

促进式调解模型

Facilitative Mediation Model

Hong Kong Mediation Council

香港调解会一天课程第二部份

One Day Training – Part 2

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Hong Kong Mediation Council

香 港 调 解 会

(隶 属 香 港 国 际 仲 裁 中 心)



We shall cover 我們將會學習

Facilitative Mediation Model 促进式调解模型

First Joint Session 首次共同会谈

Mediator's Opening Statement 调解员开场白

Parties Opening and Summary 当事人的开场白和总结

Common Ground 共同领域

Agenda 议程

Exploration 探索议程

Separate Sessions 单独会谈

Option Generation 制造方案

Second Joint Session 第二次共同会谈

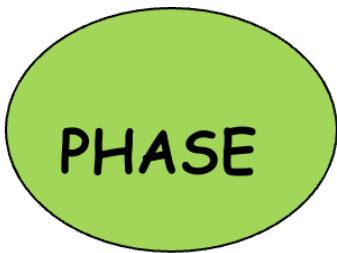
Bargaining 讨价还价 / 谈判

Settlement Agreement 经调解后的和解协议

Settlement Motivation in Construction Disputes 工程爭議的和解推動力



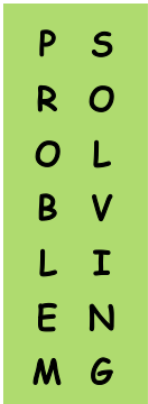
阶段



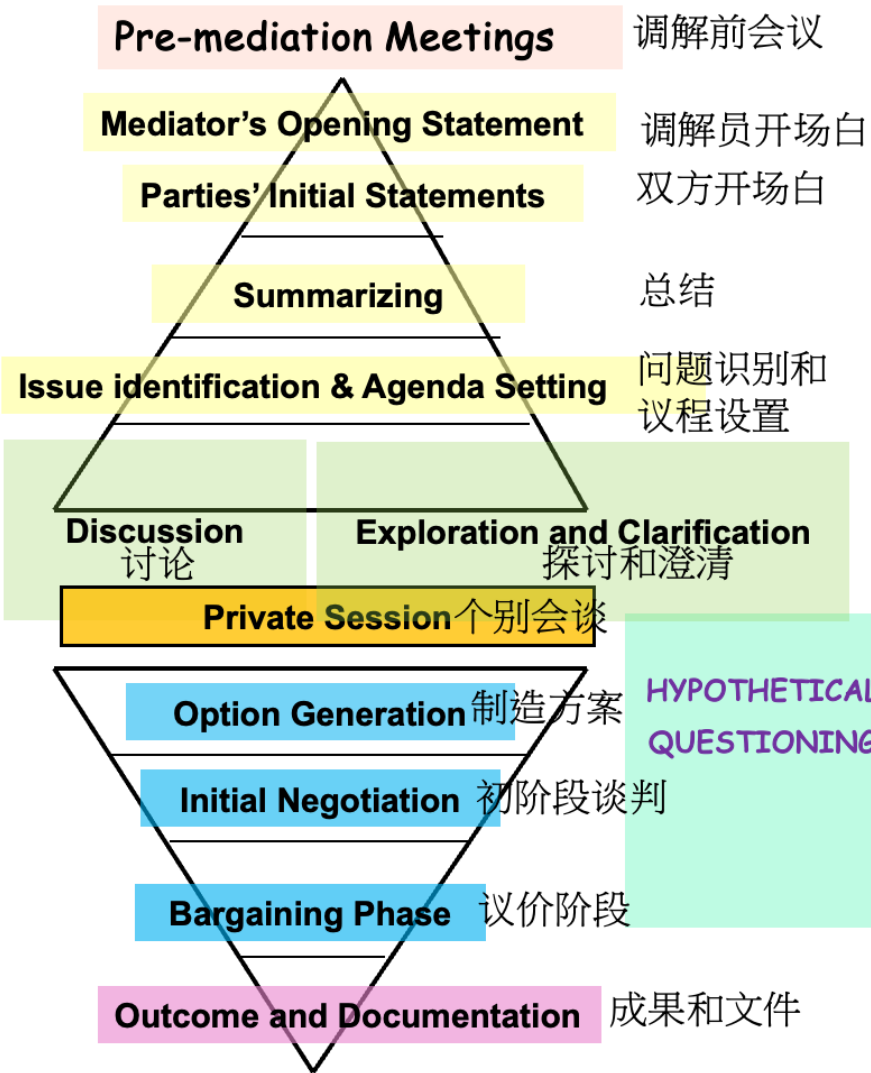
探讨
信息收集



解决问题



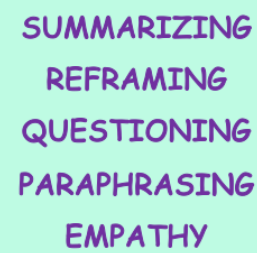
PROCESS 流程



技巧



积极倾听



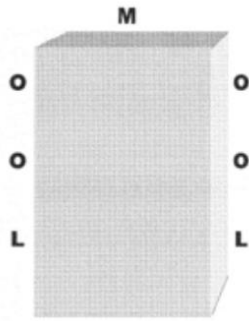
总结
重构/框架重整
适当提问
释意/复述
同理心



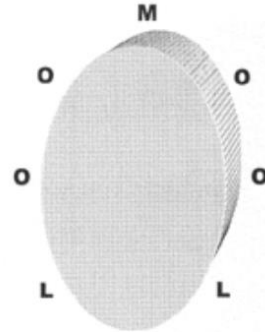
假设性
提问



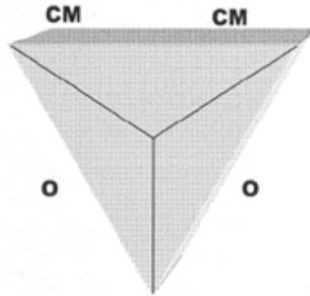
协议撰写



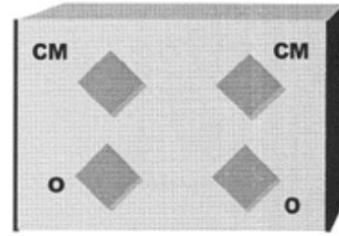
Traditional Boardroom



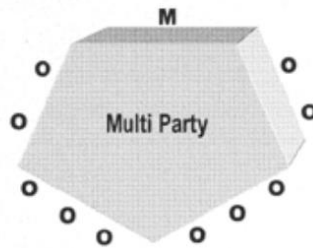
Modern Boardroom



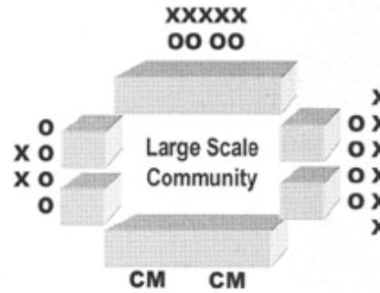
Community



Informal Community



Multi Party



Large Scale Community

CM = Co-mediators; L = Lawyer; M = Mediator; O = Party; X = Observer / Supporter



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:向各方保证讨论是保密的。

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:强调当事人控制结果。

无损权益:澄清如果调解失败,讨论内容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、单独会谈、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。

鼓励开放式沟通。

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。

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.



阶段

PHASE

探讨
信息收集

1
INVESTIGATION/
INFORMATION
GATHERING

2
EXPLORATION
勘探

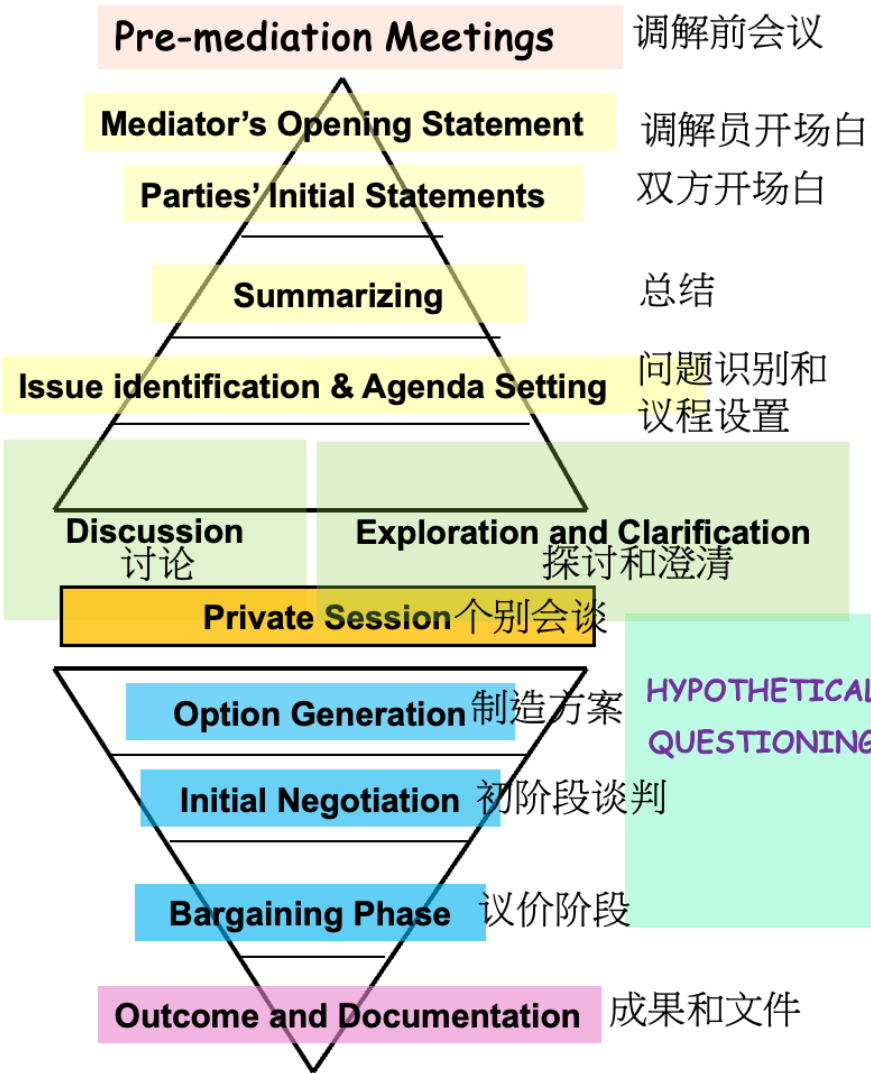
3
NEGOTIATING
TOWARDS
AGREEMENT
谈判达成协议

4
Settlement
Agreement

解决问题

P
R
O
B
L
E
M
S

PROCESS 流程



SKILLS

技巧

ACTIVE LISTENING

积极倾听

SUMMARIZING
REFRAMING
QUESTIONING
PARAPHRASING
EMPATHY

总结
重构/框架重整
适当提问
释意/复述
同理心

HYPOTHETICAL QUESTIONING

假设性提问

AGREEMENT WRITING

协议撰写

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

Who goes first? 谁先开始?

