

Research Report

on

Hong Kong Mediation Service – Standard Practice and Procedure

Hong Kong Mediation Council

Joint Mediation Helpline Office

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Abstract

The development of mediation in Hong Kong is still in an early stage. Mediation is not a popular service. Some people suggested that the unpopularity of mediation service is due to lack of standard procedure in relation to mediation practice. Other suggested that parties' understanding on mediation, nature of disputes, qualities of mediators are also attributable to this phenomenon.

The objectives of this research are to find out factors affecting parties' consents towards mediation as a mean of resolving disputes, study existing standard practices adopted by local and overseas service providers with a view to look for areas of improvement in existing mediation services in Hong Kong and find out the good practices on mediation services in order to engage disputants to use mediation.

This research includes three stages of study. In stage 1, empirical study and literature review were carried out in order to analyze the existing documents, processes, development of professional and issues in Hong Kong mediation services. Literature review on local and overseas standards and procedures in mediation services will be conducted. In stage 2, information of each mediation case (including case nature, parties' features, dispute circumstances, timelines in mediation, mediation successful rate, mediators' profile, satisfaction with the mediation process and the mediator) were collected through a feedback survey. Quantitative and qualitative analysis were performed in order to find out the best practices to cater for the need of individual sectors.

In conclusion, standard practice and procedure of mediation services and standard forms are recommended as a reference to the service providers in Hong Kong.

1. Introduction

Mediation Development in Hong Kong

(the contents below are adopted from the website of Department of Justice at
<http://www.doj.gov.hk/eng/public/mediation.html>)

- In the 2007-08 Policy Address, the Chief Executive announced the establishment of a cross-sector working group headed by the Secretary for Justice to map out plans to employ mediation more extensively and effectively in handling higher-end commercial disputes and relatively small scale local disputes.
- In 2008, the Secretary for Justice's Working Group on Mediation ("the Working Group") was set up to review the current development of mediation and provision of mediation services in Hong Kong.
- The Civil Justice Reform ("CJR") implemented in 2009 is in response to social change and technological advances which had resulted in a sharp increase in civil litigation. The objectives of CJR are to increase cost effectiveness of civil procedure, to deal with cases as expeditiously as is reasonably practicable, to promote a sense of reasonable proportion and procedural economy, and to facilitate the settlement of disputes.
- In response to underlying objectives, Practice Direction¹ No.31 on Mediation ("PD31") came into effect on 1 January 2010. It aims to promote the wider use of mediation to facilitate early and satisfactory settlement of disputes. All the civil litigants will have to consider mediation before trial. Otherwise, there may be costs implications for those who choose not to attempt mediation. Therefore, litigants have to look for mediation services. The good standard and procedure of mediation services is important to development of mediation.

Mediation Service Providers in Hong Kong

The eight major mediation service providers providing services of general mediation are Hong Kong Mediation Council – a division of Hong Kong International Arbitration Centre, the Law Society of Hong Kong, the Hong Kong Bar Association, the Hong Kong Mediation Centre, the Hong Kong Institute of Arbitrators, the Chartered Institute of Arbitrators (East Asia Branch), the Hong Kong Institute of Surveyors and the Hong Kong Institute of Architects which are recognized by the HKSAR government. It can be found that the Eight Service Providers are included in the Annex 2 in Report of the Working Group on Mediation ("The Report") published by the Department of Justice ("DOJ") of HKSAR in Feb 2010. Therefore, it is worth to study the standard practice and procedure of these eight service providers.

The Joint Mediation Helpline office ("JMHO") is founded by the aforesaid eight organizations and it is located in High Court Building. It is the only one private organization located in the government premises and is providing one-stop mediator referral services.

¹ Practice Directions are court documents which govern the conduct of litigation proceedings and provide directions and guidelines to litigants. They are therefore binding on the litigants and their legal representatives

This research is going to analyze on the standard practices and procedures adopted by these eight organizations in a number of ways, including application procedure, nomination and appointment of mediator and supporting services.

In order to figure out factors causing disputants to consider using mediation service, a survey has been conducted to analyze how the nature of disputants, nature of dispute, the proceeding under which they are experiencing would affect their decisions to utilize mediation service. Services evaluation forms were also distributed to the parties involved in mediation and find out their views on the mediation standard practices and procedures.

2. Literature review

2.1 Mediation Pilot Schemes in Hong Kong

Study on Mediation Pilot Schemes in Hong Kong is a fundamental way to understand the receptiveness of the potential users to mediation and review on standard practices. It acts as an important role for us to understand what the good practices of mediation services are in order to facilitate the settlement of the cases. Two of the famous schemes were **New Insurance Mediation Pilot Scheme (“NIMPS”)** and the **Lehman Brothers-Related Investment Products Dispute Mediation and Arbitration Scheme (“the Lehman Scheme”)**. These are the benchmark and well-known mediation schemes which can be found in The Report.

NIMPS was launched and commenced on 1 April 2007 in order to resolve insurance claims in personal injury cases. The Hong Kong Federation of Insurers (HKFI) provided a fund of HK\$250,000 to Hong Kong International Arbitration Centre (HKIAC) to operate and administrate the pilot scheme. From 2007 to 2011, 48 cases have been handled by HKIAC. Of which 11 cases have conducted mediation, 9 cases were successfully settled by mediation, 1 case was terminated and another case failed to reach settlement; 25 cases were settled by direct negotiation and 12 cases did not proceeded further after the initial intake because the parties had refused to mediate. Therefore settlement rate is 82% (9/11)².

The Lehman Scheme was initiated by Hong Kong Monetary Authority. In 2008, the collapse of the Lehman Brothers minibond scheme resulted in more than 48,000 investors in Hong Kong losing their investment. In view of this, a scheme office was set up to provide information on mediation to the investors and to assist parties to engage in mediation. If mediation fails, the case would go into arbitration.

According to statistics³, 355 requests for mediation (i.e. applications) were received as of 12 May 2011. A total of 143 applications proceeded to mediations under the Scheme, in which 127 mediation have achieved full settlement resulting successful rate to be 89%.

2.1.1 Mediation Services provided under the two schemes

² Mediation News, “New Insurance Mediation Pilot Scheme Wrap Up Report”, Hong Kong Mediation Council, 3 November 2011

³ Status Update, “Lehman-Brothers-related Investment Products Dispute Mediation and Arbitration Scheme”, Hong Kong International Arbitration Centre, 19 July 2011

The Mediation Services under two schemes comprises of 4 stages: (I) Information Session (II) Case Administrations (III) Selection and Appointment of Mediators (IV) Pre-mediation Session

(I) Information Sessions

Information sessions regarding explanation of mediation, mediators' roles and scheme services provided to the parties. For NIMPS, the Labour Department, Scheme Officers helped to conduct information sessions to the injured workers while the scheme officers under "*the Lehman Scheme*" offered the information sessions to the investors and the bankers. Through the information sessions, the scheme officers assist parties to understand the operation of the scheme, the nature of mediation and access for the suitability of their cases towards mediation. The officers also checked the necessary information/ relevant documents to be submitted for mediation. For example, under NIMPS case, medical report and/or legal advice may be necessary for mediation. .

(II) Case Administration

Staffs of the both Scheme Offices were responsible for answering enquiries in relation to mediation service, making appointment with parties, conducted pre-mediation briefings with parties, assisting them to complete applications forms and collect supporting document and passed to the appointed mediators.

(III) Selection and Appointment of Mediators

The parties could choose the mediator from panels of Accredited Mediators under NIMPS and the Lehman Scheme. The mediators under the panels are qualified mediators with suitable experiences. In general, the scheme offices would shortlist mediator(s) according to the parties' requirements. Once the parties agree to the nominated mediator, he/she would be appointed and took over the case. The appointed mediator then endeavor to conduct the mediation within time period under the rules of the schemes.

(IV) Pre-mediation session

The staff of schemes would send relevant case documents to the appointed mediator. The mediator then conducted the pre-mediation session with the aim of understanding parties' concerns and views and preparing them to negotiate in the joint session.

2.2 Overseas mediation services

The legal framework of Hong Kong is based on the English common law and, therefore, the legal system in Hong Kong is similar to the common law system used in England and Wales. In addition, much of CJR in Hong Kong is based on the CJR instituted in England by Lord Woolf in 1996 and the development of mediation service in UK is very mature. In view of these, it's worth to study the mediation practice and procedure in UK. Similarly, the Australian Jurisdiction is formed based on the common law system developed in UK. Hence, study on mediation services in UK and Australia could reach the objectives of this research.

2.2.1 Mediation Services in UK

Centre for Effective Dispute Resolution (CEDR)

(Information adopted from website of CEDR Solve: <http://www.cedr.com/solve>)

The Centre for Effective Dispute Resolution (CEDR) is a popular mediation service provider in UK. It has 20 years experiences in Alternative Dispute Resolution (ADR), conflict management, training and civil justice systems and many experienced mediators.

The CEDR provides a comprehensive service to the parties who seek for mediation. Their services can be divided into two areas: appointment service and supporting service. For the appointment service, the CEDR nominates and appoints a suitable mediator in accordance with parties' requirements on mediator. For the supporting service, it provides a wide range of supports to the parties and the mediator as follows:-

- i) arranging the date of mediation
- ii) venue booking
- iii) preparing the mediation agreement
- iv) advising the parties on which documents are required
- v) providing the mediator and the parties with an attendance sheet
- vi) coordinating the transfer of mediation bundles
- vii) dealing with other logistics and ad-hoc issues on behalf of the parties and the mediator as required

The CEDR has successfully dealt with over 20,000 dispute referral cases in the past 20 years. Its services are also widely used by over 600 law firms, over 2,000 companies, 50 public sector organizations and 15 government departments each year. The settlement rate of commercial mediations is 75 – 80%.

2.2.2 Mediation Services in Australia

Australian Commercial Disputes Centre (ACDC)

(Information is adopted from website of the ACDC <<[>>](http://www.acdcltd.com.au))

The Australian Commercial Disputes Centre (ACDC) is an independent, not-for-profit organization to provide quality Alternative Dispute Resolution (ADR) education and training and Dispute Management Services. It provides the disputants of reputable and appropriate mediators and also guideline for mediation. For the appointment of mediator stage, the ACDC will provide parties with a panel of two or more qualified potential mediators based on the materials provided by the parties and the parties' order of preferences on mediators. The ACDC will provide mediators' CVs and information related to the fees. If parties identify a preferred mediator, the ACDC will appoint that person. The ACDC provides a "Guidelines for Commercial Mediation" for parties and mediators. It includes standard procedures and rules as follow:-

- i) Notification of Parties to the Dispute
- ii) Selecting a Mediator
- iii) Neutrality of Mediator
- iv) Mediation Agreement/ Fees/ Conduct of Mediation
- v) Date, Time and Place of Mediation

- vi) Authority of Mediator
- vii) Representations and Attendance
- viii) Separate Sessions
- ix) Confidentiality
- x) Termination of the Mediation
- xi) Enforcement of the Settlement of Agreement
- xii) Liability
- xiii) Fees

LEADR Association of Dispute Resolvers (LEADR)

(Information is adopted from website of LEADR Association of Dispute Resolvers: <http://www.leadr.info/>)

LEADR is formed in 1988 as a not-for-profit organization with more than 2700 members in Australia, New Zealand and the Asia Pacific region. It provides mediation training and accreditation and an up to date listing of mediators. In addition, Sample documents such as “Model Clause for Mediation”, “Mediation Rules” and “Mediation Agreement” is also provided for the mediators and parties as reference.

