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# Mediation Bill

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# A BILL

## To

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

Enacted by the Legislative Council.

### 1. Short title and commencement

- (1) This Ordinance may be cited as the Mediation Ordinance.
- (2) This Ordinance comes into operation on a day to be appointed by the Secretary for Justice by notice published in the Gazette.

### 2. Interpretation

- (1) In this Ordinance—

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

- (a) whether the agreement is in the form of a mediation clause in an agreement or in the form of a separate agreement;
- (b) whether the agreement is made before or after the dispute arises; and

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

**Note—**

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

*dispute* (爭議) includes a difference;

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

*mediation* (調解)—see section 4;

*mediation communication* (調解通訊) means—

- (a) anything said or done;
- (b) any document prepared; or
- (c) any information provided,

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

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

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

### 3. **Objects of this Ordinance**

The objects of this Ordinance are—

- (a) to promote, encourage and facilitate the resolution of disputes by mediation; and
- (b) to protect the confidential nature of mediation communications.

#### **4. Meaning of mediation**

- (1) For the purposes of this Ordinance, mediation is a structured process comprising one or more sessions in which one or more impartial individuals, without adjudicating a dispute or any aspect of it, assist the parties to the dispute to do any or all of the following—
  - (a) identify the issues in dispute;
  - (b) explore and generate options;
  - (c) communicate with one another;
  - (d) reach an agreement regarding the resolution of the whole, or part, of the dispute.
- (2) For the purposes of subsection (1), a session is a meeting between a mediator and one or more of the parties to a dispute, and includes any activity undertaken in respect of—
  - (a) arranging or preparing for such a meeting, whether the meeting takes place or not; and
  - (b) following up any matter or issue raised in such a meeting.
- (3) For the purposes of subsection (2), a meeting includes a meeting conducted by telephone, video conferencing or other electronic means.

#### **5. Mediation and mediation communications to which this Ordinance applies**

- (1) Subject to subsection (2), this Ordinance applies to any mediation conducted under an agreement to mediate if either of the following circumstances applies—
  - (a) the mediation is wholly or partly conducted in Hong Kong; or
  - (b) the agreement provides that this Ordinance or the law of Hong Kong is to apply to the mediation.

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- (2) This Ordinance does not apply to a process specified in Schedule 1.
  - (3) This Ordinance applies to a mediation communication relating to any mediation to which this Ordinance applies.
  - (4) For the purposes of this section, it does not matter whether—
    - (a) the agreement to mediate is made before, on or after the commencement date of this Ordinance or entered into in Hong Kong or elsewhere;
    - (b) the mediation is conducted before, on or after the commencement date of this Ordinance or completed before that date; or
    - (c) the mediation communication is made before, on or after the commencement date of this Ordinance.

## **6. Application to the Government**

This Ordinance applies to the Government.

## **7. Provision of assistance or support in mediation**

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

- (a) section 44 (penalty for unlawfully practising as a barrister or notary public);
- (b) section 45 (unqualified person not to act as solicitor);
- (c) section 47 (unqualified person not to prepare certain instruments, etc.).

## **8. Confidentiality of mediation communications**

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

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- (2) A person may disclose a mediation communication if—
- (a) the disclosure is made with the consent of—
    - (i) each of the parties to the mediation;
    - (ii) the mediator for the mediation or, if there is more than one, each of them; and
    - (iii) if the mediation communication is made by a person other than a party to the mediation or a mediator—the person who made the communication;
  - (b) the content of the mediation communication is information that has already been made available to the public, except for information that is only in the public domain due to an unlawful disclosure;
  - (c) the content of the mediation communication is information that is otherwise subject to discovery in civil proceedings or to other similar procedures in which parties are required to disclose documents in their possession, custody or power;
  - (d) there are reasonable grounds to believe that the disclosure is necessary to prevent or minimize the danger of injury to a person or of serious harm to the well-being of a child;
  - (e) the disclosure is made for research, evaluation or educational purposes without revealing, or being likely to reveal, directly or indirectly, the identity of a person to whom the mediation communication relates; or
  - (f) the disclosure is made in accordance with a requirement imposed by law.
- (3) A person may disclose a mediation communication with leave of the court or tribunal under section 10—
- (a) for the purpose of enforcing or challenging a mediated settlement agreement;

- (b) for the purpose of establishing or disputing an allegation or complaint of professional misconduct made against a mediator or any other person who participated in the mediation in a professional capacity; or
  - (c) for any other purpose that the court or tribunal considers justifiable in the circumstances of the case.
- (4) In this section—
- child* (未成年人) means a person under the age of 18 years.

