



# CIC 通訊 Newsletter

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## About Construction Industry Council 有關建造業議會

The Construction Industry Council was formally formed on 1 February 2007 in accordance with the *Construction Industry Council Ordinance* (Cap. 587). It has a Chairman and 24 Members representing various sectors of the industry including employers, professionals, academics, contractors, workers, independent persons and Government officials. All of them were appointed by the Secretary for Development in accordance with Section 9 of the Construction Industry Council Ordinance.

建造業議會根據《建造業議會條例》(第587章)於2007年2月1日正式成立。議會包括主席及24名成員。來自代表業內各界別的人士，包括聘用人、專業人士、學者、承建商、工人、獨立人士和政府官員。議會主席及成員均由發展局局長按《建造業議會條例》第9條委任。

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**虎年進步**  
*Prosperous Year of Tiger*

新春愉快 身體健康  
*May this Year of Tiger brings lots of joy  
and good health to you and your family.*

CONSTRUCTION  
INDUSTRY COUNCIL  
建造業議會

Email 電郵：enquiry@hkcc.org  
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Mr LEE Shing-see, GBS, OBE, JP  
Chairman, CIC  
建造業議會主席 李承仕 先生

It is my great honour for being the Chairman of the Construction Industry Council (CIC) in collaborating and working closely with the stakeholders of the construction industry as well as contributing for the future development of Hong Kong. I would like to extend my heartfelt thanks and gratitude to you all within the industry for the great support to the CIC.

Being the Chairman of the CIC is indeed a challenging task but I am very grateful to take up the responsibility to promote the construction industry of Hong Kong, and one of the most important missions is to strive for excellence of the construction industry.

For the Ten Major Infrastructure Projects to be or being implemented, they require extensive professional knowledge in the areas of engineering, architecture, surveying, as well as technical know-how for the construction works which also create a lot of employment opportunities. On the contrary, provision of sufficient workforce to achieve the goals is also a challenge to the industry. The CIC, as the coordinator and the main communications platform for the construction industry, will play an important role in this era.

Here are a few areas where I see the CIC focusing our efforts in the coming years. We shall put more emphasis in introducing and promoting the identity of the CIC in order to enrich everyone's awareness of the CIC, particularly about its functions and activities. A series of communications collaterals will be produced. We shall also optimise the CIC's publications such as guidelines so as to keep the industry stakeholders updated on good practices recognised in the construction industry.

A series of outreach activities will be arranged with an aim to maximise the publicity of the CIC. The inaugural CIC Conference and the CIC Pay for Safety Award Scheme are planned for this year. We shall continue to arrange interflow with industry stakeholders and perform a series of roadshows to schools on a regular basis. We hope to enhance bi-directional communication together with collection of constructive recommendations and feedback from all parties concerned with the construction industry of Hong Kong. Co-operations with other construction organisations are also contemplated so as to maximise the synergy for driving the excellence for the construction industry.

Realising the importance of the sustainability of built environment to the community, the Hong Kong Green Building Council (HKGBC) was established last year with full and pro-active support of the CIC. The CIC will continue to provide assistance in different perspectives and work in close collaboration with the HKGBC to promote this important attribute of the construction industry.

The CIC will continue to perform as the advocate for quality construction in Hong Kong with focuses on key issues and concerns of the construction industry, including construction site safety, manpower training, procurement approaches, subcontracting issues, as well as technology and research. I will definitely take it as my personal goal during my term as Chairman and in the meantime, please provide your continual support to the CIC for the betterment of the construction industry in Hong Kong. 🌱

本人獲委任為建造業議會（議會）主席，得以與建造業持份者聯繫及緊密合作，為香港的日後發展出一分力，深感榮幸。各位業界人士對建造業議會的大力支持，本人在此謹致以衷心感謝。

出任建造業議會主席甚具挑戰性，必須肩負起推廣香港建造業的責任，令建造業力臻卓越，是一項重要的工作。本人獲委此重任，實在非常榮幸。

就即將推展或已展開的十大基建工程，涉獵的專業知識甚廣，包括工程、建築、測量及建造工程的技術知識，亦帶來很多就業機會。再者，提供充足的勞動力以達致此目標，亦為業界的挑戰。議會是建造業的統籌機構及主要溝通平台，擔當重要角色。

議會未來數年會專注於以下範疇。我們會加強推廣及宣傳議會的形象，使大家對議會有更多認識，尤其是議會的職能及活動。就此議會將制作一系列宣傳品。我們亦會善用議會指引等刊物，讓業界持份者獲悉業界認同的良好作業方式。

此外，議會將會安排一系列拓展活動，加強推廣工作。議會首個研討會及議會支付安全獎勵計劃訂於本年度舉行。我們會繼續與業界持份者交流，並定期到學校進行路演，藉此加強雙向溝通，從本地建造業的所有相關人士蒐集具建設性的建議及回應。為促進建造業的卓越表現，務求盡量發揮協同效益，我們計劃與其他建造業機構合作。

鑑於可持續建築環境對社區的重要性，香港綠色建築議會獲議會積極及全面的支持，並於去年成立。議會將於不同層面提供協助，並與香港綠色建築議會緊密合作，藉此推廣建造業此項重要特質。

建造業議會繼續提倡香港的優質建築，並致力處理建造業的重要及關注事項，包括工地安全、人力培訓、採購方法、分判事宜，以及技術與研究工作。這些事項均為本人在主席任期內的個人目標。請各位繼續支持議會，為香港的建造業謀福祉。 🌱

### Chairman | 主席

#### Mr LEE Shing-see, GBS, OBE, JP

Mr LEE is an experienced civil engineer and is well versed with issues concerning large infrastructural projects. Mr LEE also participates in community services in Hong Kong actively. He is currently a member of the Development Committee of the West Kowloon Cultural District Authority, Board of Directors of the Hong Kong Science and Technology Parks Corporation, Hong Kong Design Centre as well as Hong Kong Cyberport Management Company Limited respectively. He is a member of the Environmental Impact Assessment Appeal Board Panel. Mr LEE was the Secretary for Works and Permanent Secretary (Transport & Works).

