

For information

**Legislative Council
Panel on Development**

**Pilot Mediation Scheme in Support of Property Owners Affected by
Compulsory Sale under the
Land (Compulsory Sale for Redevelopment) Ordinance**

Purpose

This paper informs Members on the findings of the Consultancy Review on the Pilot Mediation Scheme in Support of Property Owners Affected by Compulsory Sale under the Land (Compulsory Sale for Redevelopment) Ordinance (PMS) carried out by Versitech Limited of the University of Hong Kong (Versitech).

Background

2. In response to the community and Members' call for further support from the Government to the minority owners affected by compulsory sale when the Land (Compulsory Sale for Redevelopment)(Specification of Lower Percentage) Notice was scrutinized by the Legislative Council back in early 2010, the Development Bureau (DEVB) commissioned the Joint Mediation Helpline Office ("JMHO")¹ to launch PMS on 27 January 2011.

¹ JMHO was founded by the Hong Kong Mediation Council, the Hong Kong Bar Association, the Law Society of Hong Kong, the Chartered Institute of Arbitrators (East Asia Branch), the Hong Kong Institute of Arbitrators, the Hong Kong Institute of Architects, the Hong Kong Institute of Surveyors and the Hong Kong Mediation Centre in 2010.

3. The scope of PMS covers, inter alia, the administration and consultancy service for a pilot scheme to facilitate owners in engaging in mediation to settle their disputes arising from compulsory sale, the training of mediators on mediation for compulsory sale, and publicity of mediation for compulsory sale. Under PMS, an eligible elderly owner can also apply for financial support for his share of the mediator fee for up to 15 mediation hours subject to means test.

4. In March 2013, after a pilot run for more than two years, the Bureau commissioned Versitech to conduct a comprehensive review of PMS to ascertain the suitability of the scope of service and its effectiveness, and to recommend the way forward.

Major Findings and Recommendations of the Consultancy Review

5. In June 2014, Versitech submitted its Final Report (**Annex I**) and Working Paper (**Annex II**) to DEVB. The following are the major findings and conclusions of the Consultancy Review –

- (a) Historical mission served – The PMS Scheme has served its historical mission in better informing the public, in particular the affected minority owners, on mediation as an alternative dispute resolution mechanism to hearings at the Lands Tribunal for settling settle disputes in compulsory sale cases.
- (b) PMS is no longer cost-effective due to changing circumstances – The Scheme was introduced at a time when there was an upsurge in compulsory sale applications after the lowering of the compulsory

sale application threshold from 90% ownership to 80% for three specified classes of lots under the Land (Compulsory Sale for Redevelopment) (Specification of Lower Percentage) Notice. Given the change in circumstances since 2011, to carry on the Scheme in its present form might not be cost-effective. Minority owners could now more readily access information on mediation service. Both the information cost and the operational cost of mediation have become lower in recent years as a result of the enactment of the Mediation Ordinance and an increase in the number of mediators trained for handling compulsory sale.

- (c) Mediation helps facilitate negotiation but may not be the most effective means in settling disputes in compulsory sale - Most cases that are withdrawn or discontinued by the majority owners before the Lands Tribunal hearings due to the majority owners' successful negotiation with the minority owners after the submission of compulsory sale applications, likely with revised acquisition price offers.

- (d) Low incentive to engage in mediation - Unlike parties engaged in mediations of other nature, minority owners in a compulsory sale case have no motivation to maintain a continuous relationship with the majority owners. The absence of this social incentive has made successful mediation more difficult. As reflected in the statistics of mediation attempts reported to the Lands Tribunal, only a small percentage of owners had made use of the mediation service under the Scheme. Owners seemed to prefer using mediation service in the open market instead of the Scheme which, over time, has been more competitively priced than that under the PMS.

- (e) JMHO can continue to provide mediation service – JMHO, an umbrella organisation comprising membership of the eight leading mediation service providers in Hong Kong which has been commissioned to operate the scheme administration and consultancy service of PMS since 2011, is capable of continuing the mediation service for compulsory sale cases outside the framework of the Scheme.
- (f) Low utilisation of financial assistance available to eligible elderly minority owners under PMS - The number of affected elderly minority owners who applied for financial assistance for mediation service under PMS in the past three years was small. Some majority owners, including known developers, were found to have provided financial subsidy to the minority owners for engaging in mediation, regardless of their age and means.
- (g) Availability of mediators - With training courses organised over the past three years, there are now 225 mediators listed on the website of PMS who are trained to mediate in compulsory sale cases. This is considered a large enough cohort to handle the caseload in future.
- (h) Focused publicity and public education - The Government has a role to continue to educate minority owners to help them make more informed decisions when faced with compulsory sale. Mediation for compulsory sale, if successful, can shorten the acquisition process and speed up the pace of urban redevelopment. Instead of general publicity, the future publicity and public education should be more focused in identifying and approaching the minority owners.

6. Based on the above findings and conclusions, Versitech has made the following three recommendations -

- (a) Recommendation 1 – Government funding for the provision of (i) administration; (ii) consultancy service; and (iii) financial assistance to the eligible elderly minority owners for mediation service should no longer be necessary.
- (b) Recommendation 2 – Government funding for training and accreditation of mediators for compulsory sale should no longer be necessary.
- (c) Recommendation 3 – Government funding for publicity and public education should be continued and awarded to non-profit-making organisations on a competitive bid basis. Indicators should be devised to monitor the performance of the service provider.

The Government's Response and Way Forward

7. We generally agree with the findings and recommendations of the Consultancy Review. PMS has served its historical mission at a time when there was an upsurge in the number of compulsory sale applications. It provided an important alternative to hearings at the Lands Tribunal in settling disputes in compulsory sale cases. However, due to the change in circumstances, to continue with PMS in its present form may no longer be cost-effective.

8. The number of applications for compulsory sale has dropped since it peaked in April 2012. The number of applications was between zero and three on a monthly basis over the 12 months from June 2013 to June 2014. The number of enquiries received by PMS has also been dwindling since it peaked in June 2012. On a monthly basis, the number of enquiries received by PMS was only between one and four over the 12 months from June 2013 to June 2014. The number of requests for mediation under PMS has also been dwindling since it peaked in May 2011. On a monthly basis, PMS has not received any request for mediation since August 2013 except for one case in December 2013.

9. We have taken stock and set out at **Annex III** a table on its achievements since the introduction of PMS in January 2011 up to end June 2014. Also included in the table is an account of how the services provided by PMS in the past can be taken forward after PMS is discontinued. In gist, the proposed arrangements are as follows-

- (a) provision of free mediation information services for compulsory sale cases – JMHO, in its own right as an umbrella organisation comprising membership of the eight leading mediation service providers in Hong Kong, will continue to provide free enquiry service on mediation for compulsory sale cases;
- (b) nomination and appointment of mediator in cases of request for mediation in compulsory sale - JMHO will continue to make the necessary referrals for engaging qualified mediators for mediation in compulsory sale cases;

- (c) administration of mediation cases including arranging pre-mediation sessions and mediation sessions by the appointed mediator - this will be handled by similar mediation service providers in the open market at a fee (JMHO itself, given its unique background, will likely be the most popular service provider to take over);
- (d) financial assistance for eligible elderly minority owners - while eligible elderly owners can turn to PMS for application to DEVB for reimbursement of their share of the mediator fee now, given the small number of applications in the past (six only, with two approved and the rest withdrawn/rejected), it should be clear that the provision of financial support to elderly owners on their share of the mediator fee is not in great demand. Notwithstanding, we have approached the Senior Citizen Home Safety Association, service provider of the “Outreach Support Service for Elderly Owners” Pilot Scheme also commissioned by DEVB, to take up administration of the financial support applications to DEVB by eligible elderly minority owners for another year for further assessment;
- (e) arranging the training and accreditation of mediators for compulsory sale to be listed on the PMS website - there are already 225 mediators trained on compulsory sale. This is considered a large enough cohort who can be appointed to handle mediation of compulsory sale cases in future. Should any need arise in future, various organisations and institutions in the market will be able to provide similar training on compulsory sale for mediators;

- (f) arranging for the provision of free venue for mediation - in the past three years, mediations under PMS can be conducted at free venues provided by the Hong Kong Housing Society (until it withdrew venue support last year) and the Urban Renewal Authority (URA). URA has agreed to continue to provide venue at a reduced fee for the conduct of mediations related to compulsory sale referred by JMHO in future; and
- (g) publicity and public education – this will be continued as recommended by the Consultancy Review.

Publication

10. The Final Report and the Working Paper of the Consultancy Review on PMS under the Land (Compulsory Sale for Redevelopment) Ordinance have been uploaded and accessible on the website of DEVB (www.devb.gov.hk).

Advice Sought

11. Members are invited to note the recommendations of the Consultancy Review on PMS and the winding down of the Scheme.

**Development Bureau
October 2014**



VERSITECH LTD.

The University Technology Transfer Company

Annex I

**Consultancy Review on the Pilot Mediation
Scheme in Support of Property Owners
Affected by Compulsory Sale under the Land
(Compulsory Sale for Redevelopment)
Ordinance (Cap. 545)-**

Final Report [r3a] (English Version)

To: Development Bureau (DEVB)

From: Versitech Limited, HKU

Submission Date: Jun 07, 2014

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Document Control

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GLOSSARY

Abbreviations	Descriptions
CS	Compulsory Sale
CSLR	Compulsory Sale of Land for Redevelopment
DEVB	Development Bureau
HKU	The University of Hong Kong
JMHO	Joint Mediation Helpline Office
LCSRO	Land (Compulsory Sale for Redevelopment) Ordinance
PMS	Pilot Mediation Scheme
REDA	Real Estate Developers Association of Hong Kong
WAD	Withdrawal / Adjournment / Discontinuation

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1 SUMMARY OF FINDINGS

In response to the consultancy brief (Quot. Ref. PLB(Q) 13/2012) dated 21 December 2012, and the consultancy agreement dated 6 March 2013, this Final Report summarizes the findings of the consultancy review on the Pilot Mediation Scheme (PMS) in support of property owners affected by compulsory sale under the Land (Compulsory Sale for Redevelopment) Ordinance (LCSRO) (Cap. 545) (the “Study”), and makes recommendations on the way forward, including options of introducing improvement measures / revamping the scheme / termination of the scheme.

The period under the Study is from 27 January 2011 (since the operation of PMS) to 30 April 2013. Some references are also made to earlier periods for comparison purposes (since the operation of LCSRO on 7 June 1999).

The commencement date of the Study was 6 March 2013. The Inception Report was submitted on 28 March 2013 and accepted by the DEVB on 8 July 2013 after revisions. The Working Paper, evaluating the suitability of the scope of service under PMS, evaluating its effectiveness and identifying reasons for the success rate of PMS, was first submitted on 11 September 2013 and last on 23 June 2014, after several rounds of comments and revisions. This version (r3a) of the Final Report was submitted on 07 June 2014 and accepted by the Secretary for Development on 8 September 2014.

1.1 Summary of the qualitative analysis

Interviews with various stakeholders and review of related documents and studies suggest that:

1. Many minority owners might have the misconception that the PMS was established by the Government to assist them to achieve the highest acquisition price, which has never been the aim of the PMS.
2. Many minority owners do not fully understand the purpose of mediation, the role of the mediator and how mediation works.

3. A majority of the disputes arising from Compulsory Sale of Land for Redevelopment (CSLR) are not resolved through mediation services. Most acquisitions for redevelopment are voluntary market transactions. The number of disputes that ends up with the need for Compulsory Sale (CS) is small compared with all cases of acquisition for redevelopment. These CS cases are usually not about whether the minority owners are willing to sell their units but rather about the acquisition price for their units. One major problem facing the minority owners in a CS dispute is whether offer price by the majority owner is a fair price¹. This problem is mainly due to a lack of price information, especially when the number of transactions of similar old units is thin, and the dispute over price cannot be resolved with mediation. As a result, the number of CS disputes that has been successfully resolved by mediation is only a small fraction of all the CS disputes.

4. Minority owners may have little incentive to resolve CS disputes through mediation since:
 - a. There is no social incentive for the minority owner to maintain a long term harmonious relationship with the majority owner.

 - b. There is little financial incentive for the minority owner to resolve the CS dispute by mediation:
 - i. Almost all CSLR litigation cases did not result in cost orders against the minority owners irrespective of the outcome if they just acted as passive respondents during the Lands Tribunal hearings. Minority owners would reasonably expect that it will not cost them much if they do nothing and let the Lands Tribunal determine the reserve price for auction for them.

 - ii. Due to a lack of price information, minority owners would rather let the Lands Tribunal assess the reserve price than to reach an agreement through mediation since they would expect that the cost of the former is marginal and the outcome could be tested and confirmed in the market through auction.

¹ Some minority owners responded that they would like the Government to include free valuation service in the PMS.

- iii. When the property market is booming, there is expectation amongst minority owners that delay could result in a higher acquisition price. When the market is falling, minority owners may want to reach agreement quickly with the majority owners through informal means that are cheaper and quicker, such as negotiation.
5. Of all the CS cases that attempted to solve dispute with mediation, only a small proportion was done through the PMS (this is also consistent with the data from the quantitative analysis).
6. Compared to the mediation services provided by the market, mediation services provided by the PMS is much less flexible in terms of fee structure.
7. The PMS, with a fixed fee schedule which was determined by the Government in consultation with the Joint Mediation Helpline Office (and, with the change in the going rates of mediators in the market, now proves to be higher than the rate offered by some mediators in the open market), is in a disadvantaged position when competing with the private sector especially when the PMS mediation service is sometimes provided by the same pool of mediators in the open market.
8. One of the main reasons why the minority owners use the PMS services was the perceived impartiality and credibility of PMS. This is not straightly due to the fact that the PMS was funded by the Government. The Government-funded PMS aims to enhance public knowledge on mediation as an alternative dispute resolution mechanism to handle CS disputes prior to the Lands Tribunal hearings. The PMS, which is operated by the Joint Mediation Helpline Office, also supports the training of mediators on CS to handle these mediation cases and maintains a list of mediators trained on CS. The independence and impartiality of the mediation services provided by the Joint Mediation Helpline Office is more because of the neutrality of the Joint Mediation Helpline Office and the code of conduct of mediators who may also be professional members of the respective professional member organisations of the Joint Mediation Helpline Office and who are also guided by their respective professional codes of practice.

9. The majority owners have a strong financial incentive to reach agreement with the minority owners. Some of them are even willing to pay for the minority owner's share of the mediation costs². However, those interviewed have also expressed the view that mediation may not be an effective means of resolving CS disputes. In many cases, the majority owners' purpose of conducting mediation was to show the Lands Tribunal that they had done their best to resolve the disputes with the minority owners before applying for a CS order in accordance with the 2011 Practice Direction issued by the Lands Tribunal.
10. There is no shortage of qualified mediators for CS cases. The demand for CS related mediation service has been declining while there has been a significant increase in the number of qualified mediators who can provide mediation services for the CS disputants.
11. The education and publicity service of the PMS is considered important but it is difficult to make it cost effective as CSLR only affects a very small number of property owners. Mass media publicity is usually not cost effective.
12. The four supporting services under the PMS, viz., the administration of mediation requests and mediation cases; consultancy service for mediation requests and mediation cases; publicity and training of mediators on CS cases; and public education on mediation in CS cases, require very different expertise and experience. It is difficult, if not impossible, to have a single service provider which can be well versed in all the four aspects. It is not necessary to bundle all four PMS services together and award the PMS contract to one service provider. When the services are bundled together, there are only a limited number of service providers which have the capability to bid the PMS contract. In the third contract, the PMS services were divided into two contracts – (1) provision of administration and consultancy services and (2) provision of publicity and public education services. This resulted in awarding the two contracts

² REDA announced on 6 March 2011 that they would be willing to pay "the appropriate share of the mediator's fee under the PMS for those owners who are not eligible for Government assistance", if the majority owners are members of REDA. (<http://www.reda.hk/press-releases/pilot-mediation-scheme>). According to the PMS' statistics, there have been 5 cases where the majority owners voluntarily paid for the minority owners' share of mediation fee and application fee. Among them, there are 3 cases where the majority owners are REDA members, which suggest that there are non-REDA members who are also willing to pay for the minority owners' share of mediation costs.

separately to two service providers.

13. The service requirements of the four major tasks of the PMS are well specified in the contracts, but there are no explicit requirements on any quality control although the two service providers have delivered according to their service requirements.
14. The PMS was introduced after the lowering of the threshold for application for CS from 90% to 80% for three specified classes of lots which could induce a surge in the demand for mediation services that could not be met by the private sector. Also, the public had relatively little knowledge or confidence in using mediation to resolve the CS disputes at the time. Therefore, the Government's funding for the PMS at this early stage could be justified. However, after running the PMS for 3 years, the number of qualified mediators has increased substantially. In addition, there is also an institutional improvement in the use of mediation services after the enactment of the Mediation Ordinance and the Hong Kong Mediation Code. The information cost on the quality of the mediator and the mediation process has been significantly lowered. There is sufficient capacity in the open market to handle the demand for CS mediation services.
15. Lastly, the publicity and public education services under PMS are found to be inefficient, because CSLR is irrelevant to many people until their properties are being acquired. So it may not work by educating the mass public. It would be more appropriate to engage social service organizations with extensive and long term experience in outreaching work to owners of units in old buildings to provide the publicity and public education services.

1.2 Summary of the quantitative analysis

a. Utilization rate:

According to the data provided voluntarily by parties to CSLR cases,³ of all the CSLR application cases during the period 15 February 2011 – 31 March 2013 (based on information from Judiciary sources), there were 94 mediation attempts to resolve the disputes. Of the 94 mediations, only 12 (or 13%) were provided through the PMS. There were 37 cases (39%) cases with unknown (unreported) source of mediation provider. If these cases are excluded, the mediation services provided through PMS was 21%. This confirms the qualitative analysis that the rate of PMS utilization is low.

