HONG KONG MEDIATION AND ARBITRATION CENTRE

GUIDELINES FOR MEDIATOR ACCREDITATION

January 2014

Hong Kong Mediation and Arbitration Centre
Level 12, Infinitus Plaza,
199 Des Voeux Road
Central, Hong Kong

Website: www.hkmaac.org
Email: mediation@hkmaac.org
Tel: 3796-3366
Fax: 3796-3000
CONTENTS

I. Objectives ................................................................................................................. 3

II. Procedures for Accreditation of Mediators
1. Establishment of Two Panels of Mediators ......................................................... 3
2. Requirements to be an Accredited Mediator ....................................................... 4
3. Exemption ................................................................................................................. 5
4. Panel membership .................................................................................................... 6
5. CPD requirements .................................................................................................... 6

III. Code of Conduct
6. Professional Code of Conduct for Mediators ....................................................... 9
I. OBJECTIVES

This “Guidelines for Mediator Accreditation” is designed to:

♦ safeguard the professional standard of mediation practice in Hong Kong;
♦ assist the general public to understand and utilize our mediation services; and
♦ encourage our mediators to advance their mediation skills.

In order to achieve the highest standard of mediation practice, Hong Kong Mediation and Arbitration Centre (“HKMAAC”) has developed this Guidelines for Mediator Accreditation which relates to the procedures for accreditation of mediators, application procedures, CPD training requirements, Professional Code of Conduct, and guidelines for professional practice of family mediators.

It is important that all the mediators of HKMAAC shall be regulated by our prevailing Professional Code of Conduct. In the event that any of our accredited mediator fails to observe it, our Disciplinary Committee may at its sole discretion remove such panelist with (or without) providing reasons for doing so. The decision of the Disciplinary Committee shall be binding and final.

II. PROCEDURES FOR ACCREDITATION OF MEDIATORS

1. Establishment of Two Panels of Mediators

It is recognized by the HKMAAC that levels of expertise, knowledge and experience of every mediator are crucial in dispute resolving. Therefore, it is part of our professional commitment and due diligence process to ensure that the knowledge and experience of any of our prospective mediators are up to professional standard. Each of our mediators shall have the necessary expertise and knowledge to assist disputing parties in resolving their disputes in a professional and cost effective manner.

HKMAAC has established two Panels of Mediators. Prospective applicants who wish to be accredited as our mediators should read the information contained herein and submit all the required documentation as specified for our consideration.
In this regard, two panels of accredited mediators are maintained by the HKMAAC:

(a) Panel of General Mediators; and
(b) Panel of Family Mediators.

2. Requirements to be an Accredited Mediator

To qualify for accreditation as an Accredited Mediator, applicants must complete both of the following 2 stages:

Stage 1 – Academic Stage

General Mediator

(a) Tertiary education or above in any disciplines (in case that applicants cannot fulfil this requirement, applicants should have substantial working experience recognized by HKMAAC).

(b) Satisfactory completion of a mediation training programme organized / co-organized by HKMAAC with 40 hours minimum duration (or any other programmes approved by the HKMAAC Professional Membership Committee). For the purpose of mediator accreditation, “satisfactory completion” means (i) passing the written examination(s) as required by the mediation training programme; and (ii) having satisfied the training programme’s attendance requirement.

Recommended course contents for mediation training include, inter alia, the followings:

- Alternative Dispute Resolution;
- Litigation/Mediation/Arbitration/Adjudication/Expert Determination;
- Agreement to Mediate;
- Mediation Ordinance;
- Drafting of Mediated Settlement Agreement;
- Professional Code of Conduct;
- Mediation Procedures and Process;
- Roles and liabilities of Mediators;
- Mediation Skills (BATNA/WATNA/Reality Test);
- Fundamentals of legal system and contract law
- Fundamentals of Family law and divorce procedures (Family Mediator only)
Family Mediator

(c) Satisfactory completion of a family mediation training programme organized / co-organized by HKMAAC with 60 hours minimum duration (or any other programmes approved by the HKMAAC Professional Membership Committee). For the purpose of mediator accreditation, “satisfactory completion” means (i) passing the written examination(s) as required by the family mediation training programme; and (ii) having satisfied the training programme’s attendance requirement.

Stage 2 – Practical Stage

Upon the completion of Stage 1, applicants shall also:-

(a) Mediate at least 2 simulated (or actual) mediation cases.

(b) In case of actual mediation cases, applicant shall be required to obtain the prior approval from HKMAAC. Upon the completion of actual mediation, completed evaluation sheets from the disputants, together with the comments from the HKMAAC mediator supervisor on the applicant’s performance should be obtained.

(c) Prior to the application being accepted, applicant for mediation accreditation may be requested by HKMAAC to take part in an accreditation assessment, including a personal interview, and a possible simulation supervised by an accredited mediator chosen by HKMAAC Professional Membership Committee.

The purpose of the above evaluation process is to satisfy HKMAAC Professional Membership Committee that acceptable level of competence has been achieved by the applicant.

