



HKIAC MEDIATOR ACCREDITATION COMMITTEE

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HKIAC Mediator Accreditation Committee Members' Contact Details

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Wilkinson & Grist	6/F Prince's Building	Chater Road	Central	Hong Kong
High Court	38 Queensway	Hong Kong		
Ho & Allington Limited	Suite 2105A Harcourt House	39 Gloucester Road	Wanchai	Hong Kong
Kowloon-Canton Railway Corporation	KCRC House	No 9 Lok King Street	Fo Tan, Shatin	NT
Les Leslie Associates	Suite 2105A Harcourt House	39 Gloucester Road	Wanchai	Hong Kong
The Hong Kong Catholic Marriage Advisory Council	M2 Level, Tsui Cheung House	Tsui Ping (North) Estate	Kwun Tong	Kowloon
Hong Kong International Arbitration Centre	38/F Two Exchange Square	Central	Hong Kong	
CMA Services Ltd	Suite 1206 Workingview Commercial Bldg	21 Yiu Wa Street	Causeway Bay	Hong Kong
High Court	38 Queensway	Hong Kong		
Office of the Ombudsman	30/F China Merchants Tower	Shun Tak Centre	Central	Hong Kong

Hong Kong International Arbitration Centre
Mediator Accreditation Committee

TERMS OF REFERENCE
(approved by the Council of the HKIAC on 16 November 2002)

INTRODUCTION

The Hong Kong International Arbitration Centre Mediator Accreditation Committee (“the Committee”) is established as a committee of the Hong Kong International Arbitration Centre (“HKIAC”) and these terms of reference are subject to the Memorandum and Articles of Association of the HKIAC.

1. AIMS

The aims of the Committee are :-

- to establish and maintain panels of mediators who have met the requirements established by the Committee, from time to time, for accreditation and inclusion thereon;
- to establish, keep under review and safeguard the professional standards of training and experience required by persons in order for them to be accredited and included on the panels of mediators established and maintained by the Committee;
- to liaise with the Hong Kong Mediation Council (“HKMC”) on issues pertaining to the development and training of mediators;
- to assess the suitability of mediation training courses in light of the standards established from time to time by the Committee for persons to be accredited and included on the panels of mediators established and maintained by the Committee;
- to facilitate the exchange of information and ideas in relation to the accreditation of mediators and the standards in connection therewith.
- to establish complaint procedures and deal with disciplinary actions with regards to Mediators included on the panels of mediators established and maintained by the Committee.

2 COMMITTEE

2.1 The Committee shall be comprised of no more than eight persons, composed of the following :-

- (a) Four persons appointed by the HKIAC Council;
- (b) Four persons nominated by the HKMC Committee and approved by the HKIAC Council.

2.2 (a) The HKIAC Council shall have the power to fill a casual vacancy on the Committee due to

- (i) the termination of office of a member appointed by the HKIAC Council;
 - (ii) the removal of such member by the HKIAC Council; or
 - (iii) the death of such member
 - (b) The HKIAC Council shall have the power to fill a casual vacancy on the Committee on the recommendation of the HKMC Council, in the event of
 - (i) the termination of office of a member appointed by the HKIAC Council on the recommendation of the HKMC Council;
 - (ii) the removal of such member by the HKIAC Council; or
 - (iii) the death of such member.
- 2.3 (a) The term of office of a member appointed by HKIAC Council and/or nominated by the HKMC and approved by the HKIAC Council shall be for a period of not more than two years.
- (b) Retiring members shall be eligible for re-nomination to the Committee after having been absent from the Committee for a period of not less than 2 years since that member was last a member of the Committee.
- (c) No member shall be on the Committee continuously for more than three terms of two years.
- 2.4 The quorum at Committee Meetings shall be four, one of which shall be the Chairperson or Vice Chairperson.
- 2.5 The Committee shall have a Chairperson. The Chairperson shall be appointed by HKIAC Council and shall be a member of HKIAC Council and shall be amongst the members of the Committee appointed by the HKIAC Council.
- 2.6 The Committee shall have a Vice-Chairperson appointed by the Committee and approved by the HKIAC Council.
- 2.7 Any matter coming before a Committee meeting which requires a vote shall be decided by a simple majority of those Committee Members present. Each member of the Committee shall be entitled to one vote on all matters requiring a vote at Committee meetings, save that the Chairperson, or in his absence, the Vice-Chairperson shall have an additional casting vote.
- 2.8 The Chairperson or any two (2) Committee Members may call for a meeting of the Committee. Members of the Committee shall be entitled to at least 24 hours written notice of any meeting of the Committee which notice may be subject to waiver by the Committee Members.
- 2.9 The Chairperson shall preside over all meetings of the Committee at which the Chairperson is present and in the absence of the Chairperson, the Vice-Chairperson shall preside.
- 2.10 The Committee may establish sub-committees, working parties or other ad-hoc bodies to assist in its functions, but all such bodies shall be directly responsible to the Committee. The Committee may create and provide rules for the operation, changes in structure or mandate or cessation of such sub-committees, working parties or

other bodies as the Committee deems appropriate from time to time. Co-opted members appointed by the Committee may be invited from time to time to be part of these sub-committees, working parties or other ad-hoc bodies to assist in its functions.

- 2.11 The Chairperson or in his absence, the Vice-Chairperson of the Committee shall report to the HKIAC Management Committee from time to time on the activities of the Committee.
- 2.12 Other than as provided for in these Terms of Reference the Committee shall organise its meetings as it shall see fit from time to time.

3. SECRETARIAT

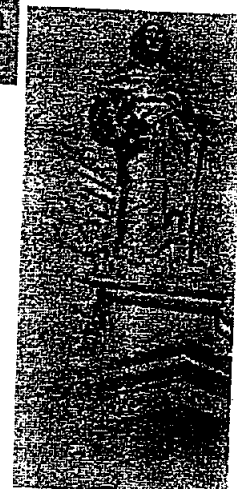
- 3.1 The Secretary General of HKIAC and his staff shall render administrative and secretarial assistance to the Committee.
- 3.2 The Secretary General or in his absence a member of the Committee shall compile and maintain minutes and records of the Committee meetings.

4. STATUS OF THESE TERMS OF REFERENCE

- 4.1 In the event of any discrepancy between the Memorandum and Articles of Association of HKIAC and these Terms of Reference or any amendment thereto, precedence shall be given to the Memorandum and Articles of Association of HKIAC.
- 4.2 The Committee may refer at any time to HKIAC Council, through the Secretary General, a proposal to revoke or amend these Terms of Reference, but such revocation or amendment shall not take effect unless and until approved by HKIAC Council. Notwithstanding anything else herein contained the HKIAC Council reserves the right to revoke or amend these Terms of Reference on its own initiative at any time and in any manner it deems appropriate.

Guide to Accredit Mediators

Criteria for Considering Mediation Training Courses for Which Approval is Sought for Purposes of Mediator Accreditation



The policy of the HKIAC Mediator Accreditation Committee (the "Committee") is to require that each new mediation-training course for which approval is sought from the Committee, be examined on its merits and reviewed from time to time. It is essential that any mediation-training course, which is approved by the Committee, is of sufficiently high standard to enable the participants to receive credit towards accreditation.

The following are the criteria which the Committee will take into account in connection with the consideration of a proposed new course:-

- (a) the dates of the proposed course;
- (b) the content of the proposed course;
- (c) the proposed course programme day-by-day, including how many hours of lectures and simulations per day;
- (d) the name and qualifications of the course trainers, including their mediation training record, mediation experience and the amount of time, each of them will actually spend providing training during the course in question;
- (e) the names and numbers of coaches, their qualifications including for each individual their mediation training record, mediation experience and the amount of time they will actually spend coaching during the course in question;
- (f) the maximum number of participants in the proposed course;
- (g) the number and length of role plays in the proposed course, with a brief description illustrating the training objective of each and details of how each stage of the process is covered;
- (h) the methods by which the role plays will be monitored by the course trainers and coaches and how the individual course participants will be coached or provided with feedback;
- (i) whether a certificate is issued to "successful" course participants (including a definition of what "successful" means) and what is the content of such certificate, if any, and
- (j) the method by which a course participant will provide feedback to the course provider and how such feedback is to be use by the course provider and

Each time that it is intended by a course provider to again give a mediation training course for which Committee approval has already been given, with a view that the participants in such course should receive credit toward accreditation by the Committee, the provider of such course should notify the Committee in writing of such intention in a timely manner, confirming that the course to be given is exactly the same as that as previously approved, and if not exactly the same describing what the proposed changes are, and in addition advising the Committee of the information set out in (a), (d), (e) and (f) above, in which event, should all be in order, the course provider can usually expect approval from the Committee for such course.

The Committee reserves the right in its sole discretion to approve or refuse to approve any mediation training course for which approval is sought.

The policy as set out above is subject to change from time-to-time.

27 September 2001

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RULES FOR THE HANDLING OF COMPLAINTS
AGAINST AN ACCREDITED MEDIATOR

(adopted by the Council of the HKIAC on 17 October, 2000)

1. For the purposes of these Rules, except where the context otherwise requires or permits, the following words shall have the meanings respectively attributed to them below:

“Accredited Mediator” shall mean a person who has been accredited by the MAC and whose name appears on one or more of the Panels at the relevant time.

“CAAM” shall mean an Accredited Mediator against whom a Complaint has been made.

“Code” shall mean the General Ethical Code and/or the Guidelines for Professional Practice of Family Mediators Family of The Hong Kong Mediation Council, a division of the HKIAC (the HKIAC Mediation Group as it was known at the time the said Code and Guidelines were initially adopted), in effect at the time the events which give rise to a Complaint take place.

“Complaint” shall mean a complaint made against an Accredited Mediator with respect to the latter’s (i) alleged conduct or behaviour in connection with a mediation proceeding; and/or (ii) alleged conduct or behaviour not connected with a mediation proceeding which might be seen to call into question the CAAM’s suitability to remain as an Accredited Mediator.

“Complainant” shall mean a person making a Complaint.

“CDC” shall mean a Complaint Determination Committee” appointed pursuant to 5(1) below.

“HKIAC” shall mean the Hong Kong International Arbitration Centre.

“Improper Conduct” shall mean an act or behaviour, including without limitation an act of omission, on the part of an Accredited Mediator which a reasonable and objective person, knowing the facts of the matter, would consider same to:

- (1) be such a serious breach of the Code; and/or
- (2) so seriously bring the Accredited Mediator’s professional abilities and/or personal temperament into question; and/or
- (3) so seriously bring discredit upon and/or damage to the HKIAC, the MAC and/or the Panels;

that the continued presence of the Accredited Mediator in question on the Panels is no longer merited.

“MAC” shall mean the Mediator Accreditation Committee of the HKIAC.

“Panels” shall mean the Panels of Accredited Mediators established by the MAC and existing at the relevant time.

“Rules” shall mean these Rules.

“Secretary-General” shall mean the Secretary-General of the HKIAC.

2. As used in these Rules and where the context so requires or permits, words importing the masculine shall include the feminine and vice versa and words importing the singular shall include the plural and vice versa.