The data provided by JMHO showed that, up to 30 April 2013, there were 6 cases where the minority owners applied for reimbursement of mediation fees under the mediation fee subsidy scheme offered by the PMS; but there were only 2 approved cases.

b. Success rate

Of all the 94 mediation cases mentioned above, only 11 (12%) cases were successfully resolved by mediation and 2 were provided through the PMS (based on information from Judiciary sources). Since 12 of the 94 mediation cases were provided by the PMS, the PMS success rate was $2/12 = 17\%$. This success rate is higher than the average of 12%, although based on a small number of observations.

c. The number of qualified CS mediators

After running five training sessions through the PMS, there are now 225

³ It is to be noted that according to the statistics kept by JMHO, the number of cases handled under the PMS is higher than the number shown here. This is because some of the mediation cases reported to the Judiciary did not identify the source of mediation support and they might have actually been handled under the PMS.

trained mediators for compulsory sale mediation listed on the PMS website who are considered well qualified to mediate on CS cases. The demand for training courses for CS mediators is expected to decline, especially if the declining trend of the number of compulsory sale applications submitted to the Lands Tribunal continues.

The annual budget that the service providers of the PMS earmarked for training CS mediators was the largest when the PMS was first launched and decreased over time as more CS mediators have been trained as shown below

2011-12	HK\$300,000
2012-13	HK\$137,349
2013-14	HK\$31,933

Note: The diminishing budget is also indicative of a declining demand for training course for CS mediators.

2 RECOMMENDATIONS

PMS has served its historical mission to better inform and educate the public, in particular, the minority owners, on the availability of an alternative dispute resolution mechanism if faced with compulsory sale of their properties by the majority owners at a time when there was an upsurge of compulsory sale applications to the Lands Tribunal after the lowering of the compulsory sale application threshold from 90% ownership to 80% for three specified classes of lots.

Given the change in circumstances since the introduction of the PMS in 2011, if the Scheme is to be continued in its present form, it may not be the most beneficial to the affected minority owners and the society as a whole. We recommend the current PMS be revamped as follows:

Recommendation 1

Government funding for the provision of (1) administration, (2) consultancy services and (3) subsidy to eligible elderly minority owners of the PMS be discontinued

Recommendation 2

Government funding for training and accreditation of mediators of the PMS be discontinued.

Recommendation 3

Government funding for publicity and public education be continued and awarded to non-profit-making organizations on a competitive bid basis. The contract should be 2-3 years long and indicators be devised to monitor the performance of the service provider.

2.1 Justifications for Recommendation 1

- a. The PMS was introduced at a time when the costs of using mediation as a means of resolving conflicts between the minority and majority owners involved in compulsory sale applications were high. These costs reduce the potential of using mediation to reach a win-win agreement. This may potentially slow down the rate of redevelopment and thus not beneficial to the society as a whole. These costs include (1) information cost about the purpose, operational details and effectiveness of mediation and (2) the costs of finding a mediator acceptable to both parties (particularly the minority owners). The provision of (1) administration and (2) consultancy services under the PMS were aimed to lower these costs and had facilitated the use of mediation to resolve disputes between the minority and majority owners and thus facilitated redevelopment during the past few years. These costs have been lowered in recent years as a result of (1) the enactment of the Mediation Ordinance the process for which had enhanced public awareness and understanding of mediation and (2) increase in the number of qualified CS mediators trained to handle CS cases (currently 225). As a result, the need for the Government to continue funding (1) the administration and (2) consultancy services of the PMS has been greatly reduced.
- b. The PMS was introduced to promote mediation, which is one of the possible means of voluntary dispute resolution. However, the qualitative and quantitative findings do not suggest mediation to be a highly effective means of resolving CS disputes, amongst others. The reported mediation success rate for CS application cases, though based on limited data, was only 12%. The number of CS cases that were terminated due to withdrawal, adjournment or discontinuation (WAD) before hearing was more than double the number of successful mediation cases for a given period. This suggests that even after the filing of applications to the Lands Tribunal, various means, other than mediation, were successfully used to resolve the disputes leading to conclusion of the cases without the need for judgment from the Lands Tribunal.
- c. There is a lack of incentive, both financial and non-financial, for the minority owners to resolve their disputes with the majority owners using mediation. This is because there is no incentive for the minority owners

to consider the need to maintain a long term business or social relationship with the majority owner. The low risk of cost orders being handed down by the Lands Tribunal against the minority owners also means that resolving the dispute through the Lands Tribunal is not a cost burden for them. To some minority owners, judgment by the Lands Tribunal may even be a preferred option as they perceive that the Lands Tribunal can make a fair judgment on the reserve price, which can later be tested and confirmed in the market through auction.

- d. Notwithstanding that some minority owners do perceive the PMS to be capable of providing them with more independent mediation services, mediation service provided under the PMS only constitutes a small proportion of all mediation cases (13%-21% as indicated from the self-reporting statistics provided to the Judiciary by parties to CS cases). This suggests that, despite being financed by the Government, the PMS services are not as competitive as those offered by the market. The possible reasons for the relatively low utilization of the services offered by PMS are a lack of flexibility in terms of mediation fee scale. Furthermore, the Joint Mediation Helpline Office, which has been operating the administration and consultancy service for the PMS, will continue to provide the information on mediation service for compulsory sale cases and make the necessary referrals for engagement of qualified mediators in its own capacity as an umbrella organization comprising membership of the eight leading mediation service providers in Hong Kong.
- e. One of the purposes of the PMS is to provide assistance to the elderly minority owners. However, the number of affected elderly minority owners who applied for this service is small. There were only 6 applications and only 2 met the means test criteria and had been approved so far. It is noted that some majority owners, including known developers, are also prepared to and in fact found to have provided this subsidy to the minority owners, regardless of their age and means. As such, even if the Government is to cease this subsidy, the impact should be minimal.

2.2 Justifications for Recommendation 2

- a. There are a total of 225 mediators listed on the PMS website as of today. This is not a small number compared to the demand for CS mediation services. This pool of mediators is considered a reasonably large pool to handle compulsory sale cases, especially if the number of applications for CS order continues to decline.
- b. Should there be a surge in demand for CS mediators again, there will be courses offered by various organizations in the market to satisfy the need for more qualified CS mediators. There is no justifiable cause for the Government to subsidize the training of CS mediators and not the other types of mediators. These training courses are value-added programmes and therefore the training cost should be borne by the attendees themselves.

2.3 Justifications for Recommendation 3

- a. Publicity and education lowers the information costs, increases the transparency of the CSLR policy and allows minority owners to understand their rights. It enables the minority owners to make more informed decisions. With more informed minority owners, the number of disputes between minority owners and majority owners may be reduced and the time taken to resolve disputes can be shortened if the affected minority owners know their rights, are made aware of the courses of actions available to them and the potential outcomes. This may speed up the redevelopment process and in turn benefit the society as a whole. The minority owners are usually more informationally disadvantaged when compared with the majority owners. Government intervention as an information provider to address the imbalance can be justified
- b. In view of the nature of CSLR, it requires social network with the owners in old buildings and more proactive actions to identify and approach the potential minority owners.



VERSITECH LTD.

The University Technology Transfer Company

Annex II

**Consultancy Review on the Pilot Mediation
Scheme in Support of Property Owners
Affected by Compulsory Sale under the Land
(Compulsory Sale for Redevelopment)
Ordinance (Cap. 545)-**

Working Paper [r7] (English Version)

To: Development Bureau (DEVB)

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JMHO (Joint Mediation Helpline Office)	Providing information and interviews
Judiciary	Providing data
REDA (Real Estate Developers Association)	Attending interview
SCHSA (Senior Citizens Home Safety Association)	Providing information and interview
Other interviewees in personal capacity (undisclosed names)	Providing information and interview

GLOSSARY

Abbreviations	Descriptions
ADR	Alternative Dispute Resolution
BM	Building Management
BMMCO	Building Management Mediation Coordinator's Office
BMMPS	Building Management Mediation Pilot Scheme
CSLR	Compulsory Sale of Land for Redevelopment
DEVB	Development Bureau, Hong Kong SAR Government
HKHS	Hong Kong Housing Society
HKMA	Hong Kong Monetary Authority
HKU	The University of Hong Kong
JMHO	Joint Mediation Helpline Office Limited
LCSRO	Land (Compulsory Sale for Redevelopment) Ordinance
LEGCO	Legislative Council
LT	Lands Tribunal
MIO	Mediation Information Office
NIMPS	New Insurance Mediation Pilot Scheme
NOO	Notice of Opposition
PD	Practice Direction
PMS	Pilot Mediation Scheme
PSP	Participating Service Provider
REDA	Real Estate Developers Association of Hong Kong
RVD	Rating and Valuation Department
SCHSA	Senior Citizen Home Safety Association
SFC	Securities and Futures Commission
SLPN	Land (Compulsory Sale for Redevelopment) (Specification of Lower Percentage) Notice
URA	Urban Renewal Authority
WAD	Withdrawal / Adjournment / Discontinuation

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1 PREAMBLE

In view of the statutory requirements on the confidentiality of mediation communication, specified by s.8(1) of the Mediation Ordinance (Cap. 620) that: "a person must not disclose a mediation communication except as provided by subsection (2) or (3)", any information which may directly or indirectly by inference disclose any particulars of mediation communication would NOT be revealed in the report.

The study method of this project would only focus on the aggregates of information and data collected, without disclosing any particulars of any specific mediation cases. All the identifiers, including names, addresses, case numbers or other personal/organization information, would NOT be shown in the report, unless they are publicly available information.

This approach of research and disclosure strictly conforms to the requirements of confidentiality specified by s.8(2)(e) of the Mediation Ordinance, that is: "the disclosure is made for research, evaluation or educational purposes without revealing, or being likely to reveal, directly or indirectly, the identity of a person to whom the mediation communication relates". Readers may refer to LCS (2012) as listed in Section 7 for the detailed discussions on the rationale for the provisions in s.8(2)(e).

However, due to the constraints in information and data collection of this review, some empirical analyses and cases study approach would NOT be viable. Most of the findings can only be based on a broad brush approach and opinion surveys.

2 INTRODUCTION

In response to the consultancy brief (Quot. Ref. PLB(Q) 13/2012) dated 21 December 2012, and the consultancy agreement dated 6 March 2013, this Working Paper details the initial findings of the consultancy review on the Pilot Mediation Scheme (“PMS”) in support of property owners affected by compulsory sale under the Land (Compulsory Sale for Redevelopment) Ordinance (“LCSRO”) (Cap. 545) (the “Study”).

2.1 Study Objectives

The objectives of the Study are to conduct a comprehensive review of PMS, including (a) a review on the suitability of its current scope of service, the selection procedure to identify service provider, the mode of service and the choice of service provider; (b) an assessment on the effectiveness of the scheme, including the service requirements; and (c) recommendations on the way forward, including options of introducing improvement measures / revamping the scheme / termination of the scheme.

Backgrounds of mediation and of PMS in Hong Kong are provided in Section 3.

2.2 Scope of the Consultancy

The main scope of the Study is to carry out the following four major tasks:

Task 1 - Evaluation on the suitability of the current scope of service under PMS, namely, the two service requirements of scheme administration and scheme consultancy as well as training and publicity. The findings are discussed in Section 4;

Task 2 - Evaluation on the effectiveness of PMS, including the adequacy of the selection procedure to identify service provider, current service requirements and the adequacy of performance indicators. In conducting the evaluation, apart from examining the number of mediation cases conducted under the scheme and the success rate of these cases, the feedback from stakeholders of the scheme is also collected. In addition, the prevalence of mediation as an alternative dispute resolution mechanism for compulsory sale arranged and

conducted outside PMS are also studied. The findings are discussed in Section 5;

Task 3 - Identification of the reasons for the success rate of PMS so far, including any inherent issues that may affect the success rate of the scheme. The findings are discussed in Section 6; and

Task 4 - Recommendation on the way forward, including options of introducing improvement measures/ revamping the scheme /termination of the scheme. They would not be included in this Working Paper, but are to be discussed in the Final Report.

2.3 Period under the Study and Timeline of the Study

The period under the Study is from 27 January 2011 (since the operation of PMS) to 30 April 2013. Some references are also made to earlier periods for comparison purposes (since the operation of LCSRO on 7 June 1999).

The commencement date of this Study was 6 March 2013. The Inception Report was submitted on 28 March 2013 and accepted by the DEVB on 8 July 2013. The first draft of the Working Paper, covering the discussions and findings of Tasks 1-3's objectives, was submitted on 11 September 2013. This version (r7) of the Working Paper was submitted on 23 June 2014. The Final Report together with recommendations for way forward was submitted on 7 June 2014.

3 Background

3.1 Background of Mediation in Hong Kong

Readers who are familiar with mediation in Hong Kong can skip this Section.

3.1.1 Mediation in General

Mediation, one of the alternative dispute resolution (“ADR”) methods, has been implemented on a trial basis in the construction sector in 1984 (Hong Kong Government, 1984). The "Hong Kong Government Mediation Rules" for the construction sector was published in 1991 (Hong Kong Government, 1991). Then in 2008, a Working Group headed by the Secretary for Justice was established to map out plans for more extensive and effective use of mediation in both commercial disputes and at community level. The Working Group published its Report in 2010 with 48 recommendations grouped under 3 areas, namely (1) training and accreditation, (2) regulatory framework, and (3) publicity and public education (LCS, 2012 – see Section 7). More recently, the Mediation Ordinance (Cap. 620) has been brought into force since 1 January 2013, section 4(1) of which defines mediation as follows:

"...mediation is a structured process comprising one or more sessions in which one or more impartial individuals, without adjudicating a dispute or any aspect of it, assist the parties to the dispute to... identify the issues in dispute; explore and generate options; communicate with one another; reach an agreement regarding the resolution of the whole, or part, of the dispute."

3.1.2 Practice Direction 31: Mediation

Along with the implementation of the Civil Justice Reform in 2009, active case management is now required under Order 1A Rule 4(2) of the Rules of the High Court (Cap. 4A). Active case management includes encouraging and facilitating parties to use an ADR procedure if the court considers it appropriate and helping parties to settle the case.

Furthermore, the Practice Direction 31 on Mediation has come into effect since 1 January 2010¹, which sets out the features of a Mediation Certificate, a Mediation Notice and Response. These features "facilitate parties to enter into dialogue on mediation, identify areas of agreement and disagreement, and to assist the court to facilitate mediation." (DoJ, 2010 – see also Section 6.13.3 on Recent Developments)

3.2 Background of LCSRO and PMS in Hong Kong

3.2.1 Timeline of the major events of LCSRO and PMS

The following timeline summarizes the major events elaborated in this section.

Table 3.1 Timeline of the Major Events of PMS

Dates	Events
7 June 1999	Implemented LCSRO (Cap. 545)
1 January 2010	Issued the Judiciary Practice Direction No. 31, PD31: Mediation
22 January 2010	Gazettal of the Land (Compulsory Sale for Redevelopment) (Specification of Lower Percentage) Notice
17 March 2010	Announced plan to introduce PMS for applications for Compulsory Sale under LCSRO
27 January 2011	Commissioned the Joint Mediation Helpline Office (JMHO) to operate PMS
27 January 2011	Commissioned the Senior Citizen Home Safety Association (SCHSA) to operate the Outreach Support Services for Elderly Owners
28 January 2011	Issued Practice Direction (LPTD: CS No.1/2011) on mediation for compulsory sale cases
6 March 2013	Commissioned Versitech to conduct a review of PMS under LCSRO

3.2.2 Situation of Urban Renewal in Hong Kong

There are about 20,000 private residential buildings (4 storeys or above) in Hong Kong (see Table 3.2), but they are ageing fast. The percentage of old residential buildings (4 storeys or above) aged 30 years or above accounts for more than half of the housing stock in 2011. The percentage has been growing by almost 1% p.a. from 49% in 2007 to 55% in 2011 (see Table 3.2).

¹ The PD is at <http://legalref.judiciary.gov.hk/lrs/common/pd/pdcontent.jsp?pdn=PD31.htm&lang=EN>

The speed of redevelopment of these old residential buildings is rather slow. The Urban Renewal Authority (“URA”) has been redeveloping not more than 0.1% each year of the total number of old buildings in Hong Kong as shown in Table 3.2. Even assuming that all demolitions of private housing units are for redeveloping into housing units, the average number of demolition of housing units each year in these 6 years is only 1,545, which is just about 0.14% of the total housing stock (see Table 3.3).

One of the major reasons of the slow redevelopment rate is the multiple ownership system in Hong Kong, which makes the acquisition of 100% ownership very difficult, especially when there are missing owners and deceased owners, or when the property titles are not clear.

Table 3.2 Situation of Old Residential Buildings in Hong Kong

	2007	2008	2009	2010	2011
Total no. of private residential buildings (4 storeys or above) in Hong Kong	19,094	19,383	19,459	19,564	19,701
Total no. of residential buildings (4 storeys or above) aged 30 years or above in Hong Kong (percent)	9,445 (49%)	9,802 (51%)	10,161 (52%)	10,473 (54%)	10,839 (55%)
Total no. of residential buildings (4 storeys or above) redeveloped by URA (percent)	6 (0.06%)	2 (0.02%)	3 (0.03%)	2 (0.02%)	2 (0.02%)

Source: http://www.legco.gov.hk/yr11-12/english/fc/fc/w_q/devb-pl-e.pdf

Table 3.3 Situation of Demolition of Private Housing Units in Hong Kong

	2007	2008	2009	2010	2011	2012	Ave.
Total no. of private housing units demolished	826	1,416	1,659	1,187	1,666	2,515	1,545
% to total private housing stock	0.08%	0.13%	0.15%	0.11%	0.15%	0.22%	0.14%

Source: RVD (2012) Property Review

3.2.3 Land (Compulsory Sale for Redevelopment) Ordinance

LCSRO was enacted in 1998 and brought into force on 7 June 1999. Originally, it allows an entity owning not less than 90% of the undivided shares of a lot to make an application to the Lands Tribunal for an order to compulsorily sell all the undivided shares in the lot for the purpose of

redevelopment.

About a decade later, the Government gazetted the Land (Compulsory Sale for Redevelopment) (Specification of Lower Percentage) Notice² ("SLPN") on 12 January 2010, which proposed to lower the compulsory sale application threshold from 90% to 80% for three specified classes of lots. SLPN came into operation on 1 April 2010.

