



THE

LAW SOCIETY
OF HONG KONG

香 港 律 師 會

**ASSESSMENT AS A LAW SOCIETY
ACCREDITED GENERAL MEDIATOR**

**Information Package for Assessments
on 18 - 19 June 2013**

May 2013

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CONTENTS

Part I	ASSESSMENT – 18 - 19 June 2013	1
1.	Assessment Date and Venue	1
2.	Assessment Registration Conditions	1
3.	Timetable	2
4.	Language	2
5.	Assessor	3
6.	Mediator Assessment Process	3
7.	Guidelines for Candidates	7
8.	Sample Forms	9
Part II	POST ASSESSMENT	9
Part III	ACCREDITATION.....	9
APPENDICES.....		11
Appendix 1 – Self Evaluation Form (MA2)		12
Appendix 2 – Assessment Form (MA4)		13
Appendix 3 – Written Agreement Template		19
Appendix 4 – Application Form (MA1)		20
Appendix 5 – Sample Curriculum Vitae of Accredited Mediator (MA5)		23

Part I ASSESSMENT – 18 - 19 June 2013

1. Assessment Date and Venue

Date : 18 - 19 June 2013

Time : 8:30 am – 5:30 pm

Venue : Hong Kong International Arbitration Centre
 38th Floor, Two Exchange Square
 8 Connaught Place, Central, Hong Kong

2. Assessment Registration Conditions

- (a) Registrations will be accepted on a first-come first-served basis. However, completion of a mediation training course of 40 hours' minimum duration approved by the Law Society and Hong Kong International Arbitration Centre ("HKIAC") is a pre-requisite for those who wish to register for the assessments.
- (b) Apart from playing the role of mediator and be assessed as such on the day of assessment, every candidate is required to play the roles of the mediated parties in two sessions in the same day as part of the accreditation process. Hence, each candidate will participate in 3 role plays on the assessment day, one as the mediator and two as a disputing party.
- (c) If a candidate is absent from any session (including the sessions in which he is required to play the role of a mediated party), he will be disqualified from the assessment scheduled for that day.
- (d) If a candidate cannot attend a day of assessment which has been confirmed, a written notification of his absence must be given to the Law Society.
 - (i) A candidate must give written notice of his inability to attend an assessment in which he has enrolled at least 7 days before the scheduled assessment. No refund of the registration fee will be made if the candidate is absent from the assessment without giving prior written notification to the Law Society or notice is given less than 7 days before the scheduled assessment.
 - (ii) Where written notification is given at least 7 days before the scheduled assessment, a refund of the registration fee will be given to the candidate after a deduction of administration fee of HK\$3,800 but only on condition that a replacement can be found to fill up the role of a mediator left by the candidate in the simulated mediation.

- (iii) As a candidate is not only required to play the role of a mediator in one session of the simulated mediation, but also the role of a mediated party in the other 2 sessions, a candidate who is only willing to play the role of a mediator must pay a surcharge of HK\$3,800 for each session he fails to play the role of a mediated party whether or not a replacement can be found to fill up the role of the mediated party in that session.

3. Timetable

- (a) Each day of assessment

8:30 am – 8:45 am	Meeting of candidates
8:45 am – 9:00 am	Meeting of assessors
9:00 am – 11:30 am	Session 1
11:30 am – 12:00 noon	<i>Break</i>
12:00 noon – 2:30 pm	Session 2
2:30 pm – 3:00 pm	<i>Break</i>
3:00 pm – 5:30 pm	Session 3

- (b) Each session in a day (2 hours and 30 minutes)

Reading time:	20 minutes
Role-play:	1.5 hours
Writing of mediated agreement / statement of outcomes	15 minutes
Self-reflection	10 minutes
Feedback:	15 minutes

4. Language

The assessments can be undertaken in either Cantonese or English but the assessment forms will be in English.

