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

MEDIATE FIRST
調解為先

2024年調解會議
Mediation Conference 2024

調解為先：築融和之橋 創美好未來

MEDIATE FIRST : BRIDGE CULTURES BUILD FUTURES

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10 May 2024 • 2024年5月10日

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Mediation Conference 2024
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Mediate First: Bridge Cultures, Build Futures
調解為先：築融和之橋 創美好未來

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林定國資深大律師, SBS, JP
香港特別行政區政府律政司司長

羅厚如局長（司法部人民參與和促進法治局局長）、各位講者、各位來賓、各位朋友：

大家早晨。首先我謹代表律政司歡迎大家參與2024年調解會議。

調解周是律政司每兩年舉辦的旗艦活動。今年以「調解爲先：築融和之橋　創美好未來」爲主題，舉辦了一系列的研討會，探討了校園調解、職場調解、消費者爭議調解、在家事法庭中採用替代爭議解決模式及直到今日壓軸的調解會議。

調解周的成功有賴於各位講者、主持人、合辦機構、支持機構對律政司推廣調解工作的大力支持，我在此謹代表律政司表達衷心的謝意。我亦代表律政司歡迎超過600多位線上和現場的來賓參與今日的調解會議。

調解為先：築融和之橋 創美好未來

自古以來，「包容共濟、求同存異」都是中華文化的傳統之一。人與人之間因着不同的文化背景或其他差異，難免出現爭議或分歧。現今科技亦進一步拉近人與人之間的距離，相互頻繁的交往亦使「融洽和諧」較以前變得更重要，但紛爭反而拉遠人與人之間的距離。調解正是我們通往融洽和諧之路最有效的工具，它可以幫助我們建築一道融和之橋，找出有利雙方的方案，讓雙方能夠邁步向前，創造美好未來。

因此，律政司自 2009 年起一直推廣「調解爲先」的理念，提

倡和鼓勵香港更廣泛地使用調解。在整個調解周期間，我們的講者也分享了調解如何在社會各個領域扮演着重要的角色，推動廣泛地使用調解作爲爭議解決工具。

深化調解文化

香港作爲國際法律和爭議解決服務中心，政府亦致力深化調解文化。

爲了發揮好香港的獨特優勢，全面配合「一帶一路」的高質量發展，香港特別行政區政府在 2023 年《施政報告》中重點提及需要「深化調解文化」這項新的政策措施，包括檢視規範調解專業的認證和紀律事宜的制度；在政府合約中加入通用的調解條款和鼓勵私營機構採用類近條款。

「深化調解文化」的政策措施有兩個層面：第一，我們希望加深社會各界對調解的理解，提高調解意識。第二，在實際的運作上，政府及各機構都能夠以「調解爲先」這概念，在發生糾紛的時候先探索採用調解解決爭議。

爲了落實此政策措施，律政司計劃發布調解條款範本，鼓勵各政府部門在可行且適當的範圍內將調解條款加入至未來的政府合約中，從而進一步推廣首先使用調解作爲爭議解決途徑。我們希望在政府的牽頭下，以身作則，能夠鼓勵私人公司在合約中加入類似的調解條款，進一步推廣「調解爲先」的文化。

要成功推動調解的廣泛使用，除了在合約中加入調解條款這一「硬件」外，更重要的是心態，我說的是心態上的改變，需由認知開始。律政司會先從內部培訓做起，在這方面，我們正積極與不同政策局和政府部門交流和探討合作，從而深化政府內部的調解文化，期望進一步將此調解文化推廣至各行各業。同時，我們亦希望加深公務員及其他公職人員對調解的認識，將調解融入到日常工作中，在面對市民大眾的時候能夠多運用調解的技巧。

在社會層面方面，律政司會舉辦與調解相關的推廣活動和培訓課程，鼓勵市民應用調解和調解技巧化解社區爭議，如鄰里、物業管理、消費者、社會福利等糾紛，希望提升市民的調解意識，讓調解走入社區，以調解化解矛盾，促進社區的和諧及穩定。

主題演講

在國家《十四五規劃綱要》和《粵港澳大灣區發展規劃綱要》下，中央人民政府提出香港作爲亞太地區國際法律及爭議解決服務中心的策略性定位。內地與香港的關係密切，內地調解急速發展亦與香港息息相關。在接下來的主題演講，我們非常榮幸邀請到司法部人民參與和促進法治局局長羅厚如先生，爲我們分享內地在加強人民調解規範化建設、健全行政調解工作體制、完善行業性專業性調解制度規則等各方面的發展，及內地與香港未來在調解方面的聯動建設。

連結脈絡：大灣區的跨境調解

香港一直享有我們國家境內唯一普通法司法管轄區的獨特地位，以及粵港澳大灣區（下稱「大灣區」）「一國兩制三法域」這個前所未有的特點所帶來的獨特優勢和機遇。如何在大灣區迅速發展的過程中，充分發揮香港的獨特優勢和能力，發揮香港在《粵港澳大灣區發展規劃綱要》中不可或缺的作用，是關鍵所在。

爲促進及推廣在大灣區善用調解，大灣區調解平台於 2021 年制定了統一的《粵港澳大灣區調解員資格資歷評審標準》及《粵港澳大灣區調解員專業操守最佳準則》，亦於 2022 年制定了《粵港澳大灣區跨境爭議調解示範規則》，供大灣區內的調解機構及調解員參照及採用。

三地藉着大灣區調解平台制定的多項調解標準，實現大灣區內不同規則機制的「軟聯通」，化「制度之異」爲「制度之利」，便利民商交流互動。

粵港澳三地已於今年 3 月 28 日同時發布及施行各自的大灣區調解員資格資歷評審細則，香港方面的細則已刊載於律政司的網站。爲鼓勵和協助香港調解員取得大灣區調解員的資格，律政司正籌備舉辦香港方的粵港澳大灣區調解員培訓課程，課程詳情將稍後公布。粵港澳三地亦將積極推動於今年內設立粵港澳大灣區調解員名冊。

今日早上，我們非常幸運邀請來自粵港澳三地的調解專家探討大灣區內調解迅速發展的進程及將來的龐大機遇。幾位專家將透過經驗分享剖析如何應對三地法律差異、調解機制、文化及模式的區別等等，讓大家參與及進行大灣區跨境調解時更得心應手。通過互動對話，希望各位來賓可以掌握未來大灣區市場以調解解決爭議的新觀點及方向。

聯通國際：香港的優勢

順應國際調解的需求，在中央人民政府的鼎力支持下，及配合香港在「十四五」規劃下發展爲亞太區國際法律及爭議解決服務中心的定位，國際調解院籌備辦公室也在去年 2 月 16 日正式在香港成立。

國際調解院是爲解決國際爭端提供高效的調解服務的國際組織，爲和平解決國際爭端提供新的選擇。隨着國際調解院正式宣布將在香港設立總部，香港在國際調解方面佔有領先優勢，我們將大力推動香港成爲全球的「調解之都」。

在今日下午的環節，國際調解院籌備辦公室主任孫勁博士會和我們解釋國際調解院的定位和角色，並分享他對國際調解的法律機制、實踐和未來機遇的看法。我們也邀請到不同講者討論香港在知識產權、海事法和家族辦公室這些領域的定位以及調解在這些領域的角色。他們將分享香港在這些領域中的獨特挑戰和機遇，並探討調解如何有效解決爭議。

隨着科技的發展和全球化，人和事都能夠突破地域限制。知

識產權糾紛可能涉及不同法律管轄區的法律問題，海事法糾紛經常出現在國際貿易和運輸的背景下。而在管理大量財富和資產的家族辦公室領域，調解亦可以應用在家族成員或其他持份者之間的爭議。善用調解可以解決爭議雙方的分歧並達成和解，以維護關係並避免長時間的訴訟，及爲各方提供保密的環境，使大家能夠探索更多解決方案。

期待第二個環節中，各講者可以分享香港調解業界如何能在國際舞台上發揮作用。

調解的未來動向：人工智能

人工智能近年亦迅速發展，如今被廣泛應用在不同行業，不斷重塑各個專業領域。人工智能爲簡化和優化爭議解決流程提供了獨特的機會。在今日第三個環節，我們將邀請到有涉足人工智能領域的專家和法律人士探討人工智能的影響和潛力。

此外，本次會議也將深入探討人工智能在爭議解決和調解方面的趨勢和影響。我們的講者將分享他們對人工智能參與爭議解決的看法，包括線上爭議解決平台以及虛擬調解等。本環節還會探討人工智能在爭議解決和調解中的影響、倫理考量和未來趨勢，希望讓各位能夠多了解人工智能在爭議解決中的應用。

結語

我們期待與各位在今日的會議上，就如何在香港、大灣區及國際實現更優質發展的旅途上攜手共進，交換更多意見。律政司會繼續緊貼全球爭議解決領域的最新發展，並投放資源鞏固法律基礎設施和人才培訓，充分發揮香港作爲「超級聯繫人」和「超級增值人」的角色。

最後，我再次感謝大家在今年整個 2024 年調解周期間的參與和支持，並祝願今日的會議圓滿成功。謝謝大家。

主題演講

羅厚如先生
中華人民共和國司法部人民參與和促進法治局局長

女士們、先生們：

大家上午好！很高興受邀參加由香港律政司舉辦的2024年調解會議。這次調解會議的主題很有意義，非常契合當前調解在社會治理和糾紛解決中扮演的角色。調解在中國具有悠久的歷史，蘊含着幾千年來中華民族「和爲貴」、「息訴」、「止訟」等傳統智慧，在國際上被譽爲「東方經驗」。

中國的憲法、《民事訴訟法》、《仲裁法》、《人民調解法》、《勞動爭議調解仲裁法》等等都對調解作出了規定。在中國，調解有人民調解、行政調解、司法調解、行業性專業性調解等多種類型。中國司法部負責指導人民調解、行政調解、行業性專業性調解。其中，人民調解是人民調解委員會通過說服、疏導等方式，促使當事人在平等協商基礎上自願達成協議，解決民間糾紛的活動。群眾性、自治性、民間性、不收費是人民調解的本質特點。行政調解是由具有行政調解職能的國家行政機關主持，根據國家的法律政策，在自願基礎上，通過說服來教育當事人以協議的方式解決糾紛的活動。行業性專業性調解更強調運用專業知識，借助專業力量進行調解，既包括行業性專業性人民調解，比如醫療糾紛、道路交通人民調解等，也包括市場化的行業性專業性調解，如商事調解、律師調解等等。

調解作爲與訴訟、仲裁並列的糾紛解決方式，具有程序靈活、節約成本、快速高效的優勢，在糾紛解決機制中具有獨特的魅力。習近平總書記多次強調，要堅持把非訴訟糾紛解決機制挺在前面。2023年10月，中國司法部會同最高人民法院召開全國調解工作會議，明確提出要推動形成以人民調解爲基礎，人民調解、行政調解、司法調解、行業性專業性調解優勢互補、有機銜接、協調聯動的調解工作格局。在新時代新征程上，中國調解制

度呈現出新的發展局面。

第一，調解範圍越來越廣。調解在中國具有廣泛的社會基礎，「有糾紛找調解」已成爲人們的共識。近年來，調解的糾紛已經從婚姻、家庭、鄰里等常見性、多發性糾紛，延伸到醫療、道路交通、勞動爭議、物業等領域，並逐步擴展到消費、旅遊、金融、保險、知識產權等領域。糾紛的性質既包括人身權、財產權等傳統權益的糾紛，也包括數字權利等新型權益的糾紛，既有線下的糾紛，也有線上的糾紛，具有現實與虛擬交織、跨地區跨領域的特點。據統計，2024年，全國人民調解組織共調解各類矛盾糾紛1,720萬件，這裏也包括了法院委派委託調解成功的728萬件案件。

第二，調解組織形式不斷豐富。在鞏固鄉鎮（街道）、村（社區）人民調解組織的基礎上，大力推進行業性專業性人民調解組織建設，對矛盾糾紛易發多發的重點行業、重點領域，鼓勵社會團體或其他組織依法設立行業性專業性人民調解組織，推進形式多樣的個人調解室、特色調解室建設，探索設立更多符合實際需要的新型人民調解組織。目前，全國共有人民調解委員會69.8萬個，行業性專業性人民調解組織4.9萬個，派駐有關部門人民調解組織4.1萬個，人民調解組織基本覆蓋城鄉社區、重點領域和重點單位。加強商事調解特別是涉外商事調解工作，推動設立了一批國際商事調解組織，積極培育和打造具有國際影響力的商事調解品牌。指導上海、北京、廣東自貿試驗區開展商事調解組織登記管理試點。據不完全統計，目前全國已經登記設立了376個獨立的商事調解組織。

第三，調解隊伍整體素質進一步提高。中國司法部聯合有關部門出台《關於加強人民調解員隊伍建設的意見》，在鞏固和規範兼職人民調解員的同時，大力加強專職人民調解員隊伍建設，全面開展人民調解員等級評定工作，推動將調解員作爲一個新增職業，納入新修訂的《中華人民共和國職業分類大典》，大力加強調解員培訓工作，制定培訓計劃，編寫培訓教材，積極開展崗位培訓，調解員隊伍的整體素質有明顯提高。各地不斷豐富人民

調解員的選任方式，將選任與聘任結合起來，注重吸納退休的法官、檢察官、律師、法學工作者和專業技術人員加入到調解員隊伍。針對重點領域矛盾糾紛的特點規律，健全完善人民調解諮詢專家庫，注重運用專業知識，借助專業力量化解矛盾，提高調解工作的權威性和公信力。廣泛動員群團組織、社會組織、企事業單位以及基層群眾、社會專業人士等各方面力量，積極參與化解矛盾糾紛。目前，全國共有人民調解員307.8萬人，其中專職人民調解員46萬多人。

第四，調解工作機制和方式方法不斷創新。健全完善人民調解、行政調解、司法調解聯動工作體系，全國20多個省份出台了加強訴調對接、警調對接等銜接聯動工作機制的意見，目前已經在全國所有的中級、基層人民法院和法庭以及90%的公安派出所設立了調解工作室，接受移交委託開展調解工作。強化調解優先的理念，引導當事人優先通過調解方式化解矛盾糾紛，把調解貫穿於行政裁決、行政覆議、仲裁、訴訟等全過程，統籌律師、基層法律服務、公證、法律援助、司法鑒定等法律服務資源，形成工作合力。積極運用新載體新技術開展調解工作，全國有20多個省份研發了智慧移動調解系統，為當事人提供「一站式」在線諮詢、線上調解等服務。

第五，調解制度規範不斷完善。制定發布司法行政行業標準《全國人民調解工作規範》，對人民調解組織、隊伍、制度、業務、保障等進行全面規範，提高調解工作的規範化水平。貫徹落實《民事訴訟法》、《人民調解法》等相關法律規定，提升調解協議的主動履行率和執行力度。將行政調解作為法治政府建設的重要內容，納入《法治政府建設實施綱要（2015-2020年）》、《法治政府建設實施綱要（2021-2025年）》，着力構建各級政府負總責，司法行政機關牽頭，各職能部門為主體的行政調解工作體制。據不完全統計，目前有《行政覆議法》、《道路交通安全法》、《治安管理處罰法》等10多部法律，《行政覆議法實施條例》、《醫療糾紛預防和處理條例》等20多部行政法規和30多部部門規章，涉及到行政調解的規定。有10多個省、市級地方性法規和近30個省、市級地方政府規章中對行政調解作出了規定。中國政府高度重視商事調解工作，首批簽署了《新加坡調解公

約》。中國司法部致力於加強商事調解頂層設計，積極推進商事調解立法進程，已經將《商事調解條例》納入到2024年國務院立法計劃，目前正在會同有關部門加快推進法規草案的起草工作。鼓勵地方在商事調解方面大膽探索創新，廣東省司法廳與香港、澳門的相關部門共同建立粵港澳大灣區調解工作委員會，發布《粵港澳大灣區調解員資格資歷評審標準》、《粵港澳大灣區調解員專業操守最佳準則》和《粵港澳大灣區跨境爭議調解示範規則》等等。深圳市人大常委會頒布《深圳經濟特區矛盾糾紛多元化解條例》，首次以地方性法規對商事調解組織的設立和管理作出規定。深圳市司法局還推動成立了內地首家商事調解協會，加強對商事調解的自律管理。

實踐表明，調解在服務高品質發展；推進高水準對外開放；保障當事人合法權益等方面發揮着重要的作用，在營造大灣區一流市場化、法治化、國際化營商環境中有着重要的地位。我們將按照去年7月中國司法部賀榮部長訪問香港時簽署的《司法部與香港特別行政區政府律政司就進一步深化人才培養與法律服務合作的會談紀要》的要求，務實擔當履行調解工作指導職責，大力支持香港建設亞太區國際法律及爭議解決服務中心，積極推動國際商事調解交流合作，助力大灣區成爲高品質發展的示範地和中國式現代化的引領地。

感謝大家的聆聽。謝謝！

討論環節(一)：
連結脈絡：大灣區的跨境調解

(謄本)

(劉洋先生, MH)
大家好，我是海問律師事務所香港辦公室的合夥人劉洋，非常榮幸受邀擔任是次調解會議第一個討論環節的主持人。我會與粵港澳三地的頂尖調解專家一起討論「連結脈絡」── 第一個討論環節的主題，爲大家分享粵港澳大灣區（下稱「大灣區」）跨境調解的特點與發展。

第一位講者是羅偉雄博士。羅博士是資深的國際商業顧問及糾紛解決的調解專家。他是香港和解中心、香港國際調解中心、香港國際商業仲裁中心、內地－香港聯合調解中心等多間仲裁/調解機構的會長和主席。羅博士會講解香港調解體制的概要和香港在跨境爭議調解的發展，亦會分享自己的豐富經驗。有請羅博士。

(羅偉雄博士教授)
因爲今天我們討論大灣區的調解，所以我會介紹香港的國際調解系統及發展。

簡單而言，香港現時的爭議解決及風險管理系統涵蓋調解環節的不同部分，主要是最初的促成交易、機構或個人將來的風險管理、爭端解決，以及傳承及持續發展階段。在不同的環境下，我們能夠以不同的體系來配合及支援相關需要。

第二個部分是資歷培訓及專業認證。香港調解資歷評審協會（下稱「HKMAAL」），負責處理香港調解員的資歷。國際爭議解決及風險管理協會則負責國際調解員的資格。兩者各自負責關於法律及爭議解決的專業服務標準、規則及資歷的評審。

第三個部分是人員培訓。取得牌照後，相關人士需要提供不同的

服務。爲此，我們有不同的中立機構，以處理調解、仲裁、審裁及知識產權的註冊和保護。香港和解中心負責處理本地調解，內地—香港聯合調解中心負責處理投資者跟國家之間糾紛的調解工作，香港國際調解中心主要處理跨境及國際調解。我們有不同顧問及代理人，如談判顧問、風險管理顧問、調解、仲裁及審裁代理人。

香港的制度以專業見稱。每一個法律和爭議解決的環節都是一個專業範疇，當中包括制定規則和確保人才資歷，從而構成質素認證系統（Assurance System）。香港的服務是切合需要。面對不同類型的糾紛，我們可以使用不同團隊及規則處理和解決問題。香港是國際平台，能夠銜接世界各地，而其他地方會採納香港新的認證系統，以致香港能成爲國際爭議解決服務中心。

香港法律服務的各個環節可以互相銜接。調解可以銜接其他法律程序，如訴訟、仲裁及審裁。服務使用者，包括商會、律師行或其他專業服務團體等，都會彼此合作，令調解服務能夠更加切合使用者的需要。

