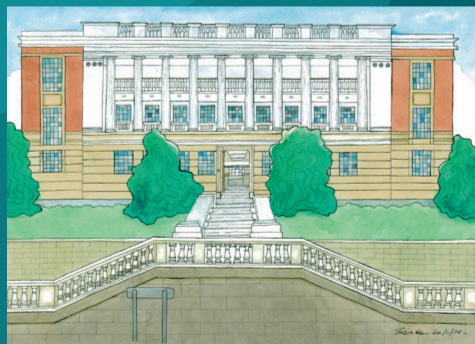
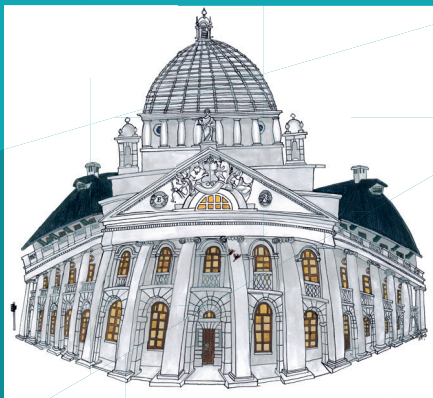


# 土地審裁處建築物管理案件的 案件管理及調解

## Case Management and Mediation for Building Management Cases in the Lands Tribunal



# 土地審裁處

## 建築物管理案件的案件管理及調解

### I. 引言

1.1 土地審裁處（下稱“審裁處”）為簡化建築物管理案件的處理程序，已於2008年1月1日起實施試驗計劃。於2008年1月1日至2009年6月30日期間，該計劃已應用在雙方均有律師代表的案件中。該計劃經適當的調整後，審裁處也曾在其他案件的法律程序中作出具體指示，把該計劃的某些規定引用在合適的案件中。

1.2 該計劃的目的在於使審裁處能更有效率、迅速及公平地處理建築物管理案件。不必要的聆訊會被減少及如果審裁處根據文件便可公平地作出指示而無需進行口頭聆訊，審裁處便會如此處理。該計劃不鼓勵訴訟各方作出不必要的非正審申請，而審裁處會在合適的案件中，施加訟費懲罰。該計劃並鼓勵訴訟各方以調解方式解決爭議。這一切均符合2009年4月2日實施的民事司法制度改革的基本目標。

1.3 經過評估和諮詢後，審裁處現決定將試驗計劃在作出一些調整後，採納為標準的常規。因此，土地審裁處庭長已發出指示，即“實務指示LTPD: BM No. 1/2009”，藉以於2009年7月1日起實施標準常規。

1.4 本小冊子旨在幫助閣下明白甚麼是標準常規，並了解其運作的方式。本小冊子也簡介了在土地審裁處建築物管理案件中進行調解的程序，以及如何透過調解的方式，在建築物管理的爭議中達成和解。

## II. 案件管理

2.1 標準常規的主要特點，就是審裁處將會主動積極地管理案件。審裁處將按照民事司法制度改革的基本目標，履行其案件管理的職責以及行使其案件管理的權力。此等基本目標如下：

- (a) 提高在審裁處席前進行的法律程序而依循的常規及程序的成本效益；
- (b) 確保案件在合理切實可行範圍內盡速有效處理；

(c) 提倡在進行法律程序的行動應與案情相稱及程序精簡的意識；

(d) 確保在訴訟各方達致公平；

(e) 利便解決爭議；及

(f) 確保審裁處資源分配公平。

2.2 由2009年7月1日起，所有建築物管理案件，無論訴訟各方是否有律師代表，將會編入正常的建築物管理案件聆訊表內。試驗計劃聆訊表將於此日期起停止使用。在此日期前已編入試驗計劃聆訊表的案件，將會自動歸入正常的聆訊表內排期審訊。如果訴訟人沒有律師代表，審裁處會為其案件排期作過堂聆訊，但如雙方均有律師代表，則由審裁處酌情決定，為案件排期作過堂聆訊或甚至排期審訊。