5. Assessor

- (a) The Lead Assessor for the Assessment is Mr. Leung Hing Fung. Mr. Leung practises as a Barrister, Mediator and Arbitrator. He is the Chairperson of the Hong Kong Mediation Council, Hong Kong International Arbitration Centre, and Associate Professor in Law at The University of Hong Kong. In addition to being a mediator and arbitrator, Mr. Leung has many years of experience as a lead assessor, trainer, and coach in mediation.
- (b) No candidate will be assessed twice by the same assessor.
- (c) No candidate will be assessed by an assessor who has been a mediation trainer at a mediation course approved by the Law Society and HKIAC that was attended by the candidate.
- (d) All assessors are required to declare any conflict of interest and no candidate will be assessed by an assessor who has a conflict of interest with that candidate.
- (e) Assessment Form (MA4) should be returned by the assessors to the Lead Assessor the day following the assessments the latest.
- (f) Assessors are encouraged to provide detailed comments on the performance of the candidates in the Assessment Form (MA4).

6. Mediator Assessment Process

- (a) For the purpose of assessment, candidates must follow the facilitative mediation model covering the key aspects outlined below:
 - (i) Mediator's Opening Statement

Explain the mediator's impartial role, the mediation process, voluntariness, confidentiality, check for signatures on the Agreement to Mediate and confidentiality agreement/s, check authority to settle, manage introductions and time.
 - (ii) Statement by party A
 - (iii) Mediator summarises party A's statement

Clarify questions on issues raised in the parties' opening statements but refrain from further exploratory questioning at this stage
 - (iv) Statement by party B

- (v) Mediator summarises party B's statement

Clarify questions on issues raised in the parties' opening statements but refrain from further exploratory questioning at this stage

- (vi) Identify matters for discussion

Mediator works with the parties to arrive at a list of items for an agenda on a whiteboard/flipchart and seeks parties' confirmation. Agenda items should be stated neutrally and mutually wherever possible.

- (vii) Mediator identifies common ground, if appropriate.

- (viii) Mediator asks parties to agree on sequence/order in which agenda items will be discussed.

- (ix) Joint discussion of agenda items one by one

Allow time for joint discussion. This is the exploration stage for the parties to come to understand each other's perspectives. If the candidate does not do this, his assessment will be unsatisfactory as the assessor needs to see his joint session facilitation skills. Separate sessions should not be held during the agenda discussion stage except under exceptional circumstances. If they *are* necessary (ie. for exceptional reasons) try to keep them very brief.

- (x) If appropriate, the Mediator may decide to identify the needs and objectives of the parties and list them on the whiteboard/flipchart.

- (xi) Mediator suggests separate sessions (caucuses) with both parties once exploration of issues stage has been completed — ie. all agenda items have been discussed. For the purpose of the assessment, one separate session with each party will normally be sufficient. Candidates should avoid entering into shuttle-mediations at this point. This should be avoided and will not be required as part of the assessment process. Parties should be encouraged to raise their own issues in joint session rather than via the Mediator, wherever possible. As a guide, no more than a total of 30 minutes should be spent in separate sessions.

- (xii) Parties return to joint session to facilitate negotiation and generate options. Mediator lists options as they arise at any time on the whiteboard/flipchart or paper.

- (xiii) Mediator facilitates a process of looking at possibilities, not just

debating about fixed positions and solutions. Mediator encourages creativity for mutual benefit and to help the parties own the final outcome. The mediator does not offer advice or suggestions but encourages the parties to generate their own options and solutions through the skilful use of questioning and facilitation techniques.

- (xiv) Mediator checks options to see if they meet the parties' needs and that all options/offers are clarified.
 - (xv) Mediator conducts adequate reality testing regarding the feasibility and workability of options.
 - (xvi) Mediator must maintain the confidentiality of disclosures made during separate sessions (caucuses).
 - (xvii) Mediator assists the parties to focus on the future and to prevent backsliding.
 - (xviii) Mediator assists the parties to understand and agree on details.
 - (xix) Mediator encourages the parties to determine the substantive content of the agreement and cross-checks with the parties to reality test to ensure a lasting and realistic outcome.
 - (xx) Mediator explores the likelihood of the agreement holding.
 - (xxi) Prepare a simple written agreement using the template provided. **If agreement is not reached**, the Mediator should still, for the purpose of the assessment, prepare an agreement in principle, or a Statement of Outcomes/Heads of Agreement of those items that were agreed. It is important that there is written confirmation of what was achieved during the process.
 - (xxii) The Mediator should ensure that the agreement is read and understood by both parties before signing.
 - (xxiii) The Mediator should finish the mediation with a professional closure: acknowledge parties' participation; next steps, destroy notes.
- (b) Joint sessions
- (i) The assessor will need to see progress towards settlement occurring mostly during the joint sessions, between the parties.
 - (ii) The Mediator's role is to facilitate direct understanding and communication between the parties and to assist the parties to understand each other's concerns and interests.