香港的調解源於1985年，當時使用中國傳統「和事佬方式」的調解方法。自1988年開始，我們進入「導入期」，引入了新的規則調解，即系統性調解。自1999年開始，我們進入整合階段，調解於香港實施並加以改革。至2011年起，香港的調解已經走向國際，處於領先地位。簡單來說，現時香港的調解程序完善，不論是相關法例及規則，還是資歷認證系統。

關於調解的發展，香港曾參與制定國際公認的標準。香港和解中心是聯合國國際貿易法委員會中《新加坡調解公約》的觀察員，亦是世界貿易組織的主要非政府機構代表，積極參與討論、制訂全新的國際糾紛解決機制。現時全球有超過650個不同地區的國際機構，接受我們的相關資歷認證及服務，而當中有46個國際及地方組織，包括亞太區仲裁及調解中心，承認我們所發出的認證，並互相承認及交換資歷，不需要重新進行資歷認證。

香港的法例完善。我會介紹近期的《道歉條例》。《道歉條例》的目的是在特別的環境之下，鼓勵更多人使用調解處理爭端。在2016年的法例諮詢期，我們明白道歉條文不可置於《調解條例》之下，而是需要一條新的主體條例。《道歉條例》的目的是讓當事人進行調解前，可以先獲得合適的道歉，以照顧其情緒。進行調解時，因爲當事人已經處理好情緒，爭議雙方的談判便會更直接，從而加快談判速度。

香港《調解條例草案》於2011年11月提交立法會，於2013年1月1日正式生效。條例的目的是鼓勵和促進以調解方式解決爭議，以及保障調解通訊的保密性。條例爲調解程序提供了一個非常清楚的定義，涵蓋範圍亦非常廣闊。香港的司法機構及其制度鼓勵調解。2010年1月1日開始，香港已經推出各項調解的實務指示。簡單來說，目標是鼓勵大家先採用調解處理爭議。雖然爭議其中一方可以不使用調解，但可能需要面對不利的訟費令。簡單來說，要是爭議雙方使用調解，不僅可以大幅度減少雙方所需的時間，所需的費用也有機會減少，避免大家在訴訟時，因爲沒有使用調解而令當事人有機會承擔非常昂貴的訴訟費用。

另外，調解的實務指示涵蓋不同的層面。除了實務指示31，其他實務指示包括人身傷害、家事及僱員補償等，以促進調解。

香港的調解制度清楚且穩定，使整體的調解服務非常系統化，取得優異成效。按照調解程序，由受理個案至調解會議，當中涉及許多程序，調解員需要進行管理，包括分析該宗個案及與當事人交流，目標是改善當事人心境，希望當事人可以合作，以促進整體利益。故此，香港專業調解擁有完整的設計及策略，每個程序都非常清楚且目標明確，既可以令當事人清楚了解自己的需要、利益以及防範風險，又可以令當事人的情緒得以紓緩，從而改變競爭態度，最終能合作解決問題。當然，調解員需要使用不同技巧來引導當事人進行上述程序，並達成目標。調解非常特別，目標是確保整體利益，幫助爭議雙方獲得最大利益，從而使他們樂於執行協議。調解員亦會跟進協議最後是否可以執行。

調解可以照顧不同層面的獨特需要，因爲各種爭議所涉及的問題、解決方案及可行性等都不一樣。

香港不同的專項調解服務能充分發揮不同功用。我們（香港國際調解中心）總共有16個專業委員會，可以處理16種不同類型的糾紛，包括跨境糾紛等。在香港最新的國際調解專業系統內，調解的定位是非常清楚—非常有效的爭議解決方法。國際商事爭議解決的團隊是會針對糾紛的特點、當事人的關注事項、需要、行業的習慣、面對的困難、市場發展及過去的案例等，協助爭議雙方有序地商討以解決糾紛。透過調解團隊的協助，讓當事人作出有效且理智的決定。調解團隊消除了爭議解決環境之下所出現的對立。因爲進行調解時，所有參與者，包括調解中心、調解個案經理、調解員、爭議雙方、雙方的代理人及專家，都會變成一個團隊，共同去爭取最大的利益。

在循序漸進的模式之下，專業調解的目標是促使當事人改變思維，然後改變心態，最後改變行爲，由競爭變爲共創利益。故此，我們有着優異的調解成果，包括非常高的和解率。因爲爭議雙方會理解彼此的利益及需要，所以我們有超過70%的個案透過調解來解決。更重要的是履約率，香港的調解特色在於，爭議雙方和解後，非常願意執行協議。按照調解的程序，當事人可以取得最大回報。既然能獲得最大回報，那麼當事人當然會盡其所能執行協議。不過，履約率爲甚麼是98%而不是100%呢？因爲當事人並非不願意執行，而是他未能執行。在特別的情況之下，如2019冠狀病毒病疫情期間，當事人因物流服務暫停而未能把貨物運往目的地。甚至是運氣不好，因爲資金問題，所以公司停止營業。在這些情況之下，當事人沒有辦法執行協議。

最後，我會以一個案例總結調解現時的發展，並作出對比。飲料牌子王老吉跟加多寶之間的訴訟已進行了十多年。分歧在於，雙方合作之後，是否可以繼續使用各自的牌子。當中是相差十數億的賠償。然而，最大的問題是訴訟已持續10年，其中一方在去年仍繼續上訴。2011年，雙方的市場佔有率比較高。經過10年訴訟

後，雙方的市場佔有率已經大幅度下降。最嚴重的是，相關的飲品市場在這段時間增加了三倍，意味着雙方不能分享市場擴張的紅利。如果當初雙方決定使用調解，那麼結果將會截然不同，雙方能分享超過1,000億的相關飲品市場。

關於騰訊及字節跳動的抖音關於短視頻的爭議，金額涉及幾千萬。雙方同樣展開了長時間的訴訟，最後雙方進行調解，並達成和解。現在雙方合作，令市場變得更龐大，並使雙方獲得更高的市場佔有率。雙方均可以在自身的平台推廣對方的產品及服務，從而提升生意額及促進公司的發展。

以上是我的分享，多謝大家。

(劉洋先生, MH)
謝謝羅博士的精彩分享。他讓我們了解香港調解的整個制度和發展，特別是香港在調解上的領先優勢。

接下來的講者是黃吳潔華律師。她是吳建華律師行合夥人，也是香港律師會（下稱「律師會」）調解委員會主席。她在過去十數年積極推廣調解，擁有豐富的調解工作經驗，曾參與香港《調解條例》的草擬工作。她將根據自己的經驗，分享透過調解處理的爭議類別，以及香港調解員在大灣區提供跨境調解的趨勢。有請黃吳潔華律師，謝謝。

(黃吳潔華女士)
謝謝主持人的介紹。今天，我要講述香港使用調解解決的一般個案，以及分享我在大灣區擔任調解員的經驗。此外，我亦會講述透過調解處理的爭議類別及在大灣區提供跨境調解的趨勢。關於這個題目，我會講解深圳前海合作區人民法院訴調對接中心、深圳市前海國際商事調解中心，還有港籍調解員參與內地調解的安排。不少港籍調解員，包括我自己，現正在大灣區提供調解服務。最後，我亦會跟大家分享我在大灣區處理跨境爭議的經驗。

在香港，調解是保密的。很多時候，完成調解的個案是沒有確實數目。律師會有很多調解員，亦進行很多調解的工作。不過，律師會不會公開律師完成多少宗調解個案，而香港國際仲裁中心亦不會公開中心所處理的調解個案數目。那麼，這些數據的出處是哪裏？唯一可以收集的統計數字是來自司法機構。高等法院原訟法庭的調解證明書，在2023年有1,323份，包括六類高等法院民事案件。正如剛才羅博士所說，民事案件是須要遵守實務指示31，在訴訟過程中必須進行調解，而法庭亦鼓勵訴訟雙方進行調解。這1,000多宗案件的分類包括高等法院民事訴訟、海事訴訟、商業訴訟、建築及仲裁訴訟、雜項案件及傷亡訴訟。相比剛才羅厚如局長所說內地有成千上萬宗的調解個案，我們的數目是很少。因爲香港相較內地，地方及人口相對較少，所以法院處理的案件亦比較少。

至於區域法院，2023年有11,618宗案件，包括民事訴訟案件、僱員補償案件、平等機會訴訟、雜項案件、傷亡訴訟和稅款申索案件。由此可見，區域法院處理的調解案件超過高等法院甚多。當然，我只是列出常見的種類，其實還有很多是沒有列出，因爲那是沒有公開。

金融糾紛調解中心的調解工作主要是消費者和金融機構個案，如銀行與消費者之間的糾紛。一般來說，現在銀行都是自行處理相關糾紛。若收到客戶的投訴，銀行一般會進行跟進。如果個案在一段時間內未能解決，他們會尋求金融糾紛調解中心的協助。雖然該中心已經運作多年，但是我們沒有相關個案的數據，原因是他們不會公開。

另一個例子是消費者委員會，他們的工作範疇是非常廣泛，而調解個案亦非常多。不過，他們沒有公開相關數字。

我以足球明星美斯訪港進行友誼賽爲例子。該比賽一票難求，門票被炒至高價。最後，這位足球明星沒有出賽。比賽過後，大量消費者作出投訴，並向警方報案。幸好，消費者委員會協助解決

事件，使相關消費者不需入稟法院進行訴訟。

司法機構設有小額錢債審裁處，處理小金額的調解案件。土地審裁處處理不同的大廈業主糾紛、業主和租客之間的糾紛、強制售賣土地的糾紛等。

深圳前海合作區人民法院訴調對接中心的調解服務可分爲「訴前調解」及「訴中調解」。香港亦有進行「訴前調解」，只是香港法院一般都沒有提及，原因是香港的司法程序與內地的司法程序有所分別。

內地的糾紛處理安排有其程序。假如爭議雙方向法院提出訴訟，案件便進入「立案」程序。未立案之前，如果雙方都希望進行調解，這個訴調對接中心便會安排調解員，與兩位當事人進行調解。如果調解成功，調解員可以立刻撰寫調解協議書，然後呈交法官以頒布命令，這樣案件便可以完結。

我曾多次處理這種情況。當事人未進行訴訟前便進行調解，然後達成協議。我們立刻撰寫調解協議書，再呈交法官審閱，沒有問題便會蓋章，即時生效，當事人甚至立刻執行。如果涉及欠款，那麼相關的當事人可馬上繳款。現在電子錢包十分普及，在手機上進行簡單操作便可進行匯款，效率之快可以一天內完成所有調解程序。

如調解不成功，案件便會進入正式的法律程序，立案並交由法庭處理。如法官認爲爭議雙方可以再進行一次調解，他便會徵求雙方同意後，再次進行調解。

關於深圳市前海國際商事調解中心對調解員的要求。港籍調解員會獲邀爲哪種案件進行調解呢？一般是涉及這五種案件：

1）涉及香港行業慣例或交易習慣。

2）涉及深港服務行業合作發展和行業規範，如兩地進出口貨物。兩地海關的要求、關稅的要求及法律的要求都是不一樣。

3）涉及適用香港法律。爭議雙方在爭議發生前已達成共識：以香港法律解決爭議。在這種情況下，他們可以在前海提出訴訟。

4）香港與內地對同一情形的裁決可能存在重大差異，如不同利率計算。這包括很多民事的借貸案件。在香港，法例規定法定貸款利率的上限。內地則由最高人民法院頒布民間借貸的最高利率司法保護上限爲 4 倍貸款市場報價利率（Loan Prime Rate，簡稱 LPR）。兩地所使用的法律是完全不同。

5）其他適合港籍調解員調解的案件，如案件中有一方或者雙方都是香港人，但是他們在內地居住。這種情況便適合港籍調解員來進行調解。

在大灣區調解跟香港有甚麼不同？確實有很多不同的地方。香港採用「促進式調解」（Facilitative Model）。我們由外國引入這個模式，一直沿用至今。在這個模式之下，我們作爲調解員不會評估個案哪一方的勝算高低。我們希望爭議雙方可以通過調解員使用的技巧，達成一個雙方均可接受的方案，最後成功和解。

在大灣區或人民法院進行調解時，我們採用「評估式調解」（Evaluative Model）。調解員會跟當事人分析，哪一方的錯失比較多，哪一些證據可能不足。如果在法律上有爭拗的時候，擔任調解員的我便會請示坐在一旁的法官對這宗案件的看法。假如要繼續訴訟，結果會怎樣？有時候，法官會直接告訴當事人，向他解釋這宗案件從決定訴訟的時候就已經不對。當事人聽到分析後往往會很惆悵。其實通過調解，這些案件亦是可以解決。

因爲擔任調解員的時候，我們能夠查閱爭議雙方的檔案。屆時，雙方的律師陪同出席會議，我們便能仔細地查閱及評估他們所提供的證據是否充足。我曾處理一宗案件，爭議雙方在爭論，一方

聲稱得到對方的同意才會做這件事，而另一方卻否認，然而我們未能找到相關記錄，最後在他們的通訊軟件對話內容中才找到了記錄。法庭的訴訟需要證據，最終因爲我們找到證據，所以雙方便可坐下來慢慢解決事情。

多謝大家。

(劉洋先生, MH)
我們現在有請來自廣東的彭波律師。彭波律師是廣東固法律師事務所主任、廣州國際商貿商事調解中心理事長、中國國際經濟貿易仲裁委員會調解員，以及中國國際貿易促進委員會調解中心《內地與香港關於建立更緊密經貿關係的安排》框架下《投資協議》的首批90位投資爭端調解員之一。

彭波律師將爲我們介紹廣東的調解體制和主要調解機構，廣東調解處理大灣區和跨境爭議的模式，以及內地調解的最新發展。有請彭波律師。

(彭波先生)
大家，上午好。今天我跟大家分享的主題是廣東商事調解的機遇與發展，主要包括四個題目。第一個是廣東調解的機制和主要調解機構。第二個是廣東調解處理大灣區 / 跨境爭議的模式。第三個是廣東在調解的最新發展。最後，我想展望一下我們粵港澳三地未來在調解的合作前景。

關於調解機制，剛才羅厚如局長代表了我們國家，最權威地介紹了調解。他也談到我們的調解主要分類，包括人民調解、行政調解和司法調解。這是最官方和權威的分類。我覺得可以再細化一下。

第一個是人民調解，主要是人民調解委員會達成的調解協議。人民調解委員會是覆蓋最廣泛的調解組織，其上位法是 2010 年的《人民調解法》，當中的規定非常清楚。

第二個分類是行政機關主持的調解，最常見的是交通意外。發生交通意外後，公安機關可能會在確定事故的責任後，便會進行調解。這是行政調解的典型例子。

司法調解主要是法院主持的調解。剛才黃吳潔華律師提及，訴訟過程進行的調解完成後，便會撰寫調解書。

仲裁調解是仲裁機構在受理案件後，在開庭或在開庭後進行的調解。仲裁調解是仲裁機制的特色，因爲我們有機地把調解和仲裁結合在一起。

最後一個是商事調解機構的調解。這是我今天的重點介紹，商事調解在這幾年發展迅速，是我們最希望能夠看到進一步發展和壯大的調解方式。

至於調解機構，我介紹一下本人就職的廣州國際商貿商事調解中心，英文名稱是 Guangzhou International Commercial Mediation Center（下稱「GICMC」）。GICMC 列入《廣州市優化營商環境條例》。因爲這條例是地方法例，所以 GICMC 跟其他的商事合作中心最大分別之一在於它是有法例規定的法定機構。GICMC 在 2020 年的 8 月 19 日正式取得了《民辦非企業單位登記證書》，並在同年的 9 月 5 日正式成立。我們當時取得兩項全國的「首個」，一個是我們是首間以市級律師協會—廣州市律師協會（即民辦非企業的法人）開辦的中立商事調解機構，而第二個是我剛才講到，GICMC 是第一間列入地方法例的商事調解機構。

由律師協會開辦意味着我們有兩萬多名專業人才可以參與其中。列入地方法例爲我們中心的公信力和未來的發展奠定了優異的基礎。我們在廣州律師大廈有獨立的辦公室，面積約 400 平方米，分爲 4 個調解室，可以線上和線下同步進行調解。辦公環境很不錯，是非常良好的調解環境。

我們受理的個案主要屬於商事範疇。因爲我們希望明確區分商事

調解和人民調解的受理範圍，所以我們不受理勞動、交通、婚姻或家事的案件。我們的受理個案基本上是商事方面的專業調解。

GICMC 的架構完善，設有理事會和其轄下的秘書處。秘書處下設 4 個部門，分別負責立案、宣傳、培訓和內部審查。內部審查是 GICMC 的特色。因爲 GICMC 成立之後，我們發覺中立調解機構的公信力至關緊要，所以爲了防止和杜絕虛假調解所引致的聲譽受損，我們在受理個案的時候，會進行嚴格的內部審查。有些個案雖然很大，但如果我們認爲當中有虛假調解的嫌疑，或當事人之間的關聯性非常強，而他們沒有合理的解釋或相關的依據，那麼我們可能不予受理。

我們希望 GICMC 在成立之初就能建立一個公正、規範、中立和高效的專業形象。內審部主要負責內部的審查，而其他制度規範亦非常完善。我們的收費方式具有內地特色——「調解不成，不收費」。我們還有一個口號——「不傷和氣還保密，調解不成不收費」。大家在 GICMC 進行調解，只有成功和解之後，我們才收取相應的費用，如果調解不成功，我們不收取任何費用。

GICMC 從 2020 年 12 月 17 日開始正式受理個案。截至今年 4 月，受理的商事調解個案爲 2,624 宗，涉及金額超過 153 億元人民幣，成功調解的個案金額達到 5 億元人民幣。其實金額還要多一點，因爲我們昨天成功調解一宗金額約 2 億多元人民幣的個案。雖然 GICMC 的調解成功率算不上特別高，但是目前在內地的商事調解範疇，我覺得我們還是做得不錯，畢竟我們有很多個案的爭議雙方不是自願前來。我稍後會講述個案的來源。

現在，GICMC 共有 502 位調解員，大部分是律師，其他則爲公司法務人員、專家教授、工程造價師、公證員等。其中，港澳籍的律師和外籍調解員有 27 名，其中很多是作爲特邀調解員的兩地執業律師。我們希望有越來越多的香港和澳門的律師能夠參與 GICMC 的工作，真正參與內地商事調解的大海中。

剛才黃吳潔華律師提及香港調解案件的數量跟內地沒辦法相比。確實，內地的調解案件數量非常龐大，需要大量高水平的專業調解員。我們大大增強自己的特色，就是涉外調解能力。我們目前能夠進行涉外調解的調解員約佔全體的 1/4。他們可以使用多種語言及在多個司法管轄區提供調解服務。我們希望未來能夠提供更多這類國際商事調解的法律服務，特別是在大灣區的建設及「一帶一路」的沿線上，發揮我們商事調解的作用。

同時，GICMC 還成立證券期貨糾紛多元化解委員會。2023 年 2 月，GICMC 成立南沙辦公室。爲了落實《南沙方案》，GICMC 在南沙成立專門的商事調解機構。同時，我們跟多個法院及多個協會建立了合作關係。廣州市天河區人民法院爲推行「社會化有償調解機制」，進行試行工作，而 GICMC 是第一間進行合作的商事調解機構。廣州市白雲區人民法院是 GICMC 註冊所在地的法院，兩者就自行受理的個案，簽訂了長期的合作協定。GICMC 自行受理的個案可以在白雲區人民法院進行司法確認，賦予強制執行力。這是 GICMC 在商事調解的非常重要優勢。