There are 3 stages in the compulsory sale procedures as elaborated in the DEVB (2012) paper.³ Stage I (from filing to setting down for trial) requires the applicant, among others, to serve notice on the respondents; and the respondent, if he/she opposes the application, to file with the Registrar of the Tribunal a notice of opposition. The average time for Stage I in 2011 was 163 days. Stage II (setting down for trial) period was reduced from 49-day to 41-day (Q3 2011) and further to 28-day (2012). Stage III (trial) takes about 1 to 6 days to hear a case.⁴

3.3 Mediation for Compulsory Sale Cases under LCSRO

Furthermore, the Lands Tribunal promulgated the Practice Direction on Mediation for Compulsory Sale of Land for Redevelopment ("CSLR") Cases Under LCSRO (Cap. 545) [LTPD: CS No. 1/2011]⁵ which has come into effect since 15 February 2011. It applies the principles of Practice Direction 31 to CSLR Cases at the Lands Tribunal.⁶

Thus, pursuant to Practice Direction LTPD CS No. 1/2011, parties in CSLR Cases should attempt mediation to settle dispute including the purchase of the undivided shares that are owned by the minority owner, because according to section 4(2) of LCSRO, the Tribunal would not make an order for sale unless it is satisfied that, amongst other things, the majority owner has taken reasonable steps to acquire all the undivided shares in the lot. And the Lands Tribunal might not consider that the majority owner in CSLR Cases has

² Gazette No. L.N. 6 of 2010 dated 1 Apr 2010, [http://www.legislation.gov.hk/bllis_pdf.nsf/4f0db701c6c25d4a4825755c00352e35/54AE920BF6F4677A482576B200541FCF/\\$FILE/CAP_545A_e_b5.pdf](http://www.legislation.gov.hk/bllis_pdf.nsf/4f0db701c6c25d4a4825755c00352e35/54AE920BF6F4677A482576B200541FCF/$FILE/CAP_545A_e_b5.pdf)

³ CB(1)2046/11-12(01), 29 May 2012, Proposed Creation of Judicial Posts in the Lands Tribunal, <http://www.legco.gov.hk/yr11-12/english/panels/dev/papers/dev0417cb1-2046-1-e.pdf>

⁴ <http://www.legco.gov.hk/yr11-12/english/panels/dev/papers/dev0417cb1-2046-1-e.pdf>

⁵ The LTPD is at http://legalref.judiciary.gov.hk/lrs/common/pd/pdcontent.jsp?pdn=LTPD_CS1_2011.htm&lang=EN

⁶ "As stipulated in the Direction on Application of the Civil Justice Reform to the Lands Tribunal issued on 12 February 2009 [LTPD: CJR No. 1/2009], Order 1A of the Rules of the High Court is of general applicability in the context of cases in the Lands Tribunal. Order 1A sets out the underlying objectives of the Rules of the High Court, and can be applied to the Lands Tribunal by virtue of section 10(1) of the Lands Tribunal Ordinance. Thus, by applying Order 1A to the Tribunal, the Tribunal has the same duties as in the High Court to facilitate the settlement of disputes. The parties and their legal representatives involved in cases before the Tribunal also have the duty to assist the Tribunal to discharge the duty in question."

taken all the reasonable steps to acquire the minority owner's undivided share of the lot, if the majority owner unreasonably fails or refuses to attempt mediation with the minority owner.⁷

3.4 Pilot Mediation Scheme

After the issuance of SLPN (as detailed in a LC paper on 17 March 2010)⁸, the Development Bureau (“DEVB”) has introduced a Pilot Mediation Scheme (PMS) in support of property owners affected by compulsory sale under the LCSRO. Initially, DEVB provided funding of \$3.34 million for PMS with breakdown as shown in the Table 3.4 below:

Table 3.4 Financial Support for the Pilot Mediation Scheme

Descriptions	Costs
Setup cost	\$1.24 million
Operating costs (the 1 st year)	\$1.6 million
Reserve for financial assistance for eligible elderly owners to cover the fees of mediators	\$0.5 million
Total	\$3.34 million

Source: LC Paper No. CB(1)1362/09-10

DEVB commissioned the Joint Mediation Helpline Office (“JMHO”) to set up and operate PMS since January 2011. The service contract with JMHO has since been renewed: the first renewal was from January 27, 2012 to January 26, 2013; and the second renewal with JMHO (for scheme administration and consultancy) and with the Senior Citizen Home Safety Association (“SCHSA”) (for publicity and public education) was from February 21, 2013 to February 20, 2014. The contracts have been extended lately, pending the outcome of this review. A variation order for an additional 5 training sessions was also agreed on August 24, 2012 after the first renewal.

The aim of PMS is "to mediate dispute or differences between owners arising out of or in relation to applications for compulsory sale of land lot that has been made or is intended to be submitted to the Lands Tribunal". PMS affords owners the opportunities to come to agreement and reach settlement during the information gathering stage or, when necessary, after adopting

⁷ Besides, the Lands Tribunal may take into account any unreasonable failure of a party to engage in mediation in exercising its discretion on costs.

⁸ Full paper (LC Paper No. CB(1)1362/09-10) is available at <http://www.legco.gov.hk/yr09-10/english/hc/papers/hccb1-1362-e.pdf>

voluntary mediation process to resolve disputes or differences.

Mediation under PMS is initiated by a request for mediation from the property owners concerned. It will be conducted in accordance with the mediation rules to facilitate settling the dispute on terms agreed by both the majority owner and minority owner or to facilitate narrowing their differences. Mediation is a wholly voluntary process and either party may choose to terminate the mediation at any time.

If a settlement agreement can be reached by the mediation under PMS, it has the force of law and is binding on the parties. Even in the event that there is no overall settlement agreement reached, the parties and the mediator may still endeavour to agree on common facts or the steps ahead, which may be of assistance in the future determination of the dispute by subsequent litigation if any. (PMS, 2011)

The Hong Kong Housing Society (“HKHS”) and URA provide venue for mediation at no costs to the parties of the dispute. A uniform application fee and uniform rate of mediator fee is charged for mediation under PMS as shown in Table 3.5.

The application fee is non-refundable once agreement to mediate has been reached. The mediator fee for the first 15 hours, which is at a fixed rate, is paid in equal share by the majority owners and the minority owners, save for eligible elderly minority owners. Eligible elderly minority owners who have paid the application fee and satisfied the means test may receive the mediation service free of charge under PMS. These eligible elderly owners are granted waiver for the mediator fee for up to a total of 15 hours of mediation (including the pre-mediation session of no more than three hours).⁹ That said, even in PMS cases, there are also cases where the majority owner will voluntarily pay for the minority owner’s share of the mediation fees.

Table 3.5 Application fee and rate of mediator fee under PMS

Type of fee	Amount
Application fee	HK\$500 per party
Mediator fee (shared equally by parties)	
Pre-mediation session ¹⁰	HK\$3,000 per hour

⁹ Details in <http://www.legco.gov.hk/yr11-12/english/sec/library/1112in18-e.pdf>

¹⁰ Pre-mediation session is different from intake session (pre-mediation consultation service) which is free of charge.

(up to 3 hours)	
Subsequent mediation session (from 4th to 15th hour)	HK\$3,000 per hour
Venue fee	Free of charge if HKHS or URA provided venue is used

Source: PMS (2011)

3.5 Joint Mediation Helpline Office Limited

JMHO is jointly founded by the Hong Kong Mediation Council, the Hong Kong Bar Association, the Law Society of Hong Kong, the Chartered Institute of Arbitrators (East Asia Branch), the Hong Kong Institute of Arbitrators, the Hong Kong Institute of Architects, the Hong Kong Institute of Surveyors and the Hong Kong Mediation Centre. They are also the eight Participating Service Providers (PSPs) of JMHO. It is set up as a non-profit-making organization with a view to promoting the use of mediation as a means of dispute resolution in Hong Kong.

Figure 3.1 below shows the flowchart of the standard procedures of mediation for CSLR under LCSRO under PMS. More details of the procedures are available from JMHO website¹¹. There are a total of 225 mediators listed on the PMS website as at 27 December 2013¹². The flowchart shows that PMS is a Two-Stage process: (1) Information Gathering Stage, and (2) Mediation Stage. This study assesses the success rate for each of the two stages:

(1) Information Gathering Stage Success - mediation is conducted via PMS after the information gathering stage; and

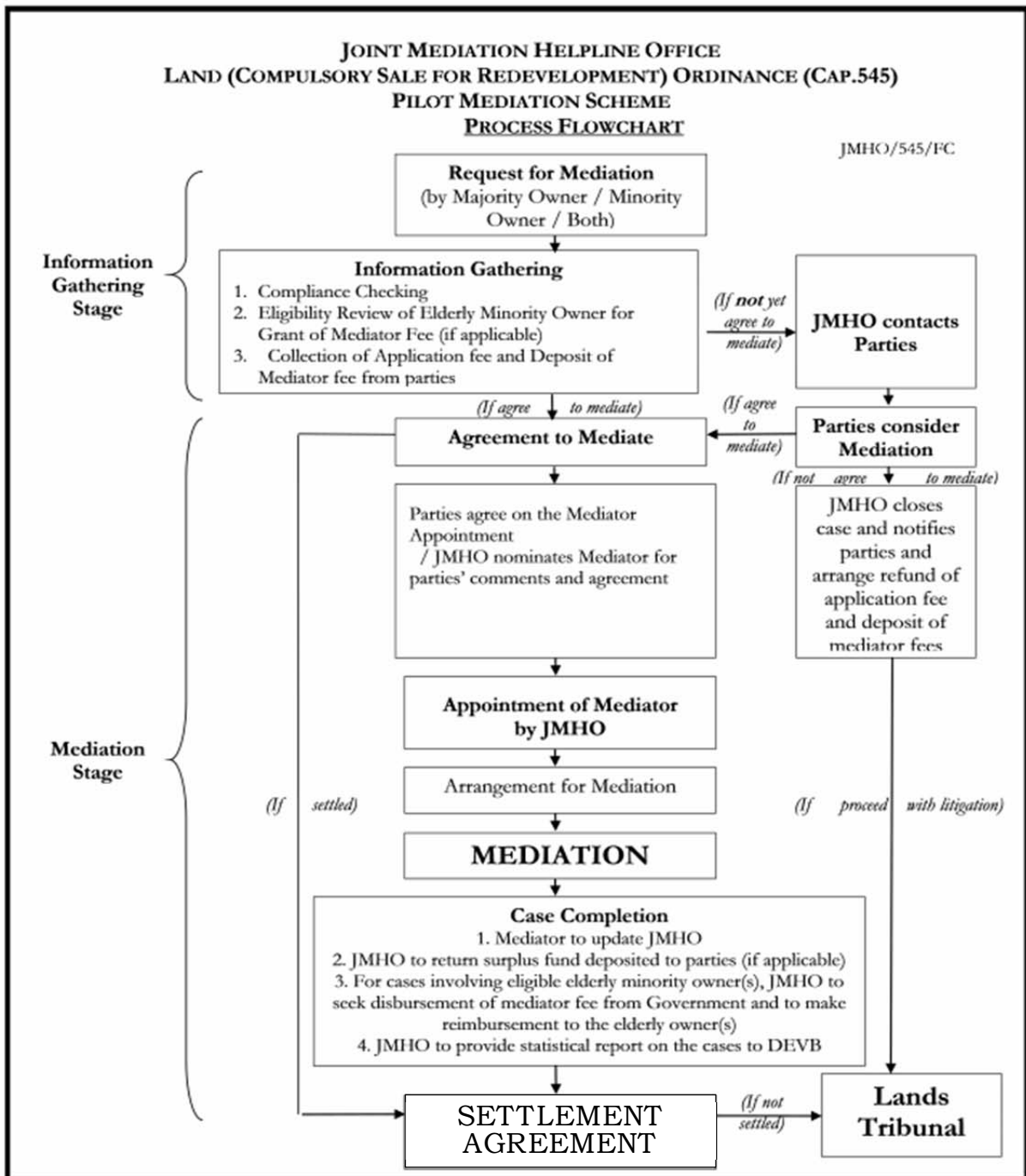
(2) Mediation Stage Success - disputes are settled by PMS mediation.

The success rates are discussed and analyzed in Sections 5 and 6.

¹¹ <http://www.jointmediationhelpline.org.hk/>

¹² The full list of mediators is available from http://lcsromediation.hk/index.php?option=com_content&view=article&id=19&Itemid=17&lang=en (accessed 1 May 2014)

Figure 3.1 Flowchart of the Procedures of PMS¹³



¹³ http://www.lcsromediation.hk/index.php?option=com_content&view=article&id=7&Itemid=8&lang=en

4 Task 1 Suitability of the Scope

Currently, the scope of services of PMS is broadly categorized into 2 service items, namely **Scheme Administration and Scheme Consultancy Service (Service Item 1)** and **Publicity and Training Service (Service Item 2)**. Some of the service requirements are as follows:

A. Service Item 1 includes, among others, the following service specifications:

1. Prepare and revise documentation, including Mediation Rules, Application Forms and Information Kits for PMS;
2. Arrange mediation of disputes between property owners arising out of or in relation to applications for compulsory sale of land for redevelopment, including case information gathering, submission of request for mediation from one or both of the parties, screening of scope, notification of acceptance of case, seeking agreement of the other party to mediation (if the request is not from both parties), handling of response form and application for grant of mediator fees from elderly minority owners. The work involved in the mediation process will involve the nomination of mediator, the collection of deposit of mediator fee from the parties, giving the parties the opportunity to comment on nomination, the appointment of mediator, arranging the pre-mediation sessions by mediator with parties, arranging further information gathering from parties and arrangement of mediation sessions with parties;
3. Draw up and maintain a list of trained mediators for the minority and majority owners to choose from and upload the list onto the dedicated website of PMS. Appoint a mediator from the list when the parties cannot agree on the choice of mediator;
4. Provide a dedicated telephone line for communicating with the public on PMS with designated operating hours. The telephone line shall be answered by telephone recording service outside the operating hours;
5. Develop and maintain the dedicated website for PMS and being responsible for hosting the web server for the dedicated website which is able to perform the following functions:
 - (a) to provide linkage to the Development Bureau homepage;
 - (b) to provide bilingual versions in English and Traditional Chinese layout;

and

(c) to provide an email address for receiving and answering public enquiries;

6. Being responsible for liaison with HKHS, URA or any other venue provider for the provision of venue support for individual mediation cases;

7. Prepare statistical reports of the mediation cases conducted under PMS on a monthly basis;

8. Develop and maintain a database storing all relevant data and results of PMS and provide statistics kept in the database as requested by the Government Representative;

9. Administer the reimbursement of mediator fee to eligible elderly minority owners, who meet eligibility criteria laid down by the Government, as part of the package of service under PMS;

10. Work with DEVB on the details of the disbursement procedures including (a) devising and revising as necessary an assessment mechanism, eligibility criteria and relevant application form(s) to assist elderly minority owners to apply for grant of mediator fee, assess the eligibility of the elderly minority owners applying for the free mediation sessions in accordance with the approved eligibility criteria, and (b) upon completion of each mediation case with the eligible elderly minority owners, apply to DEVB for reimbursement to the minority owner(s) his/her (their) share of the mediator fee for up to 15 hours of mediation session;

B. Service Item 2 includes, amongst others, the following service specifications:

1. Arrange and oversee all publicity and promotion of PMS to encourage majority owners who are applying or eligible to apply to the Lands Tribunal for compulsory sale under Cap. 545 to apply for mediation under PMS. Also, to promote PMS to the affected minority owners. The publicity and promotion programme shall include:

(a) At least five public talks on PMS each year.

(b) Other outreach programmes such as attending call-over hearings of

compulsory sale applications at the Lands Tribunal, visiting target buildings across the territory, conducting road-shows in districts and promoting PMS through publicity materials such as leaflets and posters, videos, souvenirs and electronic means;

2. Organize training and seminars for all users, namely, mediators and minority owners, the former through professional workshops and the latter, through public talks, to introduce Cap.545 and PMS.¹⁴

4.1 Methodology for Task 1

PMS is not a new scheme of its kind. Similar mediation schemes have been launched in Hong Kong for a number of years. Experience in the past might be useful in evaluating the suitability of the scope of service of PMS. This Study compares and contrasts the scopes of PMS with the building management mediation pilot scheme (BMMPS) administered by the Lands Tribunal launched on 1 Jan 2008¹⁵.

Both schemes share some similarities and differences in the nature of dispute and the scope of services. For example, both BMMPS and PMS are mediation supporting services that deal with building (particularly multiple ownership building) related disputes. However, the former is administered by the Judiciary while the latter is contracted out to a third party service provider. A comparison of PMS with the BMMPS may shed light on the suitability of the scope of service of PMS, having regard to the nature of the disputes handled by PMS.

4.2 Four Main Financial Models for Mediation Supporting Services

There are currently four main financial models for mediation supporting services provided in Hong Kong, namely:

1. Mediation supporting services provided by individual mediators or mediation service providers in the private sector;
2. Mediation supporting services provided through systems of the Judiciary;
3. Mediation supporting services provided by a tender awarded service

¹⁴ DEVB (2012) Service Specifications, Quotation for the Provision of PMS service, PLB(Q) 018/2012

¹⁵ <http://mediation.judiciary.gov.hk/en/mcos.html>

provider funded by the Government, such as PMS; and

4. Mediation supporting services provided by a self-funded institute (funded by users or members), such as the New Insurance Mediation Pilot Scheme (NIMPS)¹⁶.

More detailed backgrounds of the above four models are discussed in the literature review section (Section 5.1.1).

The major advantages of the mediation supporting services provided by private sector are flexibility and confidentiality. In addition, this system involves no subsidies from tax payers. Private sector provided mediation services may have different mediation rules (instead of a standard set of mediation rules), negotiable mediation fees and procedures, and different terms of agreement on the confidentiality of the mediation, which are not shared by the three models.

The advantages of the other three models are the perceived independence, impartiality, accessibility and transparency of the services. These models typically involve, to some extent, standardized mediation rules, fixed mediation fees, a publicized list of accredited mediators, and fixed mediation venues provided by an independent third party. They are trusted for their independence, impartiality and transparency. With the exception of the self-funded scheme, these models involve the use of public funds, which need to be justified, not only on the basis of benefits to the users but also benefits to the society as a whole.

The mediation supporting services provided by the Judiciary are perceived to be the most independent and impartial. The mediation supporting services provided by a tender awarded service provider funded by the Government is a commonly used approach by the public sector to purchase expertise and independent services. However this approach may undermine the long-term commitment of the service provider, if the nature of the scheme is not meant to last for a long period.