- (iii) For the purpose of the assessment, it is not satisfactory to conduct a shuttle mediation with the mediator relaying offers between the parties in separate sessions. The mediator should encourage and prepare the parties to present their offers /options in the joint session.
- (iv) The Mediator should not minimise the parties' direct communication through the overuse of separate sessions (caucuses).
- (v) The facilitative mediation model, as described, must be applied and demonstrated.

In practice, all kinds of variations to the above may occur but for the purpose of assessment, candidates are required to follow the process model as described.

(c) Time management

- (i) Candidate mediators will need to manage their time during the role plays.
- (ii) Within the set timeframe, the assessor will expect to see the preparation of a simulated written agreement (or Statement of Outcomes, agreement in principle, Heads of Agreement). This means that the Mediator must receive a verbal agreement from each party and write a small list of key points on a written agreement template provided for the purpose.
- (iii) The Mediator should check who will undertake any agreed actions, when it will be undertaken and other details as though completing a real agreement.
- (iv) Parties will simulate looking over the document and, if agreement is reached, will sign this simple, simulated written agreement.

(d) Role play scenario

Role play scenarios must be undertaken by the mediation accreditation candidate "sight unseen" that candidates must advise the Law Society if they have previously seen, participated in, or mediated the same role play scenario presented to them for assessment. Candidates must declare previous knowledge of a particular scenario whether it was experienced as part of a previous role play simulation assessment, coaching or training experience.

(e) Role players

- (i) Role players should endeavour to make their roleplaying as

realistic as possible so that the candidate mediators can demonstrate their skills and knowledge.

- (ii) However, when reasonable strategies and techniques are applied, role players should respond as a reasonable person would.
 - (iii) Role players must keep to the instructions on their role play information sheets and must stay in character throughout the mediation.
 - (iv) Candidates should ensure that the outlined facilitative process model is followed. For example, do not break the parties into a series of separate sessions (caucuses) after their opening statements without summarising and without listing and discussing the agenda issues. Candidates who do not follow the process model and assessment guidelines as described will be unsuccessful in their assessment.
 - (v) Role players who are not candidates of the assessments should attend the briefing session of the Lead Assessor before they participate in the role plays.
- (f) Video taping the assessment
- The assessment process will be videotaped for record purposes.
- (g) Self evaluation
- (i) All candidates will be required to complete a feedback document on proforma sheet provided for the purpose.
 - (ii) The document is a reflection on the performance as a mediator (self-reflection).
 - (iii) These feedback documents will be submitted to your assessor for the purpose of demonstrating the understanding of the mediation process and the ability to undertake sound professional reflective practice. The comments will in no way influence the assessment outcome of the candidates. It only serves to provide information on how well a candidate can critically analyse mediation practice and processes and the ability to learn from experience.

7. Guidelines for Candidates

- (a) Candidates must demonstrate the critical aspects of competency when applying the outlined Facilitative Mediation Model and behaviours and attitudes which are consistent with these requirements.

- (b) In preparing for the assessment, reflect on current mediation practice to ensure that all of the following behaviours are avoided during assessment:
- Breach confidentiality?
 - Dominate the process?
 - Give advice?
 - Act in judgemental way?
 - Compromise impartiality/neutrality?
 - Adopt an interrogatory, inquisitorial approach?
 - Fail to deliver a competent opening statement including the key elements as described in the recommended process model?
 - Fail to facilitate joint discussion between the parties? (eg. overuse of separate sessions or relying heavily on shuttle mediation)
 - Fail to identify the parties' needs, interests and issues?
 - Fail to identify matters for discussion (eg. agenda items) as mutually and neutrally as possible?
 - Fail to identify and discuss the issues? (eg. using agenda)
 - Fail to use neutral language/terms to assist communication and understanding? (eg. reframing, paraphrasing)
 - Act as a deal maker?
 - Lose control of own emotions? (eg. argue with or show anger, frustration towards one or both of the parties)
 - Terminate the mediation without good cause? (eg. unable to overcome an impasse; unsure of the process and what to do next)
 - Fail to reality test the options generated?
 - Fail to document the mediation outcomes in a written agreement? ie. settlement agreement; agreement in principle; Heads of Agreement; Statement of Outcomes.
 - Fail to conclude the mediation with a professional closure?
 - Omit, or fail to complete, without valid reason, any of the