At the MAC Level

3. Any Complaint must be made in writing and submitted to the Secretary-General and must be accompanied with all the evidence and/or statements upon which the Complaint is based. Once a Complaint has been duly received the Secretary-General shall immediately make a record of the date the Complaint is received, the name of the Complainant, the name of the CAAM and the nature of the Complaint. As soon as possible thereafter, the Secretary-General shall write to the Complainant acknowledging receipt of the Complaint. At the same time the Secretary-General shall notify the CAAM in writing that the Complaint in question has been made, and provide to the CAAM a copy of the Complaint, a copy of the evidence and/or statements upon which the Complaint is based and a copy of the Rules and shall invite the CAAM to submit in writing within twenty-one (21) days of the notification by the Secretary-General any comments the CAAM might wish to make in the circumstances. In addition, the Secretary-General shall as soon as possible forward to the Chairman of the MAC a copy of the Complaint and the evidence and statements in support of the Complaint submitted by the Complainant and any comments thereon submitted by the CAAM.
4. (1) As soon as possible after receipt by the Chairman of the MAC from the Secretary-General of a copy of the Complaint and the evidence and statements in support of the Complaint submitted by the Complainant as well as any written comments the CAAM in question may wish to make within the twenty-one (21) days provided for in 3 above, the Chairman of the MAC shall convene a meeting of the MAC in order to review and investigate the Complaint to determine whether in its view there is a prima facie case of Improper Conduct to answer.

(2) Save as otherwise provided for in these Rules, the MAC shall have the power to conduct its review and investigation of a Complaint in such manner as it considers appropriate. All decisions of the MAC shall be made by majority of the members and the Chairman of MAC shall have a casting vote. The MAC may take into consideration and act on any information available to it whether or not such information would be admissible in a court of law.

(3) (a) If after conducting its review and investigation of a Complaint pursuant to 4(2) above the MAC is satisfied that there is no prima facie case of Improper

Conduct to answer the MAC shall dismiss the Complaint and shall instruct the Secretary-General to notify in writing both the CAAM and the Complainant informing them of the MAC's decision.

(b) If after conducting its review and investigation of a Complaint pursuant to 4(2) above the MAC is satisfied that there is a prima facie case of Improper Conduct to answer the MAC shall instruct the Secretary-General to write to both the CAAM and the Complainant informing them of the findings and advising them that the matter is being referred to a CDC.

At the CDC Level

5. (1) As soon as possible after having satisfied itself pursuant to 4(3)(b) above that there is a prima facie case of Improper Conduct to answer, the Chairman of the MAC shall appoint a Complaint Determination Committee, consisting of three (3) members who shall be selected from amongst (i) former Chairmen of the HKMC; (ii) former Chairmen of the MAC ; (iii) existing or former members of the HKMC Committee, (none of whom may have been members of the MAC which found that there was a prima facie case of Improper Conduct to answer); and (iv) former members of the MAC (none of whom may have been members of the MAC which found that there was a prima facie case of Improper Conduct to answer) to investigate and determine whether or not there was Improper Conduct on the part of the CAAM. The Chairman of the MAC shall appoint one of the three (3) CDC members to chair the CDC.

(2) Save as otherwise provided for in these Rules, a CDC shall have the power to conduct its proceedings in such manner as it considers appropriate. All decisions shall be made by a majority of the members of the CDC. The CDC may take into consideration and act on any information available to it whether such information would or would not be admissible in a court of law. In dealing with all matters before the CDC, the Complainant and the CAAM may act on their own respective behalves or be represented by another person of his/her own choice. A CDC may appoint a solicitor or barrister to advise it as to the manner in which it exercises its functions.

(3) (a) As soon as possible, but in any event no later than fourteen (14) days after the CDC has been established, the Chairman of the CDC shall notify in writing the CAAM and the Complainant that the CDC has been established.

(b) The Complainant shall have up to thirty (30) days from the date of the notice referred to in 5(3)(a) above to file with the CDC a restatement of the Complaint which must be accompanied by or cross-referenced to the evidence and statements the Complainant wishes to rely on in support of the Complaint. Copies of such filings must be sent to the CAAM or his/her duly designated representative at the same time as they are filed with the CDC.

(c) The CAAM shall have up to thirty (30) from the date of the Complainant makes his/her filing set out in 5(3)(b) above to file with the CDC a written response, which should be accompanied with such evidence and statements which the CAAM

may wish to rely upon in support of his/her response. Copies of such filings must be sent to the Complainant or his/her duly designated representative at the same time as they are filed with the CDC.

(d) Unless otherwise agreed between the CDC, the Complainant and the CAAM, a hearing shall take place at the premises of the HKIAC or at such other place in Hong Kong which the CDC may designate, on a date fixed by the CDC, which date shall not be earlier than thirty (30) days nor later than ninety (90) days from the date of the filing of the response by the CAAM pursuant to 5(3)(c) above.

(e) At a hearing held pursuant to 5(3)(d) above, the Complainant or his/her duly authorised representative shall present to the CDC all the information and evidence, including witnesses, if any, available to the Complainant in relation to its Complaint and the CAAM or his/her duly authorised representative shall present all the information and evidence available to him/her, including witnesses, if any, in support of the CAAM's response.

(4) (a) If after considering all the evidence, information and representations in the matter, and hearing the witnesses, if any, the CDC concludes that in the circumstances there was no Improper Conduct on the part of the CAAM, the CDC shall in writing so inform the Chairman of the MAC, who in turn shall note the decision and instruct the Secretary-General to write to the Complainant and the CAAM and the HKMC Committee advising them of the CDC's decision.

(b) If after considering all the evidence, information and representations in the matter, and hearing the witnesses, if any, the CDC concludes that in the circumstances there was Improper Conduct on the part of the CAAM, the CDC shall in writing so inform the Chairman of the MAC, who in turn shall note the decision and instruct the Secretary-General to write to the Complainant, the CAAM and the HKMC Committee advising them of the CDC's decision.

(5) In the event a CDC has concluded that in the circumstances there was Improper Conduct on the part of a CAAM and has so informed the Chairman of the MAC and the latter has procured the Secretary-General to notify, the Complainant and the CAAM as set out in 5(4)(b) above and the Secretary-General has duly done so, the Chairman of the MAC shall convene a meeting of the MAC and present the findings of the CDC and the MAC shall order the Secretary-General to remove the CAAM from all the Panels on which the name of the CAAM in question appears and instruct the Secretary-General to write to the CAAM advising him/her of the MAC's action, and the Secretary-General shall do so forthwith and requesting the CAAM in question to return immediately to the Secretary-General any outstanding Certificate evidencing accreditation of the CAAM by the MAC.

(6) Notwithstanding anything else herein contained, a CDC shall have the power to extend any of the time limits and/or deadlines set out in this Section 5 in such manner as the CDC in its entire discretion sees fit.

(7) A CDC shall have no power to award costs, whether or not a Complainant and/or a CAAM is represented by a legally qualified person.

Miscellaneous

6. (1) All matters relating to a Complaint and its disposition, save and except the due removal of an Accredited Mediator from the Panels, the whole pursuant to these Rules, shall be kept strictly confidential by all concerned.
- (2) Notwithstanding anything else herein contained none of the HKIAC, the HKMC, the MAC, a CDC, shall be liable for the travel and/or legal and/or other expenses or costs whatsoever incurred by any person in connection with any proceeding, matter, hearing or otherwise in connection with a Complaint or its disposition pursuant to these Rules.
- (3) All decisions by the MAC or a CDC shall be final and neither the MAC or a CDC shall be required to give any reasons for any decision made by them respectively pursuant to these Rules.
- (4) All members of the MAC and a CDC shall be indemnified out of the assets of the HKIAC against any liability and expense incurred by him or her, including without limitation the costs of legal representation in defending any court proceeding which may be taken by any person in regard to matters arising out of or in connection with these Rules.

**Guidance Note on the Degree of Seriousness of a Complaint Necessary to Establish
Improper Conduct Which Might Possibly Merit Removal
of an Accredited Mediator from the
HKIAC Mediator Accreditation Committee Panels.**

The Rules are meant to filter out frivolous complaints no matter what the motivation.

An Accredited Mediator shall be liable of Improper Conduct in such cases which are adjudged to be so serious that the Accredited Mediator in question merits removal from the Panels. It should be noted that a finding of Improper Conduct on the part of an Accredited Mediator will lead to removal from all Panels to which the Mediator in question is accredited.

Poor performance as a mediator by an Accredited Mediator, even if such amounts to negligence in law, does not usually constitute Improper Conduct. Mere error on the part of an Accredited Mediator is not sufficient to amount to Improper Conduct.

In the event that a Complaint alleges negligence or incompetence on the part of a CAAM, the negligence or incompetence must be so gross and inexcusable that it can be fairly interpreted as Improper Conduct.

Determination as to whether adequate level of non-compliance or misconduct by an Accredited Mediator has arisen so that it might be concluded that a CAAM merits removal from the Panels requires serious and impartial exercise of judgement on the part of those whose task it is to make such a determination under the Rules.

GUIDELINES FOR SUPERVISION OF TRAINEE MEDIATORS

NOTE: For the Purposes of this document, the term "Supervisor" shall refer to an HKIAC accredited Family Mediator/Supervisor & the term "Trainee Mediator" shall refer to persons who have completed the HKIAC accreditation training requirements for Family Mediators and are undertaking the live case supervision requirement to complete Stage 2 of the HKIAC Family Mediator accreditation procedures.

Policy Components:-

1. The Parties should be advised that the Trainee Mediator is not accredited.
2. Parties should be told that the Trainee Mediator has completed training but needs to complete the accreditation component of live case supervision.
3. The Supervisor has the responsibility to explain to the parties that the Trainee Mediator will be responsible for conducting the mediation, however it will be on a co-mediation basis, such that the Supervisor can monitor and intervene where necessary.
4. Both the Supervisor and Trainee Mediator should notify the parties and obtain the parties permission (preferably in writing) regarding clauses 1, 2, and 3 prior to commencing the mediation.
5. A different Supervisor must be used for each of the two supervised cases.
6. The Supervisor is ultimately responsible for the protection of the parties and ensuring that the mediation is conducted as per the Code of Practice for Family Mediators.
7. A borderline assessment/evaluation of the Trainee Mediator's performance should be considered as a "no" recommendation as per the Assessment Form.
8. A standardized, written Supervisor/Trainee Mediator contract will be used to make explicit the terms for the supervision. This contract should be signed off by both the Supervisor and the Trainee Mediator prior to commencing the mediation.
9. The Supervisor should take the responsibility of supervising Trainee Mediators in good faith and should be as independent and as fair minded as possible.

Guidelines for Supervisor:

A. Prior to Commencing the Mediation

1. Prior to accepting a Trainee Mediator, the Supervisor must ensure that he or she has the time and commitment to undertake this responsibility.
2. Check with Trainee Mediator before case allocation what times he/she can commit to the mediation proper and supervision/debrief sessions and do not accept Trainee Mediator if times are not mutually convenient or are inflexible. (Eg the Trainee Mediator is only available one evening per week.) Do not underestimate how difficult it is to co-ordinate times with both the parties that also suit yourself and the Trainee Mediator. Time availability and flexibility are important.
3. Mutually agree that the Trainee Mediator will complete the whole mediation, including drafting the Settlement Agreement and post mediation follow-up, except if the case is assessed as unsuitable as per Clause A12.
4. Agree on a mutually acceptable venue. This is generally more convenient for the Supervisor if the venue is at his/her place of work.
5. If there is an additional cost associated with the venue for the supervised mediation, responsibility for this cost should be negotiated between the Supervisor and Trainee Mediator prior to commencement.
6. It is the Supervisor's responsibility to ensure that they have up to date information regarding accreditation procedures and the latest Evaluation/Accreditation Forms. The Supervisor should also check the Trainee Mediator has obtained his or her own copy of these from HKIAC so that everyone is aware of the criteria being used for the evaluation.
7. The Supervisor will meet with the Trainee Mediator for a pre-supervision session (approx. half an hour) to clarify mutual expectations, goals and learning methods. This pre-supervision session may be conducted by telephone at the Supervisor's discretion.
8. Discuss the terms of the Supervision Contract with the Trainee Mediator and sign. This should outline each parties' responsibilities, time, fees, payment method and venue for mediation and debriefing sessions. Both the Supervisor and the Trainee Mediator should sign a "Record of Hours" sheet at the conclusion of each mediation session. It will be the Supervisor's responsibility to maintain this record sheet.
9. The Supervisor will ensure that the Trainee Mediator and the Parties have signed a Standardized Agreement to Mediate Contract prior to the commencement of the mediation. The Supervisor must also sign said Agreement in order to protect themselves and the Parties as per the terms of the contract.

