促进式调解模型 FACILITATIVE MEDIATION MODEL

马嫊傃 律師 JOSEPHINE MA, SOLICITOR HONG KONG

資深調解員 MEDIATOR

HKMAAL 香港调解员资历评审评核员 HKMAAL MEDIATOR ACCREDITATION ASSESSOR

VICE-CHAIRPERSON, HONG KONG MEDIATION COUNCIL, HKIAC

Josephine Ma

- Motto: "Mediation is a lifestyle"
- Vice Chairperson, Hong Kong Mediation Council
- Practicing Solicitor in Hong Kong for 30 years
- Double Accredited Mediator (General & Family Panels since 2004)
- Appointed to Guangdong-Hong Kong-Macao Greater Bay Area Mediator Panel (2024)
- ▶ 20+ years mediating almost all kinds of disputes, including commercial, family, inheritance, cross-border disputes, etc.
- District Court Case Settlement Conferences
- Accreditation Assessor for General Mediators since 2010
- ► Family Mediation Supervisor

We shall cover

我們將會學習

Conflicts 冲突

Conflict Resolution Styles 冲突解决方式

Definition of Mediation 调解的定义

Use of Mediation 调解的用途

Models of Mediation 调解模式

Mediator 调解员

Facilitative Mediation Model 促进式调解模型

The Process 调解 流程



What is Conflict? 什么是冲突?

A conflict occurs when two or more parties perceive that they have mutually incompatible values, priorities or goals

当两方或多方认为他们具有相互不相容的价值观、优先事项或目标时,就会 有机会发生冲突



Conflicts 冲突

Can you avoid?

你能避免吗?

Conflicts Normal Inevitable 冲突正常是 不可避免的

- ▶ We live in a world full of conflicts 我们生活在一个充满冲突的世界
- ▶ International conflicts/disputes 国际冲突/争端
- ▶ Work conflicts/disputes 工作冲突/纠纷
- ▶ Domestic conflicts/litigation/disputes 国内冲突/訴訟/纠纷
- ▶ Our own conflicts 我们自己 内在的冲突



Some Common Causes of Conflicts 平常引起冲突的原因

Stress 压力

Power
Struggle
权力斗争

Different Expectation 不同的期望 Mis-understanding 误会

Value System 价值观念

Policy 政策规条

Personality 性格

Resources资源



Conflicts - Bad? 冲突 - 坏事?

- ► Can be stressful and unpleasant
- 可能会有压力和不愉快
- Damage to substantive and relationship

对实质性和关系的损害

- ▶ Destructive 破坏性的
- ▶ Discord, disharmony, and hostility

不和谐和敌意



Good? 好处?

Values of Conflict 衝突的正面價值

New Thinking and Ideas 新思维和新想法

Other Perspectives 其他观点

Better Understanding 更好地理解

Problem Solving (even long rooted problems) 解决问题(即使是根深蒂固的问题)

Growth 成长

Positive Change 积极的改变

Breakthrough突破

Conflicts are ever present 冲突永远存在

Conflict cannot be eliminated 无法消除

But can be worked with 但可以处理

What is Conflict Resolution? 什麼是衝突解

Definition: Conflict resolution is the process of resolving a dispute or disagreement in a peaceful and constructive way.

解決是以和平且具建設性的方式解決爭端或分歧的

Goal: To find a solution that satisfies everyone involved.

目標: 找到令所有相關方滿意的解決方案。

Explanation: Effective conflict resolution minimizes harm and maximizes mutual benefit, preserving relationships and creating understanding.

THE THOMASKILMANN CONFLICT
RESOLUTION MODEL
(TKI) IS A
FRAMEWORK FOR
UNDERSTANDING
HOW INDIVIDUALS
HANDLE CONFLICT.

托马斯-基尔曼冲突解决 模型

是一种人际冲突管理风格,用来衡量个人对冲 突情况的反应

Thomas-Kilmann Model

- Thomas and Ralph Kilmann in 1974 and categorizes conflict-handling styles based on two dimensions: assertiveness(the extent to which a person attempts to satisfy their own concerns) and cooperativeness(the extent to which a person attempts to satisfy the concerns of others)
- ▶ 它由肯尼斯 托马斯(Kenneth Thomas)和 拉尔夫 • 基尔曼(Ralph Kilmann)于1974 年开发,并基于两个维度将冲突处理方式分 类: 自信性(个人在多大程度上努力满足自 己的需求)和合作性(个人在多大程度上努力 为满足他人的需求)

CONFLICT MANAGEMENT HIGH COLLABORATING **COMPETING** ASSERTIVE **COMPROMISING ACCOMMODATING AVOIDING** LOW **COOPERATIVE** LOW HIGH

Maintaining the relationship isn't important 维持关系不重要

My needs are important 我的需要很重要



Competing支配型



Compromising妥协型



Maintaining the relationship Collaborating 合作型 Si important

迁就型



Avoiding 逃避型

我的需要不重要

Accommodating My needs are not as important

Exercise 練習

- ▶ 5 GROUPS 5组
 - ▶ 5 CONFLICT RESOLUTION STYLES 5 种冲突解决方式:
 - ▶ Group 1: Competing 第 1 组: 竞争
 - ▶ Group 2: Collaborating 第 2 组:协作
 - ▶ Group 3: Compromising 第 3 组:妥协
 - ▶ Group 4: Avoiding 第 4 组:逃避
 - ▶ Group 5: Accommodating 第 5 组: 迁就

Scenario 场景

- A student council is trying to allocate funds for their annual budget. One group wants to spend more on social activities, while another argues that academic resources should be prioritized.
- ► 一个学生会正试图为他们的年度预算分配资金。一组希望在社交活动上投入更多资金,而另一组则认为应该优先考虑学术资源。

Reflection 反思

In Groups 小組討論

- How effective your assigned style was in resolving the conflict. 你被委派的处理冲突的方法有效吗?
- How the style impacted the relationship between the parties.

处理冲突的方法对关系有什么影响?

Class-Wide Debrief 全班汇报

- Was the resolution style effective? 解决方式有效吗?
- How did the other party in the scenario respond to your style? Did it escalate or resolve the conflict?

场景中的另一方对你的风格有什么反应?它是否升级或解决了冲突?

- One advantage and one disadvantage of using that style. 使用该样式的一个优点和一个缺点。
- In real life, when might this style be most or least effective?

在现实生活中,这种风格什么时候可能最有效或最无效?





"Conflict? What Conflict?"

"争议?什么争议?"

"Forget about it…" "忘记它吧…"

"Can we talk about it some other time?" "我 们迟些再谈好吗?"

I LOSE, YOU LOSE 我输,你输

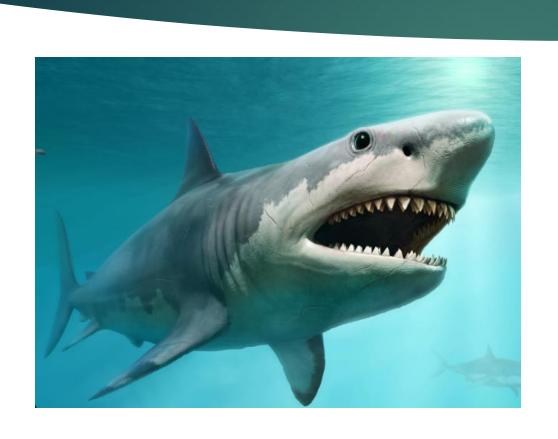
Avoiding 逃避型

- ▶ When this style is appropriate 这种方式适合:
- Issue is trivial 问题微不足道
- Cooling off period is needed 需要冷静期
- •Timing is wrong 时机错误
- ▶ When this style is not appropriate

这种方式不适合:

• Issue is important and conflict will not disappear, but instead continue to get worse

问题很重要,冲突不会消失,反而会继续恶化





"We are doing it my way...." "我们依我的方法做...."