3. Research Methodology

3.1 Three types of questionnaires were designed to collect the data from mediation service providers, mediation enquirers and mediation users. Furthermore, telephone interviews were conducted with mediators who handled referred mediation cases of the service providers.

3.2 The first survey aims to study existing practices and procedures in Hong Kong. The eight service providers namely Hong Kong Mediation Council – a division of Hong Kong International Arbitration Centre, the Law Society of Hong Kong, the Hong Kong Bar Association, the Hong Kong Mediation Centre Limited, the Hong Kong Institute of Arbitrators, the Chartered Institute of Arbitrators (East Asia Branch), the Hong Kong Institute of Surveyors and the Hong Kong Institute of Architects were the target group. As mentioned in the introduction, these are the mainstream service providers for the general cases in Hong Kong. There were 4 quantitative questions aiming to look for their views on the importance of documentation, on a 5-point scale (“1” refers to “less important”; “5” refers to “most important”), frequency of using documents, the number of mediators on their panels and the timeframe of conducting a mediation. Moreover, there were 17 qualitative questions regarding the application and nomination process, the complaint handling procedure, liability insurance, integrity process and training of mediators. Please refer to questionnaire in Appendix 5.

3.3 The second survey was conducted to explore factors causing disputants to consider using mediation service. The respondents were the enquirers come from the eight service providers. There were 17 quantitative questions about their age, education level, type of company, nature of dispute, amount of dispute, legal representatives, timeframe to conduct mediation, reasons of using mediation, the sources of knowing JMHO formed by eight service providers, belief in mediation and understandings on nature of mediation and role of mediator, on a 5-point scale (“1” refers to little

understanding; “5” refers to “full understanding”). The other 2 qualitative questions are in relation to the status of court proceedings and their expectations from mediation for their cases. Please refer to questionnaire in Appendix 6.

3.4 The service evaluation forms were also distributed to the mediation users at JMHO. There are 9 quantitative questions regarding users’ satisfactions on overall mediation service and performance of mediator, on a 6-point scale (“0” refers to very dissatisfied; “5” refers to very satisfied), users’ views on the usefulness of mediation, the timeframe of mediation, whether they would use mediation in future and recommend to others. Two qualitative questions were asked to find out how the mediator best assisted the mediation users and to obtain other comments. Please refer to questionnaire in Appendix 7.

3.5. Last but not least, telephone interview with mediators who handled JMHO referred mediation cases were conducted regarding parties’ understandings on mediation, mediators’ understanding on standard practice and procedure. The aim of conducting this interview is to receive the feedback from mediators regarding the mediation services provided by the Service Providers in Hong Kong. The questionnaire includes service guideline, areas of improvement of service including standard documents, venue booking, timing for arranging mediation and standard template and the effectiveness of the service providers’ nomination and appointment of mediators.

4. Findings

4.1 Survey 1: Mediation Service in Hong Kong – existing practice and procedure

4.1.1 Overview

The questionnaires in Appendix 5 were distributed to eight mediation service providers in December 2010 and 7 questionnaires were finally collected. The response rate is 87.5%. Most of the respondents have their own mechanism to handle mediation cases. Each respondent maintains their list of mediators. 1 of them has more than 500 mediators; 3 have more than 100 mediators and the other 3 respondents have less than 100 mediators.

4.1.2 Services provided by the Service Providers

(i) *Acceptance of mediation request before both sides agree to mediate*

Respondents provide mediator selection, nomination and appointment services. Meanwhile, most of them only provide such services after all disputants have agreed to mediate. A few respondents which accept cases before mutual agreement on mediation may also endeavour to make contact on behalf of the disputants; explain the mediation process and discuss with the disputants the feasibility of mediation on particular cases.

(ii) *Provision of documentation support to parties and mediators*

71 % of the respondents provide standardized documents such as mediation agreement/ settlement agreement/ declaration/ confidentiality agreement, etc. for their mediators. Most of the documents were made available for their members’ adoption at their liberty.

“Agreement to Mediate” and “Application for Appointment of Mediator”

4 out of the 7 Service Providers always provide “Agreement to Mediate” and “Application for Appointment of Mediator” to parties/ mediators. All of the respondents agreed that “Agreement to Mediate” is one of the most important documents. One respondent requests their members to adopt their own “Agreement to Mediate” mandatorily; 5 of them considered “Application for Appointment of Mediator” as most important document while 2 of them considered it as important document. (Figure 1.1 and 1.2 in Appendix 1)

“Declaration of Independence and Impartiality”

All respondents agreed that the “Declaration of Independence and Impartiality” is one of the most important documents. However, only 3 respondents always provide this document, 2 of them often provide while 2 of them never provide this document. (Figure 1.1 and 1.2 in Appendix 1)

“General Ethical Codes”, “Confidentiality Agreement for Non-Parties” and “Mediation Rules”

6 out of the 7 Service Providers considered that “General Ethical Codes”, “Confidentiality Agreement for Non-Parties” and “Mediation Rules” are also the most important documents. Nearly half of the respondents “always” or “sometimes” provide these documents to parties and mediators. (Figure 1.1 and 1.2 in Appendix 1)

“Guide to Mediation” and “Flowchart for Mediation Processes”

“Guide to Mediation” is defined as a document introducing the nature and features of mediation and how to engage in mediation services. “Flowchart for Mediation Processes” outlines the steps and/or procedures of mediation and the duration thereof. From our findings, 4 out of 7 respondents considered “Guide to Mediation” as the most important document, but only 3 of them always provide this document to parties and mediators. Similarly, 3 respondents considered “Flowchart for Mediation Processes” as the most important and two of them considered it as very important; however, only 2 respondents always provide such documents. According to some of the service providers, the reason why they do not always provide these documents is that mediation is a flexible process and shouldn’t be standardized, and thus even these documents are provided, it may only used as a reference to parties and mediators. (Please refer to Figure 1.1 and 1.2 in Appendix 1)

“Settlement Agreement”, “FAQs for Mediation” and “Mediation Certificate”

All respondents regard “Settlement Agreement”, “FAQs for Mediation” and “Mediation Certificate” as important to mediation process. Three of them always provide sample of “Settlement Agreement” and “FAQs for Mediation”, while only one always provides sample of “Mediation Certificate”. (Please refer to Figure 1.1 and 1.2 in Appendix 1)

“Guide to Mediation Advocacy”

Two of the respondents regard “Guide to Mediation Advocacy” as the most important while three of them regard it as very important. Yet only two of them sometimes provide this document and another two respondents seldom provide it. (Please refer to Figure 1.1 and 1.2 in Appendix 1)

(iii) Nomination and Appointment of Mediator

Generally, respondents have their own procedure and standard on nomination and appointment of mediator. The majority of them have a specific committee or panel to proceed with the nomination of mediator. They nominate and appoint mediator in comply with their internal guidelines or mediation rules. Some Service Providers would check with the disputants' preferences on mediators' qualifications or capacities before nomination. Some of them request the mediator to declare conflict of interest before the nomination to ensure the impartiality and independence of the mediator.

(iv) Timeframe of appointment of mediator

Service Providers were asked on the timeframe of appointment of mediator, i.e. from the time that all parties agree to mediate to the time of the appointment of mediator. The result shows that 3 respondents normally take “10 to 15 days” while 1 of them spent 16-25 days. Some respondents do not have such information.

(v) Number of requests for the appointment of mediator

Service Providers were also asked the number of requests received for the appointment of mediators from January 2011 to December 2012 (JMHO referred cases were not included) Only 6 out of 7 Service Providers replied. Three service providers received 83, 50 and 36 requests respectively within two years; the other three service providers did not receive any requests during 2011-2012. (This is additional information from the service providers apart from the questionnaires)

4.1.3 Professionalism

(i) Uphold of impartiality and confidentiality

As the administrators of mediation service, Service Providers do ensure their impartiality and confidentiality by upholding the quality of their staff. Service Providers designated staff with proper training to handle the mediation cases. Independent committees may be assigned to handle complaints against mediation services and mediators.

Mediators and parties and observers (if appropriate) are required to sign confidentiality agreement. Moreover, mediators are required to declare conflicts of interests. Ethical codes of some Service Providers have incorporated these requirements.

(ii) Mediation Process

Most of the respondents do not require their mediators to adopt their mediation rules mandatorily but to grant them freedom to adopt different mediation rules for their mediations. While only 1 respondent require their mediators to adopt their rules mandatorily.

(iii) General Ethical Code

The majority of the respondents adopted the Hong Kong Mediation Code as their general ethical codes. In addition, some respondents also adopted their general code of conducts in regulating their members when they act in the capacity of mediator. Six respondents considered that a General Ethical Codes is

one of the most important documents. The remaining one also considered it as very important document in mediation.

4.1.4 Complaints against the nomination and appointment of mediator, mediators and the mediation process

(i) Complaints against the Nomination and Appointment of Mediator

Most of the respondents have set up a panel or sub-committee to handle the Nomination and Selection of mediators. The nominated mediator will be approved by their chairman/ president. Five respondents provide documents on appointment of mediators, for example, “Guide to Appointment of Mediators”, “Appoint of Mediators” and “Challenge Procedure for Mediators”. 71.4% of respondents regarded these documents as most important and very important. However, a standard procedure on challenging the appointment of a mediator is not available amongst the respondents.

(ii) Complaints on Mediators and Mediation Process

According to the questionnaires collected, respondents have various mechanisms in handling complaints. The mechanisms may fall into the scope of the established professional conduct monitoring and complaint handling mechanism; or it would be handled by disciplinary committee. Investigation may be conducted by some respondents with complaints with grounds.

71% of them would provide the “Complaint Procedures for Mediators” to parties and mediators. Other relevant documents may be internal guidelines or rules and regulations which have been in public domain and available for the parties and mediators; most of the respondents do not have specific procedures and standards to handle complaints on mediation process.

4.1.5 Insurance arrangement on mediation

57.5% of the respondents did not have any professional indemnity insurance for their mediators, though some of them are considering of having one. Meanwhile, other respondents may have their general professional indemnity insurance cover the mediation practice of their mediators.

4.1.6 Training on mediators

57.2% of respondents did not train their members. On the other hand, 42.8% of the respondents trained their members through organizing seminars and talks in which some of them would provide specific training on designated topics for their members.

4.2 Survey 2: Parties characteristics, case nature and dispute circumstances

4.2.1 Overview

From January 2011 to December 2012, 587 questionnaires (Appendix 6) had been distributed to enquirers at JMHO and the eight service providers and 304 of them were collected. The response rate is 51.8%.

4.2.2 Individual or representative from company?

Table 2.1 shows that majority of the enquirers are individuals (78.3%) while 21.7% of them are representatives from companies.

