

COLUMBIA LAW SCHOOL & CITY UNIVERSITY OF HONG KONG
INTERNATIONAL ADR MOOTING COMPETITION – REVISED MOOT PROBLEM
(incorporating Clarifications 1)

1. Mr. B. Heng is a resident of Peoples Republic of Inachi (“**Inachi**”). 90% of the population of Inachi comprises ethnic Inachians who speak and use Inachalese, the official language of Inachi. In 2001, Mr. Heng traveled to the Sun Islands State (“**SIS**”) to explore possible opportunities for importing to and commercializing in Inachi SIS-manufactured moisturizing sun creams. SIS is situated in the tropics. The climate in SIS is generally hot and humid, and marked by a rainy season which lasts for about three months of the year, during which typhoons are rare but not unheard of.
2. The moisturizing sun creams manufactured in SIS are made using special Blanco beans indigenous to a particular region in SIS. The Blanco beans have many uses and are renowned for their skin enhancing properties. SIS manufactured moisturizing creams are, therefore, not only an effective means of sun protection but also help increase skin radiance and reduce skin blemishes. While the intensity of the sun in Inachi is not as great as elsewhere, Inachi residents place special value on radiant, unblemished skin and Mr. Heng sensed the availability of a large market share. Although multiple sun creams already existed in the Inachi market, Mr. Heng concluded that none were particularly well branded or marketed, thus presenting an opening for a cleverly branded and marketed product.
3. While in SIS, Mr. Heng met with Mr A. Smith, Managing Director of Hampton SunCare Ltd., a SIS-based sun cream manufacturer that also owns Blanco bean plantations in SIS from which it sources Blanco beans to manufacture its sun cream. Mr. Smith agreed in principle to appoint Mr. Heng or a company incorporated by Mr. Heng as an exclusive distributor of Hampton SunCare creams for the Inachi region and provided Mr. Heng with a letter of intent to this effect. The letter was minimalistic and only contained a requirement that Mr. Heng “*use his best endeavors to promote the Product in the Territory [Inachi] and to procure orders for the Product*”, and a provision for termination on two (2) months prior written notice should “*sales of the Product be insufficient in any given calendar month to meet the agreed minimum sales*”. A copy of the letter is **Annexure A**.
4. In reliance Mr. Heng promptly incorporated Heng SunCare Ltd. in Inachi. Mr Smith then visited Inachi for detailed negotiations with Mr. Heng pursuant to which a Distribution Agreement was executed on 15 January 2002 (“**Distribution Agreement**”) under which Hampton SunCare appointed Heng SunCare Ltd. as its exclusive distributor in Inachi of moisturizing sun cream for a five-year term, commencing January 31, 2002. The Distribution Agreement contained the following relevant terms:
 - Clause 3 of the Distribution Agreement granted Heng Suncare the exclusive right to resell Hampton SunCare's sun cream in Inachi for the period beginning on 31 January 2002 and ending on 31 January 2007.

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- Regarding exclusivity, clause 5 relevantly provided:

“5.1) Distributor’s rights under the Agreement are exclusive and, without Distributor’s written consent (which Distributor may refuse without reason), Supplier may not sell Product in the Territory, or grant similar rights to a third party.

5.2) Each party must use its best efforts to prevent the sale of Products in the Territory by persons other than Distributor (or a sub-distributor appointed in accordance with this agreement).”

- Clause 10 dealt amongst other things with the minimum sales target. Clause 10.3 provided:

“The Distributor will in each year up to 31 January 2007 sell the Product in the quantities specified in the Schedules and for this purpose will purchase such quantities of the Product only from the Supplier. Sales figures for each year will be provided to the Supplier on or before 15 February of the immediately following year. For each year subsequent to 31 January 2007 during which this agreement remains valid, the applicable sales target will unless otherwise agreed be deemed to be the target set for 2006-2007.”

- Clause 12 dealt with the Intellectual Property rights:

“The Distributor retains any and all rights in any trademarks or product descriptions developed specifically for the Inachalese language market. The Distributor grants to the Supplier a license to exploit the Distributor’s trademarks or product descriptions only in so far as is necessary to complete its obligations under this Agreement”

- Clause 21.1 of the Agreement provided that the Agreement “ends”:

“21.1.1) when the Term ends; or

21.1.2) if:

 - (a) a party defaults under this agreement;*
 - (b) by written notice, the other party requires the defaulting party to remedy the default within 21 days (or any longer period the other party allows); and*
 - (c) the defaulting party does not remedy the default within that period; or*

21.1.3) if either party seeks any form of protection from, or arrangement with, its creditors pursuant to the applicable bankruptcy or insolvency laws.

