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律政司
香港特別行政區政府
Department of Justice
The Government of the Hong Kong Special Administrative Region

HKTDC 香港貿發局

Mediate First 調解為先

Mediation 調解會議 Conference 2022

MEDIATE FIRST: HARMONY FROM NOW TO BEYOND
調解為先:和諧為本 躍進未來

06.05.2022

Mediation Conference 2022
2022年調解會議

Mediate First: Harmony from Now to Beyond
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6 May 2022 • 2022年5月6日

Organised by 主辦機構：

律政司 香港特別行政區政府 Department of Justice The Government of the Hong Kong Special Administrative Region

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“Mediate First: Harmony from Now to Beyond”
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Opening Remarks

Ms Teresa Cheng, GBM, GBS, SC, JP
Secretary for Justice,
Hong Kong Special Administrative Region

Good morning, Distinguished Guests, Ladies and Gentlemen.

Welcome to the Mediation Conference 2022. We are pleased to host our biennial Mediation Conference during the Mediation Week 2022 with different thematic events on family, medical, peer mediation and more spanning across the first full week of May. May I begin with a note of thanks to our co-organizer, the Hong Kong Trade Development Council, and our supporting organisations for their staunch support to our work on promoting mediation over the years.

2. We are very privileged to be hosting our Conference this year as one of the enhanced celebration events for the 25th anniversary of the establishment of the Hong Kong Special Administrative Region. The theme of the Mediation Week, "Mediate First: Harmony from Now to Beyond," encapsulates our philosophy of mediation. Harmony embraces changes and differences between people. It bonds us together as a nation, and mediation is the effective tool that paves our way to harmony - one of the essences in our Chinese culture. At this significant juncture of returning to our motherland for a quarter of a century, this Conference provides an excellent opportunity for us to appraise what we have achieved in mediation and explore our way forward in the innovation-driven era of new technologies and associated challenges.

3. The Mediation Week 2022 began with our young masters of the future who demonstrated their passion and understanding on the use of mediation at the 5th Hong Kong Secondary School Peer Mediation Competition Final. I am pleased to hear that from these brilliant young minds that mediation skills such as reframing issues is helping them and their peers to build a positive mindset and harmonious relationships in and outside schools.

4. Throughout the Mediation Week, our renowned speakers have canvassed on topical issues relating to how mediation can help to achieve harmony across a broad spectrum such as peer and schools, matrimonial and family, medical, small claims and Investor-State disputes. The promotion on wider use of mediation as an effective and versatile tool for dispute resolution will benefit all walks of life and strengthen our rule of law by helping the public to gain access to justice at a lower cost with greater chance of preserving ongoing relationships.

5. It is no secret that Hong Kong has always enjoyed the unique status of being the only common law jurisdiction within China and all the privileges coming from the unprecedented characteristics of "One Country, Two Systems and Three Jurisdictions" in the Greater Bay Area ("GBA"). What is pivotal is how we can fully capitalise on Hong Kong's distinctive advantages and potential amidst the rapid bloom of the GBA and make good use of its indispensable role that Hong Kong has under the Outline Development Plan for the GBA.

6. With a joint effort of the Guangdong, Macau and Hong Kong legal departments at the GBA Mediation Platform, the GBA Mediator Accreditation Standards, and the GBA Mediator Code of Conduct Best Practice have

been endorsed at the third Joint Conference and have come into effect on December 30, 2021.

7. The promulgation of the unified accreditation standards and code of conduct best practice for mediators in the GBA is a major milestone in Hong Kong's integration into the GBA development. It will also foster the professional development of the mediators in the GBA, thereby enhancing the confidence of mediation users within the GBA and the development of GBA mediation services towards standardisation and professionalism.

8. To take forward our commitment of bridging the connectivity of the legal interface and facilitating the harmonisation of laws and dispute resolution frameworks in the GBA, consolidated effort is being taken in devising guiding principles for the mediation rules in the GBA.

9. Having these guidance and reference in place, coupled with the increasing demand for mediation services in the GBA vis-à-vis the closer interaction and economic co-operation between Hong Kong and the Mainland, it is perhaps high time for us to consider whether we can pursue reciprocal recognition and enforcement of mediated settlement agreements in the GBA.

10. The United Nations Convention on International Settlement Agreements Resulting from Mediation, or otherwise known as the Singapore Convention, has entered into force on September 12, 2020. Although China is a signatory to the Convention, it is not applicable to the cross-boundary mediated settlement agreements within the GBA for the obvious reason that this international Convention is not applicable to enforcement of cross-boundary mediated settlement agreements within China.

11. It is crucial for us therefore to devise an effective enforcement mechanism that suits our need in the GBA. Although the Convention may provide us with guidance and reference, the definition of mediated settlement agreement under the Convention is not exactly in line with that under the mediation framework in the Mainland. The Convention also lacks the reciprocity requirement like the New York Convention. Therefore modelling on the mechanism of reciprocal recognition and enforcement of judgments in family cases as was implemented under the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (Cap. 639) ("the Ordinance") that came into operation on February 15 this year, may actually be a better option for us.

12. The Joint Conference of the GBA Legal Departments will be a perfect platform to explore the feasibility of establishing a pilot scheme for the implementation of reciprocal recognition and enforcement of mediated settlement agreements within the GBA, and maybe starting with family mediation settlement agreements. We look forward to exchanging views on this idea with our Guangdong and Macau counterparts.

13. Against this background and the reciprocal recognition and enforcement of judgments mechanism in family cases, we are very honoured to have invited my very good friend Professor Liu Jingdong (Director of the International Economic Law Department at the Institute of International Law of the Chinese Academy of Social Sciences) to deliver a keynote speech on the subject and related issues. Furthermore, our speakers in Panel Session 1 today are going to share their insights on the potential of and the need for a reciprocal recognition and enforcement of family mediated settlement agreements in the GBA

in light of the new Ordinance for judgments and the increasing demand for cross-boundary family mediation services.

14. In the midst of a global pandemic, mediation takes on a new dimension in the rise of online dispute resolution ("ODR"). The synergy of mediation and ODR amplifies the flexibility in mediation and adaptability in ODR, and shall continue to flourish in the era of transformation in the legal and dispute resolution services. You will hear from our speakers on Panel 2 on how the latest LawTech and ODR under the "Digital New Normal" is providing us with greater cybersecurity, flexibility, and convenience to mediation users.

15. We thrive to meet every new challenge coming from the pandemic on planet earth to the metaverse in the virtual world with the state-of-the-art LawTech. Blockchains, cryptocurrencies, non-fungible tokens (NFTs), and the initial coin offerings are all sorts of novelties and symbols of innovations and technology breakthroughs. Everyone can be an artist and an art collector now by creating and trading their own NFT art in static and dynamic images, music, videos, and more. But have we looked deep enough to understand how the Metaverse runs, the potential legal issues and risks in these digital transactions? To unveil the mystery of the Metaverse, we are very lucky to hear from the experts, Mr Yat Siu (Co-founder and Chairman of Animoca Brands and Founder and CEO of Outblaze) and the other speakers on Panel 3 on what exactly these virtual and crypto assets are, how they can be traded or exchanged, what are the potential pitfalls in the Metaverse and, importantly, how mediation may come to our rescue.

16. I hope we can exchange more ideas at today's

Conference on how we can excel together in this journey of yielding further high-quality development in Hong Kong, the GBA and beyond. To this end, we shall continue to keep abreast of the latest developments in the global dispute resolution arena and invest in our legal infrastructure and talents to tackle the rising challenges in connecting Hong Kong with other cities within the GBA and of course to the world.

17. Ladies and gentlemen, may I close by thanking you all for your participation and support throughout the Mediation Week 2022, and wishing you all a very enjoyable and fruitful discussion today.

Thank you very much.

主題演講

劉敬東教授
中國社會科學院國際法研究所國際經濟法室主任
中國國際商會調解中心副主席
最高人民法院國際商事專家委員會專家

尊敬的鄭若驊司長閣下，各位嘉賓、各位朋友：

大家好，非常榮幸應香港特別行政區律政司鄭若驊司長閣下的邀請，參加此次調解會議，並發表主旨演講。

本次會議以「調解爲先：和諧爲本 躍進未來」爲主題，可謂高瞻遠矚、恰逢其時。《聯合國關於調解所產生的國際和解協議公約》，又稱《新加坡調解公約》，已於 2020 年 9 月 12 日正式生效，該公約的誕生標誌着國際商事和解協議的法律執行力以及國際流動性顯著增強，極大地推動了國際商事調解制度成爲與司法、仲裁制度並立的、國際公認的重要商事糾紛解決機制，開闢了國際商事糾紛解決的嶄新未來。

中國中央政府作爲首批簽署《新加坡調解公約》的國家，同其他 45 個國家一道於 2019 年 8 月共同簽署了該公約，簽約三年以來，中國中央政府、內地商事調解機構、內地智庫以及法律學者積極推動中央政府早日批准該公約，並開展了制定《商事調解法》的調研論證工作，爲最終批准該公約創造了良好的法律條件和國內法律環境。

香港特別行政區作爲全球商事爭議解決中心和國際法律服務中心，長期以來，始終高度重視商事調解的作用和功能，一貫致力於運用商事調解方式解決各類商事糾紛，並爲之創造了十分良好的法律機制，形成了豐富的商事調解理論和實踐經驗，贏得國際法律界的廣泛讚譽。

2019年中央政府作出了推動粵港澳大灣區建設的重大決策，並爲此發布了《粵港澳大灣區發展規劃綱要》，提出「完善

國際商事糾紛解決機制，建設國際仲裁中心，支持粵港澳仲裁及調解機構交流合作，爲粵港澳經濟貿易提供仲裁及調解服務。」這一決策部署爲粵港澳大灣區商事調解制度的建立和發展提供了重要保障，三地定當爲大灣區商事調解制度的成功建立及良性發展共同努力。

2018 年，我和中國社會科學院國際法研究所的專業團隊承接了簽署《新加坡調解公約》的論證、評估工作，完成並提交了評估報告，作爲中國中央政府作出簽約決策的依據，並有幸赴簽約現場見證了公約的誕生。2020 年開始，我和我的團隊又接受了內地《商事調解法》立法論證課題，並會同內地相關部門和機構積極推動全國人大儘快批准《新加坡調解公約》。

利用這次寶貴的機會，我願與香港地區及大灣區的法律同仁們分享我們工作的重要成果，並藉此爲大灣區商事調解制度提出供各位參考的建議。

第一，《新加坡調解公約》的核心要義。《新加坡調解公約》的核心要義在於，該公約賦予基於調解而達成的和解協議與法院判決、仲裁裁決有着相同的法律執行力，極大提升了此類和解協議在全球範圍內的可執行性。

長期以來，作爲重要的商事糾紛解決方式，商事調解爲國際商事活動的順利開展發揮了重要而獨特的作用，儘管國際商界已經認可了商事調解的積極價值，但由於基於商事調解而達成的和解協定，從法律性質上仍屬於當事人之間的合同約定，其自身並未被賦予司法執行力，故而，此類和解協議一直存在缺乏可執行性的嚴重法律缺陷—如果一方不遵守和解協議，那麼當事人不僅用於調解的花費將付之東流，最終可能仍然要面臨訴訟或仲裁程式。

《新加坡調解公約》的誕生，改變國際商事調解面臨的上述局面，爲和解協議的跨境執行提供了國際法依據，也標誌着以《新加坡調解公約》、《承認及執行外國仲裁裁決公約》

（即《紐約公約》）、《選擇法院協議公約》及《承認與執行外國民商事判決公約》爲國際法基礎，構建的調解、仲裁、司法國際商事爭議解決三大支柱的正式建立。

第二、內地商事調解立法狀況及問題與挑戰。對於《新加坡調解公約》談判、起草、最終文本出台過程，中國中央政府全面參與，並在其中貢獻了中國的法律智慧和東方調解文化之精髓，中國作爲第一批簽署國簽署該公約，對於公約的最終誕生發揮了重要而獨特的作用。簽署《新加坡調解公約》，對於中國參與全球經濟治理、改善營商環境、推進「一帶一路」建設的法治化體系建設以及中國商事調解市場的形成、法律服務能力提升，具有重大而深遠的影響。

但應當看到，儘管內地有着較爲完善的人民調解制度，人民調解在解決社會矛盾方面正發揮了重要作用，但與人民調解性質完全不同的商事調解制度尚處於剛剛起步階段，與發達國家及香港地區相比，內地的商事調解機構還不發達，商事調解立法、司法等方面幾乎處於空白狀態，商事和解協定的法律地位及執行力尚不明確，這些問題都是中國中央政府最終批准《新加坡調解公約》之前應當解決的法律問題。

此外，《新加坡調解公約》本身還具有一些不同於承認與執行外國仲裁裁決的《紐約公約》的特點，這些特點主要包括：《新加坡調解公約》的基礎性條文禁止保留、《新加坡調解公約》未設置法院對和解協定的承認程序，而僅具有執行和解協定的程序、非《新加坡調解公約》簽約國的當事人亦可援引該公約到《新加坡調解公約》締約國境內申請強制執行其達成的商事調解協定等等。公約所具有的上述特點也對最終批准《新加坡調解公約》提出了法律方面的挑戰，需逐一加以研究並制定相關的配套措施。

第三，在大灣區引入《新加坡調解公約》執行範式的路徑及意義。近年來，在《粵港澳大灣區發展規劃綱要》指引下，粵港澳三地對於商事爭議解決制度探索了不少有益的經驗和做法，如：設立粵港澳仲裁調解聯盟、建立內地香港聯合

調解中心、發布跨境商事糾紛調解規則、簽署多項司法協助文件等等，爲推進商事糾紛多元化解決提供了新的助力。但與此同時，在粵港澳大灣區商事糾紛多元化解決機制推進過程中，仍然存在一些「堵點」亟須疏通，特別是在商事和解協議執行方面，迄今尚未建立有效的路徑和制度銜接。我建議三地政府部門及法律學者應當充分運用《新加坡調解公約》生效及中央政府簽署該公約的大好時機，在「一國兩制」原則的框架下，儘快研究制定大灣區相互執行和解協議的正式法律機制，爲推動大灣區商事和解制度的建立和未來發展，奠定堅實的法治基礎。

爲此，我本人提出以下具體建議：

第一，制定大灣區商事調解示範規則。粵港澳三地政府應參照聯合國國際貿易法委員會推出的《商事調解示範法》，研究制定統一的大灣區商事調解示範規則，爲可在三地執行的和解協議提供共同的標準依據與範本。

第二，內地應當細化新修改的《民事訴訟法》關於「依法設立的調解組織」的相關規定，在此基礎上將符合條件的港澳商事調解組織納入到內地人民法院特邀調解組織名冊之中，並依法確認並執行港澳商事調解組織作出的和解協定。

第三、由最高人民法院授權廣東省高級人民法院，與港澳地區有關方面簽署調解協定互認執行的會談紀要，在大灣區內開展試點，並在條件成熟時制定大灣區《商事調解條例》，爲在大灣區內人民法院執行三地之間的和解協議提供法律依據。

在此，我要特別說明的是，作爲國家境內唯一的普通法司法管轄區域，香港特別行政區擁有涉及兩大法系案件的合作經驗，對於解決跨境及跨國案件具有巨大優勢。此外，香港的商事仲裁和商事調解在世界範圍內享有盛譽，國際法律服務機構眾多，優秀的國際法律人才薈萃，是全球法律服務的領導者，香港特別行政區可將商事調解法律服務方面的成熟經

驗和法律體制帶入大灣區，幫助大灣區城市之間建立商事法律機制及商事調解法律專業人才庫。

此外，大灣區打造成功的和解協議執行機制，可爲內地提供可複製、可推廣的寶貴借鑒，對於內地制定全國性《商事調解法》以及推動中央政府最終批准《新加坡調解公約》，具有重大的引領意義。我真誠地希望，我和我的中國社科院專業團隊能有機會參與大灣區商事調解制度構建的相關工作，並爲此貢獻我們的智慧，與在座的法律界同仁一道，共同推動大灣區和解協議執行機制儘早建立。

最後，再次感謝香港特別行政區律政司鄭若驊司長閣下的邀請，我本人懷着十分迫切的心情，希望能在新冠疫情結束後再次蒞臨香江，與鄭司長及香港法律界的各位新老朋友們共襄盛舉。

最後，預祝本次會議圓滿成功，謝謝大家。

Panel Session 1:
Cross-boundary Family Disputes: the Potential of Reciprocal Recognition and Enforcement of Family Mediated Settlement Agreements in GBA

(Transcript)

(Mr Norris Yang)
Good morning, everyone. It is always interesting to lead the first panel, and I am very glad and honoured to have you all honoured guests, ladies and gentlemen attending. It is always my pleasure to be here for the Department of Justice ("DoJ") and I thank them and the Hong Kong Trade Development Council for inviting me.

Mediation is something that you learn forever and I have been learning since the last century. Title of today's conference is "Harmony", which is very important because this relates to thinking about "Mediate First". I remember sometime in 2002 when Lord Woolf and Dame Hazel Genn, as she came to Hong Kong to talk about the civil justice reform for the United Kingdom. Dame Hazel Genn came in and said, "Look, there is something we have to change in our perspective." When we, at that time and still now, talked about "Should we mediate this case instead of going to litigation? " She said, "Look, mediation is really very effective and very efficient. It is proven to be a very effective way and cost efficient way of resolving disputes." So she said, "Really, should we not think about why we are still litigating when mediation is so effective? So that is why the "Mediate First" mindset is a very important thing and it could achieve harmony.

I keep making typing mistakes when I type in "mediation" , and spell checks in Google often lead me to "medication". I suppose,

mediation is a medication for resolving disputes. We are very calm and are harmonised and therefore our theme "Harmony from Now to Beyond" is perfect for our Conference.

Today, the first topic is "Cross-boundary Family Disputes: the Potential of Reciprocal Recognition and Enforcement of Family Mediated Settlement Agreements in GBA" and this is really a very important topic for Hong Kong people. I have done some quick statistics. Every day in 2019, there were 46 Hong Kong people applying for a certificate of marital status so that they could get married in the Mainland. That is 46 a day. Then there are 119 marriages registered in Hong Kong every day. So 46 out of 119. That is a big percentage. From just quick calculation and extrapolation, I figured there must be 1,000 cases of cross-boundary divorces where one party is from Hong Kong and the other party is from the Mainland. With 10,000 cases and 1.4 children per family, that affects 14,000 children. That is a huge number because if you add 10,000 divorces, that is 20,000 parents, 14,000 children, and there are other family members close to the divorcing couple and that is quite a lot of people. That is why it is so important to talk about cross-boundary marriages, and today, we have three experts from Hong Kong and the Mainland to share their knowledge.

Mr Eugene Yim will share his thoughts on the new Ordinance i.e. Cap. 639, Ms Sherlynn Chan on the impact of the Guangdong-Hong Kong-Macao Greater Bay Area ("GBA") initiative on cross-boundary marriages and Ms Liu Yang on the role of lawyers in matrimonial mediation.

Eugene is a practising barrister at Bernacchi Chambers and has an extensive civil practice. He specialises in matrimonial and family law. He is a mediator in Hong Kong and has been appointed as a Deputy District Judge in the Family Court

in 2018. He has been appointed a member of the Family Proceedings Court User's Committee since 2021. He serves as the Deputy Honorary Secretary of the Hong Kong Bar Association and is recognised by chambers and partners as a recommended Junior Counsel for Family Practice. So without further ado, may I invite Eugene to share his views on the new Ordinance? Thank you.

(Mr Eugene Yim)
Secretary for Justice, Distinguished Guests, Fellow Speakers and Participants, Ladies and Gentlemen, Good Friends here,

Good morning. I am privileged to be invited by the DoJ to take part in today's discussion. It is also my pleasure to work with Norris, Sherlynn, Ms Liu Yang and all of you here this morning.