"Let's just get the job done..."

"我们就把事情完成吧…"



I WIN, YOU LOSE

我赢, 你输

Competing 支配型

- ▶ When this style is appropriate 这种方式适合:
- A decision needs to be made quickly emergency e.g. fire, danger

需要迅速做出决定-紧急情况,例如火灾,危险

- Agreed upon that power comes with position of authority e.g. authoritative figure 同意权力伴随着权威地位,例如权威人物
- Unpopular decision needs to be made 需要做出不受欢迎的决定
- ▶ When this style is not appropriate 这种方式不适合:
- Feelings are sensitive 要兼顾感受和关系
- Decision is not urgent不紧急的决定

Accommodating 迁就型

"Sure! I am flexible...."

"当然,我很弹性的..."

"Whatever you want is fine with me..."

"你要什么我都行…"

I LOSE, YOU WIN

我输, 你赢



Accommodating 迁就型

- ▶ When this style is appropriate 这种方式适合:
- Maintaining the relationship more important

维持关系更重要

• Issue is very important to the other person and not to you

问题对对方非常重要,对你并不是非常重要

- ▶ When this style is not appropriate 这种方式不适合:
- Issue is important to you 问题对你很重要
- Lead to evading the issue when others are ready to address it

当其他人准备解决问题时,回避问题,导致问题未能解决

Compromising妥协型



"I will meet you half way...."

"我愿意各退半步…."

"Let's make a deal..."

"我们作个交易吧…"

I WIN SOME, YOU WIN SOME

我赢部份, 你赢部份

Compromising 妥协型

- ▶ When this style is appropriate 这种方式适合:
- A decision needs to be made sooner rather than later 需要尽早做出决定
- •Both parties are better off than attempting a win/lose 双方每人让步一点点都比尝试输赢更好
- ▶ When this style is not appropriate 这种方式不适合:
- •Situation is urgent 情况紧急
- •Unbalanced power 力量不平衡
- Many important needs must be met 必须满足许多重要需求



"My preference is.... And please tell me yours.... If we each explain what we want, and keep talking, we can find a way for both of us.

我 优先的考虑是....请告诉我你的...如 果我们每个人都解释我们想要什么,并继 续交谈,我们可以找到适合我们俩的方法

I WIN, YOU WIN

我赢, 你赢

Collaborating 合作型

▶ When this style is appropriate 这种方式适合:

必须

这种方

- An important decision must be made 做出重要决定
- Situation is not urgent 情况不紧急
- Previous resolution attempts have failed

以前尝试的解决方案失败

- ▶ When this style is not appropriate: 式不适合:
- The matter is trivial to all involved

此事对所有参与者来说都是微不足道的

• Time, commitment and ability are not present

时间,承诺或能力不容许

ASSERTIVENESS

自信度

Conflict Approaches 冲突处理的模

Competing 支配型

- •Low relationship
- High IssueWin/lose power struggle
- 低关系
- 高对应问题
- 贏/输角力
- 斗争

Collaborating 合

- •High relationship
 •High Issue
- Expand range of
- possible options
- •Goal is win/win

合作型

- 高关系
- 高对应问题
- 扩展可能的选项范围
- 目标是双赢

Compromising 妥协型

•Relationship undamaged - 关系未受损
•Goal is to find "middle -目标是找到 "中间立场"
ground"

Avoiding 逃避型

- Low relationship
- 低关系
- Low Issue
- 低对应问题
- Withdraw from the
- 挑澼处境
- situation
- 保持中立
- Maintain neutrality

Accommodating 迁就型

- High relationship
 - Low Issue
- •Give in to other party
- Maintain harmony
- 高关系
- 低对应问题
- 向对方让步
- 保持和谐

Adapted from Kenneth Thomas & Ralph Kilmann, 1974.

COOPERATIVENESS 合作度

策略	Strategies	Resolutions议案			
火量		Win-Win	Lose-Lose	Win-Lose	
		赢 - 赢	输 - 输 Both parties	赢 - 输	
逃避型	Avoiding		ignore the issue		
支配型	Competing		双方都忽略了问题	Only one party wins	
合作型	Collaborating	Meet the needs of all involved		只有一方胜出	
迁就型	為 Accommodating	足所有参与者的需求	求	One party meets needs of other at own expense	
妥协型	Compromising		Both parties give up something	一方 牺牲 需要成全另一方的	

双方都放弃了一些东西

Conflicts and Disputes 冲突与争议

- Conflicts broader and deeper meaning
- 冲突-更广泛和更深的含义
- ▶ Disputes争议:
 - ▶ terminology preferred by some sectors 某些行业首选的术语
 - > standard terminology in litigation more focus on positions and issues which might otherwise be dealt with by more formal procedures like litigation

ADR

- ▶ Alternative Dispute Resolution 替代性争议解决
- ▶ Processes 过程
- ▶ Not judicial determination 非司法裁决
- ► Impartial third person assists to resolve disputes

公正的第三人协助解决争议

- ▶ Less costly and faster processes 成本更低,流程更快
- ▶ More creative and collaborative solutions 更具创造性和协作性的解决方案
- ► Example: Mediation, Conciliation, Arbitration* 示例:调解、调停、仲裁*

THE DISPUTE RESOLUTION SPECTRUM 争议解决范围

无协助谈判 UNASSISTED NEGOTIATIONS	ALTERNATIV	审判 ADJUDICATION		
Traditional Settlement Negotiations 传统的和解谈判 Pre-dispute Early Involvement 争议前早期参与	PROCESS ASSISTANCE 过程协助 Conciliation 协调 Facilitation 促进 Mediation 调解 Ombuds 监察员 小型审判 和解法官 Settlemer	W	PRIVATE LITIGATION 私人诉讼 Binding Arbitration 具约束力的仲裁 Summary Proceeding with Binding Decision 具有约束力的决定的简易程式	Admin Boards 管理委员会 Judicial Forums 司法论坛
NON-E	SINDING PROCESS	BINDING	PROCESSES 约束性流	

多 MORE

SELF DETERMINATION (CONTROL BY PARTIES)

