Mediation in Hong Kong

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Mediation is one of the oldest methods of resolving disputes. There is a long history of using conciliation in Asia. In Cantonese (one of the hundreds of Chinese dialects), there is a phrase literally translated as: “The two of us should stop arguing. Let us sit down, three mouths and six faces, and resolve this.” This phrase is commonly used in Southern China (and surprisingly, I can find no similar phrase used in Northern China). With two people in a dispute, I can count only two mouths and four faces (each person having a left face and a right face). We are missing one mouth and two more faces. So who is this missing third person? He is the conciliator, most likely the village chief or a respected elder in the village. Is the resolution of this dispute a facilitative process or is it guidance by the elder? The world is now a global village. Who is the village chief in a global village? Which set of “Rules” should we use?

The Hong Kong International Arbitration Centre (HKIAC)\(^1\) is empowered by statute to appoint arbitrators and determine the number of arbitrators in the tribunal (under the Hong Kong Arbitration Ordinance Chapter 341). The HKIAC is a charitable non-profit organization established in 1985 to promote arbitration and alternative dispute resolution (ADR) in Hong Kong. The Hong Kong Mediation Council (HKMC) was established in 1994 as a division of the HKIAC to promote and develop the use of mediation in Hong Kong. It has 500 members who elect the members of the main committee and the committees of the four interest groups: construction; family; community; commercial.

There is no legislation in Hong Kong regulating mediation, the accreditation of mediators, or the rules or procedures to be followed. The HKIAC has taken the lead in establishing an accreditation system, mediation rules, and, procedures for appointment of mediators.

The HKIAC has a mediator accreditation committee, which applies high international accreditation standards to ensure that “HKIAC Accredited Mediators” have undergone adequate training and assessments so they

\(^1\) See http://www.hkiac.org.
can conduct mediations professionally. Mediations conducted by well-trained mediators have a higher chance of success. HKIAC has two accredited mediator panels: general mediators and family mediators. There are 245 and 139 members, respectively, on these panels.

The HKIAC/HKMC Mediation Rules have only 15 clauses. They were designed to be simple and easy to follow. A party who does not respond to a request for mediation is deemed to have refused the offer to mediate (Rule 4). Either party or the mediator can terminate the mediation (Rule 11). The appointment of the mediator is only for a period of 42 days (which can be extended to 90 days by consent—Rule 7). We have the usual rules regarding confidentiality (Rule 12), and, most importantly, the mediator should not take on any other role in any subsequent proceedings of the same dispute (Rule 14).

The traditional Asian conciliations in a village setting are more likely facilitative, with the village elder “walking softly and holding a big stick” laced with cultural taboos and buttered with a lot of guilt. This is not exactly a workable formula for a global village setting. In Hong Kong, the mediation model we promote is “facilitative mediation.”

Most legal professionals in Hong Kong feel that parties in a dispute should voluntarily agree to mediate and that “mandatory mediation” does not point in this direction. The right to have “one’s day in court” is still held as a sacred right in Hong Kong. Once litigation is initiated,