an example. A party is claiming against the other party for compensation for breach of contract. Apart from facilitating the parties to discuss the reasonableness of the monetary claim, a mediator will also take into account other non-monetary interests of the parties, such as being treated fairly and respected in the process, or being able to put the dispute behind as soon as possible. Interest-based negotiation is an exchange of the parties' concerns rather than confrontation of powers. For example, the party breaching the contract may offer an apology to the other party coupled with an appropriate monetary compensation and an undertaking as to the manner in which the contract is to be complied with in future.

The settlement terms in an interest-based negotiation are jointly decided by the parties. While the outcome may not be ideal, it is certainly something that the parties can live with. Hence, interest-based negotiation is premised on the parties' willingness to have direct dialogue, to share responsibility in formulating solutions and exchange their views thereon. On this basis, the parties are able to resolve their disputes by focusing on their common grounds while acknowledging their differences, rather than fighting over their bottom line in a hostile manner.

Author: Mr. Roy Cheng, Director of Hong Kong Institute of Mediation

- **What are the elements of a mediated settlement agreement?**
- **Is mediated settlement agreement legally binding?**
- **What if the other party reneges on the agreement?**
- **Who should draft the agreement?**
- **What is the lawyer's role in settlement?**

When both parties have reached a settlement through mediation, the contents shall be recorded in writing, signed and confirmed by both parties. To ensure compliance of the agreement, parties need to note the following:

(1) Parties should decide the settlement terms based on their needs and shall not enter into agreement under coercion (including any inappropriate pressure from the mediator), which will otherwise lead to the reneging of the same. If needed, parties may request for sufficient time to consider the terms or even signing the agreement on another date.

(2) Parties should maintain good communication throughout the mediation in order to sort out any misunderstandings, and further enable them to establish a long-term cooperative relationship so that the odds against either party not complying with the agreement would be reduced.

(3) Before drafting any settlement agreement, parties and the mediator should check the feasibility of each term to ensure that both parties are able to earnestly carry out their promises.

(4) The content of the agreement should be as detailed as possible. For instance, if party A agrees to pay party B a sum of money, they should set out the amount, currency, payment date and location, and whether the sum would be paid by installments, by cash or other payment methods, etc. in order to avoid the difficulties in enforcing the agreement due to the lack of clarity.

(5) If the parties are legally represented, they can agree to have the settlement agreement drafted by the lawyer acting for either party, then the draft

agreement is to be reviewed by the lawyer acting for the counterparty. Finally both parties can sign the agreement which has been revised and confirmed by the lawyers from both sides.

(6) If neither of the parties is legally represented, the settlement agreement can be drafted by the mediator, then, reviewed and signed by both parties. No matter who drafts the agreement, it should be phrased with neutral wordings as far as possible in order to avoid further disputes over the terms of the agreement.

(7) A term can be added to the settlement agreement to request the parties to contact their mediator as soon as possible if they encounter any difficulties in executing the terms. This can prevent any legal action to be taken on trivial matters after signing of the settlement agreement which is not beneficial to both parties.

(8) Settlement agreement is legally binding. It is equivalent to a contract signed by the both parties. The parties are legally bound to adhere to the terms. If one of the parties reneges on the agreement, the other party is entitled to take legal action against the party in breach, but this would have deviated from what mediation originally intends to accomplish. If it is intended that the court should directly enforce the settlement agreement, use of hybrid service such as "mediation – arbitration" model should be considered.

Author: Mr. Dragon Chong, Acting Chief, Consumer Council

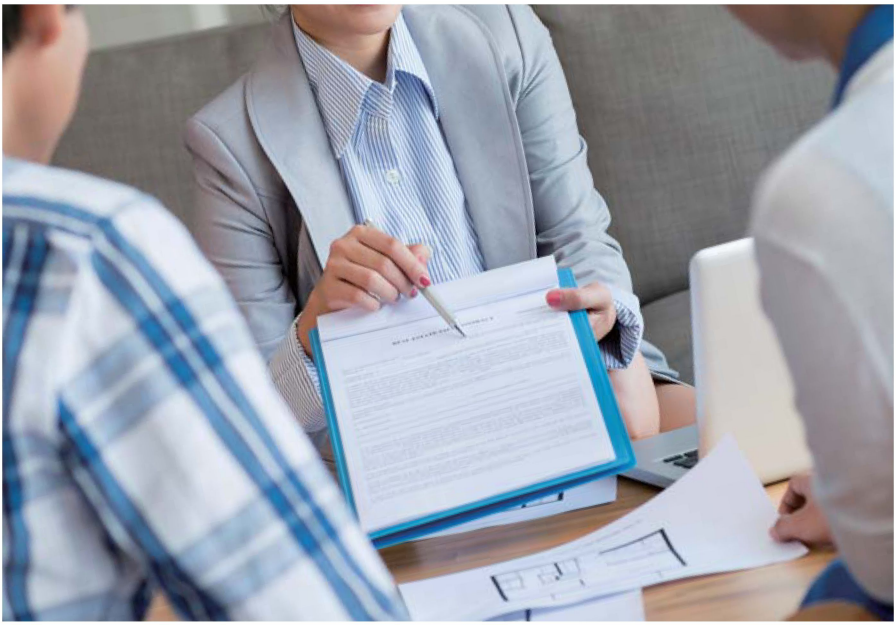
Family Mediation and Building Management Mediation

Ms. Sylvia Siu, JP, Director of Joint Mediation Helpline Office/ Representative of Hong Kong Institute of Arbitrators

Family Mediation

Family mediation is a dispute resolution process in which a professional family mediator will assume the role of a neutral and impartial third party to help separating/divorcing couples settle disputes in a harmonious and rational manner. The scope of mediation may cover arrangement with regard to the separation, child's custody, care, access and living expenses, maintenance, matrimonial home and assets division etc. The parties may attempt mediation at any stage before or during the divorce proceedings.

Divorce is more than just a set of legal proceedings to annul a marriage. It is a family problem fraught with complicated emotional and psychological issues. Through the handling of these issues with the assistance of a trained family mediator, family mediation can reduce hostility between the parties with a view to achieve mutual understanding and a win-win resolution. Parental communication and cooperation can also minimize trauma and impact on their children, thus facilitating joint performance of parental duties, fostering good parent-child relationship, as well as helping both parties to move on to their new lives.



Building Management Mediation

Building management mediation provides a peaceful and rational way to resolve complex disputes in relation to the management of multi-storey buildings involving various stakeholders. The scope of mediation may cover building management issues in connection with unauthorized building works, water seepage, contribution of management and repair fees, appointment of management committee, etc. Parties may consider mediation before any proceedings in the Lands Tribunal.

Resolving building management issues through mediation may save time and money which would otherwise be spent on litigation. In addition, all parties may still have the chance to cooperate or get along with each other in future. A mediated settlement agreement addressing the needs of both parties enables them to maintain a harmonious relationship and thus reducing the odds of having recurring disputes in the future.

If disputants need to seek family mediation or building management mediation services, they can:

- contact the Family Mediation Coordinator's Office or the Building Management Mediation Coordinator's Office of the Judiciary[1];
- consult the Family Court or Lands Tribunal;
- consult mediation service organizations (refer to Table of Mediation Service Organizations on page 112);
- consult professionals such as lawyers and social workers.

1. The Judiciary introduced Family Mediation Pilot Scheme in 2000 and set up a Family Mediation Co-ordinator's Office. Because of its proven record of success, the Judiciary decided to maintain the Mediation Co-ordinator's Office after the completion of the Pilot Scheme. After that, the Judiciary implemented Building Management Mediation Pilot Scheme in 2008 and set up a Building Management Mediation Co-ordinator's Office. The above-mentioned two offices are mainly responsible for holding mediation seminars and helping parties seek mediation services.

Mediation Information Office of the Judiciary

Ms. April Lam
Senior Mediation Affairs Officer of the Judiciary

Options for Resolving Disputes

"Why would the Judiciary encourage the parties to go through mediation first? Should the Court be responsible for resolving conflicts among litigants?" Our office always receives such enquiry from parties. In fact, litigation is not the only way to resolve disputes. Mediation is also an option. The reason why the Court encourages litigants to consider mediation is not to reduce its caseload, but to allow all parties to find an early and satisfactory way to resolve issues and avoid unnecessary delay in a more cost-effective manner.

Civil Justice Reform

Pursuant to Civil Justice Reform ("CJR"), one of the underlying objectives of the Rules of the High Court and the Rules of the District Court is to facilitate all parties to reach a settlement of their disputes before or during the litigation process. If conflicts could be resolved, court trial would be spared and valuable time and litigation expense can be saved.

Objective and Operation of the Mediation Information Office

In support of the CJR and to advocate more effective on use of mediation in reaching a resolution, the Mediation Information Office ("MIO") was established by the Judiciary with the main purpose of providing litigating parties and general public with relevant information through information sessions on mediation, assisting parties to have a better understanding of the nature and function of mediation and also introducing the ways of applying mediation services.

What to Expect from Attending the MIO Information Session?

Even though there has been an increasing awareness of "mediation", many parties are still unable to fully comprehend the details of the process as well as his or her role in the process. Therefore, in order to boost parties' confidence and their goodwill and motivation in participating in mediation, the MIO holds free information sessions weekly to answer inquires from the parties, and remove any doubts concerning participating in mediation so as to reduce their psychological resistance and to make better preparation before they participate in mediation. Positive feedbacks have been received from majority of the parties who joined the information sessions[1].