Furthermore, if the number of potential tenderers is small, the benefits of the tendering process may be impaired due to a lack of competition in the tendering process. For example, in the first two service contracts of PMS, they were awarded to a single bidder (for the third contract, it was partly

¹⁶ In addition to these four financial models, the Financial Disputes Resolution Scheme (FDRS) is a hybrid system that involves partial initial funding by the government and subsequent private funding from financial institutions.

awarded to the same bidder). Due to the special status of the single bidder, the tendering process in the past might not have been able to rely on market forces to ensure value-for-money as the single bidder is in fact a cross-organisational setup with its board of directors from the eight most representative professional bodies well versed in mediation and who will likely be, if they so choose, the prospective competitive bidders against the single bidder. The broad representativeness of the setup has deterred the member professional bodies from submitting any individual bids to provide the service.

Generally speaking, the quality and scope of service as well as the continuity of the service in this model of mediation supporting service are heavily dependent on the availability of funds. Short term contracts with repeated tendering processes are only suitable for pilot schemes. Since PMS is pilot in nature, it is understandable that the Government will not commit to a long term service contract with the single bidder. However, since the successful bidder was paid a setup cost during the first contract, the concern about lack of longer term commitment from the service provider has fortunately been addressed in the first tender (also see Section 4.3.3. below).

The mediation supporting services provided by a self-funded institute (funded by users or members) is one of the most commonly found models internationally, and is equitable (user-pay principle), financially more viable and sustainable in the long run. One example is NIMPS which is funded by the Hong Kong Federation of Insurers and operated by the Hong Kong Mediation Council for settling disputes in work-related personal injuries claims by mediation.

JMHO is also a self-funded institute with eight participating service providers (PSPs). JMHO does not charge the parties for the mediation services offered, but charge the mediator/PSPs an administrative fee of HK\$500 per mediation case.

4.3 Compared with the scope of service of BMMPS

Although BMMCO also provides scheme administration service, scheme consultancy and publicity and promotion, the scope of service and its suitability as an effective alternative dispute resolution mechanism other than the Lands Tribunal hearings is very different from PMS. These differences can be categorized into the following aspects:

1. Nature of Disputes;

2. Authority of the Scheme;
3. Financial Model of the Operations;
4. Incentives to Settle by Mediation;
5. Scope Boundary and Asymmetry in Capacity;
6. Intake Sessions (Pre-mediation Consultation Services);
7. Monitoring and Service Standard Improvements;
8. Mediation Fees; and
9. Publicity and Promotion.

4.3.1 Nature of Disputes

A Building Management Mediation Co-ordinator's Office (BMMCO) is set up at the Lands Tribunal to help co-owners of buildings to consider using mediation to resolve their disputes in building management issues.

Before making comparison between the schemes, it should be noted that all the existing mediation schemes and mediation in general are quite new to the general public in Hong Kong. Many interviewees do not know much about mediation and some even misunderstand its role.

The nature of the disputes to be resolved by PMS is different from those to be resolved by BMMPS, despite the fact that both are related to multiple ownership buildings. There is incentive under BMMCO for the parties to resolve the dispute in an inexpensive, flexible and relatively friendly manner. Since the parties involved will continue to be neighbors, a long term confrontation resulting from dispute over a relatively small sum of money is usually not a rational choice for most people. However their emotions may prohibit them from making a rational decision. A third party, such as a mediator, may help to resolve the dispute. Since there is high potential and incentive for both parties to resolve the dispute using mediation, which can enhance social harmony and also avoid unnecessary expensive litigation and use of court facilities which can otherwise be deployed for more important or socially beneficial uses, continued government funding to facilitate mediation under BMMPS can be justified for both social and financial reasons.

Although it is also related to buildings, the nature of disputes arising from

CSLR is quite different. First and foremost, the disputed sum involved is significantly larger than in BMMPS cases. For most minority owners in Hong Kong, housing is their major form of wealth. The obstacle to ready resolution of the conflict between the minority and majority owners is usually related to the minority owner's lack of information about the objective value of his property. This is especially difficult for old buildings that are rarely transacted in the market. This is confirmed by minority owner's responses that the most wanted assistance they want from the government is free valuation services. Some even have a false conception that the mediator under PMS will help them to fight for the best acquisition price. Due to the problem of lack of information, the major concern for many minority owners is whether the compensation offered by the majority owner is fair and equitable under the prevailing market conditions. This problem cannot be resolved by mediation.

In addition, demand for redevelopment is usually higher when the property market is booming. However, during a booming market, the incentive for the minority owners to resolve the conflicts quickly using mediation is small since they would expect that longer delay would lead to a higher acquisition price. Mediation is of little use in narrowing the differences between the majority and minority owners. One developer responded during an interview by the consulting team that the only good thing about mediation in CSLR is that it serves as an alarm clock to the minority owners that they need to make a decision on whether they will come to an agreement (with or without mediation) or resolve the dispute in court.

Furthermore, unlike the disputes under BMMPS, the parties involved in PMS disputes are not long term neighbours. They are unlikely to be connected with each other in anyway after resolving the dispute. Therefore the incentive of maintaining a long term harmonious relationship between the parties does not exist.

In some rare cases, the dispute is not simply about money. Some minority owners may be so emotionally attached to their housing unit that they would not surrender their home even for a very high price. Although one major function of mediation is to deal with emotions, the special emotions arising from an anticipated dissociation from an emotionally attached living environment could be a hard topic for mediators to deal with.

Lastly, some disputes may relate to legal interpretation such as the eligibility of the applications for CSLR, which is defined in LCSRO and SPLN. Some disputants may like to seek the Lands Tribunal's judgment on the interpretation of the eligibility criteria in their cases, which makes mediation not a suitable resolution method. There have been court cases that argued on the interpretations of building age, building conditions, percentage of undivided shares, etc. For example, in the recent case: *Lead Traders Limited v. Lucky Land Enterprises Limited and another* (CACV 217/2011 and CACV 219/2011), the dispute was about, among others, the interpretation of the minimum 10% criterion of undivided shares of each unit.

4.3.2 Authority of the Mediation Scheme

BMMCO was set up in Jan 2008 as an office of the Lands Tribunal by the Judiciary. BMMCO mainly holds information sessions on mediation and provides pre-mediation consultation service to the parties. Since the administration and supporting services are directly provided and managed by the Judiciary, independence, impartiality and credibility of the mediation supporting services are well perceived.

In contrast, PMS was set up as a pilot scheme and the service providers were chosen by a tendering process from eligible institutes. JMHO, the successful bidder, provides service for the administration of the mediation scheme. The service provider of PMS may not be perceived as creditable as BMMCO.

It should be noted that PMS is just one of the channels of sourcing mediation services on CSLR cases. The major developers / land assemblers (the majority owners) are not obliged to join PMS, although the Practice Direction [LTPD: CS No. 1/2011] makes the mediation a consideration of granting CSLR order (see Section 3.3). The majority owners are free to choose other private sector mediation service providers.

4.3.3 Financial Model of the Operations

BMMCO is directly funded by the Judiciary, and staffed by a Mediation Affairs Officer, with professional and clerical support. In 2012, the salary expenses of BMMCO were approximately \$1,330,000¹⁷. A comparison of the funding support for PMS and BMMPS is at Table 4.1. Since the nature and

¹⁷ LegCo LCQ5: Disputes on building management, <http://www.info.gov.hk/gia/general/201211/14/P201211140422.htm>

scope of services are different, the cost items are not directly comparable.

Table 4.1 A Comparison of Financial Support for PMS and BMMPS

Descriptions	PMS (\$m)	BMMPS (\$m)
Setup cost	\$1.24	NA
Operating costs of the 1 st year (excl. depreciation) *staff cost	\$1.6 ¹⁸	\$1.33*
Reserve for financial assistance for eligible elderly owners to cover the fees of mediators	\$0.5	NA
Total	\$3.34	\$1.33

Sources: LC Paper No. CB(1)1362/09-10

4.3.4 Cost order as an Incentive to Settle by Mediation

First, it is noted that both PMS and BMMPS provide only a platform for dispute resolution, viz, mediation. There is no alternative in the form of arbitration, and any unsettled cases by mediation under the two schemes would likely go through litigation although some cases may be settled during the litigation process.

The potential costs (money and time) of litigation of the building management disputes under BMMPS could be very substantial compared to the disputed amount. There is a strong financial incentive for the parties to settle their disputes by mediation, especially when the President Direction LTPD: CS No.1/2011 makes mediation a consideration in granting the cost order.

However, it is found that almost all litigation cases on CSLR did not result in cost orders, and most of the respondents chose not to file (or withdrew) the notice of opposition (see Section 5.2.2). There may have already been formed among the minority owners a reasonable expectation that the potential litigation cost in CSLR cases is negligible (especially compared to the potential compensation). Although the majority owners have a strong financial incentive to speed up the process, the minority owners in general do not have much time cost in the litigation process, especially in a booming market. In a falling market, the minority owner may choose to settle by other quicker means. In other words, there is little financial incentive for the

¹⁸ The operating cost per year of PMS includes TWO service items, namely (1) Service Item 1 - scheme administration and consultancy and (2) Service Item 2 - publicity and training.

minority owners to mediate and avoid litigation, unless they need to employ legal advisers, expert witnesses and professionals for the litigation which is seldom the case.

Moreover, for CSLR cases, when mediation fails to settle the dispute, it will be heard by the Lands Tribunal for the grant of a CSLR order or not. However, the Lands Tribunal does not make a judgment on the value of the property (which is normally the crux of the dispute), but makes a decision on the reserve price of the subject lot which reflects the development value of the lot by assessing "whether the reserve price falls within the range of what may broadly regarded as fair and reasonable"¹⁹ and let an auction in the market determine the final property value. That is, the disputes under LCSRO are to be settled partially by the court and partially by a forced sale in the market, if the mediation fails. When information cost about the market value of their property is high, some minority owners may prefer to let the Lands Tribunal, which is regarded as more independent and impartial, judge the reasonableness of the reserve price and let the market uncover the value of the property, rather than accepting the majority owner's offer. There is little incentive for the minority owners as respondents to settle the disputes by mediation, when both the processes of mediation and litigation are after all, a means to uncover the market price of the subject property. This is because the costs of both methods are insignificant compared with the disputed amount and that the agreed price through mediation cannot be tested in the market, which is often a major concern for some minority owners.

4.3.5 Scope Boundary and Asymmetry in Capacity

PMS does not set any upper limit for the value of the subject property. The range of the value of the subject property under CSLR case can range from several hundred thousand dollars to billions of dollars, especially when the real estate markets are prosperous. That is, the value of the subject property could be much higher than the amount at stake in BMMPS cases, so the cases under PMS can be more complicated or more difficult to be settled by mediation.

Perceived asymmetry in capacity between the majority and minority owners is another uniqueness of the disputes on CSLR. The majority owner

¹⁹ *Capital Well Ltd v. Bond Star Development Ltd* (2005) 8 HKCFAR 578

is normally a developer or a professional land assembler, who is more experienced in land matters and advised by a team of professionals. The minority owners, on the contrary, are often small individual owners (except those strategic investors), who may not have the same professional knowledge or the resources to employ professional advisers in the process of negotiation or mediation.

As both sides may have very different capacities in resources, professional knowledge and risk-management strategy capabilities, this makes a standardized set of mediation procedures more difficult to be successful. The suitability of mediation in such a situation of asymmetric capacity is questionable, as discussed in the Literature Review at Section 5.1.1.

For example, most of the disputes under LCSRO involve property valuations, but some of the minority owners may not have the resources to employ professional valuers to verify the fairness of offers by the land assembler. Some minority owners may prefer leaving it to the Lands Tribunal to determine a fair reserve price for the subject lot instead of accepting the settlement offer during mediation.

Yet, there are of course exceptional cases that both the majority and the minority owners (e.g. strategic investors) are on an equal footing in terms of professional support and resources availability. It is also opined by some majority owners that more and more minority owners are well informed and experienced in dealing with CSLR, or are advised by a team of professionals. A standard scope of service can hardly satisfy such a wide range of users.

4.3.6 Intake Session (Pre-mediation Consultation Service)

It is commonly agreed that intake session (pre-mediation consultation service) is indispensable and conducive to the success of dispute resolution. PMS has reported that there are disputes settled before conducting mediation.

BMMCO also conducts information sessions on mediation and reports attendance of the parties concerned to the court. After the information session, the Mediation Co-ordinator will conduct a pre-mediation consultation session with the parties. Information session and pre-mediation consultation of BMMPS are provided free of charge at BMMCO²⁰. It is reported that BMMCO held 429 information sessions for

²⁰ <http://mediation.judiciary.gov.hk/en/mcos.html>

1,520 persons from January 2008 – December 2010.

Similarly, in PMS, JMHO reports that a number of disputes are settled after intake sessions, without carrying out the mediation sessions (see Section 5.2.2). The intake sessions (pre-mediation consultation services) are conducted by the staff (Mediation Consultant) of JMHO. This reflects the importance of the efforts invested in the intake sessions (pre-mediation consultation services) and the pre-application stages in the scope of services provided.

However, the reasons for success in settling the disputes after these intake sessions (pre-mediation consultation services) can be very different from that of mediation sessions. The discussion of success rates in the coming Sections are therefore divided into two, namely (1) Information Gathering Stage Success Rate, and (2) Mediation Stage Success Rate.

4.3.7 Monitoring and Service Standards Improvements

JMHO has held 4 half-day training classes for mediators of PMS, and trained 147 mediators in the first year of operation (see Section 5.6.2). It is noted from DEVB source that ICAC had reviewed the previous listing criteria adopted by JMHO for CSLR mediators and considered that JMHO should open up its listing criteria. It followed that the listing of mediators as seen in the terms of the third service contract is more open.

PMS carries out users' satisfaction surveys to seek their feedback on the standards of services (a copy of the survey form is enclosed at Annex 1). Users' satisfaction survey is a very important way to monitor the performance of the scheme, but as the users of PMS often lack a full understanding of LCSRO in general and mediation in particular, an opinion survey on users' satisfaction is at best a layman's review on the standard of service (sometimes on the outcome instead of the service). In fact, some of the interviewees reflected their dissatisfaction with PMS based on a misunderstanding of the function of mediation. There is always a sampling bias in that the opinions of the respondents may not be representative of that of the entire population (those targeted for survey), especially when the number of respondents is very small.

PMS has been carrying out users' satisfaction survey by questionnaire. Up to 30 Apr 2013, there were 7 responses out of the 36 invitations (response rate is 19%). Their average satisfaction with PMS and with the performance

of the mediator was 77% out of 100% respectively. More than 71% of the respondents, i.e. 5 out of the 7, agreed that PMS mediation could help settle the disputes, and 86% of the respondents, i.e. 6 out of the 7, agreed that PMS mediation was carried out in a timely manner. There were also 4 letters of compliments from the minority owners who have used the mediation services of PMS.

The questionnaire is in Chinese and there are only 12 questions. Many of them are factual questions, such as (Q9) seeking information on the venue of mediation taken, and (Q8) seeking information on the time taken for the mediation process. Q1-Q5 are for ranking satisfaction by a 0-5 score. Most of the questions, except Q3, are about satisfaction, rather than achievement. Yet, Q3 asks about whether mediation can facilitate the settling of disputes, which is vague and subject to interpretation.

In contrast, in the Users Satisfaction Survey of BMMPS of the Judiciary, there are some specific questions on the achievements of mediation and ways to improve the Scheme, such as on whether the dispute was settled, on whether the mediation has led to significant savings in litigation costs and time, and on how mediation may be improved²¹. In other words, the PMS questionnaire survey is an opinion survey of users' satisfaction, but not for an evaluation of the performance or benchmarking. Table 4.2 compares the results of the users' satisfaction surveys of the two schemes. In fact, the satisfaction levels of the three main items are more or less the same across the board.

Table 4.2 A Comparison of Users' Satisfaction with the services of PMS and BMMPS

Descriptions	PMS	BMMPS
General Satisfaction Level to the Scheme	77%	77%
General Satisfaction Level to the Mediator	77%	80%
Agreed that Mediation is Effective to / can Help Resolve Disputes	71%	80%

Sources: Judiciary (2011) , JMHO (2013b)

²¹ Evaluation Report on Mediation for Building Management Cases in the Lands Tribunal (September 2011) available at <http://mediation.judiciary.gov.hk/en/doc/Evaluation%20on%20Building%20Management%20Cases.pdf>

4.3.8 Mediation Fees

Table 4.3 below compares the mediation fees charged under PMS with those under BMMPS. It shall be noted that many mediations carried out under BMMPS are pro-bono, and the intake sessions (pre-mediation consultation services) of PMS and BMMPS are also free of charge. If the disputes are settled at the intake sessions (pre-mediation consultation services), the \$500 application fee would be refunded.

Table 4.3 Application fee and rate of mediator fee under PMS and BMMPS

Type of fee	PMS Charged Amount (HK\$)	BMMPS Charged Amount (HK\$)
Intake session (Pre-mediation consultation service)	Free of Charge	Free of Charge
Pre-mediation session	HK\$3,000 per hour (up to 3 hours)	NA
Subsequent mediation session	HK\$3,000 per hour (from 4th to 15th hour)	Many cases are pro-bono
Extended mediation session	NA	NA
Venue fee	Free of charge if the HKHS or URA provided venue is used	NA

Sources: Judiciary (2011) , PMS (2011)

Table 4.3 shows that mediations under PMS normally cost about \$25,000 to both parties together (assuming 2-hour pre-mediation session and 6-hour mediation session, plus \$1,000 application fee), but the parties could select pro-bono service from BMMCO.

Besides the potential difference in the total mediation fees charged under the two schemes, it is noted that there is a fixed schedule of mediation fees for PMS, but it is left to the parties to agree on the mediation fees in BMMPS, including the mediator's fees for his/her time and other disbursement, such as room charges. But both schemes provide free intake sessions (pre-mediation consultation services).

It is also reflected by some interviewees that there are other similar mediation services provided in the private market (outside PMS) which charge

similar or even a lower mediation fee²². It is also observed that some mediators who are on the list but may not have relevant experience in conducting mediations on CSLR, but many clients would regard mediator's experience one of the important criteria in choosing their mediators (see for example Au and Lam, 2012 at Section 7). There can be mediators who are willing to charge a lower fee (or even providing pro-bono mediation services) to gain the experience, or to be part of a packaged service to the clients.

The relatively higher mediation fees charged by mediators of PMS, in comparison with those in the private sector, and with no pro-bono service, are likely to be one of the reasons for the lower rate of applications for mediation under PMS (i.e. Information Gathering Stage success rate).

In other mediation schemes, pro-bono mediation services can be obtained from some mediation service providers. However, it is argued that because land acquisition by CSLR involves a large sum of money, the nature of the mediation is very different from those mediation schemes that pro-bono services have been provided, and therefore mediation fees shall be charged for PMS. The workload of the mediators, and therefore the mediation fees charged, under the two schemes may not be directly comparable.