在內地進行調解，爭議雙方都想調解協議具有強制執行力。換言之，GICMC 解決了強制執行力的問題。現在，GICMC 自行受理的個案在成功調解後，皆有司法確認，且具有強制執行力，這是無可比擬的優勢。我非常有信心，這項優勢在未來能夠讓 GICMC 發揮更重要的作用。GICMC 在這幾年取得豐碩的成果，得到了省委、省政府、市委及市政府的大力支持，也累積了很多優秀案例，獲得了很多獎項。

2023 年粵港澳大灣區服務貿易大會是我們第一次參與該項活動。GICMC 作爲唯一一家參與了這項活動的商事調解機構，受到省領導及來訪單位的關注。因爲商事調解確實是比較新的東西，所以大家非常關注商事調解的未來發展。2023 年 3 月舉辦的 2023 國際商事調解發展與合作高峰論壇得到不少媒體的廣泛報導。

我們現在進入第二部分—廣東調解處理大灣區 / 跨境爭議的模式。

調解有兩種形式，第一種形式是在仲裁或訴訟過程中進行調解，最後發出具有強制執行力的調解書。第二種則是 GICMC 或其他商事調解機構參與其中，下再可分爲兩種形式。一種是「訴前委派」，就是還沒有立案之前，法院會把這些案件委派給 GICMC 進行調解。GICMC 的調解員就會聯繫當事人，詢問他願不願意調解，然後調解員會從中工作。調解完成之後，爭議雙方達成的調解協議可以呈交法院進行司法確認。司法確認是免費。另外一種就是爭議還未進入訴訟階段，爭議雙方可以聯絡 GICMC，然後 GICMC 會講解所使用的調解方式，接着雙方可以按照調解規則來選擇調解員進行調解，最後達成調解協議。如果需要進行司法確認，GICMC 可以協助當事人於我們所在地的法院進行司法確認，賦予強制執行力。這就是 GICMC 參與涉外和大灣區調解的方式。從 GICMC 成立至今，受理的涉外和大灣區案件的總金額大概是 2 億多元人民幣。我想未來 GICMC 會增加這類案件的受理數量和比例，以凸顯 GICMC 在涉外和跨境領域的優勢。

法院收到案件之後，會通過線上糾紛多元化解平台（ODR，Online Dispute Resolution）分配案件，GICMC 通過網上的帳號就可以接收案件，然後再分派給調解員。調解員就可以通過線上的方式跟當事人聯絡並進行調解。如果爭議雙方能達成協議，可以進行網上簽約，最後獲得司法確認。目前在內地法院，「智慧法院」線上處理方式非常方便，大大減少跨境交通的不便。

我現在講解案例。案例一是法院委派進行調解，由我們的調解員負責，涉及金額約 6,000 萬元人民幣。經過了 20 多天的協商，最後爭議雙方同意並確認調解書。廣州市中級人民法院審查後，進行司法確認。

第二個案例是一宗涉及 1.8 億元人民幣的自行受理個案。這宗個案在 2021 年 7 月受理，同年 8 月進行了司法確認。一宗金額達 1.8 億元人民幣的糾紛只需一個月便成功解決，效率非常高。如果進行訴訟，至少需時半年，而且費用會非常高。金額達 1.8 億元人民幣的個案訴訟費會是多少？ GICMC 是「調解成功才收費」，

而且收費的標準也只有訴訟費的一半，GICMC的優勢是非常明顯。如果各位有這方面的爭議，可以考慮先通過GICMC進行調解，從而達成一個雙贏的結果。

第三個部分是調解的最新發展。內地的大調解格局包括剛才羅厚如局長介紹的人民調解、司法調解，還有我們的商事調解等。第二項最新發展是法院的社會化有償調解試點工作取得成效，如廣州市天河區人民法院在這方面就做得非常好。第三項最新發展是商事調解的地方立法，目前進行得如火如荼。深圳市應該是第一個完成相關立法的地方。從專業角度來說，我覺得相關條例非常規範和專業。廣州的相關條例會在今年年底頒布實施。

調解協會作爲自律性的調解組織，發揮非常重要作用。深圳市商事調解協會及珠海市調解協會相繼成立，廣州市調解協會亦會在本月底正式成立。

關於未來的展望，首先是今天的會議能讓粵港澳三地調解行業的持份者聚首一堂，使三地的評審標準及示範規則更加詳細和詳盡，非常有利統一三地在商事調解的規範。

其次，內地要關注調解協議的強制執行力問題。剛才羅博士提及香港的調解協議執行率是非常高。對內地而言，爭議雙方還是希望能得到保證：達成調解協議後，不需要在未來再就強制執行力進行訴訟。我們未來三地對接的時候，需要考慮怎樣解決這個問題。

第三，我覺得需要探討並成立一個《新加坡調解公約》的試點。能不能在前海或橫琴設有試點，讓調解協議能在三地都具備強制執行力？我覺得這樣非常有利於我們未來商事調解的發展和實施《新加坡調解公約》。

最後是加強我們三地之間的交流和合作，特別是關於「調解爲先」。我覺得「調解爲先」是非常好的理念，希望能夠形成一種調解文化。

感謝大家花時間聆聽我的彙報，謝謝。

(劉洋先生, MH)

謝謝彭波律師的精彩分享。我相信在座各位能從中了解廣東，特別是廣州的調解發展潛力無限。我也非常認同律政司在過去多年爲推廣調解文化所做的工作。今天的會議讓粵港澳三地就三地三法域及三套不同的法律制度，進行現場交流，然後互相理解，共同實現融合的調解文化。

接下來的講者是來自澳門的黃淑禧律師。黃淑禧律師是黃顯輝律師事務所資深合夥人， 2022 年 10 月獲廣東省司法廳頒發粵港澳大灣區律師執業證。黃淑禧律師積極參與澳門及大灣區多元化爭議解決的發展工作，現擔任澳門世界貿易中心仲裁中心理事、執行委員會委員兼秘書長、澳門消費爭議調解及仲裁中心理事會理事，並擔任多家內地仲裁調解機構的調解員和仲裁員。

黃淑禧律師將爲我們介紹澳門的調解體制和主要調解機構，以及澳門透過調解處理大灣區和涉外跨境爭議的最新發展和經驗。有請黃淑禧律師。

(黃淑禧女士)

大家好，我是來自澳門的黃淑禧。今天，我很高興也很榮幸能夠分享澳門的調解體制及發展。

今天的分享是關於以下四個方面。首先是澳門的調解機制及主要調解機構。其次是澳門金融消費糾紛調解制度。第三是《CEPA 投資協議》投資爭端調解機制。第四是粵港澳大灣區調解工作委員會。我們作爲澳門的仲裁機構，會有甚麼調解工作？會如何推進調解工作呢？最後，我亦會作簡單的總結。

首先，我會介紹澳門的調解機制。澳門目前沒有一條專門關於調解制度的法例。雖然澳門特別行政區政府已於今年宣布開始家事調解制度法案草擬工作，但暫時未有專門就商事調解制度進行立

法。我會在此簡介澳門法律及仲裁機構規章中涉及調解的規範。

澳門目前的調解制度主要分爲兩類。

第一類是司法或仲裁中的調解，澳門法律稱之爲「試行調解」或「調停」，澳門的官方葡萄牙文則是「conciliação」(英文爲「conciliation」)，專指訴訟或仲裁之中所達成的調解。

第二類就是非司法調解，就是我們澳門、香港和內地所指的商事調解，與訴訟未必有關係。當事人自願使用調解解決爭議。澳門法律就稱之爲「調解」，葡萄牙文則爲「mediação」，意思上跟英文的「mediation」一樣。值得一提的是，澳門的法律是中葡對照。因此，我們會比對葡文及中文的法律術語，以釐清該中文法律術語在葡文是指商事調解還是訴訟中的調解。

關於司法或仲裁中的調解，根據《民事訴訟法典》及《仲裁法》的規定，如果當事人在訴訟或仲裁程序，透過調解解決爭議，相關訴訟或仲裁程序隨之終止。在這個情況下，相關法院或仲裁庭可應當事人之請求，以司法裁決或仲裁裁決的形式來確認和認可相關的和解協議，藉此產生判決的效力。根據《民事訴訟法典》的規定，以法院或仲裁庭的裁決所確認的和解有「執行名義」，即是可以直接進行民事訴訟並執行。究竟澳門法律規定哪些案件須要在訴訟中或是仲裁中進行調解？如果案件所涉及之事宜是雙方當事人有權處分者，而雙方當事人可以共同向法官聲請試行調解，或法官主動向當事人提出可以嘗試作出試行調解。《仲裁法》亦有類似規定：雙方當事人是可以以書面方式授予調停權，仲裁庭可進行試行調停。

在這種情況下，法官或仲裁庭在這種試行調解的參與方式與安排調解員的深入參與方式，是有所不同。法官或仲裁庭只是作出推動，讓當事人雙方嘗試達成和解。《民事訴訟法典》就離婚訴訟特別規定了在某一個程序的節點中，法官會要求當事人必須進行試行調解。這與試行調停的做法相同。當然，如果成功達成和解，

法院會透過訴訟判決方式來進行確認，這就是司法或仲裁中的調解方式。

接下來，我將介紹非司法調解。這與香港的一般調解，或內地的商事調解類型是一樣。首先是澳門的非司法調解。雖然澳門沒有專門的調解制度，但在《民法典》第 1172 條規定下，當事人是可以就着爭議，在雙方互相讓步之下，簽訂「和解」合同，涉及設定、變更或消滅與當事人所爭議之權利的不同之權利。這個「和解」正是大家平常的「調解」程序，即是雙方和解並簽署一份和解協定。

有一點需要注意，不是任何類型的爭議都可以作出和解。《民法典》第 1173 條規定，各當事人不得對其不可處分之權利作出和解，亦不得就不法之法律行爲所涉及之問題作出和解。如果澳門世界貿易中心仲裁中心發現在調解程序中涉及一些不法成分的行爲，便會立即終止調解。因爲《民法典》的這項規定，所以和解的程序有一定限制。在澳門，我們是按照《民法典》對「和解」的法律規定框架下進行。因此，如民商事爭議的雙方無法成功和解，雙方可以自願聘請一位中立的調解員，協助他們在良好的氣氛下解決分歧，找出共同接受的和解方案。

接下來，讓我介紹澳門受理調解個案的機構。在澳門，因爲調解沒有專屬法例，所以法律上沒有規定何爲一間調解機構。不過，澳門特別行政區政府列出四間提供仲裁或調解服務的機構，分別是兩間仲裁機構，兩間由政府設立並正式提供調解服務的調解機構。這四間機構是澳門世界貿易中心仲裁中心、澳門律師公會調解及調停中心、澳門消費爭議調解及仲裁中心及醫療爭議調解中心。

這四間中心全都是透過澳門特別行政區政府的批示而成立。澳門世界貿易中心仲裁中心及澳門律師公會調解及調停中心可以爲所有民商事類型的爭議及本地或涉外的爭議進行仲裁及調解。澳門消費爭議調解及仲裁中心協助解決澳門本地的消費所產生的爭

議。消費者需要調解時，可以向該中心求助，該中心會提供調解或仲裁服務。醫療爭議調解中心專門處理澳門本地醫療爭議的調解。

這四間機構的背景各異。簡單來說，澳門世界貿易中心是一間澳門特別行政區政府持有超過一半股權的公共企業，就着民商事、本地及涉外的爭議提供仲裁和調解服務。澳門律師公會是具有公法人地位的社團，擁有直接規管所有關於律師的發牌及紀律方面的全部職權，轄下設有調解中心，性質亦爲公法人社團。澳門消費爭議調解及仲裁中心是澳門消費者委員會的機構，是政府的公共部門。醫療爭議調解中心並非直屬於澳門特別行政區衛生局，而是獨立運作。在這四間機構當中，只有首三間提供仲裁和調解服務。這四間機構全部按照《內部規章》的規定設立組織架構、調解程序、調解收費及調解員的道德守則。澳門只有這四間機構提供正式的調解服務。

接下來是澳門的調解培訓。過去，澳門特別行政區政府部門、仲裁機構、學術單位及社團曾開辦很多調解課程，課程導師主要是來自香港的調解專家。

澳門世界貿易中心仲裁中心自 2012 年起開辦調解課程，課程內容包括調解理論、真實個案分享及模擬個案練習，以及教授澳門相關的法律及各方面的知識。我們十分感謝香港調解專家在過去多年來，對澳門調解方面的教育及貢獻，我們的每一位同學都覺得獲益良多。我們每年都會舉辦一屆調解課程，至今已經舉辦了九屆，而每屆都有 30 名學員。已接受培訓的本地學員人數至今大約有 270 名。

澳門世界貿易中心仲裁中心自 2013 年起設立調解員資格認可考試，考官及助理均是來自香港的資深調解員。考試模式跟香港甚爲相似，會要求學生進行角色扮演的調解訓練。據我所知，HKMAAL 的考試也是由每位考生來扮演當事人。這在澳門是不可行，因爲社會圈子太小了，大家都彼此認識，所以當事人都是由

香港的調解員所扮演。目前，澳門世界貿易中心仲裁中心的《認可調解員名冊》有 164 名認可調解員，80% 是澳門律師。我在此補充一點，90% 的澳門律師懂得中英葡三語。因爲澳門的法官及一半的律師是葡萄牙人，所以我們在語言方面可以發揮獨特的特點。

第二部分是澳門金融消費糾紛調解制度。2019 年 5 月，澳門金融管理局、澳門消費者委員會及澳門世界貿易中心仲裁中心簽署了《關於設立金融消費糾紛調解計劃的合作備忘錄》，指定由澳門世界貿易中心仲裁中心提供這方面的金融調解。因爲這個制度參照香港的金融調解制度，所以香港的同行對此會非常熟悉。澳門的這些制度跟香港比較相似。

澳門世界貿易中心仲裁中心亦與澳門金融學會於 2021 年合辦了澳門金融消費調解的課程，向我們的認可調解員講授更多關於保險、銀行及金融調解方面的知識，希望藉此讓他們提供相關服務。

關於金融消費糾紛調解機制，在 2019 年至 2023 年期間，澳門世界貿易中心仲裁中心跟廣東省相關機構簽署很多相關的合作協議，主要是關於金融、保險，及與珠海市合作設立「金融糾紛調解室」。澳門和珠海因應國家政策，規定在橫琴設立一個深度合作區。因爲澳門與珠海的往來十分密切，所以跟澳門在仲裁和調解方面合作得最緊密的就是珠海。

關於《CEPA 投資協議》投資爭端調解機制，內地與澳門於 2017 年 12 月簽訂《〈內地與澳門關於建立更緊密經貿關係的安排〉投資協議》，簡稱《CEPA 投資協議》。《CEPA 投資協議》在投資保護方面上有相關規定。如內地投資者在澳門進行投資時，澳門特別行政區政府部門違反這些《CEPA 投資協議》的約定，內地投資者可以在澳門以友好協商、投訴協調、通報及協調處理、調解等方式解決爭端，而司法程序則是最後辦法。

澳門世界貿易中心仲裁中心獲澳門特別行政區政府指定爲司法投

資爭端調解的機構，負責處理內地投資者與澳門特別行政區政府之間屬於《CEPA 投資協議》範圍內的投資爭端。澳門世界貿易中心仲裁中心會按照這份協議的規定，委任 15 名《CEPA 投資協議》投資爭端調解員。同時，爲了確保調解員具備這方面的專業知識，我們亦聘請來自中國國際經濟貿易仲裁委員會的投資爭端解決專家來擔任導師。這些專家特地爲這 15 名《CEPA 投資協議》投資爭端調解員進行了特別的調解培訓。

最後部分是粵港澳大灣區調解工作委員會。於 2021 年 8 月，粵港澳三地成立了這個工作委員會， 主要是落實《粵港澳大灣區發展規劃綱要》。《粵港澳大灣區調解員專業操守最佳準則》亦於後來頒布。值得一提，剛才開幕致辭的時候，林定國司長亦有提及《粵港澳大灣區調解員資格資歷評審細則》。澳門特別行政區法務局亦於今年的 3 月 28 日，同步公布澳門特別行政區方面的《評審細則》，當中規定評審委員會由 5 位成員組成，分別是澳門律師公會 2 名代表，我所屬的澳門世界貿易中心仲裁中心 2 名代表，再加上 1 名來自澳門特別行政區法務局的代表。評審委員及細則是可以在澳門特別行政區法務局的網頁上查閱。評審委員會將在 10 月接受大灣區調解員資格申請，並按照《評審細則》規定選出調解員。

澳門在粵港澳大灣區多元爭議解決的平台上有其角色。粵澳將加強司法交流協作，建立完善的國際商事審判、仲裁、調解等多元化商事糾紛解決機制。另外，澳門要與橫琴粵澳深度合作區，保持十分緊密的合作。我們在橫琴設有我們的仲裁和調解的合作平台。

鑑於澳門的歷史、語言及法律背景，澳門成爲一個與葡語系國家，有頻繁法律接觸的平台。澳門本身亦是中國與葡語系國家商貿合作的平台。我們往後會發揮這個優點，希望進一步爲葡語系國家和大灣區的爭議當事人，將澳門建設成爭議解決，包括調解的平台。

澳門十分重視多元爭議解決服務，希望香港及廣東省調解專家日後繼續就多元爭議服務的各方面工作，指導澳門，並一起提升我們大灣區的法治服務水準。

多謝大家。

(劉洋先生, MH)

謝謝黃淑禧律師的精彩分享。我相信在座各位都了解澳門的調解機制及最新發展，特別是澳門作爲中國與葡語系國家之間商貿的爭議解決平台，及調解的發展潛力。黃淑禧律師的分享承先啓後，提到粵港澳大灣區調解工作委員會，以及今年 3 月 28 日三地發布各自的《粵港澳大灣區調解員資格資歷評審細則》。

接下來是彭韻僖律師 , BBS, MH, JP。她是 HKMAAL 理事，也是第十四屆港區全國政協委員，並於 2018 年至 2021 年期間擔任律師會會長，成爲律師會成立 111 以年來首位女性會長。有請彭韻僖律師爲我們介紹《粵港澳大灣區調解員資格資歷評審細則（香港特別行政區）》的具體規定，並預告相關資訊的發布渠道。

(彭韻僖女士, BBS, MH, JP)

剛才大家聽到粵港澳三地在調解方面的發展。黃吳潔華律師提及香港調解員如何參與大灣區並以調解解決爭議。主持人及黃淑禧律師亦提及 今年 3 月 28 日頒布的《粵港澳大灣區調解員資格資歷評審細則》。這對我們未來的發展是非常重要。

香港的定位是「背靠祖國、聯通世界」。企業在大灣區的發展越來越好之時，當中的商業活動及交易不可避免涉及爭議。正如羅博士所說，爭議時使用調解，好得不得了。我觀察到現在全中國的建設方向是「法治社會」，其中最重要的是「未病先防」。不論在香港、澳門或國內，如果任何爭議都是以訴訟解決， 那麼其限制就是成本高昂及法官人數不足。剛剛全國人民代表大會和中國人民政治協商會議全國委員會（全國兩會）報告現時內地的法官數目不足，並且會讓他們的工作量大幅增加，在過去十多年增加

了兩倍，實在應接不暇。故此，調解需要全香港所有朋友及大灣區所有朋友一起推動。

我順帶一問：「在座各位是否關注調解？在座有多少人是調解員或將會成爲調解員？」很高興在座大部分都是調解員。我今天所講說的題目與在座各位有着密切關係。今年 3 月 28 日頒布的《粵港澳大灣區調解員資格資歷評審細則（香港特別行政區）》列出調解員如何只在香港進行評審後，便可成爲大灣區的調解員。這意味着各位在未來數個月需要展開行動或進行培訓。