Now, the topic I will cover during this part of the presentation is in relation to the newly enacted Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance. My aim is to talk about the new law and to set the tone for the discussion later this morning on the potential or possibility of establishing a mechanism for reciprocal recognition and enforcement of family mediated settlement agreements in the GBA.

My presentation will be divided into three parts. First, I will briefly talk about why and what we have under the new Ordinance. Second, changes brought about by the new regime. Then I will try to highlight some potential implications or matters to note under the new regime.

The starting point, that is, the Basic Law stipulates that the Hong Kong Special Administrative Region ("Hong Kong SAR") may maintain juridical relations with the judicial organs of other parts

of the country, and they may render assistance to each other. As a result, in 2017, the Arrangement on Reciprocal Recognition and Enforcement of Civil Judgments in Matrimonial and Family Cases by the Courts of the Mainland and of the Hong Kong SAR was entered into between the Supreme People's Court in the Mainland, and the HKSAR government.

To give effect to the arrangement, the new Ordinance (Cap. 639), as it is known now, came into effect on February 15, 2022, together of course, with the subsidiary legislation under the new Ordinance. This is no doubt an exciting time as 2022 also marks the 25th anniversary of the establishment of the Hong Kong SAR. Now, soon after the enactment of the new Ordinance, we also have the new Practice Direction SL10.5, which came into effect on March 1, 2022, to provide guidance to practitioners in relation to the new regime on an operational level.

As the title of the new Ordinance suggests, the new regime is applicable to mutual enforcement of judgments or orders, and I emphasise “judgments and orders”. In the new Ordinance, Mainland Judgment is defined to mean a judgment, ruling or conciliatory statement given by a court in the Mainland. Similarly, Hong Kong Judgment means a judgment, order, decree, allocatur or certificate of fixed costs made by a court in Hong Kong. So one can see that this is essentially a judgment or order-based system for mutual enforcement.

The new Ordinance is basically divided into three parts.

Part 2 of the new Ordinance makes new law to enable Mainland judgments in matrimonial or family cases to be registered in Hong Kong. Upon registration, the order judgment is capable of being enforced in Hong Kong as if it were originally made by the Hong Kong court. A built-in system to create a safety

net in the new Ordinance is that the other spouse who is at the receiving end of an application for registration of a Mainland judgment, that is normally done ex parte, may apply to set aside the registration on certain grounds. I will come back to the grounds in the Ordinance in a minute. This is of course a new and welcoming development, as Mainland judgments in family and matrimonial cases were generally not recognised or enforceable in Hong Kong in the past, and as we all know, the reverse is also true.

Part 3 of the new Ordinance provides for a new system whereby divorcing couples can apply for their Mainland divorce certificates to be recognised in Hong Kong. A bit background on this: In the Mainland, other than seeking a divorce through the court channel, married couples can also get a divorce through the administrative authorities. This is more commonly known as 離婚證 in Chinese. This is again another positive change brought about by the new Ordinance, because in the past, there was some degree of uncertainty as to whether the Mainland divorce certificates (離婚證) as opposed to court order divorces were recognised in Hong Kong. So this is solved now.

Part 4 of the new Ordinance is relatively more straightforward. It basically enables parties to a Hong Kong judgment to apply for a certified copy of the judgment. This is to facilitate if necessary Hong Kong judgments to be recognised and enforced in the Mainland under the corresponding regime in the Mainland. That is something to be covered by Ms Liu Yang in due course. We all know that previously Hong Kong judgments or orders in family and matrimonial cases were not generally recognised or enforceable in the Mainland. I believe a lot of us here may remember that the disadvantages of the absence of a cross-boundary system of mutual enforcement were identified in a decision by the Court of Appeal in 2017 in view of the

significant number of cross-boundary marriages today.

Now, I would like to highlight some matters to note or some implications I can identify under the new regime. There are four matters I intend to deal with. The first point to note is that the new Ordinance does not have any retrospective effect. In other words, it does not enable judgments or orders that were made before the commencement date of the new Ordinance that is February 15, 2022, to be registered. Therefore, old or existing orders will continue to be governed by the common law principles governing enforcement of a foreign judgment, which generally speaking means a relatively higher threshold. So we can foresee, at least for some time to come, we still have to revert back to the old common law principles for the enforcement of some existing family or matrimonial court orders.

As noted under Part 2 of the new Ordinance, an aggrieved party may apply to set aside a registration in Hong Kong court of a Mainland judgment. There are a number of grounds set out in Part 2 of the Ordinance. I am not going to read out the grounds one by one. Basically, these grounds are all related to procedural unfairness or public policy. So one will have to satisfy one of the grounds under the Ordinance before the court can consider setting aside a registration. Setting aside registration or enforcement of a foreign judgment is common in arbitration or commercial litigation contexts. This is however something new in the context of family law. Interplay between the two legal systems and their respective laws and procedures will be necessarily involved. So one will immediately ask this question, “Judging from how court process normally operates in the Mainland, how likely or unlikely is registration of Mainland judgments or orders being challenged or set aside in Hong Kong?” Now we are still waiting for the first case. So we will

have to wait for some test cases before we will have an answer to this question.

The next thing I would like to talk about is the provision for security for costs under the new regime. An applicant of a registration of Mainland judgment may be ordered to give security for costs. Theoretically, a spouse who is ordinarily residing in the Mainland and seeking to apply for a Mainland judgment to be registered and enforced in Hong Kong where for example the bulk of the family assets is located, may be requested by the other spouse to pay security for costs before she or he can carry on the application for registration. I have some friends here whose practice is in family law, and I am sure they can all testify that former spouses or even spouses who are reluctant to pay are not uncommon in family law. It therefore remains to be seen whether application to set aside registration of Mainland judgments under the new Ordinance, coupled with the power to order applicants to provide security for costs, will result in a new species of matrimonial or family disputes.

I have already mentioned that the new regime is essentially a judgment or order-based system. Under Section 2 of the new Ordinance, as I indicated earlier, Mainland judgments include conciliatory statements (調 解 書). But actually, if we take a deeper look at the interpretation in Section 2, that actually refers to conciliatory statement drawn up by the court. In other words, if divorcing parties reach a settlement, unless the terms of the settlement become part of a court order, they are unable to take advantage of the new regime.

Today, mediation is playing a big part in resolving matrimonial and family disputes. A question that immediately comes to mind is whether there is any room or necessity for developing mutual registration enforcement of family mediated settlement

agreements in cross-boundary cases. One model we can look at is the Singapore Convention on Mediation, which was referred by the Secretary for Justice in her Opening Remarks, and also by Professor Liu Jingdong earlier. This Convention, being an international convention, establishes a uniform framework for recognition and enforcement of mediated settlement agreements across borders. For the time being, there are 55 signatories with 9 rectified countries. The downside is that the Convention, however, is applicable only to international commercial settlement agreements resulting from mediation. It is expressly not applicable to mediated settlement agreements relating to family inheritance or employment law. Under the system of the Convention, there is also a built-in system for refusing enforcement in appropriate cases.

Now, I pause here and ask, “Can we have a similar model for family mediated settlement agreements in the GBA?” To echo something Norris said in his introductory remarks, this is an era when it is no longer fashionable to ask "why not mediating". Instead, we should all ask "why litigating". With this sentiment in mind, may I end this presentation by urging everyone here to start thinking about the potential or possibility of developing a mechanism for reciprocal recognition and enforcement of family mediated settlement agreements in the GBA.

Thank you, everyone!

(Mr Norris Yang)
Thank you, Eugene! Very inspiring talk! Thank you very much!

Our next speaker is Ms Sherlynn Chan. She is a very experienced family lawyer and currently oversees the Family Law practice at Deacons. She is an Accredited Family Mediator and frequently speaks on family, mental capacity and private wealth matters.

She was also a Deputy District Judge in the Family Court in Hong Kong.

She authored a book "*A Practical Guide to Mental Health Law in Hong Kong*". She chairs the Mental Health Law Committee of the Law Society of Hong Kong, and co-chairs the Mental Health, Capacity and Elder Law sub-committee of The Society of Trust and Estate Practitioners. She is a founding member and chairperson of the MIP Care Resource Connect, a charity which provides information and support to family members and caregivers of persons with special needs.

Sherlynn will share on the topic "How Mediation Can Help Resolve Family Disputes - Impact of the GBA Initiatives on Cross-boundary Marriages and Family Mediation". May I invite Sherlynn to come on stage? Thank you.

(Ms Sherlynn Chan)
Thank you, Norris!

Good morning, everyone!

I also want to thank the Secretary for Justice and her Mediation Team at the DoJ for inviting me to speak at this very important event. I would like to start by making a confession. I know this is the Mediation Conference. But as a litigation lawyer for over 25 years, I have to admit that most of my time is spent resolving disputes through court proceedings. However, when I was in the Family Unit of the Legal Aid Department, it was very disheartening for me to see the irreparable damage that was caused to the parties and their families once they stepped into the courtroom, and started giving evidence, and making all sorts of allegations against each other. I quickly saw the benefits of mediation, especially in preserving ongoing relationships in

family disputes, and enrolled in the intensive mediation course to be accredited as a Family and General Mediator since 2010.

So today, I am very excited to be able to share with you how mediation can resolve complex family disputes and the impact of the GBA initiatives on cross-boundary marriages and family mediation. Since Eugene has done such a wonderful job in explaining the practice procedures of the new Ordinance and the changes and limitations under the new regime, I will just focus on the GBA connectivity that has affected cross-boundary family mediation work. I will start with some statistics on cross-boundary marriages and divorces, followed with an overview of family proceedings in Hong Kong, some case sharing and conclude with some discussion on the way forward for family mediators, and the potential of reciprocal enforcement of family mediated settlement agreements in the GBA.

According to the government statistics, there are 640,000 daily average number of passenger trips made between Hong Kong and the Mainland. In other words, there are 26,666 passenger crossings every hour along the boundary. Now, with the continued expansion of the transport infrastructure in the GBA, these statistics will continue to rise. Further, in line with the people-centric policies to develop a quality living circle (優質生活圈) in the GBA, which will focus on education, culture, employment, health care, tourism, business, etc., there has been a huge increase in cross-boundary marriages and inevitably an increased demand for cross-boundary family mediation work.

We can actually see the number of marriages registered in Hong Kong each year. From 2001 to 2019, it averages 43,474, of which 16,782 or almost 40% of marriages registered in Hong Kong involved brides or bridegrooms from the Mainland. We also see from the number of divorce decrees granted that there is

a 57% increase in the divorce trend for the past two decades.

Here is an overview of the family proceedings in Hong Kong to illustrate why mediation is such an essential and effective process in resolving family disputes, as it saves time and legal cost. Broadly speaking, family proceedings are divided into three areas: the divorce main suit, children matters and financial relief for the spouse and children. Sometimes parties may argue on the ground of divorce, even the date of separation, or the particulars of unreasonable behaviour, and the matter will be set down for trial.

In children cases, people have difficulty in agreeing on anything. From what to eat, what to wear, which school to attend, to how many tutorial lessons or extracurricular activities are considered necessary and appropriate. And if these matters cannot be resolved in the Children's Dispute Resolution Hearing ("CDR"), the matter will have to be set down for trial.

I pause here because I recall a case where the parents of a 5-year-old daughter had heated arguments on whether the child should attend local school or international school. They spent over 10 days in court trying to resolve this one issue. The child, sadly, had to undergo numerous assessments and interviews by the social investigation officers, education psychologists and other experts for the application. I firmly believe that if the parties had attempted mediation, the child's interests would have been better served.

Similarly, for ancillary relief matters, if parties are unable to agree to a level of financial support for the spouse and children, or a fair distribution of family assets, the parties will have to file a very extensive Form E (Financial Statement). If the matter cannot be resolved at a Financial Dispute Resolution Hearing

("FDR"), the matter will be set down for trial.

So when can parties attempt mediation? The short answer is anytime: before, during or after commencement of proceedings. One of the underlying objectives of the Civil Justice Reform is to facilitate settlement of disputes. So the courts have a duty to actively manage cases by encouraging parties to use mediation as an alternative dispute resolution, and to facilitate its use where appropriate. In fact, the CDR and FDR hearings are designed to promote settlement with a judge adopting the role of a settlement facilitator. In October 2019, a pilot model of the mediator-assisted CDR and FDR was implemented to enhance the effectiveness of these hearings with the assistance of a practising mediator.

Under Practice Direction 15.10, both the parties and the solicitors have a positive duty to assist the court in facilitating settlement. Solicitors must explain the underlying objective and the availability of mediation to clients and provide them with a leaflet on family mediation before filing a petition for divorce. The parties themselves are also required to sign a certificate as to family mediation, and indicate whether or not they wish to seek mediation at the time of submitting the petition. If the party is willing to mediate, the registry will refer the matter to a mediation coordinator, who will kick-start an information session and initial assessment on the suitability of the parties for mediation.

As mentioned, parties can mediate at any stage, even after litigation has commenced or concluded. However, very often, family lawyers tend to get very involved with the complex emotions and family dynamics in the proceedings. But sometimes they forget to encourage parties to just pause and consider mediation instead of litigation. But on a positive

note, the Judiciary's latest statistics in 2021 revealed that for those who do use the family mediation services, the success rate is 68%. According to the Principle Family Court Judge C. K. Chan's seminar earlier this week, he mentioned that these success rate of mediator-assisted CDR and FDR is 92%.

The first case I would like to share with you is quite common in the family scene, and is referred to as a grey divorce. The husband and wife had been in their 60s and 70s respectively when they married. They both had adult children from their respective first marriages. 10 years later, the husband suffered from a stroke and was hospitalised. The wife was unable to visit him due to COVID-19 restrictions. Two months later, she received a petition issued by the husband with financial claims against her, including the transfer of the matrimonial home, which had been paid for by her children. The wife became suspicious of the husband's behaviour and was concerned that he was being influenced by others. And she refused to sign anything, or agree to anything without having the chance to see and talk to the husband face-to-face. So how did mediation help in this case?

The appointed family mediator was able to arrange a face-to-face meeting very expeditiously. The senior couple and their adult children all attended the mediation and were able to clarify a lot of misunderstandings and agreed to a fair distribution of assets to enable the senior couple to live separately, but with adequate care and financial means to cover the medical expenses.

I have set out some of the clear benefits reported by the mediation services users who participated in a 2017 survey. They include saving time and money, minimising psychological stress, reducing the negative impact of divorce on children and laying a good ground for co-parenting and post-divorce adjustments.

Now we all know that family disputes involve a lot more personal emotions and grievances than commercial disputes. I have set up my favourite mediation tools in resolving family disputes: Neutralise, Mutualise and Normalise. Since mediators are impartial, we can help neutralise the conflict between the parties, help mutualise the concerns and explore common grounds. Family mediators are specially trained to normalise parties' emotions and high conflict situations so as to facilitate effective communication and active listening. So you may have seen the Chinese word 聽 which reminds us to use our eyes, our ears, and our hearts to listen to underlying concerns and issues. We can also use the 5A's (Attention, Appreciation, Ask, Affection and Affirm) in effective communication to show undivided attention, appreciation and an affirmation to the parties and they will feel respected and reciprocate with trust and open communication.

The second case I would like to share with you involves cross-boundary marital disputes. The husband and wife had been married for over 40 years, and together they built substantial businesses and acquired 20 properties in the Mainland and Hong Kong. The husband who resided in the Mainland petitioned for divorce in Hong Kong. After many sessions of mediation, the parties eventually signed a mediated settlement agreement, which became the basis of a consent summons that was made into a consent order. The husband was required to transfer some Mainland properties to the wife and the wife was to pay a lump sum and transfer some shares in a Hong Kong company to the husband.

However, when the property prices in the Mainland rose, the husband reneged from the agreement. In fact, he privately cancelled some of the original property ownership certificates and refused to transfer some Mainland properties to the wife

and the wife sought Hong Kong court's assistance to facilitate enforcement of the order. Initially, the husband, through legal representatives in Hong Kong, agreed to physically attend the office of Mainland authorities to complete the transfer. However, this all happened prior to the commencement of the new Ordinance Cap. 639. Since Hong Kong orders were not generally recognised or enforceable in the Mainland, when the husband again failed to comply with the order, the wife had to issue separate legal proceedings in the Mainland. It took three years before she was able to complete all the transfers.

What is the impact of the new Ordinance on family practice in Hong Kong? I believe that there will be more certainty in enforcing orders made involving assets in Hong Kong and the Mainland, vice versa. This will help practitioners and mediators to generate more creative options in settlement negotiations. Enforcement of judgments involving cross-boundary assets will be more cost effective, and the parties will not need to re-litigate the issues in other jurisdiction.

I will quickly turn to some of the challenges faced by family mediators in COVID-19 situation. Although most mediators have adapted to online or virtual meetings with the parties, it is difficult to build rapport and mutual trust with parties online as we are not able to observe the body language and elicit the underlying concerns. There are also some technological challenges, especially in breakout sessions. I remember when I conducted my first online family mediation, for extra security and peace of mind, I arranged two separate meeting rooms with two separate devices to ensure that if I were having an individual intake session, I would not accidentally include the other side due to my technical challenges or glitches. The parties have also raised concerns about whether there were confidentiality concerns because it was very difficult to be certain that there were no unintended persons inside the room.

Then what is the way forward for family mediators in Hong Kong and the GBA? As mentioned, with such close connectivity in the GBA, the demand for the GBA mediators will certainly rise. On December 10, 2021, in the third Guangdong-Hong Kong-Macao Bay Area Legal Departments Joint Conference, two documents were endorsed, i.e. the GBA Mediator Accreditation Standards and the GBA Mediator Code of Conduct Best Practice. Now these two documents recognise the need for a unified accreditation standards, provide for a consolidated panel of the GBA mediators, and highlight the challenges faced by cross-boundary mediators, such as cultural differences, and maybe the need to reconcile three different jurisdictions within the GBA and different operational needs for each jurisdiction.

I do believe that with the new Ordinance, when it is more widely used and tested in cross-boundary family disputes, there will be more potential for similar reciprocal enforcement of family mediated settlement agreements in the GBA.

I think my time is up and thank you very much for listening.

(Mr Norris Yang)
Thanks Sherlynn for a very insightful presentation. Particularly, I think the case studies are very important.

From Hong Kong, we now zoom to Shenzhen and Ms Liu Yang is on my left side on the big screen. Ms Liu Yang is a Senior Partner of Unitop Law Firm in Shenzhen. She is a graduate with Master's degree from School of Law, Sun Yat-sen University, and is a Family Investigator which is something we do not have in Hong Kong. That is part of the training and official title. She is also a mediator and consultant in matrimonial matters in the Mainland.

She has a very strong focus on matrimonial and family matters. She has written on various legal issues and analyses on legal theory with published articles in Mainland journals and been invited to speak on many different media platforms and events in the community, including forums and talks on matrimonial law.