#### 李承仕 先生, GBS, OBE, JP

李承仕先生現為建造業議會主席。他是一位資深土木工程師，對管理大型基建工程相當熟識。李先生亦熱心參與社會服務，他現分別為西九文化區管理局發展委員會、香港科技園公司、香港設計中心，以及香港數碼港管理有限公司董事局成員，同時亦是環境影響評估上訴委員會小組成員。李先生為前工務局局長及環境運輸及工務局常任秘書長（運輸及工務）。



Mr LEE Shing-see, GBS, OBE, JP  
Chairman, CIC  
建造業議會主席 李承仕 先生

### Members | 成員

#### Ir Dr CHAN Ka-ching, Andrew, JP

Ir Dr Andrew CHAN is the President of the Hong Kong Institution of Engineers and the Chairman of the Hong Kong Green Building Council. He is currently the Deputy Chairman of the global firm of consultants, Arup Group Ltd, and is an expert in civil and geotechnical engineering.

#### 陳嘉正 博士工程師, JP

陳嘉正博士工程師現為香港工程師學會會長及香港綠色建築議會主席。陳博士是一位土木及岩土工程專家，現為奧雅納工程顧問全球副主席。



Ir Dr CHAN Ka-ching, Andrew, JP  
CIC Member  
建造業議會成員 陳嘉正 博士工程師

Ir Dr CHAN is elected a Fellow of the Hong Kong Academy of Engineering Science. He has been an advisor to the Department of Civil Engineering of the University of Hong Kong and an advisor and Adjunct Professor of the Department of Civil Engineering and School of Engineering of the Hong Kong University of Science and Technology.

陳博士亦獲推選為香港工程科學院院士，並擔任香港大學土木工程系顧問，以及香港科技大學土木工程系及工程學院顧問及客座教授。

#### Ir CHAN Siu-hung

Ir CHAN Siu-hung is the Corporate Development Director of CLP Power Hong Kong Limited. He is also the Managing Director of Hong Kong Nuclear Investment Company Limited.

#### 陳紹雄 工程師

陳紹雄工程師是中華電力有限公司企業發展總監，也是香港核電投資有限公司董事總經理。

Ir CHAN is currently a member of the HKSAR Government's Council for Sustainable Development and a member of the Pan-Pearl River Delta Panel of the Central Policy Unit.

陳工程師現為香港特區政府可持續發展委員會成員及中央政策組泛珠三角小組成員。



Ir CHAN Siu-hung  
CIC Member  
建造業議會成員 陳紹雄 工程師



Ms Teresa CHENG, BBS, SC, JP  
CIC Member  
建造業議會成員 鄭若驊 女士

**Ms CHENG Yeuk-wah, Teresa, BBS, SC, JP**

Ms Teresa CHENG is a Senior Counsel, Chartered Engineer and Chartered Arbitrator. She is called to the Bar in England and Wales; and admitted as Solicitor in New South Wales and Singapore. She is a Vice Chairperson of the Hong Kong International Arbitration Centre and a past Chairman of the Chartered Institute of Arbitrators (East Asia Branch).

She also serves as Chairperson of the Copyright Tribunal, the Environmental Impact Assessment Appeal Board Panel and the Transport Advisory Committee and Co-Chairperson of the Appeal Tribunal (Buildings) Panel.

**鄭若驊 女士, BBS, SC, JP**

鄭若驊女士是一位資深大律師、特許工程師及特許仲裁員。此外，她在英國及威爾斯獲得大律師資格，在澳洲新南威爾斯郡及新加坡均獲得律師資格。她現任香港國際仲裁中心副主席。她曾任特許仲裁學會（東亞分會）主席。

她是版權審裁處、環境影響評估上訴委員會及交通諮詢委員會主席。她也被委任為建築物上訴審裁處其中一位主席。



Mr CHEUNG Hau-wai  
CIC Member  
建造業議會成員 張孝威 先生

**Mr CHEUNG Hau-wai**

Mr CHEUNG Hau-wai is a professional building surveyor and is a Fellow of the Hong Kong Institute of Surveyors. Mr CHEUNG is the Ex-Director of the Buildings Department and a Director of the Hong Kong Green Building Council. He has thirty-five years experience in building control and has a keen interest in building rejuvenation.

**張孝威 先生**

張孝威先生是專業屋宇測量師，亦是香港測量師學會資深會員。張先生為前屋宇署署長及香港綠色建築議會董事會成員。他在樓宇管制方面具三十五年經驗，並對樓宇的復修更新工作有濃厚興趣。



Mr CHEW Tai-chong  
CIC Member  
建造業議會成員 周大滄 先生

**Mr CHEW Tai-chong**

Mr CHEW Tai-chong is the Projects Director of the MTR Corporation Limited. He is a Chartered Engineer and a Fellow of four professional institutions in the United Kingdom – Electrical, Mechanical, Civil and Railway Signaling.

**周大滄 先生**

周大滄先生是香港鐵路有限公司的工程總監。周先生亦為特許工程師及英國四個專業學會的資深會員，包括電機工程、機械工程、土木工程及鐵路信號。



**Mr CHOW Luen-kiu**  
Mr CHOW Luen-kiu is the Chairman of the Hong Kong Construction Industry Employees' General Union.

**周聯僑 先生**

周聯僑先生是香港建造業總工會理事長。

Mr CHOW Luen-kiu  
CIC Member  
建造業議會成員 周聯僑 先生

**Ir HO On-sing, Thomas**

Ir Thomas HO is the Chief Executive of Gammon Construction Limited. He promotes innovation excellence and safety in the construction industry. Ir HO participates in community services and professional institutes' services actively. He is currently Honorary President of the Hong Kong Institute of Construction Managers, Vice President of the Hong Kong Construction Association, and Member of the Building Contractors Committee of HKSAR's Development Bureau.