- Mediator chooses? 调解员选择?
- Ask parties to choose? 请各方选择?
- Plaintiff or defendant? 原告还是被告?
- Procedural Fairness 程序公平

How to ask the parties to give
their opening statements?

邀请当事人说出
他们的开场白

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

跟我说说今天 什么事把你带到这里?

What brings you to mediation today?

你今天来 想处理什么问题?

Could you please tell me the concerns that brought you here today?

请告诉我今天你有什么关注要处理的。

Please explain to me what has happened.

请告诉我发生了什么事情。

Could you please give me some background information?

请告诉我一些背景。

Summarize a Party's Opening Statement

总结当事人的开场白

- 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

Summary 摘要

- ▶ A summary is a condensation of another's message and is different from the paraphrase
摘要 是他人信息的浓缩，与释义不同
- ▶ Articulating the essence of each party's ideas in the mediator's words
用调解员的话表达各方想法的精髓
- ▶ 2 dimensions: Emotion + Substantive 2个维度：情感+实质
- ▶ Example: "Let me summarize what I'm hearing. John, you appear quite angry and hurt because of Mary's continual lateness. I also hear you saying"

示例：「让我总结一下我听到的内容。约翰，你因为玛丽的持续迟到而显得很生气和受伤。我也听到你说....」

- ▶ Condensation - restates the speaker's message in the listener's words
浓缩 - 用听众的话重述说话者的资讯

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**

Summarizing a Party's Opening Statement

总结一个双方开场白

▶ listen carefully: key ideas + supporting points (take notes)

认真聆听：关键思想+支援点（做笔记）

▶ emotional tone 情绪语调

▶ use the parties' language choices whenever possible

尽可能使用双方选择的语言

▶ Seek feedback (summary accurate?) 寻求回应（摘要准确？）



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Why do I have to “repeat”?
为什么要“重复”？

- Psychology of Conflict 冲突心理学
- Unconscious Biases 无意识偏见

Usual Intervention 常见的干预

- ▶ A party tries to respond to the other instead of giving his/her own issues and concerns. 一方试图回应另一方，而不是提出自己的问题和担忧。
 - ▶ Acknowledge the concerns and emotions, then use appropriate questions to guide the party to focus on telling the issues and concerns that bring him/her to the mediation. 确认担忧和情绪，然后使用适当的问题来引导当事人专注于讲述将他/她带到调解中的问题和担忧。
- ▶ A party interrupts when one is giving the opening statement. 一方在开场白时打断。
 - ▶ Acknowledge the need to share information. 确认分享资讯的必要性。
 - ▶ Give paper and pen and encourage writing. 给纸和笔，鼓励笔录。
 - ▶ Remind Ground Rules. 提醒基本规则。

Exercise 練習

Summary of the parties' opening statements

Summary Exercise 1a

Dispute over Delays and Liquidated Damages

Contractor's Opening Statement:

- ▶ *Good morning. We are here today to discuss the delay in completing the commercial office building project. As the contractor, we believe the delays were primarily caused by the the client's (other party) failure to provide timely approvals for design changes and their constant requests for additional work, which were outside of the original scope.*
- ▶ *Despite these challenges, we worked diligently to complete the project as quickly as possible.*
- ▶ *The delay penalties being imposed on us are unfair, given that many of the delays were beyond our control. We are seeking relief from these liquidated damages and additional compensation for the extra work we performed during the project.*
- ▶ *We also want to maintain a positive relationship with the client, but we need to reach a fair resolution on these issues.*

撮要练习 1a: 关于延迟和违约金的争议

承包商的开场陈述:

- ▶ 早上好。我们今天在这里讨论商业办公楼项目的完工延迟问题。作为承包商，我们认为延迟主要是由于客户未能及时批准设计变更，以及他们不断要求额外的工作，这些工作超出了原始范围。
- ▶ 尽管面临这些挑战，我们依然尽全力尽快完成项目。
- ▶ 对于我们被施加的延迟罚款是不公平的，因为许多延迟是我们无法控制的。
- ▶ 我们寻求解除这些违约金，并要求为我们在项目中所进行的额外工作获得额外补偿。
- ▶ 我们也希望保持与客户的良好关系，但我们需要在这些问题上达成一个公平的解决方案。

Summary Exercise 1b

Dispute over Delays and Liquidated Damages

Developer's Opening Statement:

- ▶ *Good morning. From our side, we are very disappointed with the contractor's performance on this project.*
- ▶ *The project was supposed to be completed six months ago, and the delays have caused significant financial losses for us.*
- ▶ *We acknowledge that there were some minor changes to the design, but these were not the cause of the extensive delays. The contractor consistently failed to meet deadlines and did not allocate enough resources to the project.*
- ▶ *We have had to impose liquidated damages as per the contract, and we believe these penalties are justified.*
- ▶ *That said, we are open to finding a solution that allows us to move forward, but we need compensation for the delays and assurance that this won't happen again.*

撮要练习 1b: 关于延迟和违约金的争议

开发商的开场陈述:

- ▶ 早上好。对于我们而言，我们对承包商在这个项目中的表现非常失望。该项目本应在六个月前完成，但延迟给我们造成了巨大的经济损失。
- ▶ 我们承认设计上有一些小的变动，但这些并不是大规模延误的原因。
- ▶ 承包商一直未能按时完成任务，并且没有为项目分配足够的资源。
- ▶ 我们不得不根据合同施加违约金，我们认为这些罚款是合理的。
- ▶ 尽管如此，我们愿意寻找一个能够让项目继续推进的解决方案，但我们需要对延误进行赔偿，并确保这种情况不会再次发生。

Summary Exercise 2a:

Dispute over Defective Work

Contractor's Opening Statement:

- ▶ *We delivered this residential development project on time and according to the agreed specifications.*
- ▶ *However, after the handover, the client raised concerns about alleged defects in the work, particularly regarding the roofing and plumbing systems.*
- ▶ *We stand by the quality of our work and believe that any issues are minor and within the acceptable tolerance levels.*
- ▶ *We also believe that some of the problems are due to the client's own maintenance failures.*
- ▶ *We are willing to address any legitimate defects, but we reject the notion that there are major defects that would require the kind of compensation the client is demanding. We hope to find a reasonable solution to this disagreement.*

撮要练习 2a： 关于施工缺陷的争议

承包商的开场陈述：

- ▶ 我们按时并按照约定的规格完成了这个住宅开发项目。
- ▶ 然而，在交付后，客户对工程中的所谓缺陷，尤其是屋顶和管道系统，提出了质疑。
- ▶ 我们对施工质量充满信心，认为任何问题都是轻微的，并在可接受的公差范围内。
- ▶ 我们还认为，部分问题是由于客户自身的维护不当造成的。
- ▶ 我们愿意解决任何合法的缺陷问题，但我们拒绝接受客户所要求的大规模赔偿，因为我们认为不存在重大缺陷。我们希望能够找到一个合理的解决办法来解决这一分歧。

Summary Exercise 2b:

Dispute over Defective Work

Developer's Opening Statement:

- ▶ *We are very dissatisfied with the work that was done on this project, particularly with regard to the roofing and plumbing, which have caused us a great deal of stress and financial loss. The roof has been leaking since shortly after we moved in, and the plumbing has been faulty, causing water damage throughout the house. We hired independent inspectors who verified that these issues are due to poor workmanship. We have already spent a significant amount on repairs, and we believe the contractor should cover these costs. We are hoping to resolve this without resorting to litigation, but we need the contractor to take full responsibility for the defective work and reimburse us for the repairs.*

撮要练习 2b :

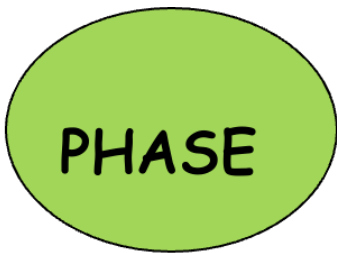
关于施工缺陷的争议

开发商的开场陈述:

- ▶ 我们对这个项目的工作非常不满意，特别是屋顶和管道，这些问题给我们带来了很大的压力和经济损失。
- ▶ 自从我们搬进来后，屋顶就一直在漏水，管道也有问题，导致房屋各处出现水损伤。
- ▶ 我们聘请了独立的检查员，他们证实这些问题是由于施工质量差所致。
- ▶ 我们已经为修理花费了大量资金，并且我们认为承包商应该承担这些费用。
- ▶ 我们希望能够在不诉诸法律的情况下解决这个问题，但我们需要承包商对施工缺陷承担全部责任，并赔偿我们的修理费用。