10. Parties should be initially assessed as appropriate for mediation by referral information/phone contact with the parties, prior to allocation by a Supervisor or acceptance by a Trainee Mediator.
11. If the Trainee Mediator brings his or her own case, the Supervisor should explain that suitability must still be assessed.
12. Both Supervisor and Trainee Mediator should be involved from the outset, i.e. they should jointly participate in the intake or pre-mediation interviews. In the event that following this assessment the Supervisor concludes that the case is not suitable or is too difficult for a Trainee Mediator, even if the Trainee Mediator brought the case to the Supervisor, the Trainee Mediator will accept the assessment of unsuitability and not proceed. The Supervisor may invite the Trainee Mediator to proceed on the basis of either observing or co-mediating as the junior partner on a non-assessable basis, on the condition that the Trainee Mediator undertakes to attend all the mediation sessions. In such case, the supervision fee for the intake and pre-mediation sessions will be charged unless otherwise agreed.

B. Conducting the Mediation

1. Be available for a minimum of a half an hour consultation with the Trainee Mediator prior to each session to discuss the goals of the session and co-mediation roles.
2. Debrief the Trainee Mediator immediately after each mediation session in person or by phone for a minimum of a half an hour, or such time as is required, to keep the Trainee Mediator informed of his/her progress/knowledge/skills/qualities, both demonstrated and required.
3. The Supervisor's feedback should concentrate on:
 - a. the encouraging/positive aspects of the Trainee Mediator's performance together with constructive criticism of the less appropriate/effective aspects of his/her mediator behavior.
 - b. feedback should be concrete, with specific examples, to make it relevant to the Trainee Mediator and easier for him/her to accept.
 - c. Do not form premature judgments on the reasons for the Trainee Mediator's performance when giving feedback but ask the Trainee Mediator to explain the rationale. His/her intention may have been appropriate but the strategy inappropriate, (eg. Breaking a deadlock).
 - d. Deliver feedback using "I" messages so as to own the feedback and help the Trainee Mediator receive the feedback without becoming defensive.
 - e. Be prepared to discuss, clarify and give examples if asked by the Trainee Mediator.

- f. Be aware of your own reaction to the Trainee Mediator and maintain neutrality. Do not overprotect or expect too much.
- g. Give feedback honestly and professionally.

C. After Settlement/Agreement Reached

1. Review and discuss the Draft Mediation/Settlement Agreement regarding the terms of the Settlement prepared by the Trainee Mediator prior to the parties' signing same. In the event that the case does not reach Settlement, but the mediation has progressed to a point where the Supervisor believes it may be helpful for assessment purposes to ask the Trainee Mediator to draft a mock Agreement, the Supervisor may do so at their discretion and will review and discuss the same with the Trainee Mediator. In this event, the Supervisor will record these comments on the evaluation sheet.
2. Do final verbal evaluation debrief with Trainee Mediator after signing at a mutually convenient time for a minimum of a half an hour, or for such time as is necessary.
3. Prepare and discuss the Evaluation Form with the Trainee Mediator within one to two weeks of the final mediation session. Give the original of this to the Trainee Mediator and retain a copy for your own records.
4. Indicate clearly your recommendation as to whether the Trainee Mediator should be recommended for the Family Mediation Panel. If the evaluation is borderline, you should not make an affirmative recommendation and should explain to the Trainee Mediator the reasons for this.
5. Explain to the Trainee Mediator that it is his/her responsibility to submit this evaluation form, together with all other necessary documentation to the Accreditation Committee of the HKIAC.

Guidelines for Trainee Mediators

A. Prior to Commencing Mediation Supervision

1. Obtain the current Accreditation criteria and a copy of the Evaluation Form from HKIAC, such that you are aware of the Accreditation and Supervision /Evaluation criteria.
2. Contact the Supervisor, in writing if possible, with request for supervision, indicating availability.
3. Negotiate, agree and sign the Supervision Contract with the Supervisor regarding the fees, venue, times, etc. for the mediation.

4. Agree to abide by the Code of Practice of Family Mediators of HKMC.
5. Prepare an Agreement to Mediate Form or mutually agree to use the Supervisor's contract.
6. Attend a pre-supervision meeting with the Supervisor to clarify goals and co-mediation roles.
7. Be involved with the Supervisor in the mediation from the outset, including Intake or Pre-mediation sessions to assess case suitability and the nature of your future involvement.

B. During Supervised Mediation

1. Make yourself available at least a half an hour before the scheduled mediation appointment to set up the room and discuss roles and process for the session with the Supervisor.
2. Come prepared for the session with a plan. Do not expect the Supervisor to do this. You are responsible for the session and the conduct of the mediation.
3. Prepare any provisional drafts for approval by the Supervisor and fax or email same at least 48 hours ahead of the session.
4. Be available for debriefing sessions for a minimum of a half an hour or for such time as required by the Supervisor.
5. Be open to and accepting of debriefing comments:
 - (i) Accept feedback as information not personal criticism or judgment. Be open to the fact that this is a new process with new knowledge, skills, qualities for you. Regardless of one's own professional expertise, this new process must be learnt through experience and mistakes.
 - (ii) If you do not agree with or do not understand the feedback, ask for clarification and examples from the Supervisor or check with others if anyone else is present, (eg. one way mirror observation)
 - (iii) Demonstrate use of feedback in subsequent mediation sessions.
6. Pay agreed supervision fees at the conclusion of each session or as otherwise negotiated in the Supervision Contract.
7. Be responsible for any necessary liaison with lawyers or other experts and report same to the Supervisor prior to the commencement of the mediation session. Show any drafts of letters to the lawyers or other experts to the Supervisor prior to sending. Keep a record of time spent in liaison.

C. After Settlement/Agreement Reached

1. Prepare the Draft Mediation Settlement Agreement and send to the Supervisor at least 48 hours before the final mediation session for the Supervisor's comments.
2. Be available for a debriefing with the Supervisor for a minimum of a half an hour or such time as required by the Supervisor.
3. Be responsible for any necessary follow-up with the clients and legal representatives and report same to the Supervisor.
4. Give and obtain completed Client Feedback Forms from the parties for Accreditation purposes.
5. Be available for a final debriefing regarding supervision evaluation with the Supervisor at a mutually agreed time and for such time as required by the Supervisor.
6. It is the Trainee Mediator's responsibility to submit the Evaluation Forms and any necessary documentation to the Accreditation Committee of HKIAC.

HKIAC ACCREDITED MEDIATOR CONTINUOUS PROFESSIONAL DEVELOPMENT (CPD) PROGRAMME

1. It is desirable that HKIAC Accredited Mediators on both the General and Family Panels, be considered to be of high quality and be seen as having met established standards of training. It is also desirable that these standards be upheld even after accreditation, and in this regard a CPD Programme for HKIAC Accredited Mediators is considered to be an important element
2. The requirements of the HKIAC Accredited Mediator CPD Programme are intended to be realistic and are the minimum requirements which HKIAC Accredited Mediators are expected to meet. HKIAC Accredited Mediators are encouraged to exceed the minimum requirements whenever possible.
3. It is noted that HKIAC Mediator Accreditation is for a 4 year period and renewal of such accreditation is subject to, among other things, that the HKIAC Accredited Mediator seeking renewal of his/her accreditation has undertaken a total of at least 5 hours of CPD during each of the previous 4 years. The HKIAC Accredited Mediator CPD Programme is based on this 4 year review cycle.
4. The Hong Kong Mediation Council (a division of the HKIAC) and its interest groups will organise as many activities as possible in order to assist HKIAC Accredited Mediators meet the requirements of the HKIAC Accredited Mediator CPD Programme. However, compliance with the HKIAC Accredited Mediator CPD Programme may be achieved through a variety of approved activities, and not exclusively through activities sponsored by the Hong Kong Mediation Council or its interest groups.

It is expected that some HKIAC Accredited Mediator CPD Programme activities will also contribute to the CPD requirements of other professional bodies (e.g. The Law Society of Hong Kong). Similarly, activities sponsored by organisations other than the Hong Kong Mediation Council may contribute toward the HKIAC Accredited Mediator CPD Programme requirements.

5. Log Books, for the purposes of the HKIAC Accredited Mediator CPD Programme, will be issued to each HKIAC Accredited Mediator, who shall be notified at the time of the issue of the Log Book of his/her HKIAC Accredited Mediator CPD Programme cycle.

The Log Books are for the following purposes:

- to provide a detailed record of compliance with the HKIAC Accredited Mediator CPD Programme requirements;

- to provide each HKIAC Accredited Mediator with a personal development record;
- to be submitted to the HKIAC Mediator Accreditation Committee for review for purposes of the renewal of accreditation.

Each HKIAC Accredited Mediator shall be responsible for the accurate maintenance of his/her Log Book and will be required to submit his/her Log Book at the time he/she seeks renewal of his/her accreditation. There will be no fee charged for the review of the Log Book, the cost of such review being included in the annual panel maintenance fee paid by each HKIAC Accredited Mediator. Accurate recording and maintenance of the Log Book in order to comply with the requirements of the HKIAC Accredited Mediator CPD Programme is very much dependant upon the integrity of each HKIAC Accredited Mediator. The HKIAC Mediator Accreditation Committee will support and advise HKIAC Accredited Mediators on matters relating to compliance with the HKIAC Accredited Mediator CPD Programme, and will conscientiously review each Log Book submitted to it by a HKIAC Accredited Mediator in connection with the renewal of his/her accreditation.

Each HKIAC Accredited Mediator must include the dates, hours, topics, trainer/presenter/speaker, and other relevant details of all events and activities which will count toward compliance with the HKIAC Accredited Mediator CPD Programme requirements.

Log Books will not be reviewed or checked at random. When the Log Books are properly due for submission and review, such review will be carried out by the HKIAC Mediator Accreditation Committee. No later than 2 months after a Log Book has been duly submitted by a HKIAC Accredited Mediator to the HKIAC Accreditation Committee, the Log Book will be returned to the HKIAC Accredited Mediator in question with an indication that either:

- a) the Log Book has been duly and properly maintained and that the HKIAC Accredited Mediator CPD Programme requirements have been met for purposes of the renewal of accreditation; or
- b) the Log Book has not been duly and properly maintained or, if duly and properly maintained, the HKIAC Accredited Mediator CPD Programme requirements for the purposes of the renewal of accreditation have not been met.

In the event that accreditation of a HKIAC Accredited Mediator is duly renewed, the Log Book will be reissued to the HKIAC Accredited Mediator in question.

In the event that accreditation of a HKIAC Accredited Mediator is not duly renewed as a result of the situation referred to in b) above, the HKIAC Accredited Mediator in question will be given clear comments and advice on what action is necessary to rectify the situation..

7. The purpose of the HKIAC Accredited Mediator CPD Programme is to enhance the skills and knowledge of HKIAC Accredited Mediators.

Suggested areas for further study and/or training, include the following:

- Communication skills
- Negotiation
- Problem-solving
- Other mediation training (Family, Community, Environment, Cross-culture)
- Legal Awareness
- Partnering / alliance-building
- Advanced mediation skills
- Other dispute resolution processes
- Conflict management / avoidance

This list is by no means exhaustive.