21.1.4) at the expiration of 60 days written notice by one party to the other.

21.1.5) For 2 years from the date at which the term of this agreement ends the Distributor shall not sell or market products that compete with Products as defined in this agreement unless prior written

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agreement to supply such products has been granted by the Supplier.”

- Clause 22 (Dispute Resolution) provided:

“22.1) The Parties will in good faith attempt to mutually resolve any disputes related to this Agreement. Failing mutual resolution, the Parties agree that this Agreement and all its provisions may be governed in all respects by the Hong Kong International Arbitration Centre and general principles of law, but not by the courts nor the law of the respective countries of the contracting parties.

22.2) All interpretations that are required for this contract and disputes arising between the Parties shall be submitted to the Court defined in 22.1 and both Parties expressly waive other rights and privileges, if any.

*22.3) If an arbitration is conducted, before the arbitral decision is communicated to the parties and before an award is issued, the arbitral panel may refer the parties to mediation with a view to the parties reaching an agreement to settle their dispute. Mediation will be conducted in accordance with the Mediation Rules of Procedure and the Code of Conduct for Mediators, **Annexure D**, which are deemed to be incorporated by reference into this clause. The mediation will be conducted by a member of the arbitration panel decided by the panel itself.*

22.4) If the dispute is not settled by mediation within 30 days of the appointment of the mediator, or such further period as the parties shall agree in writing, the dispute shall be finally resolved in accordance with the decision made by the arbitral tribunal in clause 1 and an award shall be issued to this effect. ”

22.5) The language to be used in the mediation and in the arbitration shall be English.

22.6) The governing law of the contract shall be the UNIDROIT Principles of International Commercial Contracts.

22.7) In any arbitration commenced pursuant to this clause,

- i. the number of arbitrators shall be three;*
- ii. the number of mediators shall be one; and*
- iii. the seat, or legal place, of arbitration shall be Inachi.”*

5. During negotiations, Mr. Heng argued strenuously that it was essential that Hampton SunCare guarantee Heng SunCare four years notice of termination so as to protect substantial planned investments in advertising and in opening new markets. Hampton objected strongly to such a term. However, Hampton later agreed that Clause 20 be inserted to provide as follows:

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“If, 4 years before the expiration of the Term, neither party notifies in writing of its desire to terminate this Agreement or to alter its terms and conditions, the Term in this Agreement is automatically extended for 12 months to make up the Term to five years.”

6. Mr. Heng developed a unique trademark for use in the Inachalese language market and aggressively promoted Hampton's re-branded sun cream in Inachi, running an advertising campaign featuring a local Inachi TV celebrity. Although expensive to mount, the advertising campaign was very successful and Mr. Heng consistently substantially exceeded the incremental minimum sales targets set for the years 2001 to 2007 which envisaged a 5% increase in sales each year. In fact, Mr Heng had increased sales by 20% each year during the years 2002 to 2007. During 2002 Mr Heng had sold Inachi \$2 million worth of product. No new sales targets were negotiated for the years subsequent to 2007.
7. In early 2009, Heng SunCare's sales of the sun-cream dropped sharply, despite continued aggressive advertising of the product. Mr. Heng discovered that two of his wholesalers, who were refusing to continue to purchase his product, were still selling the same product in Inachi at below wholesale price. Mr. Heng suspected that the wholesalers were sourcing original products from elsewhere. On 15 December 2009 Mr. Heng emailed Mr. Smith with his suspicions. A copy of the email is **Annexure B**.
8. Mr. Smith replied on 20 December 2009 rejecting the insinuation that Hampton SunCare was in any way involved in parallel importation of the product and suggested the sun cream may be counterfeit. He noted that Hampton SunCare required all its new distributors or other purchasers to sign a declaration in the following terms:
“The Distributor shall not resupply the products outside the Territory, and Hampton SunCare reserves the right without notice to the Distributor to discontinue supply of the products or to reduce or discontinue any discount or other concession which may have been granted to the Distributor if the Distributor resupplies or attempts to resupply products outside the Territory.”
9. A copy of Mr. Smith's email of 20 December 2009 is **Annexure C**.
10. Nonetheless, Mr. Smith decided to investigate the circumstances alleged in Mr. Heng's email. He directed one of his employees, Ms. Turncoat, to conduct the investigation. Ms. Turncoat reported back to Mr. Smith in early January 2010 that Hampton SunCare's sales manager in Ornia, a province of SIS that has a small population of ethnic Inachians, had been selling suspect quantities of the Inachalese-language sun cream to an Ornian distributor, Buccaneer Distributors (“**Buccaneer**”), at prices substantially lower than the price at which the sun cream was being sold by Heng SunCare in Inachi. Buccaneer was then exporting a substantial part of each consignment to Inachi. While it remains unclear whether the sales manager in question was aware of any parallel importation – he explicitly denied being