**何安誠 工程師**

何安誠工程師是金門建築有限公司行政總裁。他重視業界的創新及安全，同時亦積極為社會及專業團體服務。何工程師是現任香港營造師學會榮譽會長、香港建造商會副會長，以及香港特區發展局建造商委員會委員。



Ir HO On-sing, Thomas  
CIC Member  
建造業議會成員 何安誠 工程師



**Mr HO Wai-wah**

Mr HO Wai-wah is the Executive Director of the Crownity Engineering Limited. He is also the Chairman in the Hong Kong General Building Contractors Association.

**何偉華 先生**

何偉華先生是均業工程有限公司之執行董事，同時也是香港建築業承建商聯會的會長。

Mr HO Wai-wah  
CIC Member  
建造業議會成員 何偉華 先生



**Mr HUI Hon-chung, Stanley, JP**

Mr Stanley HUI is the Chief Executive Officer of the Airport Authority Hong Kong. He is a member of the Hong Kong Government's Aviation Development Advisory Committee and the Immigration Department's Users' Committee. Mr HUI is also the Chairman of the Vetting Committee of the Professional Services Development Assistance Scheme.

**許漢忠 先生, JP**

Mr HUI Hon-chung, Stanley, JP  
CIC Member  
建造業議會成員 許漢忠 先生

許漢忠先生是香港機場管理局行政總裁。許先生是香港特區

政府航空發展諮詢委員會成員、入境事務處使用服務人士委員會成員，以及專業服務發展資助計劃評審委員會主席。



**Prof KO Jan-ming**

Prof KO is a Vice President, the Chair Professor of Structural Engineering, and Director of PolyU Technology & Consultancy Company Ltd and SMILE Technologies Ltd of the Hong Kong Polytechnic University.

**高贊明 教授**

高贊明教授現任香港理工大學副校長、結構工程講座教授、理大科技及顧問有限公司，以及理大轄下的 SMILE Technologies Ltd 董事。

Prof KO Jan-ming  
CIC Member  
建造業議會成員 高贊明 教授



**Mr KWAN Yuk-choi, James**

Mr James KWAN is the Executive Director and Chief Operating Officer of the Hong Kong and China Gas Company Limited, Deputy President of Towngas International Company Limited, Executive Director of Towngas China Company Limited, Deputy President of Hong Kong & China Gas Investment Limited, and Director of the Group's joint venture companies in China. Mr KWAN is currently a member of Transport Advisory Committee and Vocational Training Council of the HKSAR.

Mr KWAN Yuk-choi, James  
CIC Member  
建造業議會成員 關育材 先生

**關育材 先生**

關育材先生是香港中華煤氣有限公司執行董事暨營運總裁，亦為中華煤氣國際有限公司常務副總裁、港華燃氣有限公司執行董事、港華投資有限公司常務副總裁，以及集團內地數家合資企業之董事。關氏現為香港特別行政區交通諮詢委員會委員及職業訓練局委員。



Mr LAM Oi-ki, Peter  
CIC Member  
建造業議會成員 林煦基 先生

**Mr LAM Oi-ki, Peter**

Peter is Executive General Manager of Chubb Hong Kong Limited responsible for new installation projects, service and product sales departments of Chubb Fire Safety. He graduated in electrical engineering from Hong Kong Polytechnic, and received a Master of Science degree in engineering management from Warwick University. He is a member of Institute of Engineering and Technology. Peter is the Chairman of the Association of Registered Fire Services Installation Contractors of Hong Kong Limited and Vice President of The Hong Kong Federation of Electrical and Mechanical Contractors Limited.

**林煦基 先生**

林先生是集寶香港有限公司的執行總經理，負責防火保安部的新安裝項目、保養及產品銷售。他畢業於香港理工電機工程系，及後取得華威大學工程碩士學位。他是 Institute of Engineering and Technology 的會員。林先生亦是香港註冊消防工程公司商會有限公司的主席及香港機電工程商聯會的副會長。



**Mr LAM Wo-hei, BBS, JP**

Mr LAM Wo-hei is a Registered Architect and Authorised Person (List of Architects) in Hong Kong. He is the Director of the Wong & Ouyang (HK) Limited and the Hong Kong Green Building Council. He is a fellow of Hong Kong Institute of Architects; an adjunct professor of HKU SPACE; and an honorary professor of the Department of Architecture at the University of Hong Kong.

**林和起 先生, BBS, JP**

林和起先生是香港註冊建築師及認可人士，他現任王歐陽（香港）有限公司董事及香港綠色建築議會董事會成員。林先生是香港建築師學會資深會員、香港大學專業進修學院特約教授，以及香港大學建築系榮譽教授。

Mr LAM Wo-hei, BBS, JP  
CIC Member  
建造業議會成員 林和起 先生



**Prof LEE Hun-wei, Joseph**

Prof LEE Hun-wei, Joseph is Pro-Vice-Chancellor and Vice-President of the University of Hong Kong, as well as Redmond Chair of Civil Engineering. He is the Director of the Croucher Laboratory of Environmental Hydraulics. Prof LEE is a Croucher Senior Research Fellow (1998) and received the HKIE Innovation Award for Construction Industry (2002). He is currently the Vice-President of the International Association of Hydraulic Engineering and Research (IAHR). He is a Fellow of the Royal Academy of Engineering (UK) and the Hong Kong Academy of Engineering Sciences.