4.2.3 Parties' characteristics of the individuals

Table 2.2 shows that majority of the respondents are in middle-aged. 34.5% of them are aged 41-50 whilst 36.1% are aged 51-60. Besides, as can be seen from Table 2.3, nearly half of the respondents (45.4%) are with primary education level only while 39.9% of them are with secondary education level. The remaining 14.7% are with tertiary education level or above. The result shows that most of the parties who seek for mediation through JMHO are in middle-aged and low education background.

4.2.4 Companies' features

As shown in the Table 2.4, among 66 respondents who were representatives of company, 59.1% of them are directors, 25.8% and 15.1% of them are managers and general staff respectively. Table 2.5 shows the types of their companies. A quarter of the respondents (25.8%) representing construction companies while 12.0% representing transportation/logistic/trading companies. In addition, 9.1% of them are from information technology industry, 7.6% are in beauty/health sectors, 6.1 % are from finance/accounting sectors and 3.0% are from property/ real estate industry. The remaining respondents come from various industries including design, retail, education and telecommunication and manufacturing.

4.2.5 Nature of Dispute

As can be seen in Table 2.6, the majority of parties' disputes of respondents include tort cases such as personal injuries and professional negligence (16.8%), family issues such as inheritance, ownership of property (16.1%), business matters (15.1%), monetary claims (12.5%) and construction disputes (10.5%). The other disputes consist of tenancy agreement (8.9%), financial such as loss in the securities markets (8.2%), employment (5.3%), neighborhood (4.6%) and consumer (2.0%).

4.2.6 Dispute Amount

As Table 2.7 shows, half of the respondents' cases (50.7%) involve the dispute amount of HK\$500,000 or below. 17.1% of cases involve the dispute amount of HK\$1 million to HK\$5 million while 11.5% of cases with dispute amount ranged from HK\$500,001 to HK\$1 million. There is 14.5% of the cases do not have clear dispute amount at that moment.

4.2.7 Court proceeding, legal representation, and application of legal aid.

Table 2.8.1, Table 2.8.2 and Table 2.8.3 shows that whether the respondents were experiencing a court proceeding, were with legal representation and applied legal aid respectively. Results show that 77.6% of the respondents were experiencing court proceedings. Among 236 respondents, 88.1% of them did not have legal representation while only 5.3% of them had applied legal aid. It shows that most of the respondents were in court proceeding but do not have any advice and assistance from legal professionals.

4.2.8 Status of the court case

Respondents who were litigants were asked about the status of their court cases. Most of them were advised by the court to attempt mediation and required to report the mediation result within the time limit. Some of them were in the initial stage of the court proceedings and were preparing the documents for the next Case Management Conference (CMC). A few of them were experiencing the court proceedings for over 10 years. As can be seen in Table 2.9, 55.9% of the respondents were required to attempt mediation within a time limit.

4.2.9 Does the other party agree to mediate?

Respondents were asked whether they know the others' consents to mediate. As shown in Table 2.10, 63.4% of them did not know and hence, they sought for JMHO mediation service. (Joint Mediation Helpline Office is one of the Service providers)

4.2.10 Reasons of using mediation

Table 2.11 shows that nearly half of the respondents (44.6%) attempted mediation because of the court direction. Other reasons including more efficient (14.1%), maintain relationship (14.1%), cost effective (12.7%). A few of them engaged in mediation because of lawyers' suggestions (5.1%), less formal atmosphere and pressure (5.4%) and others (4.0%).

4.2.11 In what way you know about the JMHO?

As can be seen from Table 2.12, half of the respondents heard of the JMHO from Mediation information Office (MIO) of the Judiciary (49.7%). 13.8% of them are from Financial Dispute Resolution Centre (FDRC) while 13.2 % of them from District Court. The other sources are Internet (6.3%), media (6.3%), lawyers (3.9%), family and friends (3.6%), government sectors (3.2%)

4.2.12 Knowledge of nature of mediation and the role of mediator

Table 2.13 shows that only 30.6% of the respondents had heard of mediation before came to JMHO. As shown in Table 2.14, the respondents were asked to evaluate themselves on understandings of nature of mediation (based on 1-5 points scale), 41.2% of them replied they understand (point "3"), 39.1% of them rated replied that they have little understanding (point "2") and 14.1 % of them replied they don't understand (point "1"). Similarly, Table 2.15 shows the respondents' self-evaluation on the understandings of roles of mediators, 20.7% of them do not understand (point "1"), while 37.5% and 35.2% of them have little understanding and understanding respectively.

4.2.13 Experiences and believes in mediation

It can be seen from Table 2.16, majority of the respondents have not attempted mediation before (97.7%). As shown in Table 2.17, 65.1% of them thought that the successful rate of the mediation would be only 40-60%.

4.2.14 The publicity of mediation in Hong Kong

As shown in Table 2.18, 97.7% of the respondents considered that the publicity of mediation in Hong Kong is not enough.

4.3 Survey 3 – Service evaluation

4.3.1 Overview

From January 2011 to December 2012, 186 service evaluation forms (refer to Appendix 7) were distributed to the mediation users and 65 of them were collected. The response rate is 34.9%.

4.3.2 Overall level of satisfaction

Table 3.1 shows that 36.9% of the users were satisfied with the mediation service (point “4”) while 27.7 % of them were very satisfied with the service (point “5”).

4.3.3. Performance of Mediator

As shown in Table 3.2, 39.7% of respondents satisfied with the performance of mediator (point “4”) while 31.7% of them very satisfied with the performance (point “5”).

4.3.4 Feelings in the mediation process

As can be seen in Table 3.3, 26.2% of the users totally agreed that mediation has facilitated the settlement of dispute (point “5”) while 29.2% of them agreed (point “4”).

Respondents were asked whether they felt statement (1) they were being heard during the mediation process and statement (2) they were in control of the process, 93.9% of them agreed with the statement (1) with level of agreement as point “3” to “5” while 86.6% of them agreed with the statement (2) with the level of “3” to “5”. The results show that the majority of the users thought that mediation can perform its function.

4.3.5 How does the mediator best assist you?

Respondents replied that mediators facilitate the communications between the parties, acknowledge their feelings, direct parties to the main issues and think from different aspects. Moreover, they appreciated that mediator controlled parties’ emotion and the environment. These factors have facilitated parties to settle their disputes.

4.3.5 Time used for mediation

As shown in Table 3.6, 91.7% of respondents suggested that the mediation was timely for their case. Table 3.7 shows that 48.3% of the respondents’ mediation concluded within 1 month or less while 37.9% of the mediation concluded in 1-2 months. The remaining 13.8% of them concluded in 2 months or above. It can be concluded that most of the mediation cases can be conducted within 2 months.

4.3.6 Mediation venue

Table 3.8 shows that 40% of respondents conducted mediation at law firms while 20% of them conducted mediation at service providers. The remaining 40% of them conducted mediation at other venues, e.g. the community centre, private meeting rooms rented in central, mediator’s office.

4.3.7 Future use of mediation and recommendation to others

Table 3.9 shows that 93.8% of mediation users at JMHO/ the service providers would use mediation

again if they have similar problems in the future. Besides, 95.4% of them would recommend mediation to others who may have similar claims as shown in Table 3.10.

4.4 Mediators' comments on mediation service

4.4.1 Parties understandings on mediation

Table 4.1 shows that 80% of the mediators rated parties' understandings on mediation before the mediation session as point "3" to point "5" while 20% of them thought that parties have little understandings on mediation (point "1" and "2"). This shows that free mediation consultation at JMHO is significant to parties' understandings on mediation. Free mediation consultation is provided to parties at JMHO. It can allow the parties to understand on the nature of mediation and mediation process, which reduce the preparation work of the appointed mediators. As a result, it reduces the costs of mediation (Parties of the JMHO is the target group of this survey).

4.4.2 Mediators' understandings on JMHO's background, uses of JMHO standard documents and JMHO referral procedure

As shown in Table 4.2, 90% of the mediators rated their understandings on JMHO's background, uses of JMHO standard documents and JMHO referral procedure as point "3" to point "5". This reflects that most of the mediators understand JMHO service after appointment and could make use of JMHO documents and information collected.

4.4.3 Guideline provided by Service Provider/ JMHO

Table 4.3 shows that 80% considered guideline provided by Service Provider and JMHO is enough.

4.4.4 The effectiveness of JMHO's referral mechanism

As shown in Table 4.4, majority of the mediators (88.8%) considered JMHO's referral mechanism as "quite effective" to "very effective" (rated as point "3" to "5")

4.4.5 Other improvements

Mediators were also asked to suggest improvements on the JMHO services, especially in the areas of standard documents, venue booking, timing for arranging mediation, publicity/ promotion and template. For the standard documents, some of them suggest providing standard documents including "Agreement to mediate" and "Settlement agreement". For the venue booking, most of them suggested providing conference rooms for free or with lower costs. One mediator suggested more time should be spent on the pre-mediation works on the area of timing for arranging mediation. For the promotion and publicity, mediators advised JMHO to extend promotion through public media such as TV. Finally, one of the mediators also commented on the process of selection/ nomination of mediators. He suggested JMHO or Service Providers should nominate a mediator according to parties' requirement on the mediator like the expertise and number of years in practicing mediation.

5. Discussion and Conclusion

5.1 Mediation Practice and Procedure in relation to number of mediation applications

From the findings of the Survey 1, service providers who received requests for appointment of

mediator provide more standard documents to their mediators. However, there are no big differences on the nomination and appointment procedure between the service providers. Therefore, the difference between nomination and appointment procedure amongst service providers does not relate to the number of appointment of mediators received.

5.2 Factors causing disputants to consider using mediation service

(i) Nature of disputants

The findings of Survey 2 show that nearly 80% of the disputants who seek for JMHO mediation services were individuals. Amongst these disputants, the majority of them are middle-aged and with low education backgrounds. Besides, 88.1% of the respondents who were experiencing court proceedings do not have legal representatives and only 5.3% of them applied legal aid. These reflect that a one-stop mediation referral service can attract these groups of disputants to utilize mediation service. One-stop mediation referral services include the free mediation information consultation session and the administration services. As the disputants who are middle-aged, low education backgrounds and without legal representative do not know how to choose mediators. The one-stop mediation referral services could assist them to seek consents from the other party regarding the agreement of mediation and also choose mediators according to parties' requirements.

(ii) Nature of disputes

Table 2.6 shows that the majority of the disputes are in terms of monetary including personal injury claims (tort cases), business contracts, inheritance (family issues) and personal debt (monetary Claims). Hence, most of the mediation cases of the service providers are civil cases involving small claim amounts. As can be seen in Table 2.7, half of the cases involved dispute amount to be HK\$500,000 or lower.

(iii) The proceedings under which they are experiencing

The findings of Survey 2 show that 77.6% of the respondents had court proceedings. Most of them were advised by the court to attempt mediation. Nearly half of the respondents attempt mediation because of the court directions. Similarly, half of the respondents heard of JMHO because of Mediation information Office (MIO). The results reflect that the encouragement of courts and the judiciary are the main drives of utilizing mediation service.

(iv) Parties' knowledge on mediation and publicity

Table 2.13 shows that nearly 70% of the respondents had not heard of mediation. Thus, their understandings on mediation and role of mediator are relatively low (Table 2.14 and Table 2.15). Moreover, 97.7% of the respondents expressed that the publicity of mediation in Hong Kong is not enough. It is not surprising that mediation is not popular in Hong Kong.

