



**土地審裁處
建築物管理案件試驗計劃
調解服務簡介**

**Pilot Scheme on Building Management Cases
in the Lands Tribunal**
Information Leaflet on Mediation



土地審裁處 建築物管理案件試驗計劃 調解

I. 序言

1.1 2007年9月，土地審裁處庭長根據香港法例第17章《土地審裁處條例》第10(5)(a)條頒佈編號為LTPD: BM No. 1 of 2007的指示。該份指示引進一項建築物管理案件的試驗計劃。此試驗計劃旨在簡化建築物管理案件的處理程序，鼓勵爭議各方嘗試採用調解以消除彼此的分歧，務求使案件得以迅速及有效地處理。

1.2 此試驗計劃已定於2008年1月1日至2008年12月31日期間進行。此試驗計劃的主要對象是各方均有律師代表的案件，但如審裁處認為適合，此計劃中部分的程序，包括調解在內，也可適用到一方或各方均沒有律師代表的案件。

1.3 本小冊子旨在幫助市民明白甚麼是調解及採用調解的好處。本小冊子亦簡介了土地審裁處的建築物管理案件試驗計劃中有關調解的程序，以及在有關建築物管理事宜的爭議中如何以調解作為達到和解的方法。

II. 為誰而設？

2.1 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。

2.2 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，而如果能達成和解，可節省不少的時間和訟費。和解亦有助維持同一大廈或屋邨業主之間和諧的關係。

2.3 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。

2.4 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，亦是為寧願獲得自願接受而非被迫接受的結果之人士而設。

2.5 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佈宣告性質的濟助，則仍須進行訴訟。

III. 甚麼是調解？

3.1 調解是解決糾紛的另一途徑，爭議各方可循此途徑達成雙方均接納的協議。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任何一方作出決定，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。

3.2 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。

3.3 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。
- 雙方均有權隨時終止調解。
- 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。

IV. 調解有甚麼好處？

4.1 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。

V. 誰是調解員？

5.1 調解員沒有嚴格的資格要求，但他們一般來自不同的專業，並接受過有關調解的訓練。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，但這些資格並非必具條件。更重要的是他們必須經過有關的調解訓練，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。

5.2 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。

VI. 往哪裡找調解員？

6.1 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。爭議各方如需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（詳見下述第IX部）。

VII. 調解費時嗎？

7.1 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。

VIII. 保密

8.1 調解員必須對調解會議中透露的所有事宜保密。如爭議各方同意參與調解，調解員通常就會要求他們簽署一份調解協議（即同意進行調解的協議），表明按調解協議進行的一切談判，均享有不被披露的特權，並在任何權利不受影響的基礎上進行。

IX. 如何要求參加調解服務講座

- **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樓206 - 208 室
電話：2170 3858
圖文傳真：2782 5780
- **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**

X. 下一步怎麼做？

10.1 任何一方如有意尋求調解服務，並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。

10.2 就試驗計劃的案件而言，調解統籌主任會為尋求調解的爭議各方提供一份願意參加試驗計畫的調解員的名單，供其從中自行選擇調解員。調解統籌主任會向審裁處法官匯報此試驗計劃中爭議各方曾否出席調解講座，以及是否願意參與調解。

10.3 任何一方申請參加調解講座或申請參與調解，並不會導致法律程序自動中止，而須視乎審裁處法官作出的有關指示而定。

XI. 調解服務是否需要收費？

11.1 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。爭議一方如想獲得某一特定調解員的服務，須先查詢是否需要收費。

XII. 根據試驗計劃進行建築物管理案件的調解

12.1 根據《土地審裁處庭長指示》，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，應先探討可否和解或採取解決糾紛的另類辦法。調解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。

12.2 在《土地審裁處庭長指示》中詳列了轉介建築物管理案件的爭議進行調解時所須依循的程序。當事人應參閱《土地審裁處庭長指示》，並就其內容與律師或其他顧問商討。

12.3 此試驗計劃的目的之一，是鼓勵爭議各方以調解方式解決爭議，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。