2.3 在任何建築物管理案件中，如果雙方均有律師代表，以下的程序將會自動適用，而(a)至(e)項則視為審裁處發出的自動指示：

- (a) 申請人在存檔及派送其申請通知書的同時，須存檔及派送其首批的證據，包括證人陳述書、相關文件和專家報告（如有的話）；
- (b) 申請人在存檔及派送其申請通知書時，須同時存檔及派送一份調解陳述書，說明他(i)曾否嘗試透過調解來解決爭議；(ii)是否願意嘗試進行調解；以及(iii)如認為案件不適合進行調解者，簡述原因；
- (c) 答辯人在存檔及派送其反對通知書時，須存檔及派送其首批的證據，包括證人陳述書、相關文件和專家報告（如有的話）；
- (d) 答辯人在存檔及派送反對通知書時，須同時存檔及派送一份調解陳述書，說明他(i)是否願意嘗試進行調解；以及(ii)如認為案件不適合進行調解者，簡述原因；
- (e) 申請人和答辯人均須在申請排期聆訊之日起計14天之內，存檔及派送其回應對方的證據，包括補充證人陳述書、所有進一步的相關文件和專家報告（如有的話），以及如審裁處庭長實務指示LTPD: BM No. 1/2009中之附件一樣的核對清單；

- (f) 如訴訟其中一方不遵從(a)、(b)、(c)、(d)或(e)項的指示，審裁處會以書面作出進一步指示，令其作出妥善的案件準備；
- (g) 除非審裁處另行作出明確的相反指示，否則訴訟中雙方均有律師代表的案件，祇會在雙方均已遵從此等指示的情況下才獲得排期聆訊；
- (h) 審裁處可對不遵從指示的訴訟人施加懲罰條款，包括“除非履行時限令”、或禁止訴訟人在審訊時未獲許可而舉證的命令，以及/或作出對其不利的訟費命令；
- (i) 經審閱文件後，
- i. 審裁處如認為案件已準備就緒可以審訊，則可將案件排期審訊而無需進行過堂聆訊；
  - ii. 審裁處如認為案件有尚待解決的事項或需進行爭辯，則可將案件排期進行過堂聆訊，並在過堂聆訊時作出所需指示，包括指示排期審訊；
  - iii. 審裁處如認為案件仍有重要的事項尚待處理，又或核對清單尚未填妥，則可作出書面指示，並押後案件聆

訊的排期，直至審裁處認為訴訟各方的準備工作已進入合理滿意的階段。

2.4 如有必要，審裁處可指示再次進行過堂聆訊，然而此等進一步的過堂聆訊祇會在特殊情況下才會進行。

2.5 訴訟各方不應作出不必要的、與案件不相稱的非正審申請，而此類申請亦不會獲得受理。此外，訴訟人應盡量使用同意傳票來處理非正審事宜。訴訟人如作出不必要或不合理的非正審申請，一般須承擔在訟費方面不利的後果，包括整筆款項的評估，以及即時支付訟費的命令。

2.6 當案件的審訊日期擇定後，除非有充分而又有力的理由，否則審訊日期不得取消。如可能導致審訊押後的話，審裁處不會輕易批准遲來的證據存檔或修訂的申請。

2.7 代表訴訟各方進行建築物管理案件的律師，應就訴訟可能招致的訟費，以及審裁處對訟費所持的態度，向其當事人提出忠告，尤其建議他們不論在向審裁處提出法律程序之前或之後，均應考慮嘗試以調解方式解決彼此的分歧。

2.8 審裁處如果認為適合，可以把上述某些規定引用在沒有律師代表的案件中，並作出其認為適當的指示。

2.9 審裁處可應至少一方的申請或主動行使其權力，按其認為合適的情況，把有關的法律程序或其中部分程序有條件地擱置一段時間，以便各方進行調解。於審裁處擱置法律程序期間，如果案件達成和解，訴訟各方必須立即通知審裁處，並應採取必須的步驟正式結束法律程序。

### III. 為誰而設？

3.1 當市民遇到建築物管理方面的糾紛，例如漏水、管理費及維修費用的分攤、或管理委員會的委任等，可能須要訴諸法庭，包括訴諸土地審裁處。但訴諸法庭結果就會有一方勝訴一方敗訴，而往往耗費不少的時間和訟費才得到結果。

3.2 調解提供解決糾紛的另類機制，定下切合實際的步驟，輔助爭議各方達至切合其需要及雙方接納的和解方案，最後往往取得一個雙贏的局面。如果能達成和解，不但可節省不少時間和訟費，亦有助維持同一大廈或屋邨業主之間和諧的關係。



