

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: 30<sup>th</sup> 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**

**FHKI Arb, FCI Arb, FIoD, CQP, MI StructE, 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, FHI Arb, 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

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- **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

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- **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

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

# How, When and What Engineer to Instruct Barrister





# How, When & What Engineer to Instruct Barrister

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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

# How, When & What Engineer to Instruct Barrister

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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

# How, When & What Engineer to Instruct Barrister

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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

# How, When & What Engineer to Instruct Barrister

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

# How, When & What Engineer to Instruct Barrister

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- 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

# How, When & What Engineer to Instruct Barrister

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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

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## ■ 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

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## BRIEF TO COUNSEL

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

Counsel is hereby instructed to prepare a written opinion before [REDACTED]

[REDACTED] on the following matter relating to the Project [REDACTED]

- (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.

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Dated the [REDACTED]

To: [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

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

Instructing Quantity Surveyor: Mr. [REDACTED]

Messrs. [REDACTED]  
[REDACTED]  
[REDACTED]

Tel. No. [REDACTED] Fax No. [REDACTED]  
[REDACTED]

# Working with Barristers

## Tips and Pitfalls



# Working with Barristers: Tips and Pitfalls

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- 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

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## ● Other Capacities:

— Arbitrator

— Mediator

— Dispute Resolution Advisor

— Adjudicator (Recently proposed SOPL)

— Etc.

## ● If Misconduct: Hong Kong Bar Association

# *Questions & Answers*

