

[Cursory Translation]

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Guangdong-Hong Kong-Macao Greater Bay Area Cross-Boundary Disputes Mediation Model Rules

(These Rules were endorsed at the 4th Guangdong-Hong Kong-Macao Greater Bay Area Legal Departments Joint Conference on 16 December 2022 and came into effect on the day of publication.)

Introduction

This document is the Guangdong-Hong Kong-Macao Greater Bay Area Cross-Boundary Disputes Mediation Model Rules promulgated by the Guangdong-Hong Kong-Macao Greater Bay Area Mediation Platform. These Rules aim to lay down the best practices for the resolution of cross-boundary disputes through amicable, voluntary, confidential, and non-adversarial mediation, for reference of the mediation institutions and mediators of the three places when formulating their detailed mediation rules.

Chapter I General Provisions

Article 1 Scope of application

- (1) These Rules are applicable to the mediation of cross-boundary disputes conducted by mediators on the “Guangdong-Hong Kong-Macao Greater Bay Area Mediator Panel” (hereinafter referred to as “GBA Mediators”) and mediation institutions approved by and within the Guangdong Province (hereinafter referred to as “Mediation Institutions”).
- (2) A “cross-boundary dispute” referred to in these Rules means a dispute which the parties agree involves more than one jurisdiction, and at least one of the relevant jurisdictions involves a jurisdiction within the Guangdong-Hong Kong-Macao Greater Bay Area (namely Guangdong Province, Hong Kong Special Administrative Region and Macao Special Administrative Region).

Article 2 Mode of mediation

- (1) Before or after a cross-boundary dispute arises, the parties may upon agreement and in accordance with these Rules apply to a Mediation Institution for mediation (hereinafter referred to as “institutional mediation”), or appoint a GBA Mediator to conduct mediation (hereinafter referred to as “non-institutional mediation”).
- (2) Except as otherwise provided by these Rules, all provisions under these Rules are applicable to institutional and non-institutional mediation.
- (3) Regardless of whether the mediation is institutional or non-institutional, the parties may agree to exclude or vary any provision of these Rules.
- (4) Where any provision of these Rules is in conflict with a provision of the applicable law from which the parties cannot derogate, the provision of law should prevail.

(5) Regardless of whether the mediation is institutional or non-institutional, the mediator must not violate any mandatory provisions under the law applicable to the mediation.

Article 3 Principle of voluntariness

Mediation should be conducted in accordance with the principle of voluntariness, and the parties must not be compelled to accept mediation.

Article 4 Principle of confidentiality

(1) Mediation is generally not open to public, unless otherwise agreed by the parties.

(2) Unless otherwise agreed by the parties, all those involved in the mediation should keep all information related to the mediation confidential, except where disclosure is required by law, or for the performance or enforcement of the mediated settlement agreement.

(3) Documents or information disclosed, produced and submitted by any party for the mediation should be kept confidential.

Article 5 Disclosure of information

To facilitate a settlement, when the mediator receives information concerning the dispute from a party, he or she may disclose such information to any other party to the mediation. However, if a party provides the information to the mediator on a confidential basis or during a caucus session with the mediator, except with the prior consent of that party, the mediator must not disclose such information to any other party to the mediation.

Article 6 Principles of neutrality and impartiality

The mediator should remain neutral, treat all parties fairly, and assist the parties in resolving disputes.

Chapter II Mediation Procedure

Article 7 Application for mediation

- (1) The parties may apply for mediation in the following manners:
 - (i) the parties to the dispute jointly apply to a Mediation Institution for mediation or jointly appoint a GBA Mediator to conduct mediation;
 - (ii) a party may send a “mediation invitation letter” to the other party or parties in person or by mail, facsimile, email or other electronic means. If the former party chooses institutional mediation, a copy should be sent to the Mediation Institution.
- (2) The parties to a non-institutional mediation may at any time by agreement carry on with the mediation in the form of institutional mediation.

Article 8 Response to mediation application

- (1) If within 14 days from the date of issuing the “mediation invitation letter” or any other time limit stipulated in the invitation letter, the elected Mediation Institution receives the acceptance to mediate from the other party or parties by any of the means set out in Article 7(1)(ii), it should commence the mediation process, otherwise a refusal to mediate may be

deemed. The elected Mediation Institution may also, after receiving a copy of the “mediation invitation letter”, take the initiative to seek the views of the other party or parties, and decide whether to arrange mediation based on the response.

(2) If the party or parties who have received the “mediation invitation letter” provide acceptance after the expiration of the relevant time limit, the elected Mediation Institution should seek the views of the inviting party before deciding whether to continue the mediation process.