3.3 世界各地的經驗顯示，調解促成和解的比率非常高，而其成效亦令大部分人士感到滿意。此外，由於各方祇會同意他們自願接受的方案，而且透過調解達成的協議又具有約束力，所以提出上訴的機會甚微。

3.4 因此，調解是為願意以和諧的態度，而非用對抗性的訴訟來解決糾紛的人士而設，亦是為希望獲得自主而非被迫接受結果之人士而設。

3.5 當然，並非所有案件都適合調解。舉例，如各方之間有真正的爭議須要由法庭頒布屬宣布性質的濟助，則仍須進行訴訟。

## IV. 甚麼是調解？

4.1 調解是另一類排解糾紛的程序，爭議各方可循此程序達成雙方均接納的協議，藉以解決分歧。調解的參與屬自願性質，由一名公正和受過訓練的第三者，即調解員，協助爭議各方在保密的環境下就爭議事項進行溝通和協商。在此過程中各方均有機會陳述其論點並聆聽對方的說法。調解員的任務並非為各方作出決定，而是幫助各方探討其論據的強弱，並尋求可行的解決方案，

從而協助各方達成和解的協議。調解員受過專門訓練，善於打破談判僵局，並能令各方專注於尋求解決方案。

#### 4.2 調解員在調解會議中協助爭議各方：

- 商討和確定受爭議的事項；
- 探索各方的實際需要和權益所在；
- 擴大和解方案之選擇範圍，並評估哪一解決方案最為適合；
- 擬訂詳細的和解協議，就每項爭議列出各方所同意的解決方式。

#### 4.3 其他關於調解的意見包括：

- 如前所述，並非每宗案件都適合調解。當事人或會獲邀出席初步會議，會上調解員會因應當事人的個別情況，對其案件是否適合調解進行評估。當事人也可諮詢其法律顧問，以便作出決定。

- 爭議各方在調解過程的任何階段均可尋求法律意見。
- 雙方均有權隨時中止調解。
- 雙方必須明白，對方在調解會議上說話的內容不影響其權利，所以在任何法律程序中均不可用作證據。
- 在調解會議上草擬的協議，經雙方簽署後具有合約之約束力。經調解達成的和解協議，不可作為仲裁裁決、判決或法庭命令般強制執行，但如一方違反協議條款，無過錯一方則可根據協議起訴對方。

## V. 調解有甚麼好處？

### 5.1 調解的好處甚多，包括：

- 爭議各方可避免對抗式訴訟制度中出現的張力和衝突。
- 爭議各方無須把爭議訴諸法庭，省時省錢。

- 爭議各方自行作出決定和達成協議，因而可能會更願意遵守協議內容。
- 和解協議條款可保密和不外洩。
- 爭議各方能維持甚至改善彼此之間的關係。
- 爭議各方達至和解的內容，可超越損害賠償和禁制令等法院所能作出的法律補救之局限。

## VI. 誰是調解員？

6.1 調解員沒有嚴格的資格要求，但他們一般來自不同的專業背景，並曾接受調解的訓練。他們或具有法律、管理、建築、工程、工料測量或其他行業的專業資格，但這些資格並非必備條件。更重要的是他們必須經過適當的調解訓練，使他們懂得如何主持調解程序，並能在過程中協助各方達成和解的協議。

## 6.2 調解員的行事方式為：

- 不提供法律意見。若當事人需要法律意見，鼓勵其諮詢自己的律師；
- 不偏袒任何一方；
- 不替當事人作出決定，但會協助當事人評估其所作決定的可行性。

## VII. 往哪裡找調解員？

7.1 在香港，許多機構都各自備有其調解員名冊。機構就收錄調解員各自定下其要求，但一般而言，收錄入名冊的調解員均經過談判及解決糾紛的訓練，具備有關的知識和技巧，並符合規定的要求。此外，調解員或須遵守其所屬機構的道德及專業實務守則。如需索取資料以便尋找調解員協助處理建築物管理的糾紛，可與土地審裁處的建築物管理調解統籌主任辦事處聯絡（詳見下文第X部）。