**李行偉 教授**

香港大學副校長、土木工程系講座教授及裘槎水力實驗室所長。李教授主力研究環境水利學，曾獲香港裘槎基金會最優秀科研學者獎、裘槎水力實驗室獎和美國土木工程師學會ASCE Hunter Rouse水力工程獎（國際水利工程界最高榮譽獎）等獎項。現為英國皇家工程學院院士、並為香港工程科學院院士及副主席、國際水力研究學會（IAHR）副主席。

Prof LEE Hun-wei, Joseph  
CIC Member  
建造業議會成員 李行偉 教授

**Mr MAK Tak-ching**

Mr MAK Tak-ching is an Organising Secretary of the Construction Site Workers General Union.

**麥德正 先生**

麥德正先生是建築地盤職工總會幹事。



**Mr WAN Koon-sun, MH**

Mr WAN Koon-sun is the Vice Chairman of the Hong Kong and Kowloon Electrical Engineering and Appliances Trade Workers Union

**溫冠新 先生, MH**

溫冠新是港九電器工程電業器材職工會副理事長。

Mr WAN Koon-sun, MH  
CIC Member  
建造業議會成員 溫冠新 先生

**Mr WONG Chik-wing, Mike, JP**

Mr Mike WONG is the Executive Director of the Sun Hung Kai Properties Limited. He is a Registered Professional Surveyor and a Fellow of the Hong Kong Institute of Surveyors. Mr WONG is a member of the Executive Committee of the Company and is currently responsible for project management matters of the Group's development projects.

**黃植榮 先生, JP**

黃植榮先生是新鴻基地產發展有限公司執行董事。他是香港測量師學會資深會員及註冊專業測量師。黃先生是新鴻基地產發展有限公司執行委員會成員，現時專責統籌集團工程策劃事務。



Mr WONG Chik-wing, Mike, JP  
CIC Member  
建造業議會成員 黃植榮 先生

**Mr WONG Tin-chueng, Conrad, JP**

Mr Conrad WONG is the Vice Chairman of Yau Lee Group, Managing Director of Yau Lee Construction Company Limited and Chief Executive Officer of VHSOFT Technologies Company Limited. He is the President of the Hong Kong Construction Association and a Director of the Hong Kong Green Building Council. Mr WONG is also an Adjunct Professor in the Department of Building and Real Estate of the Hong Kong Polytechnic University.

**黃天祥 先生, JP**

黃天祥先生是有利集團副主席、有利建築之董事長及緯衡之行政總裁。他是香港建造商會會長及香港綠色建築議會董事會成員。黃先生亦是香港理工大學建築及房地產學系兼任教授。



Mr WONG Tin-cheung, Conrad, JP  
CIC Member  
建造業議會成員 黃天祥 先生

**Ir WONG Wing-hoo, Billy, JP**

Ir Billy WONG is the General Manager of Construction Department of Henderson Land Development Company Limited. He is a Fellow of the Institution of Civil Engineers, Hong Kong Institution of Engineers, Institution of Highways and Transportation and Hong Kong Institution of Highways and Transportation. He is also a Registered Professional Engineer under the Engineers Registration Ordinance Chapter 409. Ir WONG is the Permanent Supervisor of Hong Kong Construction Association and is the Chairman of the Construction Industry Council Training Authority (Previous known as Construction Industry Training Authority).

**黃永灝 工程師, JP**

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## Government's New Initiatives to Boost Manpower of Construction Industry 政府為增加建造業人力資源的新措施

In view of the aging population and possible skill mismatch in the construction industry of Hong Kong, the Financial Secretary of HKSAR announced in his 2010/2011 Budget (the Budget) that HK\$100 million would be earmarked to the CIC to strengthen the training and trade testing of construction personnel and to uplift the image of the industry through promotion and public education.

It is also recommended to uplift the image and improve the practice of construction industry, as well as to provide all-round training so as to enhance technical skills for the upcoming infrastructure works. Ultimate purpose of these measures is to attract more people, especially youngsters, to join the construction industry so as to maintain the sustainable development of the construction industry in Hong Kong.


The CIC welcomes the new initiatives of the Government which is in line with the CIC's manpower training direction. On 24 February 2010, the day the Budget was announced, the Development Bureau also informed the CIC of these initiatives. The CIC Members discussed them in detail and gave their unanimous support to these proposals. The CIC will liaise closely with the Government to implement them smoothly.

For details on these initiatives, please refer to the webpage of the Development Bureau at <[http://www.devb-wb.gov.hk/press\\_releases\\_and\\_publications/UMPR/index.aspx?langno=1&nodeid=1779&Branch=A&lstYear=2010&PressReleaseID=12521](http://www.devb-wb.gov.hk/press_releases_and_publications/UMPR/index.aspx?langno=1&nodeid=1779&Branch=A&lstYear=2010&PressReleaseID=12521)>. 

鑑於香港建造業工人年齡偏高及可能出現技術錯配的情況，香港特別行政區財政司司長在二零一零至一一財政年度政府財政預算案（預算案）宣布預留1億元予建造業議會，加強建造業人員的培訓及技能測試，並透過宣傳和公眾教育改善建造業的形象。

預算案亦建議提升建造業的形象及改善業內文化，並加強全面培訓，優化技術水平，配合即將推行的基建工程。這些措施的最終目的是吸引更多人士，尤其是年青人加入建造業，維持香港建造業的可持續發展。

建造業議會歡迎政府的新措施，正好與議會的人力資源培訓方向不謀而合。在2010年2月24日預算案宣布當日，議會亦從發展局得悉有關事宜。議會成員於同日進行詳細討論後，一致支持有關建議。議會將會與政府密切聯繫，使之順利推行。

有關措施的詳情，請參閱發展局網頁<[http://www.devb-wb.gov.hk/press\\_releases\\_and\\_publications/UMPR/index.aspx?langno=2&nodeid=1779&Branch=A&lstYear=2010&PressReleaseID=12521](http://www.devb-wb.gov.hk/press_releases_and_publications/UMPR/index.aspx?langno=2&nodeid=1779&Branch=A&lstYear=2010&PressReleaseID=12521)>。

## Construction Dispute | 建造業爭議

### Resolving Construction Claims Through Mediation<sup>1</sup>

#### 以調解方式解決建築申索<sup>1</sup>

*\* This article is contributed by Lovells.  
本文章由路偉律師行提供。*

On 1 January 2010 the High Court of Hong Kong introduced Practice Direction 31 (similar to the existing Practice Direction 6.1 which applies to the Construction and Arbitration List of the Court) promoting the use of mediation as a vehicle for the resolution of disputes. Members of the construction industry played a key role in the founding of the Mediation Council in 1994 and since this time mediation has played a significant and successful role in the resolution of disputes in the industry.

