



## **Rules for the Building Management Dispute Resolution Service (BMDRS)**

### **INTRODUCTION**

The BMDRS is launched by the Home Affairs Department (HAD) in April 2018. Under the BMDRS, HAD appoints a retired Judge/Judicial Officer to, among others, provide opinion/assessment to parties based on his experience and expertise, assist the parties to communicate with each other and/or reach an agreement, etc. in building management disputes with a view to resolving the disputes.

### **THE RULES**

The following rules shall provide a regulatory framework in respect of the BMDRS, which will be provided in the form of a mediation<sup>1</sup> service.

#### ***The BMDRS***

1. Under the BMDRS, mediator(s) in different capacities will provide assistance to parties at various stages of the BMDRS to assist the parties to the dispute to identify the issues in dispute, explore and generate options, communicate with one another, and/or reach an agreement regarding the resolution of the whole (or part) of the dispute. Particularly, in the process, in addition to the assistance mentioned above, a **retired Judge/Judicial Officer** serving as one of the mediator(s) (thereafter referred to as the “Convenor/Member”) may, based on his experience and expertise, provide **opinion/assessment** (including the evaluation of the issue and/or the assessment of the strengths and weaknesses of the parties’ case(s)) upon

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<sup>1</sup> Mediation is a structured process comprising one or more sessions in which one or more impartial individuals, without adjudicating a dispute or any aspect of it, assist the parties to the dispute to do any or all of the following – (a) identify the issues in dispute; (b) explore and generate options; (c) communicate with one another; (d) reach an agreement regarding the solution of the whole, or part of the dispute.

request and may assist both parties to draft and sign the settlement agreement where appropriate.

### *Application of Rules*

2. The Rules apply to the BMDRS upon the parties' signing of the **Agreement to Use the BMDRS (Form 2)**.

### *The Process of the BMDRS*

#### *Initiation of the Process*

3. Insofar as a dispute arises to which these Rules apply, parties interested in the BMDRS should submit the **Collection of Data Form (Form 1)** to the District Office (DO) concerned. The DO shall refer such building management dispute to the Headquarters of HAD, and HAD/the DO may collect further basic information from the parties to prepare a brief statement setting out the background and nature of the dispute. Upon receipt of a referral case, **preliminary screening** and **intake interviews**<sup>2</sup> will be conducted to explain to the disputing parties individually the details of the BMDRS as well as the basic principles, concepts and procedures of the BMDRS, to facilitate the parties to identify the underlying issues between them and to further assess the suitability of the dispute for the BMDRS.

4. If an owners' corporation (OC) or owners' committee (OComm) is a party to the BMDRS, the management committee of the OC or the OComm shall provide sufficient authority to the person attending the sessions on behalf of it in the BMDRS for the purpose of reaching consensus and agreement on behalf of the OC or the OComm.

#### *Appointment of the Convenor/Member and/or the Mediator(s)*

5. Where the parties agree to proceed to the BMDRS, the Convenor/Member/mediator(s) will meet with the parties in a meeting to explain the content of the "**Agreement to Use the BMDRS**" (see **Form 2**). The parties shall accept the appointment of the Convenor/Member and/or the mediator(s) assigned by HAD by signing the "**Agreement to use the**

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<sup>2</sup> If it is considered that the Free Mediation Service Scheme for Building Management would be more suitable for the dispute, the dispute may be referred to that scheme instead.

**BMDRS”**. The meeting(s) of the BMDRS shall then proceed in accordance with these Rules.

***Conflict of Interest***

6. No person shall act as the Convenor/Member/mediator(s) in any dispute in which that person has any financial or personal interest in the result of the BMDRS process except by consent of the parties. Before accepting an appointment, the Convenor/Member/mediator(s) shall disclose to HAD any circumstances likely to affect their ability to act impartially or prevent a prompt resolution of the dispute. In such case, the parties may decide whether to continue with the appointment, or HAD may consider nominating another suitable Convenor/Member/mediator(s).

***Information Received by the Convenor/Member/Mediator(s)***

7. In order to enable the Convenor/Member to provide an opinion/assessment on the dispute, the parties shall provide accurate and complete information, records, documents or communications to the Convenor/Member/mediator(s).

***Subsequent Meeting(s)***

***The Evaluation Meeting(s)***

8. Unless there are any special circumstances, the parties shall provide the information as soon as practicable and the Convenor/Member shall commence the evaluation meeting as soon as practicable after his appointment and study of the information received.