## VIII. 調解費時嗎？

8.1 調解需時長短視乎爭議事項的多寡和複雜程度而定。此外，爭議各方的合作程度和參與調解會議的意願也會影響調解進度。如爭議事項不太複雜，而調解過程又順利的話，爭議各方或祇需參與兩至三次調解會議（每次需時一天或少於一天）便可達成協議。總的來說，以調解方式解決爭議，一般遠比仲裁或訴訟快捷，這對爭議各方有莫大的好處，尤其是在訟費方面。

## IX. 保密

9.1 調解會議上所披露的事情，調解員須予以保密。若雙方同意參與調解，調解員會要求他們簽訂一份調解協議，註明所有調解通訊\*是保密及不得向外界披露。以下特定情況則屬例外，例如是得到調解的每一方和調解員的同意，或有合理理由相信必須作出披露以防止任何人受傷或未成年人的福祉受嚴重損害，或獲得法院的許可下作出披露等。因此，參與調解的所有人士，包括調解員，必須遵守保密原則。

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\* 調解通訊指為調解的目的或在調解的過程中而說出的任何說話或作出的任何行為，擬備的任何文件；或提供的任何資料。

## X. 如何參加調解服務講座

- **聯絡建築物管理調解統籌主任辦事處**

地址：九龍加士居道38號土地審裁處大樓2字樓206-208室

電話：2170 3858

圖文傳真：2782 5780

網頁：<http://mediation.judiciary.hk>

辦公時間：星期一至五 上午9時至下午1時

下午2時至5時

（星期六、日及公眾假期休息）

- **向土地審裁處登記處提出要求**

地址：九龍加士居道38號土地審裁處大樓地下

電話：2170 3861

圖文傳真：2384 4901

- **諮詢律師或其他顧問**

## **注意事項：**

建築物管理調解統籌主任辦事處的工作人員，樂意就與法庭有關的調解服務的查詢，向當事人提供協助，但不會提供任何法律意見，亦不會就具體法庭案件或法律程序的進行，作出評論或提供協助。如需要法律意見或援助，請聯絡律師或向提供免費法律諮詢服務的機構尋求協助。

土地審裁處登記處職員祇協助簡單的法庭程序事宜，無論如何，審裁處職員對應否提出任何申請，不會給予意見。

## **如果天氣惡劣，建築物管理調解統籌主任辦事處有甚麼安排？**

請參閱司法機構網頁：颱風及暴雨警告的安排([http://www.judiciary.hk/tc/crt\\_services/business\\_hours\\_typhoon.htm](http://www.judiciary.hk/tc/crt_services/business_hours_typhoon.htm))或留意電台/電視台的相關報導。



## XI. 下一步怎麼做？

11.1 任何一方如有意尋求調解服務，或已聯絡調解統籌主任，便會獲安排參加調解講座。講座結束後，調解統籌主任會向爭議各方進行調解前的諮詢，並提供調解服務的資料，給各方作參考及申請服務之用。

11.2 爭議各方如有意尋求調解，調解統籌主任會提供一份調解員名單以供各方參閱。名單上列出的調解員，均是司法機構以外的人士，並在之前已表示願意提供調解服務。爭議各方祇容許在建築物管理調解統籌主任辦事處內參閱名單上的調解員資料。調解統籌主任會向審裁處法官匯報，有意尋求調解的各方是否曾出席調解講座，以及是否願意參與調解。

11.3 請注意，任何一方申請參加調解講座或進行調解，並不會導致法律程序自動擱置，而法律程序是否擱置，須視乎審裁處法官就此作出的指示而定。

## XII. 調解服務是否需要收費？

12.1 調解講座和調解統籌主任提供的調解前諮詢，均屬免費。有些調解員會提供免費的調解服務，但並非所有調解員都不收費。爭議一方如欲獲得某一名調解員的服務，須先查詢該名調解員是否收取費用。

## XIII. 訟費後果

13.1 根據土地審裁處庭長實務指示LTPD: BM No.1/ 2009的規定，如情況適合，建築物管理案件的爭議各方及其法律顧問在決定進行訴訟前，應先探討調解的可能性。調解程序可以在訴訟前或在訴訟過程中任何階段展開，又或按照審裁處的指示進行。

13.2 審裁處鼓勵建築物管理案件中各方以調解方式解決彼此的爭議，這樣做既有效率，又符合成本效益。負責處理案件的審裁處法官會就案件的處理發出適當的指示，以求達到這一目標。