阶段



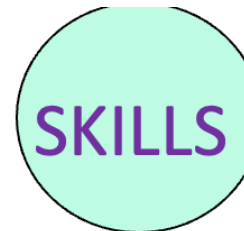
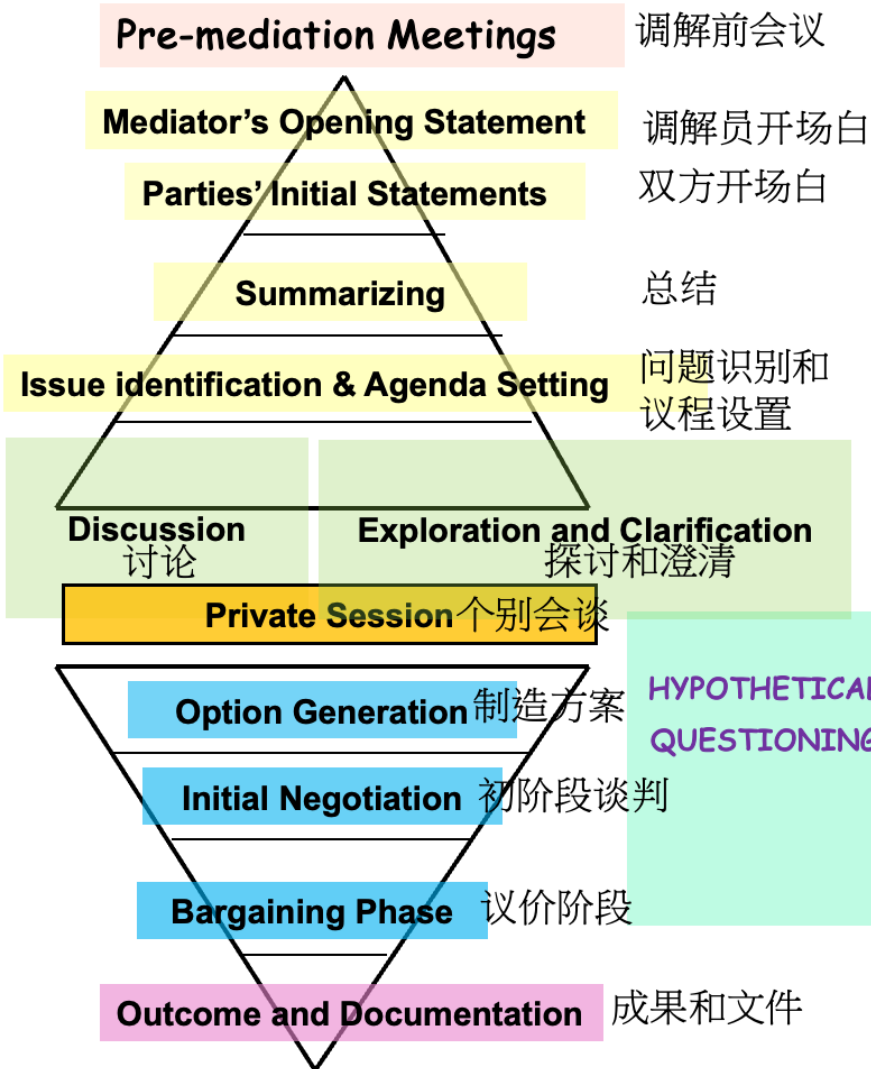
探讨
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解决问题

P
R
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PROCESS 流程



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适当提问
释意/复述
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HYPOTHETICAL QUESTIONING

假设性提问

AGREEMENT WRITING

协议撰写

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”



Benefits 好处



move disputants to the same side facing a mutual problem rather than seeing the other side as the source of problem

将争端转移到面临共同问题的同一方，而不是将另一方视为问题的根源



Provide positive reinforcement to the process

为流程提供积极的强化



Can assist in establishing conciliatory atmosphere

有助于建立和解氛围

Agenda Setting 订立议程

AGENDA



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

Setting the Agenda 制定议程



NOTE TAKING

笔记



CONCERNS

关注



NEEDS

需要



ISSUE THAT NEEDS TO BE
RESOLVED

需要解决的问题

**Items on the Agenda List
should be framed
neutrally**

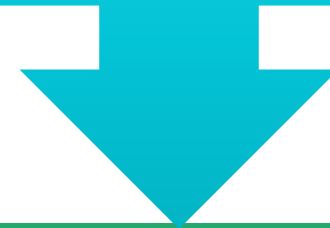
议程清单上的
事项应中立

**Otherwise, may create
feelings of bias -> erode trust
in the mediation process**

否则，可能会产生偏见感 ->
侵蚀调解过程中的信任

Avoid
Positions in
Agenda
避免议程中的
立场

Avoid listing
positions避免列出立场



Follow POSITIONS ->
CONCERNS ->ISSUES
跟随立场 ->关注 ->问题

Framing Agenda Issues 制定议程问题



**Frame concretely -
vagueness does not
stimulate idea
generation**

具体框架—太模糊不会 有
利于刺激创造性 思考/想法



**Frame to foster
creativity and problem-
solving - not using words
that include a solution 培
养创造力和解决问题能力
的框架—不使用包含解决方
案的词语**

e.g. “How to stop noise coming from Tom’s flat” should be phrased as: “How to ensure Fred’s need for sleep is taken care of”. 例如，“如何阻止来自汤姆公寓的噪音”应该表述为：“如何确保F的保睡眠需求得到照顾”。



**Consider using question
form: “How to
ensure...”; “How to
provide...”**

考虑使用问题形式：「如
何确保...“;如何提供...”



**Do not number issues yet
暂不对问题进行编号**

Agenda Exercise

Dispute over Payment Retention and Project Completion

Contractor's Opening Statement:

- ▶ *We've completed the project to the best of our abilities and within the agreed timeframe. However, the client has withheld 10% of the payment, claiming that the project is not fully completed. We have addressed all of the punch list items, and any remaining issues are minor and do not justify withholding such a large amount of money. We are here to request the release of the outstanding payment so that we can close out this project and move on to other commitments.*

Developer's Opening Statement:

- ▶ *We have been forced to withhold payment because the project is not yet complete. The contractor has failed to finish several important tasks, including landscaping and final inspections. We have also identified several areas where the work does not meet the agreed-upon standards, and we do not believe it is appropriate to release the final payment until these issues are resolved. We are willing to pay the remaining balance, but only when the project is truly finished to the quality we expected.*

议程练习 1

关于付款扣留和项目完工的争议

承包商的开场陈述:

- ▶ 我们已经尽全力在约定的时间内完成了项目。然而，客户扣留了10%的款项，声称项目尚未完全完工。我们已经处理了所有的检查清单项目，剩下的问题都是轻微的，不足以扣留这么大笔款项。我们今天来是为了请求释放剩余的款项，以便我们可以结束这个项目，并投入到其他承诺的工作中。

开发商的开场陈述:

- ▶ 我们被迫扣留付款，因为项目还没有完全完成。承包商未能完成几项重要任务，包括景观美化和最终验收检查。我们还发现一些工作没有达到约定的标准，因此我们认为在这些问题得到解决之前，释放最后的款项是不合适的。我们愿意支付剩余的款项，但前提是项目必须以我们预期的质量彻底完成。

Whiteboard Flipchart 白板 翻页板

- Verbally confirm 口头确认
- Put on whiteboard, blackboard, flipchart, display, etc.
写在白板、黑板、翻页板、显示屏等上面
- Benefits 好处

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

优先次序不影响结果

- Need to cover all agenda issues

需要涵盖所有议程问题

Different Ways to Prioritize 确定优先顺序的不同方式

Mediator chooses starting point 调解员选择起点

Logic and common sense 逻辑和常识

Urgency 紧急?

Easiest first? 最容易先?

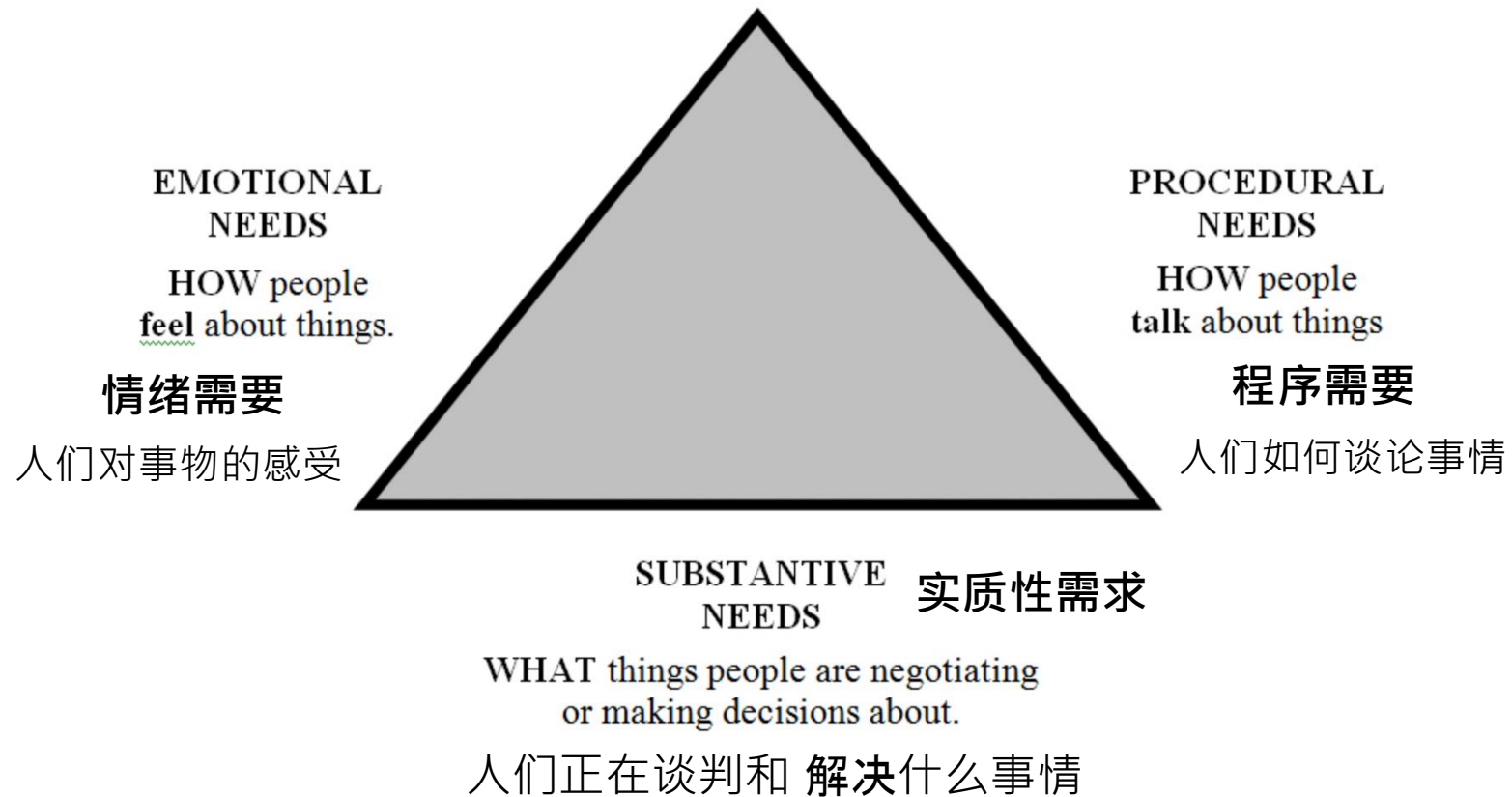
Importance? 重要性?