Suggested areas for further study specifically for HKIAC Accredited Family Mediators include the following:

- Domestic violence
- Child Abuse
- Child-care & child development
- Psychological process of separation and divorce
- Appropriate arrangements for custody, care, control and access
- Step-parenting / families
- Co-parenting
- Local policy in practices e.g. Housing, Insurance, Taxation, & C.S.S.A.
- Family law
- Special knowledge in solving financial disputes

This list is by no means exhaustive.

Activities which will qualify as meeting the HKIAC Accredited Mediator CPD Programme requirements, include:

- participation in working or development groups on ADR;
 - writing and publishing relevant articles for newsletters or other publications;
 - developing and/or delivering ADR training;
 - attendance at HKIAC, Hong Kong Mediation Council forums, workshops, talks and conferences;
 - arranging/leading/participating in training and similar events, including coaching, supervision and simulation exercises.
8. This HKIAC Accredited Mediator CPD Programme Policy Document may be revised from time to time to reflect developments in the field of ADR, changes in HKIAC mediator accreditation requirements and refocusing on what constitutes good practice, amongst other reasons.

THE HONG KONG MEDIATION COUNCIL
GUIDELINES FOR THE AVOIDANCE OF CONFLICT OF INTEREST
IN CONNECTION WITH THE TRAINING OF MEDIATORS

(Adopted by the Committee of the HKMC on 27th February 2001)

The Hong Kong Mediation Council (HKMC) recognises that there is a requirement for well-trained mediators, for without this the reputation of mediation as a whole will suffer. The HKMC also recognises that the training of mediators is one of its most important functions and that the training of mediators must be carried out in the most transparent and cost-efficient method possible.

Moreover, it is recognised that participation in the activities of the HKMC is, in principle voluntary and the skills, energy and time contributed by Members of the HKMC to its various activities are done so with the aim of promoting the greater good of mediation in Hong Kong.

In view of the foregoing, the HKMC believes that it is in the interests of its Members and mediation in Hong Kong in general, that these Guidelines for the avoidance of conflicts of interest in connection with the training of mediators be adopted by the Committee of the HKMC:-

1. The HKMC Committee shall at all times have a Training Sub-Committee responsible for selecting appropriate and relevant content of mediation training courses; the remodelling and localising of such courses if necessary, including in this connection, any rewriting of role-plays; the selection of training course providers; and the organisation of such course, subject always to the prior approval of the Committee of the HKMC.

With the notice of each Annual General Meeting the HKMC Committee shall write to all Members of the HKMC asking for expression of interest in serving on the Training Sub-Committee. The Training Sub-Committee shall be selected by the HKMC Committee, from those members expressing interest and shall be composed of as many persons as the HKMC Committee from time-to-time determines, but which in no event shall be less than three (3) members, at least two (2) of whom shall be a members of the Committee of the HKMC. The HKMC Committee shall designate one person to be the Training Sub-Committee Chair, which person must be a Member of the HKMC Committee.

At least every twelve (12) months the HKMC Training Sub-Committee shall write to all Members of the HKMC asking the latter if they have any interest in serving as coaches or trainers for training courses to be organised by the Training Sub-Committee. Selection of Coaches and Trainers shall be at the sole discretion of the Training Sub-Committee, as a minimum all Trainers shall be Accredited Mediators.

2. Subject to the provisions as set out in Paragraph 4 below, the Members of the Training Sub-Committee shall not be remunerated for the work they perform as members of such body.

3. The Training Sub-Committee shall nominate for each course and accreditation simulation cycle (a cycle constitutes one full accredited course and accreditation assessment sessions within a half year period) a "Course Organiser" who shall be responsible for all publicity administration and coordination with course providers, space facility providers, tutors, coaches and HKIAC. It is recognised this role requires significant commitment in time.
4. The "Course Organiser" of the Training Sub-Committee shall be reimbursed for all reasonable time and out-of-pocket expenses (costs) incurred by such person in connection with the organisation of a mediator training cycle, provided such person submits reasonable evidence of time spent or such disbursement to the Training Sub-Committee who must approve same in writing for payment and who shall report same in writing to the HKMC Committee.

The costs for "Course Organiser" are to be capped at HK\$15,000 for each course cycle.

Costs for the "Course Organiser" shall be incorporated into course budgets and reviewed annually by the Training Sub-Committee who shall submit their recommendation for approval by the HKMC Committee.

5. Fees for Course Coaches and Course Tutors shall be reviewed annually by the Training Sub-Committee who shall submit their recommendation for approval by the HKMC Committee.

Any member of the Mediation Council, whether a member of the HKMC Committee or Member of the Training Sub-Committee or not, shall be entitled to be remunerated at the then rate fixed by the HKMC Committee, if such member acts as a coach or tutor during a mediator training course.

6. No Member of the HKMC Training Sub-Committee shall, directly or indirectly, provide, or have any interest whatsoever in a provider of, mediation training courses to the HKMC, where such courses are provided on a commercial or remunerated basis.
7. All Training Courses run by the Mediation Council either solely or in conjunction with other Professional bodies shall be submitted for accreditation by the HKIAC Accreditation Committee. Courses shall only proceed having been formally accredited by the HKIAC Accreditation Committee.

HKSIAC MEDIATOR ACCREDITATION COMMITTEE

Procedures for Accreditation of Mediators

A. Introduction

It is recognized by both the Hong Kong International Arbitration Centre (HKSIAC) and the Hong Kong Mediation Council that the skills of a successful mediator are largely unrelated to the type of dispute. A mediator having specialist knowledge of the type of dispute may in some cases facilitate settlement, however, it is not felt to be part of the normal accreditation process to assess the specialist knowledge of potential panel members. Parties seeking mediation are normally well equipped to assess the relevance of specialist knowledge and to select a mediator accordingly. The exception to this rule is in the area of family mediation. In this area specialist knowledge of family law and dynamics is required.

In light of the above, it has been decided that two panels of accredited mediators are to be maintained by the HKSIAC :-

- (1) General Panel;
- (2) Family Panel.

An individual may qualify for both panels but as few people are expected to seek such dual accreditation the two panels have separate accreditation procedures. Any person seeking to have training under one procedure considered as counting for the other procedure will be assessed on an individual basis.

B. Objectives of Accreditation of Mediators

The accreditation system is designed :

- to safeguard the minimum professional standard of mediation practice in Hong Kong;
- to help the public best utilize the existing mediation expertise in Hong Kong; and
- to encourage further professional advancement.

C. HKSIAC Requirements to be an Accredited Mediator or Family Mediator

Requirements for accreditation as a General Mediator are attached at Appendix A, and for accreditation as a Family Mediator at Appendix B.

D. Exemption

Candidates who can demonstrate extensive mediation experience may be granted exemption from any or all of the stages of the accreditation requirements. A request for exemption must be made in writing and accompanied by all relevant supporting documentation.

E. Panel Membership

The lists of Panel Members will be maintained by the HKIAC and will be available on the HKIAC website (www.hkiac.org).

Successful candidates will be required to provide a panel reference c.v. as per Form MA5. Panel membership will be for a 4-year period. Renewal of membership will be subject to the panel member demonstrating to the HKIAC Mediator Accreditation Committee that the panel member in question has undertaken the CPD (continuing professional development) requirements as set out in Appendix C and has satisfactory completed as least two (2) actual or simulated mediations within the four year period.

F. Fees

Inclusion on an HKIAC Panel of Mediators will be subject to an application assessment fee per category of assessment and a panel maintenance fee per category per calendar year (January to December), payable not later than 31 March, as set out in Appendix D.

HKLIAC MEDIATOR ACCREDITATION COMMITTEE

Requirements to be an Accredited General Mediator

Stage 1

Satisfactory completion of a mediation training course or courses of 40 hours minimum duration approved by the HKLIAC Mediator Accreditation Committee.

Stage 2

Mediate or co-mediate at least two live or simulated mediation cases.

After completion of any two such live or simulated mediation cases, a candidate is required to complete a self evaluation sheet (Form MA2) assessing the mediation process in which the candidate participated. In addition, a candidate should obtain in the case of a live mediation, 2 completed evaluation sheets (Form MA3) from clients, if possible, together with the comments from the supervisor (Form MA4) on the candidate's performance, or in the case of simulated mediations, comments from the simulation supervisors (Form MA4).

The purpose of the evaluation sheets is to satisfy HKLIAC Mediator Accreditation Committee that an acceptable level of competence as a mediator has been achieved.

Stage 3

After completion of stages 1 and 2 candidates may apply to the HKLIAC Mediator Accreditation Committee for accreditation using Form MA1; attaching the Stage 2 mediation evaluation sheets (MA2 and MA3/MA4) to the application.

Prior to accreditation being approved, a candidate for mediation accreditation should expect to be called by the HKLIAC Mediator Accreditation Committee to take part in an accreditation assessment including a personal interview and a possible further simulation supervised by an accredited supervisor chosen by HKLIAC Mediator Accreditation Committee who must submit a completed Form MA4 in connection with the further simulation.

Candidates who are accredited will have their names included on the relevant HKLIAC Panel of Accredited Mediators, subject to complying with all the requirements.

HKIAC MEDIATOR ACCREDITATION COMMITTEE

Requirements to be an Accredited Family Mediator

Stage 1 - Preliminary

In order to qualify for accreditation as a family mediator, a candidate is required to meet the following preliminary requirements :-

I

1. A degree in social work, psychology or law or a post graduate qualification in counselling/psychiatry or law, from a recognized university or institution; and
2. Three years working experience in the fields of family law or family welfare/counselling.

or

II

1. Satisfactory and relevant experience in either mediation or the fields of family law or family welfare/counselling.

In addition, a candidate must satisfactory complete a **basic** family mediation training course or courses of 40 hours minimum duration approved by HKIAC Mediator Accreditation Committee.

Stage 2 - under Supervision of an HKIAC Approved Supervisor

A trainee who has completed the basic 40 hours Family Mediation Training (Stage 1), must then participate in two live family mediations under the supervision of a supervisor, the trainee may refer to the HKIAC website (www.hkiac.org) for a list of approved Supervisors.

The trainee may nominate a Supervisor from the list subject to their consent. The Supervisor may accept, turn down or wait list the applicant in consideration of personal capacity, caseload, language and cultural compatibility.

A supervision fee (to be agreed in writing between the Supervisor/the agency to which the Supervisor belongs and the trainee) will be paid by the trainee to the Supervisor/Supervisor's agency as the case may be for the supervision service and which fee shall in no event exceed the amount as set out in Appendix D. For those approved Supervisors in private practice this fee will be in addition to normal client fees. The source of case referrals and venue for the supervised mediations are to be negotiated between the Supervisor and the trainee.

A Supervisor, who agrees to co-mediate with or live supervise a trainee, will co-mediate or live supervise **only one case** with a trainee. Each case shall be of a minimum of **five hours** and must be sufficiently complex for the trainee to demonstrate the ability to manage emotional intensity and mediate complex financial and child related matters.

The Supervisor will provide no less than a 30 minutes feedback discussion after each mediation session and will complete and sign an evaluation form (Form MA4) within 14 days of the end of the mediation. The Supervisor shall be as thorough and comprehensive as possible in the feedback discussions and in the completion of Form MA4. A copy of Form MA4 shall be provided to the trainee.

The trainee will be required to complete the self-evaluation form (Form MA2) and obtain completed client evaluation forms (Form MA3), if possible, at the end of the mediation and forward these to the Supervisor.

The responsibility of obtaining the client evaluation forms (Form MA3) is the responsibility of trainee.

