

Speech by Secretary for Justice at "Mediate First for a Win-Win Solution" Conference (English only)

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Following is a speech delivered by the Secretary for Justice, Mr Rimsky Yuen, SC, at the "Mediate First for a Win-Win Solution" Conference today (March 20):

Chief Justice, Lord Woolf, distinguished guests, ladies and gentlemen:

On behalf of the Department of Justice, may I begin by extending our warmest welcome to all of you here.

With the support of the key players in the dispute resolution sector, this is the third time this Mediation Conference is held. The first conference, entitled "Mediation in Hong Kong: The Way Forward", was held at the end of 2007. The second one, entitled "Mediate First", was held in mid-2012. It is no exaggeration to say that much has happened since 2007 in the development of mediation in Hong Kong. This occasion, which also marks the commencement of the Mediation Week this year, provides a good opportunity to take stock as to what has happened in the past seven years, as well as to explore how we may navigate the journey ahead in the promotion and development of mediation as a means of dispute resolution in Hong Kong.

#### The Past Seven Years: A Brief History

Back in 2007, the development of mediation in Hong Kong was still at a relatively early stage. However, it was the year when the Administration expressed, for the first time, its official commitment to promote mediation through the then Chief Executive's Policy Address. Since then, much efforts have been made by the Administration in the promotion of mediation in Hong Kong.

The Working Group on Mediation, chaired by the then Secretary for Justice, was established in early 2008. It published its Report in February 2010, putting forward a total of 48 recommendations. The implementation of the recommendations was followed by the Task Force on Mediation, which was set up in December 2010 and which completed its task in around mid-2012. To continue with the promotion of mediation, a Steering Committee on Mediation was established in late 2012. This Steering Committee is supported by three sub-committees,

one overseeing the regulatory framework, the other looking after matters concerning accreditation and training standards of mediators, whilst the third one is responsible for handling publicity and public education.

As a result of the efforts of the Administration and the stakeholders, we have seen the enactment of the Mediation Ordinance in mid-2012, which has since come into operation on January 1, 2013. The Mediation Ordinance provides a legislative framework for the conduct of mediation in Hong Kong, which can safeguard the fundamentals of mediation (such as the protection of confidentiality) and at the same time allows maximum flexibility of the conduct and future development of mediation.

The promotion and development of mediation would be meaningless unless we can ensure the public's confidence in the mediation process. In this regard, the setting up of the industry-led body known as the Hong Kong Mediation Accreditation Association Limited (HKMAAL) in 2012 is another milestone in the development of mediation in Hong Kong.

Apart from the Administration, the Judiciary has played a pivotal role in the development of mediation in Hong Kong in the past seven years. Amongst others, the underlying objectives set out in Order 1A, rule 4(2) of the Rules of the High Court (which was introduced as a result of the Civil Justice Reform implemented in 2009), together with the Practice Direction on Mediation (PD 31) (which was made effective from January 1, 2010) and the other Practice Directions (concerning specific areas of dispute such as admiralty actions, personal injuries actions and shareholders and winding up disputes), have proved to be strong impetus in the promotion of mediation in Hong Kong.

Further, the Judiciary's efforts in relation to sector-specific mediation, such as the areas of matrimonial disputes and building management as well as the Mediation Information Office set up in 2010, have also made significant contribution in spreading the culture of mediation in resolving disputes in Hong Kong.

Any survey of what has happened in the past seven years would not be complete without an account of the contribution made by the professional bodies and mediation organisations. Apart from the establishment of the industry-led body HKMAAL that I have mentioned earlier, the Joint Mediation Helpline Office (JMHO) is another good

example in this regard. Situated in the High Court Building, this non-profit-making organisation provides valuable mediator referral services to parties who require mediation services.

On the whole, through the joint efforts of the Administration, the Judiciary and the other relevant stakeholders, mediation has undergone healthy development in Hong Kong in the past seven years. Mediation is now firmly part of the dispute resolution landscape in Hong Kong. The question that calls for consideration is how we can take forward the future promotion and development of mediation in the best way that suits Hong Kong. We welcome views and ideas in this regard and this is one of the reasons why this Conference is organised.

