

Establishing IAM presence in Qianhai, China

Section A Background

1. When the IAM-HKMC Symposium took place in October 2020, there was a dedicated sponsorship for simultaneous interpretation (English/Mandarin) of all six capsules. Amongst the three sponsors, there was a Hong Kong law firm, Messrs. Fred Kan & Co, and the other was DHH, a major law firm in mainland China. Fred Kan & Co, DHH and one other law firm in Macau formed an alliance firm ("**Alliance Firm**") back in 2019 to expand their business and presence in the Mainland. Jody Sin (**JS**) was invited to be the mediation consultant of the Alliance Firm.
2. On August 5, 2020, the Alliance Firm signed a framework agreement with the People's Court of Shenzhen Qianhai Cooperation Zone ("**Qianhai Court**") to establish a diversified conflict resolution work cooperation mechanism and an international commercial mediation centre. A press release was made by DHH (see below).

http://www.deheng.com/a/NEWS/Firm_News/20200824/1534.html

Under the Framework Agreement, the Alliance Firm will manage the cases referred to mediation by the Qianhai Court. It also targets at expanding its services in ADR work in other parts of China.

3. Recently, JS received an enquiry from Mr Peter Tang of DHH (the director of the Alliance Firm) regarding IAM's interest in establishing its presence in Qianhai (**QH**). Qianhai Cooperation Zone has been encouraging, inter alia, the establishment of professional mediation organizations in QH to develop cooperation mechanisms with the Qianhai Court. Given IAM's collaboration with Hong Kong Mediation Council last year, Mr Tang asked if IAM would be interested in taking a step further and considering building up its presence in Qianhai. Please see the summary below for the future development of QH pursuant to the recent plan to expand the QH Cooperation Zone announced in August/September 2021. Please note, in particular, the part on opening up the legal and dispute resolution services initiatives of the plan.

<https://www.china-briefing.com/news/china-to-expand-qianhai-cooperation-zone-detailed-aims-services-sectors-hong-kong-macao-gba/>

4. Having conferred with the President, it was understood that EC might wish to receive a working draft proposal for further discussion. Accordingly, the key elements of the proposal are set out below.

Section B Key elements of the draft proposal

1. Vision

One of the visions of IAM is to educate the public, courts, and legislative bodies on effective and appropriate uses of mediation. Since it is intended to establish an international commercial dispute resolution centre in the Qianhai Cooperation Zone in the future, the question that we are asked is whether IAM can play a role in supporting QH to achieve its mission? It is discussed in greater detail below the various areas that IAM may consider rendering its professional support and advice.

2. Nature of the presence and role of IAM in QH

It is understood that IAM may not wish to have a physical presence (e.g. establishing an office) outside the United States. In these circumstances, IAM will need to specify the role it wishes to play in the future development of mediation in QH and how it expects the QH Court to support it.

There are a few options:

- a. IAM can offer itself as an independent advisory body to provide the QH Court with professional advice on shaping the development of mediation in QH. For instance, IAM can help craft the necessary court procedures and mechanisms to encourage litigating parties to attempt mediation; advising on the model of mediation to be adopted; drafting mediation rules; collaborating with arbitral bodies to develop med-arb procedures etc.
- b. IAM could act as one of the collaborative partners (same status as other mediation organizations) with QH court on mediation development, focusing on one or more areas, such as conducting training for various stakeholders, e.g. judges, mediators, lawyers, and/or devising mediator accreditation standards.
- c. A combination of the roles under (a) and (b) above.

3. Key areas that IAM could support

Upon deciding its role as per paragraph 2 above, IAM may consider the target areas it wishes to work on. There are several directions:

a. Advising on mediation development

Mediation has been used in mainland China as a means of dispute resolution. However, most of the mediations are conducted by the judges, who mostly adopt an evaluative approach. To enable the development of professional mediation in QH consistent with the model of mediation used worldwide, IAM can advise on the possible directions that QH court would like to shape its landscape in the future development of mediation, especially for international commercial disputes. Such advice may include but not limited to how the court can support the use of mediation by incorporating mediation as part of the civil litigation procedures; a written legislation on mediation; provision of facilities in conducting the mediation process; how the QH court and arbitral bodies could jointly

design dispute resolution procedures to encourage the multi-avenues in dispute resolution e.g. med-arb.

b. Provision of training

A lot of IAM members conduct training programs in different parts of the world. These programs range from the usual 40 hours training for mediators to the training programs for lawyers to become mediation advocates. The members of IAM will be a useful source of training expertise and programs for prospective mediators in QH or even the Greater Bay Area (GBA).

Further, QH Court may connect IAM with the professional association of lawyers so that the local lawyers will be assured of proper training programs when they need to get themselves trained as mediation advocates. To educate the younger generation of lawyers, QH Court may facilitate the liaison between IAM and the law schools in GBA and southern China where IAM can support the education on ADR, or the design of conflict resolution programs in the law schools.

c. Accreditation standards

The professional standards of mediators are one of the essential building blocks in assuring the confidence of the users in the mediation process. IAM can advise the QH court on various aspects regarding accreditation. For instance, (i) the set-up of a central and unified accrediting body; (ii) the accreditation standards and procedures of mediators; (iii) the standards of trainers for mediation training programs and mediation advocates training programs; (iv) the ethical code and standards of mediators which will be applied to all the mediators.

4. Persons-in-charge of the project

It is proposed that a dedicated committee under the Board of IAM will be established to take charge of this project. The President and/or one of the Vice-Presidents should be included in the committee to ensure continuity of the work. Other committee members can take up specific tasks in relation to this project. For instance, some will be responsible for the tasks relating to training, and others will be responsible for accreditation and ethical standards, etc.