Since the Judiciary has to maintain its independent and impartial position,

1. From January 2010 to December 2014, MIO received more than 1500 returns. Almost ***89%*** of parties found that the IS had helped enhance their understanding on mediation. ***97%*** of parties would recommend the IS to friends or relatives in similar situations as theirs.

mediation service will not be offered directly by any Judiciary staff. Such service, on the other hand, will be provided by accredited mediators outside the Judiciary to be appointed by the parties themselves.

Who is the "Protagonist"

Many of the litigants held a misconception that he or she would be the protagonist, the main character in the court trial and justice was on their side and would eventually be served. They also expected that the trial process would teach the opponent a "lesson." However, they would probably not expect that throughout the formal adversarial process, they have to follow stringent court procedures and orders. If fact, they do not have much control of their destiny. The situation is even worse when the outcome would not be achieved as expected. Whoever won the case, he or she might find out that their suffering and overall time and money incurred is virtually more than what they would obtain from litigation.

On the other hand, the protagonist in mediation is not the mediator, but the participating parties. This is because a "win-win" situation requires the parties to set aside their prejudice so as to create a mutually satisfactory result together.

"Upper-hand" or "Small Fry"

A few litigants have asked such a question: if they were the one who proposed mediation first, would that mean they were "showing weak", a "small fry" position? The answer is definitely "No". Think about it carefully, parties agreeing to take part in the mediation process would inevitably take up the pressure of facing someone he or she had been in stand-off before. Breaking through such psychological barrier is not an easy task. Those who are willing to resolve disputes through mediation have therefore made a bold move to find a way out. For any mediation to be successful, parties must put aside the notions of "Right" and "Wrong". Those who are able to do so are essentially great characters looking forward to a brighter future. Only "Upper-hand" can put aside the notions of "Right" and "Wrong", choose to esteem others and create further harmonies through mediation.

Hong Kong Mediation Accreditation Association Limited

Mr John Budge, SBS, MBE, JP
Chairman, Hong Kong Mediation Accreditation Association Limited

The Hong Kong Mediation Accreditation Association Limited ("HKMAAL") was incorporated on 28 August 2012 with a view to becoming the premier accreditation body for mediators in Hong Kong. It is a non-statutory, industry-led body tasked to discharge accreditation and disciplinary functions concerning mediators in Hong Kong. It also draws up standards for training and is dedicated to ensure the professionalism of mediators.

Incorporation of HKMAAL

The development of mediation in Hong Kong has assumed a much faster pace since the establishment of the cross-sector Working Group on Mediation in 2008, led by the then Secretary for Justice (SJ), Mr Wong Yan Lung GBM SC JP. At that time, the increasing number of mediators practicing in Hong Kong with qualifications from various accreditation bodies had prompted the Working Group to raise concerns over the training and accreditation of mediators. In its report published in 2010, there were observations that the establishment of a single body for accrediting mediators is desirable and it would ensure the quality of mediators, consistency of standards, and build public confidence in mediation services.

An Accreditation and Training Group of the SJ's Mediation Task Force was therefore formed. Since there was no relevant legislation, it was proposed that a non-statutory, industry-led accreditation body be formed. This suggestion was supported by both the Department of Justice (DOJ) and the Judiciary. As a result, HKMAAL was incorporated by the following Founder Members:

- Hong Kong Bar Association;
- Hong Kong International Arbitration Centre;
- Hong Kong Mediation Centre; and
- The Law Society of Hong Kong

Accreditation bodies with a proven track record in mediation were entitled to apply to become HKMAAL Corporate Members upon the condition that they would give up their accreditation procedures.

Functions and Missions

HKMAAL commenced its operations in April 2013. It is purely a regulatory and standards-setting body including disciplinary powers, with the long term aim to become the sole accreditation body for mediators in Hong Kong.

HKMAAL's role is to accredit mediation professionals including mediators in the General and Family Categories, Family Mediation Supervisors (Supervisors) and Assessors for mediation assessments. HKMAAL also seeks to accredit mediation training courses, and solicited the expertise of experienced trainers, assessors and practitioners to assist in the formulation of

uniform accreditation standards for the industry. The Hong Kong Mediation Code will be reviewed from time to time with a view to providing guidance to mediators on ethical issues.

HKMAAL's progress to date

To date, apart from the 4 Founder Members, 7 more organizations have joined HKMAAL as Corporate Members.

As at 22 May 2015, HKMAAL has a total of 2,097 accredited mediators, with 1,820 General Mediators, 228 Family Mediators and 49 Supervisors. There are also 45 Assessors and 4 Lead Assessors on the relevant panels. HKMAAL is thus the largest mediation organisation in Hong Kong in terms of number of accredited mediators.

A Professional Indemnity Insurance Policy is being recommended to all HKMAAL Mediators.

As for the accreditation of mediation training courses in Hong Kong, HKMAAL has since July 2013 accredited 113 training courses. For the purpose of accreditation of General Mediators, 21 HKMAAL Stage 2 Assessment Courses have been organised since July 2013 with a total number of 639 Assessments. The average passing rate is 52%. In addition, the Family Mediation Supervision Pilot Scheme (Pilot Scheme) jointly run by HKMAAL and the Judiciary for referring supervised cases to Trainee Family Mediators (Trainees) in fulfillment of the Stage 2 accreditation requirements of Family Mediators, has commenced in July 2014. As at 22 May 2015, 28 HKMAAL Supervisors and 28 Trainees have enrolled in the Pilot Scheme.

Looking ahead

HKMAAL would continue to broaden its base of Corporate Members, mediators and trainers, and would:

a) invite those accreditation bodies who have not yet joined HKMAAL to make an application to join HKMAAL;
b) liaise with those Training Course Providers who have not yet submitted their mediation training courses for HKMAAL Stage 1 accreditation; and
c) finalise its disciplinary and complaint handling procedures.

Conclusion

HKMAAL has had an encouraging start but there is much still to be done. There will be challenges in the years ahead but future work must be dealt with comprehensively and transparently so as to establish a more robust regulatory regime.

Mediation Fees

Mr. Oscar Tan
Assistant Honorary Secretary of Joint Mediation Helpline Office
(Terms of service until July 2015)

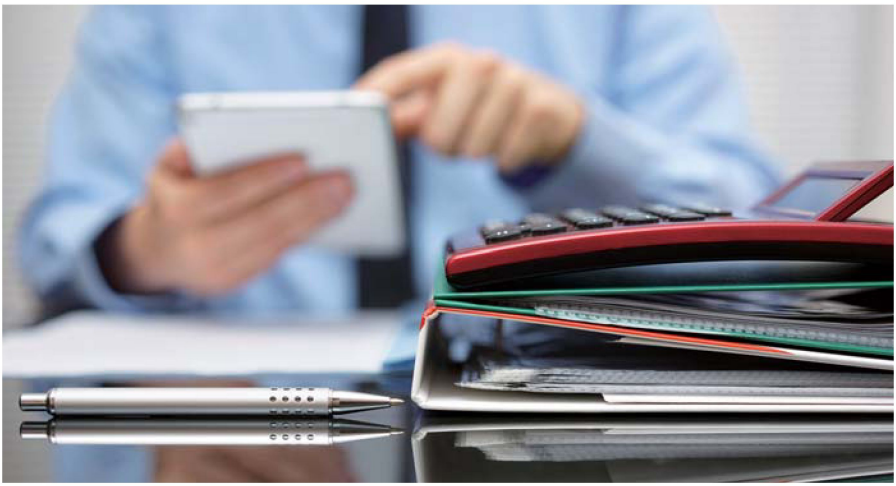
Mediation fees and expenses are the key considerations of parties who are seeking mediation. Normally, expenses involved in mediation can be classified into three categories:

Mediator's Fee

Many people mistakenly assume that mediators provide service for free or at a low rate. In fact, mediators usually have other professional qualifications, for example, some are lawyers, architects or surveyors, etc. Therefore, a junior mediator may charge an hourly rate up to HK$1,500-2,500; whereas a senior mediator may charge an hourly rate of HK$ 3,000-3,500. An overseas mediator may charge an hourly rate of up to HK$8,000.

Usually, mediators will only charge a fee for the time spent subsequent to the signing of the Agreement to Mediate. The fee usually covers the time for perusing papers, meeting with each individual party and the substantive mediation session.

Although the rate of a private mediator can be expensive, on average it takes only five hours to achieve a comprehensive settlement in mediation. That means the average expenses for a typical mediation is around HK$17,000[1]. It follows that the



1. Data source: Summary of Mediation Reports filed in the Court of First Instance in 2011 (http://mediation.judiciary.gov.hk/tc/figures_and_statistics.html#msfcjrrc)

total expenses incurred for mediation is still far lower than that for litigation.

If a party has financial needs or the amount involved in the dispute is very small, free/funded mediation services provided by non-profit organisations may be sought (the charge usually ranges between HK$0 and HK$1,200 per hour). However, these subsidised services are only available to parties who can meet specific requirements in terms of case nature and income. A party may refer to the appended table (on the next page) and make an enquiry with the relevant organisations.

Consultant's Fee

Parties may, according to their needs and case nature, consider whether services of advisors such as lawyers, surveyors, accountants or engineers are needed during mediation. Their service charges will depend on the actual services rendered, usually ranging between HK$3,000 and HK$6000 per hour, or between HK$10,000 and HK$20,000 per meeting. A party shall negotiate the fees arrangement with the advisors on a case-by-case basis.

Venue and Administration Fee

Mediation session may be held at a place agreed by the parties, such as a conference room in a commercial centre, a lawyer's office, any of the party's office or arbitration/mediation centre. As for administration fee, some mediation organisations may charge a small sum for providing administrative support. A party may refer to the appended table and make enquiries with the relevant organisations.

