

**For discussion on
14 May 2021**

**Legislative Council Panel on
Administration of Justice and Legal Services**

Mediation Initiatives of the Department of Justice

INTRODUCTION

It is the long term policy of the Government of the Hong Kong Special Administrative Region (“HKSAR”) to promote and develop the wider use of mediation to resolve disputes. Mediation allows parties to a dispute the opportunity to resolve conflicts in a mutually acceptable, timely and low-cost manner. Mediation has been undergoing rapid development and is gaining significant attention on a global basis. This paper provides a progress report on the mediation initiatives of the Department of Justice (“DoJ”) to promote the use of mediation in Hong Kong and to develop Hong Kong as an international mediation centre.

MEDIATION INITIATIVES IN HONG KONG

I. Online Dispute Resolution Platform

2. DoJ is committed to facilitating and supporting the development of an online dispute resolution platform. In the 2018 Policy Address, the Government gave policy support to the development of an online platform for arbitration and mediation by a non-governmental organisation to facilitate the provision of efficient and cost-effective online dispute resolution (“ODR”) services in Hong Kong. DoJ has assisted in developing a set of e-mediation rules to facilitate the development of the ODR platform. In January 2021, the Finance Committee has approved funding support of \$100 million to eBRAM International Online Dispute Resolution Centre Limited (“eBRAM”) for the development of an ODR and deal making platform which was intended to integrate state-of-the-art technologies.

3. Following the onset of the COVID-19 pandemic, in anticipation of an upsurge of disputes arising due to the pandemic, funding of \$50 million was provided to eBRAM for the COVID-19 ODR Scheme. The COVID-19 ODR Scheme aims to speedily resolve dispute if it involves one party from Hong

Kong, is COVID-19 related and the amount in dispute is not more than \$500,000. The mediation process is fully web-based with video conferencing technology being adopted. Each party only needs to pay \$200 registration fees for using this service.

II. “Mediate First” Pledge Campaign

4. DoJ has been organising and co-organising a variety of events and training programs and one of the most successful campaigns is the “Mediate First” pledge (“MFP”) campaign.

5. The MFP campaign was first launched by DoJ in May 2009. MFP is a non-legally binding statement of commitment where the pledgee pledges to explore the use of mediation first before resorting to other means of dispute resolution, such as litigation. DoJ has been promoting MFP to organisations in both private and public sectors by organising a biennial MFP event since 2013. In 2017, DoJ launched the “Mediate First” pledge Star Logo Award Scheme to encourage pledgees to continue to fulfil their “Mediate First” pledge and to actively consider mediation in resolving disputes. Pledgees who have met certain award criteria, such as adopting mediation clause in their contracts or nominating staff to attend mediation trainings, would be awarded a star logo during the MFP biennial event as a recognition of their achievements in promoting and adopting mediation. As at 31 March 2021, there are 692 pledgees and 40 Star Logo awardees, including small and medium enterprises, law firms, chambers and accounting firms. The numbers are still growing. DoJ will continue to assist different sectors of the community to build up a mediate first culture through talks and sharing of experience.

6. Despite the Covid-19 pandemic, DoJ continues its effort in promoting mediation. DoJ will organise the MFP event 2021 on 28 May 2021 in virtual mode. The theme of the MFP event 2021 is “Mediate First – Anchoring the Future”. It will take the form of a full day online forum featuring a diversity of speakers. The forum will comprise three panel sessions discussing the use of mediation for resolving disputes in the areas of private wealth management, healthcare and employees’ compensation. The event will conclude with a signing ceremony for new “Mediate First” pledgees together with the presentation ceremony for the Star Logo awards. There will also be a virtual networking session afterwards for real-time discussion with other participants

of the mediation sector as well as some of the speakers. It is hoped that more participants¹, both local and international, will be able to participate through the use of virtual mode this time.

7. To reinforce the prominence of Hong Kong's mediation services, DoJ has embarked on the branding of "Mediate First" as a Hong Kong initiative by way of a new "Mediate First" logo. The new "Mediate First" logo centres on two holding hands which signify unity, cooperation and peace, positioned in a heart shape that represents transparency, harmony and honesty. The new logo will be formally launched in the MFP event 2021.