2010年1月1日，香港高等法院頒布《實務指示31》（與現有的實務指示6.1內容相似，該實務指示適用於法院的建築及仲裁案件審訊表），鼓勵使用調解作為解決爭議的一種途徑。香港調解會早於1994年成立，建築業界成員對該會的創立扮演著關鍵性的角色。自該時起，調解程序在業界內的爭議解決問題上發揮著重要而且成效綽著的作用。

In this article, Timothy HILL and Damon SO, Partners in the Projects (Engineering and Construction) Practice at the law firm Lovells answer a number of questions regarding mediation.

在本文中，路偉律師行項目（工程及建築）事務部的合夥人 Timothy Hill 律師及 Damon So 律師解答若干與調解程序有關的問題。

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### **What is mediation?**

Mediation is a process by which the parties to a dispute are assisted by an independent third party, the mediator, to resolve their dispute. One of the fundamental distinctions of this approach, when contrasted with other approaches is that the parties retain control over the process and in particular settlement of the dispute. This can be contrasted with the other principal forms of dispute resolution adopted in the construction industry arbitration or court proceedings, where the appointed third party determines the dispute and imposes a settlement on the parties.

### **Does it work?**

There was considerable scepticism when mediation was initially promoted in Hong Kong. We recall that clients were concerned that mediation would be embarked upon without any real intention to engage in the process, but early experience with the Airport Core Programme proved these concerns to be unfounded. We believe the success rate with the disputes which went through mediation was over 85%. Anecdotal evidence would suggest that a success rate of around this level is realistic, although inevitably the outcome will reflect the many different factors arising in respect of any dispute. Similarly our own experience is that with the assistance of a skilled and experienced mediator clients have been successful in resolving disputes which seemed destined for a trial.

### **What is the effect of Practice Direction No. 31?**

Practice Direction No. 31 is significant for two principal reasons. Its most direct effect is where there are Court proceedings parties will be encouraged to consider undertaking mediation to resolve their disputes. Whilst mediation will remain voluntary, the Court may make an adverse costs order where a party unreasonably fails to engage in mediation. The Practice Direction identifies the existence of active without prejudice settlement negotiations being in progress between the parties as one such explanation. It is anticipated that the Court will set an anticipated minimum level of participation.

The second significance is that the implementation of the Practice Direction has been accompanied by extensive publicity and a push by a number of organisations to expand the knowledge and understanding of mediation amongst the public at large and the relevant professional and industry bodies. A likely consequence of this will be a growing awareness of and willingness to use mediation to resolve disputes or situations which might develop into disputes.

### **How is a typical mediation conducted?**

In a typical mediation, a single individual will be appointed as mediator. The mediator will have one or more meetings with the parties to discuss the preparation for the main mediation session. Parties should be prepared for the

### **什麼是調解？**

調解是爭議雙方借助獨立第三方調解員的協助，解決雙方之間的爭議的過程。相對於其他爭議解決方法，這途徑的一大特色是雙方在整個過程中，特別是在和解安排上保留著相當的控制權。相比之下，建造業界經常採用的其他主要爭議解決途徑——仲裁和法院訴訟，則會由獲委任的第三方對爭議作出裁決及對雙方施加和解安排。

### **可行嗎？**

最初在香港推行時，大家對調解均抱有相當的懷疑。記得當年客戶關注的一個問題是對方會否是在沒有誠意的情況下開始進行調解程序，但從早期機場核心工程所取得的經驗證明這些憂慮均沒有根據。我們相信通過調解進行爭議解決的個案中成功率超過85%。非正式估計顯示這個水平的成功率是符合現實的，雖然這些結果必然會反映爭議解決過程中出現的多種不同因素的互動。同樣地，根據我們本身的經驗，在具備合適技巧和經驗的調解員的協助下，某些看來必然會訴諸法院的爭議，均可透過調解而成功獲得解決。

### **實務指示 31 有什麼效用？**

實務指示 31 的重要性來自兩個主要原因。最直接的影響是法院會鼓勵與訟雙方通過調解程序解決爭議。調解程序依然是在自願的基礎上進行，但法庭可對在沒有合理解釋下拒絕參與調解的一方發出不利的訟費命令。實務指示列出若干可接受的合理解釋，其中一項是各方已在無損權利的前提下展開積極的和解談判並取得進展。預期法庭會設定一個最低限度的預期參與水平。

第二個重大的影響是在實務指示推行的同時，亦進行了廣泛的宣傳活動，多個組織機構亦在普羅大眾以及相關的專業和業界團體之間積極推動對調解的認識和了解。這發展的後果應會逐漸提高大家使用調解方式解決爭議或可能演變成爭議的情況的意識和意願。

### **典型的調解程序是如何進行的？**

典型的調解程序進行時通常會委任一名個人作為調解員。調解員會與有關各方進行一次或以上的會面，商討主要調解會議的籌備工作。在主要調解會議舉行

mediator to contact them, or the other party in the dispute in an informal manner in the run up to the main mediation session. The purpose of this contact is two fold, firstly to ensure that the parties arrive at the main mediation session prepared to deal with the issues which are likely to arise and secondly to provide the mediator with an opportunity to begin to build a rapport with the parties and their representatives which will help to ensure that the mediation is successful.