## 9. Admissibility of mediation communications in evidence

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

## 10. Leave for disclosure or admission in evidence

- (1) The court or tribunal specified in subsection (3) may, on application by any person, grant leave for a mediation communication to be disclosed under section 8(3) or to be admitted in evidence under section 9.
- (2) For the purposes of subsection (1), the court or tribunal must take into account the following matters in deciding whether to grant leave for a mediation communication to be disclosed or admitted in evidence—
  - (a) whether the mediation communication may be, or has been, disclosed under section 8(2);
  - (b) whether it is in the public interest or the interests of the administration of justice for the mediation communication to be disclosed or admitted in evidence;
  - (c) any other circumstances or matters that the court or tribunal considers relevant.

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- (3) The court or tribunal specified for the purposes of subsection (1) is—
- (a) if the mediation communication is sought to be disclosed or admitted in evidence in proceedings in the Court of Final Appeal—the Court of Final Appeal;
  - (b) if the mediation communication is sought to be disclosed or admitted in evidence in proceedings in the Court of Appeal—the Court of Appeal;
  - (c) if the mediation communication is sought to be disclosed or admitted in evidence in proceedings in the District Court—the District Court;
  - (d) if the mediation communication is sought to be disclosed or admitted in evidence in proceedings in the Lands Tribunal—the Lands Tribunal; or
  - (e) in any other case—the Court of First Instance.

## **11. Consequential and related amendments**

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

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**Schedule 1**

[s. 5]

**Processes to Which this Ordinance Does Not Apply**

1. Conciliation referred to in sections 6, 15 and 25 of the Labour Tribunal Ordinance (Cap. 25).
2. Conciliation referred to in section 39 of the Apprenticeship Ordinance (Cap. 47).
3. Conciliation and special conciliation referred to in Part II of the Labour Relations Ordinance (Cap. 55).
4. Mediation referred to in Part IIA of the Labour Relations Ordinance (Cap. 55).
5. The process described in section 17 of the Marriage Reform Ordinance (Cap. 178).
6. Mediation referred to in section 11B of The Ombudsman Ordinance (Cap. 397).
7. Conciliation referred to in sections 4 and 14 of the Minor Employment Claims Adjudication Board Ordinance (Cap. 453).
8. Conciliation referred to in sections 64 and 84 of the Sex Discrimination Ordinance (Cap. 480) and section 8 of the Sex Discrimination (Investigation and Conciliation) Rules (Cap. 480 sub. leg. B).
9. Conciliation referred to in sections 62 and 80 of the Disability Discrimination Ordinance (Cap. 487) and section 8 of the Disability Discrimination (Investigation and Conciliation) Rules (Cap. 487 sub. leg. B).

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### Schedule 1

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10. Conciliation referred to in sections 44 and 62 of the Family Status Discrimination Ordinance (Cap. 527) and section 8 of the Family Status Discrimination (Investigation and Conciliation) Rules (Cap. 527 sub. leg. A).
  11. Conciliation referred to in sections 59 and 78 of the Race Discrimination Ordinance (Cap. 602) and section 8 of the Race Discrimination (Investigation and Conciliation) Rules (Cap. 602 sub. leg. B).
  12. Mediation proceedings referred to in sections 32 and 33 of the Arbitration Ordinance (Cap. 609).
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## Schedule 2

[s. 11]

### Consequential and Related Amendments

#### Part 1

#### Amendment to Law Amendment and Reform (Consolidation) Ordinance (Cap. 23)

1. Section 24 amended (property of engaged couples)

Section 24(2), Chinese text—

**Repeal**

“調解”

**Substitute**

“解決”.

#### Part 2

#### Amendments to Labour Tribunal Ordinance (Cap. 25)

2. Section 2 amended (interpretation)

(1) Section 2, definition of *conciliation*—

**Repeal**

“(調解)”

**Substitute**

“(調停)”.

(2) Section 2, Chinese text, definition of 獲授權人員—

**Repeal**

“調解”

**Substitute**

“調停”.

**3. Section 15 amended (conciliation certificate to be filed)**

(1) Section 15, Chinese text, heading—

**Repeal**

“調解”

**Substitute**

“調停”.

(2) Section 15(1)(a), (b), (c) and (d), (3)(b), (4) and (5), Chinese text—

**Repeal**

“調解” (wherever appearing)

**Substitute**

“調停”.