13.3 參與調解與否雖然屬於自願性質，並且不影響各方在訴訟中本身的爭議，但倘若訴訟各方無理地拒絕參與調解，或不曾作出嘗試，則審裁處可作出對其不利的訟費命令。

13.4 不過，訴訟人如曾進行調解，並已達到訴訟各方事前所協定的或審裁處所決定的最低參與程度，又或有合理解釋為何不參與調解，則無須承擔對其不利的訟費命令。

13.5 審裁處在決定訴訟人拒絕進行調解是否合理時，會考慮所有相關的情況，但不會考慮在實際進行調解的過程所發生的事情。

司法機構

二〇一八年一月

(第三版)

# CASE MANAGEMENT AND MEDIATION FOR BUILDING MANAGEMENT CASES IN THE LANDS TRIBUNAL

## I. Introduction

1.1 The Lands Tribunal (“the Tribunal”) had introduced a pilot scheme to streamline processing of building management cases since 1 January 2008. From 1 January 2008 to 30 June 2009, the scheme was applied to cases with legal representation on both sides. In appropriate cases, with suitable modifications, the Tribunal had also applied some features in the scheme to other cases by specific directions made in the course of proceedings.

1.2 The aim of the scheme was to facilitate the more efficient, expeditious and fair disposal of building management cases. Unnecessary hearings would be cut down and in circumstances where directions could fairly be given on paper without any oral

hearing, the Tribunal will do so. Unnecessary interlocutory applications would be discouraged and in appropriate cases, costs sanctions would be imposed. The parties were also encouraged to resolve their disputes by way of mediation. These are all in line with the underlying objectives of the Civil Justice Reform implemented on 2 April 2009.

1.3 After evaluation and consultation, the Tribunal decides to adopt the measures in the Pilot Scheme, with some modifications, as standard practice. The President of the Tribunal has therefore issued the President's Practice Direction LTPD: BM No. 1/2009, to implement the standard practice with effect from 1 July 2009.

1.4 This booklet aims to help you understand what the standard practice is and how it works. It also gives you a brief account of the process of mediation for building management cases in the Lands Tribunal and how to undertake mediation as a means of settlement for disputes relating to building management.

## II. Case Management

2.1 The main feature of the standard practice is that the Tribunal will be proactive in case management. It will perform its case management duty and exercise its case management power in accordance with the underlying objectives of the Civil Justice Reform. The underlying objectives are as follows:

- (a) to increase the cost-effectiveness of any practice and procedure to be followed in relation to proceedings before the Tribunal;
- (b) to ensure that a case is dealt with as expeditiously as is reasonably practicable;
- (c) to promote a sense of reasonable proportion and procedural economy in the conduct of proceedings;
- (d) to ensure fairness between the parties;

- (e) to facilitate the settlement of disputes; and
  
- (f) to ensure that the resources of the Tribunal are distributed fairly.

2.2 With effect from 1 July 2009, all building management cases, whether the parties are legally represented or not, will be listed in the normal list for building management cases. The pilot scheme list shall cease to be operative from the effective date. Those cases that have been listed in the pilot scheme list prior to the effective date shall revert back to the normal list automatically. Call-over hearings will normally be fixed for cases involving litigants acting in person, but where both parties are legally represented, the case may be fixed for call-over hearing or even for trial direct without any call-over as the Tribunal sees fit.

2.3 The following procedure will automatically be applied to all building management cases where both parties are legally represented with (a) to (e) to be treated as automatic directions given by the Tribunal:

- (a) An applicant shall file and serve the first batch of his evidence, including witness statements, relevant documents and expert reports (if any), at the same time as when he files and serves his Notice of Application;
  
- (b) An applicant shall file and serve at the same time as his Notice of Application a statement on mediation setting out (i) whether he has attempted to resolve the dispute by mediation; (ii) whether he is willing to attempt mediation; and (iii) if he considers the case unsuitable for mediation, brief reasons for that conclusion;
  
- (c) A respondent shall file and serve his first batch of evidence, including witness statements, relevant documents and expert reports (if any), by the time he files and serves his Notice of Opposition;
  
- (d) A respondent shall file and serve at the same time as his Notice of Opposition a statement on mediation setting out (i) whether he is willing to attempt mediation; and (ii) if he considers the case unsuitable for mediation, brief reasons for that conclusion;