8. DoJ has also launched three dedicated social media platforms (Facebook, LinkedIn and Weibo) since 2019 to connect directly with the public in promoting the use of alternative dispute resolution services and other initiatives. Our dedicated social medial platforms have around 4,000 followers.

III. Mediation Week and Mediation Events in Hong Kong Legal Week 2020

9. As part of DoJ's continuing efforts to promote and enhance public knowledge in the broader use of mediation as an effective means to resolve disputes, DoJ has been organising the Mediation Week biennially since 2012, which typically comprises a series of events and a full-day conference.

10. Due to the outbreak of Covid-19, the Mediation Week 2020 in an abridged version was subsumed into the Hong Kong Legal Week 2020 (from 2 to 6 November 2020). During the Hong Kong Legal Week 2020, DoJ held four mediation events, namely:

- (a) 2nd Hong Kong Mediation Lecture;
- (b) Case Settlement Conference Pilot Scheme to be launched in District Court of the Judiciary;
- (c) Sports Dispute Resolution Conference; and
- (d) Mediation Conference 2020.

11. The mediation events in the Legal Week 2020 attracted broad

¹ It is expected that there would be about 800 viewers for this event.

participation from 38 jurisdictions around the world with a total of over 5,000 views.

12. The event of Case Settle Conference (“CSC”) Pilot Scheme to be launched in District Court of the Judiciary was co-organised by the Judiciary and DoJ. The CSC Pilot Scheme seeks to introduce the concept of assisted settlement in the case management process. At the CSC, the CSC masters, who are experienced in mediation, will assist the parties to narrow down the issues in dispute, review any ongoing process of without prejudice negotiation and facilitate constructive dialogue between the parties to explore options to settle their dispute. The CSC is to encourage the use of alternative dispute resolution in civil litigation and to instil among litigants as well as their legal representatives a culture of exploring settlement.

13. As a biennial event organised by the Department of Justice for promoting the wider use of mediation, the Mediation Conference 2020 with the theme “Mediate First – More than You Can Imagine” drew renowned speakers from Hong Kong and overseas to exchange insights on a range of related legal issues. Also discussed were the challenges faced by mediators in the application of the United Nations Convention on International Settlement Agreements Resulting from Mediation, mediation advocacy and the use of online dispute resolution methods.

IV. Hong Kong Mediation Lecture

14. To enhance Hong Kong’s status as the leading centre of international legal and dispute resolution services in the Asia-Pacific region and to generate intellectual exchange and networking opportunities for mediation practitioners in Hong Kong, DoJ is committed to organising a series of Hong Kong Mediation Lecture (“Mediation Lecture”).

15. The Inaugural Mediation Lecture held in Hong Kong on 5 November 2019 was the first of the series of lecture on topical issues on mediation. Professor Jack J Coe Jr was invited to speak on the topic of “The Benefits and Technical Challenges of Combining Mediation and Arbitration as Complementary Processes” with about 100 audiences. The 2nd Mediation Lecture was held during the Hong Kong Legal Week 2020 on 4 November 2020 virtually in which Mr Mark Appel discussed “Investor-State Mediation at the Tipping Point”. The Lecture received about 300 views from 25

jurisdictions. Herbert Smith Freehills co-hosted the 2nd Mediation Lecture in 2020 with DoJ and the plan is for this to continue in the next few years.

V. Mediation Essay Competition 2020 and the School Mediation Seminar

16. In 2020, DoJ co-organised the Inaugural Mediation Essay Competition with the Education Bureau, Rotary International District 3450 and Asia Conflict Resolution Institute. The theme of the essay competition was “Mediation: Listening, Dialogue and Conflict Resolution” and the target participants were secondary school students. The Mediation Essay Competition received overwhelming support of 267 entries from 51 schools. It brought about the awareness of students on the use of mediation as an amicable means to resolve conflicts in school, family or other daily settings.

17. On 21 November 2020, DoJ held the School Mediation Seminar cum the prize presentation ceremony of the Mediation Essay Competition. The event was livestreamed worldwide. This event has successfully promoted the use of mediation in school context and instilled the advantages of mediation in younger generation in Hong Kong.