(v) Parties' confidence in mediation

As shown in Table 2.17, 65.1% of the respondents considered the successful rate of mediation would be 40-60% only. The phenomenon occurs since parties are lack of knowledge in mediation.

5.3 Quality of mediation service affecting parties' decisions to utilize mediation

As can be seen in the mediation service evaluations at JMHO, the majority of the mediation users satisfied with the overall mediation service and the role of mediator. Nearly 90% of them agreed that mediation has facilitated the settlement of dispute (Table 3.3). Moreover, over 90% of the users would use mediation again if they have similar problems in future and would recommend mediation to others who may have similar claims. Therefore, a comprehensive mediation service could help to raise the public confidence in mediation and affect their decisions to utilize mediation.

5.4 Recommendations on the standard mediation practices and procedures

From the literature review on the local mediation pilot schemes, overseas mediation services and surveys from the mediation enquirers, mediation users and the mediators, there are recommendations on mediation service aiming to uphold the quality of mediation services and increase the popularity of mediation in Hong Kong.

(i) Information sessions/ intake sessions

Information sessions/ intake sessions should be conducted for enquirers, applicants, and disputants involved in the mediation by the Mediation Consultant or trained staff. Findings of Survey 2 showed that public knowledge on mediation, role of mediator and the mediation services are very limited. Moreover, the local mediation pilot schemes also proved the importance of information sessions. These sessions can enhance the disputants' knowledge in mediation and act as a way to promote mediation.

(ii) Application procedure

From findings of Survey 1, few Service Providers would proceed with the application before both/ all parties agree to mediate. In fact, parties with legal representation always propose a mediator to the other parties. However, the other parties tend to refuse as the proposed mediators are always considered as not neutral. Therefore, Service Providers are encouraged to assist applicants to invite the other side to utilize mediation service with the aim to attracting more users. Besides, Service Providers should encourage the parties to submit relevant supporting documents for the purpose of selection of mediator and mediators' preparation.

(iii) Selection/ Nomination of mediator

It was found that only few Service Providers nominate mediator according to parties' requirements on mediator. On the other hand, from the CEDR of UK, the ACDC of Australia and local mediation pilot schemes' experiences, they would nominate a mediator in accordance with parties' requirements. Service providers are highly recommended to include this procedure in the nomination process because of the relatively high settlement rate of the mediation pilot schemes. In any event parties do not agree on the nominated mediator, Service Providers are also advised to re-nominate another mediator for their considerations.

(iv) Supporting Services

➤ Briefing to the appointed mediator

Mediation Consultant/ Staff of the Service Providers are recommended to conduct a briefing to

the appointed mediator. The contents of the briefing include the parties' characteristics, details of cases, procedure of the service providers, standard documents provided and documents needed to be submitted. This briefing is important to the success of mediation since mediator with basic understandings on the case nature could prepare well before the meeting.

➤ Standard documents provided to the mediators/ services providers (*Please refer to Appendix 9*)

Currently, service providers provide a number of documents to mediators. After reviewing documents provided by major mediation service providers, the following documents are developed for reference:-

- (a) Guide to Mediation
- (b) FAQs for Mediation
- (c) Request/ Express of Interest for Mediation / Application for Appointment of Mediators
- (d) Response to Mediation
- (e) Declaration of Independence and Impartiality
- (f) Letter of Appointment of Mediators
- (g) Mediation Rules
- (h) Mediation Certificate
- (i) Evaluation Questionnaire

➤ Mediation venue

Service Providers are also advised to assist on venue booking. According to the mediators' comments, most of mediators suggested providing conference rooms for free or with lower cost to parties.

(v) Promotion and Publicity

Continuous promotion and publicity to mediation is a significant to increase the popularity of mediation in Hong Kong. Service Providers are suggested to promote mediation through information seminars, advertising on TV, newspaper or radio to raise the public awareness.

(vi) Training for Mediators

In order to raise public confidence in mediation, it is essential to maintain the high quality of the mediators. Therefore, trainings for mediators should be provided. Mediators under each service provider should attend a number of trainings every year in order to refresh their memories on mediation skills and give them a chance to practice.

5.5 Conclusion

The comprehensive mediation service is essential for engaging more disputants to utilize mediation to resolve their disputes. Therefore, Service Providers are recommended to review their mediation services from time-to-time in order to establish the good practice and procedure.

Appendix 1

Figure 1.1

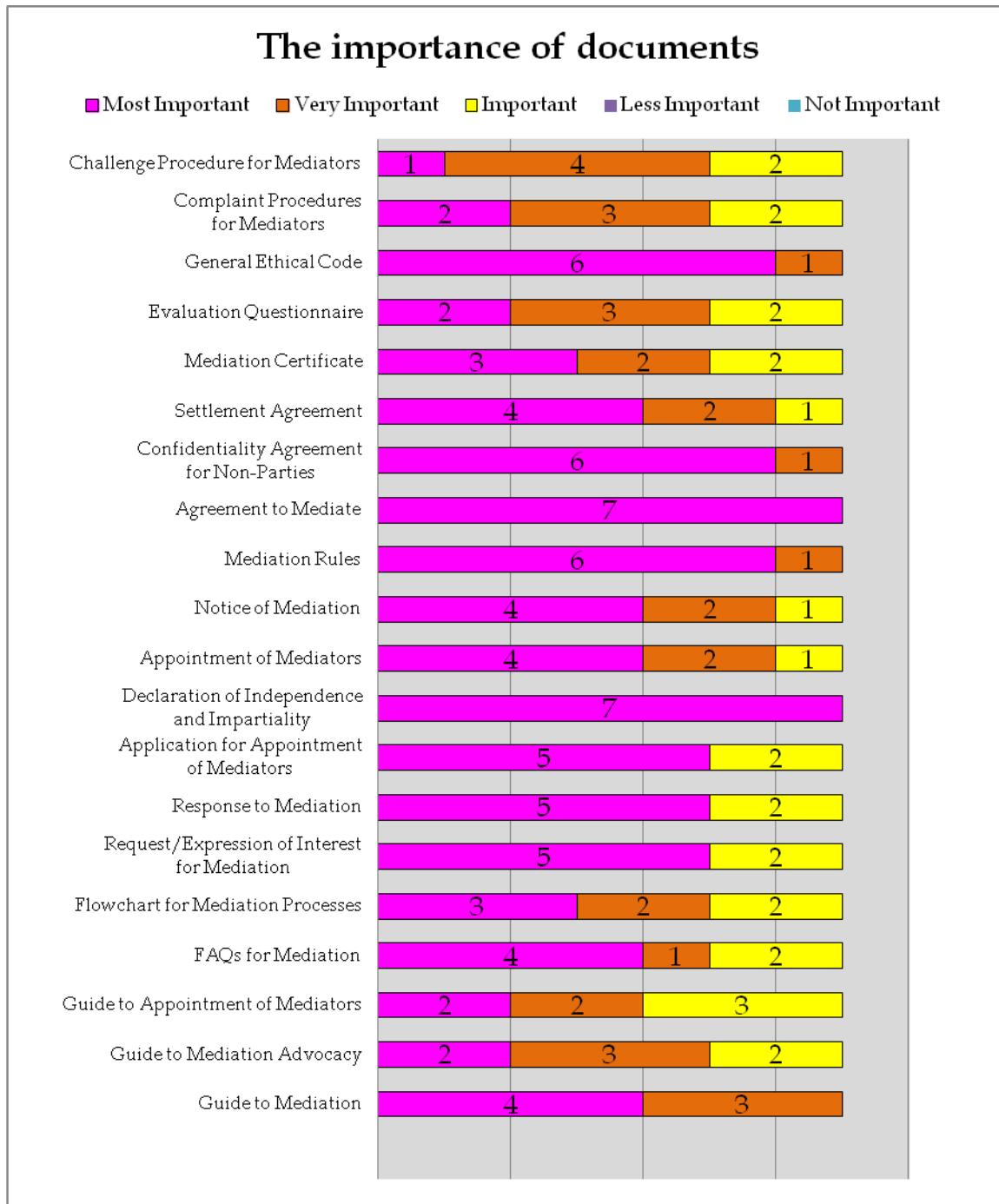
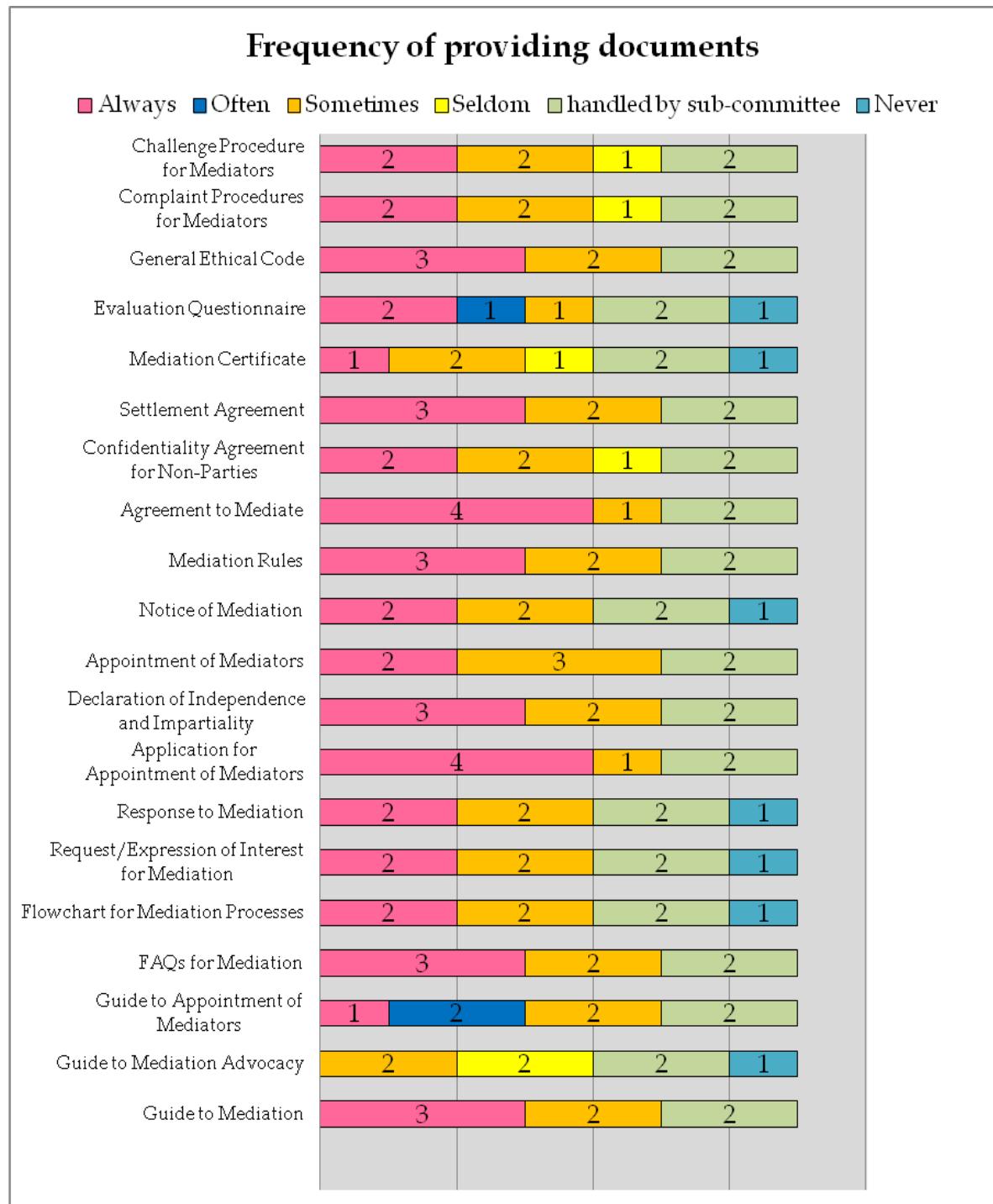


Figure 1.2



Appendix 2

Findings on parties features, case nature and dispute circumstances

Table 2.1 Are you a representative from company?