- (e) Both the applicant and the respondent shall file and serve evidence in reply to the evidence of the opposite side, including supplemental witness statements, all further relevant documents and expert reports (if any), and a checklist as per the Annex attached to the President's Practice Direction LTPD: BM No. 1/2009 within 14 days of the application to list for hearing;
  
- (f) If a party fails to comply with (a), (b), (c), (d) or (e), the Tribunal shall give further directions on paper for proper preparation of the case;
  
- (g) Unless there is a specific direction by the Tribunal to the contrary, a case where both parties are legally represented will only be listed for hearing when these directions are complied with;
  
- (h) Defaults on the part of a litigant may be sanctioned by unless orders or orders barring him from adducing evidence at the trial without leave and/or adverse costs orders;

- (i) Upon review on paper,
  - i. If the Tribunal is of the view that the case is ready for trial, it may list the case for trial without any call-over hearing;
  - ii. If the Tribunal is of the view that there are still some outstanding matters which may need to be argued, it may list the case for a call-over hearing at which directions may be given, including a direction for setting down the case for trial;
  - iii. If the Tribunal is of the view that there are still significant outstanding matters to be attended to or a checklist is incomplete, it may give written directions on paper and defer the listing of a case for hearing until the preparation by the parties reaches a reasonably satisfactory stage.

2.4 If the circumstances warrant, the Tribunal may direct further call-over hearings. Such further call-over hearings would however be exceptional.

2.5 Unnecessary and disproportionate interlocutory applications should not be made and would not be entertained. Insofar as possible, litigants should also deal with interlocutory matters by consent summons. Unnecessary or unreasonable interlocutory applications will normally be met with adverse costs consequences including gross sum assessments and orders for immediate payment of costs.

2.6 Once fixed, trial dates should not be vacated without good and cogent reasons. Late filing of evidence or late amendments that could result in adjournment of trial will not be allowed lightly.

2.7 Lawyers advising parties in building management cases should advise their clients of the costs implications of litigation and the Tribunal's attitude towards costs, in particular the consideration in making attempts to resolve their differences by mediation, before or after they issued proceedings in the Tribunal.

2.8 The Tribunal may apply some of the above features to cases involving litigants in person and give appropriate directions as it sees fit.

2.9 The Tribunal may, on the application of one or more of the parties or of its own motion, stay the proceedings or any part thereof for the purpose of mediation for such period and on such terms as it thinks fit. Where the Tribunal stays the proceedings, the parties must promptly inform the Tribunal if a settlement is reached and the parties should take the necessary steps to conclude the legal proceedings formally.

### **III. Mediation for Whom?**

3.1 If you encounter building management disputes, such as water leakage, apportionment of management fees and maintenance charges, or appointment of management committee, the disputes may have to be resolved in courts, including the Lands Tribunal. However, having litigation in courts means that one party will win and the other will lose at the end, and often after considerable time and costs have been incurred.

3.2 Mediation provides an alternative mechanism to resolve disputes. It gives supportive and practical steps for the disputing parties to reach a settlement that is responsive to their needs

and acceptable to both sides. The end result is often a win-win situation and the parties can save much time and costs when settlement is achieved. It also assists in maintaining harmony among owners in the same building or estate.

3.3 Experiences worldwide have shown that mediation facilitates a very high settlement rate and most people are satisfied with the outcome of mediation. Since the parties will only agree to what they voluntarily accept and the agreements reached in mediation are binding on the parties, the chances of having appeals are also minimal.

3.4 Thus, mediation is for those who would like to have their disputes resolved in an amicable manner rather than by way of the confrontational approach in litigation. It is also for those who would like to have an outcome that is acceptable to them, rather than forced on them.

3.5 Of course, not every case is suitable for mediation. For example, where there is a genuine dispute requiring the court to give declaratory relief, the parties may still need to go for litigation.

