



MEDIATOR ADMISSION SCHEME
INFORMATION PACKAGE
(FOR GENERAL MEDIATORS)

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I. OBJECTIVES OF THE MEDIATOR ADMISSION SCHEME

Being admitted to the Law Society panels of mediators demonstrate that the solicitors' skills, knowledge and experience in mediation have been independently considered to have maintained a given level of competence recognised by the Law Society of Hong Kong ("LSHK"). The admitted mediators are also regulated by The Hong Kong Mediation Code.

II. PROCEDURES FOR ADMISSION OF MEDIATORS

1. Three panels of admitted mediators

The LSHK maintains three panels of admitted mediators:-

- (a) Panel of Admitted General Mediators;
- (b) Panel of Admitted Family Mediators; and
- (c) Panel of Admitted Family Mediation Supervisor.

The above panels have separate admission requirements and procedures. A solicitor who wishes to be admitted under more than one panel is required to satisfy the admission requirements and procedures of the respective panels. Application will be considered on individual basis.

2. Prerequisites to be a Solicitor-Mediator

To be admitted as a Solicitor-Mediator, a candidate must be:

- (a) A holder of a current practising certificate; and
- (b) Be a member of the LSHK.

3. Requirements to be an Admitted General Mediator

To be admitted as an Admitted General Mediator, a candidate shall complete the following stages:

Stage 1

- (a) Have at least 2 years post qualification experience as solicitor on a full time basis or equivalent;
- (b) Be an accredited general mediator of the Hong Kong Mediation Accreditation Association Limited (“HKMAAL”)
- (c) The Mediator Admission Committee (“MAC”) of the LSHK has the right to waive any or all of the above requirements in particular cases, if appropriate.

Stage 2

- (a) Within 3 years after the completion of Stage 1, a candidate may apply to the MAC for admission by submitting a completed Form MA1(GM) together with the following supporting documents:
 - (i) the certificate of mediation course completed; and
 - (ii) two completed HKMAAL Form 1 and the respective settlement agreements; and
 - (iii) HKMAAL accreditation certificate (general mediator).
- (b) Prior to admission being approved, the MAC may request a candidate:
 - (i) To complete one or more further simulation supervised by a supervisor approved by the MAC; or
 - (ii) To complete one or more further HKMAAL simulation; or
 - (iii) To take part in a personal interview conducted by the MAC.

The candidate is responsible to arrange the further simulation and submit a completed HKMAAL Form 1 and, if appropriate, a digital recording (i.e. DVD) in connection with the further simulation. While the further simulation will adopt at least the HKMAAL’s standards, the MAC has the right to give additional instruction in relation to the further simulation.

Successful candidates will have their names included on the LSHK Panel of Admitted General Mediators.

4. Exemption

- (a) Candidates who have substantial mediation experience may apply to the MAC for specific exemption from the above admission requirements.
- (b) A request for exemption must be made in writing to the MAC. Specific exemption from all or any of the above requirements may be granted to the candidates who are, prior to their applications, accredited as mediators of the relevant panel by a body approved by the MAC.

5. Panel membership

- (a) Successful candidates are required to provide a panel reference c.v. as per Form MA5 (at **Appendix 2**). It is desirable that the reference be completed in both English and Chinese.
- (b) Panel membership will be for a 4-year period.
- (c) Panel members are required to apply for renewal of admission every 4 years.
- (d) Renewal admission shall commence from 1 January and all renewal applications should therefore be made before 30 November of the preceding year.
- (f) All admission granted:
 - (i) before 1 July will be due for renewal on 1 January four years after the year of admission;
 - (ii) on or after 1 July will be due for renewal on 1 January five years after the year of admission.
- (g) Renewal of membership on the Law Society's Panels of Mediators is equivalent to the renewal of admission status. Solicitors who have been removed from the Law Society's Panels of Mediators are not allowed to describe themselves as "Law Society of Hong Kong's Accredited Mediator" or "Law Society of Hong Kong's Admitted Mediator".

6. CPD requirements for renewal of panel membership

This section provides information relating to the CPD requirements for renewal of panel membership. For details of the CPD requirements of solicitors, please refer to the Law Society's CPD Information Package.

Renewal of membership will be subject to the followings:

- (a) LSHK Mediator Admission is for a 4-year period and renewal of such admission is subject to, among other things, that the LSHK Admitted Mediators seeking renewal of their admission have undertaken, out of their annual CPD requirement (solicitor), a total of at least 20 CPD points in mediation related training during the 4 immediately preceding CPD years. The 20 CPD points on mediation related training obtained during the 4 CPD years prior to renewal shall exclude the CPD points obtained from the training course(s) that fulfilled the training requirements to be an LSHK Admitted Mediator.
- (b) Each LSHK Admitted Mediator shall be responsible for the accurate maintenance of his Training Record and may be required to submit the respective Training Record at the time of application for renewal.

