

**《調解條例》
(第 620 章)
Mediation Ordinance
(Cap. 620)**

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**經核證文本
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(《法例發布條例》(第 614 章) 第 5 條)
(Legislation Publication Ordinance (Cap. 614), section 5)

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條文 Provision	頁數 Page number	最後更新日期 Last updated date
主體 Main	1—16	16.11.2017
附表 1 Schedule 1	S1-1—S1-6	25.4.2013
附表 2 Schedule 2	S2-1—S2-2	25.4.2013

尚未實施的條文 / 修訂 ——

尚未實施的條文及修訂的資料，可於「電子版香港法例」(<http://www.elegislation.gov.hk>) 閱覽。

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制定史

本為 2012 年第 15 號 —— 2012 年第 2 號編輯修訂紀錄，2013 年第 1 號編輯修訂紀錄，2017 年第 6 號，2017 年第 4 號編輯修訂紀錄

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《調解條例》
(第 620 章)
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Mediation Ordinance
(Cap. 620)
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本條例旨在訂立一個框架，就進行調解的若干事宜作規管，並作出相應及相關的修訂。

An Ordinance to provide a regulatory framework in respect of certain aspects of the conduct of mediation and to make consequential and related amendments.

[2013 年 1 月 1 日] 2012 年第 167 號法律公告

[1 January 2013] L.N. 167 of 2012

(略去制定語式條文——2012 年第 2 號編輯修訂紀錄)

(Enacting provision omitted—E.R. 2 of 2012)

1. 簡稱

(編輯修訂——2013 年第 1 號編輯修訂紀錄)

- (1) 本條例可引稱為《調解條例》。
- (2) (已失時效而略去——2013 年第 1 號編輯修訂紀錄)

1. Short title

(Amended E.R. 1 of 2013)

- (1) This Ordinance may be cited as the Mediation Ordinance.
- (2) (Omitted as spent—E.R. 1 of 2013)

2. 釋義

- (1) 在本條例中——

爭議 (dispute) 包括分歧；

經調解的和解協議 (mediated settlement agreement) 指調解的部分或全部當事人就他們的全部或部分爭議所達成的和解協議；

調解 (mediation)——見第 4 條；

調解協議 (agreement to mediate) 指兩人或多於兩人所訂立的書面協議，同意將他們之間的爭議交付調解，不論——

- (a) 協議是另一協議中的調解條款，還是作為單獨協議存在；
- (b) 協議是在爭議發生之前或之後訂立的；及
- (c) 在協議訂立時，是否有委任調解員；

附註——

2. Interpretation

- (1) In this Ordinance—

agreement to mediate (調解協議) means an agreement in writing by 2 or more persons to submit a dispute between them to mediation, regardless of—

- (a) whether the agreement is in the form of a mediation clause in an agreement or in the form of a separate agreement;
- (b) whether the agreement is made before or after the dispute arises; and
- (c) whether or not a mediator is appointed at the time the agreement is made;

Note—

An agreement to mediate could be in electronic form—see also section 5(1) of the Electronic Transactions Ordinance (Cap. 553).

調解協議可採用電子形式——亦參看《電子交易條例》(第 553 章)第 5(1) 條。

調解員 (mediator) 指第 4(1) 條提述的不偏不倚的個人；

調解通訊 (mediation communication) 指為調解的目的或在調解的過程中而——

- (a) 說出的任何說話或作出的任何作為；
- (b) 擬備的任何文件；或
- (c) 提供的任何資料，

但不包括調解協議，亦不包括經調解的和解協議。

- (2) 在本條例中，提述調解的當事人、調解的任何一方或調解的每一方，不包括提述調解員。

(編輯修訂——2012 年第 2 號編輯修訂紀錄)

3. 本條例的目的

本條例的目的是——

- (a) 提倡、鼓勵和促進以調解方式解決爭議；及
- (b) 使調解通訊得以保密。

4. 調解的涵義

- (1) 就本條例而言，調解是由一個或多於一個分節構成的有組織程序，在該等分節中，一名或多於一名不偏不倚的個人在不對某項爭議或其任何部分作出判決的情況下，協助爭議各方作出下述任何或所有事宜——

- (a) 找出爭議點；

dispute (爭議) includes a difference;

mediated settlement agreement (經調解的和解協議) means an agreement by some or all of the parties to mediation settling the whole, or part, of their dispute;

mediation (調解)—see section 4;

mediation communication (調解通訊) means—

- (a) anything said or done;
- (b) any document prepared; or
- (c) any information provided,

for the purpose of or in the course of mediation, but does not include an agreement to mediate or a mediated settlement agreement;

mediator (調解員) means an impartial individual referred to in section 4(1).