（劉洋女士）

尊敬的鄭司長，各位領導、各位同行，親愛的朋友們，大家上午好。我是來自廣東壹號律師事務所的劉洋律師，非常榮幸再次參加香港司法界的盛會，正如鄭司長所言，這是一次非常多主題的調解周。我今天就拋磚引玉，跟大家分享一個非常有趣的主題，叫「律師在家事案件中的調解技巧及其重要性」。

我這次分享將分爲三個大部分展開：第一個部分，簡要瞭解中國內地家事糾紛調解的方式和爭議解決。第二個部分，家事律師在家事案件中的調解技巧及其重要性。最後特別想分享的就是，在條例生效之後，其實我和我的香港的好朋友們、律師同行們做了很多的探討和實踐，其中有兩個案例非常具有典型意義，想拿出來跟大家分享一下。

第一個部分，跟大家簡要介紹一下中國內地家事糾紛的類型及爭端解決。其實中國內地和香港有很多文化的基礎和大家對家事的理解有很多共同的理念，在內地的家事糾紛大概也是這些類型，比如說離婚糾紛、撫養權糾紛、撫養費糾紛、離婚後財產糾紛、繼承糾紛等等，這些也和大家常見的類型是非常相似的。除此之外，我們就這些爭議有很多的解決方式，比如說協商，就是當事人自己協商解決，不需要任何第三方或者司法機構的介入，或者由第三方主持下進行調解結案，或者自行協商也不行，調解也不行，我們會通過法院判決的方式進行結案，這都是我們的爭議解決方式。今天特別想要分享的是調解結案的爭議解決方式。

首先分享兩個有趣的資料數據和法官的說法。其實調解在中

國內地源遠流長，這是中華民族的智慧，這些智慧不僅應用在日常生活中間，其實在我們的司法實踐中也會對此比較推崇。比如說最高人民法院發布的司法報告就顯示，截至 2020 年底，全國共有 3,488 家法院使用了人民法院的調解平台開展調解工作，而人民法院入駐的調解組織 3.7 萬家，調解員 16.1 萬名，調解案件高達 1,267 萬件，而且增速從年初的百十件增長到上萬件。這裡還有一個非常有趣的數字，就是我們的調解成功率是超過 61% 的，意味着 100 個案件裡面有 61 個是通過我們的調解方式結案的，這足以反映調解這個制度在我們的司法體系中運用得非常多。

再來看看廣東一個中院的法官是怎麼看待調解的，他除了看透調解這個機制之外，還講了非常本質的東西。他認爲「通過努力的調解，不僅拉近你和當事人的距離，讓當事人感受到法院是一個可以主持正義的地方，感受到法官不是簡單的教條主義，而是真正的幫助雙方找到最好解決方案的人，而法律的信仰也是通過一件件案件來培育的。」這裡有一句話非常關鍵，法官不是簡單的居中裁判者，他可能更多的是想幫助大家更好地解決爭議糾紛。所以我們在帶教的時候，我帶很多實習律師的時候，大家如果要從事家事這個領域，我們的第一堂課就是調解的課程，我會跟大家講調解是家事糾紛爭端解決機制皇冠上的璀璨明珠。可能家事爭議有很多種解決方式，但是調解絕對是那一顆最閃耀的明珠，如果你想要做好家事糾紛，我建議你先學習做調解。

接下來就簡單跟大家分享一下，在中國內地家事糾紛有哪些調解方式，剛剛劉敬東教授講到，我們有人民調解的制度，除了人民調解之外，在從事家事案件辦理中間還有一些經常使用到的調解機制，比如說律師調解、訴前聯調、訴中調解，這就是剛剛 Sherlynn 所講到的「調解貫穿在任何時候 (anytime)」。

接下來簡單分享一下，第一個是律師調解。律師調解在廣東省推廣得非常好，這是我們之前辦的一個案例，一方是香港

人，一方是廣州人，雙方在子女撫養問題上有爭議，最終是在律師的調解下達成了協議，前往民政局辦理離婚登記。在內地有兩種離婚方式，一種是雙方去到民政局辦理離婚登記，還有一種是通過法院辦理離婚手續。任何一種手續只要拿到生效的法律文件都是有效的，不需要再通過轉換，比如說我去了民政局還要不要去法院呢？不用。我去了法院，還要不要去民政局？也是不用的。這裡特別跟大家分享一下我們現在內地的離婚程式是有兩個「三十天」的，也就是有冷靜期制度。我們可能更多考慮到在婚姻這件大事上，尤其涉及到小孩、涉及到一大家子人的感受，我們會給大家三十天的冷靜期，要去兩次。三十天冷靜期到了，第二次你們夫妻雙方再來，如果還是決定離婚，那就給你辦離婚證，這是律師調解制度。

第二個特別想要跟大家講的，也是一個很有特色的制度，叫訴前聯調制度。訴前聯調爲什麼有特色呢？因爲它真的有很多優點，它和律師調解不一樣，和訴中調解又不一樣，它的特色在於高效、免費。這也是我們之前做的一個訴前聯調的案子，男方是香港人，女方是廣州人，在財產分割上沒有達成一致意見。雙方都請了律師，在跨境的這種婚姻家事案子都會有律師，但都沒有辦法達成意見，女方就起訴男方到基層法院。這時候經雙方同意後指派了一個調解員進行訴前聯調，最後成功了，然後順利地給雙方辦了訴前聯調的調解書，而且無需繳納訴訟費，大家要知道一個案子到了法院，涉及到財產分割的時候，我們可能是要繳納訴訟費的，所謂的訴訟費是法院收取的費用。

大家可以看一下人民法院公布的一個完整的訴前聯調的流程圖，比如說任何一方起訴到法院以後，人民法院認爲這個案子可以進行調解，因爲不是所有的案子都可以進行訴前聯調的。在徵得各方當事人均同意的前提下，我們就會指派一個調解員進行調解，調解成功直接製作調解書並生效。如果調解不成功，我們就直接轉爲法院立案開庭。這條路是如果任何一方當事人不同意訴前聯調或者雙方均不同意，我們就徑

直立案開庭。所以大家可以看到，人民法院對訴前聯調是非常重視的，這個不僅體現了便民、高效，而且對於真正的解決雙方當事人的爭議糾紛是非常有效的。相對於這個案子，雖然到了法院，但是我沒有給你立案號，雙方的爭議沒有擴大。

我們在 2 月 16 日的論壇上跟大家分享過的，廣州一個基層人民法院，番禺區人民法院在它的公眾號上發布的訴前聯調的一號文。內地的調解書很多香港的律師同行對這個很感興趣。文書是有大的板塊的，包括原告、原告訴訟代理人（一般是律師）、被告、原被告因爲什麼案由、什麼時候立案。我們的離婚案件一般都是不公開進行審理的。然後講了一下原告的訴求，講了一下被告的答辯，在法院的主持下達成了和解協議。我們把雙方當事人達成調解協議的內容省略了。這是蓋有紅印的，是由法院簽發的，所以它和判決書是具有同等法律效力的。當然在這樣一份民事調解書的前提下，有時候我們也會申請法院出具一份生效證明。

最後說說訴中調解，是不是雙方當事人沒有辦法訴前聯調，到了法院開庭就不能調解了呢？不是的，正如 Sherlynn 剛剛說，調解是貫穿於我們家事糾紛爭端解決的全流程的。這是我們的一個案子，也是在深圳發生的。因爲在撫養權、撫養費問題上沒有辦法達成一致，訴前聯調仍然沒有辦法達成一致。最後法院經過開庭審理，雙方質證、辯論之後達成了一致，最後對兩個孩子的撫養費做了妥善的調解。這裡要特別提到的，如果我們在人民法院進行調解結案的案子，我們的訴訟費是減半收取的。這就是我們剛才講的三種調解方式。

那接下來我們說說律師在家事案件中的調解技巧及重要性。剛剛聽了 Sherlynn 的分享非常感動，因爲作爲女性也好，作爲一名家事的律師也好，我們認爲貫穿整個家事案件辦理的過程中，需要很多的技巧。我們根據難度的系數將它整理成三板斧：第一板斧，我們認爲專業性是基礎。就是委託人找到你，這個案子交給你，你能爲他爭取到什麼的利益，你能

爲他減少什麼的支出，你能爲他在這個過程中間除了提供法律的幫助之外，還有沒有提供更多的價值，這個可能就是專業性的體現。其次，第二板斧就是我們的傾聽和共情。第三板斧是最高配置的實務的經驗，需要進行方案的拆分及優化配置。

第一板斧，專業性。專業性是整個家事案辦理的基礎，如果沒有專業性，一切都是空談。內地的家事案件在調解過程中，首先我們得知道紅線，不是所有的案子都可以調解的，也不是所有的財產都能在你這個案子中進行調解的。涉及到第三人、侵犯第三人利益，甚至這個調解書可能違反公序良俗的，我們是不允許調解的，而且你的當事人在調解可以獲得什麼，在訴訟可以獲得什麼。大家要知道，訴訟的結果可能是不一定未必會比調解來得更好，你要對當事人的利益進行分析，對證據進行全盤的把握。

其次，內地在家事案件調解中，我們還有一個特別重要的點是執行，不是說你出了調解的條款，到時候法院不能執行了，那你的專業性從何體現？條款只是你們雙方當事人認可，但是到了執行層面，比如說房產到時候根本沒辦法過戶，銀行貸款沒有辦法更換主還貸人，那你這個調解從何而來呢？所以大家在調解中間一定要考慮到最終的執行流程。其次就是調解有哪些費用，大家要知道一場訴訟耗費是巨大的，但是如果你知道訴前聯調是不收費的話，你就可能在這個地方幫當事人省了一大筆錢，這是需要我們律師在各個維度非常專業。

第二板斧，傾聽及共情。我們認爲律師不僅要聽事實，還要協助當事人去找到你這段婚姻或者這個矛盾中的爭議焦點，並協助及歸納。這麼多年的愛恨情仇，如果你不協助他歸納，是沒有辦法分清重點的。比如說這次離婚究竟是夫妻一方的過錯，還是基於親子關係的衝突，還是婆媳矛盾，你要準確地能夠把握到一個矛盾的焦點，協助你的當事人歸納。

其次，你要理解你當事人的訴求，大家要知道，很多委託人起訴，他不僅僅想要利益上得到收穫，他可能需要你提供更多的情緒上的支援，他需要你陪他走過這段最黑暗的歲月，所以他的訴求有時候聽起來不可思議，但是你要知道，他訴求的背後，他有多少心理需求需要得到滿足。比如說我們有些委託人遇到丈夫出軌的時候，尤其在跨境糾紛中間分居兩地的情況很多，尤其是疫情影響，先生可能出軌了，她起訴的時候要求巨額的精神損害撫慰金。這個首先你得理解她，因爲她所受的傷害可能不是多少金錢能衡量的，所以她要求一個巨額賠償，這個時候你要理解她的訴求，並且協助她調整精神損害撫慰金的金額。

第三點，律師的共情是指情緒上的無限理解，還有理性上的積極指引。就是無論你當事人離婚或者不離婚，爭撫養權或者不爭撫養權，他想爭一個什麼樣的結局，你都要理解他。這個過程中他可能存在情緒的反覆，甚至我們遇到大量的跨境案件，雙方當事人見面了以後又和好的情形，那就做撤訴處理就行了。

所以律師的共情真的不是冰冷的教條主義，而是真的在情緒上無限理解，只有你做好了傾聽和共情你才能真正去做好調解工作。當然在這個時候你還是要做指引的，不是當事人所有的要求你都要滿足的，違法的、不合理的，你還是要指出來的。

第三板斧是最高位階，叫做方案的拆分及優化配置。有時候不是一個訴訟可以搞定整個家事糾紛的，涉及到第三人利益的時候，涉及到有些財產目前在內地、有些財產在香港的時候，兩地如何配合的問題。而且你希望在這個訴訟，你主訴求是什麼，次要的是什麼，分別通過離婚或者離婚後財產糾紛配合去實現。還有一個就是如何讓你的客戶用最少的成本獲得最大的收益，這也是非常重要的，包括他在哪裡起訴會更便宜，用什麼方式會更便宜，這都是你需要掌握的。

我非常榮幸能參加 2 月 16 日的盛會，在條例生效之後我們做了大量的研討，從 2 月到 5 月我們的研討沒有停止，也非常感謝我的好朋友、在香港的律師同行一直跟我們保持了大量的互動。我們有兩個案子想跟大家分享。

第一個是 3 月的案子，我們有一份離婚調解書，在廣州的地區法院已經生效，也拿到生效證明了，但是結婚證在香港，當時我們就想把香港的結婚證給取消，重新做一個登記。後來發現因爲時效上的銜接以及條例上的銜接，調解書沒法在香港相互認可和執行，所以我們就換了另外一種方式解決，重新做了一個登記，這也是我們一個內地的調解書在香港做的一個了不起的嘗試。

第二個案例是在 4 月份的時候，我們的香港同行也有一些專業的問題，因爲涉及到離婚案件，涉及到內地有大量的資產，需要瞭解我們內地的財產分割及產權登記，還有稅費的問題，我們也在法院的指示的這個問題上進行了大量的研討。當然，這些問題都在推進當中，還沒有一個準確的答案，我們只能說「路漫漫其修遠兮，吾將上下而求索」。我相信在我們這麼多的熱心的同行的幫助下，在律政司這麼高度的關注下，我們一定會做得越來越好。

(Mr Norris Yang)
Thanks to our panel members, Eugene, Sherlynn and Ms Liu Yang for participating and sharing with us a lot of insight.

Thank you.

Panel Session 2 :
Mediating Disputes during COVID-19

(Transcript)

(Mr Adrian Lai)
Good morning, good afternoon, good evening depending where you are!

Welcome back for the second session. Before I open my second session, I have to say that I am so impressed by the way that the organiser organised today's sessions. In the first session, we started with cross-boundary family disputes. We were still very much on the ground. In this session, we are dealing with how we cope with mediation during a pandemic situation. In particular, you will hear my speakers tell you how to make use of the online or cyberspace facilities to facilitate mediation process. So we take off from the ground to the cyberspace. And in the session following this one, we move beyond this universe and go to the Metaverse. I am not sure whether Mr Nick Chan, MH, JP, the moderator for the next session and his colleagues will take us beyond this universe and to another universe.

Before we move to the next universe, let's stay here and talk about how we make use of cyberspace facilities or online dispute resolution ("ODR") facilities to deal with and to mediate the disputes.

You have heard my introduction. I am basically an arbitration practitioner. It is my privilege to be here to learn from my distinguished speakers. On my left is Mr Dieter Yih, JP, the Chairman of the Financial Dispute Resolution Centre ("FDRC"). He is a practising solicitor and a Past President of the Law Society of Hong Kong ("Law Society"). He is an expert on issues concerning capital markets, corporate finance, securities, public

and private mergers and acquisitions transactions in Hong Kong, the Mainland and across the Asian region. In terms of dispute resolution, he is an arbitrator of the South China International Economic and Trade Arbitration Commission (Shenzhen Court of International Arbitration ("SCIA")) and a former council member of the Hong Kong Mediation Accreditation Association Limited ("HKMAAL"). Apart from the above, he also holds a number of public offices in both governmental sector and non-governmental sector.

Next to Dieter is Ms Pui-Ki Emmanuelle Ta. She is the Chief Executive Officer of the eBRAM International Online Dispute Resolution Centre Limited ("eBRAM"), a non-governmental organisation dedicated to the development and promotion of ODR. Prior to joining eBRAM, Pui-Ki worked as a Counsel of the Secretariat of the International Court of Arbitration of the International Chamber of Commerce ("ICC"), Asia office. She has substantial experience in handling international arbitration and case management. And she has supervised hundreds of international arbitration cases in a wide range of jurisdictions and economic sectors.

Next to Pui-Ki is Mr Ronald Sum. Ronaldo is an all-round dispute resolver. You can see his footprints in all corners of dispute resolution. He is a practising solicitor and the immediate past chairman of the ICC Arbitration and ADR Sub-Committee. He is on panels of many, many arbitral bodies such as the Hong Kong International Arbitration Centre, the ICC, The China International Economic and Trade Arbitration Commission ("CIETAC"), the SCIA, the Singapore International Arbitration Centre and you name it. He is also one of the very few, if not the only Hong Kong sports arbitrator.

You can also find Ronald in the world of mediation. He is an Accredited Mediator of the HKMAAL, the CIETAC and the

Law Society. He participated and passed the screening and has become an Investor-State Mediator under the Mainland and Hong Kong Closer Economic Partnership Arrangement. In fact last night he made a very useful and insightful intervention at the informal Inter-Sessional Meeting of the UNCITRAL Working Group III of the United Nations Commission on International Trade Law.

Without further ado, perhaps I should now invite my speakers to share with you the experience on how to deal with mediation in COVID-19 situation. First speaker is Dieter. Dieter, please.

(Mr Dieter Yih, JP)
Thank you, Adrian. Before I start, I really want to echo the previous panel and what they said about mediation, i.e. finding a good solution for disputes. I remember my mother was telling me that a compromise is where two people come out, not feeling entirely happy but nobody feels totally unhappy. In a litigation situation, there is always a winner. I do not disagree that there is no winner. There is always a winner and those are the lawyers. So "Mediate First" is really a good approach. Today I am here wearing my hat not as a lawyer but as the Chairman representing the FDRC.

Let's talk about mediation and what the FDRC does. The FDRC basically administers the Financial Dispute Resolution Scheme, which is the FDRS. We are an independent non-profit organisation that assists financial institutions and their customers to resolve financial disputes through this "Mediation First, Arbitration Next" approach. Ideally just mediate. But if things do not work out, we help them arbitrate the matter. Now, under the FDRS, all financial institutions in Hong Kong that are licensed and authorised by the Hong Kong Monetary Authority or the Securities and Futures Commission, other than those only providing credit rating services, would be members of the FDRS.

Now as FDRS members, the financial institutions are obliged to advise their customers that if they have disputes between them, they have the option of seeking resolution of the dispute by way of mediation or arbitration under the FDRS. When the customers do apply to the FDRC for mediation or arbitration and if this is accepted by the FDRC, the financial institutions must cooperate and must participate in that arrangement. That is a term of their licence, so there is no way that they do not do this.

To start the process, the customers would approach the FDRC to tell us their case, make enquiries and an application for mediation. Then the FDRC would vet the applications. As long as they satisfy the conditions, we will be ready to go ahead. The conditions are, firstly, it must involve a customer. The customer must have a monetary dispute with the financial institution concerned and it must arise out of a contract between the claimant and the financial institution that is entered into or arisen in Hong Kong. The claimant does not necessarily need to be living in Hong Kong. They could be in the Guangdong-Hong Kong-Macao Greater Bay Area ("GBA") or indeed they can be living anywhere in the world or in the Metaverse for that matter. The limit for the claim at the moment is one million Hong Kong dollars. Apart from that, the application must be submitted within 24 months from the date of the purchase of a financial product or service, or from 24 months from the date of loss being first notified. Now the limits on one million dollars and 24 months can be extended by mutual consent.

We have dealt with cases where the parties have come and agreed to a higher monetary threshold. Once it is accepted, the dispute can be proceeded in three different ways. In case of "Mediation First, Arbitration Next", if they do not obtain a successful outcome through mediation, they will go to arbitration. If the parties agree only to mediation, then it will just be mediation only. Or they go straight to arbitration as well.

Specifically, under the topic today about COVID-19 and what have happened during that period, we do not see a lot of differences in terms of arbitration cases. It is because for the FDRC and under the FDRS, arbitration is by documents only, unless the arbitrator feels the need to see the parties in person. So when you have documents-only arbitration, it is really not affected by COVID-19 social distancing rules.

More specifically, over the period of COVID-19, we had 707 cases of enquiries in 2019, an increase to 1,159 in 2020 and slight drop to about 990 in 2021.

If we look at the number of cases that were accepted and progressed to mediation or arbitration by the FDRC, these numbers are much smaller. They were 20, 35 and 42 in 2019, 2020 and 2021 respectively. One of the main reasons for this is not that we did not accept the remaining 1,000 enquiry cases each year. In most enquiry cases, once the process started, that encouraged the financial institutions to mediate directly with the claimants concerned. As a result, the cases were usually settled before they came to mediation. That is actually one of the beauties of our approach. In some way, our success is seen by the fact that we actually do not have lots of successes. We are kind of policeman life-size cardboard cutout, so to speak, cardboard cutout that you put in the corner of a room and people will behave when they see that.