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so aware – the quantities sold to Buccaneer were objectively greater than would be expected given the size of the Ornian market for Inachalese-language branded moisturizing sun cream. Mr. Smith, upon being informed by Ms. Turncoat of the situation, directed that no further consignment to Buccaneer be fulfilled or approved, and that the investigation be terminated immediately. Mr. Smith at no stage advised Mr. Heng of the internal investigation, its findings or his response.

11. Mr. Heng separately had employed a private investigator to determine the provenance of the sun cream being sold by the wholesalers, and discovered that they were bona fide products manufactured by Hampton SunCare. He discovered that from February 2009 until January 2010, Hampton SunCare had sold large quantities of Inachalese language packaged sun cream to a SIS-based distributor, Buccaneer Distributors, who was then exporting substantial quantities of stock for sale to the two wholesalers in Inachi. This was subsequently confirmed in early February 2010 when Ms Turncoat, whose employment had recently been terminated by Hampton SunCare (for unrelated reasons), informed Mr. Heng of Hampton's own investigations, and Mr. Smith's actions in response to its findings.
12. In 2009 Mr. Heng manifestly failed to attain the applicable sales target and believed it was due to the parallel importation of sun cream into Inachi. On 10 March 2010, without prior notification to Mr. Smith, Heng SunCare Ltd. commenced legal action in the Inachi District Court against Hampton SunCare for the damages it suffered as a result of the parallel importation, which occurred between February 2009 and January 2010. Amongst other things, Mr Heng alleged in his suit that Hampton SunCare should have at least had constructive, if not actual knowledge of the parallel importation. Mr. Heng, however, did not purport to terminate the Distribution Agreement, and continued to request consignments of stock.
13. Meanwhile, on 1 March 2010 a super typhoon hit SIS and ruined most of the Blanco bean plantations in SIS, including those of Hampton SunCare. During the super typhoon, the roof of one of Hampton SunCare's major storage areas was also blown off and a significant amount of Blanco bean inventory was rendered un-useable for the manufacture of the cream. As a consequence, there was a severe shortage of Blanco beans in SIS and the price per pound of beans rose by 75%. After assessing the extent of the damage, Hampton SunCare realized that, under the circumstances, it was no longer viable to continue producing Blanco bean based moisturizing sun creams, at least until next year's bean harvest. On 12 March 2010 Hampton SunCare purported to terminate the Distribution Agreement on the following alternate grounds:
 1. For breach of clause 10 for failure to meet minimum sales targets in 2009, which is a breach entitling termination.
 2. For reasons of force majeure and hardship caused by the super typhoon.
 3. With 60 days notice under clause 21.1.4.
 4. Due to fundamental break down of the relationship.

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14. No notification had ever been given under clause 20.1 by either party.

15. On 14 March 2010, Mr. Heng amended his suit against Hampton SunCare to include a claim for declaratory relief that the purported termination of the Distribution Agreement was unlawful *inter alia* on the ground that the super typhoon did not excuse performance and the termination for failure to meet minimum sales targets was an afterthought and in any event impermissible under the terms of the Distribution Agreement.

16. On 20 March 2010 Hampton SunCare filed a notice of the dispute with HKIAC in accordance with the Arbitration Rules. Inachi has adopted the UNCITRAL Model Law on Arbitration without any alterations and is also a party to the New York Convention. The parties have agreed to hold the arbitration in Inachi without prejudice to their rights to challenge the jurisdiction of the tribunal.

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ANNEXURE A

Hampton SunCare Ltd.
Bean St.
Sun Islands 10000

B. Heng
99 Sun St.
Gongkho 123456
Inachi

31 October, 2001

Dear Mr. Heng,

It was a pleasure meeting with you yesterday. As discussed, we are interested in appointing either you or a company incorporated by you to be the exclusive distributor in Inachi of our special sun cream on the following basic terms:

- a. You and the company incorporated by you, if any, shall use best endeavors to promote the sun cream in the Territory of Inachi and to procure orders for the sun cream; and
- b. You and the company incorporated by you, if any, shall ensure that a minimum quantity of the sun cream, as may be agreed, is sold every month, failing which Hampton SunCare Ltd. may terminate your appointment as distributor with 2 (two) months prior written notice.

