

# Kluwer Mediation Blog

## Mandating specified professionals to report suspected serious child abuse cases

Ting-Kwok IU (Kwok, Ng & Chan, Solicitors & Notaries) · Friday, August 2nd, 2024

Hong Kong has recently passed a piece of legislation with the good intention of protecting children from serious abuse and protecting the specified professionals for making the mandatory reports. [Mandatory Reporting of Child Abuse Ordinance \(Cap. 650\)](#) (“**the Ordinance**”) was gazetted on 19 July 2024 and it is understood that the legislation will come into effect 18 months thereafter.

In essence, the Ordinance is a piece of standalone legislation with 16 sections and 3 schedules mandating twenty-five specified professionals (see Schedule 1 to the Ordinance) in Hong Kong to report any suspected serious child abuse case to the Director of Social Welfare or the Commissioner of Police. The specified professionals, or anyone of them, who fail(s) to tender a report of child abuse in a timely fashion will face criminal punishment of up to a fine at level 5 (currently set at HK\$50,000.00) and 3 months’ imprisonment.

The main legal obligation to report can be found in Section 4(1) of the Ordinance: –

### **“4. When must reports be made**

*(1) If a reasonable ground to suspect the following comes to the notice of a specified professional during the course of his or her work as a specified professional—*

*(a) a person is a child at the material time; and*

*(b) at the material time, the child—*

*(i) is suffering serious harm; or*

*(ii) is at real risk of suffering serious harm,*

*the professional must, as soon as practicable after the material time, make a report in respect of the child in compliance with section 6.”*

How is the Ordinance relevant to mediation practitioners in Hong Kong?

On the face of it, the Ordinance does not seem to affect mediators in Hong Kong because neither general mediators nor family mediators (including family mediation supervisors) are among the twenty-five professions listed in Schedule 1 to the Ordinance. This means that mediators are not under any legal obligation to report even when they come across situations set out in section 4(1) of the Ordinance, once the Ordinance comes to effect in January 2026, simply because they are not included in the list of professionals in Schedule 1 to the Ordinance.

Under [The Hong Kong Mediation Code](#) (“the Code”), mediators will not be taken as breach of confidentiality if they disclose information for the reason that there is an actual or potential threat to human life or safety. Clause 4 of the Code says: –

**“4. Confidentiality**

*(a) Mediator shall keep confidential all information, arising out of or in connection with the mediation, unless compelled by law or public policy grounds.*

*(b) Any information disclosed in confidence to the Mediator by one of the Parties shall not be disclosed to the other Party without prior permission.*

*(c) Paragraphs 4(a) and 4(b) shall not apply in the event such information discloses an actual or potential threat to human life or safety.”*

Section 8(2)(d) of [Mediation Ordinance \(Cap.620\)](#) also expressly provides that “mediation communication” (defined in section 2 of Mediation Ordinance) may be disclosed if there are reasonable grounds to believe the disclosure is necessary to prevent or minimize the danger of injury to a person or serious harm to the well-being of a child.

So, it appears that the Ordinance has not had any impact on the practice of mediation by mediators because Hong Kong mediators, though not under any obligations to report under the Ordinance, may report a child abuse case without breaching confidentiality or disclosing mediation communication under the Code and Mediation Ordinance respectively.

However, it is very common, whether in Hong Kong or other jurisdictions, for mediators to wear several hats. For example, a mediator may simultaneously be a lawyer (not within Schedule 1 to the Ordinance), an engineer (not within Schedule 1 to the Ordinance), a social worker (within

Schedule 1 to the Ordinance), or a clinical psychologist (within Schedule 1 to the Ordinance).

It seems that there are issues the Hong Kong mediation community may need to work out before the Ordinance comes into effect:-

- A social worker-mediator, or say, a clinical psychologist-mediator will have no choice but to report a child abuse case under the Ordinance. However, a mediator who is not a professional under Schedule 1 to the Ordinance does have the choice to decide whether to make the report or not. Is this conducive to the development of mediation?
- Can the parties, or one of them, terminate the engagement of the mediator who reported the child abuse solely for the reason of him/her making the report?
- If a social worker trainee mediator is working on a family mediation supervision case under a lawyer family mediation supervisor, should a suspected child abuse case be reported by the trainee mediator only? Does the lawyer-mediator (i.e. the supervisor) have the right to continue the mediation without the trainee mediator, considering the concern that the parties may perceive the trainee mediator as not neutral and/or impartial?
- How can users of mediation services, especially those without legal representatives, know what to expect when choosing a mediator from a pool of mediators with different primary/secondary occupations who are each required to follow a different sets of reporting rules regarding suspected child abuse cases?
- Should mediation training and/or assessment be tailored to mediators of different backgrounds?
- How can mediators who are not professionals within Schedule 1 to the Ordinance collaborate with mediators who are professionals within Schedule 1 to the Ordinance as co-mediators?
- Will the Ordinance put the mediators who are also professionals within Schedule 1 to the Ordinance at a disadvantage in the mediation market?

While a statutory regime requiring specified professionals to report child abuse cases is new to Hong Kong, mediation practitioners are expected to address issues that may arise from the Ordinance before it comes into effect. Similar regimes have long been in the statute books of many other jurisdictions. By 2018, more than 70 places around the world had established a mandatory reporting system for child abuse cases. For instance, as long as 50 years ago, the South Australian legislature had introduced a compulsory reporting regime through the enactment of the [Children's Protection Act Amendment Act 1969](#) (now repealed, though a similar reporting regime which can now be found in Chapter 5 of the [Children and Young People \(Safety\) Act 2017](#)).

Given that mediators often are professionals in other professions, the issues that Hong Kong may face are unlikely to be unique to Hong Kong. Mediation practitioners in other jurisdictions have more likely walked through a similar journey before.

The purpose of this blog entry is not to criticise our new piece of legislation but to invite the

international community of mediators to share and exchange any thoughts and comments. Doing so would help me consider insightful ideas which can then be relayed to my fellow mediation practitioners with the hope of improving our system further. Together we can protect children from serious abuse while maintaining the public's confidence in mediation, especially in terms of confidentiality and impartiality. Readers who are interested in sharing their experiences in relation to foreign jurisdictions and related issues are more than welcome to contact me at [iutingkwok@kncsol.com](mailto:iutingkwok@kncsol.com) or to leave a comment below.

*Special thanks to (1) Mr. Justin Fu, a final year student reading Government and Laws at the University of Hong Kong; and (2) Miss Chloe Lee, a second year LLB student at the University of Hong Kong, for their assistance in preparing this blog entry.*

*To make sure you do not miss out on regular updates from the Kluwer Mediation Blog, please subscribe [here](#).*

## 2024 Summits on Commercial Dispute Resolution in China

17 June – Madrid

20 June – Geneva

Register Now →



This entry was posted on Friday, August 2nd, 2024 at 8:04 am and is filed under [Confidentiality](#), [Family Mediation](#), [Hong Kong](#), [Legal Issues](#), [Mediation](#)

You can follow any responses to this entry through the [Comments \(RSS\)](#) feed. You can leave a response, or [trackback](#) from your own site.

