



**ADR
CHAMBERS (HK) LIMITED**
MEDIATORS • ARBITRATORS • NEUTRALS • EXPERTS
國際糾紛決議事務所(香港)有限公司

5th June 2007

Hon. Margaret NG, Chairman
Bills Committee on Civil Justice Reform
Legislative Council Secretariat
3/F, Citibank Tower,
3 Garden Road,
Central, Hong Kong

By Post, Fax (2509 0775) and
Email (shau@legco.gov.hk)

Dear Madam Chairman,

Submission to the Bills Committee on Civil Justice Reform

We refer your letter of 22nd May 2007 regarding the meeting on 11 June 2007.

ADR Chambers (HK) Limited was incorporated in Hong Kong in 2002 to provide ADR services to the legal profession, insurers, professional organizations, individuals and corporations. It has also provided ADR and negotiation training to more than 2,000 judges, civil servants, lawyers, accountants and other professionals. It was also part of a consortium that prepared the ADR Handbook and Manual for the ETW Works Bureau in 2003/2004.

ADR Chambers was originally established in Canada and is now the largest private ADR provider and trainer in Canada. It has since branched to the United Kingdom, Hong Kong, Ireland, Australia and France. (www.adrchambers.com; www.adrchambersinternational.com; www.adrchambers.co.uk;))

ADR Chambers has previously commented on our positive views regarding “mandatory” (or the more preferable designation “procedural”) mediation in our letter to the Secretary in March 2006 (re Pilot Scheme for Voluntary Mediation of Case in the Construction and Arbitration List (“Construction Mediation Pilot Scheme”). We maintain this view and hope that this would be the direction of the Judiciary in due course. A copy of the letter is attached for your easy reference.

On reviewing the Consultation Paper on CJR, we note that **none** of the Recommendations (138 to 143) of the Final Report on Civil Justice Reform (“Final Report”) on ADR were mentioned in the Consultation Paper. This is indeed a **great disappointment**.

There is an urgent need for Hong Kong (the Government, the Judiciary, the Department of Justice and the Legislative Council) to take a very active role in promoting Mediation and thus action regarding Recommendations 138-142 is of great importance and we hope that these can be included in the Amendments.

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In particular, Recommendation 143 (regarding costs sanctions) is of special importance and this policy has been implemented with much success in the UK. The learned Justices in the two leading cases (Halsey and Dunnett) have succinctly analyzed their rationale in their judgments.

Our Mr. Norris Yang was present at the Mediation Workshops conducted by Messrs. Ruttle Q.C. and Kallipetis Q.C. in March 2006 at the High Court. At that Workshop, there were numerous suggestions regarding implementation of costs sanctions as contemplated by Recommendation 143. ADR Chambers is of the view that Recommendation 143 **must be implemented** (either by Court Directions, changes of Rules or by Legislation) and should form part of the package of Amendments of the Consultation Paper.

ADR Chambers is mindful that the Judiciary might be concerned with the possible lack of qualified and experienced mediators in Hong Kong and that a sudden increase of mediation cases might strain the system. The Hong Kong International Arbitration Centre (“HKIAC”) has been accrediting Mediators in Hong Kong for over 10 years. There are at present 225 Accredited General Mediators, 140 Accredited Family Mediators and 36 Family Supervisors. All have reached minimum standards of training and assessment pursuant to the requirements of the HKIAC Accreditation Committee. These requirements are of international standards and the Judiciary has had more than satisfactory results from the Mediators of the Family Mediation Pilot Scheme (implemented by the Family Court during 2000-2003). The mediators for all these cases were HKIAC Accredited Family Mediators – and attest to the high standards of the accreditation system of the HKIAC.

Whilst it can be said that many of the Accredited General Mediators lack mediation experience (especially in the Commercial field), this is always a “chicken and egg” situation. There are, on the HKIAC list, a good number of mediators who do have substantial experience in construction and commercial cases in Hong Kong and internationally. The less experienced mediators can certainly improve with more cases and are capable of handling less complex cases. ADR Chambers is of the view that there are adequate numbers of well-trained Mediators to handle most cases that require such services.

On the other hand, ADR Chambers is cognizant that there may be complex cases when foreign expertise might be required for a mediation. In this regard, by virtue of the voluntary nature of voluntary mediation process, the parties can retain the very best talent from anywhere in the world to conduct a mediation. Indeed, several internationally prominent mediators have been regularly conducting mediations in Hong Kong.