	No. of Respondents	Percentage
Yes	66	21.7%
No	238	78.3%

Table: 2.2 Age Group of Individual

Age	No. of Respondents	Percentage
30 or below:	7	2.9%
31 – 40:	25	10.5%
41 – 50:	82	34.5%
51 – 60:	86	36.1%
Above 60:	38	16.0%

Table 2.3 Education Background of Individual

Education	No. of Respondents	Percentage
Primary	108	45.4%
Secondary	95	39.9%
Tertiary or above	35	14.7%
Others	0	0.0%

2.4 Please state your job position for company representatives

Position	No. of Respondents	Percentage
Director	39	59.1%
Manager	17	25.8%
General Staff	10	15.1%

Table 2.5 Types of Company/ Firm for company representatives

Types	No. of Respondents	Percentage
Finance /Accounting	4	6.1%
Construction	17	25.8%
Beauty/Health Sectors	5	7.6%
Information Technology	6	9.1%
Property/ Real Estate	2	3.0%

Transportation/ Logistics/ Trading	8	12.0%
Others(e.g. Design, retail, education, telecommunication, manufacturing)	24	36.4%

Table 2.6 Please state the dispute nature of your case

Nature of disputes	No. of Respondents	Percentage
Tort cases	51	16.8%
Family	49	16.1%
Business	46	15.1%
Monetary Claims	38	12.5%
Construction	32	10.5%
Landlord/ Tenant	27	8.9%
Securities	25	8.2%
Employer/ Employee	16	5.3%
Neighborhood	14	4.6%
Consumer	6	2.0%

Table 2.7 Please state the dispute amount of your case:

Dispute Amount	No. of Respondents	Percentage
HK\$500,000 or lower	154	50.7%
HK\$500,001 - 1,000,000	35	11.5%
HK\$1,000,001 - 5,000,000	52	17.1%
Above HK\$5,000,000	19	6.2%
Uncertain	44	14.5%

Table 2.8.1 Is your case a court case?

	No. of Respondents	Percentage
Yes	236	77.6%
No	68	22.4%

Table 2.8.2 Please state if you have any legal representation

	No. of Respondents	Percentage
Yes	28	11.9%
No	208	88.1%

Table 2.8.3 Please state if you have applied any legal aid

	No. of Respondents	Percentage
Yes	16	5.3%
No	288	94.7%

Table 2.9 Did you receive any instruction from the judge that your case need to be settled by mediation within a time limit?

	No. of Respondents	Percentage
Yes	132	55.9%
No	104	44.1%

Table 2.10 Does the other party agree to mediate?

	No. of Respondents	Percentage
Yes	47	15.5%
No	64	21.1%
Unknown	193	63.4%

Table 2.11 Please state the reasons why you use mediation:

(A respondent can have more than 1 choice)

Reasons	No. of Respondents	Percentage
Court Direction	158	44.6%
Suggested by Lawyers	18	5.1%
Cost Effective	45	12.7%
More Efficient	50	14.1%
Maintain relationship	50	14.1%
Less formal atmosphere & less pressure	19	5.4%
Others (TV)	14	4.0%

Table 2.12 In what way you know about the JMHO?

Sources	No. of Respondents	Percentage
MIO	151	49.7%
Financial Dispute Resolution Centre (FDRC)	42	13.8%
District Court	40	13.2%
Internet	19	6.3%
Media (e.g. newspaper)	19	6.3%
Lawyer	12	3.9%
Family/Friends	11	3.6%
Government sectors	10	3.2%

Table 2.13 Have you ever heard of mediation before?

	No. of Respondents	Percentage
Yes	93	30.6%

No	211	69.4%
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Table 2.14 How much do you understand Mediation? (1 = little understanding; 5=full understanding)

Level of understandings	No. of Respondents	Percentage
1	43	14.1%
2	119	39.1%
3	125	41.2%
4	16	5.3%
5	1	0.3%

Table 2.15 How much do you know about the role of Mediator? (1 = little understanding; 5=full understanding)

Level of understandings	No. of Respondents	Percentage
1	63	20.7%
2	114	37.5%
3	107	35.2%
4	18	5.9%
5	2	0.7%

Table 2.16 Have you tried Mediation before?

	No. of Respondents	Percentage
Yes	7	2.3%
No	297	97.7%

Table 2.17 Generally, what do you think the successful rate of mediation would be?

Successful rate	No. of Respondents	Percentage
0-20%	20	6.6%
20-40%	31	10.2%
40-60%	198	65.1%
60-80%	49	16.1%
80-100%	6	2.0%

Table 2.18 Do you think the publicity of Mediation in Hong Kong is enough?

	No. of Respondents	Percentage
Yes	7	2.3%
No	297	97.7%

Appendix 3

Findings on mediation service evaluation of JMHO.

Table 3.1 Overall Level of Satisfaction (0 = very dissatisfied; 5 = very satisfied)

Level of satisfaction	No. of Respondents	Percentage
0	0	0%
1	1	1.5%
2	1	1.5%
3	21	32.4%
4	24	36.9%
5	18	27.7%

Table 3.2 Performance of the Mediator (0 = every dissatisfied; 5 = very satisfied)

Level of satisfaction	No. of Respondents	Percentage
0	0	0%
1	1	1.6%
2	2	3.2%
3	15	23.8%
4	25	39.7%
5	20	31.7%

Table 3.3 Mediation has facilitated the settlement of dispute (0 = Totally disagreed; 5 =Totally agreed)

Level of agreement	No. of Respondents	Percentage
0	3	4.6%
1	3	4.6%
2	3	4.6%
3	20	30.8%
4	19	29.2%
5	17	26.2%

Table 3.4 You felt you were being heard during the mediation process (0 = Totally disagreed; 5 =Totally agreed)

Level of satisfaction	No. of Respondents	Percentage
0	1	1.5%
1	1	1.5%
2	2	3.1%
3	21	32.3%
4	22	33.9%

5	18	27.7%
---	----	-------

Table 3.5 You felt you were in control of the process (0 = Totally disagreed; 5 =Totally agreed)

Level of satisfaction	No. of Respondents	Percentage
0	3	5.0%
1	1	1.7%
2	4	6.7%
3	17	28.3%
4	22	36.7%
5	13	21.6%

Table 3.6 Was the mediation timely for your case?

	No. of Respondents	Percentage
Yes	55	91.7%
No	5	8.3%

Table 3.7 How long was the whole mediation process?

	No. of Respondents	Percentage
1 month or less	14	48.3%
1-2 months	11	37.9%
2 months or above	4	13.8%

Table 3.8 Where did you conduct the mediation?

	No. of Respondents	Percentage
Law firm	6	40.0%
Service Providers	3	20.0%
Others	6	40.0%

Table 3.9 Would you use mediation again if you have similar problems in future?

	No. of Respondents	Percentage
Yes	61	93.8%
No	4	6.2%

Table 3.10 Would you recommend mediation to others who may have similar claims?

	No. of Respondents	Percentage
Yes	62	95.4%
No	3	4.6%

Mediators' comments on mediation service in Hong Kong

Table 4.1 Parties' understandings on Mediation (1 = little understanding; 5 = full understanding)

Level of understanding	No. of Respondents	Percentage
1	1	10%
2	1	10%
3	4	40%
4	3	30%
5	1	10%

Table 4.2 Mediators' understandings on JMHO's background, uses of JMHO standard documents and JMHO referral procedure (1 = little understanding; 5 = full understanding)

Level of understanding	No. of Respondents	Percentage
1	1	10%
2	0	0%
3	1	10%
4	7	70%
5	1	10%

Table 4.3 Do you think there is sufficient service guideline provided by Service Provider/ JMHO?

	No. of Respondents	Percentage
Yes	8	80%
No	2	20%

Table 4.4 The effectiveness of JMHO's referral mechanism (1=not effective; 5=very effective)

Effectiveness	No. of Respondents	Percentage
1	1	11.1%
2	0	0%
3	3	33.3%
4	3	33.3%
5	2	22.2%

Research Questionnaire in relation to Mediation in Hong Kong

This is an empirical study conducted by the Hong Kong Mediation Council, in collaboration with the Joint Mediation Helpline Office Ltd., on existing practices and service models of Hong Kong mediation services. Questionnaires are now sent to mediation service providers, namely The Hong Kong Bar Association, Law Society of Hong Kong, Hong Kong International Arbitration Centre – Hong Kong Mediation Council, Hong Kong Institute of Arbitrators, Chartered Institute of Arbitrators (East Asia Branch), Hong Kong Institute of Architects, Hong Kong Institute of Surveyors or Hong Kong Mediation Centre, to collect such relevant information as detailed below.

1. Please state the procedure of mediation application in your organisation.
2. Please state the procedure of mediator selection/nomination in your organisation. Please mention the timeframe for appointing a mediator as well.
3. What is the size of panel/list of the mediators in your organisation? **Pick tick the appropriate box only in the right column below**

Number of Accredited Mediators	<input checked="" type="checkbox"/>
1-10	<input type="checkbox"/>
11-20	<input type="checkbox"/>
21-30	<input type="checkbox"/>
31-40	<input type="checkbox"/>
41-50	<input type="checkbox"/>
50-100	<input type="checkbox"/>
101-500	<input type="checkbox"/>
Over 500	<input type="checkbox"/>

4. Generally speaking, does your organisation think the documents below are important in the mediation process?

Document	<Most important			> Not important
Guide to Mediation	5	4	3	2 1
Guide to Mediation Advocacy	5	4	3	2 1
Guide to Appointment of Mediators	5	4	3	2 1
FAQs for Mediation	5	4	3	2 1
Flowchart for Mediation Processes	5	4	3	2 1
Request/Expression of Interest for Mediation	5	4	3	2 1
Response to Mediation	5	4	3	2 1
Application for Appointment of Mediators	5	4	3	2 1
Declaration of Independence and Impartiality	5	4	3	2 1
Appointment of Mediators	5	4	3	2 1
Notice of Mediation	5	4	3	2 1
Mediation Rules	5	4	3	2 1
Agreement to Mediate	5	4	3	2 1
Confidentiality Agreement for Non-Parties	5	4	3	2 1
Settlement Agreement	5	4	3	2 1
Mediation Certificate	5	4	3	2 1
Evaluation Questionnaire	5	4	3	2 1
General Ethical Code	5	4	3	2 1
Complaint Procedures for Mediators	5	4	3	2 1
Challenge Procedure for Mediators	5	4	3	2 1

Appendix 5(2)

5. Please tick the appropriate boxes to indicate the documents that your organisation has provided for the parties and mediators.