Stage 3

Satisfactory completion of an **advanced** family mediation training course approved by HKIAC. Stage 3 may be completed before Stage 2.

Stage 4

On completion of stages 1, 2 and 3 candidates may apply to HKIAC for accreditation using Form MA1; the Supervisor's signed evaluation sheets (MA4) together with evaluation sheets from clients (MA3), if available, and trainee self-evaluation sheets (MA2) shall be submitted at the same time.

Prior to accreditation being approved, a candidate for mediation accreditation should expect to be called by the HKIAC Mediator Accreditation Committee to take part in an accreditation assessment including a personal interview and a possible further simulation supervised by an accredited supervisor chosen by HKIAC Mediator Accreditation Committee who must submit a completed Form MA4 in connection with the further simulation.

Candidates who are accredited will have their names included on the relevant HKIAC Panel of Accredited Mediators, subject to complying with all the requirements.

Requirements to be an Accredited Family Supervisor

1. The applicant must be accredited by the HKIAC as an Accredited Family Mediator; and
2. The applicant must demonstrate substantial experience in the field of family mediation. (By way of guidance, it is unlikely that an applicant will be considered to have demonstrated such experience if such applicant cannot show that he/she has acted as a mediator in at least 10 family mediation cases).

HKSIAC MEDIATOR ACCREDITATION COMMITTEECPD Criteria

1. It is desirable that HKSIAC Accredited Mediators on both the General and Family Panels, be considered to be of high quality and be seen as having met established standards of training. It is also desirable that these standards be upheld even after accreditation, and in this regard a CPD Programme for HKSIAC Accredited Mediators is considered to be an important element.
2. The requirements of the HKSIAC Accredited Mediator CPD Programme are intended to be realistic and are the minimum requirements which HKSIAC Accredited Mediators are expected to meet. HKSIAC Accredited Mediators are encouraged to exceed the minimum requirements whenever possible.
3. It is noted that HKSIAC Mediator Accreditation is for a 4 year period and renewal of such accreditation is subject to, among other things, that the HKSIAC Accredited Mediator seeking renewal of his/her accreditation has undertaken a total of at least 20 hours of CPD during the previous 4 years. The HKSIAC Accredited Mediator CPD Programme is based on this 4 year review cycle.
4. The Hong Kong Mediation Council (a division of the HKSIAC) and its interest groups will organise as many activities as possible in order to assist HKSIAC Accredited Mediators meet the requirements of the HKSIAC Accredited Mediator CPD Programme. However, compliance with the HKSIAC Accredited Mediator CPD Programme may be achieved through a variety of approved activities, and not exclusively through activities sponsored by the Hong Kong Mediation Council or its interest groups.

It is expected that some HKSIAC Accredited Mediator CPD Programme activities will also contribute to the CPD requirements of other professional bodies (e.g. The Law Society of Hong Kong). Similarly, activities sponsored by organisations other than the Hong Kong Mediation Council may contribute toward the HKSIAC Accredited Mediator CPD Programme requirements.

5. Log Books, for the purposes of the HKSIAC Accredited Mediator CPD Programme, will be issued to each HKSIAC Accredited Mediator, who shall be notified at the time of the issue of the Log Book of his/her HKSIAC Accredited Mediator CPD Programme cycle.

The Log Books are for the following purposes:

- to provide a detailed record of compliance with the HKSIAC Accredited Mediator CPD Programme requirements;
- to provide each HKSIAC Accredited Mediator with a personal development record;
- to be submitted to the HKSIAC Mediator Accreditation Committee for review for purposes of the renewal of accreditation.

Each HKSIAC Accredited Mediator shall be responsible for the accurate maintenance of his/her Log Book and will be required to submit his/her Log Book at the time he/she seeks renewal of

his/her accreditation. There will be no fee charged for the review of the Log Book, the cost of such review being included in the annual panel maintenance fee paid by each HKIAC Accredited Mediator. Accurate recording and maintenance of the Log Book in order to comply with the requirements of the HKIAC Accredited Mediator CPD Programme is very much dependant upon the integrity of each HKIAC Accredited Mediator. The HKIAC Mediator Accreditation Committee will support and advise HKIAC Accredited Mediators on matters relating to compliance with the HKIAC Accredited Mediator CPD Programme, and will conscientiously review each Log Book submitted to it by a HKIAC Accredited Mediator in connection with the renewal of his/her accreditation.

Each HKIAC Accredited Mediator must include the dates, hours, topics, trainer/presenter/speaker, and other relevant details of all events and activities which will count toward compliance with the HKIAC Accredited Mediator CPD Programme requirements.

Log Books will not be reviewed or checked at random. When the Log Books are properly due for submission and review, such review will be carried out by the HKIAC Mediator Accreditation Committee. No later than 2 months after a Log Book has been duly submitted by a HKIAC Accredited Mediator to the HKIAC Accreditation Committee, the Log Book will be returned to the HKIAC Accredited Mediator in question with an indication that either:

- a) the Log Book has been duly and properly maintained and that the HKIAC Accredited Mediator CPD Programme requirements have been met for purposes of the renewal of accreditation; or
- b) the Log Book has not been duly and properly maintained or, if duly and properly maintained, the HKIAC Accredited Mediator CPD Programme requirements for the purposes of the renewal of accreditation have not been met.

In the event that accreditation of a HKIAC Accredited Mediator is duly renewed, the Log Book will be returned to the HKIAC Accredited Mediator in question.

In the event that accreditation of a HKIAC Accredited Mediator is not duly renewed as a result of the situation referred to in b) above, the HKIAC Accredited Mediator in question will be given clear comments and advice on what action is necessary to rectify the situation.

7. The purpose of the HKIAC Accredited Mediator CPD Programme is to enhance the skills and knowledge of HKIAC Accredited Mediators.

Suggested areas for further study and/or training, include the following:

- Communication skills
- Negotiation
- Problem-solving
- Other mediation training (Family, Community, Environment, Cross-culture)
- Legal awareness
- Partnering /alliance-building
- Advanced mediation skills
- Other dispute resolution processes
- Conflict management / avoidance

This list is by no means exhaustive.

Suggested areas for further study specifically for HKIAC Accredited Family Mediators include the following:

- Domestic violence
- Child Abuse
- Child-care & child development
- Psychological process of separation and divorce
- Appropriate arrangements for custody, care, control and access
- Step-parenting / families
- Co-parenting
- Local policy in practices e.g. Housing, Insurance, Taxation & C.S.S.A.
- Family law
- Special knowledge in solving financial disputes.

This list is by no means exhaustive.

Activities which will qualify as meeting the HKIAC Accredited Mediator CPD Programme requirements, include:

- participation in working or development groups on ADR;
- writing and publishing relevant articles for newsletters or other publications;
- developing and/or delivering ADR training;
- attendance at HKIAC, Hong Kong Mediation Council forums, workshops, talks and conferences;
- arranging/leading/participating in training and similar events, including coaching, supervision and simulation exercises.

8. This HKIAC Accredited Mediator CPD Programme Policy Document may be revised from time to time to reflect developments in the field of ADR, changes in HKIAC mediator accreditation requirements and refocusing on what constitutes good practice, amongst other reasons.

HKIAC MEDIATOR ACCREDITATION COMMITTEEFee Schedule

Note: Any and all of the fees are subject to change at the discretion of the HKIAC Mediation Accreditation Committee.

	General / Family (Fees in HK\$)
Application assessment / re-assessment fee per assessment / re-assessment (non-refundable)	500*
Panel maintenance fee per category per calendar year (January to December) (full fee will be payable provided the mediator is accredited on or before 15 October, if the mediator is accredited after 15 October, the fee until 31 December will be waived)	500*
Maximum supervision fee	800 per hour

** Cheques to be made payable to Hong Kong International Arbitration Centre*

HKIIAC MEDIATOR ACCREDITATION COMMITTEE

Application for Mediator Assessment :-

(Please indicate) - General
(category for) Family
(assessment) Supervisor (Family)

Name Mr/Ms/Miss/Mrs/Dr * _____ (_____)
in English *in Chinese*

Date of Birth/Nationality _____

Firm/Company * _____ Profession _____

Correspondence Address _____

Contact Tel _____ Fax _____ Email _____

Language(s)/Dialect(s) Spoken and Written - please give details:
(Please indicate ability to mediate in any language)

General Qualification(s)/Degree(s)/Professional body(ies) (grade and year obtained):

Brief Employment Summary:

<u>From/To</u>	<u>Employer</u>	<u>Position/Description</u>

* Delete as appropriate

MEDIATION RELATED TRAINING AND EXPERIENCE:

Mediation (or equivalent) training including trainer organisation, duration, etc
(Please include date(s), hour(s), trainer(s) and a copy of the certificate(s))

Details of any other relevant training, eg negotiation, counselling, partnering workshop(s)

Experience as a mediator, eg family, commercial or other - giving approximate date(s) and total number of mediation cases

Other mediation related experience (eg as Trainer, Coach, DRA, mini-trial)

Remarks - please provide any other relevant details not covered above

Notes :-

- 1 Please fill in all sections in block letters and do not submit separate c.v. If there is insufficient space, provide details on a separate A4 sheet in the same format. In case any section of the form is not applicable, please put in N/A.
- 2 Applicants are advised to provide all the information requested in the relevant documents, where applicable, failing which the HKIAC Mediator Accreditation Committee may refuse to process and consider their applications.

- 3 *This form must be attached with a payment covering the assessment / re-assessment fee per category (non-refundable) and the annual standard fee for inclusion into HKIAC's panel of accredited mediators as set out in Appendix D. All fees must be paid in Hong Kong dollars, drawn on bank(s) in Hong Kong.*
- 4 *Upon satisfactory assessment and payment of necessary fees, accredited mediators are entitled to be included on HKIAC web site listing. Would you like your details (name, telephone number, fax number, email) to be listed on the website.*
- Yes/No **

** delete as appropriate*

PERSONAL DATA (PRIVACY) ORDINANCE NOTICE

Persons who supply data in their application to the Hong Kong International Arbitration Centre (HKIAC) are advised to note the following points pursuant to the Personal Data (Privacy) Ordinance.

1. Personal data provided in this application form will be used solely for the purpose of assessment for accreditation as a Mediator, and in this connection the data herein will be dealt with by the HKIAC staff and/or by the HKIAC Mediator Accreditation Committee members.
2. After an application for assessment has been duly processed, the application papers of the candidates will be retained in a file established by the HKIAC for each applicant. Such information will be retained by HKIAC for as long as it deems necessary or useful.
3. Under the provisions of the Personal Data (Privacy) Ordinance, an applicant has the right to request access to, and the correction of, his/her personal data as retained by the HKIAC. Applicants wishing to access or make corrections to their data should submit written requests to the Secretary General of HKIAC.

Declaration

1. I have read and agreed to the Personal Data (Privacy) Ordinance Notice.
2. I authorize the HKIAC, its staff, employees and/or members of the HKIAC Mediator Accreditation Committee to deal with, utilize and/or assess the data submitted by me as may be required in connection with my application for accreditation as a mediator.
3. I understand that my data will become a part of the HKIAC's files and may be used for all purposes deemed necessary or useful by the HKIAC.
4. I declare that the information given in support of this application is accurate and complete. I understand that any misrepresentation will disqualify my application and may lead to revocation of my accreditation as a mediator, should I be accredited.
5. I confirm that I am familiar with and will adhere to the HKIAC – The Hong Kong Mediation Council Guidelines for Professional Practice of Family Mediators / General Ethical Code.
6. Any information on this form may be made available by HKIAC to third parties for the purposes of mediator assessment or selection.