- (2) A reference in this Ordinance to the parties to mediation does not include the mediator.

3. Objects of this Ordinance

The objects of this Ordinance are—

- (a) to promote, encourage and facilitate the resolution of disputes by mediation; and
- (b) to protect the confidential nature of mediation communications.

4. Meaning of mediation

- (1) For the purposes of this Ordinance, mediation is a structured process comprising one or more sessions in which one or more impartial individuals, without adjudicating a dispute or any aspect of it, assist the parties to the dispute to do any or all of the following—

- (b) 探求和擬訂解決方案；
 - (c) 互相溝通；
 - (d) 就解決爭議的全部或部分，達成協議。
- (2) 就第 (1) 款而言，分節指調解員與爭議一方或多於一方的會議，並包括就下述事宜進行的任何活動——
- (a) 為會議作出安排或預備，不論會議是否有舉行；及
 - (b) 跟進會議中提出的事宜或問題。
- (3) 就第 (2) 款而言，會議包括透過電話、視像會議或其他電子方式進行的會議。

5. 本條例適用的調解及調解通訊

- (1) 除第 (2) 款另有規定外，如有任何調解根據調解協議進行，而下述其中一項情況適用，則本條例適用於該調解——
- (a) 該調解全部或部分在香港進行；或
 - (b) 該協議規定，本條例或香港法律適用於該調解。
- (2) 本條例不適用於附表 1 指明的程序。
- (3) 凡本條例適用於任何調解，本條例亦適用於與該調解相關的調解通訊。
- (4) 就施行本條而言，下述事宜無關重要——
- (a) 有關的調解協議是在本條例的生效日期之前、當日或之後訂立的，或該協議是在香港或其他地方訂立的；

- (a) identify the issues in dispute;
 - (b) explore and generate options;
 - (c) communicate with one another;
 - (d) reach an agreement regarding the resolution of the whole, or part, of the dispute.
- (2) For the purposes of subsection (1), a session is a meeting between a mediator and one or more of the parties to a dispute, and includes any activity undertaken in respect of—
- (a) arranging or preparing for such a meeting, whether the meeting takes place or not; and
 - (b) following up any matter or issue raised in such a meeting.
- (3) For the purposes of subsection (2), a meeting includes a meeting conducted by telephone, video conferencing or other electronic means.

5. Mediation and mediation communications to which this Ordinance applies

- (1) Subject to subsection (2), this Ordinance applies to any mediation conducted under an agreement to mediate if either of the following circumstances applies—
- (a) the mediation is wholly or partly conducted in Hong Kong; or
 - (b) the agreement provides that this Ordinance or the law of Hong Kong is to apply to the mediation.
- (2) This Ordinance does not apply to a process specified in Schedule 1.
- (3) This Ordinance applies to a mediation communication relating to any mediation to which this Ordinance applies.
- (4) For the purposes of this section, it does not matter whether—

- (b) 有關的調解是在本條例的生效日期之前、當日或之後進行的，或該調解已於該日期之前完結；或
- (c) 有關的調解通訊是在本條例的生效日期之前、當日或之後作出的。

6. 對政府的適用性

本條例適用於政府。

7. 在調解過程中提供協助或支援

《法律執業者條例》(第 159 章) 的下述條文，不適用於在調解過程中向調解的任何一方提供協助或支援——

- (a) 第 44 條 (非法執業為大律師或公證人的罰則)；
- (b) 第 45 條 (不合資格人士不得以律師身分行事)；
- (c) 第 47 條 (不合資格人士不得擬備某些文書等)。

7A. 第三者資助調解

《仲裁條例》(第 609 章) 第 10A 部適用於調解，猶如——

- (a) 在該部中——
 - (i) 提述仲裁之處，是提述調解；及
 - (ii) 提述仲裁機構之處，是提述調解員；
- (b) 在該條例第 98F 條中，**仲裁、仲裁機構、緊急仲裁員及調解程序**的定義已被略去；
- (c) (增補尚未實施——見 2017 年第 6 號第 4 條)

- (a) the agreement to mediate is made before, on or after the commencement date of this Ordinance or entered into in Hong Kong or elsewhere;
- (b) the mediation is conducted before, on or after the commencement date of this Ordinance or completed before that date; or
- (c) the mediation communication is made before, on or after the commencement date of this Ordinance.