Document	Always	Often	Sometimes	Seldom	Never	If “Never”, please state the reason
Guide to Mediation						
Guide to Mediation Advocacy						
Guide to Appointment of Mediators						
FAQs for Mediation						
Flowchart for Mediation Processes						
Request/Expression of Interest for Mediation						
Response to Mediation						
Application for Appointment of Mediators						
Declaration of Independence and Impartiality						
Appointment of Mediators						
Notice of Mediation						
Mediation Rules						
Agreement to Mediate						
Confidentiality Agreement for Non-Parties						
Settlement Agreement						
Mediation Certificate						
Evaluation Questionnaire						
General Ethical Code						
Complaint Procedures for Mediators						
Challenge Procedure for Mediators						

6. Generally speaking, what is the timeframe of a typical mediation case in your organisation?

10-15 Working Days	
16-25 Working Days	
26-35 Working Days	
36 Working Days or more	

7. Does your organisation accept a mediation case when the parties have not yet agreed to proceed to mediation?

Yes	
No (Please skip question 8.)	

8. If answer to question 7 is ‘yes’, does your organisation follow up or endeavour to make contact, on the behalf of the party requesting mediation, to explain to the other party / parties in the mediation case the mediation process face-to-face and to discuss the feasibility of mediation?

Yes	
No	

9. Does your organisation provide any mechanism for parties to complain about the mediators? If yes, what are the procedures?

10. Does your organisation provide any mechanisms for challenging the appointment of a mediator? If yes, what are the procedures?

11. Does your organisation have any procedure for handling complaints in relation to the mediation process? If so, please state what the handling procedures for the complaints in regards to mediation process at your organisation are.

Appendix 5(3)

12. Does your organisation require liability insurance to be in place for the activities undertaken by your organisation and/or your members in providing mediation services?

Yes (Please skip question 14)	
No (Please skip question 13)	

13. Please state the details of the insurance coverage required by your organisation of your members in providing mediation services.
14. Is your organisation considering to require such professional liability insurance in place for the mediation services undertaken by your organisation or your members? Please state why.
15. Please state the steps your organisation has taken to ensure confidentiality/impartiality throughout and after the mediation.
16. Does your organisation have a general ethical code of mediators that your organisation mandatorily requires your mediator members to comply? If yes, please state the general ethical code.
17. Does your organisation provide mediation rules for your mediator members to adopt mandatorily or they can adopt different mediation rules in their mediations?
18. Does your organisation provide any mediator training to your members?

Yes	
No (Please skip question 19.)	

19. Please state the details of training that had been provided to your mediators.
20. Does your organisation provide standardized documents such as mediation agreement/settlement agreement/declaration/confidentiality agreement, etc, for use by your mediator members or they can adopt documents other than the standardized documents in their mediations?
21. Please state the areas of mediation procedures that your organisation wishes to refine/improve and the tentative plan for achieving these.

END OF QUESTIONNAIRE

資助機構:

Funding Organization:



香港特別行政區政府商務及經濟發展局
COMMERCE AND ECONOMIC DEVELOPMENT BUREAU
THE GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION

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Research Questionnaire in relation to Mediation in Hong Kong

This is an empirical study conducted by the Hong Kong Mediation Council, in collaboration with the Joint Mediation Helpline Office Ltd., on existing practices and service models of Hong Kong mediation services.

This questionnaire aims to find out the best practices on mediation services to cater for the need of individual sectors. Please complete the questionnaire:

Supporting Body: _____

All information will be kept confidentially. Thank you for your cooperation.

Name: _____

Are you a representative from company? Yes, please skip question 1 & 2
 No, please skip question 3 & 4

Parties' features

1. (a) Age Group

30 or below 31 - 40 41 - 50 51-60 above 60

(b) Education Background

Primary Secondary Tertiary or above
 Others _____

Company's features [Applicable to company's representation only]

2. Please state your job position _____

3. Types of Company/ Firm

Finance / Accounting Construction Beauty/Health Sectors
 Information Technology Property/ Real Estate
 Transportation/ Logistics Others _____

Dispute Nature

4. Please state the dispute nature of your case.

Business [e.g. Contract claims, commercial problems, partnership, insurance claims, real estate transactions.]
 Construction [e.g. Contractor/client disputes, architect problems.]
 Consumer [e.g. Sales/purchase disputes, warranties, refunds, repairs, deposits, services, interactions between sales personnel and customers.]
 Employer/Employee [e.g. Contracts, discrimination, wages, dismissal, working conditions, communication.]
 Family [e.g. Parenting, custody, divorce and separation arrangements, property issues, elder care]
 Landlord/Tenant [e.g. Lease agreements, rent, repairs, security deposits, evictions]
 Neighborhood [e.g. Noise, pets, parking, neighborhood dispute]
 Securities [e.g. Losses in the securities and commodities markets]
 Monetary Claims [e.g. Accidents, debts, property]
 Tort cases [e.g.: Automobile accidents, personal injury claims, professional malpractice.]

5. Please state the dispute amount of your case.

HK\$500,000 or below
 HK\$500,001 to \$1,000,000
 HK\$1,000,001 to \$ 5,000,000
 Above HK\$5,000,000
 Uncertain

6. Is your case a court case? Yes

No, please skip question 7a, 7b, 8 and 9

If yes, please state the court case no.: _____

If yes, please state which court is now handling your case: _____

(a) Please state if you have any lawyer representation.

Yes No

(b) Please state if you have applied any legal aid.

Yes No

7. Please state the status of your court case.

8. Did you receive any instruction from the judge that your case need to be settled by mediation within a time limit?

Yes, please specify the date of time limit:

No

9. Does the other party agree to mediate?

Yes No Unknown

10. Please state the reasons why you use Mediation? (You may tick more than one box)

Court Direction Suggested by Lawyers Cost Effective

More Efficient Maintain relationship

Solve the dispute in a less pressure atmosphere

Others _____

11. What is your expectation from Mediation for your own case?

12. In what way do you know about the JMHO?

Mediation Information Office District Court

Friends Internet Media (e.g. newspaper)

Lawyer Others 其他 _____

Mediation knowledge, experience and expectation

13. Have you ever heard of Mediation before? If yes, from what channel?

Yes, channel: _____ No

14. How much do you understand Mediation? (1 = little understanding; 5=full understanding)

1 2 3 4 5

15. How much do you know about the role of Mediator? (1 = little understanding; 5=full understanding)

1 2 3 4 5

16. Have you tried Mediation before? 你曾否使用調解？

Yes

(a) If yes, when was the mediation conducted? _____

(b) Any settlement? Yes No

(c) Do you think mediation is useful in resolving disputes? Yes No

No 沒有

17. Generally, what do you think the successful rate of mediation would be?

0-20% 21-40% 41-60% 61-80% 81-100%

18. Do you think the publicity of Mediation in Hong Kong is enough?

Yes No

End of Questionnaire, Thank You! 問卷完成，謝謝！

資助機構:

Funding Organization:



香港特別行政區政府商務及經濟發展局

COMMERCE AND ECONOMIC DEVELOPMENT BUREAU

THE GOVERNMENT OF THE HONG KONG

SPECIAL ADMINISTRATIVE REGION

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Appendix 7(1)

Service Evaluation Questionnaire

This questionnaire is to facilitate the evaluation of the mediation service. The data collected will be used for an empirical study conducted by the Hong Kong Mediation Council, in collaboration with the Joint Mediation Helpline Office Ltd.

Please complete the questionnaire at the conclusion of the mediation, seal in the envelope provided and pass to the Mediator or send to:

Joint Mediation Helpline Office
Room LG 102, LG1/F, High Court Building
38 Queensway, Admiralty, Hong Kong
Tel: +852 2901 1224 Fax: +852 2899 2984
Email: email@jointmediationhelpline.org.hk

All information will be kept confidential. Thank you for your cooperation.

Supporting Body: _____

Case Ref: _____

1. Overall Level of Satisfaction
2. Performance of the Mediator

	Very Dissatisfied			Very Satisfied		
	0	1	2	3	4	5
1. Overall Level of Satisfaction	<input type="checkbox"/>					
2. Performance of the Mediator	<input type="checkbox"/>					

3. Mediation has facilitated the settlement of dispute
4. You felt you were being heard during the mediation process
5. You felt you were in control of the process

	Strongly Disagree			Strongly Agree		
	0	1	2	3	4	5
3. Mediation has facilitated the settlement of dispute	<input type="checkbox"/>					
4. You felt you were being heard during the mediation process	<input type="checkbox"/>					
5. You felt you were in control of the process	<input type="checkbox"/>					

6. How does the mediator best assist you?

7. Was the mediation timely for your case?

Yes No Reason: _____

8. How long was the whole mediation process?

1 month or less 1 ~ 2 months 2 months or above

9. Would you use mediation again if you have similar problems in future?

Yes No Reason: _____

Appendix 7(2)

10. Would you recommend mediation to others who may have similar claims?

Yes No

Reason: _____

11. Other Comments:

End of Questionnaire, Thank You! 問卷完成, 謝謝 !

資助機構:

Funding Organization:



香港特別行政區政府商務及經濟發展局
COMMERCE AND ECONOMIC DEVELOPMENT BUREAU
THE GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION

"Any opinions, findings, conclusions or recommendations expressed in this material / any event organized under this Project do not reflect the views of the Government of the Hong Kong Special Administrative Region or the Vetting Committee for the Professional Services Development Assistance Scheme."

Appendix 8(1)

Questionnaire on JMHO referral service

This is an empirical study conducted by the Hong Kong Mediation Council, in collaboration with the Joint Mediation Helpline Office Ltd. ("JMHO"), on existing practices and service models of Hong Kong mediation services.

This questionnaire aims to find out the best practices on mediation referral services to cater for the need of individual sectors. Please complete the questionnaire:

1. Parties' understandings on Mediation.

(1 = little understanding; 5=full understanding)

1 2 3 4 5

2. Mediators' understandings on the JMHO's background, use of JMHO standard documents and JMHO referral procedure.

(1 = little understanding; 5=full understanding)

1 2 3 4 5

3. Do you think there is sufficient service guideline provided by PSPs⁴/JMHO?

Yes No, reason _____

4. Any other areas of JMHO's services need to be improved?

Standard documents

Suggestions (if any): _____

Venue booking

Suggestions (if any): _____

Timing for arranging mediation

Suggestions (if any): _____

Publicity/promotion

Suggestions (if any): _____

⁴ PSPs = 8 Participating Service Providers include Hong Kong Mediation Council, Hong Kong Bar Association, Hong Kong Mediation Centre, The Law Society of Hong Kong, Chartered Institute of Arbitrators (East Asia Branch), Hong Kong Institute of Arbitrators, Hong Kong Institute of Architects and Hong Kong Institute of Surveyors

Appendix 8(1)

Template

Suggestions (if any): _____

Others _____

5. The effectiveness of JMHO's referral mechanism.

(1 = not effective; 5= very effective)

1 2 3 4 5

6. Other comments _____

End of Questionnaire, thank you!