Please sign below to confirm your agreement to the disclosure of the information contained in the application and your confirmation of its accuracy.

Signature : _____

Date : _____

Name (in print) : _____

HKLIAC MEDIATOR ACCREDITATION COMMITTEE

SELF EVALUATION FORM FOR A TRAINEE MEDIATOR
(to be completed for any live mediations)

Name _____

Type of Mediation _____ Duration of Mediations _____

Names of parties _____

Name of supervisor(s) if appropriate _____

What did you do best?

What could you have done differently?

OTHER COMMENTS

Signed _____ Date _____

HKCIAC MEDIATOR ACCREDITATION COMMITTEE

EVALUATION FORM OF A TRAINEE MEDIATOR
(to be completed if an actual (real) mediation was conducted)
PARTIES (Male/Female)

This form is to assist the Committee responsible for the accreditation of mediators to assess the ability of a candidate for accreditation and thus ensure that high standards are maintained. The co-operation of the parties in completing this form is highly appreciated.

Name of Trainee Mediator _____

Name of Supervisor _____

Did you feel heard?

Did you feel in control?

What did the trainee mediator do best?

What could the trainee mediator have done better or differently from your perspective as a party?

OTHER COMMENTS

Signed _____

Date _____

**HKIA MEDIATOR ACCREDITATION COMMITTEE
MEDIATOR ASSESSMENT PROCESS**

(Note: In case any section of the form is not applicable, please put in N.A.)

Mediator's Name:

Name of Role-Play: Date & Duration (Hours):

Parties: / Assessor:

Where 1 = excellent, 3 = average and 5 = did not achieve

1.	Mediator's Opening Statement	1	2	3	4	5	N.A.
	Meeting, greeting, modes of address	-	-	-	-	-	-
	Positive Tone	-	-	-	-	-	-
	Identification of previous contact	-	-	-	-	-	-
	Explanation of Mediation						
	• Role of Mediator	-	-	-	-	-	-
	• Confidentiality/privilege	-	-	-	-	-	-
	• Procedure to be followed	-	-	-	-	-	-
	-Ground rules	-	-	-	-	-	-
	Checked Authority to Settle	-	-	-	-	-	-
	Parties' Questions	-	-	-	-	-	-
	Commitment to proceed	-	-	-	-	-	-

Comment(s) _____

2.	Joint Sessions	1	2	3	4	5	N.A.
	Commenced parties' opening statements appropriately	-	-	-	-	-	-
	Listening and attending	-	-	-	-	-	-
	Eye contact	-	-	-	-	-	-
	Note taking	-	-	-	-	-	-
	Acknowledgment of concerns/needs/interests	-	-	-	-	-	-
	Use of clarifying questions	-	-	-	-	-	-
	Summary of parties' opening statements	-	-	-	-	-	-
	Established a list of issues	-	-	-	-	-	-
	Identified common ground	-	-	-	-	-	-
	Use of listed issues	-	-	-	-	-	-

	1	2	3	4	5	N.A.
Facilitated Negotiations						
• Separated people from problem (Separated substantive from emotional issues)	-	-	-	-	-	-
• Focused on interests not positions	-	-	-	-	-	-
• Facilitative rather than inquisitorial	-	-	-	-	-	-
Allowed/encouraged direct communications	-	-	-	-	-	-
Facilitated mutual understanding(Where approp.)	-	-	-	-	-	-
Maintained momentum in discussion	-	-	-	-	-	-
Managed conflicts appropriately	-	-	-	-	-	-

Comment(s) _____

3. Separate Meetings (Caucuses)	1	2	3	4	5	N.A.
Procedure, confidentiality explained	-	-	-	-	-	-
Relevant caucus skills/techniques used (e.g. Reality testing; doubt creation; challenging etc.)	-	-	-	-	-	-
Preparation for joint session	-	-	-	-	-	-
Appropriate duration	-	-	-	-	-	-
Kept confidentiality	-	-	-	-	-	-

Comment(s) _____

4. Option Generation, Termination and Closure	1	2	3	4	5	N.A.
Appropriate timing of option generation	-	-	-	-	-	-
Assisting parties to transfer identified issues and needs into creative options	-	-	-	-	-	-
Identified possible options	-	-	-	-	-	-
Explored possible options	-	-	-	-	-	-
Reality tested possible options	-	-	-	-	-	-
Conveyed offers accurately	-	-	-	-	-	-

	1	2	3	4	5	N.A.
Facilitated parties to reach a settlement	-	-	-	-	-	-
Suggested Heads of Agreement	-	-	-	-	-	-
Agreed on future action	-	-	-	-	-	-
Contingency arrangements	-	-	-	-	-	-
Ensured all issues were included (including for family mediation appreciation for the interest of unrepresented third parties e.g. children)	-	-	-	-	-	-
Reality tested Settlement Agreement/terms	-	-	-	-	-	-
Preparation of agreement (<i>attach agreement</i>)	-	-	-	-	-	-
Commendation of parties	-	-	-	-	-	-

Comment(s) _____

5. Process Strategy	1	2	3	4	5	N.A.
Effective strategy of caucuses, joint meetings and other process moves	-	-	-	-	-	-
Appropriate timing of separate sessions	-	-	-	-	-	-
Appropriate use of separate sessions	-	-	-	-	-	-
Appropriate timing of joint sessions	-	-	-	-	-	-
Appropriate use of joint sessions	-	-	-	-	-	-
Parties would be satisfied with process	-	-	-	-	-	-

Comment(s) _____

6. Skills and Behaviour	1	2	3	4	5	N.A.
Maintained impartiality	-	-	-	-	-	-
Remained neutral	-	-	-	-	-	-
Established rapport	-	-	-	-	-	-
Maintained parties' trust	-	-	-	-	-	-
Optimistic tone	-	-	-	-	-	-
Listening skills	-	-	-	-	-	-
Diplomatic skills	-	-	-	-	-	-
Use of notes	-	-	-	-	-	-

	1	2	3	4	5	N.A.
Acknowledgment of concerns/emotions	-	-	-	-	-	-
Identified issues	-	-	-	-	-	-
Identified underlying needs/interests	-	-	-	-	-	-
Managed negative interactions and emotions	-	-	-	-	-	-
Summarised appropriately	-	-	-	-	-	-
Appropriate use of questions	-	-	-	-	-	-
Reframed appropriately	-	-	-	-	-	-
Doubt creation	-	-	-	-	-	-
Appropriate body language	-	-	-	-	-	-
Use of whiteboard/butcher's paper	-	-	-	-	-	-
Refrained from advising	-	-	-	-	-	-
Controlled process appropriately (Avoided domination or non-assertive)	-	-	-	-	-	-
Dealt with impasses	-	-	-	-	-	-
Reality tested	-	-	-	-	-	-
Persevered	-	-	-	-	-	-
Maintained momentum	-	-	-	-	-	-
Appropriately managed any power imbalances	-	-	-	-	-	-

Comment(s) _____

Overall Comments on Mediator's Performance _____

Based on this performance, does the assessor recommend the person being assessed should be accredited as a mediator by HKIAC Mediator Accreditation Committee

** delete as appropriate*

YES/NO *

If no, what steps do you suggest the candidate to take _____

Supervisor/Assessor's Signature: _____ Date: _____

SAMPLE

Description of Format

(In MS Word format)

WONG John	← Surname first & only Surname in CAPITAL LETTER
BSc CEng FICE FHKIE FCI Arb	← Qualification and Membership of Professional Bodies
Authorized Person Registered Structural Engineer	
Senior Partner	← Present Position
Wong & Partners	← Name of Company
2105 Goodluck Centre, 3945 Hennessy Road, Wanchai, Hong Kong	← Address
Tel: 2566 1234 Fax: 2566 5678 E-mail: john@wongpart.con.hk	← Telephone, Fax and E-mail
Date of Birth: 19 June 1947	← Date of Birth
<u>Dispute Resolution Training & Experience</u>	
Experience - ICC Arbitration - 3 arbitration cases completed	← Dispute Resolution experience
<u>Career</u>	
1965-68 - BSc in engineering. Imperial College of Science & Technology, University of London.	← Career Details - indicate year, position held and organisation
1986-74 - Graduate Engineer, Smith & Partners HK, design of highway structures, Asst Resident Engineer on Sun Street flyover.	
1974-79 - Resident Engineer, Yat Lee New Town with The Consulting Engineers' Practice.	
1979-81 - Associate Partner, The Consulting Engineers' Practice, responsible for new town development.	
1981- - Senior Partner, Wong & Partners	
<u>Area of Expertise</u>	
Intellectual Property, Information Technology, etc.	← Area of Expertise
<u>Language</u>	
Fluent in Cantonese, Mandarin and English	← Languages/Dialects Spoken to a level you could conduct an arbitration in them
<u>Other Relevant Experience</u>	← Remove this heading if it is not applicable to you
 	← Indicate here if there is other relevant experience



HKLIAC PROCEDURES FOR APPOINTMENT OF ACCREDITED MEDIATOR(S)

Introduction

Mediation is a voluntary, non-binding, private dispute resolution process in which a neutral person, the mediator, helps the parties to reach their own negotiated agreement. The mediator has no power to impose a settlement. His/Her function is to overcome any impasse and encourage the parties to reach an amicable settlement. In commercial disputes an impasse most often arises from either a lack of trust in the integrity of the other party or a genuine good faith difference of opinion on the facts underlying the dispute or on the probable outcome of the case were it to go to court. The mediator may act as a shuttle diplomat, a channel for communication, filtering out the emotional elements and allowing the parties to focus on the underlying objectives. He/She will encourage the parties to reach an agreement themselves as opposed to having it imposed upon them. Mediation has proven an outstandingly successful management tool for resolving difficult disputes. It is a means by which the parties can re-learn the basis of communication with which they can then resolve future disputes. This is particularly important in family disputes where invariably there are ongoing issues to be resolved including child custody, etc.

Request for Mediation

If a dispute arises, a party may request the initiation of mediation by delivering a written request for mediation to the other party or parties with copies to HKIAC. Such request for mediation shall contain a brief self-explanatory statement of the nature of the dispute, the quantum in dispute (if any), the relief or remedy sought and nomination of a mediator or mediators thought suitable.

Response to Request for Mediation

A party or parties who receive a request for mediation shall notify any other party and HKIAC within 14 days after receipt of the request whether any mediator nominated is acceptable. Failure by any party to reply within 14 days shall be treated as a refusal to mediate.

The names, addresses, phone and fax numbers of all parties to the dispute, and those who will represent them, should be exchanged between the parties and also furnished to the HKIAC.

Appointment of the Mediator(s)

Where the parties agree on a mediator and the proposed mediator is willing to serve, they will notify HKIAC. The mediation shall then proceed in accordance with HKIAC Mediation Rules ("the Rules") provided that the parties have stipulated in their contract or by agreement to adopt the Rules. If the parties fail to agree within the time stipulated in the Rules they will notify HKIAC by completing and submitting Form M with a copy provided to the other Party. Proof of documentary service to the other Party must be furnished to HKIAC. HKIAC shall, upon

such verification, appoint a single accredited mediator who is prepared to serve and is not disqualified under the Rules.

On receipt of an application to appoint a mediator or mediators pursuant to the Rules, HKIAC shall appoint a suitable person, having regard to:-

- i. the nature of the dispute;
- ii. the availability of mediator or mediators;
- iii. the identity of the parties;
- iv. the independence and impartiality of the mediator or mediators;
- v. any stipulation in the relevant agreement; and
- vi. any suggestions made by the parties themselves.

When HKIAC has made a decision, it shall notify the parties and the mediator accordingly.