Training Records may be reviewed or checked at random. Training Records should be retained for at least 6 CPD practice years.
- (c) In the event that admission of a LSHK Admitted Mediator is not duly renewed, the LSHK Admitted Mediator in question will be informed.
- (d) Exemptions from the CPD requirement in mediation related training may be granted by the MAC on a case-by-case basis under exceptional circumstances.

III. GUIDELINES AND CODE

1. The Hong Kong Mediation Code

A. General Responsibilities

The Mediator shall act fairly in dealing with the Parties to the mediation, have no personal interest in the terms of any Settlement Agreement, show no bias towards the Parties, be reasonably available as requested by the Parties, and be certain that the Parties have been informed about the mediation process.

B. Responsibilities to the Parties

1. Impartiality/Conflict of Interest

The Mediator shall maintain impartiality towards all Parties. The Mediator shall disclose to the Parties any affiliations/interests which the Mediator may have or had with any Party and in such situation obtain the prior written consent of all the Parties before proceeding with the mediation.

2. Informed Consent

- (a) The Mediator shall explain to all Parties the nature of the mediation process, the procedures to be utilised and the role of the Mediator.
- (b) The Mediator shall ensure the Parties sign an Agreement to Mediate prior to the substantive negotiations between the Parties.*
- (c) The Agreement(s) to Mediate shall include the responsibilities and obligations of the Mediator and the Parties.

3. Confidentiality

- (a) The Mediator and his or her staff 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 3(a) and 3(b) shall not apply in the event such information discloses an actual or potential threat to human life or safety.

(d) The Mediator shall ask all attendees of the mediation who are non-parties to sign a separate confidentiality agreement where appropriate.

4. Suspension or Termination of Mediation

The Mediator shall inform the Parties of their right to withdraw from the mediation. If the Mediator believes that a party is unable or unwilling to participate effectively in the mediation process, the Mediator can suspend or terminate the mediation.

5. Insurance

The Mediator shall consider whether it is appropriate to be covered by professional indemnity insurance and if so, shall ensure that he/she is adequately covered.

* A sample Agreement to Mediate is attached.

C. Defining the Process

1. Independent Advice and Information

In a mediation in which a Party is without legal representation or relevant expert opinion, the Mediator shall consider whether to encourage the Party to obtain legal advice or relevant expert opinion.

2. Fees

The Mediator has a duty to define and describe in writing the fees for the mediation. The Mediator shall not charge contingent fees or base the fees upon the outcome of the mediation.

D. Responsibilities to the Mediation Process and the Public

1. Competence

The Mediator shall be competent and knowledgeable in the process of mediation. Relevant factors shall include training, specialist training and continuous education, having regard to the relevant

standards and/or accreditation scheme to which the Mediator is accredited. For example, in the event the mediation relates to separation/divorce, the Mediator shall have attained the relevant specialist training and the appropriate accreditation.

2. Appointment

Before accepting an appointment, the Mediator must be satisfied that he/she has time available to ensure that the mediation can proceed in an expeditious manner.

3. Advertising/promotion of the Mediator's services

The Mediator may promote his/her practice, but shall do so in a professional, truthful and dignified manner.

***AGREEMENT TO MEDIATE**

THIS AGREEMENT IS MADE ON _____

BETWEEN THE FOLLOWING PERSONS (*in this Agreement called the 'Parties'*)

(*Name of Party: Please Print*)

(*Name of Party: Please Print*)

(*Contact Telephone Number*)

(*Contact Telephone Number*)

(*Address*)

(*Address*)

AND THE MEDIATOR (*called 'the Mediator'*)

(*Name of Mediator: Please Print*)

(*Contact Telephone Number*)

(*Address*)

APPOINTMENT OF MEDIATOR

1. The Parties appoint the Mediator to mediate the Dispute between them in accordance with the terms of this Agreement.

ROLE OF THE MEDIATOR

2. The Mediator will be neutral and impartial. The Mediator will assist the Parties to attempt to resolve the Dispute by helping them to:
 - (a) systematically isolate the issues in dispute;
 - (b) develop options for the resolution of these issues; and
 - (c) explore the usefulness of these options to meet their interests and needs.
3. The Mediator may meet with the Parties together or separately.
4. The Mediator will not:
 - (a) give legal or other professional advice to any Party; or
 - (b) impose a result on any Party; or
 - (c) make decisions for any Party.