There is a tendency when we look at the numbers to see whether or not there has been an increase in mediation or at least in dispute claims over the COVID-19 period. We are not able to accurately pinpoint the actual cause because concurrent with COVID-19, the FDRC actually stepped up its promotion and educational activities. This could be a result of increased education activities rather than a rise in actual disputes.

Nonetheless we are able to ascertain that over the period, because of all the work from home arrangements and social distancing rules, the time required to deal with and process an application has become longer.

However, there is no evidence to suggest that the success rate of mediation varied or changed during this time, which means the people's intention or the people's desire to reach settlement was the same before and during COVID-19.

With the increasing difficulties of attending a mediation venue over the COVID-19 period, we do see more requests for doing this online. In most of our cases, however parties opted to wait for relaxation in social distancing measures. Hong Kong, as most of us know, has been fortunate in the COVID-19 period. We had four waves of COVID-19 but between each wave was an interval where we had relative normality in handling affairs and people could come out. So, this was the reason why some people wanted to wait during the COVID-19 situation. Nevertheless, there was a number of cases where the claimants were overseas and did not want to come back to Hong Kong because of the quarantine requirements. We, therefore, handled a number of cases online and have thus developed a protocol for handling online mediation. In brief, we would organise people to come to the FDRC and assign different rooms for different parties to attend their mediation. Parties in a case could mediate online in different rooms next door. The main reason for this arrangement is that they wanted to keep the social distancing and did not want to interact with different parties during COVID-19.

I will not go into detail of how we do it. I think Pui-Ki has probably got a better way on how to conduct mediation online. However, what I want to say is that when parties are present in the FDRC premises, they are not allowed to take videos or recordings or have other nonparticipating parties present. That is to preserve confidentiality.

I will end here. We do foresee that there is a potential for online mediation going forward even post-COVID and this is something that I think should be explored and encouraged.

Thank you.

(Mr Adrian Lai)
Thank you, Dieter.

Before I move to Pui-Ki, I have a question to ask. You mentioned the FDRC protocol for online mediation, but still the parties have to physically come to your office, albeit separate in different rooms. You mentioned one concern is confidentiality. Are there any other concerns?

(Mr Dieter Yih, JP)
Yes, there are. Interestingly, we have found that a number of our claimants, being basically consumers, are not technologically proficient enough to be able to conduct online meetings. For a lot of us, especially those of you who are sitting remotely today, having Zoom meetings or video conferences is a fact of daily life. For a lot of our claimants, having a video conference is actually difficult for them.

Besides, we have found that a lot of them have difficulties in getting a secure premises for themselves, premises quiet enough where people will not be coming in and out to disturb them.

Apart from confidentiality, these two are the main reasons why a lot of them actually prefer, still, to come to the FDRC for online mediation.

(Mr Adrian Lai)
Thank you, Dieter.

Our next speaker is Pui-Ki whose topic is “Harnessing LawTech in Financial Dispute under the Digital New Normal”.

Pui-Ki, please.

(Ms Pui-Ki Emmanuelle Ta)
Various options are available to resolve disputes during COVID-19 pandemic. We have just heard from Dieter about the FDRC’s experience in handling financial disputes and under the use of online mediation sessions by video conferencing. How about using other available advanced digital technology to enhance the efficiency of the traditional dispute resolution process and moving entirely to an online platform to resolve your disputes by mediation?

ODR is an online process in which all aspects of the proceedings are conducted online through an ODR platform, from filing of request for mediation up to settlement agreement using advanced digital technologies. Today, I will tackle the question of how ODR and LawTech can facilitate the resolution of disputes, including financial disputes, cross-border disputes in an effective and efficient way under the "Digital New Normal". Before I share with you the features of the ODR platforms developed by eBRAM , let me briefly introduce our organisation.

eBRAM is a non-profit LawTech company established in 2018 with the support of the Asian Academy of International Law, the Hong Kong Bar Association, and the Law Society of Hong Kong. eBRAM’s vision is to provide a one-stop shop for commercial parties from all over the world by providing a deal-making dispute avoidance and dispute resolution online platform and integrating advanced digital technology. eBRAM not only develops ODR platforms and provides ODR services, but also administers cases like other arbitral institutions to ensure that

the ODR process is conducted in accordance with the ODR rules. eBRAM is also one of the qualified institutions under the Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and of the Hong Kong Special Administrative Region. In June 2020, eBRAM launched its first ODR platform to resolve COVID-19-related disputes. And in March 2020, eBRAM launched the Hong Kong Legal Cloud.

Due to COVID-19 pandemic, legal and business professionals have turned to technology to facilitate their work. The pandemic has also changed the way businesses resolve their disputes. We have seen a greater use of virtual meetings, artificial intelligence ("AI") translation, document sharing and management platforms, including electronic signatures. At the same time, we have heard some concerns from financial institutions over the use of online processes in finance-related disputes, including confidentiality and privacy, the environment of the mediation process, leak or breach of data, cybersecurity and the legitimacy of electronic signatures.

To address these concerns, eBRAM has put in place various safeguards and adopted a stringent cybersecurity protocol to ensure the safety of the system and network. We also employ highly secure encryption and blockchain technology to all our ODR platforms. All data are encrypted during transmission and they are stored in data centres in Hong Kong. All file transfer logs are stored in blockchain-enabled immunity storage. We also apply eKYC (Know Your Customer) technology and multi-factor authentication during the e-signing and registration process. Users are required to go through the eKYC procedure when filing a claim with eBRAM for identity verification. We use the best range of signer verification option (eKYC and one-time password) to eliminate the risk of signature fraud. The e-signing process is tracked securely and saved in a secure environment

with a document's hash value protected by blockchain technology to prevent file amendments.

Cybersecurity is eBRAM's priority. eBRAM platform addresses all security and confidentiality concerns and enables exchange of highly confidential files within a secure environment without the need for sending them by email or other less secure means. Our network also complies with international cybersecurity standards so all users' accounts are protected using a multi-factor authentication. Our platform is protected by the highest level of cloud security, including firewalls, intrusion detection, and a 24/7 network threats monitoring. Regular independent tests and total system audits are conducted by external certified security experts.

With regard to eBRAM's LawTech and ODR services, eBRAM has developed various LawTech services, including the Hong Kong Legal Cloud, video conferencing and e-signing systems and the COVID-19 ODR and Asia-Pacific Economic Cooperation ("APEC") ODR platforms. eBRAM is currently developing two additional ODR platforms to resolve disputes by online mediation and online arbitration. eBRAM also issued various sets of ODR rules, including the COVID-19 ODR Scheme, the APEC ODR, e-mediation and e-arbitration rules, which provide a structural framework to ensure transparency, efficiency and fairness in the ODR processes.

Financial disputes, as well as other cross-border disputes can be resolved by mediation under different schemes and rules, first through eBRAM's COVID-19 ODR platform or the eBRAM APEC ODR platform or in accordance with eBRAM's e-mediation rules, which were published in June 2021. eBRAM's mediation platform is currently being developed with an expected launch date in the third quarter of the year. Now, what are the specificities of eBRAM's platform?

It is a technology-based platform with human element for the administration of cases and decision-making. eBRAM administers each case in accordance with its rules. The platform incorporates advanced digital features, including a video conferencing platform, and a communication box providing the parties and the mediators with a convenient and secure communication channel. From request for mediation up to settlement agreement, the parties and the mediator will be required to exchange all communications and documents through the online platform instead of sending them by email or by other less secure means. The platform also includes an e-signing system allowing the parties to sign any settlement agreement directly on the platform, an online and secure payment system, and an AI machine translation to translate any documents exchanged and uploaded on the platform.

We now turn to the first scheme, the COVID-19 ODR Scheme. In June 2020, eBRAM launched the COVID-19 ODR platform for the general public and businesses in Hong Kong to resolve COVID-19 related low-value disputes in less than six weeks. Three conditions have to be met for disputes to be admitted under that Scheme. Firstly, the dispute arises out of or is related to COVID-19. Secondly, the claim does not exceed HK$500,000. And thirdly, either one of the parties involved in the dispute is a Hong Kong resident or a Hong Kong company. The ODR platform under that Scheme is available in simplified and traditional Chinese and English and adopts a three-stage proceedings, including negotiation, mediation, and arbitration. Each stage will be completed within a short period of time. The COVID-19 ODR proceedings are governed by eBRAM's COVID-19 ODR rules.

Under this Scheme, a party having a claim arising out of or related to COVID-19 and wishing to commence proceedings

through eBRAM's COVID-19 ODR platform shall register his/her case online directly on eBRAM's website. Each party will only be charged HK$200 if all parties agree to use eBRAM's platform. Under that Scheme, the fees of any mediators or arbitrators appointed will be subsidised by the Hong Kong government.

Now I would like to share with you our experience with COVID-19 ODR Scheme. As you can see COVID-19-related disputes cover a wide range of disputes that may have resulted from the sales of goods or services between businesses during COVID-19 pandemic including the sale and purchase of face masks.

The use of ODR was proposed on a number of occasions by the claimants. However, it was difficult to obtain the respondent's consent to use ODR to resolve the disputes between the parties. Today, we have received 23 applications under that Scheme and more than 430 enquiries. Based on our experience of the COVID-19 ODR Scheme, we note that small businesses in Hong Kong have been reluctant to use ODR to resolve their disputes as they have not been familiar with such form of process. There may also be a misconception that ODR might be more suitable for legal professionals or large enterprises with in-house counsel. For instance, some users of our COVID-19 ODR platform had concerns about data privacy. The parties refused to upload their identity card copies to the platform during the registration process. In other cases, there were concerns about confidentiality that a third-party, i.e. the ODR provider would be aware of the dispute between the company and its client. So the parties have preferred to settle their dispute privately instead of using ODR.

In order to overcome these psychological barriers, recent initiatives have been taken to encourage the use of ODR. eBRAM will continue to engage in capacity building and

enhance awareness in order to build trust and confidence in online processes.

Turning to the APEC ODR platform, the second ODR platform that eBRAM has developed, eBRAM is also an ODR platform provider under the APEC Collaborative Framework for ODR of Cross-Border Business-to-Business Disputes. Its role is to assist enterprises, in particular MSMEs (micro, small and medium sized enterprises) in the APEC economies to resolve cross-border business-to-business disputes quickly and cost-effectively. As an ODR provider under the Framework, eBRAM launched its APEC ODR rules in June 2021. Our APEC ODR rules apply if the dispute arises out of cross-border business-to-business transactions or the parties are from the APEC member economies or if the parties have agreed to resolve their disputes in accordance with eBRAM's APEC ODR rules.

In terms of procedure, the eBRAM platform adopts a three-stage proceedings to be conducted within a short period of time, including negotiation, mediation and arbitration. If the parties fail to settle the dispute, a neutral would be appointed by eBRAM to conduct the mediation proceedings and the arbitration proceedings if the mediation fails. Such appointment shall be made by eBRAM from its panel of neutrals, which comprises of international experienced commercial dispute resolution professionals coming from different jurisdictions and speaking the languages of the APEC economies.

We welcome dispute resolution institutions to use our platform as we believe that our LawTech services and our ODR platforms may assist their work. Embracing ODR and using cloud storage, e-signing system and real-time translation can enhance the efficiency of mediation process. ODR also gives greater flexibility to the parties who can use and access the platform anytime and anywhere from any device, according to their needs

and availability. eBRAM's video conferencing platform also provides a private online space for mediation meetings.

Finally, eBRAM offers white-label solutions and tailor-made ODR platform services to meet specific requests from other dispute resolution bodies. According to eBRAM's roadmap, the APEC ODR platform will be launched very shortly and eBRAM's stand-alone online mediation and online arbitration platforms by the third quarter of 2022. As a forerunner in LawTech, eBRAM will continue to integrate the latest advanced digital technology to enhance its platforms.

Thank you very much.

(Mr Adrian Lai)
Thank you, Pui-Ki.

Pui-Ki, can you help me to resolve a potential family dispute? Before I came here from home, I had told my daughter what I am going to do today. She posed me a very challenging question. If we are really pro-ODR, why are we here physically today?

(Ms Pui-Ki Emmanuelle Ta)
Actually ODR is not just all about video conferencing, right? Video conferencing is one of the technologies that is available, but ODR platforms actually integrate all the other advantages or technologies that I have mentioned earlier, including e-transcription and e-translation to facilitate the process and to make it quicker as well. It also includes a document sharing and storage platform, which is secure instead of using email communication which may be less secure. It also integrates video conferencing platform for the parties to communicate. It is a one-stop-shop to make it more convenient for the parties to meet, to communicate and to find a quick resolution of their disputes.

(Mr Adrian Lai)
Thank you.

I believe that you are very experienced in this industry. Video conferencing has been there for decades. Now we have blockchain. We have AI. We have cloud. We, therefore, have a one-stop solution to resolve disputes through ODR.

The next speaker is Ronald. We have the views from the institutions. We have the views from eBRAM telling us that in fact an ODR platform is available. Let's hear from the user's views. Ronald is going to give us a little account of what happened during the COVID-19 situation and how ODR can assist in resolving disputes via mediation or other means of alternate dispute resolution.

(Mr Ronald Sum)
Thank you, Adrian. Thank you, Dieter and Pui-Ki, both experts in this area. Thank the Department of Justice Mediation Team and the Hong Kong Trade Development Council for inviting me to be a speaker of this Seminar. I am particularly happy today because it brings back lots of memories. As a commercial dispute resolution lawyer, attending a family law lecture is not a day-to-day job, so to speak. This morning we had a family law presentation.

I remember some 27, 28 years ago, when I was a young lawyer, I handled a family law case which was the second case in my legal career. It went right up to the High Court of Australia in Canberra. The wife actually cried in court and the parties were very, very wealthy in the 1970s. I remember this so well because I was the person looking at the exhibits and a couple of them were rings being bought ages ago in Hollywood Road. I am very certain that the couple would have settled their disputes,

if mediation, the dispute resolution mechanism had been there. It was, as Ms Sherlynn Chan was saying, family law or dispute cases that are actually not one of those happy moments in life.

Then I fast forward to some 12, 13 or 14 years ago. Two tankers exploded in the outer part of Hong Kong, one of those was a really nasty explosion. The mediation sector in Hong Kong started to pick up the case and people were skeptical because it was purely commercial in nature. We are only talking about dollars here. There is no love in it, it had exploded. They went on to mediation in Hong Kong, but it was not successful. Eventually, the case had gone into the London Maritime Arbitrators Association and the parties settled the dispute in London. Both parties were Asian. On one end of the spectrum, something very emotional can be settled by mediation. On the other end of the spectrum, commercial matters can also be settled.

In Hong Kong, we have all been trotting along very happily until COVID-19. COVID-19 impact did not seep through until the early part of 2020. I just make a note here of the caseload of the FDRC. There were 707 cases in 2019 and 1,159 in 2020. That is when Hong Kong introduced the General Adjournment of Proceedings (GAP). So, everything seemed to stop working.

I am going to give you a little bit of a rundown of the history of Hong Kong in the past two or three years. Everything stopped and there was a huge backlog of cases. At that stage, many people also raised questions. As a defence lawyer, you should be very happy because you were there to delay things. You were there to drag things on, whereas the plaintiffs were there pulling their hair out and say, “Well, I need to go on with the case.” In fact, it is not quite correct because litigation is a rather stressful, long and costly process. People, whether plaintiffs or defendants, were thinking what to do.

Arbitration, in fact, is a different scene because apart from physical hearings for the parties involved in arbitration, they know and have experienced e-hearing online arbitration. E-hearing online arbitrations are definitely on the radar. They are more receptive to the ideas of online arbitration, e-hearing, etc. Obviously, mediation has been widely accepted in recent years. I believe the first lecture on mediation in Hong Kong was run by the Centre for Effective Dispute Resolution ("CEDR") over 10 years ago. Some of the judges in the Judiciary attended it and I actually attended the first or second one of the CEDR training.

Obviously there have been promotions. Many of the audience would know there is a boxing advertisement which is actually the FDRC advertisement. I do not know whether that has led to a business growth or not, but people get to know about mediation because of the government promotions. Not only is mediation promoted in Hong Kong, but also it flourished in the international scene for Investor-State arbitration where people are thinking of alternative ways of resolving disputes. Thus, they are talking about Investor-State mediation where a lot of confidential information is being passed through.

Some audience may have heard of this type of agreement which I have not come across personally. They call this "Break Agreement", an agreement that is between the parties saying that everything stops and will be handled after COVID-19 ends. I have seen a signed copy of those agreements. It really exists, albeit not very common in Hong Kong.

Then what will happen in the next phase? Of course, we have our very own eBRAM and the FDRC. Before all these institutions, I think everyone has a smartphone with WeChat and WhatsApp. Then it evolves into Zoom, VooV, Tencent Meet, Microsoft Teams and Webex. One of the questions being asked by Adrian's daughter, "Why are we here? We are supposed to

have the conference online."

You can look at the development. It is no longer WeChat or WhatsApp. It is now Zoom, a very sophisticated platform with breakout sessions. Not long ago, the community suddenly came to a standstill and we got all these technologies which were pretty raw. The fact was that we could not meet under social distancing, even the court stopped. You could not even go to mediation even you did not mind. If you went to a law firm including mine, you had to log in and declare you had had vaccination beforehand by filling in a form. Meanwhile your opposing party would not want to sit next to you because they were concerned that you may have COVID-19 resulting in quarantine being a close contact.

Everything just stopped and here comes the big question, "What should we do?" The only solution, I would not say alternative, is ODR. There is no more choice. If you are stressed in a litigation, if it is costly and long, you just have to go for some resolution. That is the ODR mechanism.

Many clients will ask, "What platform do you use? Are we going to use WeChat? Are we going to use Zoom? Are we going to use eBRAM or the FDRC? Can it be hybrid?" As Dieter said before, the clients may even ask, "Can I go to your law firm and have the other party in another room for mediation meeting?" A lot of these questions have started to arise in particular for some of the more sensitive cases where you are concerned about confidentiality.

For those cases which are very document-heavy, I am certain that the lawyers who are with us having an issue of their filing cabinets full of lever arch folders will ask, "Am I going to scan and upload it? Where am I going to store it?" The parties will say, "Are we going to destroy it afterwards." "If I have to pass

a document to someone, how am I going to do it? Do we need a document management system?"

All these questions which have not been raised before suddenly come to mind. Why? If you have 10 boxes of documents and you are doing it online, you have to scan and upload them. There is no other way of doing it. Is your secretary going to do it or are you going to do it yourself? These are what the clients are thinking. "If you are going to do it, are you going to charge me for it? Are you going to ask a third party, a provider to upload all these documents? Is it secure?" All these questions come to mind and that is the reason why a protocol has been developed. In the previous session, Ms Sherlynn Chan actually touched on the observations I had.

Let me share my observation on the different attitudes of various generations towards online mediation. The younger generation is more used to online mechanisms, for example the ICC Mediation Competition for the university students and the 5th Hong Kong Secondary School Peer Mediation Competition Final hosted this Monday for senior secondary students. However, we see a different tendency of the more seasoned practitioners on the matter. Like what Ms Sherlynn Chan presented, a lot of senior practitioners have told me that they could not observe the facial expression of whom they were talking to during online mediation. Having all of these in mind, you need to have a protocol. What is the protocol? What are the confidentiality issues? How long are you going to keep the documents? And so on. Some of them will require clear tutorials in how to use the system.

It is just my very simple observation. If you compare Zoom with other platforms, the setups are the same. You log into the system, go to the chat room with a leave button for you to log out. Everything is very similar to each other in terms of how to use it with slight differences.

I am going to give you three examples. The first one is an international commercial mediation where three parties comprising of two in Hong Kong and one in Singapore, a mediator and an assistant, three sets of lawyers with two in Hong Kong and one in Singapore, and two counsels with one in the Hong Kong law firm's office while the other in the United Kingdom. The mediation had been set for one day but eventually was extended for another day. The platform was Zoom with Microsoft Teams as a backup. Caucuses took the whole day with discussions on the format of e-mediation and what protocols to follow. Everything was signed and sealed. Actually, the parties enjoyed the experience of this mediation.