VI. Investment Law and Investor-State Mediator Training Course

18. Under the mediation mechanism established in accordance with the investment agreement signed on 28 June 2017 under the framework of the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA), the Mainland and Hong Kong have each designated certain mediation institutions and mediators for handling investment disputes involving investors of the other side. The list of designated mediation institutions and mediators mutually agreed to by the two sides, a set of mediation rules drafted by DoJ for adoption by the designated mediation institutions of Hong Kong and the mediation rules for adoption by the designated mediation institutions of the Mainland, were announced on 14 December 2018.

19. Against this background, DoJ has been working towards developing Hong Kong into an international investment law and investment dispute resolution skills training base with the goal of building up a team of investment mediators in Asia to handle international investment disputes. Co-organised with the International Centre for Settlement of Investment

Disputes (ICSID) under the World Bank Group and Asian Academy of International Law (AAIL), the first investment law cum investment mediation training in Asia was held in Hong Kong in 2018, which was attended by local and overseas legal and dispute resolution practitioners and government officials from 18 jurisdictions. World-renowned speakers were invited to share and speak on topics about investment law and mediation of investor-State disputes, with interactive coaching and role-play sessions. The second training course was held in Hong Kong from 28 October to 3 November 2019, which was attended by 40 participants from Hong Kong, the Mainland, Association of Southeast Asian Nations countries and beyond.

20. DoJ will continue to organise further rounds of training on a regular basis. The next training course is planned to be held in Q4 2021, subject to the Covid-19 pandemic situation.

VII. West Kowloon Mediation Centre

21. The West Kowloon Mediation Centre (“WKMC”) commenced operation on 8 November 2018, and the pilot mediation scheme for cases referred by the Small Claims Tribunal (“SCT”) and other suitable cases (“Pilot Mediation Scheme”) was launched on the same day. The Joint Mediation Helpline Office (“JMHO”) was appointed by the Government as the independent coordinator to implement the Pilot Mediation Scheme. The implementation of the Pilot Mediation Scheme is overseen by a supervisory committee established under the Steering Committee on Mediation chaired by the Secretary for Justice.

22. Up to 31 January 2021, a total of 798 cases had been referred to the WKMC by the SCT, 476 cases of which submitted an application for mediation. In addition, WKMC has also received 72 applications for mediation received from “walk-in” parties (i.e. parties who were not referred by the SCT but with their amount in dispute falling within the jurisdictional limit of the SCT). Out of these 548 applications for mediation, 379 cases reached an agreement to mediate. Mediation was conducted in 335 cases at the WKMC during the abovementioned period, while arrangements for mediation were pending for 42 cases and 2 cases were terminated after agreement to mediate was endorsed (but were settled by direct negotiation in advance of mediation held). Settlement had been reached in 170 cases after mediation, representing a success rate of 51%.

23. JMHO is also implementing the Mediator Mentorship Scheme (“MMS”) as part of the Pilot Mediation Scheme at the WKMC. The MMS aims to offer opportunities to newly-accredited mediators to conduct cases with the guidance of more senior and experienced mediators. There are three categories of mediators under the MMS, being mentor mediator, mediator and mentee mediator. Either a mentor mediator or a mediator will be appointed for a mediation. For cases where a mentor mediator is appointed, up to 3 mentee mediators will be nominated as observers. For cases where a mediator is appointed, a mediation consultant of JMHO will be appointed as his/her supervisor.

24. The Pilot Mediation Scheme will end in early 2022, and DoJ will continue to review and monitor the effectiveness of this scheme and plan the way forward.

VIII. Mediate First within HKSAR Government

25. While DoJ has been actively promoting mediation in Hong Kong and beyond, we are also committed to promoting a general policy within the Hong Kong Government to explore mediation first before reverting to other dispute resolution procedures. In view of the above, DoJ is formulating a policy proposal to invite all bureaux and departments (“B/Ds”) to commit to use mediation first to resolve disputes in suitable cases and be “Mediation First” pledgees. DoJ envisages that a guidance note on mediation will be provided to B/Ds to serve as general guidance in preparing for and participating in mediation. In line with the above, DoJ is considering setting up a “Mediation Approval Group”, which will be responsible for giving advice on suitability to mediate and to ensure compliance with policy, as well as to provide education to B/Ds on mediation.

