

23 May 2012

Legislative Council Secretariat (Council Business Division 2)  
Legislative Council  
Central  
Hong Kong  
**Attn: Bills Committee on Mediation Bill**

Dear Sirs/Madams

**Re: CI Arb(EAB) Member Survey on Practice of Mediation in Hong Kong**

The Chartered Institute of Arbitrators (CI Arb) was founded in 1915 with aim of promoting arbitration as an alternative method of dispute resolution to litigation. It was incorporated in 1924, granted a Royal Charter in 1979 and charitable status in 1990 in the UK. As a professional body, the Institute has members worldwide and over 1,500 members in Hong Kong and China which are managed under the East Asia Branch. Our mission is to promote and facilitate the determination of civil and commercial disputes by arbitration, mediation and other alternative means of private dispute resolution.

The East Asia Branch (EAB) of the CI Arb is aware of the second reading of the Mediation Bill to be passed toward the end of May 2012. In that regard, a Working Group on Mediation Practice was formed to canvass members' views relating to the current practices of mediation in Hong Kong, by way of a survey and to collect/collate our members' views for the consideration of the Department of Justice.

Members were asked to express the views on five aspects, namely

- (1) the accreditation of mediators;
- (2) training and development for mediators;
- (3) mediators' fees;
- (4) practicing opportunities for junior mediators; and
- (5) applicability of mediation to civil disputes.

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A summary of the survey results is enclosed in Appendix I. Certain key results of our analysis are highlighted in the following paragraphs.

### **Accreditation of mediators**

While we found that members are generally facing no difficulties to ascertain the various routes to become an accredited mediator in Hong Kong and to ascertain which organisations offer accreditation for mediators, it is worth to note over 60% of the respondents indicated that it is difficult to distinguish between the various panels of accredited mediators operated by various organisations in Hong Kong and that over 60% of the respondents considered it important to have one single accreditation body for mediators in Hong Kong so as to ensure the quality and standard of mediators. Some members expressed that there are too many organisations offering mediation training and the quality of the training provided is sometimes in doubt.

### **Training and development for mediators**

Over 60% of the responses expressed that there is a lack of unified or uniform training for mediators. However, members' views are diverse in respect of the questions on whether they consider that there is a lack of suitable trainers and whether it is important to have continuous training requirements for accredited mediators.

### **Mediator's fees**

Members were asked about whether it is important to set benchmarks for mediator's fees so as to keep experienced and competent mediators in the mediation industry. The respondents' views are diverse on this question. However, 60% of the respondents expressed their concern about the unreasonably low fees charged by junior mediators and the likely effect of providing low quality of service. Members are of the view that the price competition among mediators would be unhealthy to the development of the mediation profession. However some members believe that the concern is not relevant as the fees charged by each mediator is market-driven.

### **Practicing opportunities for junior mediators**

Over 60% of the respondents considered that there is a lack of practicing opportunities for junior mediators and majority of the respondents (over 70%) considered that a system should be set up to promote the services of junior mediators for less complex cases.

### **Applicability of mediation to civil disputes**

Members were asked about whether it is important to have clear guidelines on what cases are suitable for mediation and whether there are certain civil disputes that are not suitable to be resolved by mediation. The survey indicated there seems to be no absolute answer to both questions. Members' views are rather diverse in this aspect. Nonetheless, members were able to quote a few cases that are not suitable for mediation. Hence, whether there should be guidelines issued to suggest what types of cases are unsuitable for mediation may require further consideration and deliberation.

### **Conclusion**

In this survey, the East Asia Branch has canvassed views from about its 1000 members, including about 40 accredited mediators under our panel. The feedbacks received or response rate is about 10%. Although the result of the survey conducted is based upon a small sampling size. That said, the findings of such survey do reflect some of the current concerns in the mediation industry or professionals in Hong Kong. The East Asia Branch takes the view that the Mediation Bill will be a big step forward and is good for the mediation industry or professionals in Hong Kong in that it sets out a basic framework for mediation and promotes the facilitative mediation model. What may need to do more afterwards are further discussions and collaborations of the practitioners and the government in future to develop suitable policies and procedures for ensuring the quality of mediators in general so that the community at large can be benefitted from receiving the services of qualified professionals in the course of mediation.

### **Our Recommendations**

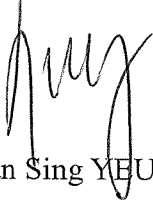
In light of the results in this survey, we would recommend

- (i) To set up one single accreditation body for mediators in Hong Kong so as to ensure the quality and standard of mediators and to address the difficulties faced by practitioners and users to distinguish between various panels of accredited mediators run by various institutions. It is also important for the accreditation body to set up a unified training for mediators in order to ensure the consistency and standard of the training.
- (ii) To set up a system to promote the services of junior mediators for less complicated cases. It is considered that such system not only can provide practicing opportunities for junior mediators but also relieve the problem of

unreasonably low fees offered by them in a bid to get themselves experience in mediation.

Should there be any query over the results of our survey, please feel free to contact the undersigned and we are happy to discuss the same further.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Man Sing YEUNG', written in a cursive style.

Man Sing YEUNG  
Chairman

c.c. Secretary for Justice (Attn: Mr WONG Yan Lung, SC, JP)

## CIArb(EAB) Member Survey on Practice of Mediation in Hong Kong

### Summary of responses

Survey period: 6 March 2012 - 30 March 2012

Total no of responses: 47 out of around 1000 invited members

	Questions	Survey Result
<b>1</b>	<b>Applicability of mediation to civil disputes</b>	
1.1	Do you consider it important to have clear guidelines on what cases are suitable for mediation?	Yes: 27 (57%) No: 20 (43%)
1.2	In your view, are there civil disputes that are not suitable to be resolved by mediation?	Yes: 27 (57%) No: 20 (43%)
<b>2</b>	<b>Accreditation of mediators</b>	
2.1	Do you find it difficult to ascertain the various routes to become an accredited mediator in Hong Kong?	Yes: 13 (28%) No: 34 (72%)
2.2	Do you find it difficult to ascertain which organisations offer accreditation for mediators in Hong Kong?	Yes: 14 (30%) No: 33 (70%)
2.3	Do you find it difficult to distinguish between the various panels of accredited mediators operated by organisations in Hong Kong?	Yes:31 (66%) No:16 (34%)
2.4	Do you consider it important to have one single accreditation body for mediators in Hong Kong to ensure the quality and standard of mediators?	Yes:31 (66%) No:16 (34%)
<b>3</b>	<b>Training and development for mediators</b>	
3.1	Do you consider that there is a lack of unified training for mediators?	Yes: 31 (66%) No: 16 (34%)
3.2	Do you consider that there is a lack of suitable trainers?	Yes: 16 (34%) No: 31 (66%)
3.3	Do you consider it important to have continuous training requirements for accredited mediators?	Yes: 23 (49%) No: 24 (51%)
<b>4</b>	<b>Mediator's fees</b>	

4.1 Do you consider it important to set benchmarks for mediator's fees Yes: 25 (53%)  
No: 22 (47%)

4.2 Are you concerned about the fees charged by junior mediators and its effect, if any, on the quality of service provided? Yes: 28 (60%)  
No: 19 (40%)

**5 Practicing opportunities for junior mediators**

5.1 Do you consider that there is a lack of practicing opportunities for junior mediators? Yes: 31 (66%)  
No: 16 (34%)

5.2 Should a system be set up to promote the services of junior mediators for less complex cases? Yes: 35 (74%)  
No: 12 (26%)