6. Application to the Government

This Ordinance applies to the Government.

7. Provision of assistance or support in mediation

The following sections of the Legal Practitioners Ordinance (Cap. 159) do not apply to the provision of assistance or support to a party to mediation in the course of the mediation—

- (a) section 44 (penalty for unlawfully practising as a barrister or notary public);
- (b) section 45 (unqualified person not to act as solicitor);
- (c) section 47 (unqualified person not to prepare certain instruments, etc.).

7A. Third party funding of mediation

Part 10A of the Arbitration Ordinance (Cap. 609) applies in relation to a mediation as if—

- (a) in that Part—
 - (i) a reference to arbitration were a reference to mediation; and
 - (ii) a reference to an arbitration body were a reference to a mediator;

- (d) (增補尚未實施——見 2017 年第 6 號第 4 條)
(由 2017 年第 6 號第 4 條增補)

編輯附註：

《仲裁條例》(第 609 章)第 10A 部第 3 及 5 分部尚未就調解而適用。請參閱《2018 年〈2017 年仲裁及調解法例(第三者資助)(修訂)條例〉(生效日期)公告》(2018 年第 260 號法律公告)。

8. 調解通訊的保密

- (1) 除按第 (2) 或 (3) 款的規定，任何人不得披露調解通訊。
- (2) 在下述情況下，任何人可披露調解通訊——
 - (a) 所有下述人士均同意作出該項披露——
 - (i) 有關的調解的每一方；
 - (ii) 有關的調解的調解員，如有多於一名調解員，則每名調解員；及
 - (iii) 作出該項調解通訊的人(如該人並非有關的調解的任何一方或調解員)；
 - (b) 該項調解通訊的內容，是公眾已可得的資料(但僅因非法披露才屬公眾可知的資料除外)；
 - (c) 該項調解通訊的內容，是假若無本條規定，便會符合以下說明的資料：受民事法律程序中的文件透露規定所規限，或受其他要求當事人披露他們管有、保管或控制的文件的類似程序所規限；
 - (d) 有合理理由相信，為防止或盡量減少任何人受傷的風險，或任何未成年人的福祉受嚴重損害的風險，作出該項披露是必需的；

- (b) in section 98F of that Ordinance, the definitions of **arbitration**, **arbitration body**, **emergency arbitrator** and **mediation proceedings** were omitted;
- (c) (Addition not yet in operation—see 6 of 2017 s. 4)
- (d) (Addition not yet in operation—see 6 of 2017 s. 4)
(Added 6 of 2017 s. 4)

Editorial Note:

Divisions 3 and 5 of Part 10A of the Arbitration Ordinance (Cap. 609) have yet to apply in relation to a mediation. Please see the Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017 (Commencement) Notice 2018 (L.N. 260 of 2018).

8. Confidentiality of mediation communications

- (1) A person must not disclose a mediation communication except as provided by subsection (2) or (3).
- (2) A person may disclose a mediation communication if—
 - (a) the disclosure is made with the consent of—
 - (i) each of the parties to the mediation;
 - (ii) the mediator for the mediation or, if there is more than one, each of them; and
 - (iii) if the mediation communication is made by a person other than a party to the mediation or a mediator—the person who made the communication;
 - (b) the content of the mediation communication is information that has already been made available to the public, except for information that is only in the public domain due to an unlawful disclosure;
 - (c) the content of the mediation communication is information that is otherwise subject to discovery in

- (e) 該項披露是為研究、評估或教育的目的而作出的，並且既沒有直接或間接洩露該項調解通訊所關乎的人的身分，亦相當不可能會直接或間接洩露該人的身分；
 - (f) 該項披露是為徵詢法律意見而作出的；或
 - (g) 該項披露是按照法律施加的要求而作出的。
- (3) 在根據第 10 條獲得法院或審裁處的許可下，任何人可為下述目的，披露調解通訊——
- (a) 執行或質疑經調解的和解協議；
 - (b) (如有人提出指稱或申訴，而針對的是調解員所作出的專業失當行為，或任何以專業身分參與有關的調解的其他人所作出的專業失當行為) 就該指稱或申訴提出證明或爭議；或
 - (c) 有關的法院或審裁處認為在有關個案的情況下屬有理由支持的任何其他目的。
- (4) 在本條中——
- 未成年人** (child) 指未滿 18 歲的人。

