

Chapter:	620	Mediation Ordinance	Gazette Number	Version Date
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		Long title	L.N. 167 of 2012	01/01/2013
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An Ordinance to provide a regulatory framework in respect of certain aspects of the conduct of mediation and to make consequential and related amendments.

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

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

(Originally 15 of 2012)

Section:	1	Short title*	E.R. 1 of 2013	25/04/2013
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- (1) This Ordinance may be cited as the Mediation Ordinance.
- (2) (Omitted as spent—E.R. 1 of 2013)

Note:

* (Amended E.R. 1 of 2013)

Section:	2	Interpretation	L.N. 167 of 2012	01/01/2013
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- (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).

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.

Section:	3	Objects of this Ordinance	L.N. 167 of 2012	01/01/2013
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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.

Section:	4	Meaning of mediation	L.N. 167 of 2012	01/01/2013
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- (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—
- (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.

Section:	5	Mediation and mediation communications to which this Ordinance applies	L.N. 167 of 2012	01/01/2013
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- (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—
- (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.

Section:	6	Application to the Government	L.N. 167 of 2012	01/01/2013
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This Ordinance applies to the Government.

Section:	7	Provision of assistance or support in mediation	L.N. 167 of 2012	01/01/2013
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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.).

Section:	8	Confidentiality of mediation communications	L.N. 167 of 2012	01/01/2013
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- (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 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.

Section:	9	Admissibility of mediation communications in evidence	L.N. 167 of 2012	01/01/2013
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A mediation communication may be admitted in evidence in any proceedings (including judicial, arbitral, administrative or disciplinary proceedings) only with leave of the court or tribunal under section 10.

Section:	10	Leave for disclosure or admission in evidence	L.N. 167 of 2012	01/01/2013
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- (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;
 - (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.

Section:	11	Consequential and related amendments	L.N. 167 of 2012	01/01/2013
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The enactments specified in Schedule 2 are amended as set out in that Schedule.

Schedule:	1	Processes to Which this Ordinance Does Not Apply	E.R. 1 of 2013	25/04/2013
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[section 5]

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).
6. Mediation referred to in section 11B of The Ombudsman Ordinance (Cap 397).
7. Conciliation referred to in sections 4 and 14 of the Minor Employment Claims Adjudication Board Ordinance (Cap 453).
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).
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).
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).
11. Conciliation referred to in sections 59 and 78 of the Race Discrimination Ordinance (Cap 602) and section 8 of the Race Discrimination (Investigation and Conciliation) Rules (Cap 602 sub. leg. B).
12. Mediation proceedings referred to in sections 32(3) and 33 of the Arbitration Ordinance (Cap 609).

Schedule:	2	(Omitted as spent—E.R. 1 of 2013)	E.R. 1 of 2013	25/04/2013
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[section 11]

Part 1

(Omitted as spent—E.R. 1 of 2013)

1. (Omitted as spent—E.R. 1 of 2013)

Part 2

(Omitted as spent—E.R. 1 of 2013)

- 2-4. (Omitted as spent—E.R. 1 of 2013)

Part 3

(Omitted as spent—E.R. 1 of 2013)

5. (Omitted as spent—E.R. 1 of 2013)

Part 4

(Omitted as spent—E.R. 1 of 2013)

6. (Omitted as spent—E.R. 1 of 2013)

Part 5

(Omitted as spent—E.R. 1 of 2013)

7. (Omitted as spent—E.R. 1 of 2013)

Part 6

(Omitted as spent—E.R. 1 of 2013)

- 8-13.(Omitted as spent—E.R. 1 of 2013)

Part 7

(Omitted as spent—E.R. 1 of 2013)

- 14-15. (Omitted as spent—E.R. 1 of 2013)

Part 8

(Omitted as spent—E.R. 1 of 2013)

16-17. (Omitted as spent—E.R. 1 of 2013)

Part 9

(Omitted as spent—E.R. 1 of 2013)

18-19. (Omitted as spent—E.R. 1 of 2013)

Part 10

(Omitted as spent—E.R. 1 of 2013)

20-21. (Omitted as spent—E.R. 1 of 2013)

Part 11

(Omitted as spent—E.R. 1 of 2013)

22-23. (Omitted as spent—E.R. 1 of 2013)

Part 12

(Omitted as spent—E.R. 1 of 2013)

24. (Omitted as spent—E.R. 1 of 2013)

Part 13

(Omitted as spent—E.R. 1 of 2013)

25. (Omitted as spent—E.R. 1 of 2013)

Part 14

(Omitted as spent—E.R. 1 of 2013)

26-27. (Omitted as spent—E.R. 1 of 2013)

Part 15

(Omitted as spent—E.R. 1 of 2013)

28-29. (Omitted as spent—E.R. 1 of 2013)

Part 16

(Omitted as spent—E.R. 1 of 2013)

30. (Omitted as spent—E.R. 1 of 2013)

Part 17

(Omitted as spent—E.R. 1 of 2013)

31-32. (Omitted as spent—E.R. 1 of 2013)

Part 18

(Omitted as spent—E.R. 1 of 2013)

33-34. (Omitted as spent—E.R. 1 of 2013)