今日我會跟大家分享三個主題。第一，我會介紹《粵港澳大灣區調解員資格資歷評審細則（香港特別行政區）》（下稱「《大灣區調解員評審細則》」）。香港已經頒布這份文件，當中的細則構成一個框架，我們可以藉這框架評審申請者是否符合大灣區調解員資格。好處是規範化大灣區的調解工作，也可以令調解行業的發展更加專業化。第二，我亦會介紹設立粵港澳大灣區調解員名冊的程序。這名冊可以讓調解服務的使用者更容易尋找到大灣區的調解員。第三，我亦會向大家講解各項評審的要求。如果在座各位希望申請成爲大灣區調解員，便需要知道如何符合資格。

2019 年起，律政司聯同廣東省司法廳及澳門特別行政區行政法務司，每年都會舉行粵港澳大灣區法律部門聯席會議（下稱「聯席會議」），加強了粵港澳三地的法律交流及協作，以把握大灣區「一國兩制三法域」的優勢，爲企業提供更全面及完善的法律及爭議解決的服務。聯席會議於 2020 年通過了設立粵港澳大灣區調解平台的工作方案。粵港澳大灣區調解工作委員會於 2021 年 8 月成立。《粵港澳大灣區調解員資格資歷評審標準》於 2021 年 12 月獲得通過。這套評審標準是爲了讓我們三地法律部門制定評審細則。三方亦各自在 2024 年 3 月 28 日發布各自的資格資歷評審細則。律政司根據上述評審標準，推出香港適用的《大灣區調解員評審細則》。

評審方面， HKMAAL 獲指定爲處理經香港評審認可的大灣區調解

員申請的唯一機構。HKMAAL 的創辦成員爲 4 間不同機構，包括律師會、香港大律師公會、香港和解中心及香港國際仲裁中心。HKMAAL 通過網站及電子郵件發布有關大灣區調解員的消息，亦會接受相關申請。如果各位有興趣申請成爲大灣區調解員，可以向 HKMAAL 遞交申請，我們會提供專用的申請表格予有興趣的調解員。收到申請後，HKMAAL 會進行初步審查，審查申請人是否符合資格。若通過的話，HKMAAL 便會接納申請，然後開始審查有關申請人的實際調解經驗、履歷及個別情況。HKMAAL 將向律政司推薦合適的申請人，律政司會仔細考慮 HKMAAL 推薦的每一宗申請建議，將合適的調解員名單呈交粵港澳大灣區調解工作委員會審核，待聯席會議確定後形成統一的粵港澳大灣區調解員名冊。至於不成功的個案，HKMAAL 有相關機制處理申請覆核和投訴等工作。

接下來是評審要求。認可調解員須符合以下要求：須擁護《中華人民共和國憲法》、擁護《中華人民共和國香港特別行政區基本法》、《中華人民共和國澳門特別行政區基本法》及擁護「一國兩制」；須要成功完成指定的粵港澳大灣區調解員培訓課程；具備至少 5 年工作經驗；累計完成調解至少 5 宗個案；須要具備至少 3 年的調解員工作經驗及職業道德良好，未有因不良名譽或者違反職業道德受懲處的記錄。我會向大家解釋這些要求。

第一項要求是有關擁護《中華人民共和國憲法》、《中華人民共和國香港特別行政區基本法》、《中華人民共和國澳門特別行政區基本法》及擁護「一國兩制」。申請人在遞交申請時，須要簽署申請表夾附的書面聲明，以完成申請表。

第二項要求是須要完成指定的粵港澳大灣區調解員培訓課程。該等培訓課程是由 HKMAAL 認可的不少於 40 小時的調解訓練課程。經由 Grandparenting 成爲 HKMAAL 的認可調解員亦被視爲符合此要求。申請人亦須要完成由律政司指定的粵港澳大灣區調解員香港培訓課程。HKMAAL 是負責評審的機構，不會參與舉辦課程的事宜。

第三項要求是申請人須具備至少 5 年工作經驗，亦須提供證明，如僱主提供相關信件或公司人事部的記錄。5 年全職工作經驗沒有指定職業。簡單來說，只要是全職工作即可。調解員可來自各行各業。如果申請人是自僱人士，便須要提供相關證明，如公司的周年報表及稅單。

第四項要求是申請人須累計完成調解至少 5 宗個案，並提交相關證明。最簡單的方法是提供參與調解協議書。申請人須要作爲主要調解員或進行共同調解，這便可以符合資格。

第五項要求是申請人至少具備 3 年的調解員工作經驗。申請人須要提交其在一間或多間調解機構的名冊上，擔任調解員至少 3 年的證明。我認爲符合這項要求並不困難。申請人亦須提交有效存續名冊資格（Current Membership Status with Good Standing），如在 HKMAAL 的名冊列有申請人的名字。相關申請人須持有效存續名冊資格才可申請。

第六項要求是申請人必須職業道德良好，未有因不良名譽或違反職業道德受懲處的記錄。因爲要確保高標準的職業道德，所以申請人須要以書面確認。

剛才我只講解了六項要求及細節，大家亦可在 HKMAAL 的網頁上參閱詳情。此外，大家需要留意以下兩點。

第一，調解最重要的原則之一就是保密。因爲要確保申請者所提供的資料不會外洩，所以申請人遞交申請及所要求的資料時，必須恪守保密原則，切記要移除或妥善遮蔽所有不得披露的通訊或資料。

第二，若申請人在申請時希望申請豁免評審要求，便須要以書面形式解釋申請豁免要求的原因。

最後，大家可以在網上參閱完整《大灣區調解員評審細則》。

多謝大家。

(劉洋先生, MH)
謝謝彭韻僖律師的分享。

各位講者的分享非常豐富，讓我們了解粵港澳三地的調解發展、澳門及香港兩地有關調解員事宜及評審細則。

多謝大家。

Panel Session 2:
International Mediation: What Hong Kong has to offer?

Keynote Speech

Dr Sun Jin
Director-General of the International Organization for Mediation Preparatory Office

Distinguished Guests, Ladies and Gentlemen,

Good afternoon. It gives me great pleasure to deliver a keynote speech at the Mediation Conference 2024 – Mediate First: Bridge Cultures, Build Futures, and to share with you the concept and progress of the establishment of the International Organization for Mediation ("IOMed").

The IOMed Headquarters

I believe that many, if not all of you, would have heard the first good news in the Year of Dragon from the Secretary for Justice Mr Paul Lam, SC back in February – the Headquarters of the IOMed will be in Hong Kong. This important decision on the Host Country of the Headquarters was taken by consensus during the 3rd Session of the Convention on the Establishment of the International Organization for Mediation ("IOMed Convention") elaboration in January this year. China will serve as the host country of the IOMed and will be hosting the Headquarters of the IOMed in Hong Kong. The Hong Kong SAR Government would be entrusted with the construction and provision of the Headquarters under the guidance and support of the Central People's Government.

The Headquarters will be housed on the site of the Old Wan Chai Police Station, which is less than 10 minutes away from where we are now (the Hong Kong Convention and Exhibition Centre). I am very delighted to share

with you that this esteemed Grade 2 historic building will be converted into the future office of the IOMed by 2025.

Why Hong Kong?

Mediation is not a new concept to Hong Kong. In fact, there is a profound connection between the Chinese culture and the concept of mediation. At the same time, Hong Kong is one of the world-class international financial and legal hubs, famous for its unique and successful implementation of the "One Country, Two Systems" constitutional framework. It is a bilingual jurisdiction backed by a well-developed common law system and a government that lends great support to fostering the development of mediation. The local and overseas "Mediate First" Pledge Campaigns, as well as the biennial Mediation Conference, are examples of the many long-term commitments that the Hong Kong SAR Government has on promoting mediation locally and internationally.

Hong Kong has also been serving as a "super-connector", a connecting platform attracting foreign investments to Hong Kong and the Mainland. Hong Kong is also a "super value-adder", as it offers diversified professional services, comprehensive networks and all-rounded talents. Since the signing of the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA), the economic integration with the Mainland has been growing stronger than ever. It undoubtedly strengthens Hong Kong's strategic position under the Outline Development Plan for the Guangdong-Hong Kong-Macao Greater Bay Area ("GBA") and deepens its cooperation with cities in the GBA and along the Belt and Road Initiative Regions.

Moreover, Hong Kong has long been actively participating in relevant international organisations such as the World Trade Organization and the Asia-Pacific Economic Cooperation under the name "Hong Kong, China". There are over 260 multilateral treaties in force that apply to Hong Kong, and more than 250 binding bilateral agreements between Hong Kong and

over 70 countries. Offices and operations of inter-governmental organisations have been set up in Hong Kong. Today, Hong Kong is also pushing for the establishment of the Hong Kong International Legal Talents Training Academy and moves to be an international legal training centre. Enjoying its distinctive advantages of the strong support from the Central People's Government, and at the same time so closely connecting to the rest of the world, Hong Kong is the well-qualified city to be forged as the "Mediation Capital" and the excellent choice to establish the IOMed Headquarters.

The IOMed, once established, will be the first headquarters of an inter-governmental organisation to be hosted in Hong Kong. This would undoubtedly be a remarkable milestone for Hong Kong and its legal and dispute resolution sector. It would significantly enhance the status of Hong Kong as an international legal and mediation hub, attracting dispute parties, mediators, lawyers and other professionals to Hong Kong for its mediation and other deal-making activities and professional services. I believe that the opportunities would definitely create vast ripple effect to the other cities in the GBA and beyond.

Why IOMed?

When compared to other forms of dispute settlement mechanism, mediation stands out as a flexible and economical means to narrow down or resolve the differences between parties, especially when they value voluntariness, confidentiality, ownership of the process, creativity in settlement terms, and the preservation of long-term relationships and business interests.

Notwithstanding the development in the global dispute resolution landscape and the rising trend for mediation being a highly favourable dispute settlement tool, currently the existing dispute settlement organisations generally take mediation as a measure supplementary or prior to litigation or arbitration procedures. Given its long history of development, its global recognition, all the benefits it could bring to the parties and its still-to-be-used potential, why

could mediation not take the centre stage?

China and the like-minded countries have discovered the evident vacuum in the international dispute settlement landscape – the absence of an inter-governmental organisation on mediation services. They determined to address it by establishing the IOMed.

The IOMed is an unprecedented organisation – it will be the first and only treaty-based, inter-governmental organisation dedicated to resolving international disputes through mediation, covering cross-border commercial, investment as well as State-to-State disputes. It could become equally eminent as an international dispute settlement establishment like the International Court of Justice (ICJ) and the Permanent Court of Arbitration in The Hague (PCA).

It will transcend the limit of litigation and arbitration in which one side wins and the other loses, and it aims to realise win-win cooperation between disputing parties, which is of high significance for promoting world peace, security and development as well as stability of international order. Being an important effort to practise the principle of settling international disputes by peaceful means enshrined in the Charter of the United Nations, the IOMed will further enrich the mechanism and means of resolving international disputes.

Its establishment will also expand the list of global public goods of the century. Not only could it strengthen the international dispute resolution mechanism, rule of law and global governance system, it would also create more and better opportunities for active participation and representation of developing countries in the international dispute resolution sector.

Ladies and Gentlemen, you may wonder, in addition to other mediation institutions, why an inter-governmental organisation for mediation is being established. What is the added value? What is the distinction? I would like to

share my personal views from five aspects.

First, commitment. The establishment of the IOMed is driven by states, largely reflecting a strong political will of their governments to support mediation, which helps promote the use of mediation at both national and international levels. As an inter-governmental organisation, the IOMed is well positioned to mobilise political will and support for mediation in the international community. Being a member to the IOMed shows a country's emphasis on peace and mutually beneficial cooperation and recognition of mediation and its significance. The move will encourage individuals, enterprises, organisations, communities and the governments of all levels in the country to promote and utilise mediation.

Second, convention. The IOMed is based on international convention and will help to build an international legal framework in the field of international mediation, ensuring the predictability and reliability of mediation as well as enhancing the status and role of mediation. In the field of international dispute resolution, litigation and arbitration have well-established international law norms and systems, but mediation mostly exists in the form of institutional rules, model laws, and other soft law forms lacking legally binding instruments and uniform rules. The IOMed will, based on existing principles and practices, promote the harmonisation and development of international law in the field of mediation. The IOMed Convention will be the first global convention to formulate the fundamental principles and rules concerning international mediation, such as confidentiality, voluntariness, conflict of interest, etc.

Third, credibility. The IOMed stands for the most trustworthy provider of mediation services with state-backed credibility. As an inter-governmental organisation, the IOMed should be more neutral and independent compared to domestic institutions established within a country, especially when it comes to handling disputes involving different states. In the past years, though mediation is a very effective form of dispute resolution, representatives from

states seem reluctant to take the responsibility for a settlement. They instead prefer decision-making by a third party, such as a court of law or arbitral tribunal. The IOMed, as an organisation established and governed by its member states and focusing only on mediation, could be more authoritative and trustworthy, which can be relied upon to resolve disputes involving states by providing strong procedural guarantee.

Fourth, capability. The IOMed maintains panels of world-class mediators with reputation and influence. The quality and results of mediation count on the mediators. They are the magicians who make the difference. Mediators of the IOMed will be designated by states, through official procedures to represent the highest standards and quality. They are the most outstanding figures with high moral character and recognised competence in specialised fields such as mediation, law, diplomacy, international relations, commerce, industry, finance, etc. In this regard, the mediators from developing countries will gain a more equal and meaningful playing ground.

Fifth, co-ordination. The IOMed will help foster a better ecosphere of mediation. It is said that mediation is one of the most effective yet most underutilised dispute resolution methods. As the first inter-governmental organisation specialising in mediation, the IOMed will strive to push and lead the development of mediation with all stakeholders. Joining hands with other international organisations as well as mediation institutions, the IOMed will make efforts to cultivate mediation culture, explore and promote the best practices of mediation, and organise forums and conferences on mediation at international, regional, national, and local levels to facilitate capacity building and information sharing among all parties. It will work to expand the pool of mediation talents and enhance awareness and capabilities of government officials and other private end users in utilising mediation to resolve disputes more frequently and willingly.

Ladies and Gentlemen, I am also very happy to report that, since its inauguration ceremony in February 2023, the Preparatory Office of the

IOMed has successfully held three sessions of negotiation for the IOMed Convention in Hong Kong. The sessions were attended by the countries which already represent more than two billion population across the globe. I am confident that with the staunch support and cooperation of the participating states, the goal to complete the elaboration process of the IOMed Convention in around 2 years would surely be achievable.

Conclusion

Ladies and Gentlemen, in order to build a more harmonious and sustainable world, we need to promote the greater use of mediation!

The IOMed is here to build the future! We will be stand-alone. We intend to stand high. We hope to stand firm, and to stand together, with all of you to build that future!

Panel Session 2:
International Mediation: What Hong Kong has to offer?

Panel Discussion

(Transcript)

(Ms Anna K. C. Koo)
It is my great honour to introduce the speakers of this Panel.

Mr C. K. Kwong, JP is the President of the Hong Kong Institute of Arbitrators and Senior Partner of SFKS CK Kwong, Solicitors. He is also the International Past President of the Asian Patent Attorneys Association (APAA). He is qualified to practise law in Hong Kong, the Guangdong-Hong Kong-Macao Greater Bay Area ("GBA"), Australia (Victoria), England and Singapore. His practice covers arbitration, mediation, intellectual property ("IP") and injunction proceedings, public and private corporate transactions, China projects, complex commercial litigation and mega property transactions.

In addition to law practice, Mr Kwong is a Chartered Arbitrator, Accredited Mediator and Notary Public. He is listed on a number of panels, including the Chartered Institute of Arbitrators, the World Intellectual Property Organization ("WIPO"), Shenzhen Court of International Arbitration, and Zhuhai Court of International Arbitration. Due to his contributions to IP protection, he has been appointed by the Hong Kong SAR Government as Justice of the Peace.

Our second speaker is Mr Lianjun Li. Mr Li is a Senior Partner and Head of the transportation and commercial litigation department of Reed Smith Richards Butler LLP. He is the Chairman of the China Committee of the Hong Kong Maritime Arbitration Group ("HKMAG"). He is qualified to practise law in Hong Kong, England and Wales, and the GBA. He is

also a China-Appointed Attesting Officer in Hong Kong. He has extensive experience in dealing with legal issues and disputes in relation to international trade, commercial transactions, transportation, shipping, ship finance and sale and purchase, cross-border investments, and international commercial and shipping litigation and arbitration.

In addition to legal practice, Mr Li is a fellow of the Chartered Institute of Arbitrators. He is also listed on a host of panels including the Law Society of Hong Kong ("Law Society"), the Hong Kong International Arbitration Centre ("HKIAC"), the China International Economic and Trade Arbitration Commission, the China Maritime Arbitration Commission ("CMAC") as well as the respective arbitration centres in Beijing, Shenzhen and Singapore. He has been recognised by Chambers and Partners, Legal 500 and Who's Who Legal, and China Business Law Journal as a leading shipping lawyer for many years.

The third speaker will be Ms Cecilia Lau. Ms Lau is a Consultant at Deacons. She specialises in family law and family dispute resolution. She has extensive experience in a wide range of matrimonial and family-related matters, including divorce and separation, financial proceedings ancillary to divorce and separation, including injunctive relief to preserve assets, proceedings relating to children and pre and post-nuptial and separation agreements. In addition to law practice, she is an experienced Accredited Family Mediator, Family Mediation Supervisor, Trainer and Coach in various family mediation courses. For over two decades, she has been actively participating in the development and cross-professional collaboration of family mediation, as evident in introducing parenting co-ordination in Hong Kong.

Ms Lau has been recommended in the area of Private Client and Family (Hong Kong) in Legal 500 Asia Pacific. She also contributes to the well-being of community and holds various positions in the Hong Kong Family Welfare Society and the Catholic Institute for Religion & Society Limited.

Without further ado, I would like to invite our first speaker, Mr Kwong, to share his view on international mediation in the context of IP protection.

(Mr C. K. Kwong, JP)
Thank you very much, Anna, for your kind introduction.

Good afternoon, Ladies and Gentlemen. It is a great honour and pleasure to be invited by the Department of Justice ("DoJ") on this Panel to share my thoughts with you today. My topic is to discuss the resolution of IP disputes by mediation. I will share with you the background of IP disputes, why mediation is attractive in resolving IP disputes, and also why Hong Kong.

To begin with, let me list out the types of IP dispute which are suitable for alternative dispute resolution ("ADR"). They usually arise under contracts, with IP as part of the subject matter.

We have moved from a knowledge-based economy to an IP-based economy. But what is IP? I will list out some of the IP for you: trademarks, patents, copyrights, designs, plant variety rights, trade secrets and confidential information. These are properties which are intangible and you cannot touch them. They are important assets in the balance sheet of companies, therefore we have to take them seriously. There are similar rights like domain names, company names, geographical indications which are kinds of IP rights but not exactly IP.

The increase in IP rights has led to an increase in the awareness of IP rights, which has in turn led to more disputes. Resolving disputes in different settings and different subject matters requires different skills and methods, with mediation being one of them. So I will list out the types of contract under which IP disputes can arise, like patents, knowhow and trademark licences, franchise agreements, computer contracts, multimedia contracts, distribution contracts, joint ventures, and research and development contracts and others.

Now, there is some general background on the trend or the need for ADR in resolving IP disputes.

