

Panel on Administration of Justice and Legal Services

Progress Report from Hong Kong Mediation Accreditation Association Limited (“HKMAAL”) for the meeting on 22 July 2014

1. HKMAAL was established with a vision to become the single accreditation body with accreditation and disciplinary functions for mediators in Hong Kong. The purpose of this paper is to summarise the progress that HKMAAL has achieved so far, to identify the problems that HKMAAL has to overcome in order to attain its objectives and suggest ways to overcome those problems.

Progress to date

2. As at 11 July 2014, HKMAAL has a total of 2092 accredited mediators, of which 1990 migrated from Corporate Members and 102 were accredited under the HKMAAL accreditation policy. Of the 2092 accredited mediators, 1849 are general mediators; 197 are family mediators and 46 are family mediation supervisors. There are also 45 assessors and 4 lead assessors on the relevant panels. HKMAAL is thus the largest mediation organisation in Hong Kong in terms of number of accredited mediators and more than 90% of the accredited mediators in Hong Kong from the Corporate Members of HKMAAL have migrated to its panels.
3. To date, HKMAAL has gained some prominence and a degree of acceptance within the mediation industry and 10 organisations have already joined HKMAAL as Corporate Members. They are Hong Kong Bar Association, Hong Kong International Arbitration Centre, Hong Kong Mediation Centre, The Law Society of Hong Kong, CEDR Asia Pacific, Hong Kong Institute of Arbitrators, Hong Kong Institute of Construction Managers, The Hong Kong Institute of Surveyors, The Hong Kong Institute of Architects and The Hong Kong Institution of Engineers.
4. As at 11 July 2014, there are 15 Training Course Providers who have successfully obtained HKMAAL Stage 1 Accreditation for their General Mediation Training Course and 2 Training Course Providers who have obtained HKMAAL Accreditation for their Conversion Course for General Mediators to become Family Mediators. HKMAAL has since July 2013 accredited 60 training courses.
5. The Accreditation Policies for General and Family Mediation are in place and the Family Mediation Supervision Pilot Scheme jointly run by HKMAAL and the Judiciary for the purpose of matching supervision cases with Family Mediation Trainees in fulfillment of the Stage 2 Accreditation Requirements of Family Mediators has commenced in July 2014.



6. Professional Indemnity Insurance for all HKMAAL Mediators is under discussion. HKMAAL considers that such a Professional Indemnity Insurance as a benefit for all HKMAAL Mediators and thus the cost of insuring all mediators on the panels would be paid by HKMAAL. Furthermore, Disciplinary Procedures have also been adopted.

Problems to be overcome

7. **Appointment of HKMAAL Mediators**

Although HKMAAL has now on its panels more than 90% of the total number of accredited mediators in Hong Kong from the Corporate Members of HKMAAL, it is important that the panel continues to expand to cover most mediators in Hong Kong and that the number is sustainable. Accredited mediators of Corporate Members on more than one occasion have indicated that they would need more incentives to join or renew their annual panel membership on the respective HKMAAL Panel. The most direct incentive is that the mediator was either appointed or selected as a mediator due to his/her status as a HKMAAL Accredited Mediator. In this regard, there are areas which require attention:

- a. We need to convince members of the Judiciary, the Department of Justice, the Legal Aid Department, the Mediation Coordinators' Offices of the Judiciary and the Joint Mediation Helpline Office that they should only provide to potential users of mediation services the list of HKMAAL Accredited Mediators.
- b. Users of mediation services should be encouraged to use only HKMAAL Accredited Mediators for their disputes. HKMAAL will also have to promote their "brand". Although work has been done in this area, more publicity work will have to be done and this can be divided into various forms:
 - Developing promotional leaflets and documents introducing the benefits of using only HKMAAL Accredited Mediators for distribution to point of referrals such as Home Affairs Department, Building Management Resources Centres, District Offices, business associations and various chambers of commerce.
 - Conducting seminars/talks to introduce HKMAAL to various professionals who could advise their clients to use mediation.
 - Articles / advertisements to be placed in various journals, newspapers and websites.
 - The Chief Executive, the Secretary for Justice and the Chief Justice making public statements supporting HKMAAL.
 - The Publicity Sub-committee of the SJ's Steering Committee on Mediation incorporating messages with regard to HKMAAL in their APIs.



