



Current Experience and Challenges of Mediation in Hong Kong – Selection and Appointment of Mediators

The Honourable Mr. Justice AU

The Court of First Instance of the High Court, the Judiciary

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1



Case Management Duty of the Court

- Order 1A Rule 4(2)
- Active case management includes
 - (e) encouraging the parties to use an ADR procedure if the Court considers that appropriate, and facilitating the use of such a procedure
 - (f) helping the parties to settle the whole or part of the case

2



Practice Direction 31 – Mediation “PD 31”

- The civil justice system serves as a means for the fair resolution of dispute between parties
- As specified in our new Order 1A, the objectives of our procedures include the achievement of procedural economy in the process and the facilitation of settlement
- Lawyers and parties are required to assist the court in furtherance of these objectives
- Case management involves proper consideration of different options to achieve a resolution

3



Main features of PD 31

- Mediation Certificate
- Mediation Notice and Response
- Court directions on Mediation mechanics
- Interim stay
- Costs sanction

4



The Role of a Judge

- The unique position of a judge:
impartial view on
 - Selection of mediator
 - Follow the direction of PD 31
- Civil litigation is only a means to resolve dispute

5



Consideration of mediation at case management hearings

- The Court can form its independent opinion on appropriateness of mediation in view of Mediation Certificates
- The view of the Court can assist litigants in assessing viability of mediation
- The Court can refer litigants to attend information sessions at Mediation Information Office (MIO) / Co-ordinators' Offices (FMCO & BMMCO)

6

Mediation Certificate

Page 1 of Appendix B Appendix B

Specimen Mediation Certificate
[Title as per proceedings]

Part I

1. Is the Plaintiff / Defendant willing to attempt mediation with a view to settling these proceedings?¹
2. If the Plaintiff / Defendant is not willing to attempt mediation, please state the reasons in this Certificate or, if thought desirable, such reasons or additional reasons should be set out in a statement signed by the party concerned or his solicitor and attached to this Certificate in a sealed envelope².

¹ If a party is willing to attempt mediation, he should issue a Mediation Notice in accordance with this Practice Direction.
² Such a sealed statement should be marked and given effect as a statement without prejudice save as to costs and will be inspected by the Court only if an issue arises in relation to costs. The use of such a sealed statement may be thought desirable if privileged information may be involved. The statement (or marked) should however be sent to the other parties.

Page 2 of Appendix B

Part II

I, [name], solicitor of [firm name] having conduct of the proceedings on behalf of [plaintiff/ defendant] confirm as follows:

- (a) I have explained to our client the availability of mediation with a view to settling the dispute or part(s) of the dispute, and the respective costs positions of mediation as compared with the costs of the litigation.
- (b) I have explained to our client the Mediation Practice Direction.
- (c) The information set out under Part I is to the best of my knowledge and belief true and correct.

[signed by the solicitor]

Part III

I, [name], the plaintiff / defendant (if the party is a corporation or an association, describe the position of the person signing this certificate, and state the authority of the person to represent the party) in these proceedings, acknowledge that I understand the Practice Direction on Mediation and the availability of mediation to resolve the dispute instead of litigation. I further confirm the information set out under Part I is true and correct.

[signed by the party]

¹ When the party does not understand English, the party should sign a Chinese version or there should be a signed interpretation clause.

Mediation Notice

Page 1 of Appendix C Appendix C

Specimen Mediation Notice
[Title as per proceedings]

Applicant: Solicitors for the Applicant.
Respondent: Solicitors for the Respondent.

1. The Applicant wishes to attempt mediation to resolve all (or a specified part) of its disputes with the Respondent and makes the following proposals¹.
2. If the Applicant wishes to propose the adoption of the rules of a particular body² for the proposed mediation, specify them³.
3. The Applicant proposes to appoint [name of mediator] as the mediator. The CV of [name of mediator] is attached. The estimated costs for engaging [name of mediator] are [costs in figures].
4. The Applicant proposes [name of venue] as the venue for the mediation. The estimated costs of renting the venue for the mediation are [costs in figures].
5. [The Applicant makes the following proposals as to payment of fees and costs for the mediation and whether the same could be recoverable as costs of the proceedings if the mediation fails.]
6. The Applicant proposes that [a specified minimum level of participation⁴] should qualify as a sufficient attempt at the mediation.

¹ An Applicant wishing to attempt mediation should make as many of the proposals referred to in paragraphs 1 to 5 as possible. It is to be used as a proposal to settle some of these proposals, he should nevertheless file the notice and then make proposals to the other party.
² For example the Mediation Rules published by the Hong Kong International Arbitration Centre in consultation with the Hong Kong Mediation Council or the Mediator's Rules and Code of Ethics of the Hong Kong Mediation Centre.
³ A mediator may be understood without the adoption of the rules of a particular body. If the Applicant does not wish to propose the adoption of such rules, this paragraph will not be applicable.
⁴ An example of a specified minimum level of participation may be an "Agreement" between the parties as to the identity of the mediator and the terms of his or her appointment, agreement as to the rules applicable to the mediator (if any) and participation by the parties in the mediation up to and including at least one substantive mediation session (of a duration determined by the mediator) with the mediator.

Page 2 of Appendix C

7. The Applicant proposes that the mediation should commence within [state period of time].
8. The Applicant requests / opposes an interim stay of the legal proceedings for [] days pending the mediation process.
9. The Applicant's willingness to pursue mediation is / is not conditional upon an interim stay of the legal proceedings being granted.

Dated this of 2009.

[signed by the Applicant or his solicitor]

¹ When the Notice is signed by a party who does not understand English, the party should sign a Chinese version or there should be a signed interpretation clause.