12.4 此試驗計劃中的調解，參與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令。

12.5 不過，訴訟人如曾採取調解或其他解決糾紛的另類機制，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，又或有合理的理由不採取這些途徑，則無須承擔對其不利的訟費令。

12.6 審裁處在決定訴訟人拒絕以調解或另類途徑來解決糾紛是否合理時，會考慮所有相關的情況，而不是考慮在調解進行中或在以另類機制解決糾紛的過程所發生的事情。

12.7 為評估此試驗計劃的成效，調解統籌主任可要求調解員向其匯報調解是否有效。

司法機構

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(第一版)

PILOT SCHEME FOR BUILDING MANAGEMENT CASES IN THE LANDS TRIBUNAL MEDIATION

I. Introduction

1.1 In September 2007, the President of the Lands Tribunal issued Direction LTPD: BM No. 1 of 2007 pursuant to Section 10(5)(a) of the Lands Tribunal Ordinance, Cap. 17. The Direction introduced a Pilot Scheme for Building Management Cases. The aims of the Pilot Scheme are to streamline the processing of building management cases and to encourage parties to make attempts to resolve their differences by mediation, so that such cases can be disposed of in an efficient and expeditious manner.

1.2 The Pilot Scheme is scheduled to run from 1st January 2008 to 31st December 2008. The primary targets are those cases where all the parties are legally represented, but if appropriate, the Tribunal will also apply some of the procedures under the Pilot Scheme including mediation to cases where one or all of the parties are acting in persons.

1.3 This pamphlet aims to help you understand what mediation is and how it works to your advantage. It also gives you a brief account of the process of mediation under the Pilot Scheme 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. For Whom?

2.1 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.

2.2 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.

2.3 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.

2.4 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.

2.5 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.

III. What is Mediation?

3.1 Mediation is an alternative dispute resolution process designed to help parties in dispute to 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.

3.2 In a mediation session, the mediator will help you to:

- 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.

3.3 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.

IV. What are the Advantages of Mediation?

- 4.1 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.

V. Who are the Mediators?

5.1 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 have 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.

5.2 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.

VI. How do I Find One?

6.1 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 IX below) if you need information as to where to find a mediator to resolve your building management disputes.

VII. Does Mediation Take a Long Time?

7.1 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 the parties especially in relation to costs.

VIII. Confidentiality

8.1 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 usually be required by the mediator to sign a Mediation Agreement (i.e. an agreement to mediate) that all negotiations undertaken pursuant to the mediation are to be privileged and conducted on a without prejudice basis.

IX. 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
- **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.**

X. What's next?

10.1 Arrangements will be made for any parties who are interested in seeking mediation and 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.

10.2 For cases under the Pilot Scheme, the Mediation Co-ordinator will provide the parties seeking mediation a list of mediators who have indicated their willingness to participate in the Pilot Scheme, from which the parties may choose their mediator. The Mediation Co-ordinator will report to the Presiding Officer as to whether the parties under the Pilot Scheme have attended an information session and whether the parties are willing to take part in mediation.

10.3 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.

XI. Do I Need to Pay for the Mediation Service?

11.1 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.

XII. Mediation of Building Management Cases under the Pilot Scheme

12.1 Under the terms of the President's Direction, parties and those advising them in appropriate case of the Building Management case should explore settlement or alternative dispute resolution 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.

12.2 The President's Direction sets out the procedures to be followed in referring a building management case to mediation. You should refer to the President's Direction, and discuss it with your lawyer or other advisor.

12.3 One of the aims of the Pilot Scheme is to encourage parties to use mediation as an efficient and cost-effective means to resolve the disputes. To achieve this purpose, the Presiding Officer in charge of the case will give appropriate directions for the conduct of cases.

12.4 Although mediation under the Pilot Scheme 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.

12.5 Nevertheless, where a party has engaged in mediation or other alternative dispute resolution mechanism 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.

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

12.7 In order to assess the effectiveness of the Pilot Scheme, mediators may be requested to report to the Mediation Co-ordinator on the effectiveness of the mediation.

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