



APPLICATION AND MEDIATION RULES

Introduction

1. With a view to promoting a more extensive use of mediation in Hong Kong, the Joint Mediation Helpline Office (“JMHO”) is appointed by the government of the Hong Kong Special Administrative Region as an independent coordinator to implement the Small Claims Mediation Pilot Scheme (“SCMPS”) for resolving suitable Small Claims Tribunal (“SCT”) cases and other cases with an amount in dispute not exceeding the jurisdictional limit of the SCT.
2. One of the objectives of the SCMPS is to enhance the professional standards of Hong Kong mediators. Therefore, experienced mediators (“Mentor Mediators”) will conduct mediation together with less experienced mediators (“Mentee Mediators”) under the SCMPS.
3. The SCMPS is therefore also known as the Mediator Mentorship Scheme (“MMS”).

Definitions

4. The following words have the following meanings where they appear in the Rules:

“Applicant”	means a party to a legal proceeding or an intended legal proceeding of the subject matter in dispute, making or who had made an Application to the JMHO under the MMS.
“Application”	means an application filed by an Applicant under the MMS.
“Appointed Mediator”	means the Mentor Mediator or the Mediator who is appointed by the JMHO in writing.
“Article”	means a term and/ or condition set out in the Rules.
“Eligible Dispute”	means a case of the SCT that is referred by the SCT to the JMHO or a case with the amount in dispute not exceeding the jurisdictional limit of the SCT as prescribed under Section 5 of the Small Claims Tribunal Ordinance (Cap. 338 of the Laws of HKSAR).
“HKSAR”	means the Hong Kong Special Administrative Region.



- “JMHO” means the Joint Mediation Helpline Office, a non-profit-making company limited by guarantee incorporated under the Laws of HKSAR.
- “JMHO Board” means the Board of Directors of the JMHO, which is the governing body of the JMHO.
- “List of Mediators” means the List of Mediators of the MMS.
- “Mediation” means the process of mediation of a dispute under the MMS, which is a confidential and consensual dispute resolution process, in which the Appointed Mediator, without adjudicating the dispute or any part thereof, facilitates the Parties to identify the issues in the dispute and reach a negotiated settlement thereto.
- “Mediation Consultation” means a pro-bono service under the MMS conducted by Mediation Consultant for a maximum of 2 hours for each case, in which mediation information is provided to Parties and background information about a dispute is gathered.
- “Mediation Consultant” means any person employed and/ or contracted by the JMHO who conducts Mediation Consultation, provides mediation information before, during and after the process of Application, Mediation Consultation and Mediation and/ or supports the Mediator in conducting Mediation under the MMS.
- “Mediator” means a person who has conducted 3 to 9 mediation cases over the past 3 years and is admitted to the List of Mediators.
- “Mentee Mediator” means a person who has conducted 0 to 2 mediation cases over the past 3 years and is admitted to the List of Mediators.
- “Mentor Mediator” means a person who has conducted at least 10 mediation cases over the past 3 years and is admitted to the List of Mediators.
- “MMS” means the Mediator Mentorship Scheme for managing and resolving Eligible Disputes administered by the JMHO.
- “Party” means an Applicant or a Respondent.



- “Respondent” means a party to a legal proceeding or an intended legal proceeding of the subject matter in dispute, against whom an Application under the MMS has been filed by an Applicant.
- “Response” means a reply by a Respondent as to whether he accepts or refuses to participate in a Mediation under the MMS.
- “Rules” means the Application and Mediation Rules of the MMS.
- “Project Officer” means any person employed by the JMHO who acts as a case manager responsible for addressing enquiries, gathering information and vetting applications to decide whether an Application should be accepted under the MMS in accordance with the Rules.
- “SCT” means the Small Claims Tribunal of the HKSAR.
- “WKMC” means the West Kowloon Mediation Centre located in 2 Ying Wa Street, Sham Shui Po, Kowloon, Hong Kong.
- “WMC” means the West Kowloon Mediation Centre Management Committee, which is a sub-committee under the JMHO Board to monitor the operation of the WKMC.

5. References to the male gender include, where the context admits, the female gender and vice versa and references to the singular number include, where the context admits, the plural number and vice versa.
6. The Rules has been translated into Chinese. If there is any inconsistency or ambiguity between English version and Chinese version, the English version shall prevail.
7. For the avoidance of doubt, the interpretation accorded to the Rules by the JMHO shall be final and conclusive.
8. The Board of Directors of the JMHO shall, at all times, have power to amend the Rules.



