

# 只要一個好的調解員就成了

## All you need is a good mediator

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(編按：香港調解會是香港國際仲裁中心轄下的組織，議會於二零零四年十一月三十日和調解會合辦了一個關於專業調解的講座，讓會員多瞭解一種解決紛爭的辦法。下文是對調解和調解會的簡介，有意進一步認識調解的讀者，可瀏覽香港國際仲裁中心的網站：[www.hkiac.org](http://www.hkiac.org)。)

(Editor's note: A seminar on professional mediation was co-organised on 30 November 2004 by the TIC and the Hong Kong Mediation Council (HKMC), a division of the Hong Kong International Arbitration Centre (HKIAC), in order to help members understand an alternative way to settle disputes. The following is a brief introduction of mediation and the HKMC. Readers may visit the website of the HKIAC at [www.hkiac.org](http://www.hkiac.org) for more information about mediation.)

衝突無處不在，每人每天大概都要花上不少時間解決各種衝突。不過，大家都要處理衝突，並不等於大家都處理好衝突。在私事上縱使無法找出方法化解衝突，受影響的或許只是牽涉其中的若干人而已，但假如在業務上也同樣不能化解衝突的話，公司卻可能損失數以百萬計的金錢，又或者開罪長久的業務夥伴。基於這些原因，商界在過去二十多年來對於排解糾紛變得日益關注，而越來越多公司對於運用訴訟這種解決糾紛的傳統手法變得更為審慎，並且正尋求其他解決糾紛的方法。在那些方法之中，要化解衝突而又不會破壞與顧客或業務夥伴的關係的，調解可以算得上是又便宜又有效的方法。

### 調解是甚麼？

所謂調解，指由一個中立的第三者，即調解員，在聆聽發生爭執的各方表述意見後，嘗試協助他們解決糾紛的過程。調解是自願性質的，而且並沒有約束力，調解員不會決定究竟誰對誰錯。在調解時，調解員力求把各方帶到談判桌前，並使他們自行達成大家都可以接受的方案；調解員是不會把任何方案強加於任何一方的。

仲裁和調解一樣，都是透過第三者排解糾紛，兩者都無須在法庭上面對法官或陪審團。不過，和調解不同的是，在仲裁時，仲裁員在研究過各方提交的證據後，會判定哪一方要為錯誤的行為負責，並且會裁定被虧待的一方可以得到多少賠償之類。

Conflicts abound and everyone is apparently spending a good deal of time trying to resolve them almost on a daily basis. Just because we all have to tackle them, however, does not mean that we all tackle them well. Whereas failure to hammer out a solution to a conflict in personal matters may affect only the few persons involved, a similar failure in business may cost a company millions of dollars or may alienate long-term business partners. That is why the business community has been directing more attention to conflict or dispute resolution over the past 20 years or so. And that is also why more companies are seeking alternative methods to settle conflicts, rather than recourse to a more traditional course of action — litigation. Among those methods, mediation stands out as an inexpensive, yet efficient solution to achieving the aim of settling conflicts without harming the relations with customers or business partners.

### What is mediation?

Mediation is a voluntary, non-binding process by which a neutral third party, the mediator, hears a dispute between two or more parties and attempts to help them settle their dispute without deciding the merits of the case. In mediation, the mediator seeks to bring all the parties together and assist them in reaching a settlement acceptable to all of them by themselves; no settlement will be forced on any parties by the mediator.

In contrast to mediation, in arbitration, another form of dispute resolution by a third party as opposed to a trial before a judge or jury, the arbitrator listens to the evidence presented by each party and then makes a judgment as to who is responsible for the wrongs and, for example, how much compensation must be paid to the wronged.

The mediator, being a third party to the dispute, must be accepted by all the parties involved as the right person who is

調解員是與紛爭無關的第三者，因此必須得到各方接納，認為他是中立而可靠的恰當人選，有能力幫助各方認清其見解是否理據充份，並且探尋可能的方案，務求當調解結束時，各方都對結果滿意。調解的過程是保密的，因此，即使調解失敗，在調解過程中披露的任何資料、文件，或向調解員說過的任何話，都不會向外洩露。

## 誰可以當調解員？

調解是成是敗，可以說繫於調解員一人身上。因此，調解員如果能夠有認可的資格，在調解時不僅可以贏得爭論各方的信心，更可以向社會推廣調解這種排難解紛的方法。

香港調解會於一九九四年成立，隸屬於香港國際仲裁中心，宗旨是在香港推動以調解方式解決糾紛。香港國際仲裁中心為調解員設立了認可制度，確保香港的調解服務達到最基本的專業水平，並鼓勵公眾利用香港已有的專業調解服務。由於該制度對調解員的培訓和專業操守要求嚴格，因此在國際上也得到廣泛認可。

## 旅行社怎樣從調解中得益？

由於調解失敗也不會影響參與調解各方採取法律行動的權利，因此旅行社不妨考慮在與顧客或業務夥伴簽訂的合約中加入一項條文，說因合約而產生的糾紛必須先轉介香港國際仲裁中心，並按其調解規則調解之類。那樣做有不少好處，其中之一是費用低廉：由認可調解員調解糾紛，最便宜的話所費不過港幣幾千元，而倘若對簿公堂，可能隨便也要花上港幣幾十萬元。

最後值得一提的，是不管糾紛是否已變成訴訟，都可以採用調解。當然，在採取法律行動前就使用調解更有效益，因為可以免卻訴訟的費用。不過，即使法庭已有裁決，雙方仍可利用調解達成省時的方案，因為假如利用法律程序提出上訴的話，可能需要幾年時間才有最終判決。☞

neutral, reliable and capable of helping the parties recognise the strengths and weaknesses of their case and exploring potential solutions so that at the end of the mediation, every party is reasonably satisfied with the outcome. What takes place during the mediation process is confidential. Therefore, even if the case cannot be settled, any information or documents disclosed or anything said to the mediator during the process will not be revealed.

## Who can be mediators?

A mediator can make or break a mediation process. As such, if the mediator is accredited, he or she can not only win the confidence of the disputing parties, but also promote the use of mediation as an alternative means of settling disputes in the community.

Established in 1994, the HKMC is a division of the HKIAC, aimed at promoting the development and use of mediation to resolve disputes in Hong Kong. The HKIAC has established an accreditation system for mediators to safeguard the minimum professional standard of mediation practised in Hong Kong and help the public to best utilise the existing mediation expertise already available in Hong Kong. With a high standard of training and ethics, the accreditation system is also widely recognised internationally.

## How can mediation help travel agents?

Since mediation will not affect the rights of the disputing parties to take legal action should no settlement be reached, travel agents may consider inserting a clause in their contracts signed with customers or business partners, saying, for instance, that any dispute arising out of those contracts must first be referred to the HKIAC for mediation in accordance with its mediation rules. One of the benefits for so doing is the low cost of mediation: the cost of mediating a case by accredited mediators can be as small as a few thousand Hong Kong dollars, whereas the potential costs could be several hundred thousand Hong Kong dollars if legal proceedings are initiated.

Finally, mediation can take place both before and after disputes have already become lawsuits. Seeking mediation before a lawsuit is filed is of course more favourable and can enable the parties to settle their disputes before any money is spent on litigation. However, even after a verdict has been delivered by the court, the disputing parties may also make use of mediation in order to reach a timely settlement, rather than opting for appeals through legal proceedings, which may take several years to have the final verdict. ☞