

Hong Kong Institute of Construction Managers

List of Accredited Mediators Scheme

1. Background

In view of the growing trend of adopting Mediation in construction disputes and recent active promotion of Mediation by the Government of Hong Kong Special Administrative Region (HKSAR) as an alternate dispute resolution in Hong Kong society, HKICM proposes to implement a scheme to establish and maintain a list of HKICM Accredited Mediators to facilitate the practitioner, the community or the Public to appoint suitable Accredited Mediator with in-depth experiences in construction practice and sound knowledge of solving disputes in construction industry by Mediation.

This scheme is also served as one of the initiatives of HKICM to promote expertise of its members to practitioners, the community and the Public in solving construction disputes by Mediation in addition to show support to the construction industry and Government's promotion in the wider use of Mediation in settlement of disputes.

2. Aims of the Scheme

- To encourage the adoption of Mediation as dispute resolution tool in the construction industry
- To promote Mediation as the first means of resolving construction disputes, minimizing disputes and to build up harmony in the construction industry
- To serve the construction industry of contracting services
- To provide working platform to HKICM members to kickoff resolving their construction disputes
- To encourage collaboration amongst HKICM members in settlement of disputes
- To adopt Hong Kong Mediation code as a voluntary code of conduct for HKICM Accredited Mediators
- To keep abreast and links with other professional bodies in the Mediation trend in Hong Kong, China, Asia and other countries.

3. Criteria for inclusion in the list of HKICM Accredited Mediators

For inclusion in the list of HKICM Accredited Mediators, the applicant must meet the following requirements: The applicant

- 3.1 is a paid-up corporate member of HKICM for at least 5 years and has 7 years working experience in construction industry in senior position; and
- 3.2 has successfully completed and passed mediation training course(s) of 40 hours minimum duration recognized by the HKICM Accredited Mediator Assessment committee; and
- 3.3 demonstrates experiences of mediating or co mediating at least two actual or simulated mediation cases that are recognized by authorized bodies, such as Hong Kong International Arbitration Center, Hong Kong Mediation Center or the Law Society etc; and
- 3.4 satisfactorily pass an interview conducted by HKICM; and
- 3.5 agrees to abide by code of ethic and mediation code as adopted by HKICM; and
- 3.6 pays administrative fee(s) of HK\$300 per year for inclusion in the list of HKICM Accredited Mediator as prescribed by HKICM (it is to be waived for 2010/11).

4. Accredited Mediator Assessment Committee

- 4.1 An Accredited Mediator assessment committee, appointed by the Council on annual basis, of not more than 7 members shall be formed to conduct the assessment as stipulated in item 3.
- 4.2 The committee shall be responsible for the establishment and maintenance of the list of HKICM Accredited Mediators.

- 4.3 The committee shall make recommendation to the Council the inclusion of suitable applicant(s) onto the list of HKICM Accredited Mediators upon conducting assessment(s) to the applicant(s) and satisfy that the applicants meet with the criteria set out in item 3.
- 4.4 The committee shall provide strong and convincing reasons to the Council for any case(s) that warrant special consideration for inclusion of any member(s) that exemption from item 3 is justified.

5. Liability of HKICM “the Institute”

- 5.1 HKICM is not responsible for any liability incurred from misconduct of the Accredited Mediators or failure of the mediation process. The Accredited Mediators bear their own liabilities for any complaint(s) or claim(s) arising from the mediation proceedings. The Institute is a mere provider of a list of HKICM Accredited Mediators.
- 5.2 HKICM would not charge any referral fee or administration fee (except the venue rental charge, if necessary) throughout the mediation process. It is the Accredited Mediator and his/her Clients’ own agreement towards the mediation charges and fees.
- 5.3 HKICM has no responsibility to benchmark or bargain the rates of Accredited Mediator. HKICM bears no liabilities for any disputes arising from the mediation fees among the Accredited Mediator and his/her Clients.