- c. To propose an amendment to the Mediation Ordinance to add a provision conferring the default appointment power of mediators to HKMAAL. This will further strengthen the premier status of HKMAAL and give an incentive to HKMAAL mediators as it is not uncommon that litigants could not agree on the choice of a mediator.

8. **Increase the number of Corporate Members and Training Course Providers**

Some Legislative Council members in the past have expressed concern that HKMAAL should broaden its base of corporate members and trainers to be as inclusive as possible. In light of this comment, HKMAAL should:

- a. identify and invite those accreditation bodies who have not yet joined HKMAAL to make an application to join HKMAAL and negotiate the terms to transfer their accredited mediators to the HKMAAL Panels. Having said that, the quality of mediators should not be compromised for the sake of expanding the corporate member base.
- b. identify and liaise with those mediation training providers who have not yet submitted their mediation training course for HKMAAL Stage 1 accreditation. In this regard, HKMAAL should assist them to raise the standards of their training course to meet the HKMAAL standards rather than passively reviewing their applications through the Mediation Accreditation Committee.
- c. publish circulars and newsletters to increase the transparency of the operations of HKMAAL so as to attract more potential corporate members and trainers. Such publications can also help HKMAAL to connect with its mediators on its panels.

9. **Robust code of conduct**

Developing a robust code of conduct for mediators is vital to HKMAAL regulatory function. The Hong Kong Mediation Code has been promoted for 3 years and now is an appropriate time to review it with a view to providing more guidance to mediators on ethical issues.

10. **International Recognition**

To bring its accreditation system in line with overseas standards, HKMAAL should consider registering with international accreditation organizations for mediators such as the International Mediation Institute and UIA and further improve the existing HKMAAL standards where appropriate.

11. **Supervision and Enforcement**

If HKMAAL is to be a regulator with teeth, like other regulators in various industries (e.g. SFC), a supervision and enforcement arm should be established to supervise whether training courses and assessments are conducted in a satisfactory manner. Moreover this section of HKMAAL is to deal with complaints against Mediators. We are at present finalizing the Complaint Procedures and will in due course consult stakeholders on those proposed procedures. We will also take this opportunity to consult stakeholders on our Disciplinary Procedures.

12. **Funding**

Funding is a crucial element in running a regulatory body. In particular, the implementation of our future plans and the ongoing expenditure of HKMAAL require substantial financial support from various sources. Apart from the conventional sources of income such as panel fees, application fees and assessment income, the following matters should be considered:

- a. Should HKMAAL create more categories of specialist panel membership, e.g. shipping, personal injuries, construction, etc?
- b. Should practising and non-practising mediators be charged different fees?
- c. Should HKMAAL engage itself in other fee generating business, e.g. appointment of mediators? HKMAAL would however have to be careful to avoid competition with its own corporate members.

13. **Development of the Secretariat**

At present Hong Kong International Arbitration Centre operates the HKMAAL secretariat. However, HKMAAL should in due course operate an independent Secretariat to support its Council and various committees as well as carrying out administrative matters in relation to accreditation and discipline. Some considerations are set out below:

- a. Office premises –It is hoped that we would be granted premises in either the West Wing of Central Government Offices or the French Mission Building which symbolizes the support of the Hong Kong SAR Government and enhances the HKMAAL brand.
- b. Professional Staff – The Mediation Accreditation Committee, the Disciplinary Committee, the proposed Supervision and Enforcement Unit,, the Communications and Publicity Committee should be supported by professional staff with expertise in the respective area.
- c. Supporting Staff to be appointed – include a receptionist, administration officers to deal with clerical duties, Stage 2 assessments and appointment matters (if such a power is granted to HKMAAL).



- d. Our website should be constantly reviewed to increase transparency of information and user-friendliness.

Conclusion

14. HKMAAL has had an encouraging start but there is much still to be done. This paper is not exhaustive of the outstanding tasks. It merely sets out the areas which HKMAAL needs to focus on in both the shorter and longer term.

HKMAAL Secretariat
July 2014