少 LESS

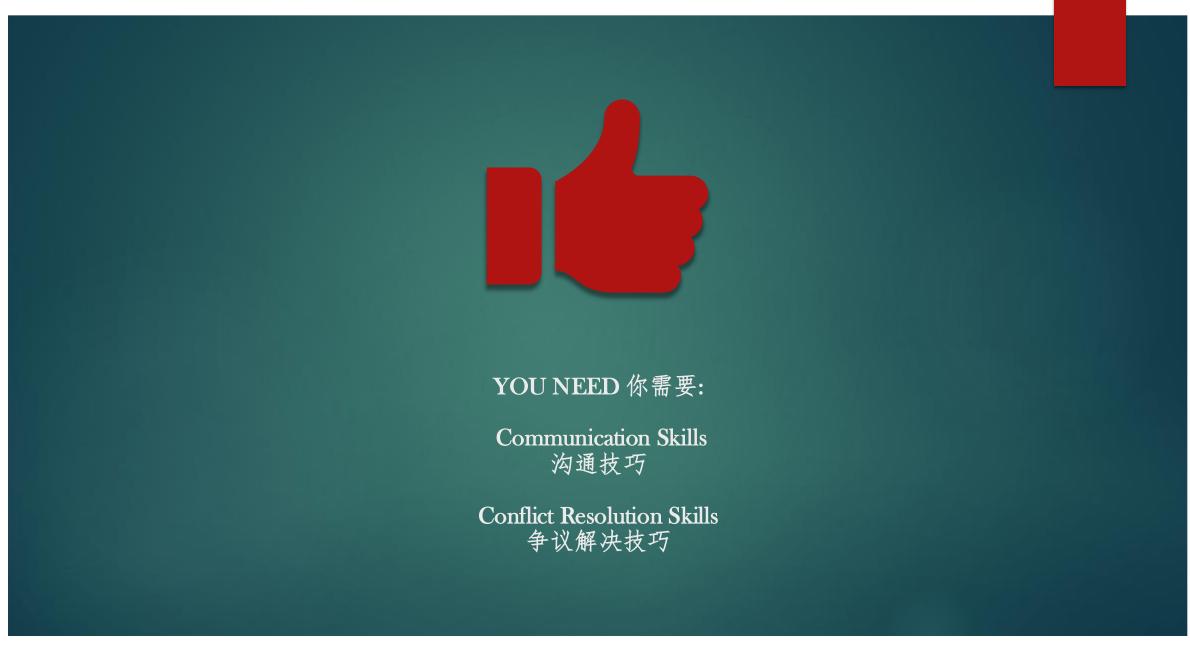
自决(由各方控制)

Peace is not the absence of conflict, but the ability to cope with it. Mahatma Gandhi

和平并不是没有冲突,而是应对冲突的能力。 圣雄甘地

GANDHI (1869-1948) WAS AN INDIAN LAWYER AND ANTI-COLONIALIST WHO RELIED ON NONVIOLENT RESISTANCE. AS A LEADER IN THE CAMPAIGN FOR INDIA'S INDEPENDENCE FROM THE BRITISH, OTHER HUMAN RIGHTS MOVEMENTS AROUND THE WORLD EMBRACED HIS WORDS AND TACTICS.

甘地(1869-1948)是一位印度律师和反殖民主义者,依靠非暴力抵抗。在领导印度争取独立脱离英国的运动中,他的言论和策略被世界各地的其他人权运动所采纳。





Welcome to the World of Mediation 欢迎进入 调解的世界

Mediation 调解

- ► A Form of ADR alternative to court system
- 替代传统法庭系统解决争议的一种形式
- ▶ Structured process 结构化流程
- ► Trained and impartial third party 训练有素且公正的第三方
- ▶ Assist the parties to make decisions 协助各方做 出决定
- ▶ Not impose decision on the parties 不会将决定加诸当事人
- ▶ Voluntary 自愿
- ▶ Confidential 保密
- ▶ Goal: amicable settlement responsive to need and acceptable to all 目标: 友好解决, 回应需求, 结果为所有人所接受

Benefits of Mediaiton 调解的好处

- ► More control over the proceedings and outcome 对程序和结果的更多控制
- ► More likely to preserve and enhance relationship 更有可能维护和改善关系
- ► Greater access to creative and adaptive solutions 更有可能获得创造性和适合的解决方案
- ▶ Quicker resolutions 更快捷的解决方案
- ▶ Less expensive更便宜

Uses of Mediation 调解的应用

Mediation is widely used to settle 调解被广泛用于解决:

- ▶ Civil cases 民事案件
- ▶ Business and Commercial Disputes 商业纠纷
- ▶ Family Disputes 家庭纠纷
- ▶ Construction Disputes 建筑争议
- ▶ Financial Disputes 财务纠纷
- ▶ Labour Disputes 雇佣关系争议
- ▶ Land Disputes 土地纠纷
- ▶ Others 其他

International Disputes

国际争端

The United Nations has played a crucial role in helping to mediate inter- and intra-State conflicts at all stages: before they escalate into armed conflict, after the outbreak of violence, and during implementation of peace agreements

联合国在协助调解国家间和国内冲突的所有阶段方面发挥了关键作用:在冲突升级为武装冲突之前、暴力爆发之后以及执行和平协定期间

Mediation Networks

Activities & S...

Featured Pr...

Digital Toolkit

Standby Team

Secretary-Ge...



Recognising the need for a more professional approach to mediation, the United Nations has enhanced its operational readiness to implement and support mediation efforts. A key innovation in this regard was the establishment of the Mediation Support Unit (MSU) within the Policy and Mediation Division (PMD) of the UN Department of Political and

Philosophy for life? 人生哲理?

Mediation skills -> conflicts -> manageable -> peace

调解技巧 ->冲突 ->可管理 ->和平

Personal and professional lives: lawyers, counselors, teachers, law enforcement officers, human resource professionals,even students and young children

个人和职业生活:律师、顾问、教师、执法人员、人力资源专业人员.....甚至学生和幼儿

► Empowering people to make their own informed choices to resolve conflicts

鼓励每一个人都有能力, 为自己作出 名智的决定,解决冲突



调解是一种生活态度

Mediation

IS A

LIFESTYLE

Models of Mediation 调解模式

Facilitative 促进式

Evaluative 评估式

Transformative 转化式

Facilitative Mediation 促进式调解

Mediator structures a process to assist the parties in reaching a mutually agreeable resolution

调解员构建一个程序,协助各方达成双方都同意的解决方案 Facilitative Mediator 促进式调解员:

- ▶ Asks questions 提出问题
- ▶ Validates and normalizes parties points of view 确认和 正常化各方的观点
- ► Searches for interests underneath the positions taken by parties 在各方采取的立场下寻找利益
- ► Assists the parties in finding and analysing options for resolution 协助各方寻找和分析解决方案的选项
- Does not make recommendations to the parties, give his or her own advice or opinion as to the outcome of the case, or predict what a court would do in the case

不向当事人提出建议,不对案件结果提出自己的意见,也不预测法院在案件中会做什么

- ▶ Mediator is in charge of the process, 调解员负责过程
- ▶ Parties are in charge of the outcome. 当事人负责结果

Facilitative Mediation 促进式调解

► Facilitative mediators want to ensure that parties come to agreements based on information and understanding

促进式调解员希望确保各方在资讯和理解的基础上达成协定

▶ Predominantly joint sessions with all parties present -> that the parties can hear each other's points of view

调解过程以**联席会议**为 主->各方可以听取彼此的观点

▶ Hold caucuses regularly 定期举行个别会谈

Evaluative Mediation

评估式调解

Evaluative mediators assists the parties in reaching resolution by

评估式调解协助各方通过以下方式达成解决方案

Pointing out the strengths and weaknesses of their cases

指出他们案件的优势和劣势

Predicting what a judge or jury would be likely to do

预测法官或陪审团可能会做什么

Evaluative Mediation 评估式调解

• An evaluative mediator might make formal or informal recommendations to the parties as to the outcome of the issues

