



THE HONG KONG INSTITUTE OF
SURVEYORS

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19 April 2013

Clerk to Panel
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Attn: Ms Mary So

Dear Sir

Panel on Administration of Justice and Legal Services
Meeting on 23 April 2013

We refer to your letter dated 9 April 2013 and would like to thank you for inviting the Hong Kong Institute of Surveyors to attend the meeting of the Panel on Administration of Justice and Legal Services to give views on the agenda Item III: "Provision of mediation services in Hong Kong."

In this connection, we have pleasure in enclosing our written submission (in English only) for the Panel meeting. A soft copy of our submission has also been sent to the email address sszeto@legco.gov.hk.

Should you have any enquiries about our views, please feel free to contact us.

Yours faithfully

Stephen Lai
President

Enc.

cc. The Hon Tony Tse, Legislative Councillor #2880 5128

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**Legislative Council
Panel on Administration of Justice and Legal Services
Meeting on 23 April 2013**

Views from The Hong Kong Institute of Surveyors (“HKIS”)

**A single accreditation body - Hong Kong Mediation Accreditation
Association Limited (HKMAAL)**

Purpose

1. This paper sets out the views from The Hong Kong Institute of Surveyors (HKIS) on provision of mediation services in Hong Kong and having a single accreditation body, Hong Kong Accreditation Association Limited in 2012.

Background

2. HKIS is one of the key stakeholders in the local construction and real estate industry. As of today, it has a total of 5,729 Corporate Members and 2,651 Probationers and Technical Members. HKIS is comprised of six divisional specialties, namely Building Surveying, General Practice Surveying, Land Surveying, Property & Facility Management Surveying, Planning & Development Surveying and Quantity Surveying. It also has a Dispute Resolution Committee to focus on various alternative dispute resolution (ADR) systems in the local construction and property development/management fields.
3. The diverse expertise of our surveyors is a valuable asset in resolving various types of disputes. Examples of the members' expertise include:
 - Building Surveyors: specialists in handling building defects such as identifying the cause of water leakage and matters relating to the Buildings Ordinance (Cap. 123);



- General Practice Surveyors: specialists in valuation of rental prices and valuation of property prices under the Land (Compulsory Sale for Redevelopment) Ordinance (Cap. 545) and other rental disputes;
 - Property and Facility Management Surveyors: familiar with matters relating to property management and the Building Management Ordinance (Cap. 344);
 - Quantity Surveyors: specialist in construction cost for building development, renovation and fitting out works providing quantum assessment for disputes between clients and main contractors, and disputes between main contractors and sub-contractors as well as redevelopment cost under Cap. 545; and
 - Land Surveyors: experts in the determination of lot boundaries.
4. In the past years, HKIS has been supportive of the Government's initiative in promoting mediation as one of the key dispute resolution methods. We have incorporated mediation as one of the dispute resolution methods in addition to arbitration in our Standard Form of Building Contract in 2005 jointly with the Hong Kong Institute of Architects and the Hong Kong Institution of Construction Managers. We have arranged training courses and accreditation by Hong Kong International Arbitration Centre accredited trainers for mediators in 2005. We have maintained a list of mediators jointly with Hong Kong Institute of Architects to discharge our duties as the appointing authority under the Standard Form of Building Contracts 2005, which is used for building works in the private sector. Currently, the joint list consists of 33 accredited mediators.
5. HKIS is also a founding member of the Joint Mediation Helpline Office (JMHO), an initiative by the Department of Justice. We are currently one of the directors of the JMHO. We have maintained a separate list of accredited mediators to offer community mediation services to the public. Currently, this list consists of 24 accredited mediators.
6. HKIS has made a wide representation in the Construction Industry Council for the past years to offer views on the development of various ADR



systems in Hong Kong including the provision of mediation services to resolve construction disputes.

HKIS views

7. Mediation is a very useful dispute resolution method for the property and construction industry and is becoming more receptive in the recent years. HKIS is very supportive of the use of mediation in resolving construction disputes and community disputes under our special areas of expertise. However, the establishment of HKMAAL has not consulted thoroughly the views of the stakeholders in this sector. With such a wide spectrum of expertise of HKIS members, our surveyors can definitely take active involvement in and make substantial contribution and constructive views to the establishment of HKMAAL, particularly on their specialized areas.
8. The members of the JMHO are supposed to be the key supporters and service providers of mediation. Currently, only three out of eight JMHO members are the founding members of HKMAAL and they are organizations with primarily lawyers as their members. This may give the public an impression that mediation remains something legalistic for lawyers and adversarial in nature, contrary to the voluntariness nature of mediation. It is dumbfounded why on one hand the setting up of JMHO recognized the importance of HKIS as one of the directors while on the other hand HKIS was not invited to be the founding members of the HKMAAL, both of which were steered by the Department of Justice.
9. HKMAAL has come into operation in April 2013 and is now inviting HKIS to become its member. In the absence of a clear grand-parenting policy, we are very concerned about whether our existing panels of accredited mediators would be recognized by HKMAAL if HKIS joins it as a member. If not, coupling with HKMAAL's requirement that its members have to relinquish their rights to accredit, we do not see any merits of HKIS to become a member of HKMAAL and this may affect their future mediation services to the construction and property industry. For mediators who are already accredited by the reputable and professional organizations, we cannot see any reason why they need to be further accredited by HKMAAL. It is akin to the situation where after qualifying as an authorized person, a practising lawyer, or medical doctor by his/her own professional



body, one needs another body to accredit him/her again for the same qualification, and thereby putting this new organization above the original professional body accrediting/granting the qualifications.

10. We consider HKMAAL as it now stands, the intention to add HKMAAL into the Mediation Ordinance, the uncertainty of recognizing our accredited mediators and HKMAAL's requirement that its members have to relinquish their rights to accredit are against the interest of mediators in our Institute and will hinder their services to the construction field and the community. Late last year, our Institute had to stop a mediator training course under preparation for our members because we did not know who will be the trainers recognized by HKMAAL and its accreditation policy.

Recommendation

11. HKMAAL should have HKIS in HKMAAL's Council and get HKIS involved in HKMAAL's Boards/Committees in the setting up of services to be provided by HKMAAL.
12. HKMAAL should adopt an unqualified grand-parenting policy to our existing accredited mediators.

Submitted by
The Hong Kong Institute of Surveyors
18 April 2013