9. 調解通訊作為證據的可接納性

在任何程序 (包括司法、仲裁、行政或紀律程序) 中，只有在根據第 10 條獲得法院或審裁處的許可下，調解通訊方可獲接

- civil proceedings or to other similar procedures in which parties are required to disclose documents in their possession, custody or power;
 - (d) there are reasonable grounds to believe that the disclosure is necessary to prevent or minimize the danger of injury to a person or of serious harm to the well-being of a child;
 - (e) the disclosure is made for research, evaluation or educational purposes without revealing, or being likely to reveal, directly or indirectly, the identity of a person to whom the mediation communication relates;
 - (f) the disclosure is made for the purpose of seeking legal advice; or
 - (g) the disclosure is made in accordance with a requirement imposed by law.
- (3) A person may disclose a mediation communication with leave of the court or tribunal under section 10—
- (a) for the purpose of enforcing or challenging a mediated settlement agreement;
 - (b) for the purpose of establishing or disputing an allegation or complaint of professional misconduct made against a mediator or any other person who participated in the mediation in a professional capacity; or
 - (c) for any other purpose that the court or tribunal considers justifiable in the circumstances of the case.
- (4) In this section—
- child** (未成年人) means a person under the age of 18 years.

9. Admissibility of mediation communications in evidence

A mediation communication may be admitted in evidence in any proceedings (including judicial, arbitral, administrative or

納作為證據。

10. 關於披露或接納作為證據的許可

- (1) 第 (3) 款指明的法院或審裁處可應任何人的申請而給予許可，准許根據第 8(3) 條披露調解通訊，或根據第 9 條接納調解通訊作為證據。
- (2) 為施行第 (1) 款，有關的法院或審裁處在決定是否就披露調解通訊或接納調解通訊作為證據給予許可時，須考慮——
 - (a) 該項調解通訊是否可以根據第 8(2) 條披露，或是否已經如此披露；
 - (b) 披露該項調解通訊或接納該項通訊作為證據，是否符合公眾利益，或是否有助於秉行公義；及
 - (c) 有關的法院或審裁處認為屬相關的任何其他情況或事宜。
- (3) 為施行第 (1) 款而指明法院或審裁處如下——
 - (a) 如在終審法院的程序中尋求披露有關的調解通訊或接納該項通訊作為證據——終審法院；
 - (b) 如在上訴法庭的程序中尋求披露有關的調解通訊或接納該項通訊作為證據——上訴法庭；
 - (c) 如在區域法院的程序中尋求披露有關的調解通訊或接納該項通訊作為證據——區域法院；
 - (d) 如在土地審裁處的程序中尋求披露有關的調解通訊或接納該項通訊作為證據——土地審裁處；或
 - (e) 在任何其他情況下——原訟法庭。

disciplinary proceedings) only with leave of the court or tribunal under section 10.

10. Leave for disclosure or admission in evidence

- (1) The court or tribunal specified in subsection (3) may, on application by any person, grant leave for a mediation communication to be disclosed under section 8(3) or to be admitted in evidence under section 9.
- (2) For the purposes of subsection (1), the court or tribunal must take into account the following matters in deciding whether to grant leave for a mediation communication to be disclosed or admitted in evidence—
 - (a) whether the mediation communication may be, or has been, disclosed under section 8(2);
 - (b) whether it is in the public interest or the interests of the administration of justice for the mediation communication to be disclosed or admitted in evidence;
 - (c) any other circumstances or matters that the court or tribunal considers relevant.
- (3) The court or tribunal specified for the purposes of subsection (1) is—
 - (a) if the mediation communication is sought to be disclosed or admitted in evidence in proceedings in the Court of Final Appeal—the Court of Final Appeal;
 - (b) if the mediation communication is sought to be disclosed or admitted in evidence in proceedings in the Court of Appeal—the Court of Appeal;
 - (c) if the mediation communication is sought to be disclosed or admitted in evidence in proceedings in the District Court—the District Court;

11. (已失時效而略去——2017 年第 4 號編輯修訂紀錄)

- (d) if the mediation communication is sought to be disclosed or admitted in evidence in proceedings in the Lands Tribunal—the Lands Tribunal; or
- (e) in any other case—the Court of First Instance.