At the main mediation session the parties will have an opportunity to present their respective positions. The session may take place over a number of days or in the very largest cases over a number of sessions. The primary purpose of such presentation is to inform the principals of the other party about the dispute that they will face. This can be contrasted where with an adjudicative process where the focus is on persuading the judge or arbitrator of the merits of the position.

Following the presentations, the mediator will begin the task of seeking to assist the parties to develop a compromised proposal. In this process, the mediator is likely to meet with the parties separately, although this can be done in joint session.

When terms of settlement are agreed the mediator will assist the parties to document the settlement, as described below this is a key part of the process.

### **How do I go about selecting a mediator?**

One of the key challenges in achieving a successful outcome to mediation is the identification of an appropriate mediator. There are no formal requirements and it is not essential that the mediator has industry knowledge (although this can help). The construction industry is fortunate that a number of leading practitioners have undergone training as mediators and are now accredited by relevant institutions as mediators. There are a number of accreditation bodies, of which the Hong Kong International Arbitration Centre (HKIAC) is perhaps the best known locally. A list of accredited mediators can be found at <[www.hkiac.org](http://www.hkiac.org)>.

The HKIAC and other accrediting organisations will assist parties in selecting and appointing mediators.

In choosing a mediator, it is important to remember that the mediator's skill of facilitating resolution, including the possibility of persuading the contrary party that there are good reasons for them to consider a settlement or improved settlement offer, are important factors. Our own experience of a skilled mediator can make a very substantial difference to the prospects of success of the mediation process.

前，調解員會分別與雙方非正式會面，目的有二，其一是確保雙方在進行主要調解會議前對可能會出現的問題有所準備，預備好如何處理；其次是給予調解員機會與雙方及他們的代表建立某種默契，有助於確保調解的成效。

進行主要調解會議時，雙方分別有機會陳述他們的立場。調解會議可能有需要進行數日，而在非常複雜的個案中，亦有可能需要進行多次調解會議。雙方陳述的目的是讓對方了解他們所要面對的爭議。與一般仲裁或訴訟程序不同的是，在該等程序中雙方陳述的目的主要是遊說法官或仲裁員接納他們的論據。

雙方陳述後，調解員會開始協助雙方達成妥協和解方案。在此過程中，調解員可能會與雙方分別會面磋商，亦可在聯合會議中進行。

倘若雙方達成和解協議的內容，調解員會協助雙方以書面方式起草和解安排，這是調解程序的主要部份，見下文詳述。

### **怎樣選擇調解員？**

在調解程序中取得成功的一個主要因素是挑選合適的調解員。調解員並無正式的資格要求，而調解員是否具備相關的業界知識亦並非必要的條件（這當然會有所裨益）。建築業內相當多的主要執業人員已接受調解員的訓練，並已獲得相關組織的認證。現有多家認證機構，其中香港國際仲裁中心在本港最為人所知。該中心的網站 <[www.hkiac.org](http://www.hkiac.org)> 載有一份認可調解員名單供參閱。

香港國際仲裁中心及其他認證機構會協助爭議雙方選擇和委任調解員。

在選擇調解員時應緊記，調解員是否具備協助雙方達成解決方案的技巧是非常重要的考慮因素，包括能否遊說對方去考慮達成和解或更佳和解方案的好處。我們的經驗證明熟練的調解員對調解過程的成敗扮演著舉足輕重的角色。

### **What sort of things should be considered before attending a mediation session?**

We think it important that parties undertake a realistic assessment of the merits of their position before the commencement of the mediation and that such assessment is kept under review during the process. In the run up to a main mediation session it is often helpful to seek the views of someone within your own organisation who is not familiar with the detail of the issues to reality test the presentation and reasonableness of the position.

Detailed consideration should be given to the value and strength of each element of the claim and counterclaim to the development of coherent settlement positions. A realistic assessment of the best alternative to a negotiated agreement should be given.

### **How is a settlement agreement given effect?**

Once the terms of a compromise are agreed, the mediator will proceed to assist the parties in documenting that settlement. Whilst very often this can be achieved by a simple document, in other cases the negotiation of the precise terms of the compromise agreement may require some assistance. The help of a mediator in concluding a fully documented arrangement can be invaluable. There is nothing worse than a compromise being lost because of the inability of the parties to finalise the terms of their agreement.

### **What happens if an agreement reached in mediation is not honoured?**

Our experience is that it is rare for parties not to honour agreements reached during the mediation process. This no doubt reflects the fact that the parties have chosen to compromise on the particular terms rather than having them imposed by a third party.

In the construction industry it is common for mediation to be an intermediate step in a dispute resolution provision leading to arbitration. In the rare circumstances where a mediated settlement is not honoured and it forms part of a dispute resolution process involving arbitration, a settlement agreement made during the course of mediation will be enforceable in the same way as an arbitration award. In other cases, the compromise will be no different to any other agreements that the parties may have reached and will be enforced by way of a claim for breach of contract.

### **Will mediation mean that I have to pay an unjustified claim?**

It is sometimes suggested that mediation involves payment for unjustified claims. Whilst successful settlement will often involve some element of compromise on the part of all parties to a dispute; we have had experience where a well structured mediation process was sufficient to persuade a

### **在出席調解會前應考慮什麼事宜？**

我們認為非常重要的是雙方在開始調解會議前應對本身的情況作出符合實際的評估，並且在整個過程中對此不斷作出檢討。在主要調解會議的籌備過程中，可邀請對相關事件並不熟識的公司內部人員對己方的陳述和立場的合理性進行現實測試並提供意見。