I had rung up my clients in the case above asking them what they thought of such arrangement. They actually thought that they felt more relaxed because if you are sitting next to your opponents in a room, you can feel a bit of pressure there. A physical meeting, in fact, puts you under pressure. For my clients in that mediation, they actually felt better doing it online.

Let's move on to the second example taking place locally. Set for half a day, the mediation involved one mediator and two parties. The interesting point is that one of the parties just did it on the phone and I could actually hear cars going by in the background. On that basis, they were using Tencent Meet. The mediation ran relatively smoothly on a seeming 5G network, even if one party was outside with his headset, presumably.

The third example is not an online session and I would call it "the holy grail". It is about an Investor-State dispute that is worth about Renminbi 130 billion. It involves a lot of sensitive information with up to 25 to 30 boxes of documents.

Here comes another question, "Is it secure?" This is sensitive information in the forms of email and facsimile to governments.

Obviously it is a matter that clients are very concerned about, let alone the costs incurred in scanning and file management. This is the general picture of the clients at this stage.

As regards e-hearing and e-mediation, mediation is a must. How do we conduct an e-hearing? How to conduct it in the most efficient and cost-effective way? Whoever comes out on top in this game will be those platforms which can be very user-friendly, efficient and secure.

This is the end of my presentation.

(Mr Adrian Lai)
Thank you, Ronald.

Can I get back to Pui-Ki's proposition? Her topic is about that fact that we are now in the "Digital New Normal". Is the proposition too bold? Or have we got to the point that we cannot or will not go back the traditional mode of dispute resolution? What do you think?

(Mr Ronald Sum)
I think it is a way of life nowadays. It is human nature that when you first try something that you are not familiar with, you are a bit skeptical but eventually you can get used to it. Everyone and everything is online nowadays. As I have just mentioned, the client pointed out that in the course of mediation, not sitting in a room or even the opponent being in the next room made them feel more relaxed. If you are more relaxed, then you tend to settle the cases easier. Even if you are not feeling 100% comfortable, at least you feel psychologically better. My personal view is that this is the way to go.

(Mr Dieter Yih, JP)
I think ODR and online mediation are going to be here to stay.

Video conferencing and online meetings have blossomed a lot for the last two years. This is going to be equally applicable to ODR. The only issues here are confidentiality and proficiency.

If the parties are aware of the technology and can get over the hurdle of their uncertainty over the process and the platform, and if you offer sufficient training in how to use the technology and access it for people, especially those who are not able to handle it on a day-to-day basis, you are going to encourage online mediation and ODR a lot.

As we go into more investments in the GBA, there would be a lot of travelling involved as more cross-boundary disputes arise. In this sense, ODR would reduce the trips in an effort to solve the disputes which are cross-boundary in nature. A lot of people would thus pick up ODR for sure.

(Mr Adrian Lai)
Thank you. Pui-Ki, is eBRAM ready to meet those expectations on ODR in terms of confidentiality, proficiency, user-friendliness and so forth?

(Ms Pui-Ki Emmanuelle Ta)
Thank you, Adrian.

As a LawTech company and ODR provider, cybersecurity, data protection and confidentiality are really our priorities. That is why we will always ensure that our platforms and systems comply with international cybersecurity standards. We have put in place various procedures to make sure that confidentiality will be preserved. We want to not only provide an easy-to-use, convenient and efficient platform, but also make sure that these platforms are secure and reliable enough. When it comes to who may have access to the platforms, we will use multi-factor authentication and eKYC to verify the identity of users. Only

those persons with a registered account in our system can access the platform. No one else, no third party can access.

For online mediation sessions, we have a video conferencing platform already integrated into the ODR platform. It means that no one else can access the ODR platform unless you send the link to that person, because the video conferencing is inside the platform.

Regarding video conferencing's break out rooms, to avoid a situation where a third party can join in at any time, we have separated the video conferencing room into three separate rooms in our ODR platform, one for joint sessions with the mediator and the parties, and two separate private rooms for the mediator to meet with the respondent and the claimant respectively. There is no possibility for the respondent to join the claimant's private room in the capacity of a mediator, for example.

These are what we have put in place to make sure that confidentiality is preserved and that only parties to the case and the mediator can access to the platform to review all the documents. I am of the view that this is a very secure communication channel because using email might not be so secure. You do not know who can read your documents or highly confidential and sensitive information.

In eBRAM, all data that are saved and exchanged on our platform are stored in data centres in Hong Kong. We also use blockchain technology to preserve file integrity.

(Mr Adrian Lai)
Thank you very much, all my distinguished speakers. Thank you.

Panel Session 3:
Metaverse: Happily Ever After or a Dangerous Start?

Keynote Speech

Mr Yat Siu
Co-founder & Chairman, Animoca Brands
Founder & CEO, Outblaze

(Transcript)

Hi, my name is Yat Siu. I am the Chairman and the Co-founder of Animoca Brands. It is a great pleasure for me to be here to discuss the opportunities and challenges on building the open Metaverse with true digital property rights and non-fungible tokens ("NFTs").

30 or 40 years ago, some people in the room may actually know what these were. We used to connect to the internet with devices such as Commodore 64. We would go online with a very primitive device back then known as acoustic coupler which was the predecessor of the modem that we use today but of course with much a lower speed. We connected our online service called CompuServe back in the day. What was interesting about CompuServe was that it really was the way in which many of us started to experience a kind of pre-metaverse. We already started building our virtual relationships and virtual context in a manner of just using text. Of course, in that way, we were communicating with people around the world. In my particular case, I actually started to develop my tech career through the use of services such as CompuServe which back in the 1980s was entirely virtual.

I just want to share this particular advertising from CompuServe,

which talks about the little Herbie and the fact that he was going to another galaxy or that maybe in the future, we could be booking all the travels or doing stock trading or getting medical health services through online services. Interestingly, these are visions that 30, 40 years ago companies envisaged as to where the internet could go. Of course, today we know that all these are reality.

That was then, but what about now? Now, the term Metaverse has really been taken over by some number of large companies, such as Facebook, Microsoft, Roblox and so on. They are all saying that the Metaverse is the next generation, future vision of the internet. There are some distinctions between the way we see the Metaverse and how they do it. It is important to know that everyone seems to agree that the Metaverse is the next big thing.

One of the reasons why that is the case is because today there are actually over 4.7 billion people accessing the internet and over 3.2 billion people playing games on a regular basis. In fact, when you take a look at what you do every day in the morning, whether it is early morning or during the course of the day, or take another look at the last thing you do before you go to bed, chances are that you are accessing a mobile device, that you are somehow connected online, and that you are, like most people, actually very much internet-dependent. Actually, this means that we are already living in a pre-Metaverse and in a dedicated online life if you think about what is important for you in your life. Just imagine what your life would be like today if you did not have access to a smartphone or if you were unable to go online, to connect with your friends, to socialise on Twitter or Facebook or to do whatever you are doing online today.

I think the biggest issue right now as we see it is that there is a new struggle going on as to defining what the true Metaverse in fact is. On one end is an attempt to define the Metaverse by large companies, such as Facebook. In other words, it is the movement

around blockchain which we generally describe as the true and open Metaverse. We certainly believe that the Metaverse will not look like this, one that is controlled by a company such as Meta, i.e. Facebook in the past or that is related to virtual reality and a sort of augmented reality. Even though virtual reality is an important component, in the future, of accessing the Metaverse, it is not actually the main reason or how we will experience the Metaverse necessarily. Let's start with the fundamentals as we see it.

The first and most important fundamental factor is that today the world is normally or actually powered by the traditional forms of valuable resources as we see it. It used to be energy. It used to be things that would grow in the ground that would be considered as very valuable. For us, what valuable resource for us is, in fact, data. Data is actually what powers the Metaverse, powers the internet and powers the largest companies online today.

What is interesting about data as a particular resource is that it comes from each of us. Traditionally a valuable resource would normally be something that you might obtain from a piece of property or a place from that you might be able to get rent because the resource present there would have value. In this particular world, this particular resource comes from human time. It comes from our ability to create things from our particular potential. What is interesting about this form of data and this form of information is that if you look at how we spend it right now, we spend a lot of it online when we play games, when we spend it on Facebook and when we spend it on Twitter. These are blocks of data and become valuable pieces of data. To us individually, it is not valuable at all because we do not really know what to do with it as if you discovered oil in your backyard 500 years ago, you would not know what to do with it. You would need the technology to be able to harvest the benefits of oil that can turn it into energy.

The same is true for data. Data in itself does not have a lot of value to an individual, but data is information which compounds with other information to create this incredible knowledge ultimately becoming the most powerful network effect. One perfect illustration is that for all of us here who may be using Facebook, Instagram or WhatsApp to communicate, we provide folds of data to the platform which uses this information to create knowledge and construct a network effect. That is awesome, except how much do we, as a creator of this data, get a benefit from the data that is derived, meaning the network effect? Very little. In fact, many of us get nothing from it.

When you look at the digital landscape, everything in the digital landscape today actually shows that we are actually in the form of basically working for free for the platform as we surrender the valuable data that we create to the platform. Think of it slightly differently, if all of us were actually no longer using a platform such as Facebook, what in fact would Facebook be worth? Not much at all. It is because it did not have our data, therefore it could not construct information and knowledge out of it. Nor could it create the powerful network effect that we need today.

This can give rise to the situation where we have all become digital servers, exist inside these digital kingdoms and have been digitally colonised. This picture may be fanciful, but it is how we see the world today where we exist in these large data silos around the world, be it Google, Apple, Microsoft, Facebook, Tencent, or whatever large tech company that you can think of. Today, data resides basically in these silos because the data exists in their platforms on their terms of service and we have no rights over them. As many of you may probably know, when you get to use Facebook or get to play a game, you abide by those terms of service because data in itself is neither a human right nor a natural right by classic definition and therefore is only contractual. We need contractual ones the moment we start using

a service. As soon as we click to agreements, we are forced to abide by these terms of service. They can also change them any time, and can remove our legacy entirely. For instance, when you have a handle on Instagram, you have a username on Twitter, who owns the handle? Is it yours if you believe you have built your identity on it? In reality, it is not. Facebook or Twitter can delete it anytime they want. If you make an app and put it on the App Store, the App Store could remove it anytime they want just based on whatever reasons they see fit.

When you look at it from that perspective, we are in fact all serfs living in these digital kingdoms who decide our fate. That is what we think is a big problem. When you take a look at the values of some of the large companies today, almost all of them on the top list are data-rich companies. We may view them as software and technology companies, but these technology companies have no value if they do not have data that they can harvest and generate the kind of network effect that they have today because it is our belief that the network effect and the knowledge are, in fact, the most valuable things on earth. Less than 20 years ago the most valuable thing was energy and that was why you had many of the traditional energy companies still known as being valuable. The market capitalisations of companies are also much larger now. Today, these tech companies have trillion-dollar market capitalisations, which in and of itself is pretty astounding given that the biggest companies more than a decade ago that were dealing with oil, for instance, could barely be over half a trillion dollars.

Anyway, what is the broad Metaverse? How does this get solved in what is known as Web 3.0 and NFT? The very first thing to understand is that the true and open Metaverse as we define it is entirely built on top of blockchain. Now many of you may know what blockchain is. Without going into too much detail, the most important thing here is about the data structures that

the data exists no longer in a private type of service, which is the database under the terms of service of an individual company, be it Facebook or your corporate server, but exists on a public chain and exists in a public manner that is immutable because it cannot be changed.

The data is in a form through a public consensus meaning that someone who wants to change and alter the content of blockchain needs to get the agreement of the majority to do so. In the case of something like Bitcoin or Ethereum, getting agreement would be something too expensive to accomplish because you have to be able to have more than 50% of all the votes. Economically speaking, it does not make sense. You essentially become a system in which you could always tell the origin of the data that is on the blockchain and verify that it is true as it was in terms of its initial creation or it is something that you are looking for. Therefore, you can think of it as a ledger as it is, a ledger that is verified and backed up through millions of them in connected nodes around the world. This characteristic creates this immutable and powerful ledger which gives rise for the first time to the possibility of actually having a form of true digital ownership not necessarily in the legal sense, but one that has to be kept open and transparent "*vis-à-vis*" those companies that are publishing things on the blockchain.

For instance, if data exists on something like Facebook, Facebook can change the data or delete it at will and it is their decision. Nevertheless, that cannot happen on blockchain meaning that now you have a third-party auditor, that is essentially entirely algorithmic, one that nobody can change. It exists there so to speak in perpetuity. Of course, in the same way, you can now, therefore, digitally own cryptocurrency, such as Bitcoin. We can now own this other thing which is known as a NFT. What an NFT is, in a summary term, essentially a way in which we can create something that is unique on the blockchain.

Often, people describe that as a form of digital scarcity. Not to be confused with artificial scarcity where you can create an item that may be rare like the only one that was sold or like painting but digital painting, it is something that we are now able to create unique imprints on that are arts.

An example in the physical world that we often compare the non-fungible assets with is a wedding ring. A wedding ring in and of itself may not be particularly valuable. Nevertheless, when you buy it from a shop like Tiffany & Co., the actual wedding ring then becomes very special to you and your family specifically because it has memories, it has new constructions and it has something of value to the family alone and nobody else. That means that the wedding ring which may be used goods *per se* is now priceless within that family. That is something that from a digital pixie standpoint we could not do before because the data has never been owned by us. With blockchain, you can. With NFTs, you are able to do that. In the same way as why I was so excited about outer space, physical ownership of property has completely revolutionised the world essentially, in terms not only of form of capitalism or democratic systems but also of innovation.

We believe NFTs will do the same. Similar to physical assets in the world and thanks to decentralised ownership, they become freely composed assets such that someone is able to create new services at fingertips and all you need to do is to do business with the person who owns these assets. Let me illustrate that perhaps in the physical context with an example of physical cars.

The fact that we have decentralised and distributed ownership of cars by millions and millions of individual customers is the reason why we can have Uber or Lyft, car companies, companies which create baby seats, people who create new services or audio equipment, people who are employed to be drivers, people

who build parking lots, charging stations and fuel stations or the fuel economies. The automobile industry that is around the ownership of cars is far, far greater than the sale of cars itself when you look at it that way. That is because people have the freedom to construct and create new innovation on top of the ownership. This is an important paradigm to understand here because the same way that powers innovation in the physical world is able to power new kinds of innovations in the digital world as people now have the freedom to do so.

It means that we do not have to go to Volkswagen, Mercedes or Tesla to seek permission to hire a driver. We only need to talk to the owner of a car to get permission to do something or to provide a service that the owner might like. This is contrary to the current situation in the digital world where every time we need to ask someone to do something because we do not actually own the digital assets and thus have to seek permission from its true owner. The true owner is the platform who sets rules there like you are allowed to do this but maybe it charges you 30% or 50% for revenue share every time you use its asset or data.

NFTs make a difference. The value shifts essentially from going to the platform to the owner as the real world does. This means that new kinds of businesses can be created because you also have the certainty of ownership. It would not be possible for a bank to provide a 20- or 30-year mortgage on a piece of property if you do not have the ability to prove not only having the ownership but also having the safety and security that the ownership is in fact safe and secure.

We can see how that functions in the physical world: places where property rights are unstable and financial and banking infrastructure is very weak because they are unable to provide long-term stability and guarantee that the money is provided for the services versus those countries with very strong property

rights, very strong governments and systems that are able to safeguard or allow for the foundation of the establishment of banking infrastructure and other services simply because of the fact that ownership can now be truly validated. This is in the physical world. In the digital world, this is happening exactly the same way through NFTs.

When you think of the digital world, people will talk about application programming interface ("API"). The API economy is, in fact, one of the most unstable economies out there because the stability of API keeps changing meaning that if you are using the service, be it Twitter, Apple or Facebook, they make a change every time which happens very frequently. You have to adapt meaning that you do not have the ability to do something that is stable in the long term as they can change it. We have seen this before with different types of platforms, companies or products.

Now decentralised ownership actually is possible because you are no longer dependent on the platform itself. It means that the assets themselves can have new compositions created by third parties for them in the same way that somebody created a service like Uber and Lyft for people who have ownership of cars and could have the ability to have other drivers drive them. The same is happening in the digital world. For example, I have a virtual sword inside a game, then I have the ability to use that virtual sword in 10 different games because other game companies would adopt it. When it comes to differences in mortgages, I would also be able to have other financial products that third parties have created for me. And I could trade them, post a collateral and issue all additional things that I can now do for the physical assets because I am the true owner of the digital assets. Contrary to the case that the digital assets are mine, you do not own your assets in the most parts of the physical world today because you are under the terms of service and you effectively vanish.

The other thing about NFTs as they are used in the Metaverse is that like physical assets in the world, they have become social identifiers. Social identifiers, in the sense of physical world, are actually the way we buy things and the way we purchase things. Having possessions of things is in fact, in many ways, a strong social identifier. Neverthelss, a social identifier does not necessarily mean that it has to be necessarily valuable but speak to who you are. A piece of clothing that you wear says something about you, so does a car that you purchase. With NFTs in the Metaverse, your wallet essentially has become the way in which you can be identified, likewise the ownership of things that you have. Let me illustrate that in a physical context here.

Bored Ape, quite a famous example of NTFs, is perhaps one of the most valuable and the most-viewed of its kind. I guess you could say that it is a kind of membership, maybe a kind of art. It is actually more valuable than most cars out there today, more valuable than a Birkin bag and more valuable than a Rolex watch. In a traditional way of thinking, it is in fact just something that is digital and does not exist in reality. Why is it so valuable? After all, it is entirely a fortune. Let's set aside the question of what art is and is not. When you buy a Birkin bag, the value spent can be very substantial as well. What portion of that value is attributable to the fact that a Birkin bag is handmade from physical material? Very small indeed. 99.9% of the reasons why you buy a Birkin bag are entirely virtual in nature.

From our perspective, what you are buying is the network effect that is embedded in a physical object itself meaning how many people talk about it, how famous it is, who else uses it and whether your friends use it. Explaining the behaviour of buying a Birkin bag from a pure utility standpoint perhaps cannot tell the picture of a very efficient way of goods movement. One can say the same about cars. When you buy a Rolls Royce, a Porsche or a Ferrari which are obviously very beautiful assets, neither

of them is necessarily to be viewed as a very strong investment unless they are vintage cars. They do not necessarily take you from point A to point B in the most efficient or the most cost-effective way, meaning that for everything that we purchase today, 99.9% of the value is virtual anyway. The network effect attached to the goods often communicate something about us to other people.

When you adopt this perspective, every purchase decision you are making in the physical world actually stems from something that is virtual to us, rather than something that is physical in and of itself. This is important because when you just ask our children what they want for Christmas, they will very likely ask for something virtual. For our children, all the social identifiers and the assets that they desire are very likely to be virtual because of the network effect that is embedded within them.

The other powerful thing that NFTs represent as well is culture and legacy. As NFTs can exist permanently on blockchain, you are able to record them as something that is immutable there forever for people to see, analyse and understand, like what patrons or writers do for history record. This essentially means that we think NFTs are a store of culture, but extends more than just the context of culture and symbolism. They are items of valuable things that we identify as our own personal legacies because they are now ours. We can pass them down to our children or to our friends as a way to pass down our culture and our legacy.

What is being done now in the Metaverse in places like The Sandbox or racing blockchain game is that you have people who are able to make a full-time living by playing these games because of the fact that just like in the physical world, these items have a value for which people can utilise inside games. Also, people have created rental ways and revenue sharing

ways in which people can enjoy these games. You can also collateralise by mortgaging these assets to generate yields today. In some of the games such as Axie Infinity in which most players are from the Philippines, people have made substantial amounts of money. It is also one of our portfolios where people there at times are able to make more money per month than being a domestic helper in Hong Kong. In the case of Axie Infinity, we do not have to go into detail as to what kind of game it is, but you now have the ability to play the game. You now have the ability to use the network effect that is embedded within the time that you have spent on playing the game, and get paid for that.