## IV. What is Mediation?

4.1 Mediation is an alternative dispute resolution process designed to help parties in dispute reach their own mutually acceptable agreements so as to resolve their differences. It is a voluntary process in which a trained and impartial third person, the mediator, can assist the parties to communicate and negotiate issues in a confidential setting. During the process, each party to the dispute has a chance to put his case and to hear what the other has to say. The mediator's job is not to make a decision for the parties, but to assist the parties to explore the strengths and weaknesses of their own cases and to identify possible solutions, so as to facilitate them to reach a settlement agreement. The mediator is skilled in unlocking negotiations that have become deadlocked and in keeping everyone focused on finding a solution.

4.2 In a mediation session, the mediator will help you:

- Discuss and decide what matters are in dispute;

- Explore each party's real needs and interests;
- Expand settlement options and assess the most suitable solution;
- Draw up the settlement agreement in detail, setting out how the parties have agreed to resolve each matter in dispute.

#### 4.3 Other observations about mediation include:

- As aforesaid, mediation may not be suitable for every case. You may be invited to attend a preliminary meeting in which the mediator will assess whether mediation is suitable for your particular circumstances, or your legal advisor may be able to assist you to decide.
- The parties may seek legal advice at any stage of the mediation.
- Both parties have the right to terminate the mediation at any time.

- Both parties must appreciate that what the other party says in a mediation session is without prejudice and therefore cannot be used in any legal proceedings.
- An agreement drafted in the mediation session and signed by both parties is legally binding as a matter of contract. A mediation settlement agreement is not enforceable as an arbitral award, judgment or order of court, but the innocent party may sue upon the agreement in the event that the other party is in breach of its terms.

## **V. What are the Advantages of Mediation?**

5.1 The advantages are many and include the following:

- You may avoid the tension and conflict in the adversarial litigation system.
- You may save some time and money in not having to contest the matters in Court.



- You make your own decisions and reach agreements with which you and the other party may be more willing and ready to comply.
- The settlement terms can be kept private and confidential.
- Mediation can improve your ability to continue and may improve your relationships with the other party or parties involved in the dispute.
- The settlement terms can go beyond the legal remedies of damages and injunctions to which the courts are limited.

## **VI. Who are the Mediators?**

6.1 There is no strict requirement of who can be a mediator, but usually mediators come from various professional backgrounds and have undergone mediation training. They may possess qualifications in law, management, architecture, engineering, surveying or any other fields, but such qualifications are not the pre-requisites. It is more important for mediators to have proper

mediation training so that they know how to conduct the mediation process and to assist the parties to reach their own settlement terms during the process.

6.2 As a rule of thumb, mediators:

- Do not provide legal advice. You will be encouraged to consult your lawyer for such advice;
- Do not take sides with either party;
- Do not make decisions for you, but help you to assess the feasibility of the decisions you make.

## VII. How do I Find One?

7.1 There are various organizations in Hong Kong maintaining their respective lists of mediators. Each organization has its own requirements to enlist a person in its list of mediators, but the persons enlisted are usually trained to meet defined

requirements covering knowledge and skills in negotiation and dispute resolution. They may also be required to abide by an Ethical and Professional Code of Practice of their respective organizations. You may approach the Building Management Mediation Co-ordinator's Office in the Lands Tribunal (see Part X below) if you need information as to where to find a mediator to resolve your building management disputes.

## **VIII. Does Mediation Take a Long Time?**

8.1 It depends on the complexity and number of issues you need to settle. The degree of the parties' cooperation and readiness to participate in the mediation sessions also count. If issues are less complicated and the process goes smoothly, it may only take 2 or 3 mediation sessions of a day or less each for you to reach agreement. All in all, mediation is generally a far more expeditious form of dispute resolution when compared to arbitration and litigation. This is of enormous benefit to all parties especially in relation to costs.

## IX. Confidentiality

9.1 Mediators are required to observe confidentiality in respect of all matters disclosed in the mediation session. When the parties agree to take part in mediation, they will be required by the mediator to sign an agreement to mediate that all mediation communication\* is confidential and must not be disclosed. They may be disclosed unless under specified circumstances, for example, with the consent of all parties and the mediator or where there are reasonable grounds to believe that the disclosure is necessary to prevent danger of injury to a person or of serious harm to the well being of a child, or with the leave of the court. Participants in mediation, including the mediators, must therefore comply with the general duty of confidentiality.

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\* Mediation communication means anything said or done, any document prepared, or any information provided for the purpose of or in the course of mediation.