评估式调解员可能会就问题的结果向当事人提出正式或非正式的建议

Evaluative mediators are concerned with the legal rights of the parties rather than needs and interests

评估式调解员关注的是当事人的合法权利,而不是需求和利益

Less focus on non-legal aspects, e.g. relationship, feelings, interests较少关注非法律方面,例如关系、感情、利益

Evaluative Mediation 评估式调解

• Evaluative mediators meet most often in separate meetings with the parties and their attorneys, practicing "shuttle diplomacy"

评估式调解员最常与当事人及其律师单独会面

• They help the parties and attorneys evaluate their legal position and the costs vs. the benefits of pursuing a legal resolution rather than settling in mediation

他们帮助当事人和律师评估他们的法律地位以及寻求法律解决方案而不是通过调解解决的成本与收益

• The evaluative mediator structures the process, and directly influences the outcome of mediation

评估式调解员构建流程,并直接影响调解结果

Transformative Mediation 转化式调解

[Goal 目標]

Empowerment

充权/賦能

Recognition

明白和认可

Transformative Mediation 转化式调解

▶ Empowerment 充权/賦能

▶ through empowerment, disputants gain "greater clarity about their goals, resources, options, and preferences" and that they use this information to make their own "clear and deliberate decision

通过充权/賦能,争议者可以「更清楚地了解他们的目标、资源、选择和取向」,并且使用这些资讯来做出「他们自己的清晰和深思熟虑的决定」

restoration to individuals of a sense of their own value and strength and their own capacity to handle life's problems

恢复个人对自己的价值和力量以及自己处理生活问题的能力

Transformative Mediation 转化式调解

- ▶ Recognition 明白和认可
 - help each person to recognize and empathize with the other party

帮助每个人理解和 明白对方的感受和想法

 enabling the parties to see and understand the other person's point of view – to understand how they define the problem and why they seek the solution that they do

使各方能够看到和理解对方人的观点——了解他们如何定义问题以及他们为什么寻求他们所做的解决方案

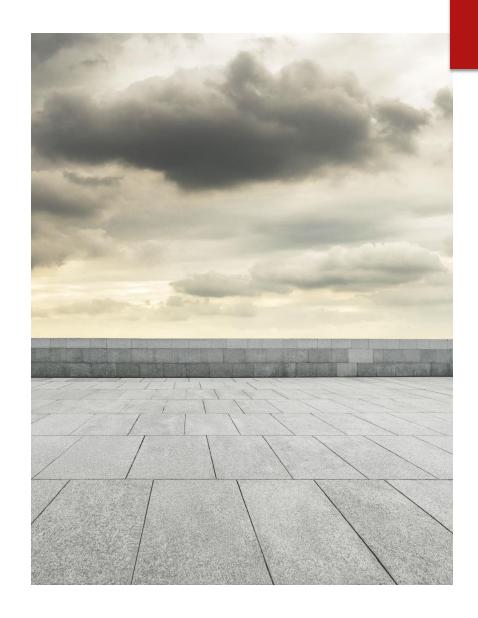
Transformative Mediation 转化式调解

Improved or transformed relationship -> settlement

转化或改善关系,从而解决争议

Empowerment and recognition pave the way for a mutually agreeable settlement, but that is only a secondary effect.

充权/賦能和认可为双方都同 意的解决方案铺平了道路, 但解决方案只是次要效果。



Transformative Mediation 转化式调解



Let the parties make their own decisions - content & process

讓各方做出自己的决定-内容和流程



Mediator 调解员:

Questions to help the parties in self-discovery

用问题协助各方自我发现/更深切地了解自己的需要

Transform conflicting individuals from adversaries to collaborators 将冲突的 对立的双方转变为合作者

Not Suitable 不适用于

 People want a punitive judgement, retribution, pay-back or revenge

人们想要惩罚性的判决、报复、回报或报复

Authoritative Judgement is needed: enforcement action needed, victim protection, establish a rule of law

需要权威判决:需要采取执法行动、保护受害者、建立法治

Serious danger of mediation being used in bad faith, e.g. fishing for information

恶意使用调解, 例如获取资讯

Incompetency of disputants (e.g. mental health, substance abuse, etc.)

争议方无能力 (例如心理健康、药物滥用等)

- ▶ Safety & violence 安全和暴力
- ▶ May be not ready now, future? 现在可能还没有准备好,未来?

FACILITATIVE MEDIATION MODEL 促进式调解模型

Hong Kong Mediation Three Main Characteristics:

- Facilitative Mediation Model
- o Focus on interests
- Structured and Confidential Process

香港調解 三大特點:

- 促進式調解模式
- 關注利益
- 結構化和保密的 流程



PHASES

階段

INFORMATION GATHERING

資料收集

2 EXPLORATION

探討和理解

3 NEGOTIATING TOWARDS

談判達成協議

AGREEMENT

4 Settlement Agreement 和解協議

Facilitative Mediation PROCESS

促進式調解流程

Pre-mediation separate Meetings 調解前單獨會議

Mediator's Opening Statement

調解員開場白

Parties Initial Statements

雙方開場白

Summarizing

Issue identification & Agenda Setting

問題識別和議程設置

Discussion

Exploration and Clarification

討論

探討和澄清

Private Sessions 個別會談

Option Generation

製造方案

Initial Negotiation

談判

Bargaining Phase

議價

Outcome and Documentation

成果和文件

@2025 Josephine Ma. All rights reserved. www.masoso.com SKILLS

技巧

ACTIVE LISTENING 積極傾聽 SUMMARIZING 總結 REFRAMING 框架重整

QUESTIONING 適當的提問

PARAPHRASING 釋義

EMPATHY 同理心 HYPOTHETICAL QUESTIONING

假設性提問

AGREEMENT WRITING

撰寫協議

Mediation Process Model for HKMAAL Stage 2 Mediator Assessment

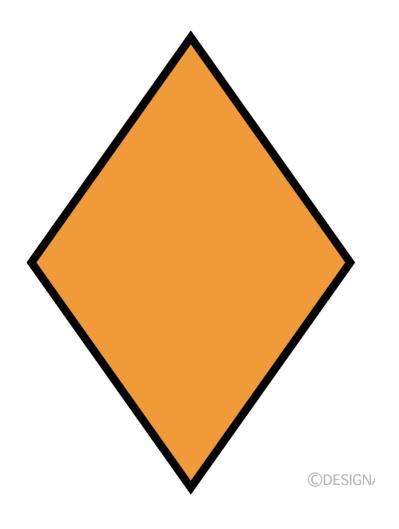
For the purpose of assessment, candidates MUST follow the mediation process model set out below, demonstrate his/her understanding and application of interest based negotiation principles in handling the dispute in the simulated cases as well as the specific skills set out in Form 1:

Candidates should refer to HKMAAL Competency Handout for more comprehensive outline of Process Stages Goals and Mediator Skills

Mediation Process 1. Mediation Opening 2a. Party A Statement & Summary 2b. Party B Statement & Summary 3. First Joint session continued including agenda, common ground and exploration of the issues. 4a. Separate Meeting Party A 4b. Separate Meeting Party B 5a. Second Joint Session **5b. Second Separate Meetings** Further option generation • Further option generation Reality testing Reality testing Assessing potential offers against • Assessing potential offers against OR alternatives (BATNA, WATNA) alternatives (BATNA, WATNA) Formulating offers where appropriate • Formulating offers where appropriate Dealing with deadlock Dealing with deadlock 6. Final Joint Session Reaching / Refining Settlement Agreement Terms, including contingency plans **Finish Role Play** 7. Drafting Settlement Agreement

*Please note: Regardless of which path the Mediator takes in the process at Step 5, Second Joint Session or Second Separate Meetings, the total separate meeting time for the role play should not be more than 40 minutes. Besides, the mediator must demonstrate the additional skills as outlined to move the process forward towards settlement, even if a full settlement is not reached.