ADR Chambers maintains panels of very experienced qualified mediators in the United Kingdom (145 Mediators and Arbitrators; <http://www.adrchambers.co.uk/>), Canada (95 Mediators and Arbitrators; <http://www.adrchambers.com/panel.htm>) and Internationally (70 Mediators and Arbitrators, <http://www.adrchambersinternational.com/medpanel.htm>).



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We are presently compiling a list of experienced mediators in Hong Kong and will be completed very soon. ADR Chambers panelists have conducted tens of thousands of mediations in Canada, the UK, Australia and Hong Kong. In this regard, ADR Chambers can organize very competent and experienced mediators (Law Lords, Retired Justices, Privy Council Members, Q.C.'s and experts in various fields) to conduct mediations in Hong Kong.

ADR Chambers is also of the view that the "Construction Mediation Pilot Scheme" can be extended to all areas of civil disputes and a Registry where parties can voluntarily register written offers of mediation and the responses (maintained by the Court or by a neutral institution such as the HKIAC) could promote and encourage the use of mediation in Hong Kong. Whilst such a voluntary Registry would have no "bite", it would encourage litigants and especially their legal counsel to consider costs implications as contemplated by Recommendation 143 (to implement Proposal 67) of the Final Report from the Working Party on Civil Justice Reform.

ADR Chambers would be pleased to discuss further our views and the above proposal (to establish a voluntary Registry of written offers of mediation and the responses for all civil disputes) with the Bills Committee. We would also be pleased to act as a facilitator for brainstorming sessions of the above proposal for all stakeholders.

We look forward to the meeting on 11th June 2007.

Yours sincerely,

Norris Yang,
Executive Director

Enclosure:
Letter dated 10th March 2006 to Steering Committee on CJR

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10th March 2006

Secretary
Steering Committee on Civil Justice Reform
LG2, High Court Building
38 Queensway
Hong Kong

Dear Sirs,

Draft Practice Direction 6.3
Pilot Scheme for Voluntary Mediation of Cases
In the Construction and Arbitration List

We refer to the draft Practice Direction 6.3 and the related information leaflet circulated for comments from interested parties.

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ADR Chambers applaud the Judiciary's initiative to establish this Pilot Scheme. This scheme is voluntary and is not "mandatory" for the parties and is a giant step towards a more formal system which can be implemented in the future.

The Canadian experience with "mandatory" (or the more preferable designation "procedural") mediation have been most successful. Australia, New Zealand and the United States also have had extensive positive experiences with such "procedural mediation" schemes over the past decade.

ADR Chambers is of the view that "Procedural" (or "Mandatory") Mediation will be the trend of the more advanced common law and civil law jurisdictions. Hong Kong was actually in the forefront promoting the use of mediation in the early 90's. The Chek Lap Kok Airport Core Project and all public works contracts have mediation clauses whereby parties may opt to use mediation to settle any disputes arising (please refer to Works Bureau Technical Circulars on Construction Mediation Rules and Administrative Guidelines; Special Condition of Contract for Construction Mediation Rules). Since the Civil Justice Reform movement in the UK, it has progressed in leaps and bounds promoting the use of mediation in civil litigation. Hong Kong presently lags behind more recent converts to mediation such as the UK, Singapore and the EU.



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Civil Justice Reform in Hong Kong will take some more time to be implemented. The proposed Pilot Scheme for Voluntary Mediation of Arbitration will be the first giant step for the Judiciary in promoting mediation to civil matters other than family cases.

ADR Chambers is of the view that this project should also be extended to construction cases where legal action has not been commenced. This can encourage the use of mediation at any time. This can be achieved by an amendment to Draft Practice Direction 6.3 paragraph A.1 to include disputes where action has not been commenced (along with the requisite changes throughout the Draft Practice Direction 6.3 to reflect this change).

Alternatively, the scheme could also be extended to all areas of civil disputes and a Registry where parties can voluntarily register written offers of mediation and the responses (maintained by the Court or by a neutral institution such as the Hong Kong International Arbitration Centre or the Hong Kong Mediation Council) could promote and encourage the use of mediation in Hong Kong. Whilst such a voluntary Registry would have no “bite”, it would encourage litigants and especially their legal counsel to consider costs implications as contemplated by Recommendation 143 (to implement Proposal 67) of the Final Report from the Working Party on Civil Justice Reform.

ADR Chambers would be pleased to discuss further the above proposal (to establish a voluntary Registry of written offers of mediation and the responses for all civil disputes) with the Judiciary. We would also be pleased to act as a facilitator for brainstorming sessions of the above proposal for all stakeholders.

Please feel free to contact the undersigned at anytime.

Yours sincerely,

Norris Yang,
Executive Director

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