In the gaming industry, most people play games entirely for free while a small number of players pay to play. Why do they pay to play? Actually, they have non-paying users with whom they can play. If those non-paying players actually stop playing the game, what will happen is that the paying players will stop paying, meaning that in fact free players are actually working for those games.

What play-to-earn inducements in the world of blockchain gaming is is that it can, in theory, reward you for the time that you are actually spending. Thanks to the ownership of these assets, people have been able to create different capital structures, whether it is rental, whether it is sales, whether it is trading or other forms.

The ownership of digital assets allows us to create a new innovation and a new invention. On top of that, it creates new economies including meta- countries and meta-economy, which is how we describe the Metaverse.

Let's take a broader perspective as to NFTs, the Metaverse and what they really mean. When you take a look at all the countries that have poor property rights in the physical context, they tend to have a very low economic output and a very low

gross domestic product ("GDP") and tend to be very politically unstable. Inversely, the countries that have strong property rights and strong property rights protection are the ones that typically have a relatively high GDP, stronger economy, better stability as the government operates in a more predictable way, leading to more innovations from the private sector and in turn more growth. The way we think of the internet today, which is why Web 3.0 and the Metaverse are so valuable and important, is that it is very much a place that is entirely based on the absence of property rights.

If you think of it in another way, most of the world did not enjoy property rights hundreds of years ago. When they did, it created an opportunity that was not just incremental to the growth of human society, but was explosive in its potential because since then people have had the ability to truly own things in a decentralised manner and have been able to build and construct on top of that. Thanks to the laws that were established around natural rights or property rights, things in relation to natural rights and property rights have become commonplace. We now accept that we, as human, genuinely have the right to own property, that we shall be able to enjoy the benefits arising out of that property. This is something that does not really exist digitally today because digital property rights are something that are difficult to protect. In this case, the ownership of the property, i.e. the data, is not something that an end user is able to have. As Hernando de Soto basically described, what property rights have done for poor economies is unlock the "dead capital" that has existed in these economies.

The same is happening to NFTs in the open Metaverse. The fact that we can now have ownership and create property rights in the digital world has unlocked the "dead capital". This is the reason why many NFTs have grown very high in value relative to their rental counterparts and worked so well. Attributable to this

fact, new financial constructs have been formed and the ability has been created. This is a very important point here because it means that not only do we need to be able to realise property rights in the digital context, but we also need to be able to do that legally.

There is a little bit of a gap in the digital world when it comes to data ownership. While blockchain makes it possible to truly improve digital ownership and provides ways in which we can audit the trail of the ownership and the purpose of the assets in question which allows people to construct things like decentralised finance on top of the conditions of these assets or to create new services, the legal side is something that is unclear at the moment because data in and of itself is broadly defined as a contractual right, not as a property right we have in the physical world.

While it is natural that protection over the digital rights will evolve and eventually digital property rights will be treated just the same way as its physical counterpart, we have yet to reach this landmark. We believe that governments are trying to resolve many issues like privacy issues and the control of Big Tech over data before we are able to treat data and data ownership as true property rights. In the physical world, if I own a property, many of the laws and systems in place offer protection. The law is here to protect when it comes to the physical property rights. In the digital context, data is something that is now auditable or traceable but perhaps from a legal enforcement standpoint it still needs to be viewed from a contractual presepctive.

I want to close here with a little story about divergent thinking. Hopefully it gives us some food for thought. In 1968, George Land and Beth Jarman created an imaginative thinking test that they had given to the National Aeronautics and Space Administration (NASA) scientists before. The reason they did

so is because when you send someone to the moon, you need to have very creative engineers solve problems in a very divergent manner. When things go wrong in space, people will not have a rulebook to tell him, "Well, moon landing does not work. Go to step A or step B." It needs someone to solve problems creatively.

They took the same elements of that test to create a version for children and followed the test subjects until the age of 15. They also gave that same test to adults. What was interesting is that when they gave this test to children at the age of 5 or so, 98% of the children were able to solve the problems in a divergent manner, meaning they were able to solve problems creatively in their way-out methods. By the time they became older, roughly at the age from 8 to 10, only 30% of them were able to solve the problems creatively. By the time they were teenagers, it was 12%. For the adult group, they fared a lot less with 2% of the test subjects.

There are many things from which we can draw conclusions. According to the late Sir Ken Robinson, schools actually educated creativity out of children for industrial needs back in the day and that system is so persistent. While this is not the subject of this talk, the point is, from the perspective of the Metaverse, that we are the creators of data ideas and imagination. In fact, the big question here is that we are not made to be creative. On the contrary, we are actually born creative.

The creativity in the Metaverse is something that is fully unleashed because we can be fairly rewarded and fairly compensated for our virtual time and attention. The more naturally creative we are, the better reward we would get. Actually, not all the data we create is valuable because we are not creative or divergent enough in our approaches.

Creativity in itself is something that we often talk about and treasure. It comes down to a bigger question, "Creativity" in

and of itself is not something on which we have been able to really capitalise well. Technology has, however, unlocked that potential. One of the things I always take as an example for the topic is a calculator. Certainly I and perhaps some of you here might be from the generation that calculators were actually banned in classrooms because people said using a calculator was cheating. Of course, calculators are used everywhere today. The reason why calculators are so powerful is that we can now do mathematics with a calculator at the pace of the best mathematicians, unlocking our ability to be creative with mathematics rather than being a human calculator. That actually means that someone could be a better architect or a better designer because he can now actually be someone who can put their creativity to their work with the support of a calculator or eventually a computer. Technology can really unleash creative potential if you are able to harness it.

On that note, we think about what the future is going to be like. Actually, the journey of the Metaverse already started 30 or 40 years ago. Today, we are ever closer to this goal to construct it in the manner that we think is necessary, which is to build an open one, of which we as end-users have the ability to own a piece. To us, this is the true vision.

In conclusion, when you look at the classic labour that is out there, we, as human, should aim to do what machines cannot. This means that we cannot be better at computation. Nor can we be physically faster and stronger than a robot. Nevertheless, here is one thing we can do better than machines, that is to be creative, to be imaginative, to be human. That is the point of the Metaverse. That is what we think NFTs can fully unlock in this what we call Web 3.0 and in the next generation of the internet.

Thank you.

Panel Session 3:
Metaverse: Happily Ever After or a Dangerous Start?

Panel Discussion

(Transcript)

(Mr Nick Chan, MH, JP)
Good afternoon. Should I also say good morning and perhaps good evening? I understand this event is very well attended with over 1,200 participants from over 19 countries. Thank you for joining us today.

The theme for this year is "Harmony from Now to Beyond". It might be cliché to say so but the future is here as you are now already participating in the beyond session entitled "Metaverse: Happily Ever After or a Dangerous Start?" It is intriguing. I am so pleased to have this esteemed panel. I am a lawyer and a lawmaker with computer science background, but it never fails to amaze me what you can learn from these guys here. You have heard from Mr Yat Siu, Chairman and Co-founder of Animoca Brands. He has given us a dazzling presentation to give us some bearings, maybe a compass to navigate through the Metaverse.

With me on stage here today are Mr Evan Auyang, Group President of Animoca Brands, Mr Basil Hwang, Managing Partner of Messrs Hauzen LLP, Mr Henry Yu, Principal Partner of Messrs. L & Y Law Office, Professor Steven Gallagher, Professor at the Chinese University of Hong Kong, and Mr Peter Bullock, Partner of King & Wood Mallesons. These are some of the brightest minds on the subject. Perhaps they even have some non-fungible tokens ("NFTs"), cryptocurrencies in their crypto wallets today. I hope these are cold wallets that they can pass around for some of us as souvenirs. They also have that, of

course, on their resumes. They have done a lot of works in this aspect. We are, therefore, very privileged today.

Today you do not have to go into the Metaverse and meet the avatars or their avatars because they are here. Let's buckle up to face the realities, virtual realities and augmented realities together. We shall go on an adventure to explore the opportunities, risks, challenges and legal issues concerning the Metaverse, NFTs, blockchains, initial coin offerings and all sorts of novelties to explore whether and how mediation could rise to the challenge as a suitable means to further the Metaverse and resolve disputes that may arise.

Without further ado, please allow me to properly introduce Evan, our first speaker of this panel. This infectiously positive young man next to me has a lifelong passion to serve the broader society. He credits his success to his mother's love and strict discipline. We have known each other for some time. He is Group President of Animoca Brands which is a Hong Kong-based multinational blockchain technology company with a lot of investments focusing on building that ecosystem, including play-to-earn games, NTFs, decentralised finance, blockchain marketplace, infrastructure and more. The company is now worth US$5 billion, perhaps more. Well done! Animoca Brands is based in Cyberport.

He would share with us the monetary and non-monetary opportunities of the Metaverse, NFTs, blockchain for the wider society and for big brand companies that wish to reach out to more clients, artists, promoters, and do some offline to online transformations.

Evan, over to you if I may.

(Mr Evan Auyang)

I am pleased to be here. I will just talk a bit through what Yat has gone through somewhat about us but I will step all the way back into what era we are in. He began by telling us about the Metaverse in terms of the CompuServe era. I will start with Web 1.0.

In the 1990s, people did not even believe in Web 1.0. What do we need? Why do we need all this stuff? Let's go to a library and find information. At that point in time it was a static web which was centralised information, and then the rest is history. We cannot even live without the internet nowadays. When I was in college in the 1990s, I did not even use email. Nowadays, people only submit homework and all that stuff via email. It seems like we cannot live without it. Then about 10 years later, we were at Web 2.0, which was all the stuff that we had with mobile commerce, social commerce, Facebook, Google, etc. It was still a centralised covered web. We are now in Web 3.0. What does that do? The key is that Web 3.0 is about enabling ownership. Web 1.0 is read-only. Web 2.0 is that everybody publishes. Web 3.0 is that everybody can own things. That is the differentiation.

Due to decentralisation and blockchain, you can now put assets on the web that enables virtual economies to take place. This is where we are. Now a lot of people talk about the Metaverse and then people talk about Web 3.0. I want to make sure that there is some clarification here. Web 3.0 is really the third iteration of the internet and is enabled by digital asset ownership, NFTs, cryptocurrencies on Web 3.0. The Metaverse is actually not necessarily a Web 3.0 thing because the Metaverse has, in fact, existed for maybe 20 odd years, like second life and all that. It is merely a place where you can do many things within a virtual space. What Yat talked about and what Animoca Brands believes in is that the true Metaverse is enabled by Web 3.0. If there is nothing you remember from what I talk about today, you should remember that the true Metaverse is powered by Web 3.0, not

the Facebook's Metaverse. Sorry, I have to say that.

It is very important to remember what Web 2.0 brought us. A circle consisting of a data extraction cycle on the left side and data monetisation on the right side gives rise to the whole platform economy we talk about and why all the platform companies such as Google and Facebook are so valuable. Why are they the most valuable companies in the world? It is because of data. However, you do not get monetised on it.

What we are trying to do in terms of what Animoca Brands is trying to do and what the Web 3.0 world is trying to do is to enable that data to be owned by all of us again so that we can monetise it. If you look at the creator economy via YouTube, people like influencers actually make money out of it. However, if you really read the terms and conditions of it, you will find that you actually do not own the data because you have to give a perpetual right to publish, to distribute, etc. In respect of Youtube's Terms of Service, I cannot read that in detail but I know the fine print basically says that you do not really own the data even though you do under the American law. I am probably a nonlawyer here but I think that means that I do not really own my data. It is ultimately extractive. At the end of the day, what's wrong with this? What's wrong with Web 3.0 that is not owned by you?

If you create something and someone says that I am going to take 47 cents off the dollar out of what you create, you probably have a problem with it because at the end of the day, what has been created has to go through platforms. With that, it is what we call "the fake Metaverse" because you do not actually own it. Facebook is fighting with Apple saying that, "Hey, you know, Apple charges you 30% on this App store. That is so exploitive." Then once that thing is turned around, Facebook is going to create their own Metaverse, but they will charge you 47%. Then

Apple comes back and then says that that is ridiculous. We are watching this with a lot of amusement, "What are you guys talking about?" We should just put everything on Web 3.0 where we should all own our data. It is blocking our creativity.

Blockchain itself actually allows us to have this digital asset ownership because its security is immutable. Once you have a transaction that is stored in all the distributed computers, it is unhackable. It becomes something that you can own within the digital asset space. In the traditional sense, you have to have an intermediary when you send your transaction. When you send a transaction between two unknown parties, you are actually enabling the network for computers to validate that data. If you want to change the data, you are actually going to have 51% of that network changed in order for that data to change. It is, therefore, virtually impossible once it becomes decentralised. That is the point about decentralisation. Why blockchain works? Why we have to embrace this Web 3.0 space? It is because it really changes how we live on the internet, and gives rise to digital property ownership and virtual economies. That is the most powerful thing about the Metaverse. The Metaverse we see today is very different from what we saw 20 years ago, and is very, very different from how the likes of Facebook, Google, etc. would tell you about what the Metaverse is.

We are talking about internet value. You have seen that we can actually create different economies and there are different tokens as well. One might ask how do you make money out of this thing? Someone like us is democratising it. What we want to talk about is that the revenue to us is that we sell tokens and digital assets like NFTs. The most important part is that we are trying to fuel an economy. We have the focus on the community actually buying, selling, trading and creating, and we get a transaction fee out of that. The larger the economy, the higher the velocity of the economy, the more economic activities will be enabled and

the more companies like us could earn. This is very community-focused in a lot of ways. It is not about dominating within that space nor about monopolising the economies that we see. It is about the creation of it.

Animoca Brands is a global company based in Hong Kong. We were founded and are headquartered in Hong Kong. We believe this is the place where we should do business because it is still the place where we were born and believe in. In terms of what we do, we would operate and invest into the ecosystem to make sure that we are fueling the Web 3.0 economy. We implement what we call “insert the blockchain brain into the assets that we own” in order for the ecosystem to flow. We do not look to make deals or invest in companies in order to dominate them. We, in fact, think of a very collaborative approach in which we make these companies successful so that when the pie grows, we grow as well along with it. The philosophy is actually quite different in terms of how we are.

In the Web 3.0 space, we do not think about scarcity but about abundance. We think about sharing. We think about how we make the pie bigger. We think about how we make everybody wealthier. It is very different from the monopolistic way of thinking about business. I know some of you might be saying, "Hey, it is very utopian in all these ways, right?" At the end of the day, that is what Web 3.0’s ethos is about and that is why I am here. There are media coverage saying that what this middle-aged guy is. Of course, I look young, but I am actually quite middle-aged by this time. Why am I going to this space at this age?

It is because the stuff that we are actually building and what we are enabling is tremendously exciting. With that belief, you can actually do good and do well at the same time that makes this thing so powerful.

We are trying to build an open Web 3.0 ecosystem. We are trying to positively transform how our next generation, who is already internet-enabled and living in this virtual space, live and work. What Yat talked about is that schools ultimately, at some point, take away students' creativity. Can we re-enable that again? Can we not get all the most creative minds to be working for companies? Take it with them. They really create, right?

What we want to do is that we want to create meaningful jobs. We want to deliver this as shared value. We do not want to monopolise this space. We want to do it through shared value and of course, we will do it sustainably. With that, I will just wrap up.

Thank you very much.

(Mr Nick Chan, MH, JP)
Thank you so much, Evan.

Now, next up is a guy I called "dependable." He is not only my Krav Maga trainer, but also a very well-known specialist in the financial market industry in guiding clients through regulations, disputes, investigations, as well as contentious and complex transactions. He represents public companies, licensed intermediaries, and investors. Basil will share with us his views on cryptocurrency. Are they prone to fraud? What are the common disputes involved?

Besides, he will share with us some real-life cases of cryptocurrency litigation, investigation and enforcement in which he or other lawyers around the world would be involved.

Basil, over to you. Thank you.

(Mr Basil Hwang)

As Nick mentioned, I will be talking a little bit about the cyber risks. I think Yat and Evan have talked about some of the more creative and fun stuff behind the Metaverse and NFTs. Some common features of cryptocurrencies and blockchain-based products are that they are primarily decentralised. I think Evan already said that decentralisation is based on blockchain. In general, there is no way that any single person can change the ownership or the record of ownership or all the value of cryptocurrency. However, I will offer a caveat. The level of decentralisation can vary and there are some cryptocurrencies with an issuer. Tether comes to mind versus cryptocurrencies like Bitcoin which are mined.

From our experience, the level of freedom and control are in opposite balance to each other over a cryptocurrency depending on what kind of cryptocurrency it is. The underlying block technology, i.e. blockchain is highly transparent such that every transaction is tracked and cannot be erased and is publicly disclosed. Cryptocurrency trading goes on non-stop 24/7 unlike stock markets. It is constantly innovating opportunities for the young and the not-so-young. I know Evan says he is not so young but he is still young. NFT is one very good example of how cryptocurrency presents opportunities for everyone. The risks around cryptocurrency are primarily the following four: regulatory restrictions, anonymity, risk of hacking and substitution or displacement of national currencies.

There are regulatory restrictions around the world on cryptocurrency and we will come to some examples later on. A lot of these restrictions are not entirely clear yet. The legal uncertainty is, therefore, a risk for cryptocurrency.

Another risk for the participants is anonymity. In general, for cryptocurrency holders or holders of blockchain, things are

anonymous because these things go into wallets with very long and hexadecimal addresses. In many cases, you cannot tell who the real owner or the identity of the owner of these wallets is.

There is a risk of hacking, especially with hot wallets that are based on an exchange. Wallets on an exchange do, however, tend to have an identity associated with them with the exchange's verification of individuals' identities.

I would say some people said that the biggest risk for cryptocurrency as a whole is its risk to national currencies. We will come to that later on in the presentation. There is probably unfounded fear for the time being that cryptocurrency could somehow displace or replace or substitute for national currencies.

Cryptocurrency market is big and growing. There are over 19,000 types of cryptocurrency in existence that trades on 521 exchanges. The market capitalisation the last time I checked was US$1.71 trillion and the 24-hour volume was US$89.9 billion. The most traded cryptocurrency is Bitcoin followed by Ethereum or Ether. You compare the entire size of the market of cryptocurrency which is a risk to traditional currencies with the US dollar, probably the world's most commonly used currency. M2 money supply in the United States of America ("US") was US$21.8 trillion as of March 2022 which was multiples of all cryptocurrencies in the world added together.

When it comes to cryptocurrency crime, illegal or illicit addresses received US$14 billion in 2021, up from US$7.8 billion in 2020. This may seem like a market increase, but that number actually represents a fall in proportion of total cryptocurrency transaction volume, which is an indication that cryptocurrency crime is falling. The reason is probably that exchanges are getting better at identifying ownership.

Certainly we were more successful in recovering stolen cryptocurrencies in the last year than we had been in the past, partly because of the ability to identify suspects or perpetrators, and partly because certain issuers assisted us with recovery of these stolen assets.

Why do I say cryptocurrency is a virtual asset but a real asset class in Hong Kong? Many hedge funds that you talk to today, investors whom you talk to today as well as family offices will tell you that cryptocurrency is a real asset class. They have to dip their toes in it and have some exposure to it. I guess it is treated by real money investors as a real asset class today and you have to have some exposure to it.

The job of the regulators in Hong Kong, as always, is to balance the risks and the opportunities. Cryptocurrency is an opportunity. I think many people in the region are jumping on the cryptocurrency bandwagon. Singapore is actively pursuing a crypto market strategy while Hong Kong is, I think, taking a more cautious approach and watching it but at the same time realising that maybe it is a real opportunity that should not be missed. Therefore, the regulators need to ensure a fair, orderly and informed market through market regulation.

