

## Joint Mediation Helpline Office Mediation Rules

*Effective from 12 July 2010*

(These Rules are drawn up based on the Rules of the Law Society of Hong Kong and the Hong Kong International Arbitration Centre. The Joint Mediation Helpline Office acknowledges their permissions for this.)

### **Introduction**

1. These Rules shall be referred to as the Joint Mediation Helpline Office Ltd. (“JMHO”) Mediation Rules.

### **Mediation**

2. Mediation under these Rules is a confidential, voluntary, non-binding and private dispute resolution process in which a neutral person (the mediator) helps the parties reach a negotiated settlement.

### **Application of Rules**

3. These Rules apply to the mediation of present or future disputes where the parties seek amicable settlement of such disputes and where, either by stipulation in their contract or by agreement, they have agreed that these Rules shall apply. The parties may agree to vary these Rules at any time.

### **Initiation of the Mediation Process**

4. If a dispute arises, a party may request the initiation of mediation by delivering a written request for mediation to the JMHO or the other party or parties with copies to the JMHO. 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 any special preference of requirements for the mediation.

### **Response to Request for Mediation**

5. A party or parties who receive a request for mediation shall notify any other party and the JMHO within 10 days after receipt of the request whether the request for mediation is accepted. Failure by any party to reply within 10 days shall be treated as a refusal to mediate.

### **Appointment of the Mediator**

6. Unless there has been an agreement of the parties on a mediator who is on the list/panel of the participating mediation service provider (PSP) designated by the JMHO and is willing to serve, the JMHO will designate a PSP for appointing for the parties a single qualified mediator who is prepared to serve and is not disqualified under Rule 7. Where the parties have so agreed on such a mediator, they shall notify the JMHO and/or the designated PSP forthwith. The appointment of the mediator takes effect upon confirmation in writing by the designated PSP. The mediation shall then proceed in accordance with the Rules.

### **Disqualification of Mediator**

7. 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 PSP any circumstances likely to create a presumption of bias or prevent a prompt resolution of the dispute. Upon receipt of the information, the PSP shall immediately communicate the information to the parties for their comments. If any party takes objection to the proposed mediator within 3 working days he shall not be appointed. In such case, the PSP shall nominate another suitable qualified mediator.

### **The Mediation Process**

8. The mediator shall commence the mediation as soon as possible after his appointment and shall use his best endeavours to conclude the mediation within 28 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**

9. The mediator may conduct the mediation in such manner, as he considers appropriate, taking into account the circumstances of the case, the agreement between the parties and the need for a speedy settlement of the dispute.

### **Role of the Parties**

10. The mediator may communicate with the parties together or with any party separately, including private meetings and each party shall cooperate 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**

11. Subject to the consent of both parties, the parties may be represented or assisted by persons of their choice. Such persons must sign a separate confidentiality agreement and agree to abide by this rule. 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**

12. The mediation process shall come to end:-

- a. Upon the signing of a settlement agreement by the parties or;
- 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**

13. (i) Mediation is a private and confidential process. Every document, communication or information disclosed 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. The parties shall not rely on or introduce as evidence in any subsequent judicial or arbitral proceedings:-

- a. any oral or written exchanges within the mediation made in connection with any mediation conducted under these Rules between a party and the mediator or between any party;
- b. any views expressed or suggestions made within the mediation either by the mediator or a party in respect of a possible settlement of the dispute;
- c. any admission made by a party in connection with any mediation conducted under these Rules;
- d. the fact that a party had or had not indicated a willingness to accept any suggestion or proposal for settlement by the mediator or by any party; and
- e. any documents brought into existence for the purpose of the mediation including any notes or records made in connection with any mediation conducted under these rules by the mediator or a party.

Provided that when any party enforces a settlement agreement any party may call evidence of

the settlement agreement including evidence from the Mediator and any other person engaged in the mediation.

(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, and without derogating from the generality of the foregoing and merely by way of examples:-

- a. the fact that information of whatsoever nature was available to the mediator, does not mean that privilege or confidentiality is waived for any subsequent litigation, arbitration or adjudication; and
- b. the fact that the accuracy of information or the validity or meaning of documents was not challenged during the mediation does not preclude challenge in subsequent litigation, arbitration or adjudication.

### **Costs**

14. (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 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; and
- c. any administrative costs in support of the mediation including the PSP's costs.

(ii) The mediator may at any time during the mediation require the parties to make deposits to cover any additional 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.

### **Exclusion of Liability**

15. The parties jointly and severally release, discharge and indemnify the mediator and the JMHO 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.