Parties' agreement 当事人协定

Alternating choice 交替选择

Taking turns 轮流询问

Ask alternatively until all issues are numbered 轮流询问直到所有问题都编号



Procedural Fairness

程序公正

Exploration

探讨 议程



阶段

PHASE

探讨
信息收集

1
INVESTIGATION/
INFORMATION
GATHERING

2
EXPLORATION
勘探

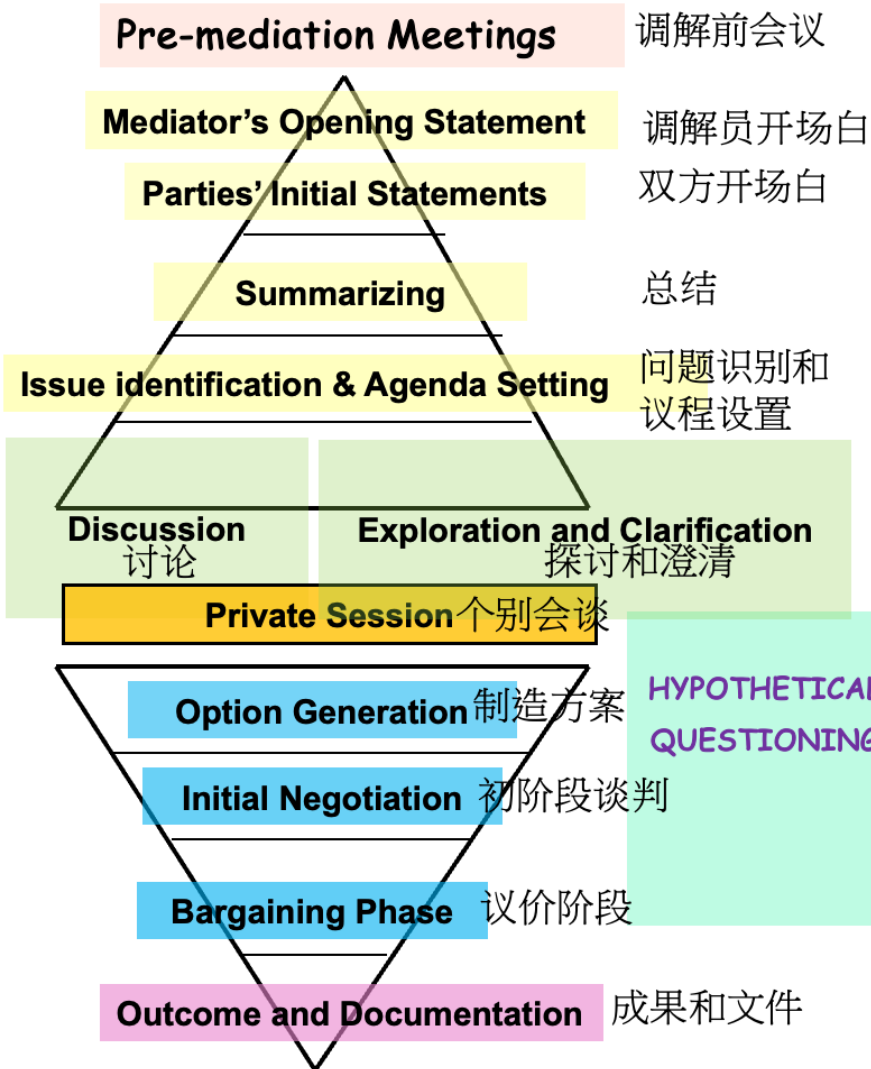
解决问题

P
R
O
B
L
E
M
S

3
NEGOTIATING
TOWARDS
AGREEMENT
谈判达成协议

4
Settlement
Agreement

PROCESS 流程



SKILLS

技巧

ACTIVE LISTENING

积极倾听

SUMMARIZING
REFRAMING
QUESTIONING
PARAPHRASING
EMPATHY

总结
重构/框架重整
适当提问
释意/复述
同理心

HYPOTHETICAL QUESTIONING

假设性提问

AGREEMENT WRITING

协议撰写

PHASES
階段

1
INFORMATION GATHERING
資料收集

2
EXPLORATION
探討和理解

3
NEGOTIATING TOWARDS AGREEMENT
談判達成協議

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' Opening Statements
雙方開場白
Summarising
總結
Issue Identification & Agenda Setting
問題識別和議程設置

Discussion 討論	Exploration and Clarification 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

SKILLS
技巧

ACTIVE LISTENING 積極傾聽
SUMMARISING 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

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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

立場

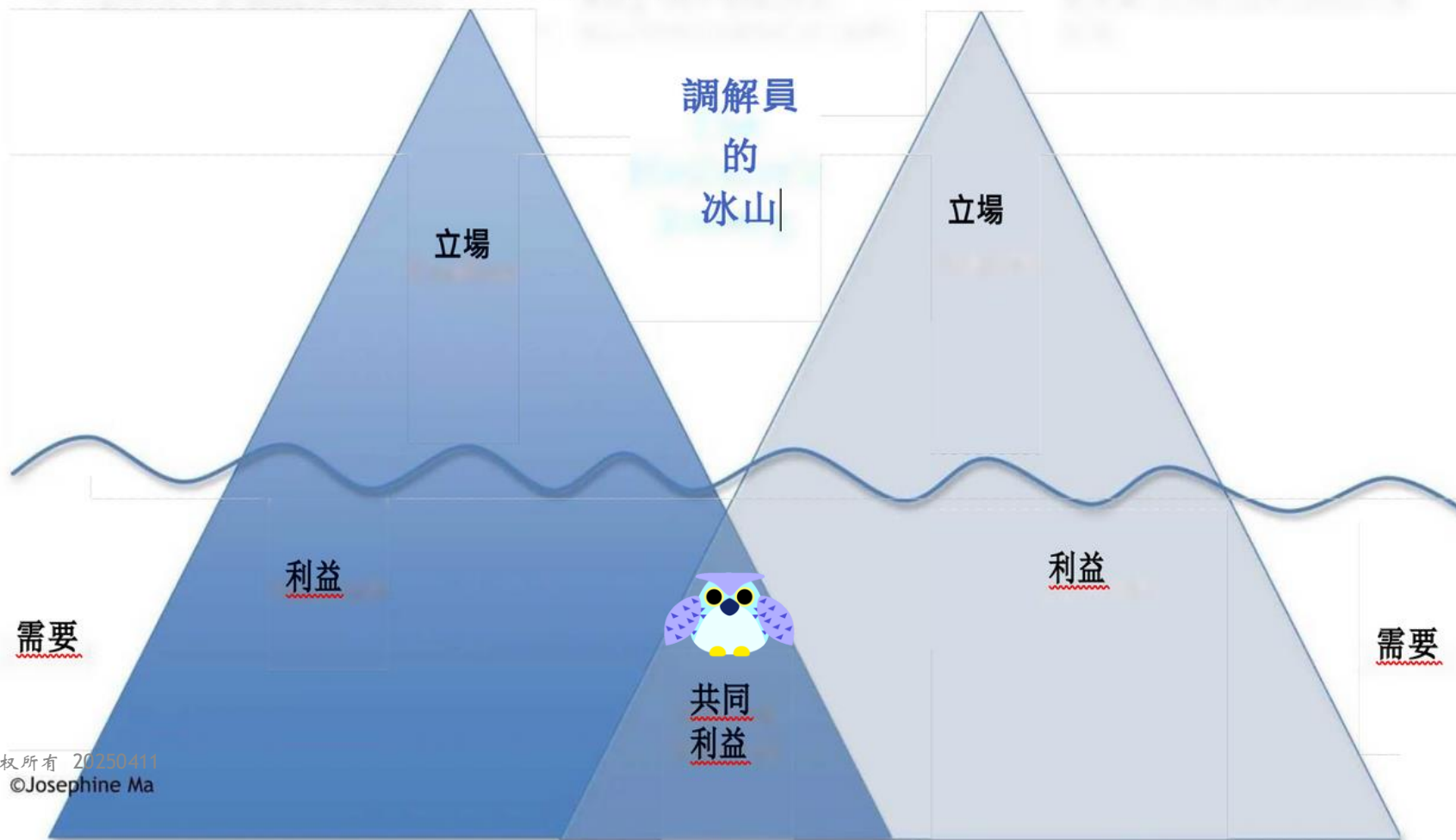
- 需求或首選行動方案。
- 立場比較明顯（在表面以上），但通常只是問題的一小部分。
- 在衝突中，人們的立場往往是不一致的。
- 立場植根於利益。

利益

- 立場背後的原因。
- 利益通常比較難看到（在表面之下），但卻是問題的很大一部分。
- 人們往往有共同的利益。
- 通過提出「為什麼」問題可以發現興趣。
- 利益植根於需要。

需要

- 所有人為之奮鬥的基本事物和情感。
- 負面情緒幾乎總是由未滿足的需要引起的。
- 需要是所有人們的慾望和行動的根源。



Exploration 探索



Engage each person 让每个人参与



Ask appropriate questions - Gathering information, facilitate understanding of issues and interests

提出适当的问题 - 收集资讯，促进对问题和兴趣的理解



Listen for Interests 集中倾听利益



Refrain from finding solutions yet 暫時不要尋找解決方案



Summarize Interests, needs and concerns 总结 利益、需求和关注点

Exploration 探索议题

➤ Appropriate Questions 适当的问题

- ❖ May start with: “What are your **concerns** ... about this agenda issue?”

