

Kluwer Mediation Blog

Mediation – why Hong Kong?

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Mediation is a confidential process with an impartial third party (the mediator) assisting the disputing parties to reach a mutually acceptable solution. Skilled mediators are also engaged by potential business partners to assist in the deal-making process.

The Hong Kong SAR Government (Hong Kong Government) and in particular the [Department of Justice](#) has been promoting mediation for more than a decade. The [Mediation Ordinance](#), which is a piece of legislation to promote, encourage and facilitate the resolution of disputes by mediation and to protect the confidential nature of mediation communications, was enacted in June 2012 and came into effect in January 2013. With the Mediation Ordinance, users of mediation services and mediation advocates have a clear understanding of what must generally be kept confidential in the mediation process and what mediation communications can be disclosed in specified circumstances.

Apart from enacting the Mediation Ordinance, the Department of Justice had taken initiatives to study, consult and pass the [Apology Ordinance](#), which came into effect in December 2017. The Apology Ordinance, being the first piece of apology legislation in Asia, clarifies the legal consequences of a party making an apology by expressly stating that it will generally be inadmissible as evidence against the maker in the relevant proceedings (rather than civil proceedings only) as an admission of fault. It is also the first piece of apology legislation that includes a statement of facts as part of the definition of apology. A wide definition of “apology” eases the concerns of those who are minded to apologise but are worried that the statement of facts relating to the apology will still be admissible as evidence as held in *Robinson v Cragg, 2010 ABQB 743*, a decision made by the Court of Queen’s Bench of Alberta, Canada.

Hong Kong has been playing an active part in the reform of investor-State Dispute Settlement (ISDS), especially in respect of promoting the use of investment mediation as one of the key reform options. As early as February 2019, the Department of Justice and the [Asian Academy of International Law](#) (AAIL) co-organized the ISDS Reform Conference 2019, with the theme of “Mapping the Way Forward”, and prominent speakers were invited to share their knowledge and experiences. Despite the shadow of Covid pandemic, the Hong Kong Government in collaboration with the [United Nations Commission on International Trade Law](#) (UNCITRAL) and AAIL held a virtual pre-intersessional meeting for Working Group III to contribute to the discussion on the use of mediation in ISDS in November 2020. In October 2021, with the support of the Central People’s Government, the Department of Justice together with UNCITRAL and AAIL organised a 2-day hybrid inter-sessional meeting on the use of mediation in ISDS for UNCITRAL Working Group III

on ISDS Reform. The event was the first time for a Working Group of UNCITRAL to conduct an inter-sessional meeting in Hong Kong and paved the way for Hong Kong to share its experience in respect of the mediation clauses and rules under the Investment Agreement of the Mainland and Hong Kong Closer Economic Partnership Arrangement, and contribute further in the Working Group's drafting process of model investment mediation clauses and guidelines.

All these demonstrate the strong commitment of Hong Kong Government in the development of mediation domestically and internationally.

Hong Kong is keen to ensure that mediators are of high quality. While local and international mediation training providers may provide mediation training services in Hong Kong, these providers must seek accreditation of their courses from [Hong Kong Mediation Accreditation Association Limited \(HKMAAL\)](#) should their participants aspire to become HKMAAL accredited mediators. HKMAAL is a non-statutory industry-led accreditation body for mediators tasked with the important functions of accreditation, standard upkeep and disciplinary proceedings. HKMAAL has three panels of mediators, namely the panel of general mediators, the panel of family mediators and the panel of family mediation supervisors. Those who look for high quality accredited mediators may visit the HKMAAL website, which keeps the CVs of the accredited mediators. HKMAAL accredited mediators include but are not limited to senior counsel, university professors, medical specialists, banking, shipping, construction professionals. There are no nationality and/or residence requirements to become HKMAAL accredited mediators. As such, Hong Kong has a pool of mediation talents of diverse background to serve local or cross-border disputing parties.

Hong Kong, being an Asia international city, has a sizeable number of mediators who are lawyers qualified to practise not only in Hong Kong but also other jurisdictions such as Australia, England & Wales, Mainland China, New Zealand, Singapore, USA, etc. These Hong Kong lawyer-mediators possess international visions and are comfortable in handling cross-border disputes. Besides, most of the mediators are bilingual speaking English and Chinese (Cantonese and Putonghua). Some of them do speak other major languages such as French, German, Japanese, etc. Parties who choose to mediate in Hong Kong will also be well supported not only by the Hong Kong qualified barristers and solicitors but also over 80 foreign law firms and more than 1,000 registered foreign lawyers practising in Hong Kong.

Should the parties wish to take advantage of the Hong Kong mediation services but are unable to come to Hong Kong physically, they may contact [eBRAM International Online Dispute Resolution Centre Limited \(eBRAM\)](#), which is an independent and non-profit organisation with the mission of elevating Hong Kong's arbitration and mediation services and building capacity to meet the rapidly expanding demand for dispute resolution services across the borders by utilising innovative technologies, for online mediation services. eBRAM has developed its dispute resolution platform leveraging latest technologies including artificial intelligence, blockchain, cloud and soft robotics. The launch of the [eBRAM COVID-19 Online Dispute Resolution Platform](#) has displayed Hong Kong's dedication to the provision of efficient online dispute resolution means to deal with COVID-19 related disputes.

Hong Kong is a gateway to Mainland China. Those who are interested to practise mediation in the [Hong Kong, Macao and Guangdong Great Bay Area](#) may be pleased to know that a lot has been done by the legal departments of Hong Kong, Macao and Guangdong. Although Hong Kong, Macao and Guangdong have different legal and judicial systems, the formation of the Greater Bay

Area Mediation Platform will facilitate (1) the promulgation of a set of unified qualification, accreditation and other relevant standards for mediators in the Greater Bay Area; (2) the establishment of a local panel of qualified Greater Bay Area mediators in each of the three places; and (3) the formulation of best practices for mediation rules applicable to cross-boundary disputes and best practices for mediators' code of conduct. These standards and best practices can enhance the confidence of the public to use mediation in the Greater Bay Area, which will assist qualified Greater Bay Area mediators to provide mediation services and promote the use of mediation in the Greater Bay Area. [The Greater Bay Area Mediator Accreditation Standards](#) and [the Greater Bay Area Mediator Code of Conduct Best Practice](#) were officially released and came into effect recently in December 2021. It is obvious that mediation will not only have a bright future in Hong Kong but also in the Greater Bay Area.

Given the worldwide trend of dispute resolution by way of means that the parties may have control of the outcome and the fact that Hong Kong is at the door of Mainland China, the world's largest trading economy, mediation is gathering great momentum in resolving disputes and deal-making activities. With the excellent mediation infrastructure in Hong Kong and the government's determined commitment to support and promote mediation, those who seek to have effective mediation services should surely consider Hong Kong. Those who are looking for a brighter mediation career are always welcome to join the Hong Kong team. ?

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