First, international trade and commerce. The growth of such activities means that parties in different parts of the world are involved. Nowadays, contracts are much more complicated than before. In the past, we may have contracts between one party and another party (i.e. one-to-one). Later, we may have contracts between one party and many parties (i.e. one-to-many) or contracts between many parties and one party (i.e. many-to-one). For example, in a typical IP licence agreement, there may be licensors of different IP rights licencing the right to use certain technology by a licensee. These IP owners forming a group of licensors to licence relevant rights to one licensee. Of course, there are many licensees as well but under different contracts. Thus, you have contracts of one-to-one, one-to-many, many-to-one and many-to-many. Contracts become complicated and then we add the international elements to it because parties come from different parts of the world that the contracts may cover several jurisdictions. It may cover the whole of North America or just Asia in which there are many countries meaning having many different sets of laws. If someone is to enforce rights under a contract, it may involve several jurisdictions. Without a method to resolve all the disputes in various jurisdictions in one go, you have to start legal proceedings in different courts under different sets of laws, hiring different sets of lawyer. It becomes extremely cumbersome. This leads to a major push for ADR in resolving IP disputes.

Then we have technical subject matters because very often, subject matters concerning IP rights may involve biotechnology, organic chemistry, mechanical engineering and maybe a combination of them. These are technical matters which are not usually dealt with by courts in the usual way, because courts usually deal with normal commercial disputes and criminal cases. The judges hearing those IP cases will be in a difficult position and also normally judges have no scientific background.

On the other hand, I would explain later on that one of the reasons for choosing an arbitrator is to choose the expertise he has in particular fields of technology. In the field of IP, confidentiality is very important. In open court, sometimes witnesses may be called to give evidence on certain technology which may be a commercial secret or confidential information. If this happens, the technology concerned will become public and it may upset both the licensor of the IP and the licensee of the technology because of different commercial interests involved. Apparently, the licensor does not want his technology to be open to the public. Especially if it is confidential, he does not want to disturb the licencing scheme structure.

The next one is time, costs and abuse. Legal systems in many parts of the world are often criticised for having proceedings which are too slow, too costly and too complicated which lead to abuse. To put it simply, mediation is a private, non-binding and third party facilitated process for the parties to reach their own agreement to settle a dispute. A mediator is not a judge, an arbitrator or a legal adviser and his aim is not to determine who is right or wrong. To summarise, mediation is a highly specialised form of negotiation with the assistance of a third party neutral. The general advantage of mediation is, of course, that you can have one single solution which avoids problems about choice of law in different jurisdictions and there can be out-of-the-box solutions.

For example, a party may claim for delivery of goods under contract, then the other party may file a defence or counterclaim for something relating to the subject matter of that particular contract. In mediation, the parties can go out of the scope of that contract or the dispute surrounding that particular contract and may actually add other terms which are of commercial benefit to the parties as part of the settlement.

Another advantage is, of course, to have a neutral mediator. It is important because to have someone neutral resolve your dispute is a very important consideration. If you have litigation in local courts, there may be a home

ground advantage which you do not know whether it is on your side or on the other side. You have a neutral person dealing with the resolution of the dispute and this will give you a sense of comfort. It is equally important to have a choice of mediator with relevant experience. If you have someone guiding you along the way avoiding all unnecessary discussions and focusing on the right issues, it could expedite the process, as opposed to arbitration and litigation. You have the finality of the dispute instead of having, as is the case of litigation, first instance hearing decision, appeal and final appeal. Of course, as we have mentioned before, the issue of privacy is important.

Types of mediation. When I was trained as a mediator, my tutor told me if the parties in mediation ask for mediator's opinion, the standard answer should be that "my opinion is irrelevant, so don't ask me." This approach is still the current mainstream approach which is "Facilitative Approach" under which a mediator does not give legal or other professional advice to any party. The sample agreement of the Law Society provides for such situation.

In 2015, in my report to the Hong Kong SAR Government on promoting Hong Kong as an international IP trading hub, one of the recommendations I made was to study and introduce evaluative mediation as a method for mediation. This would give the mediator an opportunity to express an opinion on the merits of the case which is sometimes important, especially if you have an experienced mediator in that subject matter, because it can avoid misjudgments by both parties. It will be a rights-based mediation but with safeguard because whatever views expressed by the mediator will be based on the evidence so far available to him at that particular point of time. The parties have to be aware of this qualification. The beauty of this is that whatever views expressed by the expert mediator, it is always subject to the advice by the party's own legal advisers. Therefore, there is safeguard in place and in any case, the parties can walk away and disregard the expert mediator's views.

In my view, there is no need to distinguish or to choose one form of

mediation over another. In practice the element of evaluation should come from the perspectives of the parties. When a dispute has arisen, they will have to consider whether they will win or lose that case. They will consult their lawyers and ask for opinion. From the perspective of a mediator, after receiving the papers, my natural reaction is to read the papers and see what is wrong, what the issues are, whether the merits are on a particular side or on the other side or whether it is a very difficult issue to resolve. The mediator would form a view. There is an evaluative element.

I believe, in practice and also in the course of mediation, there is a process of probing reality exercise. The mediator asks probing questions in the form of evaluation. Although he does not say that it is his view, the way he asks questions may lead to answers which may point to some conclusions. The main point is perhaps that if the parties choose to let the mediator express his view on the merits, it should be done at the end of the mediation process rather than at the beginning. The parties should be allowed to give their views first.

Article 14(a) of the WIPO Mediation Rules states that "the mediator shall promote the settlement of the issues in dispute between the parties in any manner that the mediator believes to be appropriate, but shall have no authority to impose a settlement on the parties." This very broad wording allows the parties to adopt any kind of method. Actually, the WIPO is very clever in crafting that kind of wording.

Compared to litigation and arbitration, mediation has particular attractions generally, that it is relatively cheaper, quicker and confidential. One thing which is very important to the people in this part of the world is the face-saving aspect that there is no right or wrong as it is just a commercial decision. Thus, face is saved. If you agree to a settlement, there will be no problem in enforcement, but problem can arise. We have experienced that before. After settlement, disputes can also arise and the disputes under the dispute settlement may also be subject to further mediation.

It is very important to resolve disputes in IP quickly because IP rights have limited period of time. For example, patent only has a life of 20 years while registered design may only have a life of 10 years subject to variation. Copyright has a longer duration. Given that there is a time limit for the enjoyment of those rights, you have got to enjoy them when they are there. Delay means being unable to benefit from the rights during its effective life.

Tribunal decisions may be unpredictable. There is one quite famous case named the Hoover case where litigation proceedings on infringement of patent had taken place in the United Kingdom and Germany respectively with totally different results. Sometimes tribunal decisions are not so certain.

In the IP context, when it comes to licensor-licensee situation, the parties want to maintain the ongoing relationship and it is not very nice to have a fight.

One particular product embodies many IP rights. For example, your mobile phone may involve hundreds of patents. Actually, parties in the IP world have to cross-licence between each other. It is not very nice for such cross-licensors to have claims against each other.

In many countries with many different laws, the arbitrability of IP rights is uncertain. There are different degrees of arbitrability in different parts of the world. Hong Kong has offered a solution. In 2017, I proposed an amendment to Part 11A of the Arbitration Ordinance (Cap. 609) which gives statutory guidance stating that all IP disputes are arbitrable, including the validity of any registered IP rights, which usually rests with the Patent Office or the Design Office or the Trademark Office. If we adopt Hong Kong law as the law governing the arbitration agreement and Hong Kong as the seat of arbitration, we do not have any problem which relates to the provisions under the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards (New York Convention). Under many sets of laws, there is the arbitrability issue. If we go for mediation, we do not have such

issues. The alternative is to adopt Hong Kong law.

There are several types of IP dispute which are not suitable for mediation. In the case of a bad faith counterfeiting, you cannot mediate with someone selling counterfeits as these involve criminal proceedings. Also, it is against public policy to settle criminal proceedings. In any case, you cannot settle with or mediate with someone like that. In the case of a party who needs a judicial precedent to guide the future or to scare people off and warn them not to infringe your particular IP, you need a court decision to do that.

I will wrap up by a few sample cases. One of the cases involves a sale of jukebox radio CD player where the buyer was an exporter while the seller was a manufacturer. The buyer (the exporter) was concerned about the delivery time and the quality of the goods so he did not want to pay before delivery. On the other hand, the seller (the manufacturer), of course, wanted to secure the payment before delivery. There was an impasse. If the buyer (the exporter) did not take delivery, could the seller (the manufacturer) sell the products ordered by the buyer (the exporter)? You might have thought the answer is affirmative. However, it was not that simple because the goods had been designed by the buyer (the exporter) who thus had copyright in that product. If the seller (the manufacturer) sold the goods without the consent of the buyer (the exporter) who commissioned the creation of the copyright, there would be an issue of infringement of copyright.

On the other hand, when the buyer (the exporter) ordered the goods from the seller (the manufacturer), the seller (the manufacturer) made modifications to the goods. Did the seller (the manufacturer) have copyright in those modifications? There was no easy answer. One was worried about payment while the other was worried about non-delivery and receiving defective goods. Eventually, the parties went for mediation during which both bosses had to meet each other. As a result, communication gap between the two parties was bridged leading to adjustments to the design of the goods with the purchase price adjusted to the satisfaction of both parties and there was an

agreement in principle for future orders meaning more business in the future. It created a very conducive environment for the parties to reach the settlement and to get the goods from the factory for shipment to the hands of ultimate buyers for Christmas. They were all achieved within one week. Tension was defused and complicated litigation was avoided.

There was another pretty interesting yet complicated case involving various parties. An American company owned the rights to a play and signed a contract with a Hong Kong party to arrange for the stage of the play in the city. Then, a dispute over the time for payment arose where the American company decided to terminate the contract. On the other hand, the Hong Kong party rented a premises for the performance of the play and thousands of tickets were already sold in Hong Kong. The American company threatened the theater owner that if he allowed the Hong Kong party to show the play in his premises, it would sue the theatre owner under section 33 of the Copyright Ordinance (Cap. 528) for allowing the premises to be used for an infringement to take place. It was very complicated with many parties involved if taking into account the audience who bought the tickets. The parties had a meeting with a very bad atmosphere and no conclusion could be reached. However, they were able to arrive at an interim measure - the theatre owner terminated the contract with the Hong Kong party and returned the deposit although the theatre owner was entitled to forfeit the deposit. All proceeds of ticket sales would be paid into a suspense account. The parties agreed that after the deduction of all the expenses, the suspense account would be kept and the residual amount would be paid to the party who would be ultimately entitled to the money. At least, the play could go on and people who had brought the tickets could go to their show without having a riot. The dispute was later resolved. However, at that point of time, in the absence of the interim measure, the issues were so wide ranging that they were totally unmanageable. At least, the interim measure mitigated the parties' damages and also confined and reduced the areas in dispute. This case perfectly demonstrates that it is no use in determining who is right and who is wrong. Third party's interests prevail.

The last case is a dispute in relation to smart phone where Apple sued Samsung and vice versa resulting in 50 filings in over 10 countries. The case had gone too far for any settlement, or the parties had not had enough incentive to settle yet, therefore it could not be settled. It shows that sometimes parties can reach a stage where is beyond settlement.

Touching on "why Hong Kong", Dr Sun has in his keynote speech explained the special qualities of Hong Kong and restated the Central People's Government's support for Hong Kong as an ADR hub. We possess some well-known advantages like geographical convenience, pool of specialists, common law legal system and bilingualism. The main point I wish to add is that Hong Kong is a very special place with its particular history as a result of which we have the soft power to be a mediation hub.

Beginning in 1945, we had refugees from China. In 1960s, the Korean War broke out followed by a trade embargo forcing us to transform from an entrepot trade to a manufacturing-based economy. There was the opening of China in the 1970s, which has built up our manufacturing industry. Thereafter, Hong Kong was handed over to Mainland China in 1997 shifting us to another economy. What do all these mean, in addition to the above general qualities? These mean that Hong Kong has through history become a very unique place with unparalleled advantage to be a hub. Hong Kong is like a hook which attracts many things like important markets, commercial, legal and intellectual capitals, IP owners and IP users in Mainland China and from all over the world. It is a place for making deals. Commerce, trade and transactions come with disputes. In the event of dispute, you should look to Hong Kong for resolution.

Thank you very much!

(Ms Anna K. C. Koo)

Thank you very much for your kind presentation, Mr Kwong. I have three takeaways from his speech that I would like to summarise for you.

I could not agree with him more that there is no pure form of facilitative mediation. Parties and circumstances actually demand the use of both evaluative and facilitative skills in mediation. I would like to draw your attention to his point concerning the attractions of mediation in the IP context. In particular, he highlighted that IP rights have limited shelf life and therefore time is of the essence for us to resolve the disputes. For IP protection, ongoing relationship between the parties is important. Also, IP rights are usually bundled in one product, and the issue of cross-licencing makes mediation preferable to arbitration. I think he made the point of why arbitration has been used for resolving IP disputes all along, and why mediation may be better than and preferable to arbitration. He also made the point that arbitrability is uncertain in many jurisdictions. He finally concluded with Hong Kong's advantages, addressing the topic of today's Conference and framing Hong Kong as a deal-making hub for international mediation.

Without further ado, I would like to invite our second speaker of this Panel, Mr Li.

(Mr Lianjun Li)
Good afternoon, Distinguished Guests, Ladies and Gentlemen.

First of all, thank Anna for the kind introduction. I am very honoured to be invited by the DoJ to give a presentation on what Hong Kong can offer in terms of mediation in maritime disputes. In my talk, I will cover four aspects including the current trend and issues of global maritime disputes, the development of mediation in maritime disputes, Hong Kong's role in maritime arbitration and mediation and the reasons for choosing Hong Kong, and way forward and conclusions.

To start with, I would like to first outline the current trend and issues of global maritime disputes. As you have probably known from the international media, Houthi attacks on the commercial vessels transiting through the Red Sea have caused a lot of issues. In the past vessels would pass through the

Red Sea and the Suez Canal, then go to Europe. Nowadays, vessels have to reroute to the Cape of Good Hope resulting in increasing the distance. Do you need to pay more freight? But you have a contract of carriage. There are a lot of disputes concerning this kind of issue.

The second one is Ukraine and Russia. You may note that this international conflict has led to a lot of disputes. Also you have probably heard that after Russia invaded Ukraine, there were about 500 vessels stuck in the Black Sea. The cases are still ongoing. Personally, I have handled cases where a few vessels have been stuck there for over two years with lots of issues happening.

The third one is sanction issues. Probably you have heard many countries would impose sanctions against parties in different countries if they violated the national policies. That caused a lot of concerns and disputes arising from maritime contracts.

The fourth one is new environmental and technological implications and requirements. As probably you have heard, if a vessel goes to Europe, you have to pay the European Union's Emissions Trading System (EU ETS). Again, this is causing a lot of issues. As you know, maritime transport (shipping) carries more than 90% of international trade. Therefore a lot of things are happening in the maritime world.

Regarding mediation in maritime disputes, we have seen mediation whether in general or in the shipping industry has been increasingly trendy. Nowadays, the shipping industry has recognised mediation as a model of dispute resolution to work hand in hand with maritime arbitration. This is probably attributable to the core features of mediation, i.e. speediness, flexibility and confidentiality as Mr Kwong has mentioned.

Mediation, in general, as you know, has been used informally for centuries as an amicable method in resolving disputes. In China, mediation or conciliation

has been applied in civil procedures for many years. Nevertheless, in common law countries, mediation has only formally, as you remember, been considered as a form of dispute resolution method in the United Kingdom since 1999 when the Woolf Reforms started. Hong Kong introduced its own Woolf Reforms to its own mediation system with the Civil Justice Reform commenced on 2 April 2009. Specifically, the Practice Direction 31 addresses the issues relating to mediation and applies to all civil matters, including those within the maritime or admiralty jurisdiction of the courts.

In China, the Chinese maritime courts or China's maritime administrations have been conducting mediation for many years. If you make a claim on a particular maritime incident such as ship collision and one of the mediators is the maritime authority, they are obliged to conduct mediation over marine casualties.

In the Western world, maritime mediation came into the limelight when the Baltic and International Maritime Council ("BIMCO") representing 90% of shipping organisations developed a standard dispute resolution clause incorporating an option to mediate in a standard form in 2002. In 2021, in view of the time and the costs associated with the court and arbitration procedures, the BIMCO also developed a standard clause to include ADR such as mediation, early neutral evaluation, and early intervention. Given that mediation continues to be more widely used in parallel with an increase in maritime disputes, more arbitration centres are now providing mediation service. For instance, in the standard contracts of the London Maritime Arbitrators Association ("LMAA") , the parties in dispute will be asked to indicate whether mediation is desirable. The parties have to answer this question before the formal procedures commence. A lot of maritime organisations have adopted the mediation procedures such as the LMAA/ Baltic Exchange Mediation Terms. The CMAC also has its mediation rules. That shows maritime mediation is very popular. As a lawyer, I have told my colleagues in the maritime trading world that if we do not advise that there is an option to mediate, then we would be negligent. It is very important for the

legal professionals to encourage people to settle the disputes.

The next is Hong Kong's role in maritime arbitration and mediation and the reasons for choosing Hong Kong. As Dr Sun and Mr Kwong has mentioned, Hong Kong is unique, in particular its location, that we can reach 50% of the world population. More importantly, in the shipping world, Hong Kong is a full-service centre and the fourth largest shipping registry in the world with about 2,000 vessels flying Hong Kong flag and doing international trade. For insurance, 11 out of 12 the International Group of Protection and Indemnity (P&I) Clubs have set up offices in Hong Kong. The China P&I Club is not an international member, but has office in Hong Kong. Most international maritime law firms have offices in Hong Kong. Surveyor companies have also established offices in the city. The largest ship managers are located in Hong Kong. Major ship leasing companies are based in Hong Kong. Most importantly, the business friendly policies give the maritime sector in Hong Kong an advantage that is very hard to replicate.

Hong Kong is a leading maritime jurisdiction in addition to the services. As one of the speakers has said, "One Country, Two systems" guarantees Hong Kong a high degree of autonomy. The BIMCO, the largest shipping organisation, listed Hong Kong as one of the four arbitration centres in their standard contracts in 2020, with the others being London, New York and Singapore.

Hong Kong has, of course, strong support of both the Central People's Government and the Hong Kong SAR Government in developing Hong Kong as an international financial, transportation, trade and international legal dispute resolution hub in the Asia-Pacific region.

We are very proud that in the National 14th Five-Year Plan the Central People's Government listed Hong Kong as the centre of dispute resolution including maritime centre. We have also a unique arrangement with the Mainland, i.e. 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. Thus, we are a leading maritime jurisdiction in the world that facilitates dispute resolution and mediation.

What about the current status of maritime mediation in Hong Kong? As Mr Kwong has mentioned, the Mediation Ordinance (Cap. 620) provides a framework of mediation in Hong Kong with the objective to promote, encourage and facilitate the resolution of disputes by mediation and to protect the confidential nature of mediation. In Hong Kong, there are two major mediation organisations, one of which is the HKMAG which was formed in February 2000 as a division of the HKIAC and was tasked with a special purpose to promote the use of maritime arbitration and mediation in Hong Kong. Both the HKIAC and the HKMAG keep a list of well-known maritime arbitrators. Foreign mediation are also welcomed to be held in Hong Kong. A lot of maritime mediation have been conducted in Hong Kong.

