

# THE HONG KONG MEDIATION CODE

## General Responsibilities

1. The Mediator shall act fairly in dealing with the Parties to the mediation, have no personal interest in the terms of any Settlement Agreement, show no bias towards the Parties, be reasonably available as requested by the Parties, and be certain that the Parties have been informed about the mediation process.

## Responsibilities to the Parties

### 2. Impartiality/Conflict of Interest

The Mediator shall maintain impartiality towards all Parties. The Mediator shall disclose to the Parties any affiliations/interests which the Mediator may have or had with any Party and in such situation obtain the prior written consent of all the Parties before proceeding with the mediation.

### 3. Informed Consent

- (a) The Mediator shall explain to all Parties the nature of the mediation process, the procedures to be utilised and the role of the Mediator.
- (b) The Mediator shall ensure the Parties sign an Agreement to Mediate prior to the substantive negotiations between the Parties.\*
- (c) The Agreement(s) to Mediate shall include the responsibilities and obligations of the Mediator and the Parties.

### 4. Confidentiality

- (a) The Mediator shall keep confidential all information, arising out of or in connection with the mediation, unless compelled by law or public policy grounds.
- (b) Any information disclosed in confidence to the Mediator by one of the Parties shall not be disclosed to the other Party without prior permission.
- (c) Paragraphs 4(a) and 4(b) shall not apply in the event such information discloses an actual or potential threat to human life or safety.

### 5. Suspension or Termination of Mediation

The Mediator shall inform the Parties of their right to withdraw from the mediation. If the Mediator believes that a party is unable or unwilling to participate effectively in the mediation process, the Mediator can suspend or terminate the mediation.

\* A sample Agreement to Mediate is attached.

6. **Insurance**

The Mediator shall consider whether it is appropriate to be covered by professional indemnity insurance and if so, shall ensure that he/she is adequately covered.

**Defining the Process**

7. **Independent Advice and Information**

In a mediation in which a Party is without legal representation or relevant expert opinion, the Mediator shall consider whether to encourage the Party to obtain legal advice or relevant expert opinion.

8. **Fees**

The Mediator has a duty to define and describe in writing the fees for the mediation. The Mediator shall not charge contingent fees or base the fees upon the outcome of the mediation.

**Responsibilities to the Mediation Process and the Public**

9. **Competence**

The Mediator shall be competent and knowledgeable in the process of mediation. Relevant factors shall include training, specialist training and continuous education, having regard to the relevant standards and/or accreditation scheme to which the Mediator is accredited. For example, in the event the mediation relates to separation/divorce, the Mediator shall have attained the relevant specialist training and the appropriate accreditation.

10. **Appointment**

Before accepting an appointment, the Mediator must be satisfied that he/she has time available to ensure that the mediation can proceed in an expeditious manner.

11. **Advertising/promotion of the Mediator's services**

The Mediator may promote his/her practice, but shall do so in a professional, truthful and dignified manner.

**\*AGREEMENT TO MEDIATE**

THIS AGREEMENT IS MADE ON \_\_\_\_\_

BETWEEN THE FOLLOWING PERSONS (*in this Agreement called the 'Parties'*)

\_\_\_\_\_  
(*Name of Party: Please Print*)

\_\_\_\_\_  
(*Name of Party: Please Print*)

\_\_\_\_\_  
(*Contact Telephone Number*)

\_\_\_\_\_  
(*Contact Telephone Number*)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(*Address*)

\_\_\_\_\_  
(*Address*)

AND THE MEDIATOR (*called 'the Mediator'*)

\_\_\_\_\_  
(*Name of Mediator: Please Print*)

\_\_\_\_\_  
(*Contact Telephone Number*)

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_  
(*Address*)

**APPOINTMENT OF MEDIATOR**

1. The Parties appoint the Mediator to mediate the Dispute between them in accordance with the terms of this Agreement.

## **ROLE OF THE MEDIATOR**

2. The Mediator will be neutral and impartial. The Mediator will assist the Parties to attempt to resolve the Dispute by helping them to:
  - (a) systematically isolate the issues in dispute;
  - (b) develop options for the resolution of these issues; and
  - (c) explore the usefulness of these options to meet their interests and needs.
3. The Mediator may meet with the Parties together or separately.
4. The Mediator will not:
  - (a) give legal or other professional advice to any Party; or
  - (b) impose a result on any Party; or
  - (c) make decisions for any Party.

## **CONFLICT OF INTEREST**

5. The Mediator must, prior to the commencement of the mediation, disclose to the Parties to the best of the Mediator's knowledge any prior dealings with any of the Parties as well as any interest in the Dispute.
6. If in the course of the mediation the Mediator becomes aware of any circumstances that might reasonably be considered to affect the Mediator's capacity to act impartially, the Mediator must immediately inform the Parties of these circumstances. The Parties will then decide whether the mediation will continue with that Mediator or with a new mediator appointed by the Parties.

## **COOPERATION BY THE PARTIES**

7. The Parties agree to cooperate in good faith with the Mediator and each other during the mediation.

## **AUTHORITY TO SETTLE AND REPRESENTATION AT THE MEDIATION SESSION**

8. The Parties agree to attend the mediation with authority to settle within any range that can reasonably be anticipated.
9. At the mediation each Party may be accompanied by one or more persons, including legally qualified persons, to assist and advise them.