9. The Convenor/Member may, based on his experience and expertise, prepare and provide separate/joint opinion(s)/assessment(s) to the parties. The opinion/assessment is non-binding, and should be based on the experience and expertise of the Convenor/Member and the information, records, documents or communications provided by the parties.

***The Mediation meeting(s)***

10. If the parties would like to settle, the Convenor/Member/mediator(s) will then conduct mediation meeting(s) so that the parties may better develop

their own settlement options. If both parties agree and the Convenor/Member/mediator(s) think fit, the Convenor/Member/mediator(s) may assist both parties to draft the settlement agreement, making reference to the opinion/assessment provided by the Convenor/Member at the evaluation meeting, where applicable. When a settlement is reached, the parties concerned are required to sign a **Settlement Agreement** which is legally-binding.

### ***The Duration of the BMDRS***

11. The Service for each case will normally not exceed 22 hours in total. The time allocated to each stage of the Service is approximately as follows –

- (a) the intake interview conducted by the Convenor/Member/mediator(s) should not be more than 3 hours;
- (b) the evaluation meeting(s) (whether joint/separate) conducted by the Convenor/Member should not be more than 7 hours; and
- (c) the mediation meeting(s) (whether joint/separate) conducted by the Convenor/Member/mediator(s) should not be more than 12 hours.

The parties concerned may apply for an extension of service hours. Where justified, the service hours will be extended up to a maximum of 6 hours.

Furthermore, the Service will normally be completed within 3 months from the date of the first intake interview/meeting.

### ***Manners in which the Convenor/Member/Mediator(s) should Perform their Roles***

12. The Convenor/Member and the mediator(s) should carry out their roles in such manner, as they consider appropriate, taking into account the circumstances of the case, the wishes of the parties and the need for a speedy settlement of the dispute.

### ***Role of the Parties***

13. The Convenor/Member/mediator(s)/HAD and DOs and relevant staff members may communicate with the parties together or with any party separately. Each party shall cooperate with the Convenor/Member/mediator(s)/HAD and DOs and relevant staff members, and

the parties shall give full assistance (including the provision of complete and accurate information to the Convenor/Member, the mediator(s), and HAD and DOs and relevant staff members) to enable the BMDRS to proceed and be concluded within the time stipulated.

***Authorised Person to Act on behalf of the OC/Owners' Committee***

14. The parties may authorise person(s) to act on their behalf or be assisted by persons of their choice throughout the BMDRS. Each party shall notify in advance the names and the role of such persons to the Convenor/Member, the mediator(s), HAD and the other party. Each party shall have full authority to settle or be accompanied by a person with such authority.

***Termination of the BMDRS***

15. The BMDRS process shall come to an end:-

- (a) upon settlement (in whole or in part) of the dispute by the parties and the signing of a settlement agreement or any other written records of the settlement;
- (b) upon the written advice of the Convenor/Member or the mediator(s) after consultation with the parties that in his opinion further attempts at the BMDRS are no longer justified; or
- (c) upon written notification by any party at any time to the Convenor/Member or the mediator(s) and the other parties that the BMDRS is terminated.

***Confidentiality***

16. (a) All proceedings in connection with the BMDRS conducted shall be subject to the Mediation Ordinance (Cap 620) of the Laws of Hong Kong.
- (b) Apart from paragraph (a) above, parties to the BMDRS shall also follow paragraph 13 of the **Agreement to Use the BMDRS (Form 2)** on Confidentiality.

***The Convenor's/Member's and the Mediator(s)' Role(s) in Subsequent Proceedings***

17. The parties undertake that the Convenor/Member, the mediator(s)

and/or HAD and DOs and relevant staff members shall not be appointed as adjudicator, arbitrator or representative, counsel or expert witness of any party in any subsequent adjudication, arbitration or judicial proceedings whether arising out of the BMDRS or any other dispute in connection with the same dispute that has been discussed/assessed in the BMDRS. No party shall be entitled to call the Convenor/Member, the mediator(s) and/or HAD and DOs and relevant staff members as a witness in any subsequent adjudication, arbitration or judicial proceedings arising out of the same dispute that has been discussed/assessed in the BMDRS.

***Exclusion of Liability***

18. The parties jointly and severally release, discharge and indemnify HAD and DOs and relevant staff members, the Convenor/Member and the mediator(s) in respect of all liability whatsoever, whether involving negligence or not, from any act or omission in connection with or arising out of or relating in any way to any process conducted under these Rules, save for the consequences of fraud or dishonesty.

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