Application Rules

Submission of Application

9. To submit an Application, an Applicant should fill in the MMS Application Form, clearly listing out the issues in dispute and the amount in dispute (if any), as well as attaching the documents relevant to the dispute. If the subject matter in dispute has been filed with the court, each court case of the subject matter in dispute shall be considered as one single Application.
10. In case the Application is made individually by the Applicant, the JMHO shall write to invite the Respondent to file a Response by filling in the MMS Application Form where applicable.
11. An Applicant and a Respondent who accepts Mediation under the MMS should pay a non-refundable application fee to the JMHO upon submission of the MMS Application Form. The mediation fee (for 4 hours specified mediation time) and venue fee (for mediation conducted at WKMC only) is waived. Unless the Parties and the JMHO agree otherwise, Mediation under the MMS should be conducted in a manner arranged by the JMHO.
12. An Applicant and a Respondent who accepts Mediation under the MMS should abide by the Rules upon submission of the MMS Application Form.
13. The Applicant and the Respondent shall give consent to the JMHO to share the information provided in the MMS Application Form with the Parties concerned, potential mediators to be nominated and the Appointed Mediator and other parties listed in the “Personal Information Collection Statement” under paragraph 11 of the MMS Application Form, and for the JMHO to use the information for research, evaluation or educational purposes in accordance with the Laws of HKSAR.

Role of Project Officer

14. The Project Officer shall meet with the Applicant to gather background information about the dispute.
15. Upon receipt of the MMS Application Form and the non-refundable application fee, the Project Officer shall issue an acknowledgement of receipt to the Applicant.
16. The Project Officer may require an Applicant to provide further information where appropriate. The Applicant must comply with the request within the timeframe specified by the JMHO.



17. The Project Officer shall consider, having regard to Articles 27 to 28 of the Rules, whether to accept or reject the Application.

Role of Mediation Consultant

18. The Mediation Consultant shall provide Mediation Consultation to the Applicants and the Respondents where appropriate.

19. Any notes, intakes, and/ or other forms of recordings made by the Mediation Consultant in respect of the process of Application, Mediation Consultation and Mediation shall be considered as the property of the JMHO. The JMHO shall not provide these recordings to the Applicants and the Respondents.

20. Upon the appointment of the Mediator, the Mediation Consultant shall provide primary understanding of the case background to the Mediator if appropriate and provide support the Mediator before, during and after the Mediation.

21. The Mediation Consultant may attend and/ or participate in the Mediation conducted by a Mediator if he deems appropriate.

Procedures for Accepting and Rejecting an Application

22. After the Project Officer decides to accept or reject an Application based on Articles 27 to 28 of the Rules, he will accordingly advise the Parties, and where appropriate, any other parties concerned.

23. If any Party objects to the decision made by the Project Officer, the Party can make representations to the WMC within 15 working days from the date of receipt of the Project Officer's decision.

24. The WMC shall review the decision of the Project Officer to accept or reject any Application where necessary in accordance with the Rules.

25. For the avoidance of doubt, all decisions made by WMC shall be final and conclusive and shall not be challenged by the Parties.

Guidelines for Case Intake

26. The guidelines set out in Article 28 of the Rules are NOT applicable to cases referred by the SCT.



27. The Project Officer shall NOT accept an Application if one or more of the following criteria are met:-
- a. the amount in dispute is above the jurisdictional limit of the SCT;
 - b. the dispute is not genuine or is frivolous or without substance;
 - c. the dispute involved complicated legal matters, domestic violence or alleged criminal offence or conduct;
 - d. the dispute is about the exercise of power or discretion of government departments;
 - e. the dispute is about policy matters of an organisation and there is no allegation of maladministration, material non-disclosure or negligence; and/ or
 - f. the dispute is already a subject matter of the Consumer Council, the Ombudsman, Equal Opportunities Commission, Building Management Mediation Coordinator's Office of the Lands Tribunal, Family Mediation Coordinator's Office of the Family Court, Financial Dispute Resolution Centre, or any other statutory bodies.

Mediation Rules

Nomination and Appointment of Mediator

28. JMHO has the sole authority to maintain the List of Mediators, which comprises of 3 categories of mediators, namely, Mentor Mediator, Mediator and Mentee Mediator.
29. Upon receipt of the Application and the Response, and where the Respondent accepts Mediation under the MMS, the JMHO shall nominate and appoint either a Mentor Mediator or a Mediator from the List of Mediators and shall confirm in writing to the Parties the appointment of the mediator. The mediator will be assigned by the JMHO. Unless there is any conflict of interest, any request of change of mediator would not be considered.
30. For cases which a Mentor Mediator is nominated, up to 3 Mentee Mediators will also be nominated as the observers. For cases which a Mediator is nominated, a Mediation Consultant will be appointed to support the Mediator.
31. The date and time of the mediation will be assigned by JMHO. Parties should make any request for change in mediation date or time with sufficient grounds in writing to JMHO. JMHO has the sole discretion to accept or reject any of such requests.