HKIAC may request further information from the parties which they shall supply within 14 days of such request. Where a party fails or refuses to supply the information within the specified time, HKIAC may make a decision on the basis of the information available.

Forms and Rules

Form M can be obtained from HKIAC or click [here](#).

HKIAC Mediation Rules can be obtained from HKIAC or click [here](#).

FORM M

Hong Kong International Arbitration Centre
APPLICATION FOR THE APPOINTMENT OF A MEDIATOR

This form shall be used to apply to Hong Kong International Arbitration Centre (HKIAC) pursuant to the HKIAC Mediation Rules for the appointment of a mediator.

1 THE UNDERSIGNED HEREBY APPLIES TO HKIAC FOR THE APPOINTMENT OF:

2 DETAILS OF PARTIES:

CLAIMANT:

Name _____

Address _____

Tel No _____

Fax No _____

Nationality _____

Solicitor / Adviser (If Any):

Name _____

Address _____

Tel No _____

Fax No _____

RESPONDENT:

Name _____

Address _____

Tel No _____

Fax No _____

Nationality _____

Solicitor / Adviser (If Any):

Name _____

Address _____

Tel No _____

Fax No _____

3 CONTRACT / AGREEMENT: (Enclose a copy or summarize briefly.)

4 **MEDIATION CLAUSE OR AGREEMENT:** (A copy is attached to this application.)

5 **DISPUTE:** (Brief particulars of nature, circumstances and location of dispute, issue for mediation and amount at issue are all that are required.)

6 **OTHER RELEVANT DETAILS:** (If applicable, give date on which party was requested to concur in appointment of mediator under the contract/agreement, name of mediator proposed, whether the party has responded or not and, if so, in what terms, etc.)

7 **APPOINTMENT FEE:** A cheque payable to "Hong Kong International Arbitration Centre" for \$2,000 for payment of the appointment fee is enclosed.

8 **CERTIFICATE:**

I hereby certify that the details contained herein are true and accurate.

(SIGNED) _____ Date: _____

Name and Capacity: _____



HKIAC - THE HONG KONG MEDIATION COUNCIL

GENERAL ETHICAL CODE

A. GENERAL RESPONSIBILITIES

Mediators must act fairly in dealing with mediation participants, have no personal interest in the terms of any settlement agreement, show no bias toward individuals or institutions involved in mediation, be reasonably available as requested by mediating parties, and be certain that the parties are informed about the mediation process in which they are involved.

B. RESPONSIBILITIES TO THE PARTIES

1. **Impartiality.** The mediator must maintain impartiality toward all parties. Impartiality means freedom from favoritism or bias either by word or by action, and a commitment to serve all mediation participants as opposed to a single party. The mediator should disclose to the participants any affiliations which the mediator may have or have previously had with any participant and obtain all parties' consent to proceed as mediator.

2. **Informed Consent.** The mediator has an obligation to ensure that all parties understand the nature of the mediation process, procedures to be utilised and the particular role of the mediator. Each party's consent to proceed with mediation should be obtained prior to the beginning of substantive negotiations.

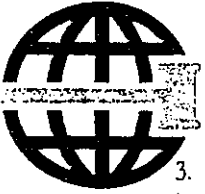
3. **Confidentiality.** The mediator shall inform mediation participants of the degree to which communications connected with the mediation process shall be confidential, including any special confidentiality which attaches to private meetings (caucuses).

4. **Suspension or Termination of Mediation.** The mediator should inform the mediation participants of their rights to withdraw from mediation at any time and for any reason. If the mediator believes that participants are unable or unwilling to participate effectively in the mediation process, the mediator should suspend or terminate the mediation.

C. DEFINING THE PROCESS

1. **Comparison to Other Processes.** The mediator shall explain that mediation is not arbitration, legal representation, or therapy and that the mediator will not decide any issues for the parties.

2. **Independent Advice and Information.** In mediations in which disputants personally represent their own individual interests and substantial legal issues exist, the mediator shall encourage the participants to obtain individual legal advice as is reasonably necessary for the parties to reach an informed agreement.



3. **Conflicts of Interest.** A mediator shall disclose all actual and potential conflicts of interest reasonably known to the Mediator. After disclosure, the mediator shall decline to mediate unless all parties choose to retain the mediator.

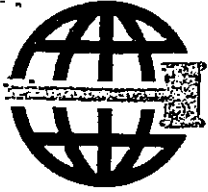
4. **Opportunity for Full Expression of Interests.** The mediator shall seek to provide each mediation participant with a full opportunity to effectively express his or her interests.

5. **Fees.** The mediator has a duty to define and describe any fees for the mediation and to agree with participants as how fees are to be shared and the manner of payment before proceeding to facilitate substantive negotiations. It is inappropriate for a mediator to charge contingent fees or to base fees upon the outcome of a mediation.

6. **Additional Representation or Roles.** A mediator shall not engage in any non-meditative role relative to the subject matter of a mediated dispute, except by the informed written consent of all mediation participants.

D. RESPONSIBILITIES TO THE MEDIATION PROCESS AND THE PUBLIC

Mediators are regarded as knowledgeable in the process of mediation. They have an obligation to use their knowledge to help educate the public about mediation; to make mediation accessible to those who would like to use it; to correct abuses and to improve their professional skills and abilities.



HKIAC - THE HONG KONG MEDIATION COUNCIL

GUIDELINES FOR PROFESSIONAL PRACTICE OF FAMILY MEDIATORS

For the purpose of this Code of Practice, family mediation has been defined as follows :-

“Family Mediation is a non-adversarial, co-operative decision-making process in which a qualified and impartial third party, “the mediator”, helps family members resolve by agreement their disputes, including but not limited to those arising from separation or divorce. The resolution is to be voluntary and based upon sufficient information and advice for each party.”

For the purpose of this Code of Practice the term mediator should be read as including mediators in the context of co-mediation.

CODE OF PRACTICE

A. PRE-MEDIATION PROCESS

The mediator shall explain the mediation process clearly to the parties at a pre-mediation session before agreeing to mediate their dispute. In particular, the mediator shall :

- a. Introduce the aims, objectives, principles and working procedures of mediation to the parties and describe the differences and similarities between mediation and other procedures for dispute resolution. In so doing, the mediator shall distinguish it from therapy, counselling, custody evaluation and advocacy.
- b. Use his or her professional skills to make an assessment with the parties about their level of readiness for mediation. When one or both parties emotions are too intense or when there is a severe power imbalance, for example situations involving domestic violence, mediation may not be suitable.
- c. Elicit sufficient information from the parties so that they can mutually define and agree on the issues to be resolved in mediation.
- d. Advise the parties that either of them or the mediator has the right to suspend or terminate the mediation process at any time.



- e. Disclose to the parties any biases or strong views he or she holds relating to the issues to be mediated and to discuss whether it is appropriate for him or her to mediate the dispute.
- f. Advise the parties of the mediator's level of educational qualifications, training and experience.
- g. Discuss with the parties the specific procedures and practices of mediation and reach an understanding with them regarding those to be followed in mediation. This includes, but is not limited to, the practice as to separate meetings between one party and the mediator, confidentiality, use of other professional services, the involvement of additional parties, and conditions under which mediation may be terminated.
- h. Advise the parties that the following exceptions shall apply to the confidentiality duty :-
 - (i) When there is the written consent of all parties.
 - (ii) When the information discloses an actual or potential threat to human life or safety. In particular the mediator shall advise the parties of the mediator's overriding duty to protect the best interests of the children.
- i. Advise the parties of the role of legal advice in the mediation process. If the mediator is also a lawyer, he or she shall inform the parties that he or she cannot represent either or both of them in any related legal action, nor can he or she give them legal advice during the mediation process.
- j. Where financial or property issues are to be mediated, obtain an undertaking from the parties to make full and frank disclosure of their financial and related circumstances prior to commencing the mediation process. The mediator shall make it clear to the parties that he or she has no power to make independent enquiries or require verification to be given in relation to any such financial disclosure. The mediator shall also make it clear that each party may obtain independent legal advice as to the adequacy of the disclosure and whether the swearing of an affidavit disclosing their financial circumstances is required.
- k. Make explicit the fees of mediation and any related costs and reach an agreement with the parties on how the costs will be shared and the manner of payment. When settling fees, the mediator shall ensure they are explicit, fair, reasonable and commensurate with the service to be performed. It is inappropriate for the mediator to base fees on the outcome of the mediation process. When a deposit has been collected before mediation services are rendered, any unearned fees shall be promptly returned to the parties upon the termination of mediation.



- I. Arrange for an agreement regarding the duties and responsibilities that each is accepting in the mediation process, a sample of which is annexed hereto, to be written and signed by the parties and the mediator.

B. MEDIATION

- I. Goal of Process and Responsibilities of the Parties and the Mediator
 - a. Mediation is a voluntary process with the responsibility for the resolution of a dispute resting with the parties.
 - b. The mediator's role is that of a facilitator with the primary responsibility being to assist the parties to reach an informed and voluntary settlement. At no time shall the mediator make a substantive decision for any party or coerce the parties into an agreement.
 - c. The goal of family mediation is a fair, mutually satisfactory, durable and harmonious resolution of the issues, not a settlement at any cost. If it is assessed that the parties are unable or unwilling to meaningfully participate in the process, the mediator may suspend or terminate mediation and refer the parties for appropriate professional assistance.
 - d. The mediator has a responsibility to promote the parties' consideration of the best interests of their children and in this regard the role of other persons in relation to the children (such as grand-parents or step-parents).
- II. Ensuring Fair Mediation
 - a. The mediator shall endeavour to ensure that the parties reach agreement freely, voluntarily, without undue influence and on the basis of informed consent.
 - b. The mediator shall ensure that each party has had an opportunity to understand the implications and ramifications of available options. In the event that a party needs either additional information or assistance in order for the mediation to proceed in a fair and orderly manner, or for an agreement to be reached, the mediator shall refer the parties for this additional information or assistance.
 - c. The mediator has a duty to ensure balanced mediation and shall not permit manipulative or intimidating negotiating techniques.



- d. The mediator shall take note of the fact that one of the parties may attempt to use the mediation process as a tactic to establish a status quo which is to the detriment of the other party.
- e. Potentially unfair agreements, evolving from a power imbalance shall be discouraged and mediation may need to be suspended.

III. Duties regarding Information, Disclosure and Advice

- a. It is the duty of the mediator to actively encourage the parties to make decisions based on sufficient information, knowledge and advice. This includes assisting the parties to obtain independent expert information and advice.
- b. When the mediation may affect legal rights and obligations, the mediator has an ongoing obligation to advise the parties to obtain independent legal advice where appropriate during the mediation process.
- c. The mediator shall ensure that both parties are given an opportunity during the course of the mediation to make enquiries about the financial disclosure given by the other, and to request any additional information and documents that may be required.

IV. Duties regarding Impartiality

- a. The mediator shall maintain impartiality. Impartiality implies a commitment to aid both parties by freedom from favoritism or bias either in word or action. Impartiality means that the mediator will not play an adversarial role.
- b. The mediator has a responsibility to maintain impartiality while raising questions as to the fairness, equity, and feasibility of proposed options for settlement.
- c. A mediator shall guard against becoming partial as a result of a power imbalance between the parties.
- d. The perception by one or both the parties that the mediator is partial does not in itself require the mediator to withdraw, but in such circumstances, the mediator shall remind both parties of their right to terminate the mediation.
- e. The mediator shall disclose to the parties any biases he or she may have relating to the issues to be mediated and any circumstances which might constitute or cause a conflict of interest, real or perceived, to arise. Such disclosure shall be made as soon

as the mediator recognizes the potential of any bias becoming operative or any conflict of interest arising.