Premediation Mediation Session Opening Statement Storytelling Issue Identification **Establishing Commonalities** Agenda Building Negotiation and Problem Solving Testing and Writing the Agreement Closure **Postmediation**





POSITIONS
Stated Opinions
Strategies

CONFLICT 冲突

Visible Behavior 可见的行为 Symptoms 症状 POSITIONS
Stated Opinions
Strategies

位置 陈述的意见

策略

INTERESTS

Unstated Opinions

Experiences

Assumptions

Biases

Values

Needs

Shared Values, Interests and Needs → Collaborative Strategies and Solutions INTERESTS

Unstated Opinions

Experiences

Assumptions

Biases

Values

Needs

关注

未陈述的意见

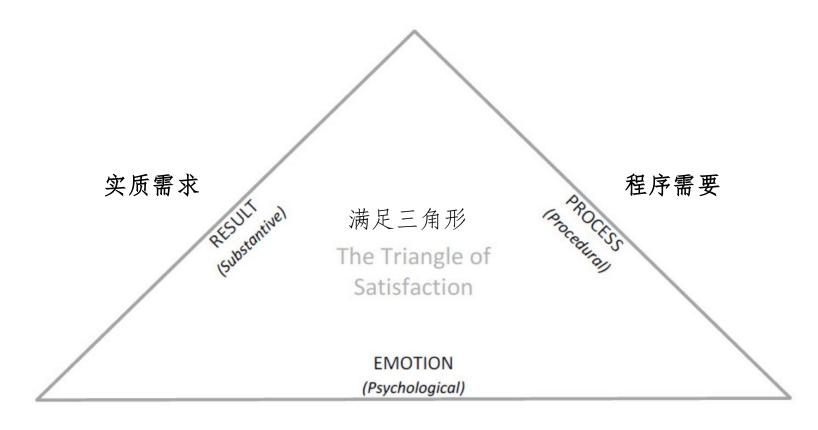
经验

设想

偏见

价值观

需要



情绪需要

Role of the Mediator 调解员的角色



Mediator 调解员

Facilitator of Negotiation

谈判促进者

Not Judge or Adjudicator

非法官或裁决者

Not a Decision Maker

非决策者

No Stake in the Outcome

非结果得益者

Trained in Mediation

接受过调解培训

Formally Accepted by Disputants

争端各方正式接受

Impartial & Independent Third
Party

公正和独立的第三方

Process Manager

- "Mediator in charge of the Process,
- Parties in charge of the 亨, Content."

流程管理者

"调解员-负责程

各方-负责内

• 4



Go to www.menti.com and use the code 6795 5320

https://www.menti.com/al67yzfaxpfh



HTTPS://WWW.MENTIMETER.C OM/APP/PRESENTATION/ALZT J5T78YQC92RPHTXFGYU9THT QQ1SQ/EDIT?SOURCE=SHAR E-MODAL

Good Mediator 好调解员

Strong People Skills

良好慨人际交往能力

Able to Empathise

能够同理心

Able to be Directive and to Confront 能够被指导和面对 Comfortable with High Emotions, Arguments, Interruptions, Tears

对高涨情绪、嘈、阻、 眼泪感到舒适

Respected and Trusted

受人尊敬同信赖

Creative in Problem Solving

创意地解决问题

Non-judgemental

Patient & Thorough 有耐性和贯彻

Persistent

持续

Low Need for Recognition, Credit, having things turn out your way

对认可、信用、事情按照你的方式发展需求低

Impartial 不偏不倚 Able to Maintain Positive Tone 能够保持积极的语气

Mediator Skills 调解员技巧

- ▶ Appropriate questions 适当的问题
- ▶ Active listening积极倾听
- ► Acknowledging and validating the expression of emotions 确认并肯定情绪的表达
- ▶ Summarizing 总结
- ▶ Paraphrasing 意译
- ▶ Reframing 框架重整
- ► Awareness of his own and the party's body language

意识到自己和各方的 身体语言

Questions – Closed ended Open ended

開放式問題 Open Questions

- ► Encourage more information 鼓勵提供更多信息
- ► Allow for a wide range of responses允許更廣 泛的回應
- ▶ "What do you think about climate change?" 你 對氣候變化有什麼看法?

封閉式問題 Closed Questions

- Limit the respondent to a specific set of responses, often "yes" or "no," or selecting from predefined options
- ▶ "Do you believe in climate change? (Yes/No)" 你相信氣候變化嗎? (是/否)



Open or Closed Questions? 開放式或封閉式 問題?

- ▶ Did you have a conflict with him?你跟他是不是發生了衝突?
- ▶ How do you feel about this matter?你對這件事有什麼感受?
- ▶ How would you like to resolve this problem?你想如何解決這個問題呢?
- ▶ Are you very upset with his actions?你對他的做法是否十分反感?
- ▶ Do you feel he needs to apologize?你是否必須要他作出道歉?
- ▶ What would you like to discuss today? 你今天想 討 論什麼事情?

Active Listening 積極傾聽



SOLER

Squarely facing speaker
 正面望着对方
 Open your posture

开放的姿态 Lean towards the speaker

微微向讲者 方向前倾 e contact is maintained

保持眼神接触
• Relax while listening

放松聆听





Acknowledging and validating the expression of emotions 确认并肯定情绪的表达

Summarising 总结

▶ Summarizing is the process of **condensing** a longer text, conversation, or piece of information into its most important points or main ideas

总结是将较长的文本、对话或信息**压缩**成最重要的 要点或核心思想的过程

- Focus on the **key points** and **essential details**
- 集中关键点和重要细节

避免加入个人意见或解释

- ► Neutral, focusing on what was said or written 保持中立,专注于所说或所写的内容
- ► Avoid adding personal opinions or interpretations

Paraphrasing 释义

Paraphrasing is the process of restating someone else's ideas or statements in your own words while maintaining the original meaning

释义是用你自己的话重新表述他人的想法或陈述,同时保持原意

▶ Unlike quoting, where you use the exact words from the source, paraphrasing focuses on rewording the information to make it clearer or more relevant to the context without altering the intended message

与引用不同,引用是使用来源的原话,而释义则注 重**重新措辞**信息,使其在不改变原意的情况下更加 清晰或更符合上下文

Reframing 框架重整

- ▶ Reframing is the process of changing the way we perceive or interpret a situation, event, or thought, often to shift from a negative to a more positive or constructive outlook. It is a cognitive-behavioral technique that can help reshape thinking patterns to influence emotions and behavior in a healthier way.
- ▶ 框架重整是改变我们感知或解释情况、事件或想法的方式的过程,通常是从消极的观点转变为更积极或建设性的观点。这是一种认知行为技术,可以帮助重塑思维模式,以更健康的方式影响情绪和行为。

框架重整 Reframing

負面 Negative ->正面 Positive

這杯水一半空, 還是一半滿?