當事人應詳細考慮所提出申索或反申索每一方面的價值和優勢，以形成貫切一致的和解立場。除此，亦應對協議以外的取代方案作切合實際的評估。

### **和解協議如何發生效力？**

雙方就和解安排達成協議後，調解員會協助雙方編寫有關和解安排的內容。一般而言，一份簡單的文件已經足夠應付，但某些情況下，有需要調解員協助就和解協議的確切條款進行談判。調解員在擬備一份完整的和解協議上可提供莫大價值的協助。假如雙方已達成和解但無法就協議的條文達成最終文稿，這將會是最壞的情況。

### **經調解所達成的協議不獲履行會有什麼後果？**

據我們的經驗，當事方很少會不履行經調解而達成的協議。這情況反映雙方是自願選擇按有關條款達成和解而並非被某第三方將有關條款施加在他們身上這事實。

在建築業界，調解通常會是最終進行仲裁的爭議解決過程中的中間程序。在極少數調解協議不獲履行的例子中，假如該調解程序是構成涉及仲裁的爭議解決程序的一部份時，調解協議可按照仲裁裁決相同的方式予以強制執行。在其他情況下，和解協議與通過其他方式達成的協議一樣，可提出違約申索而予以強制執行。

### **調解會否意味著需要支付沒有充份理由的申索？**

有意見認為調解會涉及需為沒有充份理由的申索支付補償的情況。成功的和解通常會涉及爭議各方均需作出某程度的妥協；我們的經驗顯示良好的調解程序足以說服當事人接受現實，相信他申索的成功機會渺茫，因而實質上按照調解開展前獲提供的相同條款而

party that its claims had little prospects of success and therefore a compromise on substantially the same terms as had been offered prior to commencement of the mediation was accepted.

It should be remembered that the settlement of any claim lies with the parties. There is no obligation on the parties to agree a compromise; and in considering any proposal they clearly should bear in mind their own commercial interest. We advise parties to be realistic in their approach recognising the direct cost and opportunity cost of the alternatives to an early settlement.

#### **What limitation exists on the adoption of mediation?**

There are a small number of types of commercial disputes where mediation is not an appropriate solution, this is generally where the dispute involves the rights of the public at large - but generally mediation can be used to resolve all manner of disputes.

We have been surprised that despite the success of mediation, there remains reluctance on the part of some parties in the industry to voluntarily adopt mediation where contracts do not include a requirement for its adoption. Surprisingly, this is even the case where other contracts entered into by the relevant party include mediation. We also see reluctance amongst contractors to adopt mediation in their dealings with sub-contractors. In the light of Practice Direction No. 31 such reluctance will become increasingly difficult to justify.

#### **What are the greatest challenges faced in mediation?**

In our discussions with clients, we perceive that there is a growing concern that mediation in the construction industry particularly involving substantial government projects is moving away from the quick and relatively cost free approach initially envisaged by the rules, to a more formal and lengthy process. Although there is justification in this concern, it does to some extent fail to recognise that the success of mediation in the construction industry in Hong Kong has from its very earliest days reflected a relatively formal process. However, excessive delay and associated cost and formality will adversely affect the adoption of mediation. At the same time a simpler process may result in a higher failure rate and accordingly a balance must be struck.

#### **What is the future of mediation in Hong Kong?**

The Department of Justice published a Working Paper on the future of mediation on 8 February 2010 and commenced a three month consultation process. A copy of the paper can be downloaded from <<http://www.doj.gov.hk/eng/public/mediation.htm>>. Among the recommendations of the Working Group is that there should be a stand-alone Mediation Ordinance which aims at providing a legal framework for the conduct of mediation without hampering

達成和解。

值得注意的是任何申索的和解均在乎於雙方的態度。任何一方均無義務必須同意作出妥協；在考慮任何建議時，當事人應清楚他們本身的商業利益。我們建議當事人均應抱著切合實際的期望，清楚認定有關的直接成本和提早達成和解的機會成本。

#### **採用調解有什麼限制？**

僅有很少類形的商業爭議是不適合進行調解的。這些爭議通常是涉及公眾權益的爭議，但一般而言，調解適用於各類形爭議的解決。

我們感到奇怪的是，雖然調解的成功例子這麼多，但業內仍有部份人士抱有猶疑的態度，在合約沒有要求時，很少會自願地採用調解。甚至合約內容已包含採用調解的條款，仍有人不會自願採用。我們亦見到有部份承包商不願意在他們與分包商的交易上採用調解程序。頒布實務指示 31 後，這些猶疑的態度將會更加難辯解。

#### **調解面對的最大挑戰是什麼？**

在我們與客戶的討論中，我們觀察到有關注表示特別在涉及大型政府工程的項目上，建築業界漸漸放棄原來快捷和成本相對較低的調解方式，轉而使用較正規的程序上。然而，過份的延誤和相應的費用和繁複手續會對調解的採用產生不利影響。但與此同時，較簡單的程序亦會導致失敗率較高。我們應該取得平衡。

#### **香港調解程序的未來？**


律政處於 2010 年 2 月 8 日就調解的未來發表一份工作報告，並展開為期三個月的公眾諮詢；該份文件可在 <<http://www.doj.gov.hk/eng/public/mediation.htm>>查閱。工作小組提出多項建議，其中包括制定一條獨立的《調解條例》，目的是提供適當的法律架構以進行調解，但同時不應妨礙調解程序的靈活性。

the flexibility of the mediation process.

The Secretary for Justice has also promoted a Mediate First Pledge reflecting a scheme successfully adopted elsewhere to encourage commercial organisations to commit to attempting mediation before resorting to other means of dispute resolution. Details of the scheme can be found at <<http://www.mediatefirst.hk/site>>.

**Can I bring proceedings if the mediation does not succeed?**


In the construction industry it is common for mediation to form one step in a tiered dispute resolution provision. If the mediation fails to arrive at compromise, the parties may continue through that process. Often this will mean an arbitration.

One important point to note is that commencement of the mediation will not prevent the limitation period from continuing to run. Under Hong Kong law, a claim must be brought within a limited time period, usually 6 or 12 years, from the date that the right arose, otherwise the right will be lost. Commencement of the mediation will not be sufficient to prevent this period from continuing. 