可以这样开头：“关于这个议题，你有什么**关注**.....？”

➤ Questions 问题

- ❖ to get more information 获取更多资讯
- ❖ focus on needs, concerns and interests
关注需求、关注和利益

Questions to get information

获取信息的问题

Use these questions during **Exploration of Agenda Issues**.

在探索议程问题期间使用这些问题。

- ▶ 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_____/the reasons?
 - ▶ Could you please describe what 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法。
 - 麻烦你多解释一点。
 - 你能帮我理解为什么_____ /什麼原因吗？
 - 你能描述_____时会发生什么吗？

Positions to Interests

立场 → 利益

Use these questions during **Exploration of Agenda Issues**.

在探索议程问题期间使用这些问题。

- ▶ 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?
- 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。



问别人为什么会冒犯吗？ **Why** Questions?

- ▶ 重點是怎樣問
- ▶ **HOW** YOU ASK

Summarize focusing on needs, concerns and interests

总结需求、关注和利益

- ▶ Communicate to a party that he/she is being heard and valued by the mediator 向一方传达调解员尊重和理解他的想法
- ▶ Reduce confusion by feeding back what the parties have been saying 通过反馈各方所说的话来避免误解，确保正确的理解
- ▶ Help parties assess where they are in relation to each other and choosing where to go next 协助各方评估他们彼此之间的关系，并选择下一步的做法
- ▶ Assures the parties that the mediator is objective and attuned to the whole dispute 让各方感受到调解员是客观的，并且能够明白整个争议

Facilitate Discussion of Issues 促进问题的讨论



How? 如何？

- Discuss agenda issues one by one 逐一讨论
议程问题
- Ask appropriate Questions 提出适当的问题
- Do plenty of Summaries, Reframing,
Paraphrasing, etc. to identify the interest,
needs & concerns 做总结， 框架重整， 释
义等。 识别需求、关注和利益。

Facilitative rather than Inquisitorial 促进性而非审问性



**Not only ask questions -
Appropriate Questions**

不仅提出问题 -
适当的问题



**Listen attentively
- Parties Answers**
专心聆听 各方的

答案

Mediator needs to identify the needs, concerns and interests
调解员需要识别和确认需要、关注和利益



**Mediator Skills:
Summarizing,
Reframing, Active listening**

调解员技能：总结、
框架重整、积极倾听



**Validation of emotions,
acknowledge feelings**

确认情绪、
肯定感受

Direct Communications / Dialogue 直接沟通 / 对话



Allowed/encouraged direct communications/dialogue (where appropriate) 允许/鼓励直接沟通/对话 (如适用)



“Would you like to tell him/her why this is difficult for you?” “你想告诉他/她为什么这对你来说很困难吗？”



“Could you tell him/her more about the how the situation has affected you?” “你能告诉他/她更多关于这种情况对你的影响吗？”



“Could you please explain a bit more to her/him...” “你能不能再给她/他解释一下.....”



When the parties are talking to each other directly, be attentive, listen and summarize/reframe to identify issues, interests, needs and concerns when appropriate
当双方直接交谈时，要专心，倾听并总结/框架重整，确认讨论事项、需求、关注和利益



When parties are hostile towards each other, direct communication may not be appropriate
当各方相互敌视时，直接沟通可能不合适

Manage interruptions, negative interactions

管理中斷、負面互動

Summaries 摘要

- Listen & observe 倾听和观察
- What are they talking about? 他们在说什么？
- Emotions - important issues, interests, needs, concerns? 情绪 - 重要问题、需求、关注和利益？
- Identify issues, interests 识别问题、利益
- Summarize & reframe 总结和框架重整

Acknowledgement: emotions + needs, concerns and interests

确认：情绪+ 需求、关注和利益

Appropriate Questions to direct the discussion constructively

适当适当的提问来引导双方进行有建设性的讨论

Manage interruption, negative interactions (cont.)

管理干预，负面互动（续）

Remind Ground Rules提醒基本规则

“Please speak to me.”请和我说话

Intervention 介入

- Appropriate Intervention适当的介入干预
- Speak in separate meetings在单独的会议中发言
- Speak to the interests与利益对话

Exploration

the focus is
Mutual understanding

of
Interests

探索重点是 相互理解利益

Options (in the First Joint Session)?

方案（在第一次共同会谈上）？

Do we generate options in the first joint session?
我們是否在第一次共同会谈上产生方案？

It is common that parties will give options.
各方提供方案。

Options are not forbidden.
方案是可以的。

If options are mentioned, need to identify the options. Otherwise.....
如果提到了方案，则需要确定方案。否则。。。。。

“Parking Lot
方案停泊处”

Focus the discussion back to exploration of issues, interest, needs and concerns
将讨论的重点放在对问题、利益、需求和关注点的探讨上

Benefits of not Focusing on Options and Solutions **TOO EARLY** 不要过早关注选项和解决方案的好处

- ▶ More interests uncovered, more creative options possible
发现更多意向，可能有更多创意选择
- ▶ Better address the needs and interests 更好地满足需求和利益
- ▶ E.g. Orange Dispute 例如橙的争议
- ▶ E.g. You are organizing trip for your work team overseas
例如，您正在为您的工作团队组织海外旅行

Plan: Destination, Flights, Transportation, Roadshows, Visit clients, Meetings 计划：目的地，航班，交通，路演，拜访客户，会议

Needs and interests: Address different needs, options and division into teams for different work and activities 需求和利益：满足不同的需求、选择以及针对不同工作和活动的团队划分

When you do not know what to say....
当你不知道该说什么时...

SUMMARIZE 总结



阶段

PHASE

探讨
信息收集

1
INVESTIGATION/
INFORMATION
GATHERING

2
EXPLORATION
勘探

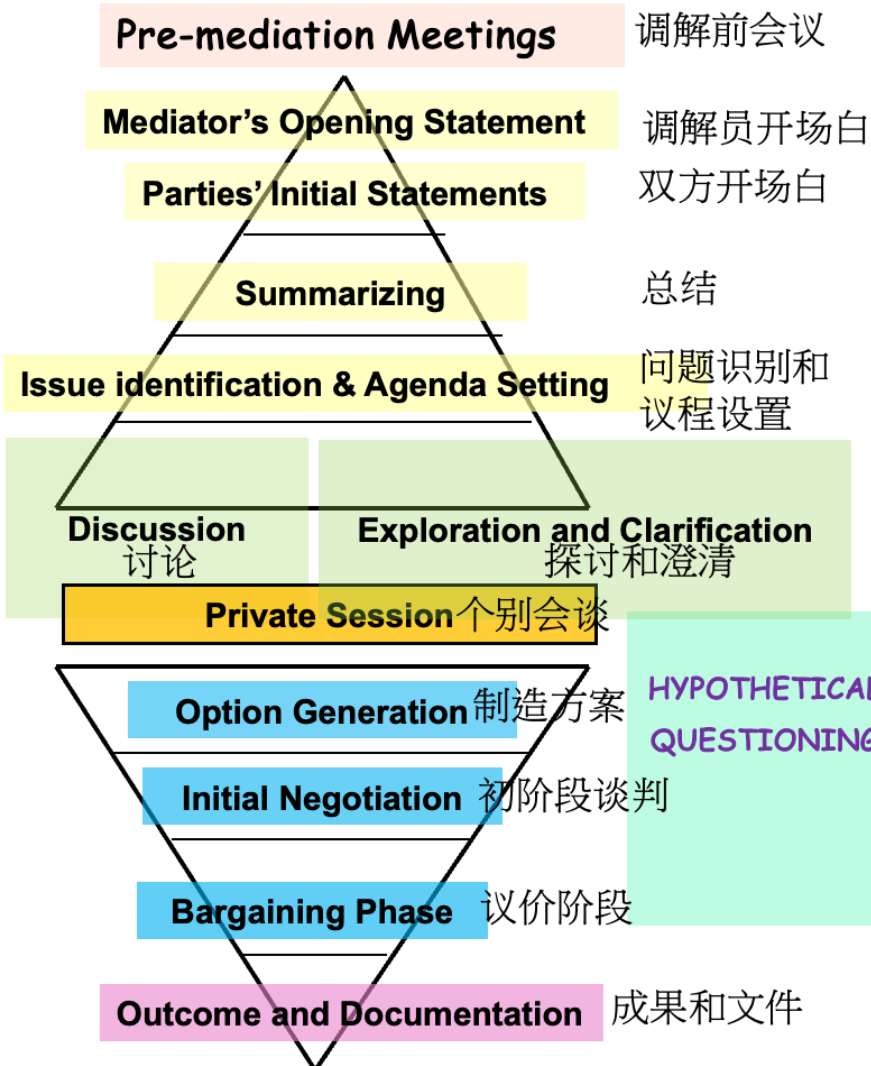
解决问题

P
R
O
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L
E
M
S

3
NEGOTIATING
TOWARDS
AGREEMENT
谈判达成协议

4
Settlement
Agreement

PROCESS 流程



SKILLS

技巧

ACTIVE
LISTENING

积极倾听

SUMMARIZING
REFRAMING
QUESTIONING
PARAPHRASING
EMPATHY

总结
重构/框架重整
适当提问
释意/复述
同理心

HYPOTHETICAL
QUESTIONING

假设性
提问

AGREEMENT
WRITING

协议撰写

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

The Caucus/Separate Sessions

个别会谈/单独会谈

Purposes of Caucuses 个别会谈的目的

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，制造怀疑，
挑战思维

Option Generation
创造方案

Enhancing Rapport & Trust
Venting and Expression of Emotion
增强融洽关系和信任
情绪的发泄和表达

Active Listening
积极倾听

Empathy
同理心

Body Language
身体语言

“How do you feel about
the mediation process?”
您如何看待调解过程

Is there anything that you
have not felt inconvenient
to discuss in Joint Session?

有什么你觉得在共同会谈上
不方便讨论的？

Is there anything that you
would like to discuss in the
private?

您想在单独会议中讨论什么？

Additional Information Not Revealed in the First Joint Session
第一个共同会谈未透露的补充资料

Uncovering Underlying Interests

发现潜在利益

Tell me more why it is so important to you that...告诉我更多为什么它对你如此重要，以至于...