(3) Section 15(6), Chinese text, before “進展情況”—

**Add**

“調停的”.

(4) Section 15(7), Chinese text—

**Repeal**

“調解”

**Substitute**

“調停”.

**4. “調停” substituted for “調解”**

The following provisions, Chinese text—

(a) Section 6(5);

(b) Section 25(3)(e)—

**Repeal**

“調解” (wherever appearing)

**Substitute**

“調停”.

### **Part 3**

## **Amendments to Labour Tribunal (Forms) Rules (Cap. 25 sub. leg. C)**

**5. Schedule amended**

(1) The Schedule, Chinese text, Form 7—

**Repeal**

“調解” (wherever appearing)

**Substitute**

“調停”.

(2) The Schedule, Chinese text, Form 9—

**Repeal**

“調解” (wherever appearing)

**Substitute**

“調停”.

### **Part 4**

## **Amendment to Apprenticeship Ordinance (Cap. 47)**

**6. Section 39 amended (reference of disputes to the Director)**

Section 39, Chinese text—

**Repeal**

“調解”

**Substitute**

“調停”。

## Part 5

### Amendment to Professional Accountants Ordinance (Cap. 50)

#### 7. Section 7 amended (objects of the Institute)

Section 7, Chinese text—

**Repeal paragraph (i)**

**Substitute**

“(i) 排解會計師專業內的爭議；”。

## Part 6

### Amendments to Labour Relations Ordinance (Cap. 55)

#### 8. Section 2 amended (interpretation)

(1) Section 2, definition of *conciliation*—

**Repeal**

“(調解)”

**Substitute**

“(調停)”。

(2) Section 2—

(a) Definition of *conciliation officer*—

**Repeal**

“(調解員)”

**Substitute**

“(調停員)”;

(b) Definition of *mediator*—

**Repeal**

“(調停員)”

**Substitute**

“(調解員)”.

(3) Section 2, definition of *special conciliation*—

**Repeal**

“(特別調解)”

**Substitute**

“(特別調停)”.

(4) Section 2, definition of *special conciliation officer*—

**Repeal**

“(特派調解員)”

**Substitute**

“(特派調停員)”.

**9. Part II heading amended (conciliation)**

Part II, Chinese text, heading—

**Repeal**

“調解”

**Substitute**

“調停”.

**10. Part IIA heading amended (mediation)**

Part IIA, Chinese text, heading—

**Repeal**

“調停”

**Substitute**

“調解”。

**11. Section 11A amended (appointment of mediator or mediation board)**

(1) Section 11A, Chinese text, heading—

**Repeal**

“調停” (wherever appearing)

**Substitute**

“調解”。

(2) Section 11A, Chinese text—

**Repeal subsection (1)****Substitute**

“(1) 凡發生勞資糾紛時，不論調停員或特派調停員是否曾試圖調停或作特別調停，處長可委任一名調解員或委出一個由 2 名或多於 2 名的人士組成的調解委員會，調解該勞資糾紛。”。

(3) Section 11A(2), Chinese text—

**Repeal**

“調停”

**Substitute**

“調解”。

**12. “調停” substituted for “調解”**

(1) The following provisions, Chinese text—

(a) Section 3(c);

(b) Section 4(1) and (2);



- (c) Section 5(1) and (2);
- (d) Section 6;
- (e) Section 7(1) and (2);
- (f) Section 8;
- (g) Section 9;
- (h) Section 10(1);
- (i) Section 35(1)(c)—

**Repeal**

“調解” (wherever appearing)

**Substitute**

“調停”.

- (2) The following provisions, Chinese text—
  - (a) Section 3, heading;
  - (b) Section 4, heading;
  - (c) Section 5, heading;
  - (d) Section 6, heading;
  - (e) Section 7, heading—

**Repeal**

“調解” (wherever appearing)

**Substitute**

“調停”.

**13. “調解” substituted for “調停”**

- (1) The following provisions, Chinese text—
  - (a) Section 11B;
  - (b) Section 11C;
  - (c) Section 11D;

(d) Section 11E—

**Repeal**

“調停” (wherever appearing)

**Substitute**

“調解”.

(2) The following provisions, Chinese text—

(a) Section 11B, heading;

(b) Section 11C, heading;

(c) Section 11E, heading—

**Repeal**

“調停” (wherever appearing)

**Substitute**

“調解”.

## Part 7

### Amendments to Minor Employment Claims Adjudication Board Ordinance (Cap. 453)

**14. Section 2 amended (interpretation)**

(1) Section 2, definition of *conciliation*—

**Repeal**

“(調解)”

**Substitute**

“(調停)”.