## **X. Ways to Seek Information Session on Mediation Service**

- **Contact the Building Management Mediation**

### **Co-ordinator's Office**

Room 206 - Room 208, 2/F, Lands Tribunal Building,  
38 Gascoigne Road,  
Kowloon.

Tel : 2170 3858

Fax: 2782 5780

Webpage: <http://mediation.judiciary.hk>

Office Hours: Monday to Friday 9:00 a.m. – 1:00 p.m.  
2:00 p.m. – 5:00 p.m.

(Closed on Saturdays, Sundays and Public Holidays)

- **Make your request at the Lands Tribunal Registry**

G/F, Lands Tribunal Building,  
38 Gascoigne Road,  
Kowloon.

Tel : 2170 3861

Fax: 2384 4901

- **Consult your lawyer or other advisers**

**Please note:**

The staff of the Building Management Mediation Co-ordinator's Office are happy to assist you with enquiries on court-related mediation, but they will not provide any legal advice or offer any comment or assistance on the conduct of specific court cases and proceedings. Please note that you should consult a legal practitioner or approach free legal advisory bodies for assistance if you require legal advice or assistance.

Staff of the Lands Tribunal Registry will only assist you on simple court procedural matters. However, no advice will be given as to whether certain application should be made.

## **What are the Arrangements of the Building Management Mediation Co-ordinator's Office in Case of Bad Weather?**

Please refer to Typhoon and Rainstorm Warning Arrangements in the Judiciary website

([http://www.judiciary.hk/en/crt\\_services/business\\_hours\\_typhoon.htm](http://www.judiciary.hk/en/crt_services/business_hours_typhoon.htm)) or radio/television announcements of the same.

### **XI. What's Next?**

11.1 Arrangements will be made for any parties who are interested in seeking mediation or have approached the Mediation Co-ordinator to attend an information session on mediation. After the information session, the Mediation Co-ordinator will conduct a pre-mediation consultation with the parties and give the information on mediation service available for the parties to consider and apply for such service.

11.2 The Mediation Co-ordinator will provide the parties seeking mediation a list of mediators who are independent from the

Judiciary and have indicated their willingness to offer mediation service, from which the parties may choose their mediator. The list of mediators can only be accessible and perused within the Building Management Mediation Co-ordinator's Office by the concerned parties. The Mediation Co-ordinator will report to the Presiding Officer as to whether the parties seeking mediation have attended an information session and whether the parties are willing to take part in mediation.

11.3 Please note that a party's application for information session or mediation will not lead to an automatic stay of the legal proceedings, but is subject to the Presiding Officer's direction in this regard.

## **XII. Do I Need to Pay for the Mediation Service?**

12.1 Information sessions and pre-mediation consultations with the Mediation Co-ordinator are free of charge. Some mediators, but not all, may provide mediation service free of charge. If a party wants to receive the service of a particular mediator, he will have to check whether the mediator concerned will charge for the service or not.



## **XIII. Costs Implication**

13.1 Under the terms of the President's Practice Direction LTPD: BM No. 1/2009, parties and those advising them in building management cases should explore mediation before they decide to litigate. Mediation can start before any litigation or at any stage during the process of litigation or as directed by the Tribunal.

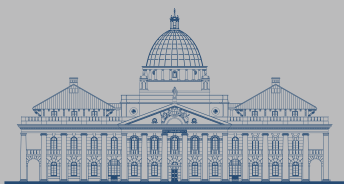
13.2 Parties to building management disputes are encouraged to use mediation as an efficient and cost-effective means to resolve their differences. To achieve this purpose, the Presiding Officer in charge of the case will give appropriate directions for the conduct of cases.

13.3 Although mediation is a voluntary process and without prejudice to the parties' contentions in the underlying action, in cases where parties unreasonably refuse or fail to attempt mediation, adverse costs order may be made against such parties.

13.4 Nevertheless, where a party has engaged in mediation up to the minimum level of expected participation agreed by the parties beforehand or as determined by the Tribunal, or has a reasonable explanation for non-participation, he shall not suffer any adverse costs order.

13.5 In determining whether a party has acted unreasonably in refusing to proceed with mediation, the Tribunal shall take into account all relevant circumstances, but not what happened during the actual process of the mediation.

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# 司 法 機 構

## JUDICIARY

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香港特別行政區政府新聞處設計封面  
政府物流服務署印

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