

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.

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律師 - 您的首選調解員

香港律師會 調解服務

引言

在香港，民事糾紛的各方若不能透過協商解決有關爭議，便會採取下一步，交由法庭透過訴訟程序解決有關爭議。各方會陳述其案情，而法官便會決定應如何把法律應用在訴訟之中。這過程可以既漫長又昂貴。

民事司法制度改革已於2009年4月2日落實。其中一項最重要的轉變，是各方當事人（包括法律代表及其當事人），均有需要考慮以「另類方式」解決爭議，而非自動進行訴訟求取「公義」，以解決紛爭。

新的《高等法院規則》命令1A要求法庭以解決爭議為最終目標。司法機構已經發出有關調解的實務指示，鼓勵各方當事人考慮以調解作為解決爭議的恰當方式，以減少訴訟引致的支出、時間，及過程的不確定性。

司法機構亦已引入不同的試驗計劃，鼓勵各方當事人在家事、建築、大廈管理等專業範疇使用調解服務以解決爭議。律師會認同調解可帶來的好處，並認為調解服務並不應該局限於以上範圍。

甚麼是調解？

調解的參與屬自願性質，由一名公正和受過專業訓練的第三者，即調解員，協助各方當事人在良好的氣氛下，達致既能滿足各方所需，又為各方所接受的和解。

調解員會安排各方當事人在一個私人 and 保密的環境下，進行面對面的洽談。各方均有機會陳述本身的論點並聆聽對方的說法。

調解員不會強行把決定加諸各方當事人身上，而會：

- 審核受爭議的事項；
- 探討各方的實際需要和權益所在；
- 討論並擴大和解方案之選擇範圍；
- 討論並評估最合適的解決方案；
- 預備和解協議，就每項爭議列出各方所同意的協議項目。

其他關於調解的意見包括：

- 雖然調解並非適用於每一宗案件，但許多案件都適合進行調解；
- 調解員或會邀請各方當事人出席初步會議，為案件是否適合調解進行評估；各方的法律顧問亦可就應否進行調解提供意見；
- 當事人在調解過程的任何階段均可尋求法律意見；
- 任何一方均有權隨時終止調解；
- 雙方必須明白，對方在調解會議上說話的內容並不影響他的權利（即有關內容保密而雙方均不可將之用於任何法律程序上）；
- 在調解會議上草擬的協議，經雙方簽署後在法律上具有合約之約束力。經調解達成的和解協議，不可作為判決、法庭命令或仲裁裁決般強制執行，但如一方違反協議條款，無過錯的一方則可根據協議起訴對方。

調解有甚麼好處？

世界各地的經驗顯示，調解達至和解的比率甚高，使用者大多對調解的結果感到滿意。

進行調解，有以下的好處：

- 調解可於訴訟之前，或於訴訟的任何階段開始；
- 各方當事人自行作出決定和達成協議，因而可能會更願意遵守協議的內容；
- 可避免對抗式訴訟制度中出現的壓力和風險；

- 及早達致和解，省時省錢；
- 和解協議的條款可保密和不外洩；
- 和解方案可包括法院所不能命令的事項；
- 有助維持各方當事人的關係，甚至能改善彼此之間的關係；
- 在訴中，敗訴一方往往感到受損害；相對而言，調解可減低提出上訴的機會。

誰是調解員？


所有香港律師會的調解員均是律師，並接受過有關調解技巧和方法的訓練，因此即使談判陷於膠著狀態，他們也善於打破僵局，令調解過程得以繼續，並促使各方專注於尋求解決的方案。

調解員的角色，是促進各方的談判過程，讓各方的爭議可以得到和解。調解員的角色是中立的，亦不會：

- 提供法律意見。若各方當事人需要法律意見，鼓勵他諮詢自己的律師；
- 把決定強加於當事人身上，但會協助當事人評估他所作決定的可行性。

往哪裡找調解員？

可在律師會的調解員名冊中選擇一位調解員：

- 向香港律師會垂詢：
電郵 mediation@hklsoc.org.hk 或電話 2846 0584
- 登入律師會網址：www.hklsoc.org.hk 然後點擊 
- 徵詢你的律師
- 往律師會（地址：香港中環德輔道中71號永安集團大廈3樓）索取有關資料

調解費時嗎？

調解需時長短視乎不同因素，例如：

- 爭議事項的多寡和複雜程度
- 各方當事人的合作程度
- 參與調解會議的意願

如果爭議事項不太複雜，而調解過程又順利的話，各方當事人或只需參與一次調解會議便可達成協議。

保密

根據調解員的實務守則，調解員必須對調解會議中透露的所有事宜保密。若各方當事人同意參與調解，調解員通常會要求他們簽署一份《調解協議書》（即同意進行調解的協議），表明進行的一切談判，均享有不被披露的特權，並在任何權利不受影響的基礎上進行。

調解服務的費用由誰支付？

各方當事人可以平均或按協議分擔調解的費用，並可與調解員商議費用水平。調解費用包括：

- 調解員的計時收費（包括審閱文件及所有調解會議的時間）
- 租用會議室須繳付的租金（若適用）

調解服務的費用並不包括：

- 律師費，或
- 當事人所聘用，以協助當事人陳述其意見的專業人士

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