## **COMMUNICATION BETWEEN THE MEDIATOR AND THE PARTIES**

10. Any information disclosed to a Mediator in private is to be treated as confidential by the Mediator unless the Party making the disclosure states otherwise.

## **CONFIDENTIALITY OF THE MEDIATION**

11. Every person involved in the mediation:
  - (a) will keep confidential all information arising out of or in connection with the mediation, including the fact and terms of any settlement, but not including the fact that the mediation is to take place or has taken place or where disclosure is required by law to implement or to enforce terms of settlement;and
  - (b) acknowledges that all such information passing between the Parties and the Mediator, however communicated, is agreed to be without prejudice to any Party's legal position and may not be produced as evidence or disclosed to any judge, arbitrator or other decision-maker in any legal or other formal process, except where otherwise disclosable in law.
12. Where a Party privately discloses to the Mediator any information in confidence before, during or after the mediation, the Mediator will not disclose that information to any other Party or person without the consent of the Party disclosing it, unless required by law to make disclosure.
13. The Parties will not call the Mediator as a witness, nor require him to produce in evidence any records or notes relating to the mediation, in any litigation, arbitration or other formal process arising from or in connection with the Dispute and the mediation; nor will the Mediator act or agree to act as a witness, expert, arbitrator or consultant in any such process.
14. No verbatim recording or transcript of the mediation will be made in any form.

## **TERMINATION OF THE MEDIATION**

15. A Party may terminate the mediation at any time after consultation with the Mediator.
16. The Mediator may terminate the mediation if, after consultation with the Parties, the Mediator feels unable to assist the Parties to achieve resolution of the Dispute.

## **SETTLEMENT OF THE DISPUTE**

17. No terms of settlement reached at the mediation will be legally binding until set out in writing and signed by or on behalf of each of the Parties.

## **EXCLUSION OF LIABILITY AND INDEMNITY**

18. The Mediator will not be liable to any Party for any act or omission by the Mediator in the performance or purported performance of the Mediator's obligations under this Agreement unless the act or omission is fraudulent.

19. Each Party indemnifies the Mediator against all claims by that Party or anyone claiming under or through that Party, arising out of or in any way referable to any act or omission by the Mediator in the performance or purported performance of the Mediator's obligations under this agreement, unless the act or omission is fraudulent.
20. No statements or comments, whether written or oral, made or used by the Parties or their representatives or the Mediator within the mediation shall be relied upon to found or maintain any action for defamation, libel, slander or any related complaint, and this document may be pleaded as a bar to any such action.

### **MEDIATION CODE**

21. The mediation shall proceed according to the terms of this Agreement and the Hong Kong Mediation Code.

### **COST OF THE MEDIATION**

22. The Parties will be responsible for the fees and expenses of the Mediator in accordance with the SCHEDULE.
23. Unless otherwise agreed by the Parties in writing, each Party agrees to share the mediation fees equally and also to bear its own legal and other costs and expenses or preparing for and attending the mediation ("each Party's Legal Costs") prior to the mediation. However, each Party further agrees that any court or tribunal may treat both the mediation fees and each Party's legal 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.

### **LEGAL STATUS AND EFFECT OF THE MEDIATION**

24. Any contemplated or existing litigation or arbitration in relation to the Dispute may be started or continued despite the mediation, unless the Parties agree or a court orders otherwise.
25. This Agreement is governed by the law of the Hong Kong Special Administrative Region and the courts of the Hong Kong Special Administrative Region shall have exclusive jurisdiction to decide any matters arising out of or in connection with this Agreement and the mediation.

**FULL DISCLOSURE** (applicable to family mediation)

26. (a) The Parties agree to fully and honestly disclose all relevant information as requested by the Mediator and by each other.  
(b) Any failure by either of the Parties to make full and frank disclosure may result in the setting aside of any agreement reached in mediation.

**SIGNING OF THE AGREEMENT TO MEDIATE**

Date: \_\_\_\_\_

\_\_\_\_\_  
*Name of Party or Representative (Please print and sign here)*

\_\_\_\_\_  
*Name of Party or Representative (Please print and sign here)*

\_\_\_\_\_  
*Name of Party or Representative (Please print and sign here)*

\_\_\_\_\_  
*Name of Party or Representative (Please print and sign here)*

\_\_\_\_\_  
*Name of Mediator (Please print and sign here)*

## **SCHEDULE**

### **Fees and Expenses of Mediator**

- |    |                     |    |            |
|----|---------------------|----|------------|
| 1. | For all preparation | \$ | (per hour) |
| 2. | For the mediation   | \$ | (per hour) |
| 3. | Room hire fees      | \$ |            |
| 4. | Allocation of costs |    |            |
|    | Party 1             |    | %          |
|    | Party 2             |    | %          |
|    | Party 3             |    | %          |
|    | Party 4             |    | %          |
|    | <b>Or</b>           |    |            |
|    | All parties equally |    | %          |