(3) If within 14 days from the date of sending the “mediation invitation letter” or any other time limit stipulated in the invitation letter, the inviting party receives the acceptance to mediate from the other party or parties by any of the means set out above, the elected Mediation Institution should commence the mediation process, otherwise a refusal to mediate may be deemed.

Article 9 Commencement of mediation

Unless otherwise agreed by the parties, the date of commencement of the mediation should be the date on which all parties to the dispute agree to participate in the mediation.

Article 10 Materials for mediation application

(1) If the parties opt for non-institutional mediation, they should provide the mediator and the other parties with the following materials:

(i) an application for mediation or “mediation invitation letter”, which should specify:

1. names, addresses, telephone numbers, email addresses and

other possible contact methods of the parties;

2. brief disputed facts;
3. the disputed amount (if any);
4. request for mediation.

(ii) evidence as appropriate;

(iii) if a party appoints an agent to participate in the mediation, a written letter of authorisation.

(2) If the parties opt for institutional mediation, in addition to providing the elected Mediation Institution with the materials stipulated in Article 10(1), they should also provide their identification documents.

Article 11 Number of mediators

Unless otherwise agreed by the parties, the mediation should be conducted by one mediator. If there is more than one mediator, they should each duly perform their duties and cooperate with each other.

Article 12 Appointment and designation of mediators

(1) After the commencement of institutional or non-institutional mediation, the parties may by agreement appoint a mediator, who must be a mediator on the “Guangdong-Hong Kong-Macao Greater Bay Area Mediator Panel”. As far as institutional mediation is concerned, if the appointed mediator is not a mediator of the elected Mediation Institution, the consent of the Mediation Institution is required.

(2) If the parties have opted for institutional mediation, and fail to agree on the choice of mediator within 10 days from the commencement of the mediation, the elected Mediation Institution should designate a mediator

on the “Guangdong-Hong Kong-Macao Greater Bay Area Mediator Panel” within the Mediation Institution.

(3) If the parties have opted for non-institutional mediation, and fail to agree on the choice of mediator, the parties may by agreement carry on with the mediation in the form of institutional mediation, and the elected Mediation Institution should designate a mediator according to the above principles.

(4) If the elected Mediation Institution has other regulations in place on the appointment of mediators, those regulations should prevail.

Article 13 Factors to be considered in designating a mediator

(1) The elected Mediation Institution should have regard to the following factors when designating a mediator:

- (i) the mediator must be on the “Guangdong-Hong Kong-Macao Greater Bay Area Mediator Panel”;
- (ii) suitability of the mediator based on his or her professional knowledge, experience and ability;
- (iii) whether the mediator can proceed with the mediation in a timely manner;
- (iv) geographic diversity of mediators in cross-boundary disputes; and
- (v) whether there are factors that may affect the impartiality and independence of the mediator.

Article 14 Prevention of conflict of interest

(1) Before accepting an appointment or designation, the mediator must without delay disclose to the parties and (if applicable) the elected

Mediation Institution any circumstances likely to give rise to justifiable doubts as to his or her impartiality or independence, including details of any personal, professional, financial or other interest that may influence the outcome of the dispute.

(2) From the time of appointment or designation and throughout the mediation process, if any such circumstances arise or become known to the mediator after the appointment, the mediator should without delay disclose the same to the parties and (if applicable) the elected Mediation Institution.

(3) After receiving the information disclosed by the mediator, the elected Mediation Institution should immediately pass it on to the parties and seek their views; and if any party objects to the choice of mediator, the parties should jointly appoint another mediator by agreement, or the Mediation Institution should designate another mediator.

(4) If the parties have opted for non-institutional mediation, after receiving the information disclosed by the mediator, a party objects to the choice of mediator, the parties should jointly appoint another mediator by agreement, or by agreement carry on with the mediation in the form of institutional mediation, where a mediator will be designated by the elected Mediation Institution in accordance with Article 12(2), or opt for terminating the mediation.

Article 15 Acceptance of appointment or designation as mediator

(1) The mediator should decide whether to accept the appointment or designation within 10 days from the date of receiving a notice, and if the mediator fails to provide his or her acceptance within the time limit, a refusal will be deemed.

(2) Before accepting the appointment, the mediator should ensure that he or she has adequate capacity to conduct the mediation, and can complete the mediation work diligently and efficiently.

(3) If the mediator accepts the appointment or designation, the mediation can be carried out in accordance with these Rules.

Article 16 Substitution of mediator

(1) The parties may by agreement substitute the mediator at any time.