資助機構:

Funding Organization:



香港特別行政區政府商務及經濟發展局
COMMERCE AND ECONOMIC DEVELOPMENT BUREAU
THE GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION

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Proposed Standard Documents**(a) Guide to Mediation****Guide to Mediation****Mediation**

Mediation is a voluntary, confidential negotiation process in which a neutral person called mediator, helps the parties to resolve the dispute and reach their amicable settlements. Any settlement agreement drawn up and signed by both/ all parties is legally binding. Mediation is not mandatory by law so it does not have to be utilized. However, with the Practice Direction 31 on Mediation issued by the Judiciary, parties to litigation are positively encouraged to engage in mediation.

Roles of Mediators

Mediators use appropriate techniques and/or skills to open and/or improve dialogue between disputing parties, which aims at helping them reach an agreement (with legally binding results) on the disputed matter. Mediator helps the parties reach their own negotiated agreement. He/she will encourage the parties to reach a mutually acceptable solution by themselves, as opposed to having it imposed upon them. The Mediator has no power to impose a settlement on the parties. His/her function is to overcome any impasse and encourage the parties to reach an amicable settlement. Normally, all parties will regard the Mediator as neutral and impartial. Disputing parties may use mediation in a variety of disputes, such as commercial, legal, diplomatic, workplace, community and family matters.

Benefits of Mediation

There are numerous benefits of mediation: reduce tensions, conflicts and risks; cost effectiveness; provide an amicable and constructive environment in which parties in disputes can reconcile their difference; promote communication and mutual understanding between the parties; flexible, can commence before litigation or at any stage during the process of litigation; settlement is agreed mutually by parties; maintain relationships.

How to engage in mediation services?

Services Providers in Hong Kong maintain their own panel list of mediators. The mediators come from different professionals and are accredited by their respective organization. Parties can select and appoint a mutually agreed mediator. On the other hand, parties can request the mediation service providers to nominate a mediator for their consideration.

(b) FAQs for Mediation

FAQs for Mediation**1. What is mediation?**

- Mediation is a voluntary, confidential negotiation process in which a neutral person called mediator, helps the parties to resolve the dispute and reach their amicable settlements.
- During the mediation, both parties will be given a chance to express their views, needs and interests.
- Any settlement agreement drawn up and signed by both parties is legally binding.

2. Who is Mediator?

- Mediator is trained to conduct effect negotiation and parties with the help of the mediator, identify issues, explore options, consider alternatives and make informed decisions. Hence likely to settle.
- Mediator is neutral and does not impose decisions on the parties. Nor the mediator gives advice, so parties' rights are reserved.

3. What are benefits of Mediation?

- Parties can maintain a relationship with each other once the dispute is over.
- Parties can stay in control of the process, rather than handing it over to the judge
- Parties can make their own decisions and thus more willing to comply with the settlement
- Cost and time effective
- Voluntary and flexible
- The settlement terms can be kept confidential
- The process is less stressful and less formal comparing to the court proceedings

4. Is the mediation kept confidential? Would the evidence at mediation be used against me in any lawsuit, arbitration or other proceedings?

Mediation is confidential and privileged. Unless authorized in writing by both parties to the mediation or compelled by law, nothing shall be disclosed in any lawsuit, arbitration or other proceedings against the parties or the mediator. The agreement is also confidential save for the needs for execution. The confidentiality covers also the mediator's staff and non-parties. According to the Mediation Ordinance, a person must not disclose a mediation communication except under specified circumstances, for example, with the consent of all parties and the mediator or where there are reasonable grounds to believe that the disclosure is necessary to prevent danger of injury to a person or of serious harm to the well being of a child, or with the leave of the court.

5. What are the costs of Mediation?

The parties are required to pay the mediation fee which may involve the administration fee of the service providers, mediator fee and rental costs of the conference room. The total mediation costs are normally shared equally by both/all parties. According to the statistics of the Judiciary in 2013, the average cost of mediation per case is around HK\$3,000 per hour.

6. What is mediation?

- Mediation is a voluntary, confidential negotiation process in which a neutral person called mediator, helps the parties to resolve the dispute and reach their amicable settlements.
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10. How much time does mediation take?

The length of the time that mediation will take depends on the complexity of the cases and degree of parties' cooperation and willingness to mediate. According to the statistics of the Judiciary in 2013, the average time spent on the mediation is around 4-5 hours.

11. How can I engage mediation service?

- Parties can select and appoint a mutually agreed mediator from the list of mediators of a Service Provider.
- Normally parties who wish to use mediation service needs to find the service provider, select a mediator and handle a range of procedures with the service provider and the mediator.
- At Joint Mediation Helpline Office (JMHO), it provides one-stop service. Cases will be transmitted to a designated participating service provider. (“PSP”).
- The Eight Participating Service Providers (PSPs) are The Law Society of Hong Kong, The Hong Kong Bar Association, The Chartered Institute of Arbitrators (East Asia Branch), The Hong Kong Institute of Arbitrators, The Hong Kong Mediation Council, The Hong Kong Mediation Centre, The Hong Kong Institute of Architects and the Hong Kong Institute of Surveyors. All are experienced service providers.
- The PSPs will process all transmitted case using a common protocol and fee schedule set out by the JMHO. The JMHO will not receive any fee from the parties. Parties need to fill out the RM 1 Form to initiate the process.
- The Hong Kong Mediation Accreditation Association Ltd. (HKMAAL) was set up as a single accreditation body in 2012 by the Accreditation Group of Mediation Task Force headed by Secretary for Justice, with the collaboration with the major mediation service providers including the majority of Participating Service Providers. HKMAAL is the largest mediation organization in Hong Kong in terms of number of mediators. Parties may consider appointing HKMAAL Panels of Mediators for mediation services

12. How should I choose a mediator?

The term "choice of mediator" implies a process of deliberation and decision-making. No formal mechanism for objecting to the appointment of particular mediators exists, but in practice the parties to mediation could ask mediators to withdraw for reasons of conflict of interest. The following are useful factors of consideration for selecting a mediator:

- Personal Attributes;
- Mediation qualifications, experiences and backgrounds;
- The mediator's training;
- The mediator's professional background;
- The mediator's certification and its value;
- The mediation model offered, and whether it suits the case;
- Any conflict of interest the mediator may have;
- The mediator's willingness to allow and possibly encourage, mediation participants to seek creative solutions;
- The mediator's fee.

13. Do I need to appoint a lawyer in mediation?

Generally speaking, it is not necessary for you to appoint a lawyer to participate in mediation. However, if you require consulting lawyer in order to facilitate the mediation and settlement, you may appoint a lawyer with the consent of all parties and mediators. On the other hand, even if the mediator is a lawyer, he/she will not give advice and will not make decisions for you.

(c) Request/ Express of Interest for Mediation/ Application for appointment of Mediator

Request/ Express of Interest for Mediation Form

The party/parties named below individually/together can request for appointment of Mediator to mediate the dispute between them as set out in this form. Unless otherwise agreed, the mediation is to follow the Mediation Rules effective at the date of this application.

1. Details of Parties:

Party 1 (Applicant)

Name: _____

Party 2 (Respondent)

Name: _____

Address: _____

Address: _____

Tel.: _____

Tel.: _____

Fax: _____

Fax: _____

E-mail: _____

E-mail: _____

Contact Person &
Tel (if any) _____

Contact Person &
Tel (if any) _____

2. Will you be represented by a lawyer at the mediation?

Yes No

If yes, please fill in the following details:

Party 1 – Representatives (if any)

Name: _____

Party 2 – Representatives (if any)

Name: _____

Address: _____

Address: _____

Tel: _____

Tel: _____

Fax: _____

Fax: _____

E-mail: _____

E-mail: _____

Your Ref.: _____

Your Ref.: _____

Contact Person:

Contact Person: _____

Person: _____

3. Method & Language of Communication:

Please specify your preferred (i) communication method(s) and (ii) communication language(s).

(i) Email Mail Fax

(ii) English Chinese

4. Court Case No. (if any): _____

5. Amount in Dispute (where applicable): HKD _____

6. Summary of the Dispute:

(Please state briefly what the dispute is about, and any particular issue(s) of importance. Please also state any relief or remedy sought)

7. Particular requirements for the mediation

Any particular language skills of the mediator? (please tick ✓ the box provided)

English Cantonese Putonghua Other (Please specify) _____

Any preference for special or other requirements of the mediator? Yes No

(please tick ✓ the box provided)

If so, please specify

8. Notice of the Gathering of Personal Data:

The personal data provided by the Party/ Parties under this Request for Mediation Form or generally in relation to the dispute are for the purpose of processing the dispute. In this connection, the personal data so provided will be handled by or revealed to the following parties:

- a) personnel of the service providers;
- b) the other Party/ Parties named in this form;
- c) the potential mediators in relation to your dispute; and
- d) the mediator appointed in relation to your dispute.

Declaration by the Party/ Parties

- I. The Party/ Parties will cooperate with the personnel of the service provider and the mediator, by providing all relevant documents and information, when requested, including information that may be personal data, to enable such personnel, service provider and the mediator to handle the dispute;
- II. The Party/ Parties undertake(s) to keep all matters and information concerning and relating to the mediation confidential and will not disclose such matters and information to any person, other than the other party/parties, the personnel of the service provider and the mediator, save and to the extent required by the laws;
- III. The Party/ Parties will not hold the personnel of the service provider and the mediator liable for any claims, loss or damages in relation to the outcome or proceedings of the dispute under the Mediation Rules.
- IV. The Party/ Parties has/have read the Notice of the Gathering of Personal Data and confirm/ confirms the agreement to provide personal data in relation to the service provider on a voluntary basis and on the terms and for the purposes set out in the Notice.
- V. The Party/ Parties further confirm/confirm that the information provided in this Request for Mediation Form is true and accurate.

9. Signature(s):

(Party 1 and Party 2 may sign this *Request for Mediation Form* ("RM1") on separate forms.)

Signature of Party 1

Signature of party 2

Full Name of Party 1:

Full Name of Party 2

Date

Date

6. Summary of the Dispute:

(Please state briefly what the dispute is about, and any particular issue(s) of importance. Please also state any relief or remedy sought)

7. Particular requirements for the mediation

Any particular language skills of the mediator? (please tick ✓ the box provided)

English Cantonese Putonghua Other (Please specify) _____

Any preference for special or other requirements of the mediator? Yes No

(please tick ✓ the box provided)

If so, please specify

8. Notice of the Gathering of Personal Data:

The personal data provided by the Party/ Parties under this Request for Mediation Form or generally in relation to the dispute are for the purpose of processing the dispute. In this connection, the personal data so provided will be handled by or revealed to the following parties:

- a) personnel of the service providers;
- b) the other Party/ Parties named in this form;
- c) the potential mediators in relation to your dispute; and
- d) the mediator appointed in relation to your dispute.

