

Version 1.0



Hong Kong Arbitration Society Mediation Rules

香港仲裁公會調解規則

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Introduction

These Rules are published by the Hong Kong Arbitration Society and can be applied to mediations conducted by the Hong Kong Arbitration Society's Panel of Mediators.

Mediation

1. Mediation under these Rules is a confidential, non-adversarial and co-cooperative decision-making process in which a qualified and impartial third party, “the mediator”, helps parties resolve their disputes. The mediator has no advisory or determinative role in regard to the content of the dispute or the outcome of its resolution. The parties to a dispute, with the facilitation of the mediator, identify the disputed issues, develop options, consider alternatives and endeavour to reach a voluntary settlement based upon sufficient information and legal advice for each party.

Application of Rules

2. 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

3. If a dispute arises, a party may request the initiation of mediation by delivering a written notice to request for mediation to the other party or parties (“the Mediation Notice”). The Mediation Notice shall contain:-
 - (a) a brief self-explanatory statement of the nature of the dispute,

- (b) the quantum in dispute (if any),
- (c) mode of mediation (whether the mediation will be conducted in person, by video conference, by telephone, online or other electronic or computer communication forms),
- (d) the proposed venue (if the mediation is proposed to be conducted in person),
- (e) the proposed date and time of the mediation meetings,
- (f) the proposed language of mediation, and
- (g) the nomination of a mediator or mediators thought suitable.

Response to Request for Mediation

- 4. (a) A party or parties who receive the Mediation Notice shall deliver a written response (“the Mediation Response”) to notify any other party within 7 days after receipt of the Mediation Notice whether the nominated mediator, the proposed mode of mediation, the proposed venue (if the mediation is proposed to be conducted in person), the proposed date and time of the mediation meeting and the proposed language of mediation are acceptable. Failure by any party to reply within 7 days shall be treated as a refusal to mediate.
- (b) Where the parties put forward differing proposals in the Mediation Notice and Mediation Response, the parties should attempt to reach agreement on the proposals on which they differ within 14 days of the date of Mediation Notice. Any agreement consequent upon such discussion should be reduced into writing in a minute signed by the parties or their solicitors.

Conduct of the Mediation

- 5. (a) Where the parties agree on the proposed mode of mediation, the proposed venue (if the mediation is proposed to be conducted in person), the proposed date

and time of the mediation meeting, the proposed language of mediation and the nominated mediator, and the proposed mediator is willing to serve, the mediation shall then proceed in accordance with these Rules.

- (b) If the parties fail to agree the mode of mediation within the time stipulated in Rule 4, they shall notify the Hong Kong Arbitration Society which shall decide the mode of mediation.
- (c) Where the mediation is conducted in person and if the parties fail to agree the venue within the time stipulated in Rule 4, they shall notify the Hong Kong Arbitration Society which shall decide the venue.
- (d) If the parties fail to agree the date and time of the mediation meeting within the time stipulated in Rule 4, they shall notify the Hong Kong Arbitration Society which shall decide the date and time of the mediation meeting.
- (e) If the parties and the mediator fail to agree the language of the mediation within the time stipulated in Rule 4, they shall notify the Hong Kong Arbitration Society which shall decide the language of the mediation.
- (g) If the parties fail to agree the mediator within the time stipulated in Rule 4, they shall notify the Hong Kong Arbitration Society which shall appoint a single accredited mediator who is prepared to serve and is not disqualified under Rule 6.

Disqualification of Mediator

- 6. 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 written consent of the parties. Before accepting an appointment, the proposed mediator shall disclose to the parties (and to the Hong Kong Arbitration Society if the Hong Kong Arbitration Society has made the appointment under Rule 5) any prior dealings with either of the parties or any circumstances likely to create a presumption of bias or prevent a prompt resolution of the dispute. Upon receipt of the information the

Hong Kong Arbitration Society shall immediately communicate the information to the parties for their comments. If any party takes objection to the proposed mediator within 7 days he shall not be appointed. In such case the Hong Kong Arbitration Society shall nominate another suitable accredited mediator.

The Mediation Process

7. The mediator shall commence the mediation not later than 28 days after the service of the Mediation Notice.

Role of the Mediator

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

Role of the Parties

9. The mediator may communicate with the parties together or with any party separately, including private meetings, and each party shall co-operate 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

10. 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 these Rules. 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

11. The mediation process shall come to end:-
- (a) Upon the signing of a settlement agreement by the parties;
 - (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;
 - (c) Upon written notification by any party at any time to the mediator and the other parties that the mediation is terminated;
 - (d) Upon the failure by any party to deliver the Mediation Response within 7 days of receiving the Mediation Notice;
or
 - (e) Upon the failure of the dispute to be settled within 42 days of the service of the Mediation Notice unless the time is agreed to be extended by the parties and mediators.