(2) Section 2, Chinese text, definition of 獲授權人員—

**Repeal**

“調解”

**Substitute**

“調停”.

**15. “調停” substituted for “調解”**

(1) The following provisions, Chinese text—

(a) Section 4(6);

(b) Section 14(1)(a), (b), (c) and (d)—

**Repeal**

“調解” (wherever appearing)

**Substitute**

“調停”.

(2) Section 14, Chinese text, heading—

**Repeal**

“調解”

**Substitute**

“調停”.

## Part 8

### Amendments to Sex Discrimination Ordinance (Cap. 480)

**16. Section 2 amended (interpretation)**

Section 2(1), definition of *conciliator*—

**Repeal**

“(調解人)”

**Substitute**

“(調停人)”.

**17. “調停” substituted for “調解”**

(1) The following provisions, Chinese text—

- (a) Section 64(1)(d);
- (b) Section 67(1)(d);
- (c) Section 68(3)(c);
- (d) Section 74(1);
- (e) Section 84(3)(b) and (6);
- (f) Schedule 6, section 11(2)—

**Repeal**

“調解” (wherever appearing)

**Substitute**

“調停”.

(2) The following provisions, Chinese text—

- (a) Section 84, heading;
- (b) Section 85, heading—

**Repeal**

“調解” (wherever appearing)

**Substitute**

“調停”.

**Part 9****Amendments to Sex Discrimination (Investigation and Conciliation) Rules (Cap. 480 sub. leg. B)****18. Title amended**

The title, Chinese text—

**Repeal**

“調解”

**Substitute**

“調停”.

**19. “調停” substituted for “調解”**

The following provisions, Chinese text—

(a) Section 6(1);

(b) Section 8(4)(a) and (b)—

**Repeal**

“調解” (wherever appearing)

**Substitute**

“調停”.

## **Part 10**

### **Amendments to Disability Discrimination Ordinance (Cap. 487)**

**20. Section 2 amended (interpretation)**

Section 2(1), definition of *conciliator*—

**Repeal**

“(調解人)”

**Substitute**

“(調停人)”.

**21. “調停” substituted for “調解”**

(1) The following provisions, Chinese text—

(a) Section 62(1)(d);

(b) Section 70(1);

(c) Section 80(3)(b) and (6)—

**Repeal**

“調解” (wherever appearing)

**Substitute**

“調停”.

(2) The following provisions, Chinese text—

(a) Section 80, heading;

(b) Section 81, heading—

**Repeal**

“調解” (wherever appearing)

**Substitute**

“調停”.

## Part 11

### Amendments to Disability Discrimination (Investigation and Conciliation) Rules (Cap. 487 sub. leg. B)

**22. Title amended**

The title, Chinese text—

**Repeal**

“調解”

**Substitute**

“調停”.

**23. “調停” substituted for “調解”**

The following provisions, Chinese text—

(a) Section 6(1);

(b) Section 8(4)(a) and (b)—

**Repeal**

“調解” (wherever appearing)

**Substitute**

“調停”.

## Part 12

### **Amendment to Disability Discrimination (Proceedings by Equal Opportunities Commission) Regulation (Cap. 487 sub. leg. C)**

24. **Section 1 amended (circumstances in which Commission may bring proceedings)**

Section 1(c), Chinese text—

**Repeal**

“調解”

**Substitute**

“調停”.

## Part 13

### **Amendment to Estate Agents (Determination of Commission Disputes) Regulation (Cap. 511 sub. leg. D)**

25. **Section 18 repealed (privileged communications)**

Section 18—

**Repeal the section.**

## Part 14

### Amendments to Family Status Discrimination Ordinance (Cap. 527)

**26. Section 2 amended (interpretation)**

Section 2(1), definition of *conciliator*—

**Repeal**

“(調解人)”

**Substitute**

“(調停人)”.

**27. “調停” substituted for “調解”**

(1) The following provisions, Chinese text—

(a) Section 44(1)(c);

(b) Section 52(1);

(c) Section 62(3)(b) and (6)—

**Repeal**

“調解” (wherever appearing)

**Substitute**

“調停”.

(2) The following provisions, Chinese text—

(a) Section 62, heading;

(b) Section 63, heading—

**Repeal**

“調解” (wherever appearing)

**Substitute**

“調停”.



