

# **\* 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.

### **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.

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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.