What matters most to you here? 在这里，什么对你最重要？

Help me understand why that would not work for you
帮助我理解为什么这对你不起作用

Tell me how that affects you 告诉我这对你有什么影响

You seem to be very concerned about 你似乎很关心.....

ASSIST THE PARTIES
TO UNDERSTAND
THE RISKS IN
MAINTAINING THEIR
POSITIONS

协助各方了解维持其
立场的风险



DEVELOP THEIR
WILLINGNESS TO
PROBLEM-SOLVE

培养他们解决问题的
意愿



ASSISTING THE
PARTIES TO
CONSIDER
ALTERNATIVES THAT
THEY HAVE IF THE
DISPUTE CANNOT
BE SETTLED

协助各方考虑在争议
无法解决时用的替代
方案



USE BATNA/WATNA
APPROPRIATELY

考虑如果不能达到和
解方案的后果和搵
可能性

Reality Test, Doubt Creation, Challenging 现实测试，制造怀疑，挑战

Option Generation 制造方案

“ Party A is concerned about _____ [state the needs and interests],
You are concerned about _____ [state the needs and interests],
Can you think of some options to address the needs of both?”

“甲方的關注是 _____ [陈述需要和利益],
您的關注是 _____ [陈述需要和利益],
您能否 提出一些方案, 以同时满足双方的需要?”

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检验防止进一步的争端

Exploration of Options

探索方案



Assisting the party to consider the possible interests and concerns of the other party

协助另一方考虑另一方可能的利益和关切



See the situation in a broader perspective

从更广阔的角度看待局势



Attempting to identify the sources of conflict

试图识别冲突的根源



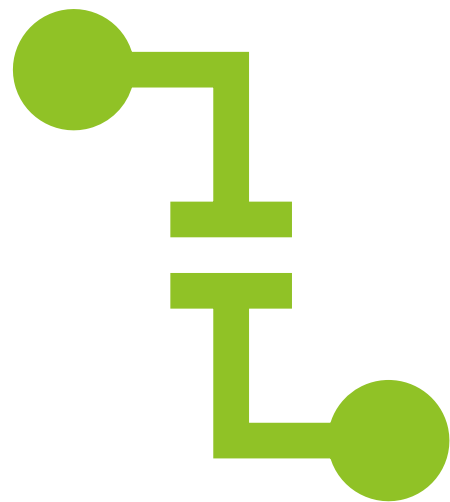
Assisting the parties to better understand their strengths and weaknesses in the dispute

协助各方更好地了解他们在争议中的优势和劣势



Assisting the party to develop their readiness and willingness to solve problems

协助培养解决问题的准备和意愿



单独会议/私人会谈

Separate Session/ Caucus

Flow and Process 流程和过程



**Not always
necessary ?**

并不总是必要的？



**No limit on the number
of private sessions (40 min
in total in assessment),**

单独会议的次数没有限制
(香港调解员评核：总共40分钟)



**Both parties should be
given the same
opportunity in terms of
time to speak to the
mediator privately**

双方应有同样的机会私下与
调解员交谈

When to Call for a Caucuses? 何时召开单独会议?

Conflicts or interruption excessive
(end Joint session with a positive note)

冲突或中断过多

(制造正面的气氛结束共同会议)

Parties are uncomfortable exploring options in front of each other

各方在彼此面前探索方案

感到不舒服

One party becomes difficult and need to work on

一方变得困难，需要努力

A party needs privacy to figure out what options he or she want to explore in joint session

一方需要私人空间 考量他想要在共同会谈上探索的方案

Mutual option generation may reveal information that a party wants to remain confidential

双方一起讨论或制造方案可能会泄露一方希望保密的资讯

The mediator needs to clarify or explore statements made by either party in private

调解员需要澄清或探讨任何一方私下发表的陈述

Power balance Strategy

处理权力不平衡的策略

Prior to a caucus (Mediator's Narrative) 在单独会议之前 (调解员叙述)

EDUCATE AND REITERATE
CONFIDENTIALITY

提醒保密性

TIME FRAME: 15-20 MIN
FOR EACH PRIVATE
SESSION, EQUAL TIME
FOR THE PARTIES
(ROLEPLAY)

时间框架：每次私人会议15-20分钟，双方时间相等 (角色扮演练习)

ADMINISTRATIVE:
WASHROOM, PANTRY,
CONSULT LAWYER, WHAT
TO DO (AGENDA,
OPTIONS), ETC.

安排：洗手间、茶水间、咨询律师、做什么 (议程、方案) 等

DECIDE WHICH PARTY TO
CAUCUS WITH FIRST

决定首先与哪方进行个别会谈

What to do in a Caucus 在单独会议中做什么

Appropriate Time
适当的时间

Explain confidentiality
解释机密性

Rapport enhanced (e.g. how is mediation going for them?) 加强信任 / 融洽关系 (例如, 调解对他们来说进展如何?)

Uncover underlying interests (e.g. is there anything to discuss which they have not felt comfortable discussing in joint session?)
发现潜在的利益 (例如, 有什么可以讨论的, 他们在共同会谈上不方便讨论?)

Options will come out - reality test, doubt creation, challenging, BATNA, WATNA, etc.

识别可行性方案 - 现实测试, 怀疑创造挑战, BATNA, WATNA等

Any other creative options?

还有其他创意方案吗?

Relevant caucus skills/techniques used (e.g. Reality testing; doubt creation; challenging, allowing venting, gathering further information, brainstorming, developing offers, etc.)

使用的相类私人会谈技巧

Preparation for the next stage of process : discuss what will happen in the next joint session (e.g. suggesting parties raise options / make direct offers)

为下一阶段的进程做准备: 讨论下一次共同会谈将会发生什么

Separation Sessions

单独会议的技巧

- allowing venting 抒发情感和想法
- gathering further information 收集进一步资料
- Underlying Interests 了解隐藏或基础的利益
- Brainstorming 脑震荡
- developing offers 制造选项和方案
- Reality testing 现实测试
- doubt creatio 制造怀疑
- challenging 挑战思维
- Prepare for exchange of offers 准备交换方案



BATNA

最佳替代方案 (Best Alternative to a Negotiated Agreement)

- **Definition:** BATNA refers to the most favourable course of action a party can take if negotiations fail and an agreement cannot be reached. It represents your fallback plan or "Plan B."

定义：BATNA 是指如果谈判失败且无法达成协议时，一方可以采取的最有利的行动。它代表了你的备用计划或“B 计划”。

- **Purpose:** Understanding your BATNA helps you determine the lowest acceptable value or outcome in a negotiation. If the proposed deal is worse than your BATNA, you should walk away from the negotiation.

目的：理解你的 BATNA 可以帮助你确定在谈判中可以接受的最低结果。如果谈判中的提议比你的 BATNA 差，你就应该离开谈判。

- **Example:** If you're negotiating the sale of your car and the highest offer you've received is \$10,000, that \$10,000 becomes your BATNA. If the current negotiation doesn't exceed this, you can reject the offer and take the \$10,000.

例子：如果你正在谈判卖车，最高的报价是 10,000 元，那么这 10,000 元就是你的 BATNA。如果当前谈判的价格低于这个数字，你可以拒绝报价并接受 10,000 元。

最差替代方案 (Worst Alternative to a Negotiated Agreement)

- **Definition:** WATNA refers to the worst possible outcome or scenario if no agreement is reached in the negotiation. It's the scenario you want to avoid if the negotiation breaks down.

定义：WATNA 是指如果没有达成协议，可能发生的最糟糕的结果或情况。这是你希望在谈判破裂时避免的情景。

- **Purpose:** Knowing your WATNA helps you understand the risks and costs of walking away from the negotiation. It can also serve as motivation to reach a deal to avoid this undesirable outcome.

目的：了解你的 WATNA 可以帮助你明白退出谈判的风险和成本。它也能激励你达成协议，以避免这个不理想的结果。

- **Example:** If you're negotiating the job offer. Your WATNA may be the inability to find a job in the coming months. This enable you assess the consequences and risks of failing to make a deal.

例子：如果你正在谈一份工作邀请，WATNA 可能是你在几个月内无法找到工作。这让你清楚地意识到谈判失败时的风险。

WATNA

Why BATNA and WATNA Matter

为什么 BATNA 和 WATNA 重要

► **Leverage:** Your **BATNA** gives you negotiating power.

谈判杠杆: BATNA 为你提供了谈判的力量。

► The stronger your BATNA, the more leverage you have because you can comfortably walk away from a deal that doesn't meet your minimum requirements.

你的 BATNA 越强，你就越有谈判优势，因为你可以从容地放弃那些达不到最低要求的协议。

► **Risk Awareness:** **WATNA** serves as a reminder of the potential risks of not reaching an agreement.

风险评估: WATNA 提醒你谈判失败后可能面临的风险。

► It can sometimes push negotiators to find middle ground, especially when the worst-case scenario is undesirable for both parties.

有时，当最坏情况对双方都不利时，WATNA 能促使谈判者找到妥协点。

BATNA 和 WATNA 总结

▶ BATNA = The best outcome if the negotiation fails (your fallback plan)

谈判失败时的最佳结果（你的备用计划）

▶ WATNA = The worst outcome if the negotiation fails (the scenario you want to avoid)

谈判失败时的最坏结果（你希望避免的情况）

Confidentiality

保密性

- ▶ The information discussed during the private session should never be disclosed to the other party, unless express consent is given by the disclosing party to the Mediator 在私人会议期间讨论的资讯不应透露给另一方，除非披露方明确同意调解员
- ▶ If consent to disclose information is given: 如果同意披露资讯：
 - ❖ Should the mediators disclose such information right away in the other party's private session? 调解员是否应该在另一方当事人的私人会议上立即披露此类资讯？
 - ❖ Should the mediator tell the other party that consent has been given? 调解员是否应该告诉另一方已经同意？

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

OPTION GENERATION 制造方案



Involve parties in brainstorming session 让各方集思广益



Ensure parties that all ideas are welcome and list them all and then discuss them 确保各方欢迎所有想法，并列出所有想法，然后进行讨论



Discuss one issue at a time 一次讨论一个问题



Focus on interests 专注于利益



Focus on the future 专注于将来



Do not be judgmental 不要批判



Can the pie be expanded? 尝试开拓谈判资源



Write ideas on board (joint sessions only), Post-it papers, cards etc. 写下想法，便利贴纸，卡片等



Get parties to build on their ideas 让各方在他们的想法的基础上再接再厉

转化：将利益和需要转化为和解方案

- 利益，关注和需要

- 转化（例如：双方分别关注到「。。」和「。。」，请你们想一些方案去对应上述提到的关注和需要。）

- 解决方案

Questions to Get Solutions

获取解决方案的问题

Use these questions when you are working on Specific Issues during **Option Generation**.