律政司司長亦提出推動一項在其他地方取得美滿成績的「調解為先」承諾書運動，鼓勵商業機構承諾在使用其他方法解決爭議前，會先考慮進行調解。該計劃的詳情可在 <<http://www.mediatefirst.hk/site>> 查閱。

**調解失敗後可以提出訴訟嗎？**

在建築業界調解通常是多層爭議解決條款中的一個環節。倘若調解失敗，當事人可繼續進行有關程序，通常會是仲裁。

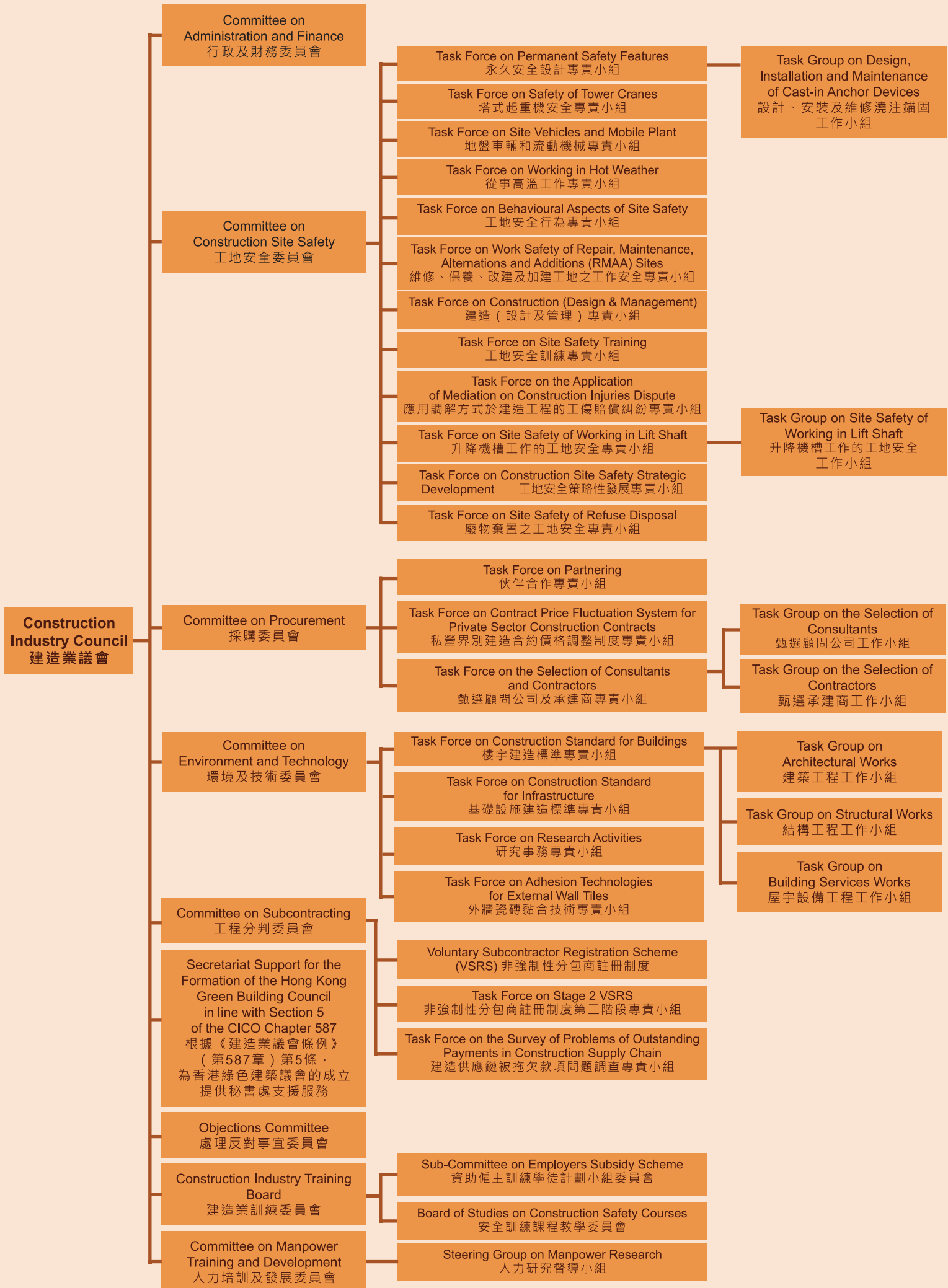
值得注意的是，開展調解不會妨礙訴訟時效期的計算。根據香港法例規定，申索必須於訴訟時效期內提出，通常由權利產生時開始計 6 年或 12 年，否則該項權利將會失效。調解的開展不足以停止該時效期的計算。 

**CIC Events Calendar | 議會活動日誌**

Date 日期	Event 活動	Organiser 主辦機構	Venue 場地
5 March 2010 2010年3月5日	CIC Anniversary Cocktail Reception 建造業議會周年酒會	Construction Industry Council 建造業議會	Hong Kong Club 香港會
July 2010 2010年7月	Lu Pan Patron's Day Dinner Reception 魯班先師寶誕晚宴	Construction Industry Council Training Academy 建造業議會訓練學院	(To be confirmed) (稍後通知)
Oct / Nov 2010 2010年10 / 11月	CIC Pay for Safety Award Scheme (tentative) 建造業議會支付安全獎勵計劃 (暫定)	Construction Industry Council Hong Kong Construction Association Real Estate Developers Association of Hong Kong 建造業議會 香港建造商會 香港地產建設商會	(To be confirmed) (稍後通知)
Oct / Nov 2010 2010年10 / 11月	CIC Conference 2010 2010年建造業議會研討會	Construction Industry Council 建造業議會	(To be confirmed) (稍後通知)

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and experience within the construction industry

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