Declaration by the Party/ Parties

- I. The Party/ Parties will cooperate with the personnel of the service provider and the mediator, by providing all relevant documents and information, when requested, including information that may be personal data, to enable such personnel, service provider and the mediator to handle the dispute;
- II. The Party/ Parties undertake(s) to keep all matters and information concerning and relating to the mediation confidential and will not disclose such matters and information to any person, other than the other party/parties, the personnel of the service provider and the mediator, save and to the extent required by the laws;
- III. The Party/ Parties will not hold the personnel of the service provider and the mediator liable for any claims, loss or damages in relation to the outcome or proceedings of the dispute under the Mediation Rules.

- IV. The Party/ Parties has/have read the Notice of the Gathering of Personal Data and confirm/ confirms the agreement to provide personal data in relation to the service provider on a voluntary basis and on the terms and for the purposes set out in the Notice.
- V. The Party/ Parties further confirm/confirm that the information provided in this Request for Mediation Form is true and accurate.

9. Signature(s):

Signature of Party 2

Name of Party 2:

Date

(e) Declaration of Independence and Impartiality

Response Form from Nominated Mediator

Note: This form is to be filled with by the nominated mediator and returned to the relevant service provider

To: **[Service Provider]**
(By email to [?]/fax to [?])

Re : Declaration of Independence and Impartiality
[Court Ref: HCA ?/2010] (if any)

Case Ref. :

Party 1 :

Party 2 :

In respect to the above case, I attach herewith my CVs and hereby confirm that:-
 (Please tick the box if you agree)

- I am available to act as a mediator in this matter and I can act impartially and independently between/among the parties;
- in conducting the mediation of this matter, I shall abide by the Hong Kong Mediation Code, the Mediation Rules and other process requirements of the which is adopted by the [Service provider] as detailed on its website; and

Name:

Date:

Encl.

(f) Letter of Appointment of Mediators

By Fax and By Post

[Address of Party 1]

[Address of Party 2]

Dear Sirs,

Re : Mediation Case Designation

Case No. :
Party 1 :
Party 2 :

We refer to our earlier letter dated [?] in relation to the captioned case.

We are considering the appointment of [Name of Mediator] as the mediator in this matter. [?] is on the [service provider]'s Panel of Accredited General Mediators and his/her contact details are:

[Address and Tel]

Please find attached the curriculum vitae of the mediator. Please also be informed that [Name of Mediator] has confirmed that there will be no conflicts of interests for acting as the mediator in this matter and s/he may act independently and impartially between the parties in this matter.

Please let us have your comments to the above (if any) on or before [?], otherwise we will be proceeding with the process for the appointment of the mediator.

Yours sincerely,

[Name]

[Position]

Attachment: Mediator's CV

(g) Mediation Rules**Introduction**

1. These Rules shall be referred to as the [Service Provider] Mediation Rules.

Mediation

2. Mediation under these Rules is a confidential, voluntary, non-binding and private dispute resolution process in which a neutral person (the mediator) helps the parties reach a negotiated settlement.

Application of Rules

3. These Rules apply to the mediation of present or future disputes where the parties seek amicable settlement of such disputes and where, either by stipulation in their contract or by agreement, they have agreed that these Rules shall apply. The parties may agree to vary these Rules at any time.

Initiation of the Mediation Process

4. If a dispute arises, a party may request the initiation of mediation by delivering a written request for mediation to the [Service Provider] or the other party or parties with copies to the [Service Provider]. Such request for mediation shall contain a brief self-explanatory statement of the nature of the dispute, the quantum in dispute (if any), the relief or remedy sought and any special preference of requirements for the mediation.

Response to Request for Mediation

5. A party or parties who receive a request for mediation shall notify any other party and the [Service Provider] within 10 days after receipt of the request whether the request for mediation is accepted. Failure by any party to reply within 10 days shall be treated as a refusal to mediate.

Appointment of the Mediator

6. Unless there has been an agreement of the parties on a mediator who is on the list/panel of the [Service Provider], the [Service Provider] will appoint a single qualified mediator who is prepared to serve and is qualified under Rule 7. Where the parties have so agreed on such a mediator, they shall notify the [service provider] forthwith. The appointment of the mediator takes effect upon confirmation in writing by the [service provider]. The mediation shall then proceed in accordance with the Rules.

Disqualification of Mediator

7. No person shall act as mediator in any dispute in which that person has any financial or personal interest in the result of the mediation except by consent of the parties. Before accepting an appointment, the proposed mediator shall disclose to the parties and to the service provider any circumstances likely to create a presumption of bias or prevent a prompt resolution of the dispute. Upon receipt of the information, the service provider shall immediately communicate the information to the parties for their comments. If any party takes objection to the proposed mediator within 3

working days he shall not be appointed. In such case, the service provider shall nominate another suitable qualified mediator.

The Mediation Process

8. The mediator shall commence the mediation as soon as possible after his appointment and shall use his best endeavours to conclude the mediation within 28 days of his appointment. His appointment shall not extend beyond a period of three months without the written consent of all parties.

Role of the Mediator

9. The mediator may conduct the mediation in such manner, as he considers appropriate, taking into account the circumstances of the case, the agreement between the parties and the need for a speedy settlement of the dispute.

Role of the Parties

10. The mediator may communicate with the parties together or with any party separately, including private meetings and each party shall cooperate with the mediator. A party may request a private meeting with the mediator at any time. The parties shall give full assistance to enable the mediation to proceed and be concluded within the time stipulated.

Representation

11. Subject to the consent of both parties, the parties may be represented or assisted by persons of their choice. Such persons must sign a separate confidentiality agreement and agree to abide by this rule. Each party shall notify in advance the names and the role of such persons to the mediator and the other party. Each party shall have full authority to settle or be accompanied by a person with such authority.

Termination of the Mediation

12. The mediation process shall come to end:-
 - a. Upon the signing of a settlement agreement by the parties or;
 - b. Upon the written advice of the mediator after consultation with the parties that in his opinion further attempts at mediation are no longer justified or;
 - c. Upon written notification by any party at any time to the mediator and the other parties that the mediation is terminated.

Confidentiality

13. (i) Mediation is a private and confidential process. Every document, communication or information disclosed by any party for the purpose of or related to the mediation process shall be disclosed on a privileged and without prejudice basis and no privilege or confidentiality shall be waived by such disclosure. Confidentiality also extends to the settlement agreement except where its disclosure is necessary for implementation or enforcement. The parties shall not rely on or introduce as evidence in

any subsequent judicial or arbitral proceedings:-

- a. any oral or written exchanges within the mediation made in connection with any mediation conducted under these Rules between a party and the mediator or between any party;
- b. any views expressed or suggestions made within the mediation either by the mediator or a party in respect of a possible settlement of the dispute;
- c. any admission made by a party in connection with any mediation conducted under these Rules;
- d. the fact that a party had or had not indicated a willingness to accept any suggestion or proposal for settlement by the mediator or by any party; and
- e. any documents brought into existence for the purpose of the mediation including any notes or records made in connection with any mediation conducted under these rules by the mediator or a party.

Provided that when any party enforces a settlement agreement any party may call evidence of the settlement agreement including evidence from the Mediator and any other person engaged in the mediation.

(ii) Nothing that transpires during the course of the mediation is intended to or shall in any way affect the rights or prejudice the position of the parties to the dispute in any subsequent arbitration, adjudication or litigation, and without derogating from the generality of the foregoing and merely by way of examples:-

- a. the fact that information of whatsoever nature was available to the mediator, does not mean that privilege or confidentiality is waived for any subsequent litigation, arbitration or adjudication; and
- b. the fact that the accuracy of information or the validity or meaning of documents was not challenged during the mediation does not preclude challenge in subsequent litigation, arbitration or adjudication.

Costs

14. (i) Unless otherwise agreed, each party shall bear its own costs regardless of the outcome of the mediation or of any subsequent arbitral or judicial proceedings. All other costs and expenses shall be borne equally by the parties and the parties shall be jointly and severally liable to pay to the mediator such costs, including:

- a. the mediator's fees and expenses;
- b. expenses for any witness or expert advice or opinion requested by the mediator with the consent of the parties; and
- c. any administrative costs in support of the mediation including the PSP's costs.

(ii) The mediator may at any time during the mediation require the parties to make deposits to cover any additional anticipated fees and expenses and suspend the process until such deposit is made.

(iii) Any surplus funds deposited shall be returned to the parties at the conclusion of the mediation.

Exclusion of Liability

15. The parties jointly and severally release, discharge and indemnify the mediator and the service provider 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 these Rules, save for the consequences of fraud or dishonesty.

(h) Mediation Certificate**Mediation Certificate**

Ref No.: _____

This is to certify that the mediation between _____ (Party A) and _____ (Party B) has/have been conducted on (date(s)) and concluded on _____ (date), for _____ hour(s) (in which _____ hour(s) pre-mediation session and _____ hour(s) subsequent mediation session) with the following outcome:

- Full and final settlement reached, agreement of settlement is duly signed.
- Partial settlement reached, agreement of the partial settlement is duly signed.
- No settlement reached.
- Others: Please specify: _____

Signature: _____ Date: _____

Name of Mediator: _____

Name of Mediation Service Provider: _____

(i) Evaluation Questionnaire**Evaluation Questionnaire**

This questionnaire is to facilitate the evaluation of the mediation service. The data collected will be used by [service provider] internally for education, research, service evaluation and improvement purpose.

Please complete the questionnaire at the conclusion of the mediation, seal in the envelope provided and pass to the Mediator or send to [address of PSP]:

Case Ref: _____

All information will be kept confidential. Thank you for your cooperation.

Please tick✓ the box as appropriate

	Strongly Disagree	0	1	2	3	4	5 Strongly Agree	
1. Service Provider								
(a) Service Provider took into account your preference when nominating mediators	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
(b) Service Provider provided timely assistance in the course of nominating and appointing of mediator	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
2. Mediation and Mediation								
(a) Mediator clearly explained mediation and the mediation process	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
(b) Mediator clearly explained the terms of the "Agreement to Mediate"	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
(c) Mediator clearly explained his/her fee	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
(d) Mediator listened to your needs and concerns	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
(e) Mediator understood your feelings	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
(f) You had a chance to hear what the other party feels	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
(g) You had a chance to communicate with the other party directly	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
(h) You felt you were in control of the process	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
(i) Mediation facilitated understandings of the issues in a dispute	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
(j) Mediation facilitated the settlement of dispute	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	
3. How long was the whole mediation process (from the date of appointment of mediator)?	<input type="checkbox"/> 1 month or less	<input type="checkbox"/> 1 - 2 months	<input type="checkbox"/> 2 months or above					
4. Where did you conduct the mediation?	<input type="checkbox"/> Law Firm	<input type="checkbox"/> Mediator's Office	<input type="checkbox"/> Community Centre					
	<input type="checkbox"/> Other venue, please specific							
5. Would you use mediation again if you come across a dispute in the future?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Reason: _____					
6. Would you recommend mediation to others who may have disputes?	<input type="checkbox"/> Yes	<input type="checkbox"/> No	Reason: _____					
7. Other Comments:	<hr/> <hr/> <hr/>							

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