HKMAAC has the right and sole discretion to waive any or all of the above requirements in particular cases.

3 Exemption

(a) Applicants who can demonstrate sufficient mediation knowledge and experience may be granted an exemption by the Professional Membership Committee from any or all of the stages of the accreditation requirements as stipulated herein above.

(b) A request for exemption must be made in writing to the Professional Membership Committee and accompanied by all relevant supporting documentation. Specific exemption may be granted to following applicants who, prior to the date of application:
Guidelines for Mediator Accreditation - Hong Kong Mediation and Arbitration Centre
Jan 2014

(i) Being the mediator(s) of any reputable local or overseas professional body approved by the HKMAAC;
(ii) Having completed a master and/or doctorate degree in the field of alternative dispute resolution from a university or academic institution approved by the HKMAAC; or
(iii) Being the academia, Honorary member, Fellowship of other recognized mediation institutions approved by the HKMAAC.

4. Panel membership

(a) The Two Lists of Panel Mediators will be maintained by the HKMAAC and available on the HKMAAC website (www.hkmaac.org) and at the office of HKMAAC.

(b) Successful candidates will be required to provide the latest resume for consideration.

(c) Panel Membership for the Two Panels will be for one year period.

(d) Panel mediators are required to apply for renewal of accreditation every year. A membership fee is payable upon renewal application.

5. CPD requirements

Renewal of Panel Accredited Mediator membership will be subject to the accredited mediator demonstrating to the HKMAAC Professional Membership Committee that he/she has undertaken or has been exempted from the CPD requirements as set out below:-

(a) It is desirable that HKMAAC Accredited Mediators on both the General and Family Panels be considered to be of high quality and be seen as having met established standards of continuous professional training. It is also desirable that these standards be upheld even after accreditation, and in this regard CPD for HKMAAC Accredited Mediators is considered to be an important element.

(b) The CPD requirements herein are intended to be realistic and are the minimum requirements which HKMAAC Accredited Mediators are expected to meet. HKMAAC Accredited Mediators are encouraged to exceed the minimum requirements whenever possible.

(c) HKMAAC Mediator Accreditation is for a one year period and renewal of such accreditation is subject to, inter alia, that HKMAAC Accredited Mediator seeking renewal of accreditation has undertaken, out of the CPD requirement, a total of at least 5 CPD points in mediation training during the immediately preceding
CPD year. Exemptions from the CPD requirement in mediation training may be granted by the HKMAAC on a case-by-case basis where exceptional circumstances exist and where it is fair and reasonable to do so.

(d) HKMAAC will organize as many professional and educational activities as possible in order to assist our accredited mediators meet their CPD requirements. Compliance may be achieved through a variety of approved activities, and not exclusively through activities sponsored by the HKMAAC.

(e) Each HKMAAC Accredited Mediator shall be responsible for the accurate maintenance of his/her CPD Training Record. Each HKMAAC Accredited Mediator may be required to provide details of all events and activities in the Training Record which will count toward compliance with the CPD requirements.

(f) In the event that accreditation of a HKMAAC Accredited Mediator is duly renewed, the CPD Training Record will be returned to the HKMAAC Accredited Mediator (if any). In the event that accreditation of a HKMAAC Accredited Mediator is not duly renewed, HKMAAC Accredited Mediator in question will be given clear comments and advice on what action is necessary to rectify the situation.

(g) The purpose of the CPD requirements is to enhance the skills and knowledge of HKMAAC Accredited Mediators.

Suggested areas for further study and/or training, include:

- Communication skills
- Negotiation
- Advanced mediation skills
- Conflict management / avoidance

(For HKMAAC Accredited Family Mediators):
- Domestic violence
- Child Abuse
- Child Care and development
- Separation and divorce
- Custody, care, control and access
- Knowledge in solving financial disputes
III. CODE OF CONDUCT

Professional Code of Conduct for Mediators

Preamble

All the General Mediators, Family Mediators of Hong Kong Mediation and Arbitration Centre (“HKMAAC”) shall at all material times comply, and act in accordance with the following principles: (i) Professional Code of Conduct for Mediators, as laid down from time to time by HKMAAC; and (ii) Hong Kong Mediation Code (the “Code”) as promulgated by the Department of Justice, which aims to provide a common standard among mediators and to serve an important quality assurance function.

Any breach of the above principle(s) will be a disciplinary matter and subject to the review and investigation of the Disciplinary Committee of HKMAAC.

The content of the Code is attached as below:-

THE HONG KONG MEDIATION CODE

General Responsibilities

1. The Mediator shall act fairly in dealing with the Parties to the mediation, have no personal interest in the terms of any Mediated 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.

Responsibilities to the Parties

2. 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.

3. Informed Consent
   (a) The Mediator shall explain to all Parties the nature of the mediation process, the procedures to be utilized 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.

4. Confidentiality
   (a) The 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.

5. 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.

6. 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.

Defining the Process

7. 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.

8. 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.

Responsibilities to the Mediation Process and the Public

9. 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.
10. **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.

11. **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.