- ▶ What might work for you?
 - ▶ What can you do to help resolve this issue?
 - ▶ What other things might you try?
 - ▶ What would make this idea work better for you?
 - ▶ Is there some way we can meet both X's need for ____ and Y's need for ____?
 - ▶ Are there other ways to address the needs?
 - ▶ Are there other ways that you think the other side would accept?
- 什么可能对你有帮助？
 - 你能做些什么来帮助解决这个问题？
 - 您还可以尝试哪些其他事情？
 - 什么会让这个想法更适合你？
 - 有什么方法可以同时满足 X 对____的需求和 Y 对____的需求？
 - 有什么其他方法去回应双方的需求？
 - 有什么其他方法对方有机会会接受的？

Information Gathering + Develop a Better Understanding
资讯收集+更好地理解

What are the benefits of this option? 此选项有什么好处？

How does this option affect you? 此选项对您有何影响？

How does this option change your life? 这个选项如何改变你的生活？

What does it mean to you? 这对你意味着什么？

If it really happens, how would it affect you?
e.g. Apology 如果它真的发生了，它会如何影响你？
例如道歉

Exploration of Options 探索方案

REALITY TEST OPTIONS 现实测试 方案

- Reality test in both joint and private sessions
共同和私人会议的现实测试
- Ask if options address party/parties needs/interests
询问 方案是否满足各方的需要/利益
- Are options workable? 方案？可行吗？
- Is more information required in relation to the option/options? Consider “in-principle” proposals
考虑有关方案是否需要的更多资讯？“原则上”的和解建议

Question to get Consequences 考虑后果的问题

Use these questions during Exploration of Options, Reality Testing, Doubt Creation, Agreement Building.

- ▶ What other options do you have if you don't reach an agreement today?
 - ▶ Are you planning to move? (get another job...)
 - ▶ What problems might there be with this idea?
 - ▶ If you agree to this solution and _____ happens, then what?
- 如果今天不能达成协议，你还有什么选择 或其他方案？
 - 你打算搬家吗？（换一份工作.....）
 - 这个想法可能有什么问题？
 - 如果您同意此解决方案并且_____发生了，那会怎样？

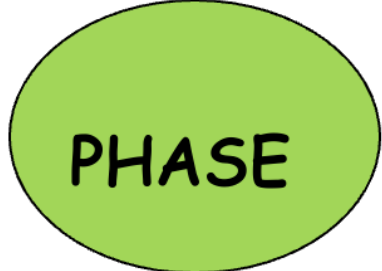
Transition to Second Joint Session

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



阶段



探讨

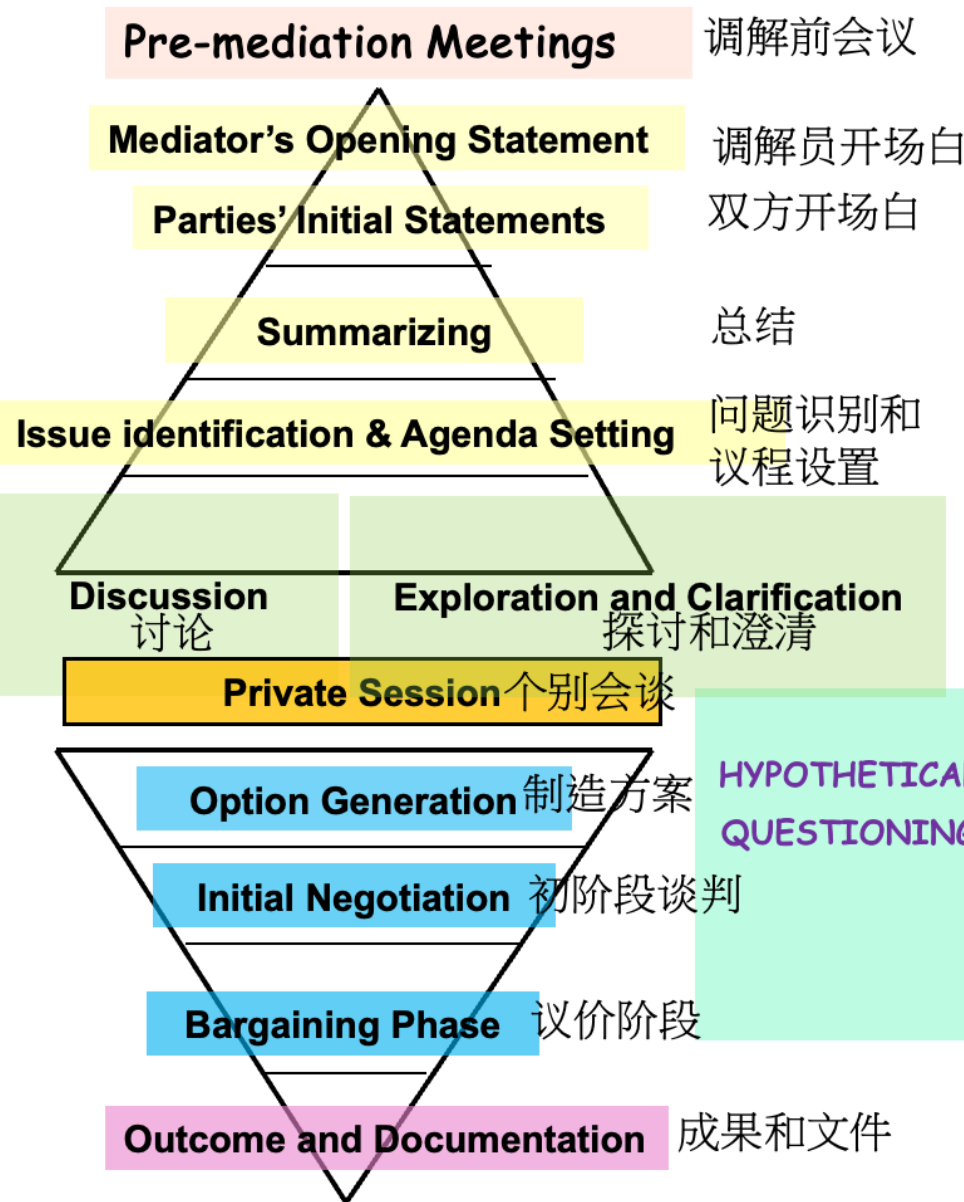
信息收集

解决问题

P
R
O
B
L
E
M
S



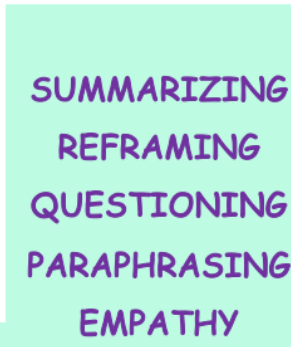
PROCESS 流程



技巧



积极倾听



总结
重构/框架重整
适当提问
释意/复述
同理心



假设性
提问



协议撰写

Debrief 汇报

Second Joint Session

第二次共同会谈

Option
Generation
产生方案

Exchange
Options
方案交换

Exchange Options 方案交换

No
Commitment
无承诺

No Criticism
没有批评

Open Mind
开放的心态

NEGOTIATION AND BARGAINING 谈判和议价

Lock the parties in agreement on a few terms first?
先锁定双方就几个条款达成协议？

Agreeing on easier issues first to create momentum?
首先就更简单的问题达成一致以创造动力？

- ▶ This can lead to impasse as only difficult issues remain
这可能导致僵局，因为只剩下困难的问题

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）
- ▶ Focus on interests not positions (needs and concerns)
关注利益而不是立场（需求和关注）
- ▶ 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

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."

明确指出折扣和优惠的原因
我所需要的对等安排

Demand and Define Reciprocity 需求和定义互惠

"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 作出或有条件的让步

"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。”

NEGOTIATION AND BARGAINING

谈判和议价



- ▶ Link offers to objective criteria as they are more easily accepted

将方案连结到客观标准，因为它们更容易被接受

- ▶ Ensure parties own the problem and its solution

确保各方拥有问题及其解决方案

- ▶ Avoid early commitment by party to bottom line

避免各方对底线的早期承诺

- ▶ Be prepared for deadlock 为僵局做好准备

- ▶ Link offers to other parties' needs and concerns

将优惠与其他方的需求和关注点联系起来

Questions to Test Agreements 测试协议的问题

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

- ▶ 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?

微调协议条款 优化和解协议

- ▶ Checking all issues included 检查 议程内的事项都已经 探讨
- ▶ Reality testing agreed settlement terms 现实测试商定的和解条款
- ▶ Fill in the details 填写详细资讯
- ▶ Contingency arrangement 应变安排
- ▶ Facilitating agreement on future action 促进就未来行动达成协定
- ▶ Facilitating fine tuning of settlement terms: summaries, clarifying questions
促进和解条款的微调：摘要，澄清问题
- ▶ Facilitating contingency arrangements if required 必要时促进应变安排
- ▶ Commending parties 赞扬各方

When people are difficult 当遇到困难的人



Need to persuade? 需要说服?



Need to get control of the
process? 需要控制流程?



Trouble to agree? 难以达成一致?

Second Joint Session - Refusal to make the first offer 第二次共同会谈— 拒绝先提出方案

- ▶ "Should you make the first offer, or let the other person do it?" There is a widespread, almost unquestionable, assumption that it is wise and strategic to let the other person talk first—and that it is suicidal to make the first offer. "

你应该提出第一个方案，还是让对方去做？”有一个普遍的、几乎不容置疑的假设，即让对方先说话是明智和战略性的——而提出第一个提议是自杀。

- ▶ there is virtually no research that supports the claim that letting the other party open first is advantageous. In fact, it can backfire—and lead to a worse outcome than you imagined.