Mediation is a professional service and normally involves a service charge. If parties want to minimize the expenditure, they should cooperate with the mediator as far as possible, provide sufficient information, and participate in mediation in a cooperative manner. For details, please refer to Chapter 11, "Mediation Strategy", of this Handbook.

Mediation Fee Table

Mediation Fee Table				
	Registration/ Application Fee	**Mediators**	**Drafting Settlement Agreement**	**Administration Fee**
Judiciary				
• Family Mediation Co-ordinator's Office	Free Mediation Referral Services; For the mediator fee, please see the fee of "Private Practicing Mediators" as listed below			
• Building Management Mediation Co-ordinator's office	Free Mediation Referral Services; For the mediator fee, please see the fee of "Private Practicing Mediators" as listed below			
Non–profit making organizations General Mediation Service			*(The following fees are on a per party basis)*	
• Joint Mediation Helpline Office	N/A	$1,000 - $2,000 per hour for Mediation session(s) & $2,500 - $5,000 for preparation works	N/A	$1,000
• Financial Dispute Resolution Centre	$200	Applicant: $1,000 - $2,000 Financial Institution: $5,000 - $10,000 (Charged per case – 4-hour mediation session)	N/A	N/A
Family Mediation (Divorce)			*(The following fees are on a per party basis)*	
• Hong Kong Family Welfare Society	$100	$0 - $600 per hour	N/A	$0 - $600
• The Hong Kong Catholic Marriage Advisory Council – Marriage Mediation Counselling Service	$100	$0 - $500 per hour	N/A	N/A
• Hong Kong Caritas Family Mediation Service	$50	$50 - $600 per session (around 2.5 - 3.5 hours)	$50 - $600	N/A
• Christian & Missionary Alliance Sha Tin Church – Community Service Centre	N/A	$400 per hour	$1,500	
• Hong Kong Sheng Kung Hui Counselling Service – Family Mediation Service	N/A	$500 per hour	N/A	N/A
• Yang Memorial Methodist Social Service – Mongkok Integrated Family Service Centre	N/A	$0 - $800 per hour	Up to $800	
• Centre for Restoration of Human Relationships	N/A	$500 - $800 per hour	N/A	N/A
Private practicing Mediators			*(The following fees are on a per party basis)*	
	N/A	$750 - $4,000 per hour (paid by both/all parties equally)	N/A	N/A

Venue Fee				
	Registration/ Application Fee	Mediators	Drafting Settlement Agreement	Administration Fee
Private Venue			*(The following fees are charged per room and shared by parties equally)*	
• Meeting room of Commercial Centre		The minimum charges: $200 - $300 per hour		
• Meeting Room/Banquet Hall of Hotel (3 - 4 Star)		$1,600 - $2,400 for 4 hours		
• Meeting room of HK International Centre		$1,500 - $2,500 for 4 hours		
• Financial Disputes Resolution Centre		$1,100 - $1,500 for 4 hours		
Community Venue			*(The following fees are charged per room and shared by parties equally)*	
• Urban Renewal Resource Centre – Community Venue for Mediation (limited to the disputes regarding building management, renewal, maintenance, construction)		$48 per hour (Pro-bono mediators may be waived)		

* The above charges are denominated in Hong Kong Dollars

** The above charges are for reference only. Please consult the relevant organisations for updated service charges.

香港法例第620章《調解條例》

詳題

本條例旨在訂立一個框架，就進行調解的若干事宜作規管，並作出相應及相關的修訂。

1. 簡稱

(1) 本條例可引稱為《調解條例》。

(2)（已失時效而略去）— 2013年第1號編輯修訂紀錄）

2. 釋義

(1) 在本條例中 —

爭議 (dispute) 包括分歧；

經調解的和解協議 (mediated settlement agreement) 指調解的部分或全部當事人就他們的全部或部分爭議所達成的和解協議；

調解 (mediation) — 見第4條；

調解協議 (agreement to mediate) 指兩人或多於兩人所訂立的書面協議，同意將他們之間的爭議交付調解，不論 —

(a) 協議是另一協議中的調解條款，還是作為單獨協議存在；

(b) 協議是在爭議發生之前或之後訂立的；及

(c) 在協議訂立時，是否有委任調解員；

附註 —

調解協議可採用電子形式－亦參看《電子交易條例》（第553章）第5(1)條。

調解員 (mediator) 指第 4(1) 條提述的不偏不倚的個人；

調解通訊 (mediation communication) 指為調解的目的或在調解的過程中而 —

(a) 說出的任何說話或作出的任何作為；

(b) 擬備的任何文件；或

(c) 提供的任何資料，

但不包括調解協議，亦不包括經調解的和解協議。

(2) 在本條例中，提述調解的當事人、調解的任何一方或調解的每一方，不包括提述調解員。

3. 本條例的目的

本條例的目的是 —

(a) 提倡、鼓勵和促進以調解方式解決爭議；及

(b) 使調解通訊得以保密。

4. 調解的涵義

(1) 就本條例而言，調解是由一個或多於一個分節構成的有組織程序，在該等分節中，一名或多於一名不偏不倚的個人在不對某項爭議或其任何部分作出判決的情況下，協助爭議各方作出下述 任何或所有事宜 —

(a) 找出爭議點；

(b) 探求和擬訂解決方案；

(c) 互相溝通；

(d) 就解決爭議的全部或部分，達成協議。

(2) 就第(1)款而言，分節指調解員與爭議一方或多於一方的會議，並包括就下述事宜進行的任何活動 —

(a) 為會議作出安排或預備，不論會議是否有舉行；及

(b) 跟進會議中提出的事宜或問題。

(3) 就第(2)款而言，會議包括透過電話、視像會議或其他電子方式進行的會議。

5. 本條例適用的調解及調解通訊

(1) 除第(2)款另有規定外，如有任何調解根據調解協議進行，而下述其中一項情況適用，則本條例適用於該調解 —

(a) 該調解全部或部分在香港進行；或

(b) 該協議規定，本條例或香港法律適用於該調解。

(2) 本條例不適用於附表1指明的程序。

(3) 凡本條例適用於任何調解，本條例亦適用於與該調解相關的調解通訊。

(4) 就施行本條而言，下述事宜無關重要 —

(a) 有關的調解協議是在本條例的生效日期之前、當日或之後訂立的，或該協議是在香港或其 他地方訂立的；

(b) 有關的調解是在本條例的生效日期之前、當日或之後進行的，或該調解已於該日期之前完 結；或

(c) 有關的調解通訊是在本條例的生效日期之前、當日或之後作出的。

6. 對政府的適用性

本條例適用於政府。

7. 在調解過程中提供協助或支援

《法律執業者條例》(第159章)的下述條文，不適用於在調解過程中向調解的任何一方提供協助或支援 —

(a) 第44條(非法執業為大律師或公證人的罰則)；

(b) 第45條(不合資格人士不得以律師身分行事)；

(c) 第47條(不合資格人士不得擬備某些文書等)。

8. 調解通訊的保密

(1) 除按第(2)或(3)款的規定，任何人不得披露調解通訊。

(2) 在下述情況下，任何人可披露調解通訊 —

(a) 所有下述人士均同意作出該項披露 —

(i) 有關的調解的每一方；

(ii) 有關的調解的調解員，如有多於一名調解員，則每名調解員；及

(iii) 作出該項調解通訊的人(如該人並非有關的調解的任何一方或調解員)；

(b) 該項調解通訊的內容，是公眾已可得的資料(但僅因非法披露才屬公眾可知的資料除外)；

(c) 該項調解通訊的內容，是假若無本條規定，便會符合以下說明的資料：受民事法律程序中 的文件透露規定所規限，或受其他要求當事人披露他們管有、保管或控制的文件的類似程序所規限；

(d) 有合理理由相信，為防止或盡量減少任何人受傷的風險，或任何未成年人的福祉受嚴重損害的風險，作出該項披露是必需的；

(e) 該項披露是為研究、評估或教育的目的而作出的，並且既沒有直接或間接洩露該項調解通訊所關乎的人的身分，亦相當不可能會直接或間接洩露該人的身分；

(f) 該項披露是為徵詢法律意見而作出的；或

(g) 該項披露是按照法律施加的要求而作出的。

(3) 在根據第10條獲得法院或審裁處的許可下，任何人可為下述目的，披露調解通訊 —

(a) 執行或質疑經調解的和解協議；

(b) (如有人提出指稱或申訴，而針對的是調解員所作出的專業失當行為，或任何以專業身分參 與有關的調解的其他人所作出的專業失當行為)就該指稱或申訴提出證明或爭議；或