required stages/steps as outlined in the process model?

8. Sample Forms

The sample forms on the following are attached as appendices:

- (a) Self evaluation form (MA2) – **Appendix 1**
- (b) Assessment form (MA4) – **Appendix 2**
- (c) Written agreement template – **Appendix 3**

PART II POST ASSESSMENT

- 9. Candidates will receive a copy of the feedback forms, namely, MA2 and MA4 within 7 days of the assessment.
- 10. Candidates who mediated or co-mediated at least 2 actual or simulated mediation cases may apply to the Mediator Accreditation Committee of the Law Society of Hong Kong for accreditation as a General Mediator by **Friday, 28 June 2013**.
 - (a) In making an application for accreditation as a General Mediator, an applicant has to submit the following completed forms, together with a cheque of HK\$500 made payable to “The Law Society of Hong Kong” as application fee:
 - (i) MA1 (application form) – **Appendix 4**
 - (ii) MA2 (self evaluation form)
 - (iii) MA4 (assessment form)
 - (b) In considering an application, the Mediator Accreditation Committee may require an applicant to take part in an accreditation assessment, including a personal interview, and a possible further simulation supervised by an assessor chosen by the Mediator Accreditation Committee, who must submit a completed MA4 in connection with the further simulation.

PART III - ACCREDITATION

- 11. Upon approval of the application for accreditation, the successful candidates’ names will be included in the Panel of Accredited General Mediators of the Law Society.
- 12. Candidates will also be requested to complete a Form MA5 (**Appendix 5**) which is a reference CV that is made available to the public through the Law Society website and the Law Society reception counter.
- 13. Accredited mediators on the Panel are required to apply for renewal of

accreditation every 4 years at a prescribed fee.

14. To be eligible for accreditation renewal, accredited mediators are required to complete, out of their annual CPD requirement, a total of at least 20 CPD points from mediation training during the 4 immediately preceding CPD years. The 20 CPD points shall however exclude the CPD points obtained from the training courses that fulfilled the Stage 1 requirement.

APPENDICES

MEDIATOR ACCREDITATION COMMITTEE

SELF EVALUATION FORM FOR A MEDIATOR CANDIDATE

Name of Mediator Candidate _____

Type of Mediation _____ Duration of Mediation _____

Name of role play / case _____

Name of Assessor _____

What did you do best?

What could you have done differently?

OTHER COMMENTS

Signed _____ Date _____

FORM MA4**MEDIATOR ACCREDITATION COMMITTEE
MEDIATOR ASSESSMENT***(Note: In case any section of the form is not applicable, please put in N/A)*

Name of Mediator Candidate: _____

Name of role-play / case: _____

Date & Duration (Hours): _____

Name of Assessor: _____

Where 1 = excellent, 3 = average and 5 = did not achieve

1. Opening Statement	1	2	3	4	5	N.A.
Meeting, greeting, modes of address						
Positive Tone						
Explanation of Mediation						
• Role of Mediator						
• Confidentiality						
• Procedure to be followed						
Ground rules						
Checked Authority to Settle						
Answering Parties' Questions						

Comment(s) _____

2. Joint Sessions	1	2	3	4	5	N.A.
Listening and attending						
Eye contact						
Note taking						
Acknowledgment of concerns						
Summary of the factors						
Use of clarifying questions						
Established a list of issues						
Identified common ground						
Use of listed issues						
Facilitated Negotiations						
• Separated people from problem						
• Focused on interests not positions						
• Facilitative rather than inquisitorial						
Allowed/encouraged direct communications						
Facilitated mutual understanding						
Maintained momentum in discussion						
Manages conflicts appropriately						