CONFLICT OF INTEREST

5. The Mediator must, prior to the commencement of the mediation, disclose to the Parties to the best of the Mediator's knowledge any prior dealings with any of the Parties as well as any interest in the Dispute.
6. If in the course of the mediation the Mediator becomes aware of any circumstances that might reasonably be considered to affect the Mediator's capacity to act impartially, the Mediator must immediately inform the Parties of these circumstances. The Parties will then decide whether the mediation will continue with that Mediator or with a new mediator appointed by the Parties.

COOPERATION BY THE PARTIES

7. The Parties agree to cooperate in good faith with the Mediator and each other during the mediation.

AUTHORITY TO SETTLE AND REPRESENTATION AT THE MEDIATION SESSION

8. The Parties agree to attend the mediation with authority to settle within any range that can reasonably be anticipated.

9. At the mediation each Party may be accompanied by one or more persons, including legally qualified persons, to assist and advise them.

COMMUNICATION BETWEEN THE MEDIATOR AND THE PARTIES

10. Any information disclosed to a Mediator in private is to be treated as confidential by the Mediator unless the Party making the disclosure states otherwise.

CONFIDENTIALITY OF THE MEDIATION

11. Every person involved in the mediation:
 - (a) will keep confidential all information arising out of or in connection with the mediation, including the fact and terms of any settlement, but not including the fact that the mediation is to take place or has taken place or where disclosure is required by law to implement or to enforce terms of settlement; and
 - (b) acknowledges that all such information passing between the Parties and the Mediator, however communicated, is agreed to be without prejudice to any Party's legal position and may not be produced as evidence or disclosed to any judge, arbitrator or other decision-maker in any legal or other formal process, except where otherwise disclosable in law.
12. Where a Party privately discloses to the Mediator any information in confidence before, during or after the mediation, the Mediator will not disclose that information to any other Party or person without the consent of the Party disclosing it, unless required by law to make disclosure.
13. The Parties will not call the Mediator as a witness, nor require him to produce in evidence any records or notes relating to the mediation, in any litigation, arbitration or other formal process arising from or in connection with the Dispute and the mediation; nor will the Mediator act or agree to act as a witness, expert, arbitrator or consultant in any such process.
14. No verbatim recording or transcript of the mediation will be made in any form.

TERMINATION OF THE MEDIATION

15. A Party may terminate the mediation at any time after consultation with the Mediator.
16. The Mediator may terminate the mediation if, after consultation with the Parties, the Mediator feels unable to assist the Parties to achieve resolution of the Dispute.

SETTLEMENT OF THE DISPUTE

17. No terms of settlement reached at the mediation will be legally binding until set out in writing and signed by or on behalf of each of the Parties.

EXCLUSION OF LIABILITY AND INDEMNITY

18. The Mediator will not be liable to any Party for any act or omission by the Mediator in the performance or purported performance of the Mediator's obligations under this Agreement unless the act or omission is fraudulent.
19. Each Party indemnifies the Mediator against all claims by that Party or anyone claiming under or through that Party, arising out of or in any way referable to any act or omission by the Mediator in the performance or purported performance of the Mediator's obligations under this agreement, unless the act or omission is fraudulent.
20. No statements or comments, whether written or oral, made or used by the Parties or their representatives or the Mediator within the mediation shall be relied upon to found or maintain any action for defamation, libel, slander or any related complaint, and this document may be pleaded as a bar to any such action.

MEDIATION CODE

21. The mediation shall proceed according to the terms of this Agreement and the Hong Kong Mediation Code.

COST OF THE MEDIATION

22. The Parties will be responsible for the fees and expenses of the Mediator in accordance with the SCHEDULE.
23. Unless otherwise agreed by the Parties in writing, each Party agrees to share the mediation fees equally and also to bear its own legal and other costs and expenses or preparing for and attending the mediation ("each Party's Legal Costs") prior to the mediation. However, each Party further agrees that any court or tribunal may treat both the mediation fees and each Party's legal costs as costs in the case in relation to any litigation or arbitration where that court or tribunal has power to assess or make orders as to costs, whether or not the mediation results in settlement of the Dispute.

LEGAL STATUS AND EFFECT OF THE MEDIATION

24. Any contemplated or existing litigation or arbitration in relation to the Dispute may be started or continued despite the mediation, unless the Parties agree or a court

orders otherwise.

25. This Agreement is governed by the law of the Hong Kong Special Administrative Region and the courts of the Hong Kong Special Administrative Region shall have exclusive jurisdiction to decide any matters arising out of or in connection with this Agreement and the mediation.

FULL DISCLOSURE (applicable to family mediation)

26. (a) The Parties agree to fully and honestly disclose all relevant information as requested by the Mediator and by each other.
- (b) Any failure by either of the Parties to make full and frank disclosure may result in the setting aside of any agreement reached in mediation.

