



“Mediate First” Pledge Event 2019

Mediate First: Unlocking Potential

The Hong Kong Courts’ Role in
Encouraging and Facilitating the Use of Mediation
in the Settlement of Litigations

The Honourable Madam Justice Lisa Wong
Judge of the Court of First Instance of the High Court,
HKSAR

24 May 2019



Civil Justice Reform (CJR) 2009

- An underlying objective of the rules of courts to facilitate settlement of disputes
- Revised rules of courts require courts to:
 - Help parties to settle
 - Encourage them to resort to alternative dispute resolution (ADR) to try to settle
 - Facilitate the use of such alternative procedure



Practice Direction 31 – Mediation (PD31)

- Primary form of ADR promoted under CJR:
MEDIATION
- Promulgation of PD31 to set up a mediation protocol
- Application: all civil proceedings begun by writ in Court of First Instance and District Court, with a few exceptions



Mediation Certificate

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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 takes 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 (so marked) should however be sent to the other parties.

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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]

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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]³

³ Where the party does not understand English, the party should sign a Chinese version or there should be a signed interpretation clause.



Mediation Notice

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Appendix C

Specimen Mediation Notice
[Title as per proceedings]

Applicant: Respondent:
Solicitors for the Applicant: 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 2 to 7 as possible. If he is not in a position to make 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 mediation may be undertaken 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 as follows: "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 mediation (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".

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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]⁵

⁵ Where 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.



- Court may on application give directions on mediation.
- On joint application, court can resolve any differences, including the mediator to be appointed.
- Otherwise, court can only resolve differences on details or mechanics of mediation.
- The court can refer unrepresented litigants to attend information sessions at Integrated Mediation Office.



Integrated Mediation Office





The Integrated Mediation Office (IMO) of the Judiciary

- Commenced operation since May 2018
- A focal point by which courts distribute mediation-related information in all civil cases, including matrimonial or family matters and building management cases



Roles of the IMO (Educator)

- Conduct information sessions
- Provide general education to the public
- Deliver educational talks to litigants, professional bodies, education institutions, government departments and court users



Roles of the IMO (Resource Person)

- Leaflets & written materials on mediation
- Resource Corner
- Videos on Mediation
- Webpage of Mediation in Judiciary website
- Built-in computer terminals for court users
- Help parties identify and appoint a mutually agreed mediator for family or building management cases



Mediation Webpage

- Website: <http://mediation.judiciary.hk>
- Email: mediation@judiciary.hk

The screenshot displays the homepage of the Mediation website. At the top, there is a navigation bar with links for 'File', 'Edit', 'View', 'Favorites', 'Tools', and 'Help'. Below this is a banner image with the text 'Mediation An alternative means to resolve disputes' and 'Hong Kong Judiciary'. The main content area is titled 'Welcome Message' and contains a paragraph about Practice Direction 31 (PD 31) effective from 1 January 2010. It also includes a section for 'Services and Facilities' with links to 'Integrated Mediation Office' and 'Building Management Mediation Co-ordinator's Office', a 'Mediation Videos' section with links to 'General Mediation', 'Building Management Mediation', and 'Family Mediation', and a 'FAQs' section with links to 'What is Mediation?' and 'How can I appoint a Mediator?'. The footer includes the W3C WAI-AA WCAG 2.0 logo and navigation links for 'Home', 'Contact Us', 'Site Map', and 'Disclaimer'.



Mediation Webpage Statistics





Essence of Practice Direction 31

- Mediation Certificate, Notice, Response & Minute are NOT mere formalities.
- Mediation is now a substantive stage in civil litigation.
- Duties of lawyers to advise, and of parties to consider, mediation.
- Adverse costs order may be made for unreasonable refusal or failure to engage in mediation.



Extension of mediation protocol to:

- Family proceedings
- Personal injuries claims
- Employees' compensation claims
- Contentious probate & administration of estates proceedings
- Construction disputes
- Building management disputes
- Cases under the Land (Compulsory Sale for Redevelopment) Ordinance (Cap 545)
- Shareholders' "unfair prejudice" petitions
- "Just and equitable" companies winding-up petitions



West Kowloon Mediation Centre





West Kowloon Mediation Centre (WKMC)

- Commenced operation from Nov 2018
- Pilot Mediation Scheme steered by DoJ
- Litigants in appropriate Small Claims Tribunal cases will be referred to the WKMC
- Provision of mediation services upon payment of a nominal all inclusive application fee of \$200 each



Cases in which a HK judge will play the role of conciliator

- Family cases where there is an application for ancillary relief or a dispute over children
- Financial Dispute Resolution (FDR) hearing
- Children Dispute Resolution (CDR) hearing
- Personal attendance of parties is required.
- Parties try to settle with assistance of the judge as conciliator.
- Judge ceases involvement if case is not settled.



Judiciary's Working Party on Mediation

- Established in January 2007 to consider at policy level how settlement of civil litigations in HK courts and tribunals through mediation may be facilitated
- Chaired by Mr Justice Lam, VP with cross-sectional membership
- Regular meetings to identify and explore new measures to promote and facilitate use of mediation to help litigants resolve disputes



3 MESSAGES

- Litigation is not an end but only a means for resolving disputes.
- There is another more time and cost effective option available.
- The Hong Kong courts are committed to facilitate the amicable consensual resolution of disputes.



Thank You