Tackling cryptocurrency crime is a separate category from market regulation. There are some examples which I will run through quickly later on. The principal regulators in Hong Kong are the Securities and Futures Commission ("SFC") and the Hong Kong Monetary Authority ("HKMA"). Publication by the SFC about the regulation of cryptocurrency is the bill that, I think, is supposed to be introduced into the Legislative Council later this year to legislate and make it mandatory for exchanges to be licensed, whether they trade in securities or non-securities cryptocurrency. There is a voluntary scheme right now to get virtual asset exchanges licensed, but it is not currently mandatory.

Anti-money laundering and counter-financing of terrorism (AML/CFT) laws are generally enforced by the Police and the Customs. I believe that the Department of Justice would handle prosecutions against violations of such laws. There is the Gambling Ordinance (Cap.148) which is quite interesting. Coupled with the Gambling Ordinance and the Trade Descriptions Ordinance (Cap. 362), the Places of Public Entertainment Ordinance (Cap. 172) has come up in our analysis of NFTs. For example, people have been selling NFTs for events. Do NTFs not comply with the Trade Descriptions Ordinance and things like that? Do NFTs represent certain products or services? Are some NFTs used for gambling under the Gambling Ordinance?

Here are some of the more famous regulatory enforcement actions. The Commodity Futures Trading Commission (CFTC) in the US took action against Tether last year and slapped them with a US$42 million fine for untrue or misleading statements and omissions of a material fact in connection with USDT in the court. Basically, Tether was saying that every USDT was backed by the US dollar. They were unable to prove that so they got a fine. Similar action was taken against Bitfinex.

The CFTC and the U.S. Securities and Exchange Commission have been taking enforcement actions against fraud and mis-selling or unregulated selling in recent years. The SFC in Hong Kong, the Police and the Customs have also recently taken enforcement actions.

According to some recent news articles, Hong Kong's dirty money sleuths tracked criminals using cryptocurrency trading platforms to move illegal funds across borders. That was a Customs action and the amount involved was over a billion Hong Kong dollars. Hong Kong's regulators have published a warning statement on unregulated virtual asset platforms. So has

Singapore. These actions, I think, have been directed at Binance. Apart from this, Singapore has taken actions against a multilevel marketing scheme using cryptocurrency. More actions have been taken in the US against Ponzi schemes and cryptocurrency fraud operations. All these make cryptocurrency sound very bad, but it is not.

We were involved in a hacking case amounting to US$1.7 million with an unknown defendant. We managed to recover 85% of those funds despite having the unknown defendant in an overseas jurisdiction. It is quite interesting. We assisted or are assisting the Mainland authority with a regulatory investigation into Hong Kong cryptocurrency operator by way of providing legal opinions. In a cryptocurrency fraud case in mainland China, we assisted with recovering Bitcoin. We are looking at a case where there is frozen stablecoin worth US$200 million and are trying to figure out how to help the purported owners recover it by establishing they are the data owners in the first place.

This is the end of my presentation. Thank you very much, everyone!

(Mr Nick Chan, MH, JP)
Thank you very much, Basil.

Next up is Henry. He is my good friend. He is the Principal Partner of Messrs. L & Y Law Office. He fights alongside me in court all the time. As solicitors, how do we fight in court? It is because we are in a volleyball court. He is a quick hitter.

Henry is the Honorary Legal Advisor to the Hong Kong Federation of Invention and Innovation, the Institute of Financial Technologists of Asia and the Techfin (GHM Greater Bay Area) Association respectively.

Over to you, Henry. Thank you.

(Mr Henry Yu)
My name is Henry. For my first 10 years plus of practice, I used to be a corporate finance lawyer doing more initial public offerings and other works. That was even before the Bitcoin's age. Then I was an in-house deputy general counsel. I came to know Bitcoin in around 2013 and was so fascinated by it that I started my own law firm by the end of 2015 fully focusing in this area. When I told my friends about this, they, of course, said, "Oh, that was quite mad! How could you just run a law firm focusing on cryptocurrency when most people think it is a scam." Now, that is no history that everyone talks about cryptocurrency, NFTs or decentralised finance and all that. One interesting thing is giving advice in this area. I keep telling my clients that whatever I tell you today, I can tell you something totally different next week or next month. Not that my advice is wrong, but the law changes so quickly that you just have to keep up with that.

Basil has already given some background but just a general global regulatory landscape. Different countries and different jurisdictions take different approaches to virtual assets or cryptocurrencies. The Mainland basically and totally bans all sorts of activities related to cryptocurrencies. In contrast, Hong Kong is taking a risk-based approach that is in the middle of the spectrum across the global regulatory landscape. We still allow and actually regulate and even give licences to virtual asset operators through the SFC. Some of the offshore jurisdictions, such as Bermuda, Malta, or even the Bahamas are lax in this. You know where we stand as a jurisdiction in the global regulatory landscape.

Let me briefly introduce the regulations of virtual assets in Hong Kong. Back in 2015, the SFC and the HKMA basically agreed that Bitcoin was actually a virtual commodity, meaning that it

is not securities and will not be governed under the Securities and Future Ordinance (Cap. 571). That is the major consequence for that acknowledgement. Nevertheless, it still leaves a lot of uncertainty on the issue of whether other cryptocurrencies and virtual assets including NFTs are securities or not? The normal answer, I think, is that you will have to ask your lawyers for legal opinion, which is a very common practice if you wish to list any of your tokens on any of the exchanges, particularly centralised exchanges. Of course, they will ask you to write a legal opinion to confirm whether your tokens or securities are not under particular jurisdictions.

One of the major breakthroughs in Hong Kong is that in 2018, the SFC launched an opt-in regime for basic centralised exchanges. In two years' time, it granted the first licence which is a Type 7 licence to one of the crypto exchanges near the end of 2020. Recently, it has granted approval in principle to the second exchange. We are making good progress in that. The SFC has made certain circulars and announcements recently, which I will go through briefly today.

We will focus on two important aspects of the Financial Services and the Treasury Bureau's Consultation Conclusions published in May 2021. First of all, the consultation paper is trying to give a definition of virtual assets. Virtual assets are defined as a digital representation of value – (i) that is expressed as a unit of account or a store of economic value; (ii) that functions (or is intended to function) as a medium of exchange accepted by the public as payment for goods or services or for the discharge of a debt or for investment purposes; and (iii) that can be transferred, stored, or traded electronically. Conditions of exclusion are also listed. I think that is not law yet, right? There are still procedures to run for legislation. I want to point out that this remains certainly arguable whether some of the NFTs these days would fall squarely within the definition of virtual assets, particularly for

item (ii) above. There will still be certain debate and we wait to see the final wording in the legislation.

Secondly, the importance of this Consultation Conclusions is that they will launch a new licence, which they call the virtual asset service providers (VASP) licence. It is fairly similar, but not identical to the Type 7 licence that we mentioned before because the Type 7 licence is a voluntary opt-in licence. What it means is that you are not compulsorily obliged to apply for the licence as a centralised exchange if you are just trading virtual commodities, but you can apply for the Type 7 licence.

Now, once the legislation for the VASP licence comes into force, all the cryptocurrency exchanges shall be required, under this legislation, to mandatorily apply for the VASP licence. The market is very interested in whether anything like NFT marketplaces including Opensea and SuperRare, other than centralised exchanges such as Binance, would be required to obtain this licence if they are deemed to be operating in Hong Kong. Let's wait and see.

I also wish to highlight some of the points in the HKMA's Discussion Paper on Crypto-assets and Stablecoins, in which they tried to say that they now recognise the existence of stablecoins, particularly something like Tether or USDC.

Actually we have an existing legislation, i.e. the Payment Systems and Stored Value Facilities Ordinance (Cap. 584) ("PSSVFO"), but it is supposed to govern most of the existing payment systems like Octopus, AlipayHK, TNG Wallet, Tap&Go, something that we are all very familiar with. A lot of people fail to realise that actually under the PSSVFO, there is something called "facilitator" other than the issuer. So far no one has actually utilised facilitator licence under the regime.

What is that? Under the ordinary stored value facilities ("SVF") issuer licence, an issuer basically takes money from a customer, and has undertaken an obligation to pay the merchant when he uses an SVF. That is the traditional model. If someone utilises his facilitator licence, what it means is that he can issue a token. He, as a facilitator, will undertake to pay the merchant and that token could be utilised by the issuer. That is the facilitator's role.

What the HKMA tried to say is that now they recognise some of these stablecoins that will be launched or are being used in Hong Kong, but they do not fall squarely within the definition of a facilitator under the PSSVFO. They basically collected views from the public as to whether they should pass a new law or expand the scope of the PSSVFO in order to bring those stablecoins under the regulation in Hong Kong.

An interesting point that I want to make is that when I was indeed in the market, some of the clients tried to utilise and apply for this facilitator licence to launch certain stablecoins in the past few years but so far they have not been successful. We have to wait and see the progress of that and whether anyone will be able to ultimately apply for a licence from the HKMA to issue a licensed stablecoin.

Let's move on to a related topic, i.e. Project e-HKD. On top of stablecoins, the HKMA issued another discussion paper titled "*e-HKD: A Policy and Design Perspective*" on 27 April 2022 to consult the public as to whether to launch a basically stablecoin issued by a central bank. Instead of reading through all 30 pages of the discussion paper, you may just focus on two points.

Amongst all the potential benefits, the most important one is the potential innovation that could be utilised for future payment needs. What it means is that e-HKD will be used in the same way as Octopus Card payment. However, e-HKD will be

supported and issued directly by the Hong Kong government.

The major difference is that theoretically, this e-HKD could be programmable. On top of that, they could be used as a smart contract. People could actually build in e-HKD as part of a smart contract for payment services. That will be the major, I would say, advantage of e-HKD over the current payment system. On the contrary, the major concern, from the regulatory point of view, is the impact on bank funding obviously attributable to the fact that the major risk of e-HKD as opposed to some of the payment systems being the counterparty risk even if the risk of a bank failure is pretty minimal in Hong Kong, particularly because of the Deposit Protection Scheme in place. When the interest rate is low, people are a lot more confident in e-HKD than bank deposit.

(Mr Nick Chan, MH, JP)
Thank you very much, Henry!

Next up is Steven. He is a Professional Consultant and Professor of Practice in Law at the Chinese University of Hong Kong ("CUHK Law"). He is passionate about education. He loves to combine his knowledge of law with that of technology to help promote and protect art, antiquities and cultural heritage. Today, he will be sharing with us how to distinguish between NFTs and cryptocurrencies, and be explaining whether NFT is useful in helping to champion and promote art from his perspective.

Over to you, Steven. Thank you.

(Professor Steven Gallagher)
Thank you very much to the organiser for inviting me to come along today. I should just say at the beginning the reason that I am talking about art and law is that before I was a lawyer I was an antiques dealer. That again feeds into what Nick said as well.

CUHK LAW has been very good to me. They have allowed me to teach a course on art, antiquities, cultural heritage and the law. It was my students who of course last year when there were all the headlines about NFTs and everything else started to say to me, "So what are they?" And I had to try and find out. I am going to try and talk a little bit about this now. What we should say, by the way, is that artists have always embraced technology. We are seeing so much of that going on at present in many different forms of electronic/digital technology.

We have got things like digital art that is being developed. These are digital sculptures being created. They do not exist in the real world. They only exist as digital representations. Of course they could be printed using 3D printers and we could have in real life sculptures versions of these, but the main of these are digital sculptures. We also have artificial intelligence ("AI") creating digital art being printed out and sold off as well. Of course we now have even robot artists, AI and robotics going together to have robot artists creating art as well. Of course most of us, I think, at the moment are really interested in NFTs.

Everyone, when we mention NFTs and art, has one image in our mind and I am sure it must be this one. Surely you will know this is the first art NFT. If you are not too sure about it, this is Yves Klein's NFT created in the 1950s. I think this one is dated at 1959. At the time, Klein had been working for a number of years in what he described as one of his greatest artworks. You have to believe him because it is an invisible artwork. He said, "There is an invisible artwork and you can buy it. I will give you a receipt for it." This is probably the world's first art NFT. It has been auctioned recently. I will explain the story about it at the end of my presentation.

As regards digital assets, one of the problems is the terms that are being used, I think, for us all to understand this. When

we use the term "digital assets", I think that should include virtual and cryptocurrency assets. I am really going to focus on cryptocurrency assets now because cryptocurrency assets usually exist, as we have said earlier, on blockchain. Blockchain technology is really what supports all the cryptocurrency assets.

Blockchain's decentralised and immutable ledgers are cryptographically protected. Those were all explained earlier on. Each block can contain any form of data. At present, most of the blocks have been recording transactions. It is a Ledger Technology which can also be used for tokens and is where we get our cryptocurrencies and NFTs. We should think of tokens just as stores of value or means of exchange which represent something else. There are two main types of tokens, fungible tokens and NFTs which exist in the real world as well. I think sometimes it helps us to try and understand these terms in the real-world meanings.

We can have some examples of a fungible token. We think of our $10 note. Often we think of fungible tokens as not being unique, but of course this is a unique note with a unique serial number on it. It can be exchanged for any other $10 note. Two $5 coins can be exchanged for it. Thus, it is a fungible token.

An example of NFT in the real world is a ticket for last year's UEFA Champions League Final where Chelsea of course beat Manchester City. It is a receipt and evidences a right. That is really where NFTs are being used for in the digital world as well. For the art world, NFTs are being used to evidence both digital artworks and physical artworks as well. On the right is an early 20th century painting which could be evidenced in some way by way of a digital NFT.

In the digital world, the NFT that everyone thinks about of course is Beeple's *Everydays: the First 5000 Days* which sold

last March or April for US$69million with all the fees. This is a photograph of that NFT. Indeed, it is not so because it is a digital representation of the digital representation of a digital artwork. NFT itself is just the receipt for the creation of this particular artwork. That is one of the problems as well.

You are trying to understand what an NFT is, what you actually get when you buy an NFT. When Christie's auctioned this, it actually sold evidence of ownership of the original digital artwork which of course was made up of 5,000 other digital artworks being put together into a mosaic as well. Trying to think about what these NFTs actually are when it comes to digital artwork is again a problem.

If we are thinking about physical art, we could think about something like 19th-century Meissen figure. We could use an NFT to evidence this particular figure and transactions involving the figure. With my blocks there, information has been chained together and we could put information of the provenance, of the condition, and of the sale of this particular porcelain figure into that particular block there which would then give benefits to the future of that particular artwork and to the owners of the artwork.

The benefits of buyers of art-linked NFTs, both digital art and physical art, are to do with confidence. One of the biggest problems in the art world and in the antique's world is issues to do with provenance, to do with authenticity, and to do with title of the properties as well. NFTs being records of these artworks are very useful. Not only would they be great for unique books and paintings that have issues of authenticity, but they would also be good for that porcelain figure that I mentioned before. That is a scarce porcelain figure but it is not unique. Once we take a record of it, once we take digital photographs of it with condition records and provenance records, we put those into an

NFT, a block of data on a blockchain and we actually make that work unique. That could be a good selling point.

There are great benefits to artists. Artists can take control of their work. That is why NFTs have proved to be very popular with artists. They get the idea of straight-to-market sale. They do not have to be involved with galleries or dealers. They get the same intellectual property ("IP") protection as all the arts will get. They also get the chance of artist's resale fees as well because they can build this into the original agreement by way of a smart contract and actually get some share of future sales. We are seeing young artists doing very well. We got Fewocious there who last month sold off US$20 million of his digital artwork in 24 hours. He would never have been able to do this in the past.

There are problems though. Apart from the scams, the thefts and everything else, buyers and sellers are facing problems because of misunderstandings about what is actually being bought and sold, particularly when we are seeing these auctions which have multiple editions and have a sort of transferable bid system. You think you are bidding for the first for the unique NFT but end up with number 3. In the sports world, they say "second sucks", meaning that you want number 1. When buyers are finding they have got number 3 or number 50 eventually, not number 1, then understandably they would be quite upset. Perhaps they have not read the conditions of sale thoroughly. However, there are issues as with all artworks where buyers buying an artwork automatically think they get the IP rights to it such as the copyright and everything else.

For artists, issues include technical issues, the costs of minting, and again IP issues. Many, many digital artworks are being copied without the artists' permissions as well. There is also this issue of resale fees that they should be able to collect, but sometimes it is difficult to collect them. Those are some of the

issues for the artists.

I will just put up again this photograph of what is probably the world's first art NFT. When Yves Klein said that he had created these invisible artworks and offered them for sale, he said, "I will give you a receipt." I think today that is still what NFTs are. He offered them to anyone who was willing to pay him in pure gold. The amount of pure gold depended. I think he sold eight or nine of them over a few years and increased the price each time. He used the gold, by the way, in future artworks. And he also had an agreement. If you wanted to, you could take the receipt and keep it as this one shown on the slide here. Or you could join him in a ceremony by the banks of the River Seine. And he would then burn the receipt and throw half of the gold you had given him into the River Seine, but kept the other half of the gold. He did not get rid of all the gold. This receipt shown on the slide was put on offer for sale by Sotheby's last month with an estimate of between €280,000 and €500,000. Eventually it sold for just over €1,000,000. Compared to Beeple's *Everydays: the First 5000 Days* which is worth US$69 million, probably it is a bit of a bargain for the world's first art NFT. Anyway, I am sure wherever he was, it would be your client smiling at the sale of this receipt for a million euros.

Thank you very much.

(Mr Nick Chan, MH, JP)
Thank you, Steven.

Next up is Peter. He is a Partner of King & Wood Mallesons and a well-known lawyer in Technology, Media and Telecommunications and IP. He advises on various aspects of law that the industry requires, be it regulatory issue, cybersecurity or data privacy. He runs a lot of big litigations, investigations, arbitrations and mediations. Peter is also an

Accredited Mediator of the Hong Kong International Arbitration Centre. Peter is going to share with us a couple of things and give us a straight talk about "Is Mediation the Panacea to Solve the Problem for the Metaverse?" Other things he will talk about include whether NFT is full of risks and what the issues that you should think about are.

Over to you, Peter.

(Mr Peter Bullock)
Thank you very much, Nick. I will take the benefit of all who have come before me with all the details and go straight into the question which is "How to Apply Mediation to the Metaverse?". I think although that is the title, we have moved quite a long way in the last hour from the "*Ready Player One*" idea of the Metaverse which is a lovely film and an even better book in my view, but it is significantly far from the current day reality which might be mediated. What we have got currently is a company trying to use the hype surrounding this potential Metaverse to generate sales in the here and now. I am going to look at things relating to blockchain-oriented disputes.

There really is an almost limitless scope for disputes across a wide variety of activities. Three sorts of examples here could go on and on. First of all, it is the cryptocurrency exchange where a customer has lost value owing to either a data breach or a misrepresentation or a fraud that could be business-to-business ("B2B"), business-to-customer ("B2C") or customer-to-customer ("C2C"). You have, as Steven has just explained very eloquently, the potential disputes relating to NFTs where products have not been delivered or have not been in accordance with the offer, or late drops, data breaches, quality issues, etc. have been found, in the way of B2B, B2C or C2C. Thirdly, I think although we have not really heard of it today so far, there is a B2C situation where a brick-and-mortar retailer makes

an online offer to a passing customer of a product which does not comply with the description or is mispriced or the retailer misuses the addressee's personal data. As we can see from all these variegated and different possibilities, one size of mediation will almost certainly not fit all these problems. They are vastly different interest groups.