V. Duties regarding Neutrality

- a. If the mediator believes that the mediator's background or personal experiences would prejudice his or her performance, the mediator shall withdraw from mediation. If either of the parties states that he or she believes that the mediator's background or personal experience would prejudice the mediator's performance, the mediator shall remind the parties of their right to terminate the mediation.
- b. The mediator shall refrain from mediating in cases where there has been any significant prior personal or professional involvement between the mediator and one of the parties, unless every party expressly consents to the mediation proceeding after there has been full disclosure of such prior involvement. In this case, the mediator shall carefully distinguish his or her role qua mediator from the earlier relationship.
- c. A counsellor - mediator or therapist mediator shall not offer counselling or therapy to either party during the mediation process.
- d. A lawyer-mediator, or any partner or employee of the same firm of such lawyer-mediator, shall not represent either party during or after the mediation process in any related legal matters arising out of the issues discussed in the mediation.
- e. The mediator shall be aware and advise the parties that post-mediation professional or social relationships may compromise the mediator's continued availability as a neutral third party.
- f. The mediator shall be sensitive to the ethnic, cultural and gender diversity of all parties to the mediation.

VI. Duties regarding Confidentiality, Privileges, and Release of Information

- a. Any information received by the mediator shall be confidential and shall not be revealed to anyone outside the mediation sessions.
- b. Information received in an individual session is not to be revealed in joint sessions without receiving the prior consent of the relevant party to disclosure.
- c. The following exceptions shall apply to the confidentiality duty :



- (i) When there is the written consent of all parties.
- (ii) When the information discloses an actual or potential threat to human life or safety. Any information divulged shall be limited to what is absolutely necessary.

d. The mediator and his or her staff shall maintain confidentiality of clients' files.

e. All discussions and negotiations are to be held on a "privileged" or "without prejudice" basis and the parties are to be required to agree not to refer to any such discussions and negotiations in any proceedings that may subsequently take place, or to require the mediator to do so; save for any discussions or negotiations which both parties agree with the mediator are to be on an open basis. The same rule shall apply to the mediator's notes, and neither party may have access to the mediator's notes save those relating to any discussions or negotiations which both parties agree with the mediator are to be on an open basis.

f. The mediator shall not agree to attend any court hearing without the consent of both parties unless compelled to do so by a subpoena issued by the court. If subpoenaed the mediator shall claim privilege when called to give evidence in order to resist disclosure of confidential information. The mediator shall only give evidence and/or produce documents when ordered by the court to do so at the hearing.

g. Information arising from mediation may be used in teaching and/or writing but must be adequately disguised so as not to reveal the identity of the parties involved.

VII. Duties regarding Inter-Professional Relations

a. The mediator shall respect the complementary relationships among mediation, legal, mental health and other social services. He or she shall promote cooperation with other professionals and encourage clients to use other professional resources when appropriate.

b. Where there are co-mediators each has the responsibility to keep the other informed of developments in the mediation process.

c. During mediation, the mediator shall carefully avoid any appearance of disagreement with or criticism of his or her co-mediator.



VIII. Duties regarding Settlement or Termination

Settlement

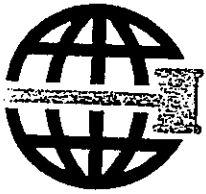
- a. The mediator shall prepare a written summary of the agreement, whether partial or complete, for the approval of and signature by the parties and the mediator. Such agreement shall not be legally binding on the parties and shall clearly so state.
- b. The mediator shall advise the parties of their right to have the agreement formalised by their respective lawyers.
- c. When the parties reach a partial agreement, the mediator shall discuss with them alternative procedures available to resolve the remaining issues and make referrals where appropriate.

Termination

- a. Mediation is voluntary and either party or the mediator can terminate it at any time.
- b. It is the right of the mediator to suspend or terminate mediation in the following circumstances :-
 - (i) Whenever the continuation of the process is likely to harm or prejudice one or both of the parties or the best interests of the children.
 - (ii) Where the parties are unwilling or unable to meaningfully participate in the process.

In either of the above circumstances the mediator shall encourage the parties to seek appropriate professional help.

- c. If the parties reach an unresolvable impasse, the mediator shall not prolong unproductive discussions that would result in emotional and monetary costs to the parties.
- d. The mediator has a duty not to withdraw his or her services except for good cause and upon reasonable notice to the parties.



C. ANCILLARY MATTERS

I. Duties regarding Training and Education

- a. Mediators shall acquire substantive knowledge, training and procedural skills in accordance with the requirements of the Training Committee of the Family Mediation Committee and the Mediation Group.
- b. Mediators are encouraged to engage in continuing education to ensure that their mediation skills are current and effective.
- c. Mediators are encouraged to join with other mediators and members of related professions to promote mutual professional development.

II. Duties regarding Advertising and Promotional Activities

- a. When advertising professional services, mediators shall restrict themselves to matters which educate and inform the public. These could include the following information to describe the mediator and the services offered: name, address, telephone number, office hours, relevant academic degree(s), relevant training and experience in mediation, appropriate professional affiliations and membership status, advantages of the mediation process, and any additional relevant or important consumer information.
- b. Mediators are encouraged to promote the advancement of mediation by participating in research, publishing, and other forms of professional and public education.

III. Duties regarding Insurance

Mediators shall ensure that they are covered to a reasonably sufficient extent by professional indemnity insurance in their capacities as mediators.

IV. Duties in relation to Administration for cases referred through the HKIAC

Mediators shall comply with all the rules and requirements of the Family Mediation Committee and the Hong Kong Mediation Council and the HKIAC with regard to administrative matters including :

- a. Notifying the HKIAC of all mediation undertaken by them.



- b. Paying all fees payable to the HKIAC promptly on completion of each mediation.
- c. Properly using the stationary, standard forms and other materials provided by or through the HKIAC.

GUIDELINES FOR THE PREVENTION OF POSSIBLE CONFLICTS OF INTEREST FOR MEMBERS OF THE HONG KONG MEDIATION COUNCIL

Introduction

One of the objectives of The Hong Kong Mediation Council ("the Council") and its members is the promotion of the use of mediation as a means of dispute settlement in Hong Kong. Amongst the methods utilised in such efforts are presentations, speeches, lectures, road shows and seminars ("events") given by members of the Council on behalf of the Council to interested organisations, bodies and agencies.

It is considered useful for the guidance of members of the Council that certain principles be set out which should assist members in conducting themselves in relation to events.

These principles relate to events only, and not to training programs or familiarisation courses for which separate guidelines will be issued at a later date.

In setting out these guidelines the Committee of the Council is not unmindful of the interest many individual members have in being appointed as a mediator in real cases and thus the interest of such members to participate in events, contributing thereto and hopefully being recognised in some way by one or more persons in the audience present. Thus participation in events may be seen as a benefit to those members participating therein. The Committee notes that such possible benefit is inevitable in the circumstances, and is in any case indirect, but nevertheless the Committee requests that members treat this possible benefit as being merely remotely collateral to the main purpose of the events, namely the promotion of the use of mediation in Hong Kong and the existence and activities of the Council.

In the interests of fairness and good practice it would be appreciated if all members of the Council observed the following guidelines.

1 General Principles

A. Promote the Council

To the greatest extent possible members should promote the Council and its activities.

B. Relationship Between Members' Activities as a Member of the Council and His/Her Private Activities

To the greatest extent possible, members should ensure that they do not mix their personal or business interests with those of the Council. Without limiting the generality of the foregoing, no event or service which the Council is promoting or offering or has stated that it intends to promote or offer shall be pre-empted, taken advantage of or usurped by a member for that member's private, personal or business benefit. To the greatest extent possible, the Council should communicate to the members of the Council in a reasonably timely manner those events or services it intends to pursue seriously.

C. Fees/Remuneration

The desire to be a member of the Council and participate in its activities is purely voluntary, and thus in principle, no member of the Council shall be paid or receive remuneration for the member's efforts for and/or on behalf of the Council, unless specifically approved in advance by the Committee of the Council.

2. Invitations

If a member of the Council receives an invitation from an organisation, body or agency to organise or participate in an event regarding the Council or mediation generally or an aspect of mediation, the member at the earliest possible moment should ascertain whether the invitation is extended to the member in the member's capacity as a member of the Council or in the member's private capacity or in the member's capacity as a member of another organisation.

If the invitation is clearly received in the member's private capacity or in the member's capacity as a member of another organisation the Council has no interest in how the member fulfils the invitation except that the member should to the extent possible and appropriate in the circumstances draw the audience's attention to the existence of the Council and its activities and distribute relevant publications and other relevant printed material in relation thereto.

If the invitation is received in the member's capacity as member of the Council, the member should as soon as possible communicate the existence and nature of such invitation to the Chairman of the Council Committee or sub-committee to which the member belongs and these guidelines will apply.

If it is unclear in which capacity a member receives an invitation, the invitation must be considered as having been extended to the member in his or her capacity as a member of the Council and the member in question should as soon as possible communicate the existence and nature of such invitation to the Chairman of the Council Committee or sub-committee, or another member of the Committee or sub-committee designated for such purpose by the Chairman of the Committee or sub-committee to which the member belongs and these guidelines will apply. The Chairman of the Council Committee or sub-committee shall note the matter, advise the Committee of the Council and otherwise deal with the matter as the Chairman in question deems appropriate in the circumstances.

If a member of the Council is asked by the member's Committee or sub-committee to participate in an event that arises from an invitation having been extended to the Council these guidelines will apply.

The expectation is that members will be open and straight-forward with regard to the origin of an invitation and will reveal same to the Committee or the Council committee or sub-committee so that any possible problem may be discussed in a spirit of frankness, co-operation and trust.

3. Handouts and Other Materials Given Out at Events

To the greatest extent possible references to the Council and its activities should be included in the publications, slides, speeches, presentations and other materials ("materials") handed out by members at events.

Subject to the principle set out in the immediately preceding paragraph, in the event that a member has prepared on his/her own a speech or other material ("member prepared material") for dissemination at an event such member prepared material may be printed on paper which mentions the member's name and/or his/her organisation, firm or company, provided that such mention is unobtrusive and tasteful. In any event the member prepared material should make it abundantly clear that the member's presence at the event and his/her speech /presentation is given as a member of the Council. In cases where the speeches or other material has been prepared as part of a collaborative effort amongst Council members ("group prepared material") all mentions in such material should be to the Council only and no reference should be made to any member or to any member's organisation, firm or company. In the event that such a determination becomes necessary, the Chairman of a relevant Council committee or sub-committee shall have the authority to determine whether material should be considered member prepared material or group prepared material.

It is permissible that the c.v. of a member participating in an event be included in member prepared material and group prepared material, as the case may be.

Members who prepare member prepared material for an event may claim copyright to such material. Copyright for group prepared material shall vest in the Council.

If material utilised by a member at an event is borrowed from another member or source or heavily relies on work previously done by another member, person or organisation due acknowledgement of this fact should be included in the material.

A copy of all material utilised in an event, whether such material is member prepared material or group prepared material should be given to the Secretary-General of the HKIAC so that it may be placed in the HKIAC's library.

For the sake of clarity, members should make every effort not to:

- represent that member prepared material as having been approved by or emanating from the Council;
- represent themselves as representing or acting on behalf of the Council unless previously been authorised to do so by a Chairman of a Council committee or sub-committee or the Committee of the Council;
- issue a document on behalf of the Council without filing a copy thereof with the Chairman of a Council committee or sub-committee, the Committee of the Council, the Secretary-General or Deputy Secretary-General of the Council, as may be most reasonably appropriate in the circumstances.