JMHO itself provides a mediation fee schedule (for non-PMS mediation) as a guideline, which is divided into 3 categories based on the amount in dispute. For example, for a dispute of amount between HK\$1m and HK\$5m, the proposed fees for pre-mediation session and mediation session are HK\$6,000 and HK\$3,000 per hour.²³

Many interviewees (minority owners) are of the view that it is not fair to charge them mediation fees for CSLR. Their argument is that the transactions are not voluntary but compulsory by law. The mediation is also regarded as a more or less required process before proceeding to the Lands Tribunal. Thus, PMS mediation fees are somehow perceived by some interviewees a "forced payment" pre-set at a level higher than the market price though they are under no requirement to use PMS mediation.

²² The difference in the mediation fee can be substantial. There were cases that the mediation fee per hour could have a difference of 300%. It has to be borne in mind that the charge can vary a lot based on the qualifications and experience of the mediator, and the scope of services, etc. JMHO (2013a) also pointed out that "... the Hong Kong Mediation Qualifications Accreditation Association Limited has not yet been fully operational, the public cannot assess the quality of different service providers. In addition, the general public may not understand about mediation. Therefore, they may prefer to choose a cheaper service, or through other intermediaries, lawyers and representatives to seek mediation services, without choosing PMS."

²³ <http://www.jointmediationhelpline.org.hk/Mf.html>

4.3.9 Publicity and Promotion

JMHO has held 11 seminars on PMS, and reached 680 members of professional bodies and general public, in the first year of operation (see section 5.3.1). It is not only the number of seminars that matters, but also reaching out to the specific target audience.

Unlike other financial disputes, CSLR disputes are very specific, that is the property to be acquired compulsorily for redevelopment under LCSRO. Thus, the chance of having such a dispute for an average person is very slim. Most people are simply not interested in the mediation services provided under PMS, until their properties fall into the criteria of LCSRO or SLPN, or even until their properties are being acquired.

It is therefore understandable that a large portion of users of PMS service had no prior knowledge about the context and procedures of LCSRO, and had no idea what mediation was and why mediation should be conducted under LCSRO.

It is also understandable that promotion of PMS to the general public would mostly be futile, or at least inefficient, if they are not delivered to the specific stakeholders who are being involved in a dispute, or at least potentially to be involved in a dispute, with other parties of a CSLR.

Social service organizations with extensive and long term experience in outreaching work to old building owners would be a better candidate for providing the publicity and public education service under PMS.

5 Task 2 Effectiveness of PMS

Effectiveness of PMS is defined by the consultancy team as the degree to which the objectives are achieved by (1) the existing selection procedure of the service provider, (2) the current service requirements, and (3) the evaluation of performance by the current performance indicators.

Both qualitative and quantitative analyses are used for this task. For the qualitative analysis, it includes a literature review and a process review. For the quantitative analysis, the statistics of the numbers of applications and settlements, and the rates of success will be discussed.

5.1 Qualitative Analyses

5.1.1 Literature Review

5.1.1.1 LCSRO

There have been very few reviews on the effectiveness of mediation for LCSRO, as it is relatively new. Two of the available studies on the review of LCSRO are: Hasting and Adams (2005) and Hui et al., (2008), but they did not study anything about mediation.

5.1.1.2 Development of Mediation in Hong Kong and Success Rates

Chau (1992), one of the earliest studies on the effectiveness of mediation in Hong Kong, compared the effectiveness of mediation versus arbitration on resolving construction disputes, and considered the experimental scheme on mediation launched since 1984 extremely promising, with a success rate not less than 80%. DoJ (2010) also regarded the mediation scheme on construction disputes very effective, especially when Fung (2012) reported that 30% or more cases settled through mediation from overseas experience.

Many pilot schemes of mediation have been implemented, including family mediation, commercial mediation and building management mediation, etc.

A 3-year family mediation pilot scheme was introduced by the Judiciary in May 2000. The success rate for the period from May 2000 to May 2003 was reported to be about 80%.²⁴ Two reports on the family mediation pilot

²⁴ The pilot scheme for family mediation was made permanent when the Judiciary issued Practice Direction 15.10 on Family Mediation.

scheme have been produced by the Hong Kong Polytechnic University (2002, 2004).

A Commercial Mediation Pilot Scheme, among others, was also run by the Hong Kong Mediation Council in 2007. And then in 2008, the Hong Kong Monetary Authority appointed HKIAC as the service provider for the Lehman Brothers-related investment Products Disputes Mediation and Arbitration Scheme, and was said to achieve 85% success rate²⁵ Ali and Kwok (2011) reviewed the scheme and considered it successful, especially on the provision of pre-mediation session.

Another Pilot Scheme for work-related personal injuries claims, New Insurance Mediation Pilot Scheme (NIMPS), was set up by the Hong Kong Mediation Council in Apr. 2007, with a seed fund of \$250,000 provided by the Hong Kong Federation of Insurers, and the settlement rate was reported to be 100% in DoJ (2010). This is probably the only mediation scheme which achieves 100% success rate. The scheme provides 16-hour free mediation services for the disputants, as the mediator receives \$15,000 from the NIMPS Fund for the first 16 hours of mediation.

The BMMPS for Building Management disputes is run by the Judiciary since Jan. 2008. The success rate for mediation of building management disputes was found to be about 43% from Jan. 2008 to Dec. 2011²⁶. Two reports on BMMPS have been produced by the Judiciary (2009, 2011).

The Pilot Mediation Scheme (PMS) in support of property owners affected by compulsory sale under the LSCRO has been launched since Jan. 2011. DEVB commissioned JMHO to set up and operate PMS. The success rate of PMS from 27 Jan. 2011 to Apr. 2013 was reported to be 78% (see Section 6 for more details). The success rate is similar to other similar schemes.

There were 48 applications of PMS within the period, and there were 14 cases that were fully or partially settled by the mediation. But there were also 17 cases that were resolved by the parties themselves after seeking initial information, i.e. after the intake session. It is unclear if in the 17 cases, which made an initial application to PMS but did not further use PMS services after

²⁵ "... a total of 334 cases were referred to the SFC by the around 243 cases were handled by the Scheme Mediation Office. Of the 243 cases, eighty-five mediations were conducted successfully while the remaining cases were settled prior to the mediation sessions. For those who actually engaged in the Mediation Scheme, settlement rate was eighty-five percent." (Ali and Kwok, 2011)

²⁶ Fung (2012) reported that there were 191 cases fully or partially settled, out of the 441 completed cases.

receiving the intake session (pre-mediation consultation service), the parties had actually resolved the disputes by the parties themselves or through mediation conducted by other service providers, even though the parties reported to JMHO that the disputes were settled.

It is also noted that for the period from 15 February 2011 (when the LTPD:CS No.1 was issued) to 31 March 2013, according to the Judiciary sources, there were in fact 29 compulsory sale applications that were fully or partially withdrawn / discontinued after having been settled by mediation. Amongst the 37 mediation sessions conducted for these 29 cases, only 7 of the sessions were conducted under PMS (See Table 5.3).

For the purpose of comparison, it is worth noting that from the Judiciary sources, for the 11 cases heard by the Lands Tribunal (and with compulsory sale orders granted) during this period, there were 14 attempts for mediation, of which only 2 were conducted under PMS, 6 were conducted by other service providers while 6 others were conducted by uncertain sources. For the 27 cases in progress, as at 31 March 2013, 52 mediation sessions were being conducted. Of the 52, only 5 were conducted under PMS while another 25 were being conducted by other service providers and another 22 were conducted by mediation sources that were not certain. (See Table 5.3)

5.1.1.3 Mediation Fees:

DoJ (2010) also provides a brief history of the charging of mediation- fees in Hong Kong. It was the pilot scheme introduced in 2007 by the Hong Kong Mediation Council for mediation of low value construction disputes that provided pro-bono mediation service for 8 hours for disputes up to \$3 million. A mediation fee of \$1,500 per hour was borne by both parties equally for mediation time beyond the 8-hour session²⁷. It sets out a standard hourly rate of mediation, which is then commonly adopted by many subsequent schemes.

5.1.1.4 Suitability:

DoJ (2010) spelt out the following 5 characteristics of cases that make mediation NOT suitable for their dispute resolution:

- (1) "the dispute is volatile and good faith is lacking between the parties;
- (2) one of the parties wants to establish a legal rule, precedent or

²⁷ It was replaced by the Construction Dispute Mediation Scheme in 2009.

principle;

(3) one of the disputants thinks that he or she can win a huge settlement from the other and has unrealistic expectations;

(4) cases where there is a significant power imbalance between the disputants and

(5) cases where fraud or criminal activities are involved."

These 5 characteristics identify the (un)suitability of PMS for CSLR disputes, as elaborated in Section 4. First, in view of the high information cost on the value of the property and the bad reputation of some land assembly agents who allegedly use unprofessional means to secure deals with minority owners, it is hard to have good faith between the parties. Together with the perceived significant power imbalance, in general, between the disputants and sometimes an unrealistic expectation of a high price settlement in LCSRO, it may also explain the low rate of application in PMS.

5.1.1.5 Success Factors for Mediation to be Taking Off and/or Settled

Before examining the factors that affect the success rate of mediation, it is useful to have an understanding of the factors that make mediation a choice for resolving disputes. The Secretary of Justice Wong (2007), cited Dame Hazel Genn's (2007) remarks that "a critical policy challenge is to identify and articulate the incentives for legal advisers to embrace mediation on behalf of their clients." He further examined the two schools of thoughts that would foster mediation as a widely accepted means of resolving disputes. The first one contends that "voluntary take-up of invitations to engage in mediation is not effective and there must be certain degree of judicial compulsion to ensure mediation will take off". The second one argues that "willingness to participate in mediation is critical to its success and thus the emphasis should be placed on facilitation, education and encouragement." Wong (2007) suggests that "background pressure and also procedural structure, such as appropriate costs orders and other case management matters, may play a very significant role in the process." Bergin (2007) reviewed the success rates of mediation in Australia and suggested the following factors of success:

"The factors that may affect parties' decisions to reach a settlement at mediation may include: the cost of the litigation; the cost of the mediation; the nature of the relationship between the parties; the desire (or lack of it) to continue in a

commercial relationship with the other party; the concern about possible publicity; the financial capacity to continue with the litigation; the existence of other projects on which the funding required for the litigation may be otherwise spent; the desire to avoid a public hearing; the presence of a trial date; the perceived strengths or weaknesses of the party's case and that of the opponent(s); and possibly the identity of the mediator."

As the parties in a CSLR dispute would very unlikely have any commercial relationship in the future, this factor of success is irrelevant in PMS. Then, most of the other factors of success are litigation and capacity related, such as the cost of litigation, and financial capacity to continue with the litigation, etc., but since there are very few cost orders granted in the litigations of CSLR, these factors are also irrelevant in PMS.

The presence of a trial date is, however, relevant to PMS, as there is a risk that the reserve price granted by the Lands Tribunal for CSLR can be lower than the final offer price by the majority owner.

Bergin (2007) found the timing effect of mediation that "the later a case is referred to mediation the greater the chance of settlement", the reported success rate increased from 27% to 60%, when the mediation session was held closer to the trial date of litigation. It is thought that the trial date could "focus the parties' minds on the necessity to make firm decisions in respect of their disputes." This finding is consistent with the responses from a majority owner that mediation serves as an alarm clock to the minority owners that they need to make a decision on whether they will come to an agreement (with or without mediation) or resolve the dispute in court (also see 4.3.1).

Lam (2009) cited the *Supply China & Logistics Technology Limited v. NEC Hong Kong Limited* case (HCA 1999/2006) that the skill and expertise of mediators is one of the determinants of the success of mediation, because many parties simply go to mediation in a 'tick-the-box' manner, just to avoid an adverse costs order being imposed upon them in the future. "Mediation ...has a better prospect of success than the usual inter parties negotiation because of the involvement of a neutral expert who has the necessary skill and expertise in helping the parties to explore their respective needs and interests..."

Au and Lam (2012) showed the statistics that the top three criteria for choosing mediator are (1) profession (26%), (2) fee-charging (26%) and (3)

experience (21%). This suggests that professional knowledge and the fee charged are equally important. But when the fee schedule of PMS is fixed, it deters users from choosing services offered by PMS when an equally professional and experienced mediator can accept a lower fee in the private market.

Besides the mediators, the performance of the legal advisers, if any, would also affect the success of the mediation. Lam (2012) reported that the Judiciary is not satisfied with the lawyers' role in facilitating clients for mediation, and further extracted a paragraph from the *Chevalier (Construction) Company Limited v. Tak Cheong Engineering Development Limited* (HCA 153/2008) case that "A solicitor who paints an unrealistic rosy picture for his client would generate unrealistic expectation on the part of the client. At the end of the day, if mediation fails and litigation fails to deliver the expected result, the client would suffer tremendously. Such a solicitor is not doing a service to his client."

Lung (2012a) even reported that "Some of them [lawyers] indeed tried to prevent settlement [of mediation]", as revealed by mediators. Lung (2012b) also made some advices for the legal advisers that "they should not take an adversarial stance in mediation because they will affect their clients" and "[they] should not hijack clients' decision on terms of settlement." Legal advisors must exercise caution when they prepare the settlement agreement for clients. Otherwise, clients may end up with another set of litigation over the disputes in the settlement agreement. Lung quoted the case *Champion Concord Ltd. & Another v. Lau Koon Foo & Another* (FACV 16, 17/2010) as an example that a dispute (about purchase of land) which was originally settled by mediation, but was led to another litigation all the way to the Court of Final Appeal, just due to some convoluted terms and unclear definition in the settlement agreement.

5.1.2 Process Review

A process review on the following issues in respect of PMS in the past three years (2011-12 / 2012 -13 / 2013-14) has been conducted:

1. A review of the selection procedures adopted for PMS, namely single tender and restricted tender (as compared to the other selection methods commonly used, e.g. open tender);
2. A review of the service requirements (as compared to what PMS users

expect from the Scheme based on their feedback during focus groups or structured interviews detailed below); and

3. A review of the performance indicators required of the service provider having regard to the fact that the Scheme is pilot in nature and the community is in general unfamiliar with mediation.

5.1.2.1 Review of the Selection Procedures

In the procurement of the three contracts with the service providers so far, all the tendering exercises are “restricted tender” in nature. This is understandable because there are very few qualified tenderers, especially when most of the recognized institutions providing professional mediation services have joined together to form JMHO. The emphasis²⁸ on the experience of providing mediation services in Hong Kong in the assessment criteria of the tenders would further limit the selection. This is also understandable as compulsory sale is not a familiar subject to all and the Government must ensure that the bidders have the capability to deliver the service for which they are bidding and will be seen to have such capability.

JMHO is specialized in mediation, but it is not so on the promotion of mediation or on the facilitation of elderly owners to apply for the subsidy scheme. It is observed that JMHO was offered the contract to provide both service items, namely, (1) scheme administration and consultation, and (2) publicity and promotion, in the first two years; but then two separate service providers that is, JMHO and SCHSA, were commissioned to provide the two service items respectively in the third contract in the 2013-2014 contract period.

As discussed in Section 4.2, normally, a tendering process can help solicit a competitive market price for the services. However, a single tender and a restricted tender do not help achieve this aim.

It is noted that the contract sum for scheme administration and scheme consultancy with JMHO was adjusted from the \$900,000 in the first contract to \$912,000 and \$604,320 in the second and the third contracts as it has become clear over time that the key components for the scheme support are the need to pay for one member of staff of JMHO with a monthly salary

²⁸ In the Marking Scheme of Item 1 of the Quotation PLB(Q) 018/2012, all the eight criteria for assessment are about the experience of the bidder.

equivalent to that of an officer grade in the Government, and payment for two term consultancies for scheme administration and scheme administration at a standard rate.

5.1.2.2 Review of the Service Requirements

Section 4 above shows the major service requirements of PMS, and they can be divided into four main services, namely (1) Scheme Administration, (2) Scheme Consultancy Service, (3) Publicity and Public Education, and (4) Training Service.

Most of the service requirements are directly related to the mediation supporting services, including pre-mediation enquiry and consultation (intake session), mediation administration, post-mediation follow-up, and training of mediators, etc. These service requirements are conducive to the quality of the mediation service.

However, there are no explicit requirements on any quality control systems, such as monitoring of the mediation process, internal evaluation of the services, feedback and review of the services, etc.

5.1.2.3 Review of the Performance Indicators

Currently, there are no explicit performance indicators stated in the service contracts for scheme administration and scheme consultancy, but generally speaking, the following three performance indicators are commonly accepted, with reference to the evaluation reports of the other mediation schemes. They are -

1. Success rate;
2. User satisfaction survey results; and
3. Number of talks and numbers of attendants.

The success rate will be discussed in Section 5.2.3, and the number of talks and numbers of attendants will be discussed in Section 5.3.

However, in view of the requirement of competing with other private services providers, the performance of PMS should also be measured by its utilization rate in the market. Details of the performance analyses are discussed in Section 5.2.2.

5.2 Quantitative Analyses

The CS cases can be settled voluntarily before Lands Tribunal hearings, before or after conducting mediations but not because of the mediations themselves. In these circumstances, parties could apply for withdrawals or the applications would be discontinued²⁹. They are not counted as success cases of mediation (Mediation Stage Success), because the parties settle their disputes before or after the mediation but not directly because of the mediation. However, the statistics of withdrawal / discontinuation can at least indicate the number of voluntary settlements in CSLR cases, with or without conducting mediations. The popularity of PMS versus other alternative means of settlement can also be assessed by comparing the proportion of withdrawal / discontinued cases after receiving PMS and non-PMS mediation services. Further analysis is provided below -

1. Number of CSLR Applications Fully Withdrawn / Discontinued;
2. Number of CSLR Applications Fully and Partially Withdrawn / Discontinued;
3. Utilization Rate of PMS; and
4. Reasons for Applications Withdrawn / Adjourned / Discontinued (WAD).

More specifically, the number of enquiries and applications for mediation under PMS and their success rates, in comparison with that of JMHO, and other mediation supporting services, are analyzed in another 2 sub-sections as follows:

1. Number of Enquiries and Applications for Mediation under PMS and their Success Rates; and
2. Number of Enquiries and Applications for Mediation via JMHO and their Success Rates.