Confidentiality

12. (a) Mediation is a private and confidential process. Every document, communication or information disclosed, made or produced 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.
- (b) 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.

Costs

13. (a) 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. Subject to any agreement to the contrary, 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:-
- (i) the mediator's fees and expenses;
 - (ii) expenses for any witness or expert advice or opinion requested by the mediator with the consent of the parties; and
 - (iii) any costs of venue and administrative costs in support of the mediation including the Hong Kong Arbitration Society and other service provider's costs.
- (b) Hong Kong Arbitration Society may at any time during the mediation require the parties to make deposits to cover any anticipated fees and expenses and suspend the process until such deposit is made.
- (c) Any surplus funds deposited shall be returned to the parties at the conclusion of the mediation.

Mediator's Role in Subsequent Proceedings

14. No party shall be entitled to call the mediator as a witness in any subsequent adjudication, arbitration or judicial proceedings arising out of the same contract.

Exclusion of Liability

15. The parties jointly and severally release, discharge and indemnify the mediator, the Hong Kong Arbitration Society and other 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.

Governing Laws

16. These Rules, the mediation agreement and the mediation clause referred to in these Rules shall be governed by, and construed and take effect in accordance with the substantive law of Hong Kong.

English is the original drafting language of these Rules. In the event of any discrepancy or inconsistency between the English version and the Chinese version, the English version shall prevail.

簡介

本規則由香港仲裁公會編訂出版。凡由香港仲裁公會調解員名冊內之調解員所主持的調解，均可適用。

調解

1. 按本規則所進行的調解是保密、非對抗性、通過合作協商而作出決定的一個程序。當中由一位合乎資格及公正持平的第三方（“調解員”）協助爭議各方解決爭議。調解員的角色不會就爭議的內容或結果作出建議或有所裁定。爭議各方在調解員的協助下，釐定爭議之所在，構思各種解決方案，考慮其他選擇，並在爭議各方均獲得充足資料及法律意見為基礎上，致力達成自願和解協議。

本規則的應用

2. 倘若爭議各方欲以友好協商方式解決爭議並已在其合同條款或通過協議方式同意採用本規則，則本規則適用於爭議各方之間目前或將來的爭議。爭議各方可在任何時間協議更改本規則。

提請調解

3. 如發生爭議，爭議各方可向另一方或各方送達一份調解的書面通知書（"調解通知書"）。該調解通知書須包括：
 - (a) 一份簡略解釋爭議性質的陳述，
 - (b) 爭議的數額（如有的話），
 - (c) 建議進行調解的形式（即調解將會而親身出席、通過視像會議、電話、網上或其他電子或電腦通訊的方式進行），
 - (d) 建議調解會議的場地（如調解建議以親身出席的方式進行），
 - (e) 建議調解會議的日期和時間，
 - (f) 建議調解會議的語言，及
 - (g) 提名一位或多位認為適合之調解員。

對提請調解要求的回覆

4. (a) 爭議一方或各方須在收到調解通知書後的七天內，送達一份書面回覆書（"調解回覆書"），通知各方是否接受所提名的調解員、建議進行調解的形式、調解會議的建議場地（如該調解建議以親身出席的方式進行）、

調解會議的建議日期和時間及調解會議的建議語言。如任何一方未能於七天內回覆，則被視為拒絕接受調解。

- (b) 如各方在調解通知書和調解回覆書中提出不同的建議，各方須盡快嘗試在調解通知書送達後之十四天內就各項建議的分歧進行磋商。經商討達成的協議，須作出書面紀錄，並由各方（或他們的律師）在紀錄上簽署作實。

調解的進行

- 5. (a) 爭議各方如同意建議進行調解的形式、調解會議的建議場地（如該調解建議以親身出席的方式進行）、調解會議的建議日期和時間、調解會議的建議語言及所提名的調解員，而該調解員亦願意接受委任，調解便可按照本規則進行。
- (b) 如爭議各方未在本規則第四條規定的時限內就進行調解方式達成協議，爭議各方需通知香港仲裁公會，而香港仲裁公會將會決定調解的進行形式。
- (c) 當爭議各方同意以親身出席方式進行調解，而如爭議各方未在本規則第四條規定的時限內就調解場地達成協議，爭議各方需通知香