## Part 15

### **Amendments to Family Status Discrimination (Investigation and Conciliation) Rules (Cap. 527 sub. leg. A)**

**28. Title amended**

The title, Chinese text—

**Repeal**

“調解”

**Substitute**

“調停”.

**29. “調停” substituted for “調解”**

The following provisions, Chinese text—

(a) Section 6(1);

(b) Section 8(4)(a) and (b)—

**Repeal**

“調解” (wherever appearing)

**Substitute**

“調停”.

## Part 16

### **Amendments to Tung Chung Cable Car Ordinance (Cap. 577)**

**30. “調解” substituted for “調停”**

The following provisions, Chinese text—

- (a) Section 19(13);
- (b) Section 29(7);
- (c) Section 33(1)—

**Repeal**

“調停” (wherever appearing)

**Substitute**

“調解”.

## Part 17

### Amendments to Race Discrimination Ordinance (Cap. 602)

**31. Section 2 amended (interpretation)**

Section 2(1), definition of *conciliator*—

**Repeal**

“(調解人)”

**Substitute**

“(調停人)”.

**32. “調停” substituted for “調解”**

(1) The following provisions, Chinese text—

- (a) Section 59(1)(d);
- (b) Section 62(3)(c);
- (c) Section 68(1);
- (d) Section 78(3)(b) and (6)—

**Repeal**

“調解” (wherever appearing)

**Substitute**

“調停”.

(2) The following provisions, Chinese text—

(a) Section 78, heading;

(b) Section 79, heading—

**Repeal**

“調解” (wherever appearing)

**Substitute**

“調停”.

## Part 18

### Amendments to Race Discrimination (Investigation and Conciliation) Rules (Cap. 602 sub. leg. B)

**33. Title amended**

The title, Chinese text—

**Repeal**

“調解”

**Substitute**

“調停”.

**34. “調停” substituted for “調解”**

The following provisions, Chinese text—

(a) Section 6(1);

(b) Section 8(4)(a) and (b)—

**Repeal**

“調解” (wherever appearing)

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Schedule 2—Part 18  
Section 34

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**Substitute**

“調停”。

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### Explanatory Memorandum

By providing a regulatory framework in respect of certain aspects of the conduct of mediation, this Bill aims to promote, encourage and facilitate the resolution of disputes by mediation and to protect the confidential nature of mediation communications.

2. Clause 1 sets out the short title and provides for commencement.
3. Clause 2 contains definitions that are necessary for the interpretation of the Bill, including the expressions *agreement to mediate*, *mediated settlement agreement* and *mediation communication*. The meaning of *mediation* is elaborated in clause 4.
4. Clause 3 sets out the objects of the Bill.
5. Clause 5 deals with the scope of application of the Bill. First of all, only mediation conducted under an *agreement to mediate* (defined in clause 2) is to be regulated by the Bill. Moreover, the Bill is to apply only if the mediation is wholly or partly conducted in Hong Kong, or the agreement provides that the Bill or the law of Hong Kong is to apply to the mediation. Exceptions are made for the processes specified in Schedule 1, which are processes referred to in certain existing enactments that are not intended to be affected by the Bill.
6. Clause 5 also makes it clear that the Bill applies to a *mediation communication* (defined in clause 2) relating to any mediation to which the Bill applies, regardless of when the communication is made. This means that any attempt to disclose a mediation communication or to adduce it in evidence on or after the commencement date of the Bill will be subject to the restrictions provided in the Bill, even if the related mediation was completed before that date.

7. Clause 6 provides that the Bill applies to the Government.
8. Clause 7 makes it clear that the provision of assistance or support to a party to mediation in the course of the mediation does not constitute an infringement of certain provisions in the Legal Practitioners Ordinance (Cap. 159).
9. Clause 8 deals with the confidentiality of mediation communications. It forbids the disclosure of a mediation communication except—
  - (a) in the circumstances provided in clause 8(2); or
  - (b) for the purposes provided in clause 8(3) with leave of the court or tribunal under clause 10.
10. Clause 9 further restricts the admissibility of mediation communications in evidence in any proceedings by requiring leave of the court or tribunal under clause 10.
11. Clause 10 sets out the matters that the court or tribunal must take into account in deciding whether to grant leave for a mediation communication to be disclosed under clause 8(3) or admitted in evidence under clause 9. It also specifies the appropriate court or tribunal to which an application for leave should be made.
12. Clause 11 provides for consequential and related amendments to existing legislation as specified in Schedule 2. Most of these amendments standardize the use of the Chinese term “調解” for “mediation”, and “調停” for “conciliation”.