### Looking into the Future

Mapping the future is not, and has never been, an easy task. However, the Department of Justice and the highest level of the current Administration are firmly committed to the further promotion and development of mediation services in Hong Kong. This steadfast commitment is put in no uncertain terms in the latest Policy Address and Budget Speech.

In paragraph 31 of the Policy Address delivered by our Chief Executive on January 15, 2014 (which specifically dealt with dispute resolution services), it is stated as follows:

"Hong Kong has a fine tradition of the rule of law and a well-developed legal system. The Government will continue to actively promote Hong Kong's legal and dispute resolution services to enhance our status as a centre for international legal and dispute resolution services in the Asia-Pacific region. The Government will strengthen its promotion efforts overseas, continue to co-ordinate the development of mediation services through the Steering Committee on Mediation ..."

In paragraph 97 of the Budget Speech delivered by our Financial Secretary on February 26, 2014, it is stated as follows:

"In recent years, arbitration and mediation have become the mainstream modes of resolving international commercial disputes. Building on our robust legal system and tradition, Government has all along been actively promoting Hong Kong's legal and arbitration services, and making its best efforts to advocate and develop mediation services,

with a view to enhancing Hong Kong's position as an international legal and dispute resolution services centre in the Asia-Pacific region."

To take this commitment forward, we will endeavour to consolidate our efforts in various areas including the provision of an environment and legal infrastructure conducive to mediation, to strengthen efforts in the context of capacity building, to enhance public understanding and interests in the use of mediation, as well as to enhance Hong Kong's competitiveness and international image as a mediation services centre in the Asia Pacific region.

In the context of legislative framework, the Steering Committee is monitoring the operation of the Mediation Ordinance as well as looking into the question of whether it is necessary to introduce an apology legislation in Hong Kong. As many mediation practitioners would echo, an apology at the right time can very often facilitate the conclusion of a settlement in various areas of dispute (especially in cases where monetary compensation is not the only concern of the parties).

Quality, professional ethics and professionalism of mediators are crucial in ensuring public confidence in the use of mediation as a means of dispute resolution. It is for this reason that HKMAAL was established. Judging from the experience of other jurisdictions and the features of the local circumstances, the task of setting accreditation and training standards as well as developing an effective disciplinary mechanism has never been an easy task. Thanks to the efforts of the Chairman and the other members of HKMAAL, much has already been achieved, but a lot remains to be done to ensure that this industry-led body would fulfil its mission of becoming the premium mediation accreditation body in Hong Kong, and win the confidence of both the mediation sector and the general public.

Infrastructure and hardware aside, it is equally important to build up a mediation culture in Hong Kong. Such a mediation culture includes, amongst others: (a) a proper understanding of mediation and its relationship with other modes of dispute resolution such as arbitration; (b) how mediation can assist parties to resolve disputes; and (c) when mediation may not be appropriate and when other modes of dispute resolution should be considered. Further, people should not adopt the "tick the box" approach and go for mediation with the mentality of going through the motion in the course of a litigation.

Nor should the professionals involved in mediation put their own interests (especially financial interests) ahead of the interests of the parties to the disputes, which is a mentality that should definitely be avoided in any genuine attempt to resolve disputes by mediation.

The cultivation of mediation culture takes time. Now that mediation is taking root in Hong Kong, its future healthy development turns on the joint efforts of all the stakeholders and the community. Judging from what has been achieved in the past seven years, I am confident that we can continue to have further healthy development of mediation in Hong Kong, so as to complement our efforts in promoting Hong Kong as an international legal and dispute resolution services hub in the Asia Pacific region.

On this note, may I wish this Conference every success. I also wish to express our utmost gratitude to all the supporting organisations and sponsors. Without their support, this Conference would not have been possible.

Thank you.

Ends/Thursday, March 20, 2014