11. (*Omitted as spent—E.R. 4 of 2017*)

附表 1

[第 5 條]

本條例不適用的程序

1. 《勞資審裁處條例》(第 25 章)第 6、15 及 25 條提述的調停。
2. 《學徒制度條例》(第 47 章)第 39 條提述的調停。
3. 《勞資關係條例》(第 55 章)第 2 部提述的調停及特別調停。(編輯修訂——2013 年第 1 號編輯修訂紀錄)
4. 《勞資關係條例》(第 55 章)第 2A 部提述的調解。(編輯修訂——2013 年第 1 號編輯修訂紀錄)
5. 《婚姻制度改革條例》(第 178 章)第 17 條描述的程序。

Schedule 1

[s. 5]

Processes to Which this Ordinance Does Not Apply

1. Conciliation referred to in sections 6, 15 and 25 of the Labour Tribunal Ordinance (Cap. 25).
2. Conciliation referred to in section 39 of the Apprenticeship Ordinance (Cap. 47).
3. Conciliation and special conciliation referred to in Part 2 of the Labour Relations Ordinance (Cap. 55). (*Amended E.R. 1 of 2013*)
4. Mediation referred to in Part 2A of the Labour Relations Ordinance (Cap. 55). (*Amended E.R. 1 of 2013*)
5. The process described in section 17 of the Marriage Reform Ordinance (Cap. 178).

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| <p>6. 《申訴專員條例》(第 397 章)第 11B 條提述的調解。</p> <p>7. 《小額薪酬索償仲裁處條例》(第 453 章)第 4 及 14 條提述的調停。</p> <p>8. 《性別歧視條例》(第 480 章)第 64 及 84 條及《性別歧視(調查及調停)規則》(第 480 章,附屬法例 B)第 8 條提述的調停。</p> <p>9. 《殘疾歧視條例》(第 487 章)第 62 及 80 條及《殘疾歧視(調查及調停)規則》(第 487 章,附屬法例 B)第 8 條提述的調停。</p> <p>10. 《家庭崗位歧視條例》(第 527 章)第 44 及 62 條及《家庭崗位歧視(調查及調停)規則》(第 527 章,附屬法例 A)第 8 條提述的調停。</p> <p>11. 《種族歧視條例》(第 602 章)第 59 及 78 條及《種族歧視(調查及調停)規則》(第 602 章,附屬法例 B)第 8 條提述的調停。</p> | <p>6. Mediation referred to in section 11B of The Ombudsman Ordinance (Cap. 397).</p> <p>7. Conciliation referred to in sections 4 and 14 of the Minor Employment Claims Adjudication Board Ordinance (Cap. 453).</p> <p>8. Conciliation referred to in sections 64 and 84 of the Sex Discrimination Ordinance (Cap. 480) and section 8 of the Sex Discrimination (Investigation and Conciliation) Rules (Cap. 480 sub. leg. B).</p> <p>9. Conciliation referred to in sections 62 and 80 of the Disability Discrimination Ordinance (Cap. 487) and section 8 of the Disability Discrimination (Investigation and Conciliation) Rules (Cap. 487 sub. leg. B).</p> <p>10. Conciliation referred to in sections 44 and 62 of the Family Status Discrimination Ordinance (Cap. 527) and section 8 of the Family Status Discrimination (Investigation and Conciliation) Rules (Cap. 527 sub. leg. A).</p> <p>11. Conciliation referred to in sections 59 and 78 of the Race Discrimination Ordinance (Cap. 602) and section 8 of the Race</p> |
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12. 《仲裁條例》(第 609 章)第 32(3) 及 33 條提述的調解程序。

12. Mediation proceedings referred to in sections 32(3) and 33 of the Arbitration Ordinance (Cap. 609).

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[第 11 條]

(已失時效而略去——2013 年第 1 號編輯修訂紀錄)

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[s. 11]

(Omitted as spent—E.R. 1 of 2013)