





Alternative Dispute Resolution Committee 解決爭議方式事務委員會

Civil Division 土木分部



Direct Professional Access to Hong Kong Barristers for HKIE Members

Date: 30th July 2015

Speakers: Mr. Gary Soo, Barrister-at-Law, Chartered Engineer Mr. Vincent Li, Barrister-at-Law, Chartered Engineer

Gary Soo

Arbitrator, Barrister-at-Law, Chartered Engineer, Accredited Mediator

LLM (Peking), LLB & BSc FHKIArb, FCIArb, FIoD, CQP, MIStructE, MICE, MHKIE, MASCE

- Arbitration and litigation involving commercial and construction disputes with Mainland China parties and legal issues
- Listed on various panels of arbitrators / mediators / panelists
- Adjunct Professor at University of Hong Kong
- Authors of various books and articles

Vincent Li

Barrister-at-Law, Arbitrator, Mediator, Chartered Engineer, Dispute Resolution Advisor

BSc (Eng), MBA, LLM, CEng, MHKIE, MICE, FHIArb, RPE

- Litigation, arbitration and mediation for disputes on construction, commercial and general civil matters
- Visiting Lecturer at HK Poly U and City U HK
- Speaker for various courses / seminars

Rundown

Overview of Direct Professional Access to Barristers

How, When and What Engineer to Instruct Barrister

Legal Advice & Appearance in Tribunal Proceedings

Working with Barristers: Tips and Pitfalls

Overview of Direct Professional Access to Barristers



Overview of Direct Professional Access to Barristers

- The Legal Professionals in Hong Kong ----Solicitors and Barristers
- Divisions of Roles and Functions
- Legal Practitioners Ordinance (Cap. 159)
- Hong Kong Barristers --- Some Data
- Hong Kong Bar Association
- What Barristers Do?

Traditional' Access to Barristers

Overview of Direct Professional Access to Barristers

- What is Direct Professional Access ("DPA")?
- Are others accessing Barristers directly?
- Why DPA for Engineers?
- Some examples?



A barrister may accept instructions from:

- a) Solicitors in Hong Kong or Director of Legal Aid or the Government (Para.50(a) of the Code of Conduct);
- b) Certain categories of professionals and bodies authorized by custom or the Bar Council (Annex 20 of the Code of Conduct); for legal works in a professional capacity in, e.g., litigation and other legal advisory works in Hong Kong

Under Annex 14 of the Code of Conduct [Overseas Practice Rules of the Bar], a barrister may accept instructions (in gist) from:

- a) Foreign lawyers, for international arbitration works in Hong Kong or for professional works not relating to litigation in Hong Kong;
- b) Local or overseas lay clients, for professional work outside Hong Kong and to be substantially performed outside Hong Kong or relating to litigation or arbitration outside Hong Kong;
- c) Foreign lay clients or lawyers, for professional works not relating to litigation in Hong Kong

Under the Direct Professional Access Rules ("the DPA Rules") set out in Annex 19 & 19A to 19I of Code, a barrister may accept instructions from a member of a "recognised professional body" without the intervention of a solicitor in any matter of a kind which falls generally within the professional expertise of the members of the recognised professional body

Annex 20 of Code lists out the recognised professional bodies

• Annex 19I of the Code sets out the Recommended Standard Terms of Engagement for DPA by HKIE members, incorporating the DPA Rules under Annex 19 of the Code

[http://www.hkba.org/the-bar/code-of-conduct/code_of_conducta19I.htm]

- Instructions from 'Qualified Instructing Member' --- FHKIE or MHKIE --- in capacity as a director, partner, shareholder / member or employee of a company, firm or other body
- Instructions only in a matter of a kind which falls generally within the professional expertise of members of the HKIE
- Not deemed to have accepted instructions until having a reasonable opportunity to peruse

Standard Terms recommended / deemed to apply unless and to the extent varied, including.....

- First point of contact by 'Instructing Member'
- Confirmation of being insured
- Etc.

Legal Advice and Appearance in Tribunal Proceedings



Legal Advice & Appearance in Tribunal Proceedings

What can be done under DPA?

- Legal advice/drafting on all aspects arising from construction contracts, tendering processes, etc.; on merits, evidence, quantum of claims/defences/ assessments; on roles, duties, risks or procedures
- Legal advice/drafting for ADR related matters and for dispute resolution
- Appear as advocate / representative in tribunal proceedings, arbitration, mediation, DRA process or adjudication
- Etc.

Legal Advice & Appearance in Tribunal Proceedings

What cannot be done under DPA?

- Litigation proceedings (up to letter before action)
- Handling clients' money or substantial administrative work
- Doing contract administration type of inter-parties work (e.g. daily correspondences)
- Work where the barrister considers in the interest of the lay client that a solicitor should be instructed

Sample of Brief

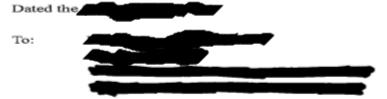
BRIEF TO COUNSEL

Counsel has been provided with all relevant documents of the case.

Counsel is hereby instructed to prepare a written opinion before?

on the following matter relating to the Project

- (a) Whether the Non-completion Certificate issued by the Architect is valid thus rendering the Contractor liable to deduction of liquidated damages
- (b) Whether the Architect's omission in issuing extension of time in time has rendered the time for the Contractor to complete the Works at large.



Brief fee: (inclusive of perusal of papers and general attendance with the instructing quantity surveyor)

Instructing Quantity Surveyor: Mr.



Tel. No. Fax No.

Working with Barristers Tips and Pitfalls



Working with Barristers: Tips and Pitfalls

- Adopting and Following Annex 19I of Code
- Defining Scope of Services
- Preparing Background Papers for Perusal
- Setting Timelines
- Communicating Specific Requirements
- Finding Most Appropriate Mode of Retainer
- Agreeing Fees

Working with Barristers: Tips and Pitfalls

- Other Capacities:
 - -Arbitrator
 - -Mediator
 - Dispute Resolution Advisor
 - -Adjudicator (Recently proposed SOPL)
 - —Etc.
- If Misconduct: Hong Kong Bar Association

Questions & & Answers