(2) If the parties have opted for institutional mediation, and the mediator is unable or unsuitable to perform his or her duties, the elected Mediation Institution may substitute the mediator, and re-appoint or re-designate the mediator in accordance with the provisions of these Rules, unless otherwise agreed by the parties.

Article 17 Conduct of mediation

(1) Unless the parties agree otherwise on the manner in which the mediation is to be conducted, the mediator may, after taking into account the circumstances of the case, the wishes of the parties, the need for efficiency and other factors, determine the conduct of the mediation as he or she considers appropriate, including but not limited to:

- (i) convening a meeting with the parties at an early stage to agree on the mediation arrangements;
- (ii) meeting with the parties or their agents individually or simultaneously;
- (iii) with the consent of the parties, inviting persons conducive to the resolution of the dispute to participate in the mediation;

- (iv) requiring the parties to submit written or oral suggestions or proposals for the resolution of the dispute;
- (v) when a point of dispute involves the understanding and application of foreign laws, upon the application of the parties, or the recommendation of the mediator with the consent of the parties, engaging a law ascertainment institution or non-interested expert for law ascertainment;
- (vi) with the consent of the parties, engaging relevant experts to provide consultation or appraisal opinion on technical issues;
- (vii) upon the application of the parties, or the recommendation of the mediator with the consent of the parties, engaging a non-interested third party to provide neutral opinion for the parties' reference; and
- (viii) taking into account the circumstances of the case and practical needs, using any technological means he or she considers appropriate to contact the parties, including holding online mediation remotely.

Article 18 Time limit for mediation

- (1) The parties may agree on a time limit for the mediation. The mediator and the parties may also determine the time limit by mutual agreement.
- (2) If no time limit for the mediation has been agreed or determined, the mediator should complete the mediation within 30 days from the date of accepting the appointment or designation, unless the parties agree to an extension.

Article 19 Place of mediation

In principle, mediation is conducted at the location of the elected Mediation Institution. If the parties agree otherwise or have opted for non-institutional mediation, mediation may be conducted at a location chosen by the parties or online, and the costs incurred thereby will be borne by the parties.

Article 20 Language of mediation

- (1) The parties may agree on the language to be used for the mediation. If this has not been agreed by the parties, the elected Mediation Institution or mediator may seek the views of the parties.
- (2) The translation costs incurred during the mediation should be borne by the parties.

Article 21 Mediation agent

- (1) The parties may authorise an agent to conduct the mediation on their behalf or to assist them during the mediation, but should inform the mediator and the other parties of the name, title, authority, etc of the agent or the mediation assistant by way of a letter of authorisation or notice of mediation assistance.
- (2) The agent or assistant participating in the mediation should separately sign a confidentiality agreement and agree to abide by the provisions of these Rules.

Article 22 Information relating to mediation confidential and generally not to be used in other proceedings

- (1) Unless otherwise agreed by the parties or stipulated by the law, the

mediator, the parties or their agents, the staff of the Mediation Institution, and other parties involved in the mediation should not in other judicial, arbitral or other dispute resolution proceedings, use as evidence, or disclose to any third party the following information:

- (i) the fact that a party participates or was willing to participate in mediation;
- (ii) views expressed, or proposals made by a party in the mediation in respect of a possible settlement of the dispute;
- (iii) statements or admissions made by a party in the course of the mediation;
- (iv) proposals made by the mediator or the parties;
- (v) the fact that a party had indicated its willingness to accept a settlement proposal made by the mediator or the parties;
- (vi) any document prepared for the mediation (including mediated settlement agreements reached through mediation).

Article 23 Exceptions

- (1) Article 22 of the Rules does not apply in the following circumstances:
 - (i) disclosure is required or permitted by law;
 - (ii) disclosure is considered necessary by the court in order to safeguard national interest, public interest, and the legitimate interest of persons not involved in the case;
 - (iii) disclosure required for the performance or enforcement of the mediated settlement agreement.

Article 24 Responsibilities of mediator in subsequent proceedings

A mediator must not act as an arbitrator, judge, juror, mediator, witness, expert, agent, or legal consultant of a party in the same or related dispute resolution proceedings after the conclusion of the mediation, except with the written informed consent of the parties involved in the mediation.

Article 25 Termination of mediation

(1) The mediation will terminate under any of the following circumstances:

- (i) the parties reach a mediated settlement agreement;
- (ii) the parties or any party makes a declaration in writing terminating the mediation;
- (iii) the time limit for mediation expires and the parties do not reach an agreement on the extension of the time limit;
- (iv) the mediator considers the case to be unsuitable for further mediation after considering the circumstances of the case and consulting the parties, and the mediator may give reasons.