几乎没有研究支持让对方先提出方案是有利的主张。事实上，这可能会适得其反，并导致比你想象的更糟糕的结果。



Anchoring 锚定原则

- ▶ According to the anchoring principle, the first offer made in a negotiation sets up a powerful, unconscious psychological anchor that acts as a gravitational force. Stated simply, there is a strong correlation between first offers and final outcomes.

根据锚定原则，谈判中提出的第一个提议建立了一个强大的、无意识的心理锚，充当引力。简单地说，首个建议和最终结果之间存在很强的相关性。

- ▶ Opening offers also influence the offers that the other party (the opponent) makes. Meaning, if you open first, the other party's counteroffer is influenced by your offer—not good for them.

第一个作出的建议也会影响另一方（对方）的建议。这意味着，如果你先建议，对方的还价会受到你的建议的影响——对他们不利。



► Conversely, several research investigations show a strong and powerful positive effect of making the first offer. The negotiator who puts the first offer on the table has an advantage, other factors remaining constant. That means that if you and I have done equal preparation and have similar leverage points, you will have an advantage if you make the first offer.

相反，一些研究调查显示，提出第一个提议具有强烈而强大的积极影响。将第一个提议摆在桌面上的谈判者具有优势，其他因素保持不变。这意味着，如果你和我做了平等的准备，并且有相似的杠杆点，如果你提出第一个提议，你可能获得优势。



When you do make a first offer, keep these 3 points in mind 当您提出第一个提议时，请记住以下三点

- ▶ **Hardly anyone accepts the first offer, so be sure you have room for maneuvering after you make it. If your first offer is too generous, you will not get credit for it.** 几乎没有人接受第一个提议，因此请确保您在提出后有回旋余地。如果你的第一个提议太慷慨，你就不会得到利益。
- ▶ **If your first offer is too generous, you will not get credit for it.** 如果你的第一个提议太慷慨，你就不会得到好处。
- ▶ **Don't make an outrageous opening offer. Sometimes, negotiators think that they can establish dominance by making an extreme offer. However, this backfires and creates a chilling effect. A chilling effect occurs when offers are so outrageous that the other party loses all motivation to continue negotiating.** 不要提出令人发指的开场白。有时，谈判者认为他们可以通过提出极端的提议来建立主导地位。然而，这适得其反，产生了寒蝉效应。当报价如此离谱以至于另一方失去继续谈判的所有动力时，就会产生寒蝉效应。

Strategies - alternatives 策略 - 替代方案

- ▶ Each write on a piece of paper the offer + then exchange simultaneously

每个人都在一张纸上写下提议，
然后同时交换



Mediator's Mantra 调解员的口头禅

Speak to the Person's Interests

针对当事人心目中最重要利益

(Not what you think, but what the person perceive)

(不是你想的，而是其本人的看法)

E.g. You want to get your neighbour to stop making the noise?

Here is how mediation can help. For that to happen, I need you to commit to respect courtesy and hold back on name calling. That way, we can finish today and you can get the peace you want.

例如，你想让你的邻居停止制造噪音吗？

以下是调解可以提供帮助的方式。为此，我需要你承诺尊重礼貌，不要辱骂。这样，我们今天就可以完成，你可以得到你想要的和平。





工程纠纷中有什么重要利益？

Interests in Construction Disputes

Settlement Motivation for Construction Disputes

工程争议的和解驱动力



- ▶ Economic Interests 经济利益
- ▶ Risk Management 风险控制
- ▶ Long Term Relationships 长期合作
- ▶ Practical Considerations 现实考量



经济利益

- ▶ 诉讼/仲裁费用和成本：诉讼程序消耗精神、时间和金钱
- ▶ 项目停滞损失：停工、延迟交付、违约、设备闲置、人工成本
- ▶ 资金链压力：怎样尽快收回款项、释放工程款或保证金



Economic Interests

▶ 1. Litigation/Arbitration Costs

- Legal procedures are time-consuming, stressful, and expensive.
- Significant costs include legal fees, expert assessments, and administrative expenses.

▶ 2. Losses from Project Delays

- Project stoppages lead to:
 - Delayed delivery schedules.
 - Breach of contract penalties.
 - Idle equipment and increased labor costs.

▶ 3. Cash Flow Pressure

- Critical concerns include:
 - How to recover payments quickly.
 - Releasing frozen construction funds or security deposits.

信誉 Reputation

- ▶ 开发商需维持市场形象
Developers need to maintain a positive market image
- ▶ 承建商则需保护行业口碑以获取未来投标资格
Contractors need to safeguard their industry reputation to secure future bids
- ▶ 公开纠纷可能影响双方融资能力或合作伙伴关系
Public disputes may harm both parties' ability to access financing or maintain partnerships





控制风险 Risk Mitigation

- ▶ 诉讼结果不确定性 Litigation Uncertainty
- ▶ 执行难度 Challenges in Enforcement of Judgements

项目延续性 Ensuring Project Continuity

- ▶ 工程仍然需要合作完成
Construction project still needs to proceed to completion
- ▶ 减少对立 Reduce conflicts
- ▶ 确保后续工程顺利进行 Ensure smooth progress of work



Conflict Resolution Strategies - 1

冲突解决策略 - 1

Types of Conflict 冲突的类型	Reasons 原因	Intervention 介入
Goals 目标	Cannot resolve without external assistance 没有外部协助就无法解决	Independence 独立 Interests 利益 Consequences if cannot resolve 如果无法解决的后果
Data 数据	Inadequate Information 资讯不足	Information 资讯 External Standard 外部标准 Experts 专家
Communication 通信	Inadequate Information 资讯不足 Misunderstanding 误解	Clarification 澄清 Future Communication 未来沟通
Resources 资源	Fixed resources 固定资源 Fixed Values 固定值	Expand Resources 扩展资源 Interests 利益

Conflict Resolution Strategies - 2

冲突解决策略 - 2

Types of Conflict 冲突的类型	Reasons 原因	Intervention 介入
Structure 结构	Dissatisfaction in distribution of power, resources, data or power 对权力、资源、数据或权力分配的不满	Stress Source of Power Ensure fair decision process 压力源头 确保公平的决策过程
Relationship/ Emotion 关系/ 情感	Undesirable behaviour, unaddressed emotions, grieving process, psychological issues 不良行为，未解决的情绪，悲伤 过程，心理问题	Validation of Emotion Control the Process to Avoid Negative Attitudes 情感的 确认 控制过程以避免消极态度
Values/ Principles 价值观/ 原则	Different mentalities, world views, religions, cultural differences, assumptions 不同的心态、世界观、宗教、文 化差异、 前设	Focus on Interests Find universal goal Encourage attitude to embrace differences and mutual tolerance 聚焦利益 找到共通的目标 鼓励拥抱差异和相互宽容的态度



Settlement Agreement

调解协议

We have learnt 我们学了

Facilitative Mediation Model 促进式调解模型	First Joint Session 首次共同会议	Mediator's Opening Statement 调解员开场白
Parties Opening and Summary 当事人开场白和撮要	Common Ground 共同基础	Agenda 议程
Exploration 探索 议程	Separate Sessions 单独会谈	Option Generation 制造方案
Second Joint Session 第二次共同会议	Bargaining 讨价还价/谈判	Settlement Agreement 和解协议

Settlement Motivation 和解推動力



Trainer Josephine Ma 導師 马嫻儀

- ▶ 马嫻儀律師是香港调解会的副主席。自2023年以来，她在不同时期担任香港区域法院案件和解会议的聆案官。2025年1月獲認證成為香港粵港澳大灣區調解員。
- ▶ 马律師从事律师工作已有25年以上。自2004年起，她获得綜合調解員及家事調解員双重认证，随后成为家事調解監督。在过去的20年里，她主持了数百宗調解案件，成功解决了包括商业、建築、金融、合同、侵权、遺產、家事及跨境等多种纠纷。自2010年以来，她一直担任綜合事務調解員认证的评核员。
- ▶ 马律師是香港調解員认证课程的調解培訓導師，教導符合香港調解资历評審協會有限公司标准的調解課程。在她的職業生涯中，她在提升香港、澳門及內地超过1,000名專業人士的調解技能方面发挥了重要作用。
- ▶ 马律師拥有中国香港比較，佛學，教育及輔導三个領域的碩士學位，以多元的視野促進和解；她的專業領域涵蓋多种調解方法，包括促進式、轉化式、評估式、治療式、敘事式及高衝突調解技巧。马女士对这些多样化的調解方式有着深厚的造詣，能够熟练地引导各方解决衝突。
- ▶ Ms. Josephine Ma is the Vice-Chairperson of the Hong Kong Mediation Council. She has served as a Master of Case Settlement Conferences in the District Court of Hong Kong during various periods since 2023. Accredited as GBD GD, Hong Kong and Macao Mediator in January 2025.
- ▶ Josephine has been a practicing lawyer for over 25 years. She began practicing as an accredited general and family mediator in 2004 and later became a family mediation supervisor. Over the past 20 years, she has conducted hundreds of mediation cases and successfully settled a wide range of disputes, including those involving commercial, construction, financial, contractual, tort, probate, family, and cross-border matters. Since 2010, she has served as an assessor for the accreditation of general mediators.
- ▶ Josephine is an acclaimed trainer in accredited general mediation training programs that adhere to the standards of the Hong Kong Mediation Accreditation Association Limited. Throughout her career, she has played a key role in enhancing the mediation skills of over 1,000 professionals across Hong Kong, Macau, and mainland China.
- ▶ Josephine holds three master's degrees in Chinese and Hong Kong Comparative Law, Buddhism, and Counseling and Education. This diverse educational background equips her with a multifaceted perspective that enhances her ability to facilitate the settlement of disputes. Her expertise spans a wide range of mediation methodologies, including facilitative, transformative, evaluative, therapeutic, narrative, and high-conflict mediation techniques. Josephine's proficiency in these diverse approaches has enabled her to expertly guide parties through the resolution of their conflicts.