(c) 有關的法院或審裁處認為在有關個案的情況下屬有理由支持的任何其他目的。

(4) 在本條中 —

未成年人 (child) 指未滿18歲的人。

9. 調解通訊作為證據的可接納性

在任何程序(包括司法、仲裁、行政或紀律程序)中，只有在根據第10條獲得法院或審裁處的許可下，調解通訊方可獲接納作為證據。

10. 關於披露或接納作為證據的許可

(1) 第(3)款指明的法院或審裁處可應任何人的申請而給予許可，准許根據第8(3)條披露調解通訊，或根據第9條接納調解通訊作為證據。

(2) 為施行第(1)款，有關的法院或審裁處在決定是否就披露調解通訊或接納調解通訊作為證據給予許可時，須考慮 —

(a) 該項調解通訊是否可以根據第8(2)條披露，或是否已經如此披露；

(b) 披露該項調解通訊或接納該項通訊作為證據，是否符合公眾利益，或是否有助於秉行公義；及

(c) 有關的法院或審裁處認為屬相關的任何其他情況或事宜。

(3) 為施行第(1)款而指明法院或審裁處如下 —

(a) 如在終審法院的程序中尋求披露有關的調解通訊或接納該項通訊作為證據 — 終審法院；

(b) 如在上訴法庭的程序中尋求披露有關的調解通訊或接納該項通訊作為證據 — 上訴法庭；

(c) 如在區域法院的程序中尋求披露有關的調解通訊或接納該項通訊作為證據 — 區域法院；

(d) 如在土地審裁處的程序中尋求披露有關的調解通訊或接納該項通訊作為證據 — 土地審裁 處；或

(e) 在任何其他情況下 — 原訟法庭。

11. 相應及相關修訂

附表2指明的成文法則現予修訂，修訂方式列於該附表。

附表1：本條例不適用的程序

1. 《勞資審裁處條例》(第25章)第6、15及25條提述的調停。

2. 《學徒制度條例》(第47章)第39條提述的調停。

3. 《勞資關係條例》(第55章)第2部提述的調停及特別調停。(編輯修訂－2013年第1號編輯修訂紀錄)

4. 《勞資關係條例》(第55章)第2A部提述的調解。(編輯修訂－2013年第1號編輯修訂紀錄)

5. 《婚姻制度改革條例》(第178章)第17條描述的程序。

6. 《申訴專員條例》(第397章)第11B條提述的調解。

7. 《小額薪酬索償仲裁處條例》(第453章)第4及14條提述的調停。

8. 《性別歧視條例》(第480章)第64及84條及《性別歧視(調查及調停)規則》(第480章，附屬法例B)第8條提述的調停。

9. 《殘疾歧視條例》(第487章)第62及80條及《殘疾歧視(調查及調停)規則》(第487章，附屬法例B)第8條提述的調停。

10.《家庭崗位歧視條例》(第527章)第44及62條及《家庭崗位歧視(調查及調停)規則》(第527章，附屬法例A)第8條提述的調停。

11.《種族歧視條例》(第602章)第59及78條及《種族歧視(調查及調停)規則》(第602章，附屬法例B)第8條提述的調停。

12.《仲裁條例》(第609章)第32(3)及33條提述的調解程序。

附表：2(已失時效而略去 — 2013年第1號編輯修訂紀錄)

資料來原：律政司
http://www.legislation.gov.hk

香港調解守則

一般責任

1. 調解員須公平地對待調解各方，對任何和解協議的條款不得有任何個人利害關係，不得偏袒任何一方，需要在合理的情況下應調解各方的要求提供調解服務，並確保調解各方均獲告知調解程序。

對調解各方的責任

2. **保持公正無私／避免利益衝突**

   調解員必須以公正無私的態度對待調解各方。調解員若有可能或曾與任何一方之間有任何從屬／利害關係，必須向調解各方披露；如屬這情況，調解員必須在展開調解程序前取得調解各方的書面同意。

3. **知情同意**

   (a) 調解員須向調解各方解釋調解程序的性質、將採用的程序和調解員的角色。

   (b) 調解員須確保調解各方進行實質磋商前已簽署調解協議。*

   (c) 調解協議須訂明調解員和調解各方的責任和義務。

4. **資料保密**

   (a) 調解員必須將調解過程所產生或與調解工作有關的所有資料保密，但若藉法律或基於公共政策理由而被強制者則作別論。

   (b) 對於任何一方在機密的情況下向調解員披露的資料，在未取得事先准許的情況下不得向另一方披露。

   (c) 若這些資料包含對人命或人身安全構成實際或潛在威脅的內容，則上文第4(a)段及4(b)段所述守則並不適用。

*夾附調解協議的樣本。

5. **暫停或終止調解**

調解員須告知調解各方他們有權退出調解。如調解員認為任何一方不能或不願意實際參與調解程序，調解員可暫停或終止調解。

6. **保險**

調解員須考慮在專業彌償保險方面受保是否適當，如屬適當，須確保自己充分受保。

確立調解程序

7. **獨立意見和資料**

假如調解的任何一方沒有法律代表或未獲取有關的專業意見，調解員須考慮是否鼓勵這一方獲取法律意見或有關的專業意見。

8. **費用**

調解員有責任以書面方式訂明和闡述所收取的調解費用。調解員不得收取成功酬金或按調解結果收取費用。

對調解程序及公眾的責任

9. **適任程度**

調解員在進行調解程序中必須具備能力和知識。相關的因素包括教育、專門訓練及持續進修，令調解員依據有關標準及／或認可計劃而獲得認可。舉例來說，當調解與分居／離婚有關，調解員便必須接受過相關的專門訓練和具備適當的認可資格。

10. **委任**

調解員在接受委任前，必須確信自己可騰出時間，以確保調解可以迅速進行。

11. **宣傳／推廣調解員所提供的服務**

調解員可進行執業推廣，但須以專業、誠實和保持尊嚴的方式行事。

*調解協議

本協議於_____年_____月_____日簽訂，協議各方（*在本協議內稱為“調解各方”*）為：

_____
（調解一方姓名：請用正楷填寫）

_____
（聯絡電話號碼）

_____

_____

_____
（地址）

_____
（調解一方姓名：請用正楷填寫）

_____
（聯絡電話號碼）

_____

_____

_____
（地址）

及調解員（*下稱“調解員”*）為：

_____
（調解員姓名：請用正楷填寫）

_____
（聯絡電話號碼）

_____

_____

_____
（地址）

委任調解員

1. 調解各方現委任調解員按照本協議的條款就他們之間的爭議進行調解。

調解員的角色

2. 調解員將保持中立和公正，並藉下列方法協助調解各方嘗試解決他們的爭議：

(a) 有系統地把爭議事項分開處理；

(b) 就這些爭議促展解決方案；以及

(c) 探討這些解決方案在符合調解各方的利益和需要方面是否有用。

3. 調解員可與調解各方共同或分開會面。

4. 調解員不會：

(a) 為任何一方提供法律或其他專業意見；或

(b) 把某個結果強加於任何一方之上；或

(c) 為任何一方作出決定。

利益衝突

5. 調解開始之前，調解員必須盡其所知，向調解各方披露他與任何一方先前的事務往來以及調解員在爭議中的任何利益。

6. 假如在調解過程中調解員察悉任何可合理地被認為會影響調解員公正行事的能力，調解員須即時把這些情況告知調解各方，然後調解各方會決定是否由該名調解員繼續進行調解，還是由調解各方委任新的調解員進行調解。

調解各方的共同合作

7. 調解各方同意在調解期間與調解員及調解對方衷誠合作。

和解授權及在調解會議上進行陳述

8. 調解各方同意出席調解會議的同時，有權力在任何合理預計範圍內作出和解。

9. 在調解期間，調解各方均可由一名或多於一名人士（包括具有法律專業資格的人士）陪同，以提供協助及意見。

調解員與調解各方之間的溝通

10. 任何一方在私下向調解員披露的資料，調解員須以保密方式處理，但披露資料的一方說明無須保密則作別論。

調解保密原則

11. 參與調解的各人：

(a) 須把進行調解所產生的所有資料以及與調解有關的所有資料保密，包括達成和解的事實和條款，但不包括將會或已進行調解這個事實，或根據法律規定為實行或執行和解條款而須披露資料的情況；以及

(b) 須承諾在調解各方與調解員之間傳遞的所有資料（不論透過任何方式傳遞）不得用以損害任何一方的法定權益，亦不得向任何法官、仲裁員或任何法律程序或其他正式程序中的其他決策人提交這些資料作為證據或披露這些資料，但根據法律規定須披露資料的情況則作別論。

12. 當一方在調解前、調解時或調解後私下在機密的情況下向調解員披露任何資料，調解員不得在沒有取得披露資料一方同意的情況下，向任何其他一方或人士披露該等資料，除非法律有所規定，則作別論。

13. 調解各方不得傳召調解員作證人，亦不得要求他在爭議或調解所引致或與此有關的任何訴訟、仲裁或其他正式程序中，提交與調解有關的任何紀錄或筆記作為證據；調解員亦不會在任何該等程序中充當或同意充當證人、專家、仲裁員或顧問。

14. 調解過程不會以任何逐字記錄或逐字謄寫文本形式予以記錄。

終止調解

15. 調解的任何一方可在諮詢調解員的意見後隨時終止調解。

16. 調解員在諮詢調解各方後如認為無法協助調解各方解決爭議，可終止調解。

為爭議達成和解

17. 透過調解而達成的和解條款，須以書面形式列明，並經調解各方或其代表簽署，方具法律約束力。

免除責任及彌償

18. 調解員不會因為根據本協議書履行調解員的責任或其意是根據本協議書履行有關義務時的作為或不作為而須向任何一方負上法律責任，但該作為或不作為含有欺詐成分則除外。

19. 調解每一方須就調解員因為或在任何情況下基於其根據本協議書履行調解員的義務或其意是根據本協議書履行其責任時的作為或不作為而被該方或任何屬該方的人或任何人經該方提出的所有申索，對調解員作出彌償，但該作為或不作為含有欺詐成分則除外。

20. 調解各方或其代表或調解員在調解期間提出或使用的陳述或意見，不論是書面還是口頭，均不得援引作為依據以進行任何涉及誹謗、永久形式誹謗、短暫形式誹謗或相關投訴的訴訟，而本文件可用以禁制任何這類訴訟。