5.2.1 Numbers of CSLR Applications and Applications Fully Withdrawn / Discontinued (Full WAD)

Since the operation of LCSRO on 7 June 1999, up to 31 March 2013, the

²⁹ The cases that are fully or partially withdrawn are collectively labeled as "Withdrawal / Adjournment / Discontinuation cases" or "WAD". Those that are fully (partially) withdrawn are referred to as "Full WAD" ("Partial WAD").

Lands Tribunal has received 195 applications for CSLR and issued 44 (23%) compulsory sale orders. There are, however, 87 (45%) applications that were fully withdrawn by applicants or discontinued or adjourned (Full WAD) as shown in Table 5.1. The number of WAD is almost twice of the number of orders granted. If the 62 (32%) applications that were under processing are excluded, the proportion of WAD is 65% of all CSLR cases. The high proportion of Full WAD implies the dominance of voluntary settlements of CSLR disputes.

Table 5.1 No. Of Applications and Orders for CSLR under LSCRO, 9 June 1999 – 31 March 2013

	Cumulative Total	% to No. of Applications
	9 June 1999 – 31 March 2013	
No. of Applications Filed	195	NA
No. of Compulsory Sale Orders Granted	44	23%
No of Applications Dismissed/ Struck Out	2	1%
No of Applications fully Withdrawn / Adjourned/ Discontinued	87	45%
No of Applications in Progress	62	32%
No of Applications filed under the 80% Threshold	71	36%

Sources: DEVB

5.2.2 Number of CSLR Applications Fully and Partially Withdrawn / Discontinued (Partial WAD)

It should be noted that the above estimation of Full WAD does not include many partial withdrawals / discontinuation cases (Partial WAD), which includes the cases where one or more respondents who did not agree with the other applicants to withdraw / adjourn / discontinue, then the court cases would have to continue.

For example, when counted from 15 February 2011 (release of the LTPD: CS No. 1/2011) to 31 March 2013, there were 38 cases of Full WADs plus 12 cases of Partial WAD before trial, i.e. there were in total 50 cases involving withdrawal / discontinuation (see item [E] of Table 5.2). The proportion of

WAD, if both Full and Partial WAD cases are counted, amounts to an overwhelming dominance of 86% of all CSLR cases.

Furthermore, within the same period, there were some decisions brought down from the applications filed in previous periods (Column 3 of Table 5.2). They also show a very high proportion of WAD (81%). Among the 26 cases decided in the period (15 Feb. 2011 – 31 Mar. 2013) but with application filed before 15 Feb. 2011, there were 21 WAD cases (17 Full WAD and 4 Partial WAD cases).

Table 5.2 No. Of Applications and Orders for CSLR under LSCRO, 15 Feb. 2011 – 31 Mar. 2013

	15 Feb. 2011 – 31 Mar. 2013	Applications Prior to 15 February 2011 (decisions between 15 Feb. 2011 – 31 Mar. 2013)
*No. of Applications Filed [A=B+F]	98	NA
No. of Decided Applications [B=C+D]	58	26
No. of Compulsory Sale Orders Granted [C = C1+C2]	20	9
*No. of Cases with Trials with CSO Granted (with some parties withdraw before trial) [C1]	12	4
*No. of Cases with Trials with CSO Granted (none of the party withdraws before trial) [C2]	8	5
*No of Applications Fully Withdrawn / Discontinued [D]	38	17
No. of Applications with Full or Partial Withdrawal / Discontinued [E= D+C1]	50	21
(% to total no. of decided applications) [E/B]	(86%)	(81%)
*No of Applications in Progress [F]	40	0

*Sources: Judiciary

5.2.3 Utilization Rate of PMS

The utilization rate of PMS can be analyzed by comparing the numbers of reported mediations conducted under different schemes or by different services providers. However, this method is limited by its voluntary

reporting nature, and so the figures may not tell the whole picture. They can be for reference nonetheless.

First, there were 94 cases that were reported to have attempted mediation out of the 61 reported applications (Table 5.3), i.e. an average of about 1.5 mediations per application.

Second, there were only 12 mediation attempts conducted via PMS out of the 94 mediation attempts, i.e. the utilization rate of PMS is 13% for CSLR in the study period. The remaining 87% of mediation attempts were conducted by other service providers (48%) or by some unidentified sources (39%). It indicates that there are many other competitive and active service providers in the private market who provide mediation and mediation supporting services for CSLR.

Excluding the cases in progress, there were only 7 mediation attempts out of the 42 mediations for CSLR that were conducted via PMS³⁰, i.e. the utilization rate of PMS is 17%. Other service providers handled 48% and the remaining 36% were by some unidentifiable sources. The similarity of the distributions (with and without including the cases in progress) indicates a steady trend of market shares of PMS.

Furthermore, it is noted that a withdrawal / discontinued case with mediation attempts does not necessarily imply a successful mediation, and in fact the reported number of successful mediations is very few (11 out of 42 decided cases). There were only two cases withdrawn because of successful mediations under PMS.

³⁰ It is to be noted that according to the statistics kept by JMHO, the number of cases handled under PMS is higher than the number shown here. This is because some of the mediation cases reported to the Judiciary do not identify the source of mediation support and they may have actually been handled under PMS.

**Table 5.3 No. Of Mediations Attempted for Applications for CSLR under LSCRO,
15 Feb. 2011 – 31 Mar. 2013**

No. of the Subject Cases that were Reported to Attempt Mediation	No. of Cases	No. of Mediations	Mediation Services Provided by (no. of times)		
			PMS	Other Service Providers	Source Uncertain
*No. of Cases Fully Withdrawn/Discontinued [A]	23	28	5	14	9
No. of Trials with CSO Granted [B]	11	14	2	6	6
*No. of Trials with CSO Granted (with some parties withdraw before trial) [B1]	6	9	2	3	4
*No. of Trials with CSO Granted (none of the party withdraws before trial) [B2]	5	5	0	3	2
Total No. of Decided Cases [C=A+B]	34	42	7	20	15
Total No. of Cases with Full or Partial WAD [D=A+B1]	29 (85%)	37 (88%)	7 (100%)	17 (85%)	13 (87%)
(% to total no. of decided cases) [D/C]					
*No of Cases in Progress [E]	27	52	5	25	22
*Total No. of Cases [F= C+E] (% to total no. of cases)	61	94	12 (13%)	45 (48%)	37 (39%)
*Reported No. of Successful Mediations	NA	NA	2	3	6

*Sources: Judiciary

Notes: (1) The figures were only based on the reports submitted by parties. (2) in general, most CSLR cases consist of multiple parties and there might be more than one attempt of mediation in each case. (3) According to the reports submitted by parties, there was only one case withdrawn because of successful mediation under PMS.

5.2.4 Reasons for Applications Withdrawn/Adjourned/Discontinued

There can be various reasons for WAD, so a sample of 41 WAD cases that were reported in court case reports are summarized in Table 5.4 to analyze their reasons of WAD. It is found that one of the major reasons for withdrawal / discontinuation is a successful settlement of the disputes between the parties (the respondents, the minority owners, accepted the applicants' offers) before or during the litigations, although we could not know whether it was the results of mediation.

TABLE 5.4 Reasons of WAD in some of the reported cases

Court Cases No.	No. of Respondents	Nos. of W/A/D	Reasons of discontinuation	Cost order
LDCS12000/2011	1	/ /1	acquired	
LDCS16000/2011	5	/1[a]/2	acquired	no
LDCS20000/2011	3	/ /1	acquired	no
LDCS21000/2011	1	1/ /	acquired	no
LDCS32000/2011	2	/ /1	acquired	no
LDCS40000/2011	3	/ /2	acquired	no
LDCS41000/2011	3	/ /1	acquired	no
LDCS4000/2012	6	/ /4	acquired	no
LDCS5000/2012	6	/ /5	acquired	no
LDCS11000/2012	7	/ /6	acquired	no
LDCS15000/2012	6	/ /4	acquired	no

LDCS33000/2012	6	//4	acquired	no
LDCS34000/2012	6	//3	acquired	no
LDCS36000/2012	6	//5	acquired	no
Total	61	1/1/39	14	

Remarks: [a] the case was adjourned pending for the document of the estate management.

Table 5.4 summarizes the numbers of respondents, numbers of WAD and related information from some of the publicly available court case reports on CSLR. There were 61 respondents from the 14 Partial WAD cases. But there were 39 discontinuations before or during the hearing, i.e. the voluntary settlement rate in these partially WAD cases is 67% and almost all of the discontinuation cases was due to the fact that the respondents accepted the applicants' offers and the subject properties were successfully acquired before any CSLR order.

There were also one case of withdrawal and another one case of adjournment. The reason for the withdrawn case is not reported, and that of the adjourned case is due to the pending of a document on the estate management for the deceased owner. Furthermore, there were 15 respondents who did not file the notices of opposition, or withdrew their notices of opposition.

Lastly, it is also noted that in most of the cases, the winning parties, primarily the majority owners, do not ask for an order for costs, which may have already been a general expectation of the minority owners in assessing the risk and cost of litigation under LCSRO.

5.2.5 Numbers of Enquiries and Applications for Mediation under PMS and their Success Rates

PMS received 184 enquiries and 48 applications for mediation services from 27 Jan. 2011 to 30 Apr. 2013, involving 22 sites.

In the following analysis, two success rates are measured, namely (1) Information Gathering Stage Success Rate, and (2) Mediation Stage Success

Rate. Information Gathering Stage success rate is defined as the number of mediations conducted through application for the services plus the number of cases resolved by the parties themselves after seeking initial information from the service provider divided by the total number of applications for mediation, as shown in Eq (1):

Equation (1): Information Gathering Stage Success Rate =

$$\frac{\text{No. of cases resolved by the parties themselves after seeking initial information from the service provider} + \text{No. of mediations conducted}}{\text{Total no. of applications for mediation}} \text{ Eq(1)}$$

The Information Gathering Stage Success Rate is intended to measure the success rate of conducting mediation or settling disputes before conducting mediation.

Mediation Stage success rate is defined as the number of settlements by mediation divided by the number of mediation conducted minus the number of on-going mediation cases, as shown in Eq (2):

Equation (2): Mediation Stage Success Rate =

$$\frac{\text{Number of Settlements by Mediation}}{(\text{Number of Mediation Conducted} - \text{Number of On-going Mediation Cases})} \text{ Eq(2)}$$

The Mediation Stage Success Rate is intended to measure the success rate of settling disputes by the mediation offered by the service provider. Up to 30 April 2013, there were a total of 19 cases that conducted mediation under PMS. Amongst these 19 cases, there were 14 cases that were successfully settled by mediation, and 1 case was still on-going. In other words, the Mediation Stage Success Rate of PMS as at 30 April 2013 was 78% (See Table 5.5).

The cumulative Mediation Stage Success Rate increased from 33% in 2012 to 78% in 2013. This could reflect the learning curve of the stakeholders of LCSR cases. However we cannot infer the learning curve is related to using mediation service in general or using PMS mediation service

in particular. Nor do we know whether the increase was due to institutional improvements (enactment of Mediation Ordinance) and infrastructure (e.g. increased number of qualified mediators).

Similarly, the Information Stage Success Rate of PMS as at 30 April 2013 was 75%, as there were 17 cases that were resolved by the parties themselves after seeking initial information from PMS. However, as it cannot be ascertained whether the 17 settlements were directly the results of the information gathering process (pre-mediation consultation or intake session), the above reported Information Gathering Stage Success Rate is debatable. If the 17 settlements were excluded, then the Information Gathering Stage Success Rate dropped to 40%.

Table 5.5 Cumulative Statistics of No. Of Enquiries, Applications and Success Rates of Mediation under PMS

	Up to 26 Jan 2012	Up to 31 Jan 2013	Up to 30 Apr 2013
No. of enquiries [A]	79	172	184
No. of applications for mediation [B]	31	42	48
No. of CS cases concerned	13	22	22
No. of mediation conducted through application for PMS services [C=B-D-G-H]	8	18	19
No. of other cases resolved by the parties themselves after seeking initial information from PMS [D]	15	16	17
No. of successful settlement by the mediation [E]	2	13	14
No. of on-going mediation cases [F]	2	1	1
Information Gathering Stage success rate [(C+D)/B]	74%	81%	75%
Mediation Stage success rate [E/(C-F)]	33%	76%	78%
No. of cases that could not be settled after the mediation session	1	4	4
No. of cases where the parties refuse to mediate or cancel application for mediation under PMS [G]	5	8	8
No. of cases pending to appoint mediators [H]	3	0	4

Source: [http://www.jointmediationhelpline.org.hk/pdf/JMHO_2011_JMHO_\(2013b\).](http://www.jointmediationhelpline.org.hk/pdf/JMHO_2011_JMHO_(2013b).)

5.2.6 Overall Nos. of Enquiries and Applications for Mediation filed with JMHO and their Success Rates

JMHO, in its ordinary course of business, received 587 enquiries and 319 applications for all kinds of mediation services from Jul. 2010 to Dec. 2012 (Table 5.6). Amongst the 319 applications, the nature of the disputes involved 43 cases of Business / Partnership, 39 cases of Personal Injuries / Employee Compensation, 33 cases of Debt, 28 cases of Inheritance, 23 cases of Construction / Renovation, 23 cases of Finance / Banking, 21 cases of Rental / Tenancy Agreement, 20 cases of Ownership of property, 20 cases of Professional Negligence, etc. But there were only 93 mediations that were finally conducted via JMHO, which implies a 29% Information Stage success rate. Amongst the 93 cases of completed mediation, 46 successfully reached a settlement. The Mediation Stage success rate is about 50%.

It implies that the success rates of PMS are not particularly low, in comparison with the figures of the overall mediation services of JMHO.

Table 5.6 Statistics of No. Of Enquiries and Applications for Mediation Conducted under JMHO and their Success Rates

	Jul. 2010 - Dec. 2010	Jan. 2011 - Dec. 2011	Jan. 2012 - Dec. 2012	Total
No. of enquiries [A]	160	190	237	587
No. of applications for mediation [B]	50	116	153	319
No. of mediation conducted through application for JMHO services [C]	11	35	47	93
Information Stage success rate [C/B]	22%	30%	31%	29%
No. of successful settlement by the mediation [E]			23	46
Mediation Stage success rate [E/C]			49%	49%

Source: DEVB (2013a) and

[http://www.jointmediationhelpline.org.hk/pdf/JMHO_2012_Annual_Report_final%20\(26032013\).pdf](http://www.jointmediationhelpline.org.hk/pdf/JMHO_2012_Annual_Report_final%20(26032013).pdf)

5.3 Publicity and Training

5.3.1 Publicity and Training for PMS by JMHO

Upon the setting up of PMS in January 2011, JMHO received, as part of the setup cost, \$330,000 for training and publicity. For recurrent budget on training and publicity in the first contract, JMHO received \$400,000. For the second contract from 27 January 2012 to 26 January 2013, JMHO received \$220,000 for training and publicity as recurrent budget. At the request of JMHO, a contract variation was effected on 24 August 2012 under which JMHO received an additional \$100,000 for enhanced training and publicity in the second contract. For the third contract in 2013-14 SCHSA instead of JMHO was commissioned to run the publicity and training programme for PMS. SCHSA was paid \$316,280 for the work. Compared with JMHO, SCHSA has been able to deliver a broader-based outreach programme. Apart from public talks, SCHSA has been attending call-over meetings of compulsory sale at the Lands Tribunal and also publishing newsletters for PMS.

JMHO has delivered 21 public seminars and 4 training workshops from the end of January 2011 to the end of January 2013, with details as shown in Table 5.8.

Table 5.8 Statistics of No. of Training, Radio Broadcasts and Seminars by JMHO in 2010-2013

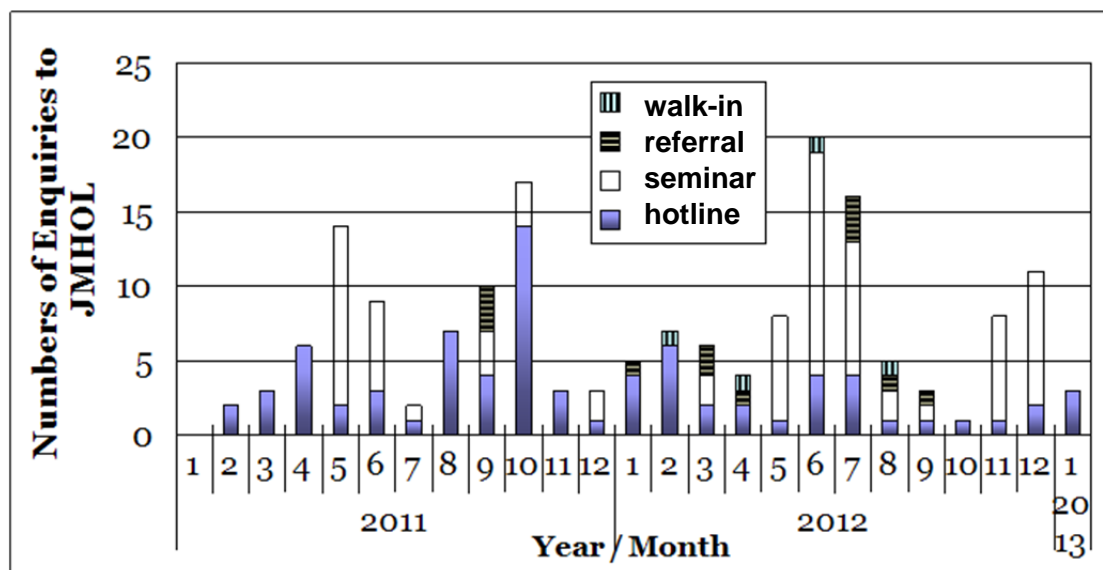
	27 Nov. 2010 - 26 Jan. 2012	27 Jan. 2012 - 31 Jan. 2013
No. of training sessions for mediators (No. of on-list mediators)	4 (147)	0 (139)
No. of radio broadcasts	25	0
	(5 - 20 Oct 2011)	

Source: JMHO (2013a, 2013b)

From 5 Oct. 2011 to 20 Oct. 2012, 25 airings of audio clips promoting PMS were broadcast on Commercial Radio 881 in a 16-day period. JMHO regarded this as a very successful promotion attempt, though passive, in reaching out to potential users of the services, as the number of enquiries via hot-line was reported to have increased sharply (by 349% against the average) in the month of the broadcast, as shown in Figure 5.1. There are altogether 78 enquiries via hot-line in the 25-month study period.