Half Empty or Half Full?



Reframing 框架重整

- ◆ Changes statement from negative to positive将陈述从负面变为正面 ("Your price is too expensive 你们太贵")
- ◆ Blaming -> needs, desired outcome责备 ->需求,期望的结果
 ("Your response to feedback is too slow 你们对反馈的回应太慢")
- ◆ Neutralizes inflammatory statements 中和煽动性/引发愤怒情绪的陈述 ("You are a lier, your words are rubbish 你说谎, 你说的都是垃圾")
- ◆ Can shift focus from past to future 可以将焦点从过去转移到未来 ("He breached the contract terms previously 他之前未有遵守合同條款....)
- ◆ Can shift focus from person to problem可以将焦点从人转移到问题上
- ♦ Can shift focus from position to interest 可以将焦点从立場转移到利益
- ♦ Can mutualize and build co-operation 可以相互合作
- ◆ Can promote understanding, trust and re-build relationships可以促进理解、 信任和重建关系

Old Frame 旧框架	New Frame 新框架
Problem 麻烦/ 问题	Matter 事项
Dispute 争议	Situation 情况
Conflict 冲突	Circumstances 情况
Difficulty 困难	Challenge 挑战
I do not believe you 我不相信你	I am having trouble understanding you 我有困难去明白你
Damage 损失	Need for repair or restoration 需要修理或修复
Compensation 赔偿	Financial arrangement 金 钱安排 Actual loss 实际损失
Reach agreement 达成协议	Ways to dealing with 处理的方法
It is a matter of principle 这是原则的问题	This is important to you 这对你很重要

Adapted from L Boulle, M Colatrella Jr and A Picchioni, Mediation: Skills and techniques, LexisNexis, San Fransisco, 2008 at p120

Reframing 框架重整

Compensation 赔偿 I Actual Loss 实际损失

Damage 损失 I Financial and other arrangements 金钱或其他安排

Position 立场 🔁 Interest 利益

Complaints 投诉/不满 I Needs 需要

Past 过去 I Future 未来

Reframing Exercise 框架重整 练习 1 He is the most uncooperative employee I have ever had. 他是我见过最不合作的雇员.

There are concerns about the business running smoothly and with a spirit of cooperation between all parties.

对于 业务顺利的进行及各方之间的合作有点关注。

Reframing Exercise

框架重整练习 2

It is a matter of principle that our company cannot tolerate them to sell those goods to any other party.

本公司的原则是不能容忍他售卖该货品给其他人士.

Exclusive sale of those goods to your company is important to you.

向贵公司独家销售这些商品对您来说很重要。

Reframing Exercise

框架重整练习3

Please tell me your position in relation to the damages payable for for the breach of contract.

请你告诉我在违反合同这件事上你的立场。

- ► Please tell me what happened to the contract. How did it affect you?
- ▶ 请你告诉我合同发生什么事? 这事怎样 影响你?

Reframing Exercise

框架重整练习 4

Their lack of transparency is making it impossible to trust them. 他们缺乏透明度,让人无法信任。

- Addressing transparency issues can lay the groundwork for building a stronger, trust-based relationship.
- ▶ 解决透明度问题可以为建立更强的信任关系奠定基础.

"

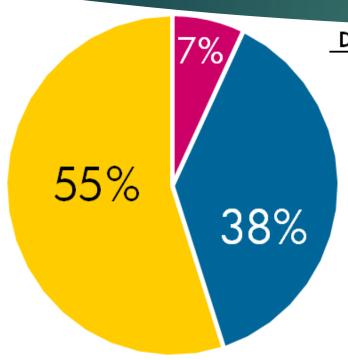
When there is a blame. There is a need.

当指责出现,必有渴求隐现

"

Losephine Ma 马嫊傃

溝通



Dr. Albert Mehrabian's 7-38-55% Rule

Elements of Personal Communication

- 7% spoken words 說話中的文字
- 38% voice, tone 語調
- 55% body language 身體語言

Body Language 身体语言

► Facial Expressions: A smile can indicate friendliness, while a furrowed brow might signal confusion or concern

面部表情:微笑可以表示友好,而皱起的眉头可能表示困惑或担忧

► Posture: Standing or sitting upright can show confidence and engagement, whereas slouching might suggest boredom or fatigue

姿势:站直或坐直可以表现出自信和投入,而懒散可能表明无聊或疲劳

► Eye Contact: Direct eye contact can convey attentiveness and sincerity, while avoiding eye contact might suggest discomfort or dishonesty

眼神交流:直接的眼神交流可以传达注意力和真诚,而避免眼神接触可能暗示不适或不诚实

Body Language 身体语言

► Gestures: Hand movements can emphasize a point, while tapping on a surface might indicate impatience or nervousness

手势:手部动作可以强调某个点,而点击表面可能表示不耐烦或紧张

▶ Proxemics (Use of Space): How close or far you stand from someone can signal comfort, intimacy, or dominance. Standing too close might make someone feel uncomfortable, while too much distance might imply disinterest or detachment

空间使用: 您与某人的距离可以表示舒适、亲 密或支配。站得太近可能会让人感到不舒服, 而站得太远可能意味着不感兴趣或疏离







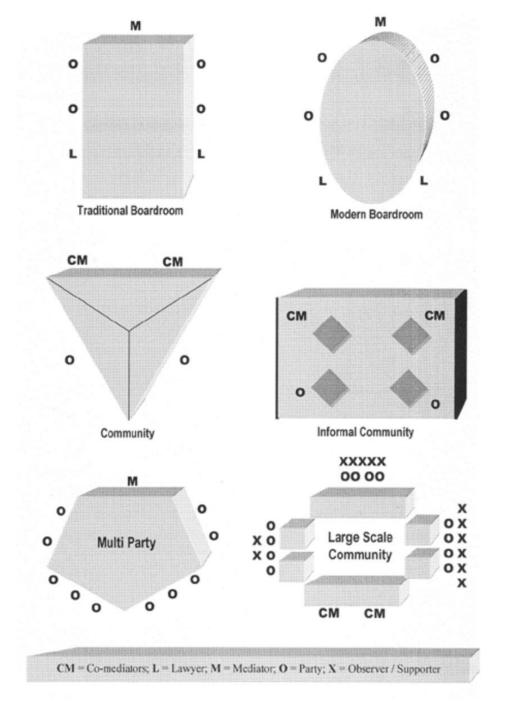
调解员

Expert of the field? 该领域的专家?

Lawyer? 律师?

Process Expert! 流程的专家!





Mediator's Opening Statement 调解员的开场白

Introduction

Introduce yourself. Appropriate addresses.

Role of the Mediator

- Explain that the mediator facilitates discussion but does not make decisions for the parties.
- Emphasize neutrality and impartiality.

Purpose of Mediation

 Highlight the goal: to help parties reach a mutually agreeable resolution.

