

## Mediation Rules

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### Hong Kong Mediation Centre Mediation Rules

## INTRODUCTION

### Mediation Rules

These Rules are published by the Hong Kong Mediation Centre (HKMC) developed in accordance with the Mediation Ordinance (Cap.620 Laws of Hong Kong) commenced on 1 January 2013 which is an ordinance to provide a regulatory framework in respect of certain aspects of mediation and to make consequential and related amendments. These Rules should also be interpreted with the Mediator's Rules & Code of Ethics of HKMC.

### Hong Kong Mediation Centre

HKMC was established in 1999 to assist disputing parties to resolve their disputes by mediation. HKMC is a legal entity in the form of a company limited by guarantee which has the status of a charitable institution recognized by the Inland Revenue Department of HKSAR. HKMC is also the first non-profit making mediation institution with charitable status in Hong Kong. The composition of HKMC is a group of professionals in various fields who are committed in the promotion of mediation.

### Suggested Mediation Clause in the contract

“Any dispute or difference arising out of or in connection with this contract shall first be referred to mediation at Hong Kong Mediation Centre (HKMC) and in accordance with its then current Mediation Rules.

### Mediation Rules (the “Rules”)

#### Mediation

- 1. Mediation is a structured confidential, voluntary and private dispute resolution process comprising one or more sessions in which one or more impartial individuals (the mediator), without adjudicating a dispute or and aspect of it, assists the parties to the dispute to reach a negotiated settlement.**

## **Application of Rules**

2. The Rules apply to the mediation where the parties seek amicable settlement of their disputes under an agreement that these Rules shall apply either by stipulation in their contract or by agreement.

## **Initiation of the Mediation Process**

3. (a) A party to the dispute may deliver a written request for mediation to the other party or parties with copies to HKMC to request for the initiation of mediation. 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 nominating a mediator or mediators considered to be suitable for the disputes.

(b) The names, addresses, phone and fax numbers of all parties to the dispute, and those who will represent them, should be exchanged between the parties and also furnished to the HKMC.

(c) A responding time of 14 calendar days should be clearly stated in the written request and failure to reply should be treated as a refusal to mediate.

## **Response to Request for Mediation**

4. A party or parties who receive a request for mediation shall notify any other party and HKMC within 14 calendar days in writing after receipt of the request whether mediation will be adopted and any nominated mediator is acceptable. Failure by any party to reply within 14 calendar days shall be treated as a refusal to mediate.

## **Appointment of the Mediator**

5. Where the parties agree on a mediator and the proposed mediator is willing to serve, they will notify HKMC. The mediation shall then proceed in accordance with these Rules. If the parties fail to agree within the time stipulated in Rule 4 they will notify HKMC who shall appoint an accredited mediator who is prepared to serve and is not disqualified under Rule 6.

### **Conflict of Interest**

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 consent of the parties. Before accepting an appointment, the proposed mediator shall disclose to the parties (and to the HKMC if the HKMC has made the appointment under Rule 5) any circumstances likely to be reasonably considered to affect the mediator's capacity to act impartially or prevent a prompt resolution of the dispute. Upon receipt of the information HKMC 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 HKMC shall nominate another suitable accredited mediator.

### **The Mediation Process**

7. Unless with the consent of the parties considering the special nature of the dispute, the mediator shall commence the mediation as soon as possible after his appointment and shall use his best endeavors to conclude the mediation within 42 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**

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. The parties may be represented or assisted by persons of their choice. 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 an end:-
  - (a) Upon the settlement (in whole or in part) by the parties and the signing of a settlement agreement or any other written records of the settlement;
  - (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**

12. (i) 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.  
  
(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.  
  
(iii) A person must not disclose a mediation communication except as provided by subsection (2) or (3) of Section 8 of the Mediation Ordinance.

#### **Costs of the Mediation**

13. (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 mediation 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 (if any);
- (c) expenses on the meeting venue (if any); and
- (d) any administrative costs in support of the mediation including HKMC's costs.

(ii) The mediator 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.

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

(iv) Notwithstanding Rule 13(i) above, the parties agree that any court or tribunal may treat both the mediation fees and each parties' costs as costs in the case in relation to any litigation or arbitration where that court or tribunal has power to assess or make orders as to costs, whether or not the mediation results in settlement of the dispute.

#### **Mediator's Role in Subsequent Proceedings**

14. The parties undertake that the mediator shall not be appointed as adjudicator, arbitrator or representative, counsel or expert witness of any party in any subsequent adjudication, arbitration or judicial proceedings whether arising out of the mediation or any other dispute in connection with the same contract. 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 and the HKMC 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.