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Chapter 1 Introduction and Overview

¶1-010 Overview of the Origins of Modern Mediation

Mediation has existed in one form or another for centuries, perhaps for as long as disputes or differences have needed to be resolved. In all cultures, traditional models of mediation have been developed to help parties reach resolution of conflict. Therefore, it is important to bear in mind that the current model of commercial mediation, now firmly established in many jurisdictions worldwide and currently being adapted in Greater China to a lesser or greater degree, did not appear in a vacuum. Speaking to Chinese or Asian audiences about mediation care should be taken to acknowledge that the listeners are part of an already rich mediation history which existed long before the recent modern Western models became popular.

There are many examples in Asia of traditional mediation practices, for example, in overseas Chinese communities clan associations and in Malaysia the penghulu or headman of a kampong, have all been the source of mediation services.¹ Each year in China the People's Mediation Committees mediate over seven million cases at the community and workplace level which means in fact that Greater China mediates more cases each year than any other region. Another Asian example is in Japan where "mediation is embedded in the business culture, where intermediaries are used as introducers, shokai-sha, and as mediators, chukai-sha, to facilitate business relationships."²

¶1-011 The Modern Phase of Mediation

Where did this model of commercial mediation come from? In order to answer this question this book will look at the modern mediation practice model most commonly used in international commercial civil cases. But first I will take a short look at the origins of the mediation model, which emerged from the United States about four decades ago, in response to a perceived need to offer people in dispute situations alternatives to litigation.

Although mediation had been used in the US in employment matters previously the first major initiative was the creation of the Federal Mediation and Conciliation Service (FMCS) in 1947. The primary focus of the FMCS was to resolve labour disputes and advise on the development of mediation programs.³

However, most would agree that modern commercial mediation really only started to grow towards its current form after the Roscoe Pound Conference of 1976. At the 1976 conference, legal scholars met to share ideas of how to improve the American legal system. The keynote address was

¹ Yong Pung How, Honourable Chief Justice, Speech City Hall, Singapore, 31 July 2002

² Moore, C. W. *The Mediation Process*, Jossey-Bass, San Francisco, 1996, p.33

³ See FMCS website at [http://www.fmcs.gov]