



# Mediation as a form of Alternative Dispute Resolution (ADR)

Edmund CHUNG and Amy SIU

## WHAT IS MEDIATION

Mediation is a well-established voluntary, non-binding, confidential process in which a neutral person (the mediator) assists the parties in a dispute to reach a negotiated settlement. The terms of such settlement can, by mutual agreement, be made legally binding.

Mediation is distinct from:

- Arbitration - a private and confidential process by which a third party, an arbitrator, decides the merits of a dispute.
- Litigation - a public process by which judges determine the rights and wrongs of a dispute.

## TYPES OF DISPUTES AMENABLE TO MEDIATION

- Family
- Community and neighbourhood
- Industrial relations
- Commercial, including insurance, shipping, financial, company and shareholder disputes
- Construction
- Medical
- Intellectual property
- Low, medium and high value issues

## ADVANTAGES OF MEDIATION

- The process provides a neutral, supportive and constructive environment in which the parties in dispute can reconcile their differences.
- The parties, with the assistance of a mediator, control the outcome of their dispute.
- Promotes communication between the parties.
- Time is used efficiently.
- Cost effective.
- Confidential process.
- Promotes an effective way of resolving disputes through co-operative decision making.

- Settlement is not imposed but agreed by mutual consent of the parties.
- Continued personal and business relationships are maintained after settlement.

## HONG KONG INTERNATIONAL ARBITRATION CENTRE (HKIAC)

The HKIAC was formed in 1985 to provide an independent forum for dispute resolution. It has developed over the years to meet the growing need for speedy and reliable resolution of commercial disputes relating to international trade and business and is now recognized as one of the world's leading dispute resolution centre.

The Hong Kong Mediation Council (HKMC) is a division of the HKIAC and promotes the development and use of mediation as a method of resolving disputes.

Source: Information Brochure from HKIAC and HKMC

## INTERVIEW WITH OUR HON. ADVISOR, MR. CHAN BING WOON, VICE-CHAIRMAN OF HKMC



To enable our members to have a deeper insight into the subject, the writers (Edmund Chung and Amy Siu) had paid a visit to our Hon. Advisor Mr. Chan Bing Woon in his Office on 14/9/2004.

Mr. Chan is an Accredited Mediator and Vice Chairman of HKMC and has been actively promoting Mediation in Hong Kong in the past 4 to 5 years. Mr. Chan advised that experience indicated that some 70% to 80% of the disputes are amenable to mediation, the other 20% to 30% related to setting of precedent case or matters touching on public policy that are not amenable. He highly recommended that Mediation should be considered when disagreements exist between parties prior to proceeding to arbitration or litigation. He anticipates that mediation will play an increasingly important role in resolving disputes in building management issues in Hong Kong in future. (Note: In fact, as RPHM, our members are continuously practising mediation process in his / her daily work viz resolving disputes between developer and individual owners, between landlord and tenants, between individual owners and their owners' corporations etc, but on a less formal environment.)

Mr. Chan has kindly agreed to give a lecture on Mediation to our members in the near future. Members are advised to watch out for announcement.