調解守則

21. 調解必須按照本協議及香港調解守則的條款進行。

調解費用

22. 調解各方必須按照附表所列支付調解員的費用和開支。

23. 除調解各方另有書面協定外，調解一方同意平均分擔調解費用，並承擔本身的法律費用及其他費用，以及在調解前準備和出席調解的開支（“調解一方的法律費用”）。調解一方並同意，不論調解是否導致爭議達成和解，在有關的訴訟或仲裁的案件中有權評核訟費或發出判付訟費命令的法庭或審裁處，可把調解費用及調解一方的法律費用視為該宗案件的訟費。

調解的法律效力及效果

24. 除非調解各方同意或法院另有命令，否則雖然進行調解，但任何關於該項爭議而打算提出或正在進行的訴訟或仲裁，均可展開或繼續。

25. 本協議書受香港特別行政區的法律管限，香港特別行政區法院有專有審判權，就本協議書及調解所引起或與此有關的任何事宜作出裁定。

全面披露（適用於家事調解）

26. (a) 調解各方同意全面和誠實地披露調解員和對方要求披露的所有相關資料。

(b) 任何一方如果沒有全面和坦誠地披露相關資料，可導致在調解過程中所達成的任何協議遭作廢。

簽署調解協議

日期：_____年_____月 ____日

_____

調解一方或其代表的姓名（請以正楷填寫然後簽署）

_____

調解一方或其代表的姓名（請以正楷填寫然後簽署）

_____

調解員姓名（請以正楷填寫然後簽署）

附表

調解員的費用及開支

1. 所有準備工作　（每小時）　元

2. 調解工作　（每小時）　元

3. 租用房間費用　元

4. 費用分配如下：

    第一方　%

    第二方　%

    第三方　%

    第四方　%

    或

    調解各方平均分擔　%

實務指示－31

調解

A部

1. 《高等法院規則》和《區域法院規則》的基本目標之一是利便法律程序中的各方就其爭議達成和解。法院推行積極的案件管理的其中一個範疇，就是肩負起達致上述目標的職責，在其認為合適的情況下，鼓勵各方採用另類排解程序，並為有關程序提供利便（下稱"有關職責"）。法院有職責協助各方和解案件，而各方及其法律代表也有責任協助法院履行有關職責[1]。

2. 本實務指示旨在協助法院履行有關職責。本實務指示適用於所有在高等法院原訟法庭和區域法院藉令狀而開展的民事法律程序[2]，但列載於附件A的法律程序則屬例外。

3. 另類排解程序指的是一個過程，各方協議委任一名第三者協助他們和解案件或解決爭議。各方之間所進行的和解談判，並不等同於另類排解程序。調解是一種常見的另類排解程序。本實務指示適用於調解的程序。凡各方正進行仲裁的程序，有關的法庭程序會予以擱置，而本實務指示將不適用於該等程序。

4. 法庭行使酌情權裁定訟費時，會考慮所有相關的情況，包括根據法庭可以接納的資料而證實訴訟人沒有合理解釋但不曾參與調解一事。法律代表須向其當事人提出忠告，使他們明白法庭可能會對不曾參與調解但沒有合理解釋的一方，發出不利的訟費令。

5. 在下述情況中，法庭不會以訴訟人沒有合理解釋但不曾參與調解為理由，發出對其不利的訟費令：

   (1) 該訴訟人已參與調解，並達到各方之前所協定的最低參與程度，或達到法庭在調解前依據本實務指示第13段所指示的最低參與程度。

   (2) 訴訟人有合理的原因解釋為何不曾參與調解。倘若各方已在無損權利的前提下展開積極的和解談判並取得進展，這點相當可能是合理的解釋之一；但談判一旦破裂，此項解釋就不再成立，各方須轉而考慮案件是否適宜進行調解。如果各方為使爭議得以和解，已經在期間積極地進行其他形式的另類排解程序，這點也可以是合理地解釋為何不參與調解的原因。

6. 法庭在所有的情況下，包括在處理因本實務指示的規定而引起的事宜以及行使酌情權裁定訟費時，均不可強迫各方披露任何依據法律原則而受保密權所保護的資料，例如享有法律專業保密權的資料，以及受無損權利的通訊特權所保護的資料，法庭也不可接納此等資料為證據。在調解過程中發生的事情，屬於無損權利的通訊，也受保密權所保護。在此須強調的是，法庭絕不會削弱由保密權所提供的保護。

7. 下文B部適用於各方均由律師代表的法律程序，C部則適用於至少其中一方沒有律師代表的法律程序。

B部

8. 此部適用於各方均由律師代表的法律程序。

(1) 調解證明書

9. 凡法律程序中的各方均由律師代表，代表各方行事的律師根據第25號命令第1條規則把“設定時間表的問卷”送交法院存檔的同時，必須把“調解證明書”存檔。“調解證明書”須採用附件B的格式撰寫及填上所需的資料，必要時可加以改動，並由律師及其代表的當事人簽署作實。

(2) 調解通知書和回覆書

10. 法律程序中任何一方（即“申請人”）如果有意嘗試調解，經存檔“調解證明書”後，應在切實可行的範圍內盡快把“調解通知書”送達予爭議中的另一方或其他各方（即“答辯人”）。“調解通知書”須採用附件C的格式撰寫及填上所需的資料，必要時可加以改動，並由申請人或其律師簽署作實。

11. 答辯人收到“調解通知書”後，應在14天內（或在各方所同意的其他時限或法庭所指定的時限內）以“調解回覆書”作出回應。“調解回覆書”須採用附件D的格式撰寫及填上所需的資料，必要時可加以改動，並由答辯人或其律師簽署作實。

12. 各方在“調解通知書”和“調解回覆書”中提出的建議若有不同，他們應在切實可行的範圍內，盡快嘗試就各項建議的分歧進行商討以求取得共識。經商討達成的共識，應以書面紀錄，並由申請人和答辯人（或他們的律師）在該份“調解紀錄”上簽署作實。

13. 在各方未能就“調解通知書”和“調解回覆書”中若干有關調解的建議達成共識的情況下：

(1) 各方如果願意由法庭指示他們如何解決分歧，可以提出共同申請，要求法庭作出指示以解決彼此的分歧；而

(2) 否則的話，任何一方可向法庭申請指示，而法庭也可以為解決各方在“調解通知書”和“調解回覆書”的建議的分歧而作出適當的指示，但祇限於就上述第11段時限的事宜，以及就有關通知書和回覆書第4、5、6及7段所述的事宜作出指示[3]。

14. 如果各方依據“調解通知書”、“調解回覆書”及任何“調解紀錄”而達成進行調解的協議，各方應按照其中所訂明的規則和時間表行事，並可於適當時向法庭提出暫時擱置法律程序的申請。

15. “調解通知書”或“調解回覆書”送達予另一方時，須同時送交法庭存檔。“調解紀錄”經雙方當事人或其代表簽署後，亦須在3天之內送交法院存檔。法庭於裁定訟費事宜時，或會參閱此等文件。

(3) 為進行調解而申請擱置法律程序

16. 法庭可應至少一方的申請或主動行使其權力，把有關的法律程序或其中部分程序擱置，以便各方進行調解。有關程序擱置的時限和條款，按照法庭認為合宜的而定，但法庭必須注意，盡量避免擾亂進度指標日期和延遲審訊日期；除非情況特殊，否則審訊日期不應予以押後。

17. 於法庭擱置法律程序期間，如果案件達成和解，原告人必須立即通知法庭，而各方也應採取必需的步驟正式結束法律程序。

C部

18. 本部適用於至少其中一方沒有律師代表的法律程序。

19. 法庭可應一方的申請或主動行使其權力，視乎所有的情況而定，在適當的時候考慮案件是否適宜進行調解。法庭可因此而要求各方提供資料，但一定會尊重資料的保密權。

20. 當法庭認為案件適宜進行調解時，法庭可指示各方依循上文B部所列的程序行事，並可對有關程序作出必要的改動。

D部

21. 本實務指示取代之前於2009年2月12日發出的《實務指示31－調解》。

22. 本實務指示將於2014年11月1日起生效。

日期：2014年8月14日

（馬道立）
終審法院首席法官

1 參閱第1A號命令第1(e)條、第3條、第4(2)(e)及(f)條規則。
2 此等程序包括藉原訴傳票開展的法律程序，其後經法庭命令須猶如該宗訟案或事宜是藉令狀開展一樣地繼續進行。參閱第28號命令第8條規則。
3 第13(2)段旨在利便調解，藉法庭作出的指示，為已同意嘗試調解的各方，解決在調解過程中技術和細節上的分歧。除非雙方均願意由法庭解決他們的分歧，否則其中一方不可提出申請，要求法庭指示另一方參與調解，或要求法庭不顧另一方的反對而作出委任某一調解員等指示。參閱第13(1)段。

附件A：http://legalref.judiciary.gov.hk/doc/npd/chi/PD31_files/cPD31_App_A.doc
附件B：http://legalref.judiciary.gov.hk/doc/npd/chi/PD31_files/cPD31_App_B.doc
附件C：http://legalref.judiciary.gov.hk/doc/npd/chi/PD31_files/cPD31_App_C.doc
附件D：http://legalref.judiciary.gov.hk/doc/npd/chi/PD31_files/cPD31_App_D.doc

資料來源：司法機構調解資訊中心
http://legalref.judiciary.gov.hk/lrs/common/pd/pdcontent.jsp?pdn=PD31.htm&lang=CH