Public seminars are also found to be able to reach more potential users of the services. There are altogether 79 enquiries after seminars in the 25-month study period (in comparison with 12 and 4 enquiries via references and walk-in, respectively). See Figure 5.1.

Figure 5.1 No. of Enquiries on PMS via Various Sources to JMHO by month



Summing up, there are 5 different publicity channels, namely (1) public talks and seminars, (2) distribution of information and receipt of enquiries via a hotline and a webpage, (3) regular mailing of the scheme leaflets to parties to the compulsory sale applications filed with the Lands Tribunal; (4) paying for search engine service to feature the Pilot Mediation Scheme on the internet; and (5) via mass media such as the airing of an audio clip on radio in October 2011.

5.3.2 Publicity and Training for PMS by SCHSA

The Senior Citizen Home Safety Association ("SCHSA"), a non-profit-making charitable organization, has, since January 2011, been separately commissioned by DEVB, at \$1.43 million to provide outreach support service for the elderly owners. Under this service contract, SCHSA will pro-actively approach and provide assistance to elderly minority owners of old buildings. Over the 12-month period since Jan. 2011, the Outreach Scheme handled 61 cases of requests for assistance from elderly owners. The scheme social workers paid 475 home visits to elderly owners, 263 building visits (distribute information leaflets door-to-door) and conducted 45 public talks on LCSRO at elderly centres.³¹

In the third contract, for PMS, SCHSA took over from JMHO the publicity and training role of PMS in 2013-14, From the end of January 2013

³¹ <http://www.legco.gov.hk/vr11-12/english/panels/dev/papers/dev0417cb1-1514-1-e.pdf>

to the end of January 2014, SCHSA conducted 6 public seminars, 1 training workshop, 1 advertisement and visited 155 old buildings to distribute information leaflets and published an e-newsletter to stakeholders, details as shown in Table 5.9.

Table 5.9 Statistics of No. of Training, Advertisement and Seminars for PMS by SCHSA in 2013-2014

	27 Jan. 2013 - 31 Jan. 2014	Remarks
No. of training sessions for mediators (No. of attendants)	1 (115)	Jointly organized by SCHSA and JMHO
No. of advertisement	1	Through Yahoo Bing
No. of public seminars (No. of attendants)	6 (221)	
No. of other forms of publicity	2	Visit 155 old buildings to distribute information leaflets, and publish 1 e-newsletter to stakeholders

Source: SCHSA

5.3.3 Publicity for PMS by DEVB and Judiciary

Separately, DEVB had produced a video to introduce compulsory sale under LCSRO to inform minority owners about their rights and protection under the Ordinance. The video explains the scope of the Ordinance, the process of compulsory sale, and the caveats that owners should watch out for when approached by developers or their intermediaries during voluntary acquisition.

Through the various submissions to LegCo, DEVB has also provided more information on compulsory sale to the general public.

The Mediation Information Office³², set up by the Judiciary, assists the parties of disputes in better understanding of the nature of mediation and how it will help the litigants to resolve their disputes. The Mediation Information Office is set up to serve the parties/litigants in court and facilitate them to seek mediation from the professional bodies. This Office answers enquiries and provides information on court-related mediation. However, the staff will

³² http://mediation.judiciary.gov.hk/en/mediation_faq_lcsc.html

not give any legal advice or offer any comment or assistance on the conduct of specific court cases and proceedings.

Judiciary (2011) also provides a General Guide to Mediation for CSLR Cases, available at

http://mediation.judiciary.gov.hk/en/doc/GeneralGuide_LTPD-Eng.pdf

6 Task 3 Factors affecting the Success

Rates of PMS

There are so far no recognized definitions for the success rate of mediation. Most of the reported success rates of mediation schemes are about the settlement rates of mediation, but there is little discussion on the success rate of supporting services.

As this Study is to review the effectiveness of PMS scheme, rather than just the effectiveness of the mediations, the analysis of the success rate is thus divided into two parts, namely: (1) Information Gathering Success Rate - whether mediation is conducted via PMS (or dispute settled) after application for mediation service; and (2) Mediation Stage Success Rate - whether the disputes are settled by mediation under PMS. They have been defined mathematically in section 5.2.5.

An assessment on whether the reported success rates of mediations under PMS are high or low is discussed in Section 6.3. The ensuing Section 6.1 explains the research method for this task, and records the number of interviews conducted.

6.1 Methodology for Task 3

Three semi-structured interviews have been carried out with the incumbent service providers of PMS, namely, JMHO and SCHSA, to collect their feedback on the scheme. Meetings with the consultancy project client, DEVB, are also held to discuss the findings.

Another 17 focus group discussion sessions, information exchange sessions, semi-structured interviews and/or email exchanges have been held to solicit opinions and feedback from the following eight groups of major stakeholders-

- (1) members of the Panel on Development, Legislative Council,
- (2) District Councilors of District Councils in urban areas;
- (3) staff of the Judiciary;
- (4) the mediators;

- (5) the minority owners of compulsory sale applications since the implementation of PMS;
- (6) the relevant professional bodies and PSPs;
- (7) the relevant consultants; and
- (8) the Real Estate Developers Association of Hong Kong (REDA) and its members (representing the majority owners).

6.2 Are the Success Rates High or Low?

Before investigating WHY the success rate is high (or low), one must define WHAT is high (or low) success rate first. Whether a success rate is high (or low) cannot be told simply by reading the rate itself. The following TWO approaches have been proposed, i.e. –

1. Comparison with the success rates of other mediation schemes in Hong Kong; and
2. Tracking the time trend.

6.2.1 Comparison

Comparing with the success rates of the reviewed mediation schemes in the literature review section (5.1.1), which range from 43% to 85%, the Mediation Stage success rate of PMS (78%) falls within the range.

However, there are very few reports on the Information Gathering Stage success rate, so it cannot be compared. Since the period of comparison is not the same, and there are differences in the nature of disputes, the administration system and the arrangement of intake session (pre-mediation consultation service) of each scheme, their comparisons may have to be qualified.

6.2.2 Time Trend

Table 6.1 compares the time trend of the success rates of PMS in the past two and a half year, in cumulative terms.

It shows that the Mediation Stage success rate of PMS is improving over time, from 33% to 78%. It may reflect the learning curve of all the stakeholders.

However, the Information Gathering Stage success rate of PMS is stable over time, attaining around 75%. It may reflect the keen competition of the

mediation supporting services provided in the private market.

TABLE 6.1 A Comparison of the Time Trend of the Success Rates of PMS

PMS	Up to 26 Jan 2012	Up to 31 Jan 2013	Up to 30 Apr 2013
Information Gathering Stage success rate [(C+D)/B]	74%	81%	75%
Mediation Stage success rate [(E)/(C-F)]	33%	76%	78%

6.3 Factors affecting the Success Rates

Success rate is also strongly affected by the nature of the subject matter and the quality of the service. It is also well recognized that the major reason for choosing mediation is to save costs and time so if there is little room for cost and time savings in settling CSLR disputes by mediation, then mediation is unlikely to be taken by the parties, let alone any settlement by the mediation.

Summing up, there are at least 7 factors affecting the success rates of PMS, summarized as follows, and elaborated in the following sub-sections:

1. Definition of success rates;
2. Nature of dispute;
3. Alternatives to PMS;
4. Cost considerations
5. Time considerations
6. Service quality considerations
7. Risk and strategy considerations
8. Trust
9. Independence versus flexibility

6.4 Success Rates and their Definitions

As discussed in Section 5.2.5, because there are various ways for calculating success rates of mediation, and there is no commonly recognized

definition, different calculations can produce different success rates and interpretations. For example, the Information Gathering Stage success rates can differ by 35% (40% versus 75%) when the cases that were resolved by the parties themselves after seeking initial information from PMS (pre-mediation consultation or intake session) are counted as success cases. In general, the reported success rate, no matter which definition we use, would be an under-estimation, because there are some uncontested cases (i.e. minority owners who have not filed any notices of opposition), defective or doubtful title cases and missing owner cases that could not be mediated.

6.5 Success Rates and Nature of Disputes

The nature of disputes on CSLR also makes them less amenable to successful mediation. As discussed in Section 4.3.1, the nature of engagement between the parties of CSLR is not based on a voluntary contract, but on a potential empowerment of a compulsory sale by law. In other words, the minority owners cannot avoid the disputes in the first place, by not engaging with the majority owners. It has been contended that, as discussed in the literature review section, mediation is not suitable for disputes arising from non-voluntary engagement.

The disputes on CSLR involve LSCRO and SPLN, which set out the criteria for an application of compulsory sale. Sometimes, the disputants would have different interpretations on the criteria and their fulfillments in their cases³³, and prefer to have a court judgment rather than a resolution by mediation.

Furthermore, the asymmetric capacity of the parties in dispute also affects the success rate of mediation. For example, it is claimed that in many cases of mediation on CSLR, due to financial constraint, the minority owners have to rely on the valuation report provided by the consultants of the majority owners, or on some unverified valuation data, which affected the mediation results³⁴.

Even if the minority owners have their own valuation reports, the reports can only provide, in general, estimates of the existing use value and the redevelopment value of the subject building as a whole, rather than the

³³ Examples of cases arguing on different interpretations of LSCRO and SPLN are provided in Section 4.3.1.

³⁴ JMHO (2013a) also pointed out that there have been some cases that owing to insufficient data collection or outdated information, such as an expired valuation report, which the counter-party did not accept, and the mediation results were affected.

subject housing unit, unless an expert witness or a negotiator is called. This issue is especially controversial when different property uses are allowed in different part of the building. It is also hard to find comparables in the vicinity as transactions of ageing buildings are rare.

For example, there was a case that the two mediation parties disagreed with each other on the calculated areas of the common parts of the premises, which can be complicated due to the vague demarcations in the DMC of old buildings and various building designs.

The nature of a CSLR dispute is therefore widely recognized as complex, because it involves very complicated issues such as land titles and valuations, very large sums of money, multiple parties and common parts of the co-owned property, and very long period of time. The complexity of the disputes makes it more difficult to be resolved by mediation.

Lastly, most of the interviewees opined that the subject matter of the disputes on CSLR is, among others, about the market price of the property, thus the success of the mediation may be affected by the state of the property market and the parties' expectation on the trend of the property market, which is elaborated in Section 6.10.1.

6.6 Success Rates and Alternatives to PMS

Instead of carrying out mediations under PMS, there are some alternatives for resolving the disputes, including -

1. Negotiation and private sector mediation (Non-PMS mediation)
2. Collective bargaining

6.6.1 Private sector mediation

Negotiation has long been practised in the private sector for successful land acquisition. Professional consultants are normally employed to represent the assembler to negotiate with the minority owners. It is therefore a common practice to extend the services from negotiation to include mediation by the private sector consultants.

The majority owners, via their consultants or legal advisers, would normally propose a mediator or a private mediation platform for conducting the mediation with the minority owners, if necessary. Unless the minority

owners refuse, private sector mediations would normally be conducted, rather than mediations under PMS.

Unfortunately, there are no statistics on these private sector mediations, except the voluntary reporting data received by the Judiciary (Table 5.3). There can be many reasons for not choosing PMS but private sector mediation, including -

1. One-stop shop and trust in the legal advisers;
2. Confidentiality;
3. Flexibility in the mediation contract and the mediation rules;
4. Flexibility in the mediation fees; and/or
5. Flexibility in the choice of mediator.

In contrast, the reasons for choosing PMS include -

1. Independence and impartiality of the mediator supporting services;
2. Confidence and trust in quasi-public services;
3. Provision of subsidy (to eligible elderly owners) in mediation fees;
4. Provision of free venues;
5. Pro-active liaison by social workers in cross-referrals from the other government-funded Outreach Support Service for Elderly Owners;
6. Free of charge pre-mediation briefing, consultation and follow-up, etc., and/or
7. Transparency, including a fixed rate of mediation fee and standardized mediation rule, and a list of accredited mediators.

Furthermore, once the mediation "has broken the ice" for the parties to negotiate, they could further their negotiations even after closing the mediation sessions. There have been cases that the parties settled their disputes just before or during the litigation process. Some of the interviewees contended that the mediation sessions were conducive to these settlements of the disputes, even though the settlement could not be made in the mediation sessions.

6.6.2 Collective Bargaining

Since there have not yet been any multi-party mediation services adopted under PMS, all the mediations for CSLR are one-to-one between the majority and the respective minority owners. Theoretically, there should be incentives for both the majority and the minority owners to negotiate collectively, as it can save time and risk to the majority owners, and with a stronger bargaining power and a fairer result to all the minority owners. Yet, it requires efforts amongst minority owners for liaison and making collective decisions.

There have been some cases that the minority owners, with the assistance of District Councilors, reach an agreement collectively with the majority owner.

6.7 Success Rates and Cost Considerations

When promoting mediation, it is commonly argued that mediation can save litigation cost for the majority owner. For example, it is said that the average mediation cost of PMS to both parties is about \$25,000 (assuming no legal representatives), but the average litigation cost for a LSCRO case ranges from \$1 million to \$3 million as advised by JMHO (JMHO, 2013b). In other words, it is estimated that PMS can help save up to 99% in cost.

However, it may not help save costs for the minority owners. As discussed in Section 5.2, most of the minority owners did not file notices of opposition (uncontested cases), and did not have to bear any litigation costs. If that is the common expectation of the minority owners, then the mediation fee would become a burden rather than a saving to the minority owners.

Unlike BMMPS, where mediations are commonly conducted free-of-charge (pro-bono), PMS is at a cost to the parties. It certainly affects the decisions of the minority owners whether to take on the services or not. If there are alternatives with lower costs, then it would affect the Information Gathering Stage success rate of PMS.

Besides, as a subsidy scheme for eligible elderly is provided by PMS, it can be expected that some elderly owners would choose PMS, as the mediation fee could be waived, subject to a means test, up to a maximum of 15 hours.

It is reported by JMHO that, up to 30 Apr. 2013, there were 6 cases of

elderly minority owners having applied for the mediation fee subsidy scheme offered under PMS; but there are only 2 approved cases. It requires the applicants (elderly) to pay for the mediation fees first, and who will be reimbursed if they pass the eligibility test.

In view of the triviality of the mediation fees in comparison to the cost of the redevelopment project, many majority owners are prepared to pay the mediation fees for the minority owners. If the majority owners offer an alternative mediation platform, with lower or even free mediation fee, it will certainly attract some minority owners to abandon the choice of PMS³⁵.

In fact, since 6 Apr. 2011, REDA has also introduced a scheme of "paying the appropriate share of the mediator's fee under PMS for those owners who are not eligible for Government assistance", if the majority owners are members of REDA.³⁶ But, according to statistics collected by PMS, there have only been 5 cases in which the majority owners voluntarily pay for the minority owners' share of mediation fee and application fee. Among them, there are only 3 cases in which the majority owners identified themselves as REDA members.

Furthermore, in some cases where the minority owners came forward for mediation service provided under PMS, based on the information available, the service provider could not tell whether the majority owners were members of REDA or not.³⁷

6.8 Success Rates and Time Considerations

It is commonly agreed that one of the major advantages of mediation is saving in time, especially in comparison with the time taken for litigation. The majority owners may have strong incentives (for saving on time and money) to settle the disputes under LCSRO by mediation, no matter it is PMS or not.

However, there are other conflicting time considerations in the disputes on CSLR. For example, the option-to-wait is valuable during the bargaining process of land acquisition. Its value can be maximized by not settling the dispute until the very last minute before or during the litigation, especially

³⁵ JMHO (2013a) also agreed that "There have been cases that the majority owners, shortly after the application, chose to discontinue the cases or the minority owners could not decide whether to make a formal request for mediation or not. The minority owners said that the majority owners offered to pay part or all of the mediation costs, and would solicit mediators within or outside the designated list of mediators. Some minority owners chose to accept the offer or proposal."

³⁶ REDA (2011) Press Release on PMS. See <http://www.reda.hk/press-releases/pilot-mediation-scheme> (accessed 2 May 2014)

³⁷ JMHO (2012) Annual Report 2011/2012

when the property market price is expected to rise. It would therefore lower the Mediation Stage success rates of PMS.

On the other hand, it is to be noted that CSLR judgments do not only determine whether the subject buildings shall be compulsorily sold for redevelopment or not, but they also approve the reserve prices for the auctions. If the minority owners believe that the Lands Tribunal would help achieve a fair price, then they would even prefer an unsettled mediation.

6.9 Success Rates and Service Quality Considerations

The service quality is definitely one of the reasons contributing to the success of PMS.

It is estimated by JHMO that it took 631 hours in 2013-14 to handle all the cases under PMS, including enquiries, applications, intake sessions (pre-mediation consultation services), mediation and post-mediation follow-up (excluding the applications for subsidy). It can be converted into a unit service hours of approximately 21-hour per case. Table 6.6 shows the breakdown of the service hours.

TABLE 6.6 Breakdowns of the Service Hours of PMS

Stages	No. of Cases	Total Service Hours (hours)	Average Service Hour per Case (hours)
Enquiry Stage	184 enquiries	152	1
Intake Stage	48 cases	126	3
Follow-up Stage (Nomination and Appointment of Mediator)	18 cases	126	7
Pre-mediation Stage	18 cases	25	2
Post mediation Stage	18 cases	22	2
Mediation Stage	18 cases	108	6
Total	NA	631	21
Application for Subsidy	6 applications	72	12

Source: Estimated by JMHO (2013b)

But it only cost the parties \$25,000 in mediation fees, on average. It required another \$30,000 funding from the government to handle each case on average in 2013-2014. In other words, it required \$55,000 per case to maintain the service quality standards of PMS at 2013 price level. It implies

a unit service cost of about \$2,600 per hour per mediation case under PMS³⁸ (see Table 6.7).

TABLE 6.7 Resources Requirements of PMS

Resources	Total for the period	Average per case
Service hours for handling mediation cases (excluding handling the application for subsidy of mediation fee by elderly owners)	631 hours	21 hours
Government funding in 2013/2014 for handling mediation cases (assuming 20 cases)	\$604,320	\$30,216
Expenses of parties to the mediation cases (assuming 18 cases, each of 2-hour x \$3,000 for pre-mediation, 6-hour x \$3,000 for mediation, and \$1,000 application fee)	\$450,000	\$25,000
Total costs	\$1,054,320	\$55,000
Average cost per hour	-	\$2,619

Source: Estimated from JMHO (2013b)

6.10 Success Rates and Risk / Strategy Considerations

It is commonly believed that the success rate of mediations under PMS is highly dependent on the trend of the property market and the risk as assessed by the parties, i.e.