One of the cases demonstrates how you promote or help the parties to mediate. A few years ago, The Hon Mr Justice Russell Coleman was a mediator and a maritime counsel. We had a very complicated case involving English law and the arbitration was conducted in London. Our client was a listed company in Hong Kong. This multi-million US dollar case was not without legal risk. So why not mediate? The other party proposed a well-known mediator in Hong Kong whose charge was HK$3,000 per hour. We thought we should have a more senior mediator, therefore we invited The Hon Mr Justice Russell Coleman to be the mediator of the dispute. He agreed but informed us that his hourly charge was HK$9,000.

The difference in the mediator’s fee between these two proposals amounting to HK$6,000 would be paid by our client. Therefore, we had a mediator who could be trusted by both parties.

Normally mediation lasts for two days. On the first day, the parties will

start arguing until late in the evening without reaching settlement. Our case followed a similar pattern with one day for reading and the other day for mediation. Until 9:00 p.m. of the second day, it was far from finishing the mediation and we were about to end the meeting and leave. Then The Hon Mr Justice Russell Coleman proposed a settlement amount which was beyond both parties' authority to accept. He further suggested that both parties make a settlement agreement subject to the respective boards of directors' approval within ten days. If it was approved, settlement would be reached. If nil, no settlement would be reached. The reason why he proposed this was because if both parties had left that day, they would have fought all the way. On the ninth day, both parties started talking to each other and the settlement was reached on the tenth day.

Mediators are normally trained not to take a position or to advise but to facilitate communications between the parties in dispute. This is a very interesting example showing the reason why the parties in dispute hire a mediator - they want to have someone in addition to their internal and external legal teams. On the contrary, mediators in many cases normally go through one room to another and pass information rather than take any view.

Another case has to do with a maritime mediator from London called Stephen Ruttle who is a King's Counsel and a full-time mediator now. He has come to Hong Kong many times to mediate. During mediation, his first question for us was how much each party in the dispute had spent so far. Both parties replied that they each had spent half a million dollars. Then he asked what the claim amount was, 5 million or 10 million dollars. Finally, he was very successful. Although he did not push like what The Hon Mr Justice Russell Coleman did, he was very good. In Hong Kong, many maritime arbitrators like Philip Yang also provide mediation service.

Concerning way forward, I believe particularly that due to Hong Kong's unique location and tradition, mediation will be continually and increasingly used by the parties in dispute. Hong Kong is in a unique position to ride on a

new wave of mediation and succeed as a global maritime dispute resolution hub for the following reasons.

Firstly, China is emerging as a dominant global maritime power, which could almost eventually lead to an increase in maritime disputes involving Mainland parties. Secondly, the support of the Government plays a very important role in promoting the use of mediation and arbitration to resolve disputes. The comprehensive legal system and our pool of competent maritime professionals will certainly attract the use of mediation and also arbitration. As Mr Kwong has mentioned, our bilingual ability and our understanding of Western and Eastern cultures will also help.

On that note, I would end my speech. It is my honour to be invited to this wonderful event and to discuss the mediation issues with our distinguished panellists.

Thank you for your attention.

(Ms Anna K. C. Koo)
Thank you very much for your experience sharing, Mr Li.

I was particularly drawn to the two illustrations about mediation that he has suggested. First of all, the fees charged by our reputable mediators in the maritime jurisdiction. More importantly, as Mr Kwong has mentioned, there is indeed no need to choose between facilitative and evaluative mediation skills because as you can see from the first scenario that Mr Li has mentioned, it is crucial that a mediator, at the right time, actually makes an offer to start the negotiation ball rolling again. Also just like the promotion of mediation by the Judiciary recently in Case Settlement Conferences, the legal cost to date is another incentive to help the parties to settle disputes. These features, I would say, make mediation distinct from arbitration.

Mr Li, right at the beginning, showed us some unique features in maritime

disputes. Not only are maritime disputes issues between the chartered parties, but they are also relevant regarding regional stability, sanctions risks as well as the development of technology and environmental concerns. He also mentioned that rules of the leading maritime arbitration commissions request parties to consider whether mediation is worth trying, which is another incentive to push and boost the use of mediation in this context.

Similar to what Mr Kwong has mentioned, he considers that Hong Kong is a deal-making hub, not just from the historical perspective, but also in terms of the volume of trade in maritime.

Thank you for your sharing, Mr Li. Now I would like to invite Ms Lau to come on stage. Thank you.

(Ms Cecilia Lau)
Good afternoon, Distinguished Guests, Ladies and Gentlemen, Friends and Companions!

Thank you for giving me this opportunity. Thank the DoJ for inviting me to talk about mediation in relation to the family offices in Hong Kong.

To start off, let me describe what a "Family Office" is. In short, a "Family Office" is an organisation that provides services to one or more high-net-worth families. "Family Office" is a developing concept with no set definition, as this can vary from one to another depending on circumstances and needs. Functions and services provided by a family office can be very wide-ranging. Some typical services would include financial planning, advisory strategy and governance. I am referring to all three types of family office, i.e. single-family offices, multi-family offices, and embedded family offices.

For a single-family office, it is controlled by one family. As such, the office can provide tailored advice to each family member according to his or her

own needs.

For a multi-family office, it serves more than one family and is typically run as a commercial business. In some circumstances, multi-family offices may need to obtain licences from the Securities and Futures Commission.

For an embedded family office, it is usually an informal structure embedded within the business owned by a family.

Family offices are becoming increasingly popular in Hong Kong. According to the Deloitte's Market Study on the Family Office Landscape in Hong Kong dated 18 March 2024, there were around 2,703 single-family offices in Hong Kong as at the end of 2023, of which 33% were within the wealth tier of over US$100 million. With the city's highly open and internationalised market, rule of law and a free flow of information and capital, it is expected that there will be an increasing number of ultra-high-net-worth individuals around the globe selecting Hong Kong as their preferred location to establish their family offices.

What are the potential disputes that family offices have to handle? A family office is usually the private wealth manager of a high-net-worth family to provide focused and better risk management. Apart from centralised and professionally managed investment activities, it usually provides financial planning services to each family member, which would help them to achieve their lifetime goals. There could be different views among family members leading to potential disputes, for example on the investment strategies or charitable donations. This is especially so when there are different camps within one big family.

Family offices provide governance and strategy services. A family office provides a centralised record keeping for all family members for privacy and confidentiality. It also provides estate and succession planning services to avoid future family disputes. It would understand what is important to the

family and its current and future needs. It would execute strategies which preserve wealth across generations, like establishment of trust structure, philanthropic and charitable initiatives, and structuring. Family offices would often be asked to provide trainings and education to the family's next generations in areas such as wealth management and good family governance to impute the family's virtues and values. Potential disputes may include the control and succession of family business by different family members or other wills, and probate disputes.

Family offices also provide advisory services. With high-net-worth family members being increasingly mobile, who often live in multiple jurisdictions and travel extensively, the advices can be multi-jurisdictional. On a global level, there could be potential external disputes with government bodies on tax or property interest, which may lead to litigation.

What are the benefits of mediation to potential disputes handled by family offices? For internal disputes, in other words, the disputes within family members or among family camps who have close relationship, mediation is confidential and "without prejudice". There is no loser in mediation. Those in close relationship usually have high emotion when they have disputes. Mediation process can help stabilise their relationship and their emotions will be properly handled. As we want to achieve a win-win situation, common interests and goals can be discovered for long-term benefits for the high-net-worth family as a whole. Active communication can be facilitated and solutions can be tailor-made. Even creative and innovative options can be generated for future planning of the high-net-worth family.

For external disputes, for example disputes with service providers or business partners of these high-net-worth families, mediation is also advantageous. Mediation is non-adjudicative and timesaving. Similar to internal disputes, high-net-worth individuals and families care about privacy and confidentiality, as they are usually reputable figures under public scrutiny. Mediation helps to ensure confidentiality and privacy during the process.

Considering the nature of potential disputes which family offices would handle, I think that eBRAM International Online Dispute Resolution Centre Limited ("eBRAM"), being an online mediation platform, is suitable. I am very touched by the passion of eBRAM's CEO and her team in promoting online mediation. I am sure that they are very interested in providing services to cases relating to family offices.

What Hong Kong has to offer? Hong Kong's central location in the GBA offers unrivalled access to the GBA investment opportunities. Around 23% of ultra-high-net-worth families in the Mainland are based in the GBA. Hong Kong is an attractive location for family offices since it opens up many East-meets-World wealth management opportunities for them. Hong Kong is best known for being an international financial centre and a strong financial hub. Hong Kong has broad access to different services of an international standard that family offices need. Hong Kong has a large and multi-cultural workforce of experienced, talented and skilled professionals to serve family offices, including Hong Kong-based mediators, of course. Hong Kong offers ease of doing business and has a well-known simple tax system.

Without doubt, it has been taking decades and unmeasurable efforts of many to grow and develop what Hong Kong now has. I would like to share my personal observation as to how Hong Kong mediation has been contributing in the past 30 years to what Hong Kong now has to offer to the family offices in Hong Kong. I witnessed that there has been an increasing number of experienced professionals in legal, financial and other industries who would work with family offices and private clients attending mediation training courses. Some of these courses offered Chinese menus and were taught in Chinese. Some experienced practising family mediators had day-to-day practice in handling complex disputes involving high-net-worth families with high emotion and close relationship. Hong Kong has these very competent and experienced practising mediators to take up even complex cases of disputes relating to ultra-high-net-worth families. Many stakeholders of family offices and even members of ultra-high-net-worth families have been

learning mediation and participating in seminars or courses of mediation. I am sure that they would seriously consider mediation when facing potentially contentious matters.

Mediation has been so developed in Hong Kong that our Judiciary and Government have recently been taking active steps to change the citys' dispute resolution culture by mediation. The family offices in Hong Kong would benefit from the city's atmosphere of inclusiveness and diversity. Through training courses, live supervision of mediation cases, co-mediation, conferences, projects, etc., we identify young talents to whom we can pass on our treasure we have found in mediation. These young talents have international experience and exposures. Some of them already have relevant internationally recognised qualifications and the GBA Lawyer's licences, which definitely add value to their practices and contribution to Hong Kong mediation.

How do Hong Kong and the GBA work together? Here I would like to share my motto: Affirm Ourselves; Appreciate Others; Learn from Others; Enrich Ourselves. I think this is how Hong Kong and other GBA cities are actually working and growing all together. For instance, the Cross-boundary Wealth Management Connect Scheme provides a good platform to develop Hong Kong's strength as a major city in the GBA. It facilitates cross-boundary investment between Guangdong, Hong Kong and Macao, thus greatly increases Hong Kong's financial accessibility to the GBA high-net-worth families.

With the establishment of the Greater Bay Area Mediation Platform, the appointment of a joint list of mediators within the GBA, who are governed by standards, best practice and rules, the quality of the mediators in the GBA can be guaranteed. This is a welcome initiative as it allows practitioners and the family wealth sphere to identify and connect with Hong Kong mediators, especially those with family and private wealth experience, to collaborate in resolving family office-related disputes. This provides a degree of specialism

and commodity, which I have to join my panel members, because all of them would say such characteristics are unique in Hong Kong. This is a promising collaboration and it is developing. This will bring a lot of benefits to Hong Kong's mediation landscape and encourage parties to explore mediation as a useful and timely ADR tool in dealing with family and private wealth disputes.

I would like to conclude my sharing by saying that mediation is part of our Chinese culture. These are a few Chinese traditional philosophies emphasising harmony and diversity. It is my vision that with the increasing benefits Hong Kong can reap from being part of the GBA, we can work together with all other GBA cities to promote the benefits of mediation and contribute as a Chinese style GBA mediation to international mediation.

Thank you.

(Ms Anna K. C. Koo)
Thank you very much, Ms Lau! I was particularly struck by her last comment which actually I would say is a successful continuation of the theme of all the speakers. As you see, we are trying to suggest Hong Kong's edge in promoting international mediation. The theme among all the speakers is that we are a deal-making hub from the historical perspective and from the volume of trade. Additionally, Ms Lau has further added the cultural perspective. I, of course, agree with them.

From time to time, we have been asked about the buzzword "Family Office", and Ms Lau has kindly showed us the classification that covers single-, multiple- and embedded family offices in particular concerning family wealth management disputes. She has highlighted two areas which include property interest and tax. I could also see that in using mediation to resolve these kinds of dispute. We need to pay attention to internal camps, as well as whether the disputes have to do with external parties such as business partners.

I will wrap up by answering the question raised for us - what Hong Kong has to offer in the context of international mediation? To sum up the points from my panel speakers, there are four areas. First, the possibility of achieving mutually satisfactory results in mediation. Second, there are established mediation clauses and procedures. Third, obviously the Government's support for mediation services. Finally, I will add the legal framework and the strong pool of talents in Hong Kong.

Thank you.

Panel Session 3:
Bots v Humans? The Future of Mediation

(Transcript)

(Mr Nick Chan Hiu Fung, MH, JP)
Good afternoon, friends from around the world who are joining us today in Hong Kong, maybe online as well.

My name is Nick Chan, a solicitor with computer science background with a focus in artificial intelligence ("AI"). It is my honour to serve as the moderator for this Panel. This is an important discussion about "Bots v Humans? The Future of Mediation".

Please allow me to introduce our panel speakers. First, may I introduce Ms Stephanie Siu. Stephanie practised law in one of the largest international law firms. She is now Strategic Solutions Manager at Thomson Reuters, responsible for overseeing a suite of legal tech solutions, ranging from drafting, contract management, e-billing to research and generative AI across the Asia-Pacific region. She is also a regular speaker at universities, law schools, law firms, and conferences on topics such as legal technology and innovation, AI, the future of law, and the impact of technology on the industry.

Next, I would like to introduce a King's Counsel, Mr Ng Jern-Fei. Mr Ng is an experienced counsel specialising in commercial litigation and arbitration, with extensive experience appearing before courts and arbitral tribunals and sitting as arbitrator in different jurisdictions including England, Hong Kong, the British Virgin Islands, Malaysia, Singapore, the Cayman Islands, Luxembourg and the list goes on. He has acted as a counsel in over 350 cases and as arbitrator in some 30 cases (as presiding, sole and co-arbitrator). Mr Ng is also the fourth English King's Counsel to be admitted to the Singapore Bar, and the only English King's Counsel to have triple affiliations in London,

Hong Kong and Singapore.

Our third panellist is Mr Kenneth K. Y. Lam. Kenneth is a Barrister in private practice in Hong Kong and was called to the Bar in 2004. He sat as a Deputy District Judge and as a High Court Master. He is also a Fellow of the Hong Kong Institute of Arbitrators and an Accredited Mediator.

Let's begin our discussion. The General Assembly of the United Nations on 21 March this year adopted unanimously the first global resolution on AI that encourages countries to safeguard human rights, protect personal data, and monitor AI for risks. What is AI in your opinion? Has AI already grown too powerful? Stephanie, please.

(Ms Stephanie Siu)
First of all, I am very honoured to speak on this Panel. To the questions, I think for AI and simple layman's terms, we can easily understand it as a computer system that can perform tasks which traditionally require human intelligence to.

Has AI grown too powerful? Before answering that question, I think one thing we can all agree on is that AI is very much intertwined with our daily lives now. On the micro level, even my parents ask ChatGPT and Bot every question. The Gartner Report also indicates that as at today, one third of the companies had already integrated AI into their business operations. This continues to grow.

In the legal sector, lawyers are coming together to regulate it. I think one thing we can agree on is that AI is here to stay. Has it grown too powerful? I think it is a very simplistic question. It is a little bit more nuanced than that. There are both risks and opportunities around that.

(Mr Ng Jern-Fei, KC)
Thank the Department of Justice for the opportunity to join this Panel

Discussion. It is a real privilege and honour to be able to speak to you all and on this very important topic as well, no less!

I think the short answer to your question of whether AI has grown too powerful is, in my view, no. There is a risk that we might tend to be too alarmist at developments and say that that poses a threat, obviously, to the sustainability of our professionals as we know it. However, the truth is that human history has been punctuated by incidents and revolutions where we have increasingly relied on automation in order to facilitate our personal and professional lives. It is obviously the Industrial Revolution. Over the years, there has been increased automation in a way in which we work. Some of us who have been in practice long enough might still remember the days when, for instance, legal research meant that you actually went to a physical library and pulled off a case report or maybe even a hard copy textbook to search for the answers. Those prophets of doom who back in the days would say, "Oh no! You know, LexisNexis is here to conquer your jobs."

(Mr Nick Chan Hiu Fung, MH, JP)
Not Thomson Reuters?

(Mr Ng Jern-Fei, KC)
Thomson Reuters is a friendly one. That is why I deliberately chose LexisNexis. I am just kidding! Do not take me to task for that, LexisNexis!

We are still here. The best bit is that we are an innovative profession, and we are also adaptive and versatile. Instead of ceding the responsibilities which we have always done to automation or what is now known as AI, we have simply adapted, specialised, grown better at our work and used AI in order to improve efficiency. I do not think AI has become too powerful or will become too powerful. Rather, I have every bit of confidence that as a profession, we will adapt and make use of AI to simply make ourselves even more powerful and efficient in a way in which we choose to do our work.

(Mr Nick Chan Hiu Fung, MH, JP)
Thank you for that. The birth of calculators did not finish all the jobs for accountants, right? Over to you, Kenneth.

(Mr Kenneth K. Y. Lam)
Thank you for allowing me to be here. It is a great privilege to speak here.

I agree with Mr Ng that AI is not too powerful. If anything, it is not powerful enough. I remember when ChatGPT first came up, the first question which my friend put to ChatGPT was "What is the most famous case Barrister Mr Kenneth Lam has ever done?" The answer was Laughing Gor. Actually, the case does not exist but a hallucination. That is the thing that I am talking about!

People think of AI as something new, but it is not. I am old enough to remember that back in the 1990s, there was a time when the International Business Machines Corporation (IBM) sought to train a computer to play chess, and the computer won. There was a big thing in 1997, I think. That is the only thing that specific computer can do. The computer can only play chess but cannot play mahjong. If you look at ChatGPT now, you can ask it anything. It is very versatile. The fact that it sometimes hallucinates is a bit of a problem. It is still a long way to go before it becomes something which can replace human analysis.

I do not think AI is going to be replacing us anytime soon. If anything, we want AI to be more powerful, so that we can spend more time doing something else, playing tennis or whatever instead of flipping through physical dictionaries and thesaurus.

AI is not too powerful but not powerful enough, I think.

(Mr Nick Chan Hiu Fung, MH, JP)
Does anyone think that AI mediator will replace us? What do you think?

(Ms Stephanie Siu)

I would like to think not. For mediation, a central part is to create an environment that helps facilitate settlements. To be able to create such an environment, we need to have things like empathy, compassion and understanding. These are the human elements that make us human not replaceable by technology. Having said that, increasingly AI is being used to help doctors with mental health, mental support and mental wellness. That was just an article a few days ago on the South China Morning Post about a little nine-year-old boy who had just lost his brother and was able to find solace in an AI reproduction of his brother. That is some food for thought.

(Mr Ng Jern-Fei, KC)

I just want to build on something that Kenneth has said. I could not help but think about that incident which is obviously referred to Deep Blue versus Garry Kasparov back in the 1990s. That neatly illustrates the limitations of AI. Deep Blue was an AI that only knew how to play chess, but would not be able to play mahjong. In other words, you had an AI which knew how to checkmate, but knew not how to "食糊" (Winning off another player's discard) or "自摸" (Self-Draw). That neatly brings us back very nicely to the point that Stephanie has made.