SIGNING OF THE AGREEMENT TO MEDIATE

Date: _____

Name of Party or Representative (Please print and sign here)

Name of Party or Representative (Please print and sign here)

Name of Party or Representative (Please print and sign here)

Name of Party or Representative (Please print and sign here)

Name of Mediator (Please print and sign here)

SCHEDULE

Fees and Expenses of Mediator

- | | | |
|------------------------|----|------------|
| 1. For all preparation | \$ | (per hour) |
| 2. For the mediation | \$ | (per hour) |
| 3. Room hire fees | \$ | |
| 4. Allocation of costs | | |

Party 1	%
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Party 2	%
---------	---

Party 3	%
---------	---

Party 4	%
---------	---

Or

All parties equally	%
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IV. APPENDICES

THE LAW SOCIETY OF HONG KONG (LSHK)
MEDIATOR ADMISSION COMMITTEE

Application for Mediator Admission (General): -

Name Mr/Ms/Miss/Mrs/Dr* ()
in English *in Chinese*

Nationality _____

Firm/Company* _____ Date of Admission _____

Correspondence Address _____

Contact Tel	Fax	Email
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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>
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**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 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 LSHK Mediator Admission Committee may refuse to process and consider their applications.
- 3 Upon satisfactory consideration, admitted mediators are entitled to be included on the LSHK 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 INFORMATION COLLECTION STATEMENT

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

1. The personal data collected in this Application form and in the documents submitted by you to support this Application (“the data”) will be used by the Law Society of Hong Kong (“the Society”) for the purposes of considering this Application for mediator admission, the renewal and/or reinstatement as the Society’s Mediator and other related matters.
2. In applying for mediator admission, it is obligatory for you to supply the Society with the data requested in this form except as otherwise indicated. The consequence for you if you fail to supply such data is that the Society will not be able to process this Application or it may result in delay or refusal of this Application.
3. The data may be provided to such persons within the Society whose proper business it is to have access to and assist in the processing of this Application and related matters. The data may also be provided to the Mediator Admission Committee of the Society, other relevant committee members of the Society and to such other persons who may help the Society in attaining the purposes above mentioned.
4. Any data that is provided to anyone outside of the Society will be restricted to what is necessary and not excessive to achieve any intended purpose.
5. You have the right to request access to and correction of the data. Any such request should be addressed to the Secretary General, the Law Society of Hong Kong, 3/F, Wing On House, 71 Des Voeux Road Central, Hong Kong.
6. The Privacy Policy Statement of the Society is available on its website at www.hklawsoc.org.hk.

Declaration

1. I have read and agreed to the above Personal Information Collection Statement.
2. I authorise the Society, its staff, employees and/or members of the Society’s Mediator Admission Committee or other relevant the Society’s Committees to deal with, utilise and/or assess the data submitted by me as may be required in connection with my application for admission as a mediator.
3. I understand that my data will become a part of the Society’s files and may be used for all purposes deemed necessary or useful by the Society.
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 admission as a Mediator, should I be admitted.
5. I confirm that I am familiar with and will adhere to the Hong Kong Mediation Code.
6. Any information on this form may be made available by the Society to third parties for the purposes of mediator 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*

SAMPLE

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
<u>Career</u>	
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>	← Other experience including negotiation, partnering etc
Negotiation - Law Society Negotiation Skills Workshops (Basic) & (Advanced), 1999 and 2000 completed	

Requirements to be an Admitted General Mediator

To be admitted as an Admitted General Mediator, a candidate must be:

- A holder of a current practising certificate; and
- Be a member of the LSHK.

Moreover, a candidate should also complete the following stages:

STAGE 1

- (a) have been engaged in the practice of law for 2 years on a full time basis or equivalent
- (b) be an Accredited General Mediator of the HKMAAL

REMARKS:

The MAC has the right to waive any or all of these requirements in particular cases

STAGE 2

Within 3 years after completion of Stage 1, candidates may apply to the MAC for admission by submitting a completed Form MA1(GM) and the following supporting documents:

- (i) the certificate of mediation course completed;
- (ii) two completed HKMAAL Form 1 with settlement agreements; and
- (iii) HKMAAL accreditation certificate (general mediator)

Prior to admission being approved, the MAC may request a candidate:

- (i) To complete one or more further simulation supervised by a supervisor approved by the MAC;
- (ii) To complete one or more further HKMAAL simulation; and/or
- (iii) To take part in a personal interview conducted by the MAC.

The candidate is responsible to arrange the further simulation and submit a completed HKMAAL Form 1 and, if appropriate, a digital recording (i.e. DVD) in connection with the further simulation. While the further simulation will adopt the HKMAAL's standards, the MAC has the right to give additional instruction in relation to the further simulation.

Successful candidates will have their names included on the LSHK Panel of Admitted General Mediators.