調解服務機構一覽表

機構名稱	電話	網址
聯合調解專線辦事處	2901 1224	http://www.jointmediationhelpline.org.hk
香港國際仲裁中心	2525 2381	http://www.hkiac.org
香港調解會（隸屬香港國際仲裁中心）	2525 2381	http://www.hkiac.org
香港大律師公會	2869 0210	http://www.hkba.org
香港律師會	2846 0500	http://www.hklawsoc.org.hk
特許仲裁學會（東亞分會）	2525 2381	http://www.ciarbasia.org
香港仲裁司學會	2525 2381	http://www.hkiarb.org.hk
香港建築師學會	2511 6323	http://www.hkia.net
香港測量師學會	2526 3679	http://www.hkis.org.hk
香港和解中心	2866 1800	http://www.mediationcentre.com.hk
香港調解學院	2851 6680	http://www.mediate.com.hk
金融糾紛調解中心	3199 5199	http://www.fdrc.org.hk
香港家庭福利會	2561 9229	http://www.mediationcentrehk.org
香港公教婚姻輔導會－婚姻調解服務處	2782 7560	http://www.divorce.org.hk
香港明愛－家事調解服務	2669 2316	http://family.caritas.org.hk
基督教宣道會沙田堂社區服務中心	2648 9281	http://centre.shatinalliance.org.hk

機構名稱	電話	網址
香港聖公會輔導服務處－家事調解服務	2713 9174	http://cs.skhwc.org.hk
循道衛理楊震社會服務處－旺角綜合家庭服務中心	2171 4001	http://www.yang.org.hk
復和綜合服務中心	2399 7776	http://www.restoration.com.hk

Mediation Ordinance (Cap 620)

Long title

An Ordinance to provide a regulatory framework in respect of certain aspects of the conduct of mediation and to make consequential and related amendments.

1. Short title

(1) This Ordinance may be cited as the Mediation Ordinance.

(2) (Omitted as spent—E.R. 1 of 2013)

2. Interpretation

(1) In this Ordinance—

agreement to mediate（調解協議）means an agreement in writing by 2 or more persons to submit a dispute between them to mediation, regardless of—

(a) whether the agreement is in the form of a mediation clause in an agreement or in the form of a separate agreement;

(b) whether the agreement is made before or after the dispute arises; and

(c) whether or not a mediator is appointed at the time the agreement is made;

Note—

An agreement to mediate could be in electronic form-see also section 5(1) of the Electronic Transactions Ordinance (Cap 553).

dispute（爭議）includes a difference;

mediated settlement agreement（經調解的和解協議）means an agreement by some or all of the parties to mediation settling the whole, or part, of their dispute;

mediation（調解）— see section 4;

mediation communication（調解通訊）means—

(a) anything said or done;

(b) any document prepared; or

(c) any information provided,

for the purpose of or in the course of mediation, but does not include an agreement to mediate or a mediated settlement agreement;

mediator（調解員）means an impartial individual referred to in section 4(1).

(2) A reference in this Ordinance to the parties to mediation does not include the mediator.

3. Objects of this Ordinance

The objects of this Ordinance are—

(a) to promote, encourage and facilitate the resolution of disputes by mediation; and

(b) to protect the confidential nature of mediation communications.

4. Meaning of mediation

(1) For the purposes of this Ordinance, mediation is a structured process comprising one or more sessions in which one or more impartial individuals, without adjudicating a dispute or any aspect of it, assist the parties to the dispute to do any or all of the following—

(a) identify the issues in dispute;

(b) explore and generate options;

(c) communicate with one another;

(d) reach an agreement regarding the resolution of the whole, or part, of the dispute.

(2) For the purposes of subsection (1), a session is a meeting between a mediator and one or more of the parties to a dispute, and includes any activity undertaken in respect of-

(a) arranging or preparing for such a meeting, whether the meeting takes place or not; and

(b) following up any matter or issue raised in such a meeting.

(3) For the purposes of subsection (2), a meeting includes a meeting conducted by telephone, video conferencing or other electronic means.

5. Mediation and mediation communications to which this Ordinance applies

(1) Subject to subsection (2), this Ordinance applies to any mediation conducted under an agreement to mediate if either of the following circumstances applies—

(a) the mediation is wholly or partly conducted in Hong Kong; or

(b) the agreement provides that this Ordinance or the law of Hong Kong is to apply to the mediation.

(2) This Ordinance does not apply to a process specified in Schedule 1.

(3) This Ordinance applies to a mediation communication relating to any mediation to which this Ordinance applies.

(4) For the purposes of this section, it does not matter whether—

(a) the agreement to mediate is made before, on or after the commencement date of this Ordinance or entered into in Hong Kong or elsewhere;

(b) the mediation is conducted before, on or after the commencement date of this Ordinance or completed before that date; or

(c) the mediation communication is made before, on or after the commencement date of this Ordinance.

6. Application to the Government

This Ordinance applies to the Government.

7. Provision of assistance or support in mediation

The following sections of the Legal Practitioners Ordinance (Cap 159) do not apply to the provision of assistance or support to a party to mediation in the course of the mediation—

(a) section 44 (penalty for unlawfully practising as a barrister or notary public);

(b) section 45 (unqualified person not to act as solicitor);

(c) section 47 (unqualified person not to prepare certain instruments, etc.).

8. Confidentiality of mediation communications

(1) A person must not disclose a mediation communication except as provided by subsection (2) or (3).

(2) A person may disclose a mediation communication if—

(a) the disclosure is made with the consent of—

(i) each of the parties to the mediation;

(ii) the mediator for the mediation or, if there is more than one, each of them; and

(iii) if the mediation communication is made by a person other than a party to the mediation or a mediator-the person who made the communication;

(b) the content of the mediation communication is information that has already been made available to the public, except for information that is only in the public domain due to an unlawful disclosure;

(c) the content of the mediation communication is information that is otherwise subject to discovery in civil proceedings or to other similar procedures in which parties are required to disclose documents in their possession, custody or power;

(d) there are reasonable grounds to believe that the disclosure is necessary to prevent or minimize the danger of injury to a person or of serious harm to the well-being of a child;

(e) the disclosure is made for research, evaluation or educational purposes without revealing, or being likely to reveal, directly or indirectly, the identity of a person to whom the mediation communication relates;

(f) the disclosure is made for the purpose of seeking legal advice; or

(g) the disclosure is made in accordance with a requirement imposed by law.

(3) A person may disclose a mediation communication with leave of the court or tribunal under section 10—

(a) for the purpose of enforcing or challenging a mediated settlement agreement;

(b) for the purpose of establishing or disputing an allegation or complaint of professional misconduct made against a mediator or any other person who participated in the mediation in a professional capacity; or

(c) for any other purpose that the court or tribunal considers justifiable in the circumstances of the case.

(4) In this section—

child（未成年人）means a person under the age of 18 years.

9. Admissibility of mediation communications in evidence

A mediation communication may be admitted in evidence in any proceedings (including judicial, arbitral, administrative or disciplinary proceedings) only with leave of the court or tribunal under section 10.

10. Leave for disclosure or admission in evidence

(1) The court or tribunal specified in subsection (3) may, on application by any person, grant leave for a mediation communication to be disclosed under section 8(3) or to be admitted in evidence under section 9.

(2) For the purposes of subsection (1), the court or tribunal must take into account the following matters in deciding whether to grant leave for a mediation communication to be disclosed or admitted in evidence

(a) whether the mediation communication may be, or has been, disclosed under section 8(2);

(b) whether it is in the public interest or the interests of the administration of justice for the mediation communication to be disclosed or admitted in evidence;

(c) any other circumstances or matters that the court or tribunal considers relevant.

(3) The court or tribunal specified for the purposes of subsection (1) is—

(a) if the mediation communication is sought to be disclosed or admitted in evidence in proceedings in the Court of Final Appeal — the Court of Final Appeal;

(b) if the mediation communication is sought to be disclosed or admitted in evidence in proceedings in the Court of Appeal — the Court of Appeal;

(c) if the mediation communication is sought to be disclosed or admitted in evidence in proceedings in the District Court — the District Court;

(d) if the mediation communication is sought to be disclosed or admitted in evidence in proceedings in the Lands Tribunal — the Lands Tribunal; or

(e) in any other case-the Court of First Instance.

11. Consequential and related amendments

The enactments specified in Schedule 2 are amended as set out in that Schedule.

Schedule 1: Processes to Which this Ordinance Does Not Apply

1. Conciliation referred to in sections 6, 15 and 25 of the Labour Tribunal Ordinance (Cap 25).

2. Conciliation referred to in section 39 of the Apprenticeship Ordinance (Cap 47).

3. Conciliation and special conciliation referred to in Part 2 of the Labour Relations Ordinance (Cap 55).

4. Mediation referred to in Part 2A of the Labour Relations Ordinance (Cap 55).

5. The process described in section 17 of the Marriage Reform Ordinance (Cap 178).

6. Mediation referred to in section 11B of The Ombudsman Ordinance (Cap 397).

7. Conciliation referred to in sections 4 and 14 of the Minor Employment Claims Adjudication Board Ordinance (Cap 453).

8. Conciliation referred to in sections 64 and 84 of the Sex Discrimination Ordinance (Cap 480) and section 8 of the Sex Discrimination (Investigation and Conciliation) Rules (Cap 480 sub. leg. B).

9. Conciliation referred to in sections 62 and 80 of the Disability Discrimination Ordinance (Cap 487) and section 8 of the Disability Discrimination (Investigation and Conciliation) Rules (Cap 487 sub. leg. B).

10. Conciliation referred to in sections 44 and 62 of the Family Status Discrimination Ordinance (Cap 527) and section 8 of the Family Status Discrimination (Investigation and Conciliation) Rules (Cap 527 sub. leg. A).