Article 26 Mediated settlement agreement

(1) If the parties reach an agreement on all or part of the dispute through institutional mediation, the mediator should prepare a mediated settlement agreement in writing and provide guidance to the parties on the signing of the mediated settlement agreement.

(2) If the parties reach an agreement on all or part of the dispute through non-institutional mediation, the mediator may prepare a mediated settlement agreement in writing and provide guidance to the parties on the signing of the mediated settlement agreement.

(3) Unless otherwise agreed by the parties, in respect of institutional

mediation, the Mediation Institution and the mediator should stamp (if any) and sign on the mediated settlement agreement. In respect of non-institutional mediation, the mediator may sign and stamp (if any) the mediated settlement agreement, or provide other evidence that the agreement resulted from mediation.

(4) The parties may consider choosing the governing law of the mediated settlement agreement.

Article 27 Legal consequences of signing a mediated settlement agreement

By signing the mediated settlement agreement, the parties are deemed to have agreed that the mediated settlement agreement can be used as evidence of mediation. The parties may seek relief in accordance with the law applicable to the signed mediated settlement agreement.

Chapter III Supplementary Provisions

Article 28 Charging standards should be made public

The charging methods and standards of Mediation Institutions and GBA Mediators should be made public on websites or by other means.

Article 29 Liability for costs

(1) Regardless of the outcome of the mediation, the costs and expenses incurred during the mediation should be borne equally by the parties, unless otherwise agreed by the parties. The term “costs” includes:

(1) management or administrative fees of the Mediation Institution

and GBA Mediator in charge of the mediation;

- (2) fees and travel expenses of the appointed GBA Mediator;
- (3) costs of engaging law ascertainment institutions, experts, technical appraisals, neutral assessments, and persons conducive to the resolution of the dispute agreed by the parties;
- (4) any other expenses incurred during the mediation.

(2) The Mediation Institution or mediator may require the parties to pay the costs in advance, and may require the parties to pay a deposit during the mediation process to cover any additional fees and expenses expected to be incurred, and may suspend the mediation until the advance payment or deposit is made.

(3) The balance of any advance payment should be returned to the parties at the conclusion of the mediation.

Article 30 Exclusion of liability

(1) Save for fraudulent or dishonest conduct, the parties agree to waive any claim against the Mediation Institution or mediator for any act or omission in connection with the mediation.

(2) Any statements and opinions made or used by the parties or their agents and mediators during the mediation, whether written or oral, must not be cited as a basis for any litigation involving defamation or other related complaints.

Article 31 Applicable version of the Rules

Unless the parties have specifically agreed otherwise on the applicable version of the Rules, it is presumed that the Rules in effect on the date of

commencement of the mediation apply.

Article 32 Calculation of dates and time limits

The term “day” referred to in these Rules refers to a calendar day (natural day). Unless otherwise agreed by the parties, when calculating “time limits” referred to in these Rules, the relevant period should be counted from the day following the date of occurrence of the event and end at 24:00 on the last day of the period. The relevant period is continuous, and local public and statutory holidays of each of three places do not affect the counting. If the last day of the time limit falls on a Sunday or a holiday, it should be postponed to the next first working day.

Article 33 Effective date

These Rules will come into effect on 30 December 2022.

Annex - Model Mediation Clause:

Model mediation clause 1: mediation only

Any dispute, controversy or claim arising out of or relating to this contract should be submitted to mediation conducted by [an authorised mediation institution of the Guangdong Province / a mediator on the “Guangdong-Hong Kong-Macao Greater Bay Area Mediator Panel”] in accordance with the Guangdong-Hong Kong-Macao Greater Bay Area Cross-Boundary Disputes Mediation Model Rules.

(Note: The parties should consider adding:

- (a) the year of adoption of the version of the Rules;
- (b) the parties agree that within 10 days from the commencement of the mediation, one mediator will be appointed by agreement, and if the parties do not reach a consensus, the mediation institution should designate a mediator;
- (c) the language of the mediation should be...;
- (d) the place of mediation should be... .)

Model mediation clause 2: multi-tiered clause

Any dispute, controversy or claim arising out of or relating to this contract should be submitted to mediation conducted by [an authorised mediation institution of the Guangdong Province / a mediator on the “Guangdong-Hong Kong-Macao Greater Bay Area Mediator Panel”] in accordance with the Guangdong-Hong Kong-Macao Greater Bay Area Cross-Boundary Disputes Mediation Model Rules. If parties cannot reach agreement through mediation, the following method [1/2] below will be adopted for the resolution of the dispute:

- (1) submitting to [an arbitration tribunal] for arbitration;
- (2) commencing legal proceedings to [court] in accordance with the law.