Comment(s)

3. Separate Meetings	1	2	3	4	5	N.A.
Procedure, confidentiality explained						
Relevant questioning						
Preparation for joint session						
Appropriate duration						
Kept confidentiality						

Comment(s)

4. Option Generation, Termination and Closure	1	2	3	4	5	N.A.
Appropriate timing of option generation						
Assisted parties to transfer identified issues and needs into questions for discussion						
Identify possible options						
Explore possible options						
Reality tested options						
Conveyed offers accurately						
Suggested Heads of Agreement						
Agreed on future action						
Contingency arrangements						
Ensured all issues were included (including for family mediation appreciation for the interest of unrepresented third parties, eg the children)						
Preparation of agreement (<i>attach agreement</i>)						
Commendation of parties						

Comment(s)

5. Process Strategy	1	2	3	4	5	N.A.
Effective strategy of caucuses, joint meetings and other process moves						
Appropriate timing of separate sessions						
Appropriate timing of joint sessions						
Aware of parties' needs						

Comment(s)

6. Skills and Behaviour	1	2	3	4	5	N.A.
Maintained impartiality						
Established rapport						
Maintained parties' trust						
Optimistic tone						
Listening skills						
Diplomatic skills						
Use of notes						
Acknowledgment of concerns						
Identified needs and interests						
Identified underlying issues						
Managed negative interactions and emotions						
Summaries						
Appropriate use of questions						
Reframing						
Doubt creation						
Appropriate body language						
Use of whiteboard/butcher's paper						
Refrained from advising						
Avoided domination						
Dealt with impasses						
Reality testing						
Persevering						
Maintained momentum						
Appropriately managed any power imbalances						

Comment(s)

Overall Comments on Mediator's Performance

Based on this performance, does the supervisor/assessor recommend the person being supervised / assessed should be accredited as a mediator by Law Society Mediator Accreditation Committee and the HKIAC Mediator Accreditation Committee?

YES/NO*

** delete as appropriate*

What steps / professional development would you recommend the candidate to undertake?

Assessor's Signature: _____

Date: _____

Written Agreement Template

Parties

(“Party A”)

(“Party B”)

(jointly “the Parties”)

Background

The Parties have agreed to settle "the Dispute" which has been the subject of mediation today ("the Mediation").

Terms

It is agreed as follows:

..... (insert additional terms here).

This Agreement is in full and final settlement of any causes of action whatsoever which the Parties have against each other.

This Agreement shall be governed by, construed and take effect in accordance with Hong Kong law. The courts of Hong Kong shall have exclusive jurisdiction to settle any claim, dispute or matter of difference, which may arise out of, or in connection with this agreement.

Signed

____ (“Party A”)

____ (“Party B”)

Dated

MEDIATOR ACCREDITATION COMMITTEE

Application for Mediator Assessment: -

Please indicate category for assessment –

General ☐

Family ☐

Supervisor (Family) ☐

Name Mr/Ms/Miss/Mrs/Dr* ()

_____ *in English* _____ *in Chinese*

Date of Birth/Nationality _____

Firm/Company* _____ Date of Admission _____

Correspondence Address _____

Contact Tel _____ Fax _____ Email _____

Language(s) / Dialect(s) Spoken and Written - please give details:
(Please indicate ability to mediate in any language)

General Qualification(s) / Degree(s) / Professional body(ies) (grade and year obtained):

Brief Employment Summary:

<u>From / To</u>	<u>Employer</u>	<u>Position/Description</u>

**delete as appropriate*

MEDIATION RELATED TRAINING AND EXPERIENCE:

Mediation (or equivalent) training including trainer organisation, duration, etc
(Please include date(s), hour(s), trainer(s) and a copy of the certificate(s))

Details of any other relevant training, eg negotiation, counselling, partnering workshop(s)

Experience **as a mediator**, eg family, commercial or other - giving approximate date(s) and total number of mediation cases

Other mediation related experience (eg as Trainer, Coach, mini-trial)

