



THE
LAW SOCIETY
OF HONG KONG
香港律師會

The Law Society of Hong Kong

Information Note on Mediation Services

Introduction:

The Law Society of Hong Kong ("Law Society") has actively promoted the development of mediation in Hong Kong by providing a diverse range of mediation services to not only mediation practitioners but also the general public. The Law Society provides the following mediation related services:-

1. Mediators Nomination Scheme:

The Law Society maintains two panels of mediators, namely Panel of Accredited General Mediators and Panel of Accredited Family Mediators. All Law Society mediators are solicitors who have undergone training in mediation skills and techniques and fulfilled the Law Society's accreditation requirements. Parties to mediation can jointly apply to the Law Society for nomination of a solicitor-mediator to act as the mediator in their dispute if they cannot appoint a mediator by mutual agreement. The Law Society does not charge any administration fee for this service. Since the implementation of the nomination scheme, the Law Society has made more than 120 nominations of mediators.

2. Training:

The Law Society is one of the leading training providers in mediation in Hong Kong. We provide mediation training and set training standards to protect the interest of the users.

The Law Society also maintains a Panel of Accredited Family Mediation Supervisors to supervise trainees in family mediation.

Generally, the Law Society provides a wide range of programmes including: training courses, seminars, workshops, conferences, forums, etc.

3. Accreditation:

The Law Society implemented the Law Society's Mediator Accreditation Scheme in 2005 and now maintains a panel of 250 mediators. Moreover, the Law Society has worked closely with other mediation organisations on matters in relation to the development of accreditation of mediators in Hong Kong (i.e. formulate accreditation standards).

Moreover, the Law Society also actively engaged in formulating, standardising and improving the accreditation standards on trainers, coaches, assessors and lead assessors in mediation training and assessments. The Law Society has taken a leading position in setting the accreditation standards and providing professional trainings to experienced mediators to become qualified assessors and/or trainers in mediation assessments and trainings in order to safeguard the quality of mediators in Hong Kong. To promote



THE
LAW SOCIETY
OF HONG KONG
香港律師會

excellence to the mediation profession, the Law Society continues to communicate with other mediation organisations to work on matters in relation to the development of accreditation standards of mediation professionals.

The Law Society is a Founder Member of the Hong Kong Mediation Accreditation Association Limited ("HKMAAL") which aims to be the pre-eminent accreditation body of mediators in Hong Kong. HKMAAL's role is to safeguard the standards of mediators and protect the interest of mediation users in Hong Kong.

4. Promotion of Mediation:

The Law Society maintains a hotline: Tel. 2846 0584 and an enquiry email on mediation: mediation@hklawsoc.org.hk to provide assistance to the general public. We handle public enquires on mediation and provide information on Law Society's mediation services.

The Law Society has also published an Information Pamphlet on Mediation ("Pamphlet") to promote mediation and introduce the Law Society's mediation services to the public. The Pamphlet is currently available at the Law Society, government departments and NGOs and for download on the Law Society's website (copy attached).

In addition, the Law Society also organises or co-organises public mediation events to provide information on mediation to the general public of Hong Kong.

The Law Society of Hong Kong
April 2013



Solicitor Mediators Your Best Choice

The Law Society's Mediation Services

Introduction

In Hong Kong parties to a civil dispute which cannot be settled through negotiations proceed by taking their case to the court to be resolved by a process known as "litigation". The parties will present their case and a judge will determine how the law is to be applied; this can be a lengthy and expensive process.

The Civil Justice Reforms were implemented on 2 April 2009. One of the most important changes is the need for *all parties*, including legal representatives and their clients to consider "alternative resolution methods" as a means of settling the dispute rather than automatically proceeding to litigation to seek 'justice' to settle the dispute.

The new Order 1A of the Rules of the High Court imposes on the Court an 'underlying objective' to facilitate *settlement* of disputes. The Judiciary has issued a new *Practice Direction on Mediation* designed to encourage parties to consider mediation as a suitable alternative dispute resolution method so as to avoid the expense, time and uncertainty involved in litigation.

The Judiciary has used pilot schemes to encourage parties to use mediation to resolve disputes in the following specialist areas: family, construction, and building management cases. The Law Society recognises the benefits of mediation and considers its use should not be confined to these specialist cases.

What is Mediation?