Mediation Principles

- Confidentiality: Assure parties that the discussions are private.
- Voluntary Participation: Stress that the process is voluntary and can be ended at any time.
- Self-Determination: Emphasize that parties control the outcome.
- Without Prejudice: Clarify that discussions cannot be used as evidence in court if mediation fails.

Process Overview

 Describe the steps: opening statements, joint discussion, private sessions (if applicable), and negotiation.

Ground Rules

 Establish guidelines for respectful and constructive communication.

Encourage Open Communication

 Invite parties to express their perspectives and concerns openly.

Timeframe

Provide an estimate of the duration of the session.

Questions

Invite any questions or concerns from the parties.

Mediator's Opening Statement 调解员的开场白

介绍

自我介绍,适当的稱呼。

调解员的角色

说明调解员促进讨论, 但不为当事人做决定。

强调中立和公正。

调解的目的

突出目标:帮助各方达成双方都同意的解决方案。

调解原则

保密性: 向各方保证讨论是私密的。

自愿参与:强调该过程是自愿的,可以随时跟调解员商量之后结束。

自决:强调參與調解的各方控制结果。

不损害权利:澄清如果调解失败,讨论不能在法庭上用作证据。

流程概述

描述步骤: 开场白、联合讨论、私人会议、谈判和谈判和再次联合会议.

基本规则

建立尊重和建设性沟通的指导方针。

鼓励开放式沟通

邀请各方公开表达他们的观点和担忧。

时间范围

提供会话持续时间的估计值。

问题

邀请各方提出任何问题或疑虑。

Hong Kong Mediation Three Main Characteristics:

- Facilitative Mediation Model
- Focus on interests
- Structured and Confidential Process

香港調解 三大特點:

- 促進式調解模式
- 關注利益
- 結構化和保密的 流程



EXPLORATION

2

探討和理解

PHASES

階段

INFORMATION

GATHERING

資料收集

3 NEGOTIATING TOWARDS AGREEMENT

> 4 Settlement Agreement 和解協議

談判達成協議

Facilitative Mediation PROCESS

促進式調解流程

Pre-mediation separate Meetings 調解前單獨會議

Mediator's Opening Statement 調解員開場白

Parties Initial Statements

雙方開場白 Summarizing

總結

Issue identification & Agenda Setting

問題識別和議程設置

Discussion

Exploration and Clarification

討論

探討和澄清

Private Sessions 個別會談

Option Generation 製造方案 Initial Negotiation 談判 Bargaining Phase

議價

Outcome and Documentation 成果和文件

@2025 Josephine Ma. All rights reserved. www.masoso.com

SKILLS 技巧

ACTIVE LISTENING 積極傾聽 SUMMARIZING 總結 REFRAMING 框架重整

QUESTIONING 適當的提問

PARAPHRASING 釋義

EMPATHY 同理心
HYPOTHETICAL QUESTIONING
假設性提問

AGREEMENT WRITING

撰寫協議

Parties'
Opening
Statement
当事人的开场
白

One party's opening statement 一方 开场白

Mediator's Summary 调解员总结

The other party to give the opening statement 另一方开场白

Mediator's Summary调解员总结

How to ask the parties to give their opening statements?

怎样问?

Tell me about the situation that has brought you here today.

跟我说说今天 什麼事把你带到这里?

What brings you to mediation today?

你今天来 想處理什麼問題?

Summarize a Party's Opening Statement 总结当事人的开场台

Use mutual and neutral language

使用相互和中立的语言

- "Let me see if I have heard you correctly..."
- "让我看看我对你的说话是否有正确的理解,你是不是指……"
- ► Re-framing often used in summary

「框假重整」是总结时常常用的

SUMMARISING PARTIES' OPENING STATEMENTS

总结各方开场白

Accurate summary showing that mediator has understood parties' concerns

准确的摘要

表明调解员理解各方的关注

Condensed version – substantive + emotions

精简版 - 实际要处理的事情 + 情感

Common Grounds 共同点

Common Goals 共同目标

Characteristics, attitudes or context shared by the parties 双方共有的特征、态度或背景

Agreed Facts or Mutual Agreement 双方同意的事情

"You both agree that business has been successful..."

"你们都同意业务是成功的....."

"Disputants both desire to resolve the dispute without court proceedings"

"争议双方都希望在 不用對博公堂的情况下解决争议"

"Shareholders who want the company to strive"

"股东都希望公司 能够成功"



AGENDA 议程

- ▶ Issues recorded in a mediator's notes -> building blocks of the agenda 调解员笔记中记录的事项 >组成议程
- ▶ Agenda is used to give structure to the process 议程用于为流程提供结构
- ▶ Issues need to be named to lead parties to realistic solutions 需要提出问题以引导各方找到现实的解决方案
- ▶ Issues should be future oriented 问题应面向未来

PRIORITISING AGENDA

确定议程的优先顺序

► After agenda is completed, prioritize issues

议程完成后,确定问题的优先顺序

- ▶ To give structure 提供结构
- Purpose: convenience of discussion

目的: 讨论的便利性

- ▶ Reassure the parties 向各方提醒:
 - ▶ Priority does not affect outcome

▶ Need to cover all agenda issues 题 优先次序不影响结果

需要涵盖所有议程问

Exploration / Discussion 探索/讨论

After setting the Agenda

设置议程后

Discuss the agenda issues one by one

逐一讨论议程问题

Purpose: Facilitate better understanding of issues, interest, needs and concerns

目的: 促进对问 题、 利益、需求和 关注的理解

Position -> Interests

立场 -> 利益

Questions to get information

获取信息的问题

- Could you please give me an example?
- Could you tell me more about how you see this?
- Could you please explain this?
- Could you please help me understand why____?
- happened when___?

- 请你给我举个例子。
- 关于这件事,请你告诉我更多你的想
- 麻烦你多解释一点。
- 你能帮我理解为什么 吗?
- Could you please describe what 你能描述____时会发生什么吗?

Use these questions during Exploration of Agenda Issues.

在探索议程问题期间使用这些问题。

Positions to Interests 立场 -> 利益

- ▶ What is important to you?
- ► Could you please help me understand the reasons this is important to you?
- What concerns you about the situation?
- How does it affect you?
- matters to you a lot-is that right?
- Is there something you think that [other party)doesn't understand about your situation?
- ▶ Mhàs
- ► Hows

- 对你来说什么是重要的?
- 请你帮我理解是什么原因令这件事很重要。
- 你对这种情况有什么关注?
- 这对你有什么影响?
- 对你很重要,对吗?
- 您觉得有什么地方是误解了你的情况。
- 為什麼?
- 怎樣?

Use these questions during Exploration of Agenda Issues.