港仲裁公會，而香港仲裁公會將會決定調解場地。

- (d) 如爭議各方未在本規則第四條規定的時限內就會議的日期和時間達成協議，爭議各方須通知香港仲裁公會，而香港仲裁公會將會決定調解會議的時間和日期。
- (e) 如爭議各方未在本規則第四條規定的時限內就調解的語言達成協議，爭議各方須通知香港仲裁公會，而香港仲裁公會將會決定調解會議使用的語言。
- (f) 如爭議各方未在本規則第四條規定的時限內就委任調解員達成協議，爭議各方須通知香港仲裁公會，香港仲裁公會將委派一名已獲認可、而又願意出任調解、並且未有按本規則第六條規定被取消資格的調解員擔當調解工作。

取消調解員資格

- 6. 除非得到爭議各方當事人的書面同意，在任何爭議的調解結果中佔有財政或個人利益的人士，不得擔任為該項爭議的調解員。擬定的調解員在接受委任前，必須向爭議各方當事人披露（如經由香港仲裁公會按照本規則第五條規定而委任，則須向香港仲

裁公會披露) 任何可能產生假定偏見或妨礙儘快達成調解的情況。在收到該等資料後，香港仲裁公會須立即將資料通知各爭議各方，並徵詢其意見。如爭議任何一方在七天內提出反對選用該位擬定的調解員，香港仲裁公會將會提名另一位合適及已獲認可的調解員。

調解程序

7. 調解員於調解通知書送達後之二十八天內開始進行調解。

調解員的任務

8. 調解員在考慮及個案的情況、爭議各方的意願及迅速解決爭議的需要後，可按其認為適當的方法進行調解。

爭議各方的責任

9. 調解員可同時與爭議各方或分別與爭議任何一方聯絡，包括進行非公開會議，爭議各方應與調解員合

作。爭議各方可在任何時間要求私下會見調解員。爭議各方應全力協助調解的進行，使之能在規定時間內達成。

代表

10. 在爭議各方同意下，爭議各方可自行選擇其他人士代表或協助進行調解。該等人士必須另行簽署一份保密協議書，並同意遵守本規則的規定。爭議一方須事先將該等人士的姓名及職責知會調解員和爭議另一方。爭議各方均具有進行和解的全面權力或由具有上述權力的人士陪同下進行和解。

調解的終結

11. 調解程序將在下列情況下，即告終結：-
 - (a) 爭議各方簽立和解協議；
 - (b) 調解員經與爭議各方協商後，以書面知會爭議各方，表示他認為已無充分理由進一步調解；
 - (c) 爭議任何一方在任何時間以書面形式通知調解員及爭議另一方調解已終止；
 - (d) 爭議任何一方在收到調解通知後七天內未能送達調解回覆書；或

- (e) 爭議各方不能在調解通知書送達後四十二天內就該爭議達成和解，除非爭議各方和調解員同意將時間延長。

保密

- 12. (a) 調解是一項非公開及保密之程序。爭議任何一方為調解的目的或因與調解有關的原因而披露、製作或呈交的一切文件、通訊或資料，均是在受保密權涵蓋及無損權益的基礎上披露，而作出上述披露並不表示放棄任何保密權特權通訊或保密要求。除因履行或執行和解協議所需，和解協議亦同樣受保密要求的規範。
- (b) 任何一方概無意被調解過程中披露的任何事宜影響，而該等披露亦不會影響爭議各方在任何後繼的仲裁、審裁或訴訟中的權益或爭議各方在其中的地位。

費用

- 13. (a) 除另有協定外，不論調解結果如何或日後任何仲裁或司法程序之結果如何，爭議各方須各自承擔其本身的費用。除非爭議各方另行

同意，否則一切其他費用及支出須由爭議各方平均分擔。爭議各方並須就此承擔共同及各別責任，向香港仲裁公會及調解員支付該等費用，包括：-

- (i) 調解員的費用及開支；
 - (ii) 在爭議各方同意的情況下，因應調解員要求而產生的任何證人或專家意見的開支；及
 - (iii) 任何場地或其他支援調解程序之行政費用，包括香港仲裁公會及其他服務提供者的費用。
- (b) 香港仲裁公會可在調解過程中的任何時間，要求爭議各方提交保證金以支付任何預期的調解費用及其他開支，並可暫時中止調解，直至該保證金已獲繳納為止。
- (c) 任何預繳款項的餘額，將在調解完結時退還給爭議各方。

調解員在後繼程序中的角色

14. 任何爭議一方均無權傳召調解員作為任何因同一合同而引起之後繼審裁、仲裁或司法程序中的證人。

免除法律責任

15. 調解員以及香港仲裁公會按本規則進行的調解，其作為或不作為（不論涉及疏忽與否）所引起或有關連的任何責任，爭議各方須共同及各別地予以免除、解除及彌償，但任何欺詐或不誠實作為所產生的後果除外。

適用法律

16. 本規則，本規則所指調解協議書和調解條款將適用於香港法律，並按照其規定進行解釋和生效。

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