Mediation is a voluntary process in which a professionally trained and impartial third person, the mediator, helps the parties to reach an amicable settlement that is responsive to their needs and acceptable to all sides.

The mediator brings the parties together in a face-to-face meeting in a private and confidential setting and each party will have the opportunity of putting forward his point of view and listening to what the other has to say.

The mediator does not impose a decision on the parties and is there to:

- Review what matters are in dispute;
- Explore each party's real needs and interests;
- Discuss and expand settlement options
- Discuss and assess the most suitable solution;
- Prepare the settlement agreement setting out the agreements reached by the parties to resolve each matter in dispute.

Other observations about mediation include:

- Mediation is suitable in many cases although it may not be suitable for every case.
- The mediator may invite the parties to attend a preliminary meeting in order to assess whether mediation is suitable; the parties legal advisers will be able to assist on whether to proceed;
- The parties may seek legal advice at any stage of the mediation;
- Either party has the right to terminate the mediation process at any time;
- Everything discussed in a mediation session is without prejudice which means the process is confidential and neither party can raise any issues in any legal proceedings;
- An agreement drawn up in a mediation session and signed by both parties is legally binding as a matter of contract. The agreement itself is not enforceable as a judgment, an order of the court, or an arbitration award, but an innocent party may sue upon it if the other party is in breach of its terms.

What are the Advantages of Mediation?

Mediation is increasingly popular and experiences from around the world indicate the process facilitates a high settlement rate and most people are satisfied with the outcome of mediation.

The following are some of the advantages of proceeding with mediation:

- Mediation can start *before* any litigation or at any stage during the process of litigation;
- You make your own decisions and reach agreements with which you and the other party may be more willing and ready to comply;

- Avoiding the stress and risk of the adversarial court system;
- Saving time and money with an early settlement;
- The settlement terms can be kept private and confidential;
- Terms of settlement can include matters which the court cannot order
- Enables parties to maintain a continuing relationship and may even improve that relationship;
- Chances of an appeal are reduced, in contrast to litigation where a losing party feels aggrieved by the court's decision

Who are the Mediators?


All Law Society mediators are solicitors and have undergone training in mediation skills and techniques so that they know how to conduct the mediation process by unlocking negotiations that have become deadlocked and in keeping everyone focussed on finding a solution.

The role of the mediator is to facilitate negotiations so the parties can reach a settlement of their dispute. Mediators are neutral and:

- Do not provide legal advice. Parties should consult their solicitors for such advice;
- Do not impose decisions on the parties but help assess the feasibility of the proposals made during the mediation.

How do I Find a Mediator?

Select a mediator from the Law Society's Panel of Mediators:

- Contact The Law Society of Hong Kong at mediation@hklawsoc.org.hk or 2846 0584
- Visit the Law Society's website at www.hklawsoc.org.hk and click 
- Consult your solicitor
- Visit the Law Society Secretariat at 3/F, Wing On House, 71 Des Voeux Road Central, Hong Kong to obtain information

Does Mediation Take a Long Time?

The length of the mediation depends on several factors such as:

- The complexity and number of issues you need to settle
- The level of co-operation between the parties
- readiness to participate in the mediation

Where the matter is relatively uncomplicated and the process goes smoothly, it may only take one mediation session to reach agreement.

Confidentiality

Mediators are required by their Code of Practice to observe confidentiality in respect of all matters disclosed in the mediation session. In addition, solicitors are bound by their Code of Practice to observe confidentiality. When the parties agree to take part in mediation, they will usually be required by the mediator to sign a Mediation Agreement (i.e. an agreement to mediate) that all negotiations are to be privileged and conducted on a without prejudice basis.

Who Pays for the Mediation Services?

The parties can agree to share the costs of the mediation equally or as agreed. Fees will be negotiated with the Mediator and will include the following:

- mediator's fees for his time (including perusal of papers and all mediation sessions)
- room hire costs (if any)

They will not include the fees of

- the solicitors or
- any other professional instructed (by the parties) to assist in the presentation of their cases.

THE LAW SOCIETY OF HONG KONG
3/F, Wing On House, 71 Des Voeux Road, Central, Hong Kong
Telephone: (852) 2846 0584
Facsimile: (852) 2845 0587
E-mail: mediation@hklawsoc.org.hk
Website: <http://www.hklawsoc.org.hk>

Incorporated with limited liability