在探索议程问题期间使用这些问题。

Hong Kong Mediation Three Main Characteristics:

- Facilitative Mediation Model
- Focus on interests
- Structured and Confidential Process

香港調解 三大特點:

- 促進式調解模式
- 關注利益
- 結構化和保密的 流程



EXPLORATION

2

探討和理解

PHASES

階段

INFORMATION

GATHERING

資料收集

3 NEGOTIATING TOWARDS AGREEMENT

> 4 Settlement Agreement 和解協議

談判達成協議

Facilitative Mediation PROCESS

促進式調解流程

Pre-mediation separate Meetings 調解前單獨會議

Mediator's Opening Statement 調解員開場白

Parties Initial Statements

雙方開場白 Summarizing

總結

Issue identification & Agenda Setting

問題識別和議程設置

Discussion

Exploration and Clarification

討論

探討和澄清

Private Sessions 個別會談

Option Generation 製造方案 Initial Negotiation 談判 Bargaining Phase

議價

Outcome and Documentation 成果和文件

@2025 Josephine Ma. All rights reserved. www.masoso.com

SKILLS 技巧

ACTIVE LISTENING 積極傾聽 SUMMARIZING 總結 REFRAMING 框架重整

QUESTIONING 適當的提問

PARAPHRASING 釋義

EMPATHY 同理心
HYPOTHETICAL QUESTIONING
假設性提問

AGREEMENT WRITING

撰寫協議

The Caucus 个别会谈

Part of the Mediation Process

调解过程的一部分

Private, confidential meeting of members of one side of a dispute with the mediator

争议一方成员与调解员的私人保密会议

This meeting is separate and distinct from the joint session

个别会议与共同会谈分开 有别于共同会谈

Purposes of Caucuses 私人会谈的目的

Enhancing Rapport & Trust 增强融洽关系和信任

Venting & Express Emotions

发泄和表达情绪

Additional information not revealed in the joint session

第一次共同会谈未透露 的补充资料

Uncovering Underlying Interests

发现潜在利益

Reality Testing, Doubt Creation, Challenging 现实测试,怀疑创造,挑 战思维

Option Generation 创造方案

Option Generation 制造方案

Identify the needs, concerns and interests identified (both parties), then ask for options to address the interests of both parties

确认确定的需求,关注点和利益(双方),然后寻求解决双方利益的选项

Brainstorming for creative options

集思广益, 寻找创意选项

Is the proposed solution viable?

建议的解决方案是否可行?

Consider the practicability of the option: Ease of implementation? To what extent it addresses the parties' interests?

考虑该选项的实用性:

易于实施? 它在多大程度上解决了各方的利益?

The options to a negotiated settlement must be reality tested → prevent further disputes 谈判解决的选择必须经过现实测试防止进一步的争端

Transition to Second Joint Session 過渡到第二次共同會談

Transition过渡

Smooth transition from separate session to the 2nd joint session or 2nd separate sessions 从单独会议顺利过渡到第二次共同会谈或第二次单独会议

Summarize总结

Summarize Options 总结选项

Prepare

准备

Prepare to exchange options in Second Joint Session

准备在第二次共同会谈上交换方案

Hong Kong Mediation Three Main Characteristics:

- Facilitative Mediation Model
- Focus on interests
- Structured and Confidential Process

香港調解 三大特點:

- 促進式調解模式
- 關注利益
- 結構化和保密的 流程



EXPLORATION

2

探討和理解

PHASES

階段

INFORMATION

GATHERING

資料收集

3 NEGOTIATING TOWARDS AGREEMENT

> 4 Settlement Agreement 和解協議

談判達成協議

Facilitative Mediation PROCESS

促進式調解流程

Pre-mediation separate Meetings 調解前單獨會議

Mediator's Opening Statement 調解員開場白

Parties Initial Statements

雙方開場白 Summarizing

總結

Issue identification & Agenda Setting

問題識別和議程設置

Discussion

Exploration and Clarification

討論

探討和澄清

Private Sessions 個別會談

Option Generation 製造方案 Initial Negotiation 談判 Bargaining Phase

議價

Outcome and Documentation 成果和文件

@2025 Josephine Ma. All rights reserved. www.masoso.com

SKILLS 技巧

ACTIVE LISTENING 積極傾聽 SUMMARIZING 總結 REFRAMING 框架重整

QUESTIONING 適當的提問

PARAPHRASING 釋義

EMPATHY 同理心
HYPOTHETICAL QUESTIONING
假設性提問

AGREEMENT WRITING

撰寫協議

Second Joint Session 第二次共同会谈

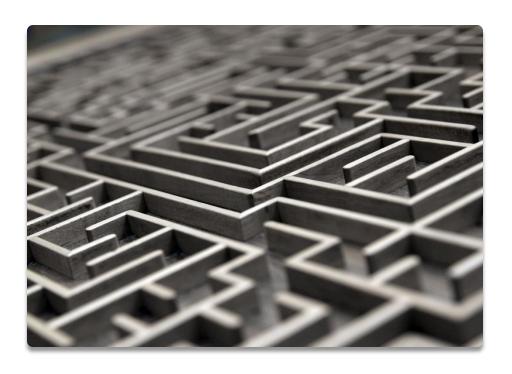
Option Generation

产生方案

Exchange Options

方案交换

Positional - Principled Bargaining 立场 - 有原则的议价



Principled Bargaining 有原则的议价

- ► Separate people from problem (understand concerns) 将人与问题分开(了解关注点)
- ► Focus on interests not positions (needs and concerns) 关注利益而不是立场(需求和关注点)
- ▶ Invent options for mutual gain (creative options and priorities) 创造互惠互利的解决方法(创造性选项和优先事项)
- ► Insist on using objective criteria 坚持使用客观标准

Conditional Offers 有条件方案 Condition linked bargaining 与条件挂钩的讨价还价

Label Concessions 标签优惠

Demand and Define Reciprocity

需求和定義互惠

Your Offer:

"I can agree to a 10% discount on the service fee." 10%的折扣?

Labeling the Concession:

"I'm offering this discount because I value our partnership and hope this encourages us to finalize the contract today. In return, I would appreciate a longer commitment from your side, perhaps extending the contract to two years instead of one."

折扣的原因 我所需要的对等安排 "This isn't easy for us, but we've made some adjustments on price to accommodate your concerns. We expect that you are now in a better position to make some changes to the project deadlines. An extra month for each milestone would help us immeasurably."

"这对我们来说并不容易,但 我们对价格进行了调整,以满 足您的担忧。我们希望您现在 能更好地调整工程的限期。每 期限延长一个月将对我们有很 大帮助。

Make Contingent Concessions

作出或有条件的讓步

"We can provide additional support but only if you agree to purchase some of the following additional services," or,

"This is literally the best we can do on price right now. But if you can adjust some of your demands, we might be able to reopen the price issue." "

"我们可以提供额外的支援,但 前提是您同意购买以下一些附加 服务。"或者,"这实际上是我 们目前在价格上能做的最好的安 排。如果您能调整一些要求,我 们也许可以重新讨论价格问 题

Questions to Test Agreements测试协议的问题

- ► Is this agreement acceptable to everybody?
- ► Have we covered everything?
- Is there any piece of this you're uneasy with?
- Now, is this what you're agreeing to:___?
- Can you live with this every day, every week from now on?

- 这个协议大家都能接受吗?
- 我们是否涵盖了所有内容?
- 有没有让你感到不安的部分?
- 现在,这就是你同意的吗?
- 从现在开始,你能每天、每周都接受这个吗?

Use these questions when Building and Writing the Agreement. 在构建和编写协定时使用这些问题。



We have learnt 我们学了

Conflicts 冲突

Conflict Resolution Styles 冲突解决方式

Definition of Mediation

调解的定义

Use of Mediation 调解的用途

Models of Mediation 调解模式

Mediator 调解员

Facilitative Mediation Model 促进式调解模型

The Process 调解 流程





支持機構