As agreed, I shall travel to Inachi in January 2002 to finalize the terms of our agreement.

[Signature]
A. Smith
Managing Director

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ANNEXURE B

BY EMAIL

15 December 2009

Dear Mr. Smith:

In the past year the sales of Hampton SunCare sun cream have dropped sharply (from 90,000 to 60,000 units), despite the fact that we spent 2.2 million Inachi dollars for advertising on Hampton SunCare products.

Originally, I put the blame on the weak economy at the present moment. In the past three months two wholesalers refused to get Hampton SunCare products from Heng SunCare. However, I find out that they have Hampton SunCare goods to sell to the retailers at prices that are somewhat lower than our selling prices to the wholesalers. This makes me think that there must be imitated goods or parallel imports of the Hampton SunCare sun cream getting into the Inachi market.

Given that Heng SunCare Ltd. has not sold any products bearing the Inachi packing with our Inachi company name and logo in other territories or countries, I am certain that these two wholesalers have gotten imitated goods from somewhere and we shall inform the bureau of commercial crime and take appropriate legal action against them for compensation.

I hope you can give me the answer at your earliest convenience so that we can prevent further losses due to copied goods and protect our brand names.

Best regards,

B. Heng

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ANNEXURE C

BY EMAIL

20 December 2009

Dear Mr. Heng,

Please be advised that it is Hampton SunCare’s policy to require every new distributor or other purchaser to sign a declaration prohibiting the re-supply of products outside a concerned territory, subject to discontinuation of supply. This standard declaration is typically worded as follows:

“The Distributor shall not resupply the products outside [the Territory], and Hampton SunCare reserves the right without notice to the Distributor to discontinue supply of the products or to reduce or discontinue any discount or other concession which may have been granted to the Distributor if the Distributor resupplies or attempts to resupply products outside [the Territory].”

My guess would therefore be that the said products are counterfeit. However, we will look into the matter from our end as well.

Best regards,

A. Smith

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ANNEXURE D

MEDIATION RULES OF PROCEDURE

SCOPE AND APPLICATION

- Article 1 These Rules apply to moot mediation of international, cross-border, foreign-related and domestic disputes.
- Article 2 These Rules are formulated for resolving disputes arising between parties with or without contractual relations by means of Mediation.
- Article 3 Mediation can be carried out if an agreement to mediate exists between the parties according to the applicable law. Where no mediation agreement exists between the parties, one party requests mediation and the other party does not refuse, it shall be deemed that a mediation agreement exists.

Notwithstanding the aforesaid, if the Arbitral Tribunal, before making an award, believes that there is still a chance of the parties reaching a successful concord, it may order that the matter be the subject of mediation.

VARIATION OF RULES

- Article 4 When using these Rules, their provisions and stipulations can be varied if the parties are in unanimous agreement and the Director of the Competition also agrees; however, the variation may not violate the law.

MEDIATION DEFINITION AND PROCESS

- Article 5 In these Rules mediation means a dispute resolution process whereby an independent and impartial third party (the mediator) assists disputing parties to negotiate a resolution of their dispute. 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;
 - (c) explore the usefulness of these options to meet their interests and needs.
- Article 6 The Mediator may meet with the Parties together or separately.

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Article 7 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.

Article 8 The Mediator shall conduct mediation independently and impartially in accordance with the stipulations of the contract (if any), these Rules, the Code of Conduct in Appendix 1, the applicable law and the principles of fairness and reasonableness.

Article 9 Mediation can be conducted as a separate process or, if the parties agree, or if the Arbitral Tribunal directs, in combination with arbitration (conducted during arbitration proceedings or at their conclusion but before an award is made) or in combination with litigation (conducted during court proceedings).

APPOINTMENT OF MEDIATOR

Article 10 One mediator shall be appointed for each mediation by the Director of the Moot (i.e. to be allocated by roster prior to the moot taking place).

Article 11 In mediation with one mediator, the parties shall endeavor to reach agreement on the name of a sole mediator. For the purposes of competition the sole mediator will be appointed in accordance with Article 10 of these rules.

Article 12 Judges and mediator(s) are not subject to the limitation of nationality. Any qualified person of any nationality is entitled to be appointed as a judge or mediator.

Article 13 When accepting an appointment, the mediator shall ensure that he/she fulfills his/her duties and discloses any circumstances that may affect his/her independence and impartiality in the specific case. The Parties will then decide whether the mediation will continue with that Mediator or with a new mediator appointed by the Parties.