Remarks: please provide any other relevant details not covered above

Notes : -

- 1 Please fill in all sections in block letters and do not submit separate c.v. If there is insufficient space, provide details on a separate A4 sheet in the same format. In case any section of the form is not applicable, please put in N/A.
- 2 Applicants are advised to provide all the information requested in the relevant documents, where applicable, failing which the Mediator Accreditation Committee may refuse to process and consider their applications.
- 3 This form must be attached with a payment covering the assessment / re-assessment fee per category (non-refundable) and the annual standard fee for inclusion into Law Society panel of accredited mediators as prescribed by the Law Society from time to time. The current fee is HK\$500 per category. All fees must be paid in Hong Kong dollars, drawn on bank(s) in Hong Kong.
- 4 Upon satisfactory assessment and payment of necessary fees, accredited mediators are entitled to be included on the Law Society website listing. Would you like your details (name, telephone number, fax number, email) to be listed on the website. Yes/No *

* delete as appropriate

PERSONAL DATA (PRIVACY) ORDINANCE NOTICE

Persons who supply data in their application to the Law Society of Hong Kong (LSHK) are advised to note the following points pursuant to the Personal Data (Privacy) Ordinance.

1. Personal data provided in this application form will be used solely for the purpose of assessment for accreditation as a Mediator, and in this connection the data herein will be dealt with by the LSHK staff and/or by the LSHK Mediator Accreditation Committee or other relevant LSHK Committee members.
2. After an application for assessment has been duly processed, the application papers of the candidates will be retained in a file established by the LSHK for each applicant. Such information will be retained by LSHK for as long as it deems necessary or useful.
3. Under the provisions of the Personal Data (Privacy) Ordinance, an applicant has the right to request access to, and the correction of, his/her personal data as retained by the LSHK. Applicants wishing to access or make corrections to their data should submit written requests to the Director of Finance and Administration of LSHK.

Declaration

1. I have read and agreed to the Personal Data (Privacy) Ordinance Notice.
2. I authorise the LSHK, its staff, employees and/or members of the LSHK Mediator Accreditation Committee or other relevant LSHK Committees to deal with, utilise and/or assess the data submitted by me as may be required in connection with my application for accreditation as a mediator.
3. I understand that my data will become a part of the LSHK's files and may be used for all purposes deemed necessary or useful by the LSHK.
4. I declare that the information given in support of this application is accurate and complete. I understand that any misrepresentation will disqualify my application and may lead to revocation of my accreditation as a Mediator, should I be accredited.
5. I confirm that I am familiar with and will adhere to the LSHK Code of Practice for General/Family* Mediators.
6. Any information on this form may be made available by LSHK to third parties for the purposes of mediator assessment or selection.

Please sign below to confirm your agreement to the disclosure of the information contained in the application and your confirmation of its accuracy.

Signature: _____ **Date:** _____

Name (in print): _____

** Delete if and as appropriate*

FORM MA5

WONG John	
LLB Law Society of Hong Kong	← Qualification and Membership of Professional Bodies
Partner	← Present Position
Wong & Co.	← Name of Firm
Room 1221 Gloucester Tower, 11 Pedder Street, Central, Hong Kong	← Address
Tel: 2566-1234 Fax: 2566 5678 e-mail: john@wongco.com.hk	← Telephone Fax and e-mail
Date of Birth :19 June 1954 (optional)	← Date of Birth
Fluent in Cantonese, Mandarin and English	← Languages/Dialects Spoken to a level you could conduct a mediation in them
<u>Mediation Training</u> Mediation - LSHK mediation course Feb 1999 completed Appointed as mediator on 1 occasion 2 mediations on-going	← Mediator training ← Mediator Experience
Career 1973 – 6 - LLB University of Hong Kong 1976 - PCLL University of Hong Kong 1976 – 78 - Trainee Solicitor Contract – Chan & Co., HK 1979 – 83 - Assistant Solicitor, Chan & Co., HK, practising mainly in family law. 1984 – 87 - Assistant Solicitor, Ng & Co. Family law practice 1988 – present - Partner, Wong & Co., HK Family law practice	← Career Details – give year, position held and organisation
<u>Other Relevant Experience</u> Negotiation - Law Society Negotiation Skills Workshops (Basic) & (Advanced), 1999 and 2000 completed	← Other experience including negotiation, partnering etc