6. Ethical Issue and Code of Practice

- 6.1 The Accredited Mediators shall all the time observe the Hong Kong Mediation Code as adopted by HKICM; [Annex I]
- 6.2 The Accredited Mediator should oblige the code of ethic and membership regulations set out by HKICM.
- 6.3 During the mediation process, the Accredited Mediator shall always maintain his/ her professional competency by
- acting fairly in dealing with mediation parties
 - avoid any personal interest in terms of any Settlement Agreement
 - showing no bias toward individuals or institutions involved in the mediation
 - being reasonably available as requested by mediated parties
 - be certain that the parties are informed about the mediation process in which they are involved
- 6.4 The Accredited Mediator should always promote and maintain the good name of Hong Kong Institute of Construction Managers and keep the Institute's information confidential.
- 6.5 The Accredited Mediator shall consult the Institute in case of doubt, concern or fear.

7. Accredited Mediator Discipline Panel

- 7.1 An Accredited Mediator discipline panel, of not more than 3 members, shall be appointed by the Council to conduct investigation on justified complaint(s) received by the Institute against any Accredited Mediator(s) in relation to misconduct during the mediation process.
- 7.2 This discipline panel shall report to the Council on the findings and make recommendation(s) for subsequent action(s) appropriate to the complaint case(s). This may include the recommendation of removal of

the subject Accredited Mediator from the list of HKICM Accredited Mediators.

- 7.3 The discipline panel may call concerned parties to attend interview(s) and submit written documents as supporting evidences for the purpose of conducting the investigation.
- 7.4 The Accredited Mediator shall fully co-operate with the discipline panel during the investigation. Non-response or incorporative behaviors with the discipline panel will be considered as an improper conduct which may result in immediate removal of his/her name from the list of HKICM Accredited Mediators. Serious breach of code or misconduct may lead to expulsion of membership from the Institute.

8. Continuous Professional Development “CPD”

The Accredited Mediator is encouraged to maintain his/ her professional competency in mediation skills through on-going training.

It is desirable that HKICM Accredited Mediators be considered of high quality and be seen as having met established standards of training.

Inclusion on the list of the HKICM Accredited Mediators is for a 2-year period and renewal of such inclusion is subject to, among other things, that the Accredited Mediator seeking renewal of his inclusion has undertaken, out of his CPD requirement, a total of at least 10 CPD points in mediation training during the 2 immediately preceding CPD years. The 10 CPD points on mediation training obtained during the 2 CPD years prior to renewal shall exclude the CPD points obtained from the training course(s) that fulfilled the training requirements, as stated in item 3.2, to be an HKICM Accredited Mediators.

Exemption from the CPD requirement(s) in mediation training may be granted by the HKICM Accredited Mediators Assessment Committee on a case-by-case basis where exceptional circumstances exist and where it is fair and reasonable to do so.

For the CPD hours to be validly counted, the CPD programme or activities should be approved or other organizations that have obtained relevant accreditation.

Each HKICM Accredited Mediators shall be responsible for the accurate maintenance of his Training Record and will be required to submit his/her Training Record at the time he/she seeks renewal of his accreditation.

Training Records may also be reviewed or checked by the HKICM Accredited Mediators Assessment Committee for assessment on random basis.

Kenny Wong
Chairman of Mediation Working Group
28 June 2010

Attachment:

Annex I Hong Kong Mediation Code

Special remarks:

Hong Kong Mediation Code, ("code") is a voluntary code of conduct for mediators prepared by the Working Group on Mediation, which was set up in early 2008, chaired by the Secretary for Justice, Mr. Wong Yan Lung. The code consists of standards expected of mediators in Hong Kong and a sample Agreement to mediate. The working group encourages organizations interested in the promotion and facilitation of the use of mediation in Hong Kong including Government agencies and the Judiciary to adopt the code and set up a robust complaint and disciplinary process to enforce the code.