If the AI that you are using in the context of mediation has got a single purpose focus, just like Deep Blue back in the 1990s, all you need to do is just one particular function, and that function or that process is scientific or logical or algorithmic in nature. Then you can sort of see the danger and the risks that would be posed to the industry. However, mediation and also, I think by extension, arbitration or even litigation for that matter, is not an algorithmic or science-driven process. It is logical, but there is a very heavy dose of nuance, of human judgment, of this element of interaction between the participants. That is what makes mediation special. In other words, you are talking about a two dimensional activity like playing chess. I am sorry. I do not mean to insult those who play chess. I am sure that it is very complicated. It is more than just two dimensional.

The work that we do which is mediation or even dispute resolution is multifaceted, even when we are confronted with a documentary evidence. Nevertheless, we take a great interest in seeing the characters that appear before us in the mediation to work out what is the human facet behind the story or behind the case. That influences the decisions that we make as either mediators or arbitrators or judges.

I do not actually think that AI will come to threaten our position, whether in mediation or other forms of dispute resolution, because at the heart of the activity that we do, it is actually three dimensional and multifaceted.

(Mr Kenneth K. Y. Lam)
If I can build on that, it is not just whether it is two dimensional or three dimensional but also has something to do with the training. A computer or an AI programme is only as good as the training you put it through. Chess is easy because all the best chess matches are public matches. You can find records of them and trace each and every step and then teach a computer why the chess player did that and what the plan of the chess player was. It is all public. You can input a lot of data into the computer programme and then the computer programme can learn.

However, mediation is a lot different because you are dealing with human emotions, which are not necessarily public. For example, you have a mistress or two mistresses and you may not tell anyone. That is the kind of information which you cannot find in the public domain. For a mediator to be any good, he needs to understand private matters, emotions and secrets which people have, and concerns which they have and do not tell anyone. That is the limitation of AI because you cannot find publicly available data to input into the training and the AI can never get its head around these concepts. It is not just two dimensional or three dimensional, but also because of the limitation in training. I hope that adds to Mr Ng's point.

(Mr Nick Chan Hiu Fung, MH, JP)

For AI programmes, systems and platforms like generative AI with well-known example of ChatGPT, some says that they are called weak AI. Believe it or not. If you talk to computer scientists, they say this is weak because in the future there will be Artificial General Intelligence which is supposed to have empathy.

The World Economic Forum survey suggested that AI may create 69 million jobs in the next five years, but at the same time may take away 83 million jobs. It sounds like that it is a net loss. What do you think about the future legal market for law graduates? What would it look like in the next ten years? Please advise some of our next generation of lawyers, children who are about to go to law school. Should they go to law school? What do you think?

(Ms Stephanie Siu)

I think it is a nuanced question. There are definitely risks but opportunities for junior lawyers or law graduates as well. On the risk side, I think it is inevitable that certain low-level tasks will be automated, like translation. In the past, we charged translation, say, by the word, by the line. I also did a lot of translation back then and charged end clients 0.1 units by billables, but now we can simply plug it into tools like DeepL or say eBRAM International Online Dispute Resolution Centre Limited ("eBRAM"), for live translations and you instantly get the results. That is the risk part.

The opportunities are also there. There are more career options. For example, in-house legal teams are hiring legal operation roles and law firms are also hiring innovation lawyers. On this front there are also opportunities.

I think for law graduates or law students, it is important to keep tabs on this so that you can know where you should be pivoting your skill sets to remain competitive.

(Mr Kenneth K. Y. Lam)

Last month I sat as a Deputy Judge. When I wrote one judgment, I started by typing out the full title of the land. I thought to myself, "Why am I doing this? I did not go to law school in order to type out and define the shares in a court document."

I think if we can have AI take up the most boring parts of legal practice and just let the computer do all the typings, at least type all the land titles out without human input, we actually make legal practice a lot more interesting and less mundane.

I think AI is a good thing in the sense that it makes the entire industry more focused on things that really require human determination. Having AI is a positive force in terms of the future of the law.

(Ms Stephanie Siu)

If I may just add on that. On a related note, building on top of that, one thing highly discussed that might divide the industry is that "Oh, by using AI, how would that affect the learning of junior lawyers? If they do not do the hard work, how can they become successful and good lawyers?" I do concur with that point. For example, when I practised, I went through hundreds and thousands of documents working till 4 a.m. for a week. I would argue again that this is not probably like a good war time story, but it is not what makes lawyer a great lawyer. In fact, when you are so overwhelmed with work, sometimes you just end up focusing on the task trying to complete the task robotically and lose sight of the bigger picture or the objective of the exercise. Whereas with using technology, now it is not perfect and lawyers still have to supervise. In this process, it is also a learning process and might even help you to focus and to learn in a more efficient manner, I would argue.

(Mr Nick Chan Hiu Fung, MH, JP)

A side note is that this year I completed staff performance evaluation a lot quickly. When I started typing, the system actually suggested the words to

complete my sentence. I just tapped it and the sentence came out. Of course, I really thought it through.

AI is expected to increase the global gross domestic product (GDP) by US$6.5 trillion within the short ten years. What does that mean for the legal profession? Does it mean we make more money? What about for dispute resolvers, in particular jobs for mediators and other members of the dispute resolution community?

(Mr Ng Jern-Fei, KC)

I was going to say that, to me, there are two aspects there. Firstly, as far as lawyers are concerned, it would lead, in all likelihood, to increased specialisation. What I mean by that is that tasks which form part and parcel of the corpus or general pool of work which lawyers would otherwise undertake on a routine basis, would perhaps be increasingly automated. There would be a demand for specialist advice and specialist legal assistance. That is one thing.

The second thing is that I think there is a danger, of course, to see this as an "either-or" thing. In other words, it is like a fork in the road. Do you turn left and you embrace more AI, or do you turn right and you shun AI. To my mind, that is a false dichotomy, if I can put it like that, because AI introduces new workstreams and new methods of working, for example, e-discovery. I mean how e-discovery has grown over the years. It is a good thing. I am sure that even the younger lawyers who would otherwise be turning pages of documents through the night will tell you it is a good thing. However, what that has done is that has spawned a new industry. This has given rise to new job opportunities. Dare I say, I never thought I would say this, whether in private, let alone at a conference, it might give rise to specialisation in those who actually want to specialise in e-discovery. What it means is that it simply creates more focused lines of industry and more focused service providers. For instance, you see e-platforms, not just eBRAM, but other e-platforms that specialise in certain functionalities, case management, specialised translators,

hearing service providers, and the assortment of facilities that comes with all of these innovations.

I do not think we should see as an "either-or" thing. All it means is that there are different opportunities for those of us who want to work in the industry.

(Mr Kenneth K. Y. Lam)

I agree. As lawyers, we always find new revenue streams. As society changes, lawyers change with society. For example, I spend an awful lot of time doing defamation cases. In the old days, it was all newspapers. Nowadays it is all Instagram (IG) and LinkedIn. With a new format, there is a new form of tort. I am not worried about lawyers' job being taken away. There will be new jobs. You just have to adapt. Thank you.

(Ms Stephanie Siu)

Maybe l would like to add on a more global landscape. In the big law firms, you can also see them starting to open their innovation hubs. For example, A&O Shearman has just sold their legal tech unit to a private equity firm. I think these are all indications that there are also new opportunities for us.

At the online dispute resolution conference last week, I thought one of the counsel from Airbus shared that they had already incorporated AI for earlier risk management, for example, identifying cases even before it becomes a dispute, identifying a certain risk and being able to resolve that before it becomes a full-fledged dispute. This sort of early case management or intervention might also has been indicated that might be a future trend.

(Mr Nick Chan Hiu Fung, MH, JP)

Now, research has said that China is leading the world in AI development, training 47% of AI programmers these days and encouraging industries, big and small, to upgrade ourselves and to embrace something called AI plus, something called new quality productive forces.

Hong Kong, as an international financial centre and the engine for growth in the Guangdong-Hong Kong-Macao Greater Bay Area, has eight pillars of focus in the National 14th Five-Year Plan, including dispute resolution and fintech. Is our next generation ready? Is our profession ready?

(Ms Stephanie Siu)

I think it is a continuous learning curve. One thing I would like to point out is why it is all the more important for public education in this area because AI is very powerful, but we also do not want to end up being that US lawyer who relied on ChatGPT and cited a fictional case. Learning about the technology and knowing where its limits are is important for us to really be leveraging on AI to achieve the optimal results.

(Mr Nick Chan Hiu Fung, MH, JP)

Can I tweak the question a bit? Are the laws already concerning AI? When you have to resolve AI-related disputes, how come the law is like this? It has not caught up with technology. What do you think?

(Mr Kenneth K. Y. Lam)

I think we need more test cases in the Court of Final Appeal ("CFA"). Someone would have to litigate, then the wise people on the bench would change the law and adapt the law to the situation. Until that happens, there may well be a problem in that you are not quite sure whether your advice would remain good. We definitely need people to keep testing cases that usually happens faster than going through the Legislative Council to have a new legislation passed, but that is the beauty of common law in general which is organic and is capable of adaptation. I do not worry too much.

For example, many years ago there was the Fevaworks case in the CFA where they used a newspaper example to determine whether the Hong Kong Golden Forum could be held liable for libel. Things like that will continue to happen. For example, if ChatGPT defames someone, it is possible for you to sue the corporate owner, etc. I think we can be confident that even when these cases

come to our courts, we will be able to deal with them.

(Mr Nick Chan Hiu Fung, MH, JP)
What areas of law does a typical case involving the use of AI relate to? Is it copyright? Kenneth has just mentioned defamation. Maybe data privacy? What areas of law have you guys seen or do you predict will rise sharply?

(Mr Ng Jern-Fei, KC)
The areas of law or at least the areas that could potentially cover the work that AI would perform are actually quite limitless, if you think about it, because at the moment the question is focused perhaps on one jurisdiction, but bearing in mind that AI is borderless or in fact cross-border, it is the question of whether the laws are sufficiently advanced or have gotten the flexibility to cover cross-border transactions which are powered by or facilitated by AI.

As things currently stand, I do not see why the laws would not adapt. For instance, it was only not too long ago that we had introduced in our lives for the first-time digital payments, right? In this day and age, there are very few people who still go around carrying cash or using cash in the course of their daily lives. Nevertheless, the laws that we have whether in this jurisdiction or indeed in other jurisdictions or on a cross-border basis, have evolved in order to allow us to complement or rather to adjust a way in which we have let our lives be different as it may be.

I have every bit of confidence that as the different ways in which AI permeates our personal and professional lives, the laws will be able to adapt. The beauty of it is that the development of AI or rather the use of AI is not just specific to one jurisdiction, but goes across different jurisdictions. With all these minds applying together collectively to address any problems that might emerge, there will be means of dealing with any problems that might otherwise surface.

(Mr Nick Chan Hiu Fung, MH, JP)

Can I touch on your daily work as an experienced arbitrator, disputes resolver? Can I invite a volunteer or volunteers to help us bring through different stages of mediation? How might you have already adopted, applied and developed AI for the use in steps of mediation process?

(Mr Kenneth K. Y. Lam)

Every mediator does mediation slightly differently. For me, I always start with a joint session where I explain the ground rules that could be done very quickly, but immediately after I have done that, I will split the group and talk to each party in private. Now that is the part where the human elements would be the most important because all you do is to listen. You just ask open questions and invite the parties to open up to you and just tell you what is in their minds. It could be nothing to do with court papers. Maybe, on the face of it, it is a breach of contract case, but really the person is emotionally hurt. That is the part where AI has no application whatsoever.

When it comes to settlement agreement where it almost closes the deal, AI can be extremely useful. For example, as I have said, I have spent a lot of my time dealing with defamation cases, both as adviser and as mediator. For those of you who are not familiar with defamation cases, it is never about money. It is only because the common law is not without its limitation. The general compensation is not something which attracts people to litigate. The victim does not want the money but always demands an apology or an open court statement or a corrective statement, and the publisher just wants to get rid of the litigation at minimal cost without admitting liability. What the parties would end up trying to do would be to come up with a creative writing, some sort of statement that stops short of saying sorry but is in fact a statement of being sorry. How do you say sorry without using the word “sorry”? How do you say regret without saying regret? How do you create a piece of writing which everyone can accept? That is when things like ChatGPT come in handy because ChatGPT is a text generation programme to which you can fine tune your instructions and it will come up with some text which you have never

thought of.

In the old days, I would have to go to my own library and take out physical copies of the Oxford Dictionary of English or Thesaurus, and try to find words which say sorry without actually having the word sorry in it. It was painstaking, but with ChatGPT and other similar programmes, the possibilities are endless. You can even say it in a foreign language. For example, the parties could be of different nationalities. They may be willing to say sorry in English but not in Chinese, because they have to think about what Chinese speakers think. You can have one word in one language, another word in a different language, and so on and so forth. It is a bit like having a second brain to brainstorm yourself at no additional cost to anyone.

Of course, you have to be very careful about what the programme is feeding you. At the end of the day, lawyers will not be rendered redundant because no one would accept a computer-generated settlement agreement. It has to be fettered by the legal representatives.

The fact that you can now use a computer to help you brainstorm ideas makes the entire process a lot more cost-effective. I think, in mediation, whenever people have to think about a settlement agreement and the precise terms therein including wording, apology, public statements or indeed a press release announcing the outcome of the mediation to, for example, the shareholders, AI comes in handy. I think that is probably where AI can be most helpful.

(Mr Nick Chan Hiu Fung, MH, JP)
Thank you, Kenneth. I think in mediation, sometimes when you are not familiar with the industry in dispute, you can google it, but maybe using a generative AI tool could also be helpful. I guess document crunching is kind of like e-discovery as Mr Ng has mentioned. What other processes in mediation can you think of?

(Ms Stephanie Siu)

Perhaps AI application is not limited to mediation, but generally it can be used in something like the body of e-discovery. Nowadays we have to deal with more and more new forms of data, right? Say for example, there is new short form data of messages from WeChat, Slack and WhatsApp. There are also videos and audios now making things even more complicated. There are emojis or reactions to texts which you can even react to emails now, right? This makes things much more complicated and very difficult to deal with if you just review and plow through them manually. I think in terms of e-discovery and just sorting through all these sorts of varied sources of data, there is definitely a role for AI to play and assist.

(Mr Ng Jern-Fei, KC)

I suddenly think that there are two avenues in which AI can assist whether it is in terms of mediation or other forms of dispute resolution. One is in relation to data crunching and another one is document crunching. For document crunching, I touched on very briefly just now because we talked about e-discovery. The reality is then just sort of leveraging something that Stephanie has said. Compared to 10, 20 years ago, there is a real influx of the volume and complexity of documentary exchanges now. Not only is it just about letters in the traditional sense, but also it is about Wechat, WhatsApp, other forms of social media communications and voice notes, etc. There are quite a lot of documents to crunch and I can see how AI could make that all more efficient, whether in the context of mediation or in the context of arbitration or litigation. That is the second of those two categories. The first is data crunching.

Data crunching can be useful. For example, if you are in a mediation and if it is a mediation that is commercial in nature, in other words, a commercial dispute ultimately, you have to crunch the numbers. It is very often, I find, especially in mediation, perhaps more so than in arbitration or litigation, that people are trying to work out what if they agree to that particular potential settlement Option A? What are the financial consequences that come from

that? What if they agree to Option B? What are the financial consequences that will come to that? What if it is Option A2?

In mediation, it is not always a plain vanilla question of a linear line and then plotting where on the graph the defendant places the claimant. Very often the settlement comes in the form that I will pay you a fixed sum of money but at the same time you can invest in my business. For the profits that you will earn from that investment, I will allocate you a shareholding that will be for you to keep or you can liquidate it as the case may be. A party who is on the receiving end of such a settlement offer may want to do some number crunching to try and work out what exactly this translates to in dollars and cents. Mediation is the sort of process that will not take days and days to unfold. It is in a quick time and is usually done in the course of a day. I have never known a mediation to last more than a day. I mean, very unusually, you might get two days and that is about it. This is where I think AI might be useful because it will allow the parties who are in mediation to do some rapid but hopefully accurate number crunching to compare the different options on the table and to know what financial consequences there are. Of course, the data crunching that will occur is also not straightforward. For example, if you are presented with a particular option which includes some kind of non-monetary, at least not an immediate monetary compensation which is not liquid in nature but involves investment taking up shareholding in a particular company, etc., you might want to project what that company is likely to earn in the next five, ten years or whatever it is. That is where most of the forensic accounting experts will do. They will have a base-case scenario, a low-case scenario and a high-case scenario. That is the sort of thing that I imagine a party in a mediation might want to work out and say, “Well, you know, in the worst-case scenario, I might lose some money if I invest in this company. In the best-case scenario, I might make, you know, $100 million. Maybe I will make $10 million in the base-case scenario.” That at least will arm them with more precise information rather than a rough and ready guesstimate that they would otherwise have to engage to make an evaluation there and then on the spot, or to take instructions from the decision makers who can then give them

the green light or not, as the case may be, to agree to a particular settlement.

(Mr Nick Chan Hiu Fung, MH, JP)
Do you think there are specific areas of dispute where an AI mediator or machine is better placed than a human to solve the disputes cost-effectively?

(Mr Ng Jern-Fei, KC)
Yes, I think there are. I think it will be a sort of low-value disputes. I actually mean that quite genuinely because we have such disputes these days actually where you buy something from an online retailer and are dissatisfied with a particular product which you have purchased. You can actually refer it to the online retailer's inbuilt dispute resolution mechanism. I do not know whether you call that a mediator or an arbitrator, but it is certainly a mechanism automated where you punch in all the parameters. You set out the nature of your complaint and what the product is, and then almost instantaneously they churn out a result and say, "We would recommend this particular outcome. We will give you compensation."

For food delivery platforms, they will give you the next meal free or will give you some voucher but not cash, with which you can exchange for the next purchase of the similarly defective product. Jokes aside, there is a scope for that. I think where you are dealing with disputes of higher value and or increased complexity involving human interaction, that is where I think the need or the opportunity for AI as mediators will then diminish.

(Mr Nick Chan Hiu Fung, MH, JP)
What do you think about the future trends in a wider sense than in dispute resolution? Do you see AI coaching witnesses? Is that going to be an issue? Is AI coaching parties before a mediation good or bad? What are your thoughts?

(Mr Ng Jern-Fei, KC)
Maybe I will take this one briefly as well, just focusing on AI coaching. I certainly have heard that being suggested before. Firstly, obviously, as

we know, in this and other similar jurisdictions, coaching of witnesses in anticipation of litigation is not allowed. However, quite apart from whether it is allowed or not allowed, I have never found it to be a good idea even if it is allowed in some jurisdictions where they do this as a matter of course. They rehearse the witness to the point that the witness comes across as jaundiced, artificial and stilted in the course of their cross-examination. It never leaves a good impression on the tribunal, or on the court, because the judge or the arbitrator is astute enough to know when someone is just being, dare I say, mechanical or robotic, to the point that it comes across as being not genuine.

By the way, I think that leads me very nicely to make by way of emphasis on the point that I have maybe made before, but maybe with not as much focus on the fact that in our business, the dispute resolution business, AI will never wholly supplant or replace the human actors in the process. If we start, we have been focusing on the role of the counsel and the lawyers thus far. It is the same with the decision makers as well because you will never find at least not on the current state of technology.

Although I know that Nick has talked about the AIs which perhaps are able to express or display a level of empathy, I certainly do not see that happening, at least not for present purposes. We, as participants in the dispute resolution process, do value decision makers, whether they are judges, arbitrators or mediators who are able to apply their human touch in evaluating the difference between witnesses or an argument that is purely functional and mechanical and not perhaps one that leads to the right answer, and actually are able to tell the difference between what is clinically correct and what should be the fair and reasonable outcome.