1. Property price risk
2. Other risks / strategies

6.10.1 Property price risk

Most of CSLR disputes are about the acquisition price of the units. The major problem facing the minority owners in a CSLR dispute is whether the offer price by the majority owner is a fair price. However, market prices fluctuate a lot, and the overall trend is upward in the study period. A wait-and-see approach can be a reasonable strategy to get a higher offer in compulsory sale, if the property market is expected to rise. It also increases

³⁸ Bearing in mind the estimation is just an approximation for illustration purpose only, as the service hours per case is an over-estimation when most of the applications would not undergo mediation process; whereas the government unit funding per case is an under-estimation when some of the resources would be taken by the other non-mediation cases.

the value of the option-to-wait.

The effects of the expected property price change on the success rate of mediation under PMS can be illustrated under the following scenario-analysis.

If the property market is expected to rise (fall), the majority owners would have financial incentive to acquire more (less) housing units for redevelopment. Thus, the number of applications for CSLR and for mediation under PMS would be increased (decreased)³⁹. However, the minority owners would also expect an increasing (decreasing) price if the unit can be sold later. So the number of settlements by mediation would be less (more). Combining the two parties' reinforcing stances under the two scenarios, the success rate would be decreased (increased). Their effects are reinforcing on the success rate because the former increases (decreases) the value of the denominator while the latter decreases (increases) the value of the nominator, in the formula for calculating the success rate.

A similar direction in the reserve price to be approved by the Lands Tribunal is also expected in a rising (falling) property market as the case may be.

The two-year data available from PMS also tally with the above hypothesis. The expectation of a rising property price in 2011 was much stronger than in 2012, especially when some anti-speculation measures have been implemented since 2012. The increase in the number of applications for CSLR in 2011 was larger than that in 2012. The number of mediations conducted under PMS was also three times more in 2011 than in 2012, but the success rate of mediations conducted under PMS was much lower in 2011.

6.10.2 Other risks

It is commonly recognized that many minority owners prefer to wait and see whether other minority owners would settle their disputes by mediations, and how much would the other minority owners accept before making their own decisions. It becomes a chicken-and-egg situation, and their individual decisions become inextricably intertwined decisions.

However, due to the uniqueness of the individual units, price comparison

³⁹ JMHO (2013a) also agreed and pointed out that there were 44 and 13 applications of CSLR in the 1st half and the 2nd half of 2012 respectively, due to, among others, the implementation of various market stabilization measures.

between units is difficult and can be confusing to the minority owners.

Furthermore, the stakeholders may not fully realize the pros and cons of settling the disputes earlier or later. For example, it has been said by some mediators that many minority owners may not realize that those who settle early have a higher chance to buy a better quality housing unit at the same district. It is because the housing supply of the whole district is fixed in the short-term and would quickly dry up if there is a sudden increase in the number of cash-rich buyers looking for properties in the same district.

In some special situations, the majority owners may prefer a judgment from the Lands Tribunal, rather than a settlement through mediation. For example, if their properties are of defective or doubtful titles, a compulsory sale court order can help overcome the title issue.

6.11 Success Rates and Trust

It is trust that matters in resolving disputes. That is why many people prefer to let the Tribunal, which they trust, to judge. Many people prefer to let the legal advisers and professionals, whom they employ to represent their interests, negotiate, if they can afford it. The success rate of mediation under PMS is affected by the following three levels of trust:

6.11.1 Trust in the fairness of Lands Tribunal

Many minority owners believe that litigation is fairer than mediation, and consider that mediation under PMS is just a necessary process before litigation. This attitude towards mediation explains why many mediations do not succeed.

6.11.2 Trust in the mediation process and the mediator

The accreditation system for mediators of PMS provides confidence to the users, and the suitable matching of mediator with owners looking for mediation under PMS also enhances the Information Gathering Stage success rate of the scheme. The scheme administrator and the PSPs try to match the qualifications and experience of the mediators with the users' specified preferences, and it further allows both parties (client and mediator) to reject the nomination and change the nomination, if they find each other not suitable. There was a case in which it took three rounds of matching attempts to confirm appointment of the mediator.

Some minority owners complained that the mediators did not represent their interests and did not help them fight for a higher price. This type of complaints reflects a misunderstanding of the role of mediation. It also explains why some mediations under PMS could not succeed. If the users want the mediator to be his negotiation agent fighting for their interests, it could be quite disappointing to them if the mediator was independent.

Furthermore, in many cases, the majority owners consider the mediation process as a mere pre-requisite for applying for compulsory sale. They only wanted to go through the motion of mediation. They too do not trust the mediation process.

6.11.3 Trust in the business partners or representatives

The parties under dispute may have their own in-house or contracted or well acquainted legal advisers, and/or mediators, with whom they may have long-term relationships and have built up trust. It can be expected that they would not consider using PMS if their own legal advisers/mediators can provide similar services or have other suggestions.

Furthermore, it is pointed out that there have been some failure cases in which the owners' representatives did not have sufficient authorization from the owners. Some of the representatives could not make crucial decisions on the owners' behalf during the mediation process, and affected the mediation results.⁴⁰

6.12 Success Rates and Independence versus Flexibility

The Information Gathering Stage success rate of PMS may be affected by the mediation services provided in the private sector. The reasons for choosing PMS instead of other mediation service available in the private sector are mainly -

1. Independence
2. Flexibility

6.12.1 Independence

As PMS is funded directly by the Government, and it is often perceived by the general public as a more independent mediation service than that

⁴⁰ JMHO (2013a) Annual Report

provided by other private mediation service providers. Most of the minority owners who choose mediation services under PMS believe that mediation services provided under PMS is more independent and impartial. Normally, they are worried that the non-PMS mediation services proposed by the majority owners would be biased and do not champion their interests.

This, however, is a misconception. The independence and impartiality of the mediation service provided by JMHO, including PMS, is not because of government funding but because of the professional codes of conduct of mediators who may also be professional members of the respective professional member organisations of JMHO.

6.12.2 Flexibility

It is commonly agreed that non-PMS mediation services provided in the private market can provide more flexibility in terms of timing, the selection of mediators, mediator fees, mediation venues, rules of mediation, and contractual terms among the parties.

Furthermore, as most majority owners would normally employ consultants, including legal consultants, for the redevelopment projects, it can be expected that majority owners would likely choose the mediation services provided by the same consultants for one-stop-service.

6.13 Conclusions

This section summarizes the findings of the consultancy and attempts to assess the impact of any proposed substantial revamp or proposed termination of PMS. Some recent development of mediation in Hong Kong which might have imposed or may impose further significant effects on PMS is also discussed. However, recommendations on the way forward of PMS would not be made in this Working Paper but would be made in a separate Final Report.

6.13.1 Summary of Findings

Although mediation services are readily available in the private market at a competitive fee level, PMS is providing one more choice for users, especially the minority owners of compulsory sale. PMS is regarded by many minority owners as being more independent and trustworthy because it is supported by the Government and administered by a professional setup.

PMS also helps provide important and professional information and enquiry services to users, which have helped some of them settle their disputes even without conducting mediation at all. During the first year of the scheme, when mediation was not well understood by the public in Hong Kong, the provision of information and enquiry services was very important. However, when mediation becomes more commonly understood and the public is more confident in the mediation service, in particular, after the enactment of Mediation Ordinance and the Mediation Code, the setting up of the accreditation body, and the promotion efforts in these few years, the role of PMS in providing information on mediation and maintaining public confidence in the mediation process may have been reduced or even replaced.

The success rate of PMS is relatively high and comparable to that of other similar schemes, if the cases settled during intake sessions (by pre-mediation consultation services) (without conducting mediation) are counted as success cases. However, if these cases are excluded, then the success rate of PMS is relatively low.

Besides scheme administration and mediation consultancy service, PMS also helps promote mediation to the public and provide training to the mediators. In view of the special nature of CSLR disputes, promotion and public education services under PMS would be conducive to the healthy development of mediation services for CSLR disputes.

6.13.2 Impact Assessment

The following analyses the impact on the mediation supporting service for CSLR disputes, in case PMS is revamped or terminated.

First, if PMS is suspended or terminated, the minority owners would have less choice in choosing compulsory sale mediation service, if mediation is necessary. They may not be able to get access to the enquiry service, information and intake sessions (pre-mediation consultation services) free of charge under PMS.

However, as the private market is similarly providing similar supporting service and mediation service, it would not result in a total suspension of the mediation supporting service for CSLR disputes.

In fact, JMHO or any of the PSPs could readily expand and absorb mediation for CSLR disputes into its current supporting service scope, without

any funding from the government. JMHO has been the service provider of scheme consultancy and scheme administration for PMS. It is most well placed to absorb and take over any mediation cases on compulsory sale if PMS is discontinued.

The accreditation of mediators and mediation courses, on the other hand, can be done by the Hong Kong Mediation Accreditation Association Limited (HKMAAL) set up after the enactment of the Mediation Ordinance (Cap 620).

6.13.3 Recent Developments

Further to the Report of the Working Group on Mediation in 2010, the Secretary for Justice had set up a Mediation Task Force to work on the (1) regulatory framework, (2) accreditation and training and (3) public education and publicity of mediation. The Mediation Ordinance was enacted and effective on January 1, 2013. The HKMAAL was then incorporated in the form of a company limited by guarantee on 28 August 2012. A “Mediation First” Pledge campaign was launched in May 2009, and an Announcement in the Public Interest (API) for the promotion of mediation was produced and broadcasted in December 2011. Two conferences of Mediation in Hong Kong were held in 2011 and 2012. The Secretary for Justice had set up a Steering Committee on Mediation, with the following 3 sub-committees: (1) the Regulatory Framework Sub-committee, (2) the Accreditation Sub-committee, and (3) the Public Education and Publicity Sub-committee.

Specifically, HKMAAL is a non-statutory, non-profit-making, industry-led, independent and single accreditation body for mediators and mediation related training in Hong Kong. Its roles are to accredit mediators in the Family and General Category and to accredit Family Supervisors. Professional standards of mediators are maintained and kept under review. Training courses are also accredited by the Council to ensure participants are taught the essential skills of mediation and that those who teach the courses are properly qualified. HKMAAL promotes a culture of best practice and professionalism in mediation in Hong Kong.

There are four founder members for HKMAAL, namely (1) the Hong Kong Bar Association, (2) the Law Society of Hong Kong, (3) Hong Kong Mediation Centre, and (4) Hong Kong International Arbitration Centre. There are also three committees under the HKMAAL Council, they are (1) Mediation Accreditation Committee, (2) Working Party on Membership, and (3)

Working Group on Accreditation Standards. It is also explicitly stated by HKMAAL that promotion of mediation is not the role of HKMAAL, because they would focus on accreditation standards and development of training of mediators. In other words, it is left to the market or the government to continue the promotion of mediation to the public. The Mediation Accreditation Committee of HKMAAL is to:

1. To set and review standards for accredited mediators, supervisors, assessors, trainers, coaches and other professionals involved in mediation in Hong Kong;
2. To set standards and assess the suitability of relevant mediation training courses in Hong Kong and experience required for persons to be accredited;
3. To maintain panels of mediators, assessors, family supervisors who have met the requirements;
4. To review issues pertaining to the development and training and continuous training of mediators, assessors and family supervisors; and
5. To establish complaint procedures and deal with disciplinary actions.

It provides a single platform for managing, reviewing, receiving complaints, and taking disciplinary actions on accredited mediators and the related professionals, and on accredited training courses.

The setting up of this single non-profit-making organization to accredit mediators and mediation training courses, as well as taking disciplinary actions, would help enhance public confidence in mediation services, because the quality of mediators is one of the most crucial determinants in the success of the mediation process. It does not only help ensure the standard of mediators and mediation training courses, but more importantly, it provides a feedback channel for reviewing and taking disciplinary actions on the performance of mediation services, which is seriously lacking at present.

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ANNEX 1 The User's Satisfaction Survey Form for PMS



土地（為重新發展而強制售賣）條例（第 545 章） 調解先導計劃

服務評估問卷

這份問卷旨在評估土地（為重新發展而強制售賣）條例（第 545 章）下調解先導計劃的調解服務。收集到的資料將會用作公司內部服務檢討用途。煩請於調解結束後填妥問卷，密封於所附之信封內，並送往：

聯合調解專線辦事處
香港金鐘道三十八號高等法院大樓 LG1 樓 102 室
電話：+852 8103 3833 傳真：+852 2899 2984
電郵：scheme@jointmediationhelpline.org.hk

所有資料絕對保密。多謝合作。

個案編號: _____

	非常 不滿意	0	1	2	3	4	5	非常 滿意
1. 整體滿意程度	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
2. 調解員的整體表現	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	完全 不同意	0	1	2	3	4	5	完全 同意
3. 調解能夠促進各方和解	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
4. 在調解過程中，你覺得你所表達的意見和感受有被聆聽	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
5. 你覺得你能夠掌握整個調解過程及進度	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
6. 調解員在那一方面最能協助你?								

7. 這次使用調解處理你的個案是否及時？

是 不是 理由： _____

(Last updated on 20 January 2012)

Room LG 102, LG 1/F
High Court Building
38 Queen's way
Admiralty, Hong Kong
Tel : +852 8103 3833
Fax : +852 2899 2984
www.jointmediationhelpline.org.hk

8. 整個調解過程需時多久？

- 1個月或少於1個月 1~2個月 2個月或以上

9. 你們在那裡進行調解？

- 香港房屋協會 物業管理諮詢中心 其他地方，請註明：_____

10. 將來你遇到類似的糾紛時，會否再次使用調解服務？

- 會 不會 理由：_____

11. 你會否推薦其他有需要人士使用調解服務？

- 會 不會 理由：_____

12. 其他意見

-全卷完-
謝謝你的參與。

(Last updated on 20 January 2012)

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38 Queen's Way
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Pilot Mediation Scheme (PMS) – Achievement of Objective/Scope of Service

Objective/Scope of Service	Achievement since 2011 (up to 30 June 2014)	Post-Pilot Mediation Scheme
1. Provision of information on mediation service for compulsory sale cases (communication with the public on PMS at enquiry counter, through telephone line and email address)	No. of enquiries handled: 211	Joint Mediation Helpline Office (JMHO) will continue to provide free mediation information services for compulsory sale cases
2. Nomination and appointment of mediators for mediation in compulsory sale cases	Total no. of requests for mediation handled: 52 No. of cases where one of the parties refused to participate in mediation: 8 No. of cases where the parties resolved their disputes after seeking	JMHO will continue to make the necessary referrals for engaging qualified mediators for mediation in compulsory sale cases

	<p>initial information but without undergoing actual mediation: 18</p> <p>No. of cases where mediators were successfully appointed and mediation sessions held: 26</p>	
<p>3. Administration of mediation cases including making arrangements for pre-mediation and subsequent mediation sessions with parties in compulsory sale cases at an application fee of \$500 (payable by each party) and rate of mediator fee of \$3,000 per hour for all sessions (equally shared by parties)</p>	<p>No. of mediation cases successfully conducted and settled: 16</p> <p>No. of cases where disputes could not be settled after mediation: 10</p>	<p>This will be handled by mediation service providers in the market in future.</p> <p>JMHO itself, given its unique background, will likely be the most popular service provider to take over after the discontinuation of PMS.</p> <p>JMHO has all along been providing a mediation fee schedule for non-PMS mediation as a guideline. This will continue in future.</p> <p>According to the JMHO fee schedule, the mediator fee will vary with the amount in</p>

		<p>dispute. The higher the amount in dispute, the higher will be the mediator fee rate. The parties and the mediator are not bound to follow this fee schedule. The mediator may conclude agreement with the parties in writing on his or her mediator fee and inform JMHO.</p> <p>Under the JMHO fee schedule, the mediator fee for the pre-mediation session(s) (up to 4 hours) for a disputed amount up to \$1 million is \$5,000 to be shared equally between the two parties and the per hour mediation rate to be shared equally between the two parties is \$2,000. For a disputed amount between \$1 million and \$5 million, it is \$6,000 (up to 4 hours) for the pre-mediation session and \$3,000 per hour for the mediation session.</p>
4. Administration of the	Eligible elderly minority owners may	The Senior Citizen Home Safety

<p>reimbursement of mediator fee to eligible elderly minority owners (Government funding of \$500,000 was reserved annually for such purpose)</p>	<p>be provided financial subsidy for their share of mediator fee for up to a total of 15 hours of mediation (including the pre-mediation session of no more than 3 hours).</p> <p>Total no. of applications for subsidy of mediator fee: 6 (comprising 2 approval cases and 4 withdrawal/ rejected cases)</p>	<p>Association (SCHSA) can take over the administration of the reimbursement of mediator fee to those eligible elderly minority owners.</p>
<p>5. Training and accreditation of mediators</p>	<p>There are a total of 225 mediators listed on the PMS website who are trained to mediate in compulsory sale cases.</p> <p>No. of training workshops for mediators conducted: 5</p>	<p>Compared to the demand for mediation in compulsory sale cases, this pool of mediators is considered a large enough cohort to handle the caseload in future.</p> <p>Should there be a surge in demand for mediation in compulsory sale cases beyond the capacity of the 225, the various organisations and institutions in the market should be able to provide the necessary training to satisfy the demand</p>

		for more qualified compulsory sale mediators.
6. Provision of free venue support for mediation in compulsory sale cases	Free venue support for mediation is available at the Property Management Advisory Centers of the Hong Kong Housing Society (HKHS) before the withdrawal of service last year and also at the Urban Renewal Resource Centre of the Urban Renewal Authority at Tai Kok Tsui, Kowloon.	The Urban Renewal Authority will continue to provide venue support at a reduced fee for conducting mediation in compulsory sale cases referred by JMHO in future.
7. Publicity and public education	No. of public talks and seminars conducted: 28 Other publicity channels including regular mailing of information leaflets to parties likely affected by the compulsory sale of their properties for redevelopment, publicity and public education via mass media, etc.	In the light of the recommendation in the Consultancy Review for the Government to continue publicity and public education on mediation and compulsory sale in a focused manner, we will consider possible consolidation of the future publicity and public education efforts on mediation in compulsory sale with the other prevailing support programme targeted at elderly owners affected by

		compulsory sale under the 'Outreach Support Service for Elderly Owners' pilot scheme operated by SCHSA.
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