Article 14 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.

Article 15 The mediator shall endeavour to finish the mediation within the time period allocated for the competition and enforced by the Judges of the mediation.

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COMMENCEMENT OF MEDIATION PROCESS

Commencement of Mediation Process

Article 16 The party initiating mediation shall send the other party a written invitation to mediation to be conducted in accordance with these Rules (or other rules), identifying the subject of the dispute. For the purposes of this competition this shall be deemed to have occurred.

Article 17 Mediation proceedings commences when the initiating party receives the other party's written reply expressing his acceptance of the mediation invitation. For the purposes of this competition a roster of times for mediation will be provided to teams by the Director of the competition.

Statement of Dispute

Article 18 Each party shall submit to the judges and the mediator a written statement of dispute describing general facts and nature of the dispute and the issues in dispute. The statement shall be no more than 2 pages long (12 point, Times New Roman, double spaced). The statement shall be copied to the other party and the Director of the Moot. This representation plan must be submitted to the Moot Director via email at v.nase@cityu.edu.hk by 12 noon on Monday 2nd August, 2010.

ATTENDANCE AND COOPERATION BY THE PARTIES

Article 19 The parties must attend the mediation in person. They may be accompanied by their legal representatives. Of the students representing the particular team in the arbitration hearings, one will undertake the role of the client and the other will continue to act as legal counsel/attorney.

Article 20 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

Article 21 The Parties agree to attend the mediation with authority to settle within any range that can reasonably be anticipated.

Article 22 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

Article 23 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.

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CONFIDENTIALITY OF THE MEDIATION

Article 24 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.

Article 25 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.

Article 26 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.

Article 27 No verbatim recording or transcript of the mediation will be made in any form.

TERMINATION OF THE MEDIATION

Termination of Mediation Proceedings

Article 28 Mediation proceedings shall be terminated when one of the following circumstances arises:

1. The parties have reached a settlement and signed a settlement agreement;
2. The mediator does not see any reasonable prospect of settlement and has declared in writing the termination of the mediation proceedings;
3. All parties or one of the parties make a written request to the mediator to terminate the mediation proceedings; and,
4. The term of mediation expires and the parties do not request an extension.

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SETTLEMENT OF THE DISPUTE

Article 29 (1) If the mediation results in an agreement, the parties shall sign a settlement agreement (including therein a dispute resolution clause to the effect that if one party does not comply with the settlement agreement, the other party may initiate a specified ADR process), and then the mediator(s) may draft the settlement agreement.

(2) 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

Article 30 The Mediator will not be liable to a 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.

Article 31 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.

Article 32 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.

COST OF THE MEDIATION

Article 33 The Parties will be responsible for the fees and expenses of the Mediator in accordance with the SCHEDULE at the end of these Rules.

Article 34 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.

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LEGAL STATUS AND EFFECT OF THE MEDIATION

- Article 35 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.
- Article 36 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.

Appointment of Judges

- Article 37 In each competition session, two Judges shall be present to watch the performance and give marks for it. The Judges are to be appointed by the Director of the Moot.
- Article 38 In each competition session, one counsel and one client from each competing team shall be present. Each match is limited to 120 minutes, with 60 minutes for arbitration (strictly enforced) and 60 minutes for mediating of the dispute. At the conclusion of the mediation competitors and anyone else present, will vacate the room while the judges complete score cards and assess the respective teams Representation Plans. Then judges will provide a few general comments to assist competitors.

A single break of 5 minutes may be taken by each team during each competition session. Caucus breaks of no more than 7 minutes each and 15 minutes total may be proposed by the mediator(s) as the mediator(s) consider necessary and appropriate.

The Director of the Moot may issue instructions to clarify or streamline this procedure if this is seen as necessary. If so, all competing teams will be advised.

These Mediation Rules of Procedure come into force as from 2010.

SCHEDULE

Mediator's Fees and Expenses

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

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Party	1:	_____	%
Party	2:	_____	%
Party	3:	_____	%
Party	4:	_____	%

Or

All parties equally _____ %

THE CODE OF CONDUCT FOR MEDIATORS

This code of conduct is the Hong Kong Mediators' Code of Conduct. Its rules should be adhered to as far as is practicable in this competition. These rules are included for guidance purposes and may be modified where appropriate for the purposes of the competition. Consent to mediate by the parties shall be considered to be given for competition purposes.

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 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. A sample Agreement to Mediate is attached.

(c) The Agreement(s) to Mediate shall include the responsibilities and obligations of the Mediator and the Parties.

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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 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.

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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.