Roles of the Mediation Offices in the Judiciary (Information Provider & Educator)

- Conduct information sessions
- Alert the parties the impact of persistent disputes
- Achieve win-win situation
- Explain the advantages of mediation
- Introduce the role of the mediator

9



Content of an Information Session

- Mediation Video
- Mini lecture delivered by Mediation Affairs Officers / Mediation Coordinators
- Q & A

10



Family Mediation Coordinator's Office



Location: 1st Floor, Wanchai Tower,
12 Harbour Road, Hong Kong

11



Building Management Mediation Coordinator's Office



Location: 2nd Floor, Lands Tribunal Building,
38 Gascoigne Road, Kowloon

12



Mediation Information Office



Location: Room LG104, LG1 High Court Building,
38 Queensway, Hong Kong

13



Roles of the Mediation Offices in the Judiciary (Resource Person)

- Leaflets & materials on mediation
- Resource Corner
- Videos on Mediation
- Webpage of Mediation in the Judiciary website
- Built-in computer terminals for court users

14



Mediation Webpage

- Website: mediation.judiciary.gov.hk
- Email: mediation@judiciary.gov.hk

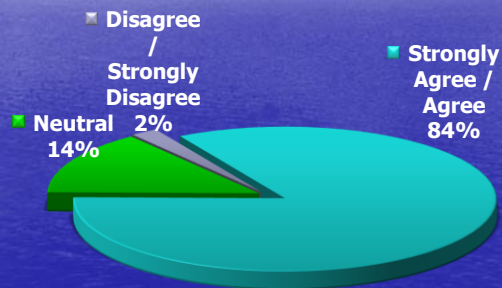


15

Summary of Users' Opinion Survey to Information Sessions on Mediation held by Mediation Information Office (Jan 2010 ~ April 2012)

Parties considered the Information Session on Mediation has helped to better their understanding of mediation

	No.	%
Strongly Agree / Agree	735	84%
Neutral	120	14%
Disagree / Strongly Disagree	18	2%
Total	873	100%



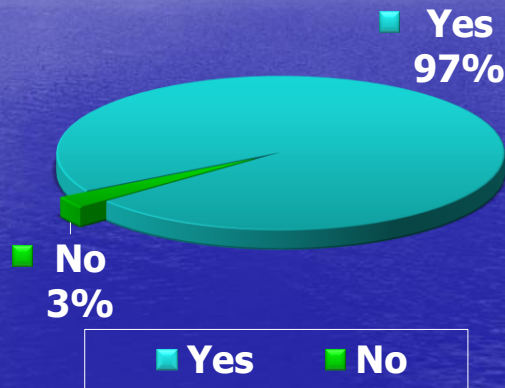
- Strongly Agree / Agree
- Neutral
- Disagree / Strongly Disagree

16

Summary of Users' Opinion Survey to Information Sessions on Mediation
held by Mediation Information Office
(Jan 2010 ~ April 2012)

**Parties would recommend the Information Session on Mediation to a
friend in similar situation as theirs**

	No.	%
Yes	849	97%
No	22	3%
Total	871	100%



17



The Referring Mechanism FMCO & BMMCO

- Pre-mediation Consultation / Intake interview after Information Session for each party
- Panel list of mediators for parties' consideration
- Assisting parties to agree on the choice of a mediator
- Liaising with proposed mediators about their availability
- Referring case to mediator for mediation service
- Collecting the mediation results from appointed mediators

18



Evaluation Report on Mediation for Building Management Cases in the Lands Tribunal of the Judiciary (Jan 2008 – Dec 2010)

- 3-year Users' Satisfaction Survey
 - No. of survey issued: 636
 - No. of survey returned: 329
 - Respond rate: 52%

19



Respondents' Criteria for selecting a mediator

1	Profession	208	26%
2	Fee-charging	207	26%
3	Experience	168	21%
4	Location to provide mediation	65	8%
5	Time to provide mediation	59	7%
6	Language	52	7%
7	Other Party's choice	27	3%
8	Gender	9	1%
9	Others	11	1%
	Total	806	100%

20



Certain comments from the Users' Satisfaction Survey on the appointed mediators

- Although no agreement could be reached, the mediator's impartial, fair and objective attitude, and offering his/her office as the venue for mediation, was truly valuable, I was highly satisfied with the overall service.
- 雖然未能達成協議，但調解員持公正、公平客觀的態度，更加借出其辦公室作服務地點，實難能可貴，我感到整體的服務非常滿意。

21



- Mediation was beneficial and constructive to both parties, [it] could effectively reduce the differences between both parties, although I could not achieve the result as I expected in this mediation, I would wholeheartedly thank the mediator. He had tried his greatest efforts.
- 調解對雙方有益有建設性，有效地將雙方的分歧拉近，雖然我在這次調解未能達成我所期望的結果。但我是衷心感謝為我作調解的調解員，他已盡了最大之努力。
- Mediator's attitude, active assistance is an essential element in reaching an agreement.
- 調解員的態度，積極的協助是達成和解不可缺少的因素。

22



- Experience of a mediator is very important, such as time management and atmosphere moderation have to be done. Otherwise, the mediation would be lead by both parties, but not by the mediator, after being overshadowed, the result is unsuccessful.
- 調解員的經驗是非常重要的，如控制時間和緩和氣氛是必須要實行。否則調解就被雙方帶領而不是由調解員帶領，調解員被他人蓋過，結果是不成功。

23



- A mutually satisfied result may not be achieved in one or two mediation sessions. Especially if there is a deep difference between two parties, that cannot be resolved easily. Thus, if the mediator can patiently provide mediation service to both parties, the chance of success will be highly increased.
- 調解很可能不是一次或二次可以達成雙方滿意的結果。尤其是雙方有很深的歧見，不容易化解的。所以如果調解員能耐心地給予雙方的調解服務，那麼成功的機會便大大提高。

24



Thank You