Signing of Agreement to Mediate and Confidentiality Agreement

32. Before the Mediation is conducted, the Parties and the Appointed Mediator shall enter into an Agreement to Mediate in relation to the conduct of the Mediation in a prescribed form. Subject to the consent of the Parties, the Appointed Mediator and the JMHO, any additional terms/ clauses could be inserted.
33. The Mentee Mediator, Mediation Consultant and any other persons attending the Mediation should enter into a Confidentiality Agreement in relation to his participation in the Mediation in a prescribed form.
34. The Parties should confer necessary authority on their representatives to settle the dispute in Mediation, if applicable.

Roles of the Appointed Mediator and the Parties

35. The Appointed Mediator shall conduct the Mediation with due care and skills, in accordance with the Hong Kong Mediation Code and in such manner, as he considers appropriate, taking into account the circumstances of the case, the wishes of the Parties and the need for a speedy settlement of the dispute.
36. The Appointed Mediator may communicate with the Parties jointly or separately, including private meetings and each Party shall cooperate with the Appointed Mediator. A Party may request a private meeting with the Appointed Mediator at any reasonable time. The Parties shall give the Appointed Mediator full assistance to enable the Mediation to proceed and be concluded in an effective manner.
37. In the event that any agreement is reached in the mediation on the terms necessary to settle the dispute, Parties shall enter into a Settlement Agreement in a prescribed form with the necessary terms inserted. In the event that there is no overall settlement agreement reached, the Appointed Mediator, with the consent of the Parties, may assist the Parties to narrow down the issues in dispute for use in subsequent proceedings (if any), where appropriate.

Mediation Process

38. The date and time of mediation will be assigned by the JMHO. The Appointed Mediator shall use his best endeavours to conclude the mediation within 15 working days from the assigned mediation date.
39. Any extension of the scheduled mediation time shall be agreed by the Parties, the Appointed Mediator and the JMHO.



Termination of the Mediation

40. The Mediation process shall come to an end:
- a. upon the signing of a settlement agreement by the Parties;
 - b. upon the written advice of the Appointed Mediator after consultation with the Parties that in his opinion further attempts to resolve the disputes by mediation are no longer justified;
or
 - c. upon written notification by any Party at any time to the Appointed Mediator and the other Party that the mediation is terminated.

Confidentiality

41. The Parties and the Appointed Mediator agree to abide by Sections 8 to 10 of the Mediation Ordinance (Cap. 620) and in any event shall not disclose, transmit, introduce or otherwise use any opinions, suggestions, proposals, offers, or admissions obtained or disclosed during the Mediation by the Parties or the Appointed Mediator as evidence in any judicial proceedings, arbitration or other proceedings, unless agreed in writing by the Appointed Mediator and the Parties to the mediation or compelled by law.
42. Where a Party privately discloses to the Appointed Mediator any forms of mediation communication in relation to the eligibility of case intake stipulated in Articles 27 to 28 of the Rules in confidence before entering into the Agreement to Mediate, the JMHO, its directors and/ or employees and/ or contractors shall hold the rights to access such information without prior notice.

Language of Mediation

43. The language of Mediation shall be decided by the Appointed Mediator, taking into consideration the Parties' preferences as far as practicable. A Party shall accompany a translator with him at his own expenses where applicable.

Appointed Mediator's Role in Subsequent Proceedings

44. The Parties undertake that the Appointed Mediator shall not be appointed as arbitrator, representative, counsel or expert witness of any Party in any subsequent arbitration or judicial proceedings whether arising out of the Mediation or any other dispute in connection with the same dispute. No Party shall be entitled to call the Appointed Mediator as a witness in any subsequent adjudication, arbitration or judicial proceedings arising out of the same dispute.

Exclusion of Liability

45. The Parties jointly and severally release, discharge and indemnify the JMHO, its directors and/ or employees and/ or contractors and/ or agents and/ or members and the Appointed Mediator and the Mentee Mediator in respect of all liability whatsoever, whether involving negligence or not, from any act or omission in connection with or arising out of or relating in any way to any mediation conducted under the Rules, save for the consequences of fraud or dishonesty.

Disclaimer

46. The JMHO provides the List of Mediators for the purpose of providing information about mediators who are willing to act as mediators under the MMS, and who have attained recognized professional qualifications in mediation. JMHO does not in any way warrant, guarantee, or endorse the capabilities or suitability of any particular mediator on the List of Mediators to act as a mediator in any particular dispute. All complaints against a mediator under the MMS shall be referred to the WMC where appropriate.