11. Conciliation referred to in sections 59 and 78 of the Race Discrimination Ordinance (Cap 602) and section 8 of the Race Discrimination (Investigation and Conciliation) Rules (Cap 602 sub. leg. B).

12. Mediation proceedings referred to in sections 32(3) and 33 of the Arbitration Ordinance (Cap 609).

Schedule 2: (Omitted as spent—E.R. 1 of 2013)

Source: Department of Justice
http://www.legislation.gov.hk

The Hong Kong Mediation Code

General Responsibilities

1. The Mediator shall act fairly in dealing with the Parties to the mediation, have no personal interest in the terms of any Settlement Agreement, show no bias towards the Parties, be reasonably available as requested by the Parties, and be certain that the Parties have been informed about the mediation process.

Responsibilities to the Parties

2. **Impartiality/Conflict of Interest**

   The Mediator shall maintain impartiality towards all Parties. The Mediator shall disclose to the Parties any affiliations/interests which the Mediator may have or had with any Party and in such situation obtain the prior written consent of all the Parties before proceeding with the mediation.

3. **Informed Consent**

   (a) The Mediator shall explain to all Parties the nature of the mediation process, the procedures to be utilised and the role of the Mediator.

   (b) The Mediator shall ensure the Parties sign an Agreement to Mediate prior to the substantive negotiations between the Parties.*

   (c) The Agreement(s) to Mediate shall include the responsibilities and obligations of the Mediator and the Parties.

4. **Confidentiality**

   (a) The Mediator shall keep confidential all information, arising out of or in connection with the mediation, unless compelled by law or public policy grounds.

   (b) Any information disclosed in confidence to the Mediator by one of the Parties shall not be disclosed to the other Party without prior permission.

   (c) Paragraphs 4(a) and 4(b) shall not apply in the event such information discloses an actual or potential threat to human life or safety.

*A sample Agreement to Mediate is attached.

5. **Suspension or Termination of Mediation**

   The Mediator shall inform the Parties of their right to withdraw from the mediation. If the Mediator believes that a party is unable or unwilling to participate effectively in the mediation process, the Mediator can suspend or terminate the mediation.

6. **Insurance**

   The Mediator shall consider whether it is appropriate to be covered by professional indemnity insurance and if so, shall ensure that he/she is adequately covered.

Defining the Process

7. **Independent Advice and Information**

   In a mediation in which a Party is without legal representation or relevant expert opinion, the Mediator shall consider whether to encourage the Party to obtain legal advice or relevant expert opinion.

8. **Fees**

   The Mediator has a duty to define and describe in writing the fees for the mediation. The Mediator shall not charge contingent fees or base the fees upon the outcome of the mediation.

Responsibilities to the Mediation Process and the Public

9. **Competence**

   The Mediator shall be competent and knowledgeable in the process of mediation. Relevant factors shall include training, specialist training and continuous education, having regard to the relevant standards and/or accreditation scheme to which the Mediator is accredited. For example, in the event the mediation relates to separation/divorce, the Mediator shall have attained the relevant specialist training and the appropriate accreditation.

10. **Appointment**

    Before accepting an appointment, the Mediator must be satisfied that he/she has time available to ensure that the mediation can proceed in an expeditious manner.

11. **Advertising/promotion of the Mediator's services**

    The Mediator may promote his/her practice, but shall do so in a professional, truthful and dignified manner.

*Agreement to Mediate

This Agreement is made on _____

Between the Following Persons *(in this Agreement called the 'Parties')*

_____	_____
(Name of Party: Please Print)	*(Name of Party: Please Print)*
_____	_____
(Contact Telephone Number)	*(Contact Telephone Number)*
_____	_____
_____	_____
_____	_____
(Address)	*(Address)*

and The Mediator (called 'The Mediator')

_____

(Name of Mediator: Please Print)

_____

(Contact Telephone Number)

_____

_____

_____

(Address)

Appointment of Mediator

1. The Parties appoint the Mediator to mediate the Dispute between them in accordance with the terms of this Agreement.

Role of The Mediator

2. The Mediator will be neutral and impartial. The Mediator will assist the Parties to attempt to resolve the Dispute by helping them to:

(a) systematically isolate the issues in dispute;

(b) develop options for the resolution of these issues; and

(c) explore the usefulness of these options to meet their interests and needs.

3. The Mediator may meet with the Parties together or separately.

4. The Mediator will not:

(a) give legal or other professional advice to any Party; or

(b) impose a result on any Party; or

(c) make decisions for any Party.

Conflict of Interest

5. The Mediator must, prior to the commencement of the mediation, disclose to the Parties to the best of the Mediator's knowledge any prior dealings with any of the Parties as well as any interest in the Dispute.

6. If in the course of the mediation the Mediator becomes aware of any circumstances that might reasonably be considered to affect the Mediator's capacity to act impartially, the Mediator must immediately inform the Parties of these circumstances. The Parties will then decide whether the mediation will continue with that Mediator or with a new mediator appointed by the Parties.

Cooperation by The Parties

7. The Parties agree to cooperate in good faith with the Mediator and each other during the mediation.

Authority to Settle and Representation at The Mediation Session

8. The Parties agree to attend the mediation with authority to settle within any range that can reasonably be anticipated.

9. At the mediation each Party may be accompanied by one or more persons, including legally qualified persons, to assist and advise them.

Communication Between The Mediator and The Parties

10. Any information disclosed to a Mediator in private is to be treated as confidential by the Mediator unless the Party making the disclosure states otherwise.

Confidentiality of The Mediation

11. Every person involved in the mediation:

    (a) will keep confidential all information arising out of or in connection with the mediation, including the fact and terms of any settlement, but not including the fact that the mediation is to take place or has taken place or where disclosure is required by law to implement or to enforce terms of settlement; and

    (b) acknowledges that all such information passing between the Parties and the Mediator, however communicated, is agreed to be without prejudice to any Party's legal position and may not be produced as evidence or disclosed to any judge, arbitrator or other decision-maker in any legal or other formal process, except where otherwise disclosable in law.

12. Where a Party privately discloses to the Mediator any information in confidence before, during or after the mediation, the Mediator will not disclose that information to any other Party or person without the consent of the Party disclosing it, unless required by law to make disclosure.

13. The Parties will not call the Mediator as a witness, nor require him to produce in evidence any records or notes relating to the mediation, in any litigation, arbitration or other formal process arising from or in connection with the Dispute and the mediation; nor will the Mediator act or agree to act as a witness, expert, arbitrator or consultant in any such process.

14. No verbatim recording or transcript of the mediation will be made in any form.

Termination of The Mediation

15. A Party may terminate the mediation at any time after consultation with the Mediator.

16. The Mediator may terminate the mediation if, after consultation with the Parties, the Mediator feels unable to assist the Parties to achieve resolution of the Dispute.

Settlement of The Dispute

17. No terms of settlement reached at the mediation will be legally binding until set out in writing and signed by or on behalf of each of the Parties.

Exclusion of Liability and Indemnity

18. The Mediator will not be liable to any Party for any act or omission by the Mediator in the performance or purported performance of the Mediator's obligations under this Agreement unless the act or omission is fraudulent.

19. Each Party indemnifies the Mediator against all claims by that Party or anyone claiming under or through that Party, arising out of or in any way referable to any act or omission by the Mediator in the performance or purported performance of the Mediator's obligations under this agreement, unless the act or omission is fraudulent.

20. No statements or comments, whether written or oral, made or used by the Parties or their representatives or the Mediator within the mediation shall be relied upon to found or maintain any action for defamation, libel, slander or any related complaint, and this document may be pleaded as a bar to any such action.

Mediation Code

21. The mediation shall proceed according to the terms of this Agreement and the Hong Kong Mediation Code.

Cost of The Mediation

22. The Parties will be responsible for the fees and expenses of the Mediator in accordance with the SCHEDULE.

23. Unless otherwise agreed by the Parties in writing, each Party agrees to share the mediation fees equally and also to bear its own legal and other costs and expenses or preparing for and attending the mediation ("each Party's Legal Costs") prior to the mediation. However, each Party further agrees that any court or tribunal may treat both the mediation fees and each Party's legal costs as costs in the case in relation to any litigation or arbitration where that court or tribunal has power to assess or make orders as to costs, whether or not the mediation results in settlement of the Dispute.

Legal Status and Effect of The Mediation

24. Any contemplated or existing litigation or arbitration in relation to the Dispute may be started or continued despite the mediation, unless the Parties agree or a court orders otherwise.

25. This Agreement is governed by the law of the Hong Kong Special Administrative Region and the courts of the Hong Kong Special Administrative Region shall have exclusive jurisdiction to decide any matters arising out of or in connection with this Agreement and the mediation.

Full Disclosure (applicable to family mediation)

26. (a) The Parties agree to fully and honestly disclose all relevant information as requested by the Mediator and by each other.

    (b) Any failure by either of the Parties to make full and frank disclosure may result in the setting aside of any agreement reached in mediation.

Signing of The Agreement to Mediate

Date: _____

_____

Name of Party or Representative (Please print and sign here)

_____

Name of Party or Representative (Please print and sign here)

_____

Name of Mediator (Please print and sign here)

Schedule

Fees and Expenses of Mediator

1.	For all preparation	$	(per hour)
2.	For the mediation	$	(per hour)
3.	Room hire fees	$	
4.	Allocation of costs		
	Party 1		%
	Party 2		%
	Party 3		%
	Party 4		%
	Or		
	All parties equally		%

Practice Direction – 31

Mediation

Part A

1. An underlying objective of the Rules of the High Court and the District Court is to facilitate the settlement of disputes. The Court has the duty as part of active case management to further that objective by encouraging the parties to use an alternative dispute resolution procedure ("ADR") if the Court considers that appropriate and facilitating its use ("the duty in question"). The Court also has the duty of helping the parties to settle their case. The parties and their legal representatives have the duty of assisting the Court to discharge the duty in question[1].