Our law whether it is the common law system or even the civil law system, is littered with concepts like fairness and reasonableness. If you are dealing with the civil legal system, you talk about concept of good faith, for example. It is very hard to imagine even the most advanced AI is able to grapple with the nuances of what constitutes fairness, reasonableness, and good faith. How do

you define that? If there was a human being whom you were trying to teach fairness, reasonable and good faith, I am not sure whether you could actually define it to that person, let alone define it in intelligible portions that you feed it as an input into an AI. Obviously AI only responds to what you teach it, but unless you can define a concept with precision and with specificity. Say, this is fairness and this is reasonableness and this is good faith. It is difficult to actually imagine an AI ultimately replacing those attributes and therefore the people who are part and parcel of the system, who are able to embody those attributes.

(Mr Kenneth K. Y. Lam)

Yes, I tend to agree because I have recently sat on a case in the District Court where a witness was on the verge of tears. The experience of dealing with that reminds me of the need for the human touch in handling witnesses whether you are the advocate or the judge. Many years ago, a very senior judge in Hong Kong wrote an article circulated amongst judges only. The article is entitled "The Art of Court Craft". I cannot circulate the document because it is restricted, but the general theme is simple enough that we have to remember that when people come to a dispute resolution process, whether it is a courtroom or an arbitrator or a mediator is engaged, that ultimate end user has certain expectation. The witnesses would expect to be treated with respect. That may or may not be a well-founded expectation, but that is the expectation.

The parties who would have to live with the outcome would expect some empathy from the decision maker. These are all human attributes which are very difficult to replicate. I do not know of any current AI which has the ability to handle emotions in a way an experienced human decision maker can. Maybe in the future that may be the case, but at the moment I do not think it is possible for AI to replace the kind of empathy which a human judge or human arbitrator or human mediator can demonstrate. For those of you in the mediation business, it will be a while before your job is taken away.

(Mr Ng Jern-Fei, KC)

Can I just maybe jump in there just very briefly in reaction to Kenneth's observation? That was really interesting because that sort of reminds me of the point Nick has made earlier about maybe there being generative AI in the future that can display empathy. Therein lies, I think, the conundrum, even if you can teach the AI, "Well, you have to show empathy and you have to react when there are tears," for instance. Tears equals empathy and empathy equals truth, perhaps. Given that the witness is emotional, he or she must be telling the truth hence the tears.

It reminds me of my very first case in court where one of the witnesses cried and the judge simply referred to the witness and said, "Stop shedding your crocodile tears." It was a slightly irate judge. And then when I said, "I sympathise with the witness." To which the judge then turned his eyes towards me and said, "You are not here for sympathy. You are just here for his pound of flesh." He said to me, to which I almost wanted to respond, "Yes, but what is your point?"

See, here is the point. As human beings in the whole process, we are able to tell the difference between even types of tears. I am not sure whether you can actually teach an AI to differentiate between genuine tears and crocodile tears and therefore increase propensity for telling the truth.

(Mr Nick Chan Hiu Fung, MH, JP)

Please put your hands together for very distinguished panellists. Very informative. Thank you very much!

Closing Remarks

Mr Cheung Kwok-kwan, SBS, JP
Deputy Secretary for Justice, Hong Kong SAR Government

Distinguished Guests, Ladies and Gentlemen,

Good evening. On behalf of the Department of Justice of Hong Kong ("DoJ"), I would like to thank all of you for participating in the Mediation Conference 2024.

Today's Conference showcased the significant progress we have made in the promotion of mediation and charted a promising path for the future of mediation. I would like to begin by expressing my sincere gratitude to our esteemed speakers, moderators, supporting organisations, distinguished guests, online and in-person participants from Hong Kong and beyond, and my colleagues who have worked devotedly in putting together this exceptional event.

The Mediation Week is our biennial flagship event dedicated to promoting the wider use of mediation in resolving disputes. This eventful week culminates in today's Conference, which provides a valuable platform for bringing together seasoned practitioners and experts for an insightful exchange of views on resolving cross-boundary and international disputes through mediation, as well as the intersection between artificial intelligence and mediation. We also gained valuable insights from Mr Luo Houru's (Director of the Bureau of People's Participation and Promotion of Rule of Law of the Ministry of Justice of the People's Republic of China) keynote speech this morning on the Mainland's mediation system, including the enhanced infrastructure and regulatory framework.

Earlier this week, we also had four thematic seminars exploring the use of mediation in different sectors, including education, workplace, consumer and

the Family Court.

Despite the diverse contexts, the common theme is that resolving disputes by way of mediation carries a lot of benefits. This brings me to reflect on the nature and characteristics of mediation, and I would like to highlight a few key takeaways from this week's events.

Key takeaways

Firstly, mediation is a valuable tool for resolving everyday conflicts, whether within schools, workplaces, families, or between consumers and businesses.

In the school setting, mediation can help resolve conflicts among students, teachers and parents. By fostering dialogue and understanding, mediation or the use of its skills could prevent the escalation of school disputes, preserve relationships and promote a positive and inclusive learning environment. During the School Mediation Seminar, the thought-provoking sharing of the experienced mediators, educators, students and parents reinforces our belief that cultivating mediation culture in schools helps lay a solid foundation for a harmonious community. The signing of the "Mediate First" Pledge by students demonstrated their strong dedication to first explore the use of mediation as a flexible and constructive means in resolving disputes.

Mediation is increasingly used to address workplace disputes. We all understand how hard it could be when conflicts arise in the workplace, especially when we spend a lot of time with our colleagues. As shared by the speakers in the Workplace Mediation Seminar, mediation involves skills such as active listening and emotional management, to facilitate candid communications. Mediation can help defuse tension at the workplace, create a harmonious working environment and, if applied effectively, get everyone back to work happily. In the unfortunate event that an accident happens resulting in an employees' compensation claim, mediation would also be

a preferable means to resolve the claim in the legal proceedings amicably, addressing the needs and concerns of both the employer and the employee.

Consumer dispute is another area where mediation proves highly useful. In the modern era of digital economy, consumer disputes arising from e-commerce activities have surged. As explored in the Consumer Mediation Seminar, consumer disputes usually involve a large number of low-value disputes. Although each dispute may involve a modest sum of money, the cumulative effect of these disputes can be significant. Mediation could provide a quick and economical way to resolve them. Particularly for businesses which value reputation and customer satisfaction, not only does mediation save time and resources for both consumers and traders, it also enables them to preserve their relationships. We are delighted to learn that the Consumer Council will be launching a new online dispute resolution platform, which will surely further facilitate the effective resolution of consumer disputes.

It goes without saying that parties in family litigation can benefit from mediation. Family Court cases typically involve intense emotions and personal grudges. The Judiciary in Hong Kong has been actively promoting family mediation which helps the divorcing couple to improve communication and enhance the chance of maintaining an amicable relations to handle future responsibilities. We are pleased to learn from the Judiciary's Seminar yesterday that the recently introduced Mediator-assisted Financial Dispute Resolution and Mediator-assisted Child Dispute Resolution procedures, which run in parallel with litigation, have proven to be highly effective, and the feedback is positive and encouraging.

The second takeaway is that it is a clear global phenomenon to use mediation in resolving cross-boundary or international disputes, and Hong Kong has a lot to offer in this regard.

For those who have been involved in cross-boundary or international

disputes, you would likely have firsthand experience dealing with the difficulties and complexities brought about by the legal and cultural differences. Traditionally, arbitration has been the preferred mode of alternative dispute resolution. However, as international arbitration has become increasingly costly and procedurally complex, there is a call for a more effective means of dispute resolution.

It is no surprise that people resort to mediation. In essence, mediation, as a voluntary and flexible process, avoids the need to tackle different legal rules and traditions. It is also solution-oriented and interest-based, and allows parties to develop tailor-made solutions which could go beyond traditional judicial remedies. Mediation even has the potential to turn disputes into deals and new opportunities.

Our distinguished speakers from Panel 1 and Panel 2 today have shed light on what Hong Kong is able to offer in this area.

Regionally, working together with Guangdong and Macao, we have established the Greater Bay Area ("GBA") Mediation Platform. We heard from Panel 1 today that there are remarkable opportunities presented by the mediation standards and model rules promulgated by the GBA Mediation Platform. With the official promulgation of the local accreditation rules for accreditation of GBA mediators in late March this year, we are one step closer to forming a consolidated panel of GBA Mediators.

I would like to add that the DoJ released the Action Plan on the Construction of Rule of Law in the Guangdong-Hong Kong-Macao Greater Bay Area ("Action Plan") last month. The Action Plan underpins the guiding principle of "Three Interfaces, Two Connects and One GBA". Building upon the Action Plan, through "Three Interfaces", namely the interfaces of mechanisms, regulatory frameworks and talents, the DoJ will actively seek to foster "Two Connects" – the connectivity of hardware and software in the construction of rule of law in the GBA, thereby eventually achieving the goal

of "One GBA". The GBA Mediation Platform will surely play a crucial role in improving the interface of non-litigation dispute resolution services in the GBA.

On an international level, the recent announcement that Hong Kong will host the headquarters of the International Organization for Mediation signifies a resounding vote of confidence in Hong Kong as a leading international legal and dispute resolution services centre in the Asia-Pacific region. Earlier this afternoon, we had the privilege of hearing from Dr Sun Jin (Director-General of the International Organization for Mediation Preparatory Office) on the vision and latest developments of the International Organization for Mediation, followed by the esteemed speakers of Panel 2 elaborating on Hong Kong's edge in providing top-notch mediation services to the international community, that is, the unique advantages under "One Country, Two Systems", ample experiences, strong and diversified pool of talents, just to name a few.

Coming to the third and last takeaway - we should be fully prepared to embrace the opportunities as well as the challenges, brought about by the evolving technological landscape.

We heard from the interesting discussion in Panel 3 just now on how artificial intelligence is reshaping the dispute resolution sector. On the one hand, the use of technologies could streamline the dispute resolution process and improve cost efficiency. On the other hand, there are legal and ethical implications which demand our close scrutiny. While we may not have immediate answers to some of the novel questions, it should not stop us from exploring and harnessing the potential of artificial intelligence.

DoJ's mediation initiatives

It is the DoJ's long-term policy initiative to promote the wider use of mediation. We firmly believe that mediation transcends boundaries, and is a

key to fostering cultural understanding, and ultimately shaping a better and brighter future.

We are committed to promoting the use of mediation in Hong Kong through various measures, including publishing and disseminating mediation leaflets and e-newsletters to the public and stakeholders, as well as organising capacity-building activities and promotional events, such as the Mediation Conference today.

As the Secretary for Justice pointed out in his opening remarks this morning, "deepening the mediation culture" is one of the key initiatives in the Policy Address 2023. To take the lead, the Government is actively pursuing the initiative of incorporating standard "Mediation First" dispute resolution clauses in government contracts in so far as practicable. It is hoped that this will encourage private companies to follow suit.

Further, in terms of capacity building for dispute resolution talents, we have been co-organising the Investment Law and Investor-State Mediator Training for mediation practitioners and government officials from various jurisdictions since 2018. The next round of the training course will take place later this month. Through the training course, we would continue nurturing local and overseas talents on investment mediation, and impressing upon governments from different jurisdictions to opt for mediation in resolving investment disputes.

Closing

Throughout the Mediation Week and today's Conference, we have garnered a wealth of insights and observations from our distinguished speakers with diverse backgrounds and expertise. Their inspiring sharing has provided us with food for thought and given us the confidence to continue promoting mediation locally, regionally and internationally.

Closing Remarks

As we set our sights on the future, Hong Kong will no doubt continue to capitalise on its advantages in bridging connections with the Mainland and international community, and strengthen its position as a leading international and dispute resolution hub in the Asia-Pacific region under the National 14th Five-Year Plan.

Before I close, I would like to draw your attention to our "Mediate First" logo where you can see the pair of holding hands forming a heart shape under the Hong Kong skyline. Hand in hand, heart to heart, together, we can "bridge cultures, build futures".

Thank you once again for joining today's Conference and the Mediation Week 2024. I look forward to seeing you all again in our future events. Thank you.

Mediation Conference 2024
Mediate First: Bridge Cultures, Build Futures

Programme

Time	Activity
MORNING SESSION	
09:30-09:55	**Opening Remarks** **Mr Paul T K Lam, SBS, SC, JP** Secretary for Justice, Hong Kong SAR Government
09:55-10:15	**Keynote Speech** **Mr Luo Houru** Director, Bureau of People's Participation and Promotion of Rule of Law, Ministry of Justice of the People's Republic of China
10:15-10:30	**Morning Break**
10:30-12:15	**Panel Session 1:** **Connecting the Dots: Mediating Across Boundaries in the GBA** Join us for a dynamic discussion on the future of mediation in the Greater Bay Area ("GBA"). Our distinguished panel of mediation experts from Guangdong, Hong Kong and Macao will explore the immense opportunities brought by the mediation standards and model rules promulgated by the GBA Mediation Platform and the GBA Mediator Panel for amicable resolution of cross-boundary disputes. They will share case studies on navigating legal differences, overcoming cultural barriers, and leveraging technology to improve access to justice across the GBA.

	Through interactive dialogue, attendees will gain new perspectives on developing mediation skills to resolve disputes in the increasingly connected and integrated GBA marketplace of the future. **Moderator:** **Mr Edward Liu, MH** Partner, Haiwen & Partners LLP **Speakers:** **Prof Dr Law Wai Hung Francis** President of the Hong Kong Mediation Center; Chairman of the International Dispute Resolution & Risk Management Institute **Ms Melissa K. Pang, BBS, MH, JP** Council Member, Hong Kong Mediation Accreditation Association Limited **Mr James Peng** Managing Partner of PW & Partners Law Firm; President of Guangzhou International Commercial Mediation Center **Ms Vong Sok Hei Rosita** Secretary-General, World Trade Center Macau Arbitration Center **Mrs Wong Ng Kit Wah Cecilia** Partner, Kevin Ng & Co., Solicitors; Chairlady, Mediation Committee of the Law Society of Hong Kong
12:15-12:30	**Q&A**

AFTERNOON SESSION	
14:30-16:15	**Panel Session 2:** **International Mediation: What Hong Kong has to offer?** Following the announcement of establishment of the International Organization for Mediation (IOMed), Hong Kong is graced with the institution that aims to be a permanent multilateral international organisation that provides efficient mediation services for settling international disputes. While the use of mediation to resolve dispute is limitless and boundless, Hong Kong has an edge to offer its services for all sorts of cross-jurisdictional disputes. Speakers in the panel will present their views on what Hong Kong can offer in areas of intellectual property, maritime and family offices. **Keynote Speech** **Dr Sun Jin** Director-General of the International Organization for Mediation Preparatory Office **Panel Discussion** **Moderator:** **Ms Anna K. C. Koo** Chief Executive Officer and Board Director of the Financial Dispute Resolution Centre

	Speakers: **Mr C. K. Kwong, JP** President, Hong Kong Institute of Arbitrators; Senior Partner, SFKS CK Kwong, Solicitors **Ms Cecilia Lau** Consultant, Deacon **Mr Lianjun Li** Senior Partner, Reed Smith Richards Butler LLP; Chairman, Hong Kong Maritime Arbitration Group China Committee
16:15-16:30	**Q&A**
16:30-17:30	**Panel Session 3:** **Bots v Humans? The Future of Mediation** The rapid advancement of artificial intelligence ("AI") continues to reshape various industries and sectors, and presents unique opportunities to streamline and optimise the dispute resolution process. This panel will examine the implications and potential of AI, its ethical and legal considerations, as well as future trends and impact in the field of dispute resolution and mediation. **Moderator:** **Mr Nick Chan Hiu Fung, MH, JP** Director, AALCO, Hong Kong

	Speakers: **Mr Kenneth K. Y. Lam** Barrister, Jason Pow SC's Chambers **Mr Ng Jern-Fei, KC** Arbitrator (HKSAR); Advocate (Singapore) **Ms Stephanie Siu** Strategic Solutions Manager, APAC, Thomson Reuters
17:30-17:45	**Q&A**
17:45-18:00	**Closing Remarks** **Mr Cheung Kwok-kwan, SBS, JP** Deputy Secretary for Justice, Hong Kong SAR Government

2024 年調解會議
調解為先：築融和之橋 創美好未來

節目表

時間	活動
上午環節	
09:30-09:55	**開幕致辭** **林定國資深大律師, SBS, JP** 香港特別行政區政府律政司司長
09:55-10:15	**主題演講** **羅厚如先生** 中華人民共和國司法部人民參與和促進法治局局長
10:15-10:30	**小休**
10:30-12:15	**討論環節（一）：** **連結脈絡：大灣區的跨境調解** 本討論小組由來自廣東、香港和澳門的調解專家探討由粵港澳大灣區調解工作委員會制定的大灣區調解標準及調解示範規則和粵港澳大灣區調解員名冊爲友好解決跨境爭議帶來的巨大機遇。專家將透過分享案例剖析如何應對法律差異、克服文化不同，並利用科技技術使大灣區內的法律服務變得更可及。通過互動對話，觀眾將對調解發展以解決未來大灣區市場爭議獲得新觀點。歡迎加入我們一起參與討論大灣區調解的未來！

	主持人： **劉洋先生, MH** 海問律師事務所有限法律責任合夥合夥人 **講者：** **羅偉雄博士教授** 香港和解中心會長； 國際爭議解決及風險管理協會主席 **彭韻僖女士, BBS, MH, JP** 香港調解資歷評審協會有限公司理事 **彭波先生** 廣東固法律師事務所主任； 廣州國際商貿商事調解中心理事長 **黃淑禧女士** 澳門世界貿易中心仲裁中心秘書長 **黃吳潔華女士** 吳建華律師行合夥人； 香港律師會調解委員會主席
12:15-12:30	**問答環節**

下午環節	
14:30-16:15	**討論環節（二）：** **國際調解：香港的優勢** 隨著國際調解院總部正式宣佈將在香港設立總部，這個主要爲解決國際爭端提供高效的調解服務，旨在成爲常設的多邊國際政府間組織將在香港落戶。利用調解來解決糾紛是無限及無地域所限的，香港在提供各種跨境爭議服務都擁有優勢。講者將討論香港在知識產權、海事法和家族辦公室這些領域的貢獻。 **主題演講** **孫勁博士** 國際調解院籌備辦公室主任 **小組討論** **主持人：** **顧家珍女士** 金融糾紛調解中心行政總裁及董事局董事 **講者：** **鄺志強律師, JP** 香港仲裁師協會會長； SFKS 鄺志強律師行資深合夥人 **劉穎賢女士** 的近律師行資深顧問律師 **李連君先生** 禮德齊伯禮律師行有限法律責任合夥高級合夥人； 香港海事仲裁協會中國委員會主席

16:15-16:30	**問答環節**
16:30-17:30	**討論環節（三）：** **人工智能與人類？調解的未來動向** 人工智能的迅速發展不斷重塑各個領域和行業，爲簡化和優化爭議解決流程提供了獨特的機會。本討論環節將探討人工智能的影響和潛力，其道德和法律考慮，以及在爭議解決和調解領域未來的趨勢和影響。 **主持人：** **陳曉峰先生, MH, JP** 亞非法協香港區域仲裁中心主任 **講者：** **林嘉仁大律師** 鮑永年資深大律師辦事處大律師 **吳振輝英國御用大律師** 香港仲裁員； 新加坡律師 **蕭凱盈女士** 湯森路透策略解決方案經理
17:30-17:45	**問答環節**
17:45-18:00	**閉幕致辭** **張國鈞律師, SBS, JP** 香港特別行政區政府律政司副司長

MEDIATE FIRST

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