IX. Sports Dispute Resolution

26. DoJ is committed to enhancing and promoting Hong Kong’s status as a leading international legal hub for legal and dispute resolution services in different areas. Following the Sports Dispute Resolution Conference in November 2020, DoJ is exploring how to further the development of sports law and dispute resolution in Hong Kong.

MEDIATION INITIATIVES ABROAD

I. Mediate First Pledge events outside Hong Kong

27. Following the success of the MFP events in Hong Kong, DoJ co-organised the inaugural MFP event in Shanghai with the Shanghai Law Society and the Shanghai Commercial Mediation Centre on 20 August 2019. It was the first time that the MFP event was brought outside Hong Kong. About 80 enterprises and individuals signed the pledge. To keep the wheel of “Mediate First” rolling, on 2 November 2019, DoJ co-organised the MFP ceremony in Qianhai, Shenzhen with the Bureau of Justice of Shenzhen Municipality and the Qianhai Authority. This ceremony was part of the 4th Qianhai Legal Intelligence Forum and about 20 companies/organisations signed the pledge. We will continue our efforts in bringing “Mediate First” to other jurisdictions.

II. ICC International Commercial Mediation Competition – Hong Kong

28. To raise Hong Kong’s profile as an international mediation centre and to build up Hong Kong as the host of regional mediation competitions, DoJ will continue to organise in Hong Kong the ICC International Commercial Mediation Competition – Hong Kong (“Hong Kong ICC Mediation Competition”) with the International Chamber of Commerce – Hong Kong. The Hong Kong ICC Mediation Competition focuses on mediation advocacy skills in international commercial mediation. It is open to both local and overseas university students. The winning team will have a chance to participate in the globally-renowned mediation competition held by the International Chamber of Commerce in Paris.

29. The inaugural Hong Kong ICC Mediation Competition was held in October 2018. The winning team, City University of Hong Kong, participated in the 15th ICC International Commercial Mediation Competition in Paris in February 2019. Due to the Covid-19 pandemic, the 2nd Hong Kong ICC Mediation Competition was held virtually on 11 – 14 November 2020. 20 teams from universities in different jurisdictions participated. The teams were judged by top-notch local and overseas mediators and judges. There were 37 matches within 60 hours. The winning team further competed at the 16th ICC International Commercial Mediation Competition in early

February 2021, which was also held virtually. The 3rd Hong Kong ICC Mediation Competition will be held on 15 – 18 October 2021.

III. Promoting the Use of Mediation in the Greater Bay Area

30. The “Outline Development Plan of the Guangdong-Hong Kong-Macao Greater Bay Area” (the “Outline Development Plan”) was promulgated on 18 February 2019. It explicitly supports Hong Kong to establish itself as the centre for international legal and dispute resolution services in the Asia-Pacific region. It also encourages the promotion of the development of a multi-faceted dispute resolution mechanism that is based on wide consultation, joint contribution and shared benefits; and the provision of quality, effective and convenient judicial and legal services and safeguards for the development of the Greater Bay Area (“GBA”). With the development of the GBA, DoJ anticipates that there will be a sharp increase in the demand for alternative dispute resolution services.

31. The GBA comprises three different legal systems, the Mainland, Hong Kong and Macao. To facilitate regular exchanges and collaborations, the Department of Justice of Guangdong Province, the Secretariat for Administration and Justice of the Macao Special Administrative Region and DoJ established the Guangdong-Hong Kong-Macao Bay Area Legal Departments Joint Conference (“Joint Conference”) in September 2019. The Joint Conference has so far held two meetings in September 2019 and December 2020. The Joint Conference endorsed in December 2020 the establishment of a mediation platform (“GBA Mediation Platform”). The GBA Mediation Platform aims to promulgate a set of unified qualification, accreditation and other relevant standards for mediators in the GBA and facilitate the establishment of a local panel of qualified GBA mediators in each of the three places. It will also study the formulation of best practices for mediation rules applicable to cross-border disputes and best practices for mediators’ code of conduct.

ADVICE SOUGHT

32. DoJ will continue to implement our various mediation initiatives set out above and will strive to develop new promotion, training and other initiatives, with a view to further strengthening Hong Kong’s position as a dispute resolution centre in the Asia-Pacific region. We invite Members’ comments

on our mediation initiatives.

Department of Justice

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