We have been talking about regulators and how they are involved in this space. They have tended to intervene where there is a perceived vulnerable consumer involved. In terms of cryptocurrency, they were seen as people who arguably should know better but are prepared to take a punt and not particularly vulnerable. You have not got old ladies putting their life savings into cryptocurrency or hopefully not very often. When you get to NFTs, then you are dealing with the new economy of art. Perhaps you are getting closer to people who may not be wanting to have that rather brash risk profile that is associated with cryptocurrency. Perhaps it will tend to draw regulators in.

What could possibly go wrong with all these? As with most virtual businesses, service providers in the cryptocurrency and other digital asset spaces will likely not deal with their customers face-to-face and may be regulated in a jurisdiction far removed from the customers. Across my desk, I get whatever the potential complainant has got by way of paper. The paper is very poor, considering that vast amounts of money which are digital currencies are in issue. It is the first time since the dot-com bubble in 2000 that participants have not read the documents. No one has read the privacy terms throughout. In my experience, this is the first time in four or five years, that participants have not read the documents. When you look at the documents, whether or not on purpose, it is very often the case, more often than not in my experience, that the terms and conditions have got inconsistencies. The governing law may be in one place while the dispute resolution provisions may be mentioned

somewhere with completely different meaning and the venue for adjudication may be in some third place. All the language used may simply be distorting the situation. Let's assume that it is an overhasty set-up. There may not be or may be more dark motives. Anyway those things are putting dispute resolution in a difficult position.

This leads to threshold questions. Has there been a valid submission to jurisdiction? Will a court or an arbitrator accept jurisdiction? Will there be a *forum non conveniens* dispute so that one court or arbitrator will perhaps accept jurisdiction only to find out that that is a dispute in a second or third jurisdiction.

Then you got the legal treatment of digital assets. Are we talking about property? As far as I am aware, there is no definitive decision on that in Hong Kong but there are decisions in Singapore and New Zealand, which basically say that digital assets should generally be treated as property.

Here comes the question of conversion to fiat currency. If you are going to take an action on some cryptocurrency in the High Court, you cannot just produce an exchange rate to a fiat currency arguing whether or not the exchange rate is applicable. Generally speaking, the Court will say, "No. Hang on. This is really to be treated as a commodity." Those things make it all the more difficult.

Finally, we go to the question of whether mediation works. Is it a panacea given that I have pointed out all these difficulties in the set-piece litigation and arbitration? I do not think it is a panacea because it is important that for mediation to work, there are consequences of not buckling down and doing a mediation properly. With the Financial Dispute Resolution Centre ("FDRC"), you have the idea of "Mediation First and Arbitration Next." That means that the banks and the SFC regulatees are

bound by the process because if they mess around in mediation, they probably will end up in arbitration because it is very low-cost for the consumers. Also they would suffer reputational damage because they are all bound in Hong Kong.

With the Uniform Domain Name Dispute Resolution Policy (UDRP), there is a closed system that has been running for 23 or so years also in Hong Kong for dealing with domain name disputes. It is very effective indeed because if you do not engage, you will lose your domain name asset. It is as simple as that. Therefore, everybody has to be involved, but that is a form of arbitration rather than mediation. If you get involved in Amazon or Tmall and you do not abide by their rules, then you will be locked out of their system, in the event you are unreliable or mess around with IP.

The systems that are in place across these three items are sort of self-policing if you like. You cannot game them because if people lose confidence in you, you fall off the end of it.

How do you produce systems which encourage compliance when building your Metaverse dispute resolution systems? I think that what you need is for all vendors and customers within the system to agree contractually to participate in the mediation process. And that needs to be against the backdrop of other mandatory dispute resolution. In the United Kingdom, there is a deposit protection scheme for residential tenancies. If you are in Scotland, then the state pays for the process. If you are in England, then the parties involved pay a small amount to participate. Whatever happens, if there is a dispute at the end of a private tenancy, it is dealt with within the closed system. In Hong Kong, the FDRC has a fee structure weighted in favour of consumers As I said, there is an impetus for the financial institutions to do the right things.

There are, perhaps, some novel approaches which you can use. You can join the gig economy. There is a platform called Kleros where effectively you can be a paid juror, giving up your time in order to solve other people's disputes and getting paid in digital assets. In the future, you can really use AI. You can cut out the paid juror and submit to an AI to adjudicate your disputes. That is a very long way off, but I think if we think about the idea of building a rule-based system with some backstop possibility of redress, then you may have the gem of an idea for a mediation system that could work in this sector.

Thank you.

(Mr Nick Chan, MH, JP)
Thank you so much, Peter.

That is all the time we have. Thank you for joining us today! Thank you all!

Closing Remarks

Ms Christina Cheung, JP
Law Officer (Civil Law), Department of Justice,
Hong Kong SAR Government

Distinguished Guests, Ladies and Gentlemen,

On behalf of the Department of Justice ("DoJ"), may I thank all of you for your participation in the Mediation Conference 2022.

Today's Conference not only showcased the latest remarkable progress that has been made in the promotion and development of mediation, it is also particularly fascinating, because this a special event to celebrate the 25th anniversary of the establishment of the Hong Kong Special Administrative Region ("Hong Kong SAR").

I would begin by expressing our gratitude to our co-organiser, the Hong Kong Trade Development Council, speakers, moderators, our supporting organisations, guests, and close to, I think Nick gave us the figure just now, about 1,200 online participants from over 19 jurisdictions.

The biennial Mediation Conference is one of our long-term promotion initiatives, and a platform for bringing together seasoned practitioners and experts to discuss topical issues on mediation development. Today's theme: "Mediate First: Harmony from Now to Beyond" denotes our vision and mission. We have witnessed wide range transformation in the mediation landscape brought about by the dispute resolution profession, business community, and other stakeholders since our first Mediation Conference

more than a decade ago.

Looking ahead, our journey will continue to be a challenging one. One may ask, for example, how can Hong Kong continue to innovate and excel in the global and the Guangdong-Hong Kong-Macao Greater Bay Area ("GBA") mediation arena?

As the Secretary for Justice pointed out in her Opening Remarks this morning, this Conference offers a timely discussion on the reciprocal recognition and enforcement of mediated settlement agreements. We heard much about the Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (Cap. 639) that came into operation on February 15, which aptly responds to the growing demand from the GBA for an enforcement mechanism for cross-boundary disputes.

Now, the breakthroughs in the legal interface call for a mutual recognition and enforcement channel for mediated settlement agreements in cross-boundary disputes and hence the proposal of a pilot scheme in the nine GBA cities. It echoes with the views of Professor Liu Jingdong we heard this morning in his Keynote Speech on how Hong Kong can utiltise its rich experience and talents in cross-border dispute resolution in shaping the GBA mediation landscape.

We also heard this morning from prominent speakers on Panel 1 about the impact of the new Ordinance on reciprocal recognition, enforcement of matrimonial and family judgments, and how a similar mechanism for family mediated settlement agreements may hopefully be a game-changer in the GBA.

To this end, we will continue to work towards creating a conducive environment in terms of institutional structure, and talents for the wider use of mediation in the GBA through the work of the GBA Mediation Platform.

Transformation answers the challenges we faced in the past two years. The "New Normal" rapidly fuels the development of LawTech in online dispute resolution ("ODR"). Speakers on Panel 2 shared the first-hand information and experiences on high level Investor-State disputes mediation, and the Mainland and Hong Kong Closer Economic Partnership Agreement (CEPA) mediation as well as local disputes mediation under the Financial Dispute Resolution Scheme of the Financial Dispute Resolution Centre, and the COVID-19 Online Dispute Resolution Scheme run by eBRAM International Online Dispute Resolution Centre Limited. These all illustrate why mediation and ODR are the apt tools to resolve disputes arising from COVID-19.

The innovations that concern us and impact on our lives go way beyond the use of ODR. We just heard Mr Yat Siu gave us a quick tour to the Metaverse through his eye-opening presentation. You will all agree with Mr Siu that the Metaverse is the next big thing and how we are all connected in a way unimaginable a few decades ago through exchanges and collection of valuable data we contributed. They are eye-opening as well as opening new opportunities. They also present limitless scope for dispute as Mr Peter Bullock sees it. As speakers just now dissected the unprecedented legal issues from commercial, litigation, regulatory and enforcement angles and shed light on how mediation may come to our rescue in disputes concerning digital assets. Under this global wave of LawTech, ODR

and mediation evolution, we shall continue to equip ourselves and be adaptive to transformations coming at a breathtaking space.

The Mediation Conference today is coming to a close, which also marks the conclusion of the Mediation Week 2022. If you would allow me just to give you a very quick recap of the thematic events which took place during this week.

The week started off by the School Mediation Seminar cum 5th Hong Kong Secondary School Peer Mediation Competition Final on Monday, where the vibrant sharing and outstanding performance of our finalists reinforced our belief that nurturing the culture of mediation in school is an important step in bringing about a harmonious society.

During the Seminar on Family Mediation 2022 on Tuesday, we had the privilege to hear from the Hong Kong Family Welfare Society, the Judiciary, and seasoned family practitioners on the application of the new Ordinance and its impact on family mediation in Hong Kong. Coupled with Panel 1 discussion we heard this morning, they gave us an overall view of the new Ordinance and the new directions for development in mediation.

We were encouraged to hear from Dr. Tony Ko Pat-sing, Chief Executive of the Hospital Authority ("HA") during the Medical Mediation Seminar on Wednesday, that over 900 HA staffs have completed the 40-hour mediation training. The discussions and mediation demonstration during the Seminar showcased how mediation skills can come into play at different stages and for different aspects of a medical dispute.

Another strong supporter and major stakeholder we have been working alongside on mediation and the promotion of mediation is the Judiciary. We were pleased to hear from the Judiciary's Launching Event yesterday that they will open the new Integrated Mediation Office (West Kowloon) later this year, and provide support and services to litigants in need as a continuation of the Small Claims Mediation Pilot Scheme previously operated from in West Kowloon Mediation Centre.

Global phenomenon of Investor-State disputes is very much in our radar screen, you will note from the discussion at the UNCITRAL Working Group III on ISDS Reform Forum yesterday. Bigger steps have to be taken in bringing about imperative reforms in the Investor-State mediation arena for greater efficiency.

All the thought-provoking discussions and sharing from the esteemed experts and leaders from various backgrounds throughout the Mediation Week, and today's Conference have provided us not only food for thought, but also a great vote of confidence for us to continue to make use of mediation, whether in domestic or cross-border disputes, so as to bring "Harmony from Now to Beyond".

Now, in addition to our long-term "Mediate First" initiative to cultivate the wider use of mediation to resolve disputes, the DoJ at the same time continues to use our best endeavours to strengthen the rule of law in which we take pride, so as to solidify Hong Kong's status as a leading centre for international legal and dispute resolution services in the Asia Pacific.

To this end, I am thrilled to announce that the 4th

Edition of one of DoJ's key publications – *"The Judge Over Your Shoulder"* (JOYS) is officially released today, and it is accessible from DoJ's website.

One of the fundamental requirements of the rule of law is that the Government and public bodies must act lawfully in the public law sense. The 4th Edition also is for that purpose to assist administrators to make decisions in their everyday job. It also sets out some important developments in the area of public law where the constitutional order of the Hong Kong SAR has been considered. So for those of you who are interested in the development of law in this area and judicial review, you may wish to download it by scanning the QR code that you see on the screen, or visit our website.

So to conclude, may I thank all of you once again for your support, participation and contribution to this Conference and the Mediation Week 2022. We look to you and the community for your continuous support, and please stay tuned for our upcoming events.

Thank you so much.

Mediation Conference 2022
"Mediate First: Harmony from Now to Beyond"

Programme

Time	Activity
	MORNING SESSION
9:00 - 9:10	**Opening Remarks** **Ms Teresa Cheng, GBM, GBS, SC, JP** Secretary for Justice, Hong Kong Special Administrative Region
9:10 - 9:30	**Keynote Speech** **Professor Liu Jingdong** Director of International Economic Law Department, the Institute of International Law of Chinese Academy of Social Sciences; Vice-Chairman of Commercial Mediation Center of China Chamber of International Commerce; Member of the China International Commercial Court Expert Committee, the Supreme People's Court of China
9:30 - 11:00	**Panel Session 1: Cross-boundary Family Disputes: the Potential of Reciprocal Recognition and Enforcement of Family Mediated Settlement Agreements in GBA** Family disputes involve emotions and personal relationships; mediation, rather than litigation, may come to help to resolve the disputes amicably. This panel will discuss the mechanism under the new Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance and in the light thereof, explore how a reciprocal recognition and enforcement mechanism for family mediated settlement agreements may come into place in the Greater Bay Area.

	Moderator: **Mr Norris Yang** Senior Consultant and Founder, Yang Chan & Jamison LLP, Hong Kong (associated with Deloitte Legal); Chairman, Communications and Publicity Committee, Hong Kong Mediation Accreditation Association Limited; Chairman, International Negotiation Mediation Society Macau; Executive Director, ADR International Limited **Speakers:** **Mr Eugene Yim** Barrister, Bernacchi Chambers **Ms Sherlynn Chan** Partner, Messrs. Deacons **Ms Liu Yang** Senior Partner, Unitop Law Firm
11:00 - 11:15	**Q&A**
11:15 - 11:30	**Morning Break**
11:30 - 12:30	**Panel Session 2: Mediating Disputes during COVID-19** COVID-19 may seem to have slowed down our life. However, disputes do not stop because of COVID-19. Under this new norm, novel disputes of different kinds and values arise on a daily basis. This panel will explore why mediation is the best way to solve COVID-19 related disputes, from high value disputes under the CEPA mediation mechanism to lower value disputes that could fit into the specific dispute resolution schemes offered by FDRC and eBRAM.

	Panel Discussion **Moderator:** **Mr Adrian Lai** Deputy Secretary-General, Asian Academy of International Law **Speakers:** **Mr Ronald Sum** Partner, Head of Dispute Resolution (Asia), Addleshaw Goddard (Hong Kong) LLP; Council Member of the Law Society of Hong Kong **Mr Dieter Yih, JP** Chairman of the Financial Dispute Resolution Centre; Partner, Messrs Kwok Yih & Chan **Ms Pui-Ki Emmanuelle Ta** Chief Executive Officer, eBRAM International Online Dispute Resolution Centre
12:30 - 12:40	**Q&A**
AFTERNOON SESSION	
14:30 - 16:30	**Panel Session 3: Metaverse: Happily Ever After or a Dangerous Start?** Welcome to the Metaverse, where an adventure awaits! In here, you will be surrounded by cryptocurrencies, non-fungible tokens (NFTs), blockchains, initial coin offerings (ICOs) and all sorts of novelties. For your safety and utmost security for this journey, do pay attention to our panel where we will illustrate the possible legal issues behind and what may cause disputes to arise and how mediation may be the most suited means for resolving such disputes. Buckle up and we wish you all an enjoyable journey.

	Keynote Speech **Mr Yat Siu** Co-founder & Chairman, Animoca Brands; Founder & CEO, Outblaze **Panel Discussion** **Moderator:** **Mr Nick Chan, MH, JP** Partner, Squire Patton Boggs; Chairman, Hong Kong and Mainland Legal Professional Association **Speakers:** **Mr Basil Hwang** Managing Partner of Messrs Hauzen LLP **Professor Steven Gallagher** Professional Consultant and Professor of Practice in Law, CUHK LAW **Mr Evan Auyang** Group President, Animoca Brands **Mr Henry Yu** Principal Partner, Messrs. L&Y Law Office, in association with Henry Yu & Associates; Member, Innotech Committee of the Law Society of Hong Kong **Mr Peter Bullock** Partner, King & Wood Mallesons; Accredited Mediator, HKIAC
16:30 - 16:50	**Q&A**
16:50 - 17:00	**Closing Remarks** **Ms Christina Cheung, JP** Law Officer (Civil Law), Department of Justice, Hong Kong SAR Government

2022 年調解會議
調解為先：和諧為本 躍進未來

節目表

時間	活動
	上午環節
9:00 - 9:10	**開幕致辭** **鄭若驊女士, 大紫荊勳賢, GBS, SC, JP** 香港特別行政區律政司司長
9:10 - 9:30	**主題演講** **劉敬東教授** 中國社會科學院國際法研究所國際經濟法室主任； 中國國際商會調解中心副主席； 最高人民法院國際商事專家委員會專家
9:30 - 11:00	**討論環節 (一)：跨境家事爭議：於大灣區相互承認和執行家事和解協議的潛能** 家事爭議牽涉情感和個人關係，相對於訴訟，調解能有助友好地解決紛爭。這個環節會討論新實施的《內地婚姻家庭案件判決（相互承認及強制執行）條例》的機制，並探討在這基礎上如何在大灣區建構家事和解協議相互承認和執行的機制。 **主持人：** **楊洪鈞先生** 香港勤信律師事務所創辦人及高級顧問（與德勤法律聯繫）； 香港調解資歷評審協會有限公司傳訊及宣傳委員會主席； 澳門國際談判調解學會主席； 協寧國際事務有限公司行政董事 **講者：** **嚴永錚先生** 貝納祺大律師辦事處大律師

	陳連基女士 的近律師行合夥人 **劉洋女士** 壹號律師事務所高級合夥人
11:00 - 11:15	**問答環節**
11:15 - 11:30	**小休**
11:30 - 12:30	**討論環節（二）：2019 冠狀病毒相關的糾紛調解** 2019 冠狀病毒疫情減慢了我們的生活節奏，但糾紛並不會因此而停止。在這新常態下，每天均有形形色色的新糾紛出現。這個環節將會針對探討爲何調解是解決與疫情相關的爭議的最佳方法，不論是《內地與香港關於建立更緊密經貿關係的安排》下的調解機制適用的高額糾紛，還是適用於金融糾紛調解中心 (FDRC) 或一邦國際網上仲調中心（eBRAM）提供的特定爭議解決計劃的較小額糾紛。 **主持人：** **黎逸軒先生** 亞洲國際法律研究院副秘書長 **講者：** **岑君毅先生** 安勝恪道（香港）有限法律責任合夥律師行合夥人及亞洲爭議解決部主管； 香港律師會理事 **葉禮德先生**, JP 金融糾紛調解中心主席； 郭葉陳律師事務所合夥人 **謝珮琪女士** 一邦國際網上仲調中心有限公司行政總裁
12:30 - 12:40	**問答環節**
下午環節	
14:30 - 16:30	**討論環節（三）：元宇宙：幸福到永遠 或是 危險的開始 ??**

	歡迎蒞臨元宇宙，您的冒險即將展開！在這裡，您將被加密貨幣、非同質化代幣 (NFT)、區塊鏈、首次代幣發行 (ICO) 和各種新奇事物所包圍。爲了確保您有一個安全的旅程，請細心留意我們的小組討論，我們將在其中說明元宇宙及虛擬空間中可能涉及的法律問題以及引起的爭議以及調解如何成爲解決此類爭議的最合適方式。請閣下繫緊安全帶，祝大家旅途愉快。 **主題演講** **蕭逸先生** Animoca Brands 聯合創辦人和主席； Outblaze 創辦人和行政總裁 **小組討論** **主持人：** **陳曉峰先生, MH, JP** 翰宇國際律師事務所合夥人； 香港與內地法律專業聯合會主席 **講者：** **黃浩宸先生** 浩宸律師行合夥人 **Steven Gallagher 教授** 香港中文大學法學院法律實踐專業顧問和教授 **歐陽杞浚先生** Animoca Brands 集團總裁 **余沛恒先生** 林余律師事務所 (與余沛恒律師事務所聯營) 首席合夥人； 香港律師會創新科技委員會 (Innotech Committee) 成員 **Peter Bullock 先生** 金杜律師事務所合夥人； 香港國際仲裁中心認可調解員
16:30 - 16:50	**問答環節**
16:50 - 17:00	**閉幕致辭** **張錦慧女士, JP** 香港特別行政區政府律政司民事法律專員

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