

Insights

HK – COVID-19 – 9 KEY POINTS ON THE HK GOVERNMENT’S COVID-19 ONLINE DISPUTE RESOLUTION SCHEME

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The Hong Kong Department of Justice has officially launched the COVID-19 Online Dispute Resolution ('ODR') Scheme on 29 June 2020.

As previously introduced in our [article](#), the Scheme aims to support individuals / businesses affected by COVID-19 in resolving disputes through negotiation, mediation and arbitration, in relation to disputes with a monetary value below HK\$500,000.

Following the launch, more details have been provided by the Government and the Scheme's operating body.

In this update, we will lay out the key points of the Scheme as now published.

1. Who is the scheme operator and how is it implemented?

The Scheme is to be operated independently by eBRAM International Online Dispute Resolution Centre ('eBRAM').

eBRAM has developed a video conferencing platform ('Platform') for parties to sign necessary electronic agreements, and to conduct mediation / arbitration hearings online. To protect the privacy of the parties, all data submitted to the Platform will be stored in a private cloud hosted in Hong Kong managed by eBRAM.

eBRAM has published a set of rules for the Scheme ('Rules') which can be accessed at [here](#).

2. What are the applicable disputes?

According to the Rules, COVID-19 related disputes are any commercial, contractual, tortious, property, family or tenancy disputes arising directly or indirectly out of the COVID-19 pandemic in any part of the world.

The dispute must have a value of under HK\$500,000 and be arbitrable under Hong Kong law. Also, one of the parties must be a Hong Kong resident or a company registered in Hong Kong.

3. When will it become available?

eBRAM will provide training to a group of over 150 mediators and arbitrators on how to use the Platform, which training is aimed for July 2020.

Upon completion of the training, parties may submit their cases to the Platform.

4. What are the brief procedures & maximum time period allowed for each tier?

The Scheme consists of three 'Tiers':

- a. Tier 1 Negotiation Stage;
- b. Tier 2 Mediation Stage; and
- c. Tier 3 Arbitration Stage.

There is a maximum time period allowed for parties to resolve the dispute at each Tier.

Pre-Tier 1

Before progressing to Tier 1, the parties begin by entering into an ODR Agreement. The ODR Agreement should set out details of the grounds on which the claimant's claim is made. The claimant then must submit the signed ODR Agreement to eBRAM. The ODR Proceedings are deemed to commence once eBRAM notifies the parties of the availability of the ODR Agreement on the Platform.

- **Time period:** The respondent has to provide a response (which should include a response to the grounds on which the claimant's claim is made and notice of any counterclaims) within three days after being notified of the availability of the ODR Agreement on the Platform. The claimant then has the right to respond to the counterclaims if any within three days.

Tier 1 Negotiation Stage

Parties may choose to negotiate via the Platform or other agreed methods.

- **Time period:** The parties have to attempt to settle within three days of the commencement of the negotiation stage. They may agree to a 'one-time extension' of no more than three days.

Tier 2 Mediation Stage

If the parties fail to reach a settlement through negotiations, they will go to the mediation stage. The parties will appoint a mediator suggested by eBRAM, and attempt to settle again.

- **Time period:** The parties have to appoint a mediator within three days of the commencement of the negotiation stage, and attempt to settle within three days.

Tier 3 Arbitration Stage

If the parties still are unable to reach an amicable settlement through mediation, the parties will go to the arbitration stage. The parties will appoint an arbitrator suggested by eBRAM. The arbitrator will set a deadline for the parties to complete all communications and submissions. The arbitrator then will issue an arbitral award.

- **Time period:** The parties have to appoint an arbitrator within three days of the commencement of the arbitration stage. All communications and submissions must be filed no later than one month from the appointment of the arbitrator. The arbitral award has to be issued within seven days from the filing of last submission.

In light of the above, it is expected that the parties could obtain an arbitral award around two months after the submission of the ODR Agreement.

5. Can parties appeal to the arbitrator's decision?

No. The arbitral award is final and binding on the parties. There is no avenue of appeal.

6. Are legal representatives allowed?

Yes. Both parties are allowed to appoint representatives to act for them.

7. What will be the mechanism for appointment of mediators/arbitrators?

eBRAM will appoint the mediators / arbitrators.

At the beginning of Tier 2 and Tier 3, eBRAM will generate a list of five mediators / arbitrators, from which the parties may agree who to appoint. The parties only can appoint one mediator / arbitrator at each tier.

If the parties fail to agree, eBRAM will appoint a mediator / arbitrator whose name did not appear in the original list. Each party has a maximum of three challenges to eBRAM's choices of appointment.

8. What are the costs of the scheme and fees for mediators/arbitrators?

Each party is required to pay HK\$200 as the registration fee to eBRAM.

The costs of the arbitration normally will be borne by the unsuccessful party, subject to the arbitrator's discretion to make apportionment of costs.

The Government has vowed to bear the fees for the mediators and arbitrators, meaning that the Scheme is largely free of cost to the parties.

9. What are the advantages of the scheme?

Accessibility: Parties are able to resolve their disputes via remote and online access to the Platform. A physical venue for a hearing is not required.

Efficiency: Parties are subject to strict deadlines at each stage. The ODR Proceedings will not be prolonged by endless extension of time and interlocutory / procedural applications that parties all too often encounter in court or conventional arbitration proceedings. Given the strict timeframe, parties inevitably will be placed under more pressure to reach a settlement. It is expected, therefore, that the parties will obtain an award much quicker from this Scheme than from the courts or from a conventional arbitral tribunal, thereby lowering parties' costs exposure.

Cost: If Government does indeed cover the fees of the mediator and arbitrator, and if a party represents itself, the cost of these abbreviated proceedings will be substantially less than traditional court or arbitration proceedings, thus enhancing access to quick justice.

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