2. The aim of this Practice Direction ("PD") is to assist the Court to discharge the duty in question. It applies to all civil proceedings in the Court of First Instance and the District Court which have been begun by writ[2] except the proceedings set out in Appendix A.

3. ADR means a process whereby the parties agree to appoint a third party to assist them to settle or resolve their dispute. Settlement negotiations between the parties do not amount to ADR. A common mode of ADR is mediation. This PD applies to mediation. Where the parties are engaged in arbitration proceedings, the court proceedings would be stayed and this PD would not apply to such proceedings.

4. In exercising its discretion on costs, the Court takes into account all relevant circumstances. These would include any unreasonable failure of a party to engage in mediation where this can be established by admissible materials. Legal representatives should advise their clients of the possibility of the Court making an adverse costs order where a party unreasonably fails to engage in mediation.

5. The Court will not make any adverse costs order against a party on the ground of unreasonable failure to engage in mediation where:

   (1) The party has engaged in mediation to the minimum level of participation agreed to by the parties or as directed by the Court prior to the mediation in accordance with paragraph 13 of this PD.

(2) A party has a reasonable explanation for not engaging in mediation. The fact that active without prejudice settlement negotiations between the parties are progressing is likely to provide such a reasonable explanation. However, where such negotiations have broken down, the basis for such explanation will have gone and the parties should then consider the appropriateness of mediation. The fact that the parties are actively engaged in some other form of ADR to settle the dispute may also provide a reasonable explanation for not engaging in mediation in the meantime.

6. In all contexts, including dealing with matters arising under this PD and in exercising its discretion on costs, the Court cannot compel the disclosure of or admit materials so long as they are protected by privilege in accordance with legal principles, including legal professional privilege and the privilege protecting without prejudice communications. What happens during the mediation process, being without prejudice communications, is protected by privilege. It must be emphasized that there is no question of the Court undermining the protection afforded by privilege.

7. Part B applies to proceedings in which all parties are legally represented. Part C applies to proceedings in which one or more of the parties is not legally represented.

Part B

8. This Part applies to proceedings in which all parties are legally represented.

(1) Mediation Certificate

9. In proceedings where all the parties are legally represented, solicitors acting respectively for the parties shall file in Court a Mediation Certificate at the same time as the time tabling questionnaire filed under Order 25, rule 1. The Mediation Certificate shall contain the information required and be in the form as per Appendix B, with modifications if necessary, and signed by the solicitors and the party they represent.

(2) Mediation Notice and Response

10. If a party ("the Applicant") wishes to attempt mediation, he should as soon as practicable after filing the Mediation Certificate serve a Mediation Notice on the other party or parties ("the Respondent") in the dispute in the form and containing the information as per Appendix C, with modifications if necessary, and signed by the Applicant or his solicitor.

11. Upon receiving the Mediation Notice, the Respondent should respond to the Applicant by way of a Mediation Response within 14 days (or such other time as the parties may agree or as the Court may direct) in the form and containing the information as per Appendix D, with modifications if necessary, and signed by the Respondent or his solicitor.

12. Where the parties put forward differing proposals in the Mediation Notice and Mediation Response, the parties should attempt to reach agreement on the proposals on which they differ as soon as practicable. Any agreement consequent upon such discussion should be reduced into writing in a minute called the Mediation Minute signed by the Applicant and the Respondent or their solicitors.

13. Where the parties are unable to reach agreement on certain proposals in the Mediation Notice and Mediation Response in relation to the mediation:

    (1) If the parties are willing to have their differences resolved by direction of the Court, they may make a joint application to the Court for directions resolving the points of difference between them; and

    (2) in the absence of such willingness, any party may apply to the Court for directions and the Court may give such directions as are appropriate to resolve differences between the parties regarding the proposals that they have each made in the Mediation Notice and the Mediation Response respectively, but only in respect of the matter of time referred to in paragraph 11 above and the matters referred to in paragraphs 4, 5, 6 and 7 of the said Notice and Response[3].

14. Where the parties reach agreement on mediation in accordance with the Mediation Notice, Mediation Response and any Mediation Minute, the parties should proceed in accordance with the stipulated rules and timetable and, if appropriate, may apply to the Court for an interim stay of the proceedings.

15. The Mediation Notice and Mediation Response shall be filed in Court at the time of the service of the same on the other party. The Mediation Minute shall also be filed in Court within 3 days after it has been signed by or on behalf of both parties. These documents may be taken into account by the Court on questions of costs.

(3) Application for Stay for Mediation Purposes

16. The Court may, on the application of one or more of the parties or of its own motion, stay the proceedings or any part thereof for the purpose of mediation for such period and on such terms as it thinks fit, bearing in mind the importance of avoiding so far as possible, disruption to the milestone dates and of avoiding, save in exceptional circumstances, any postponement of the trial dates.

17. Where the Court stays the proceedings, the plaintiff must promptly inform the Court if a settlement is reached and the parties should take the necessary steps to conclude the legal proceedings formally.

Part C

18. This Part applies to proceedings in which one or more parties are not legally represented.

19. On the application of a party or on its own motion, the Court may consider at a suitable stage whether mediation is appropriate, taking into account all the circumstances. The Court may seek information from the parties for this purpose, always respecting privilege.

20. Where the Court considers that mediation is appropriate, the Court may give directions that the parties should follow the procedure set out in Part B with any necessary modifications.

Part D

21. This Practice Direction supersedes the previous Practice Direction 31 on Mediation dated 12 February 2009.

22. This Practice Direction shall come into effect on 1 November 2014.

Dated this 14th of August 2014.
(Geoffrey Ma) Chief Justice

[1] See Order 1A, rule 1(e), rule 3 and rule 4(2)(e) and (f).
[2] The proceedings include those which were begun by originating summons but were ordered to be continued as if the cause or matter had been begun by writ. See Order 28, rule 8.
[3] Paragraph 13(2) is directed at facilitating the mediation by having the Court resolve differences concerning the details or mechanics of the mediation process where the parties have agreed to attempt mediation. The Court may not, for instance, be asked to direct a party to engage in mediation or to appoint a particular mediator over the opposition of the other party, unless both parties are willing to have their differences resolved by the Court. See paragraph 13(1).

Appendix A: http://legalref.judiciary.gov.hk/doc/pd/eng/PD31_files/PD31_App_A.doc
Appendix B: http://legalref.judiciary.gov.hk/doc/pd/eng/PD31_files/PD31_App_B.doc
Appendix C: http://legalref.judiciary.gov.hk/doc/pd/eng/PD31_files/PD31_App_C.doc
Appendix D: http://legalref.judiciary.gov.hk/doc/pd/eng/PD31_files/PD31_App_D.doc

Sources: Mediation Information Office of the Judiciary
http://legalref.judiciary.gov.hk/lrs/common/pd/pdcontent.jsp?pdn=PD31.htm&lang=EN

List of Mediation Service Providers

Service Providers	Tel	Website
Joint Mediation Helpline Office	2901 1224	http://www.jointmediationhelpline.org.hk
Hong Kong International Arbitration Centre (A division of the HKIAC)	2525 2381	http://www.hkiac.org
Hong Kong Mediation Council	2525 2381	http://www.hkiac.org
Hong Kong Bar Association	2869 0210	http://www.hkba.org
The Law Society of Hong Kong	2846 0500	http://www.hklawsoc.org.hk
The Chartered Institute of Arbitrators (East Asia Branch)	2525 2381	http://www.ciarbasia.org
Hong Kong Institute of Arbitrators	2525 2381	http://www.hkiarb.org.hk
The Hong Kong Institute of Architects	2511 6323	http://www.hkia.net
The Hong Kong Institute of Surveyors	2526 3679	http://www.hkis.org.hk
Hong Kong Mediation Centre	2866 1800	http://www.mediationcentre.com.hk
Hong Kong Institute of Mediation	2851 6680	http://www.mediate.com.hk
Financial Dispute Resolution Centre	3199 5199	http://www.fdrc.org.hk
Hong Kong Family Welfare Society	2561 9229	http://www.mediationcentrehk.org
The Hong Kong Catholic Marriage Advisory Council – Marriage Mediation Counselling Service	2782 7560	http://www.divorce.org.hk

Service Providers	Tel	Website
Caritas Hong Kong – Family Mediation Services	2669 2316	http://family.caritas.org.hk
Christian and Missionary Alliance Shatin Community Centre	2648 9281	http://centre.shatinalliance.org.hk
Hong Kong Sheng Kung Hui Counselling Service – Family Mediation Service	2713 9174	http://cs.skhwc.org.hk
Yang Memorial Methodist Social Service – Mongkok Integrated Family Service Centre	2171 4001	http://www.yang.org.hk
Centre for Restoration of Human Relationships	2997 7776	http://www.restoration.com.hk

Joint Mediation Helpline Office
聯合調解專線辦事處

香港灣仔港灣道12號灣仔政府大樓3樓322室
Room 322, 3/F, Wanchai Tower, 12 Harbour Road,
Wan Chai, Hong Kong

電話 Tel : (852) 2901 1224
傳真 Fax : (852) 2899 2984
電郵 Email : email@jointmediationhelpline.org.hk
www.jointmediationhelpline.org.hk

ISBN 978-988-14354-0-8