



律政司
Department of Justice



“Mediate First” Pledge Event 2021 2021年“調解為先”承諾書活動

MEDIATE FIRST - ANCHORING THE FUTURE
調解為先 立足未來

28 May 2021 • 2021年5月28日



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Opening Remarks

The Honourable Teresa Cheng Yeuk-wah, GBS, SC, JP Secretary for Justice, Hong Kong SAR Government

Distinguished Guests, Ladies and Gentlemen,

Good morning. On behalf of the Department of Justice (“DoJ”), it is my great pleasure to welcome you all to the “Mediate First” Pledge Event 2021 today. I am glad to see that we have over 1 300 registrations from 14 jurisdictions joining us today.¹

2. We started the “Mediate First” Pledge campaign in 2009. As you all know, the “Mediate First” Pledge is a non-legally binding commitment where the pledgees acknowledge their readiness to explore the use of mediation first before resorting to other means of dispute resolution.

3. Up to this year, we have now over 700 pledgees in Hong Kong from different sectors. I wish to express my gratitude to all the pledgees for their immense support. I would also like to extend my congratulations to the 34 “Mediate First” Pledge Star Logo awardees for their active involvement in this meaningful campaign.

4. Today’s theme is “Mediate First - Anchoring the Future”. In order to anchor a successful future, one needs to do a lot to pave the path. The DoJ has started paving the path for a prosperous future for the mediation community for more than a decade. We have put in place a strong regulatory framework with the implementation of the Mediation Ordinance and the Apology Ordinance, coupled with an industry-led accreditation body for mediators, the Hong Kong Mediation Accreditation Association Limited, to ensure the quality of mediators in Hong Kong.

5. The Department’s past initiatives have been well received

¹ These figures are updated as at 27 May, 2021.

by the mediation community. Mediation has been undergoing rapid development and the DoJ has spared no effort in promoting mediation both locally and internationally. May I take this opportunity to highlight a few to you.

Investment Mediation and the CEPA Mediation Agreement

6. Mediation as a flexible dispute resolution means that emphasis is on harmony and achieving a win-win situation that is apt for investor-state disputes. It allows host states and foreign investors great autonomy to control the mediation process. A well-trained and professional investment mediator will be able to facilitate the parties to reach mutually beneficial, creative and forward-looking settlement arrangements. The most special feature of mediation is that remedies are limitless and they are not limited to monetary damages, i.e., the mediated solution can be “multi-dimensional”. Mediation allows parties’ non-monetary needs and interests to be taken into account when reaching a settlement, and by having frank discussion about the issues, the parties will have a greater chance of restoring their relationship and continuing to collaborate in the future.

7. Recognising these benefits, a Mediation Mechanism has been established under the Investment Agreement under the Mainland and Hong Kong Closer Economic Partnership Arrangement (“CEPA”) for settlement of investment disputes between Hong Kong and the Mainland. A set of CEPA Investment Mediation Rules are in place, and there are 43 Hong Kong mediators designated under this Mediation Mechanism.

8. With a view to building up a team of investment mediators in Asia to handle international investment disputes, the Department brought to Hong Kong a capacity building and training programme on investment mediation in 2018. Together with the International Centre for Settlement of Investment Disputes (ICSID) and the Asian Academy of International Law (AAIL), we have been co-organising the

Investment Law and Investor-State Mediator Training in Hong Kong. Government officials, legal and mediation practitioners attended the training and had intellectual and professional exchanges on investment mediation.

9. Despite the COVID-19 pandemic, the Department is considering to hold the next Investment Law and Investor-State Mediator Training in the last quarter of 2021.

Mediation in the Guangdong-Hong Kong-Macao Greater Bay Area

10. Hong Kong has been serving as a bridge or a springboard for inbound and outbound investment into and from the Mainland. Given Hong Kong's unique "One Country, Two Systems" and our well-developed and impartial legal system, Hong Kong's position as an international legal and dispute resolution services hub will be further enhanced with the opportunities presented under the Belt and Road Initiative and the Guangdong-Hong Kong-Macao Greater Bay Area ("GBA").

11. In this respect, the Department has been working closely with the Department of Justice of Guangdong Province and the Secretariat for Administration and Justice of the Macao Special Administrative Region in the Guangdong-Hong Kong-Macao Bay Area Legal Departments Joint Conference on the establishment of a GBA Mediation Platform. The GBA Mediation Platform would be an authoritative platform for high-level exchange and co-operation among the legal departments of the three governments of Guangdong, Hong Kong and Macao, established to discharge the role of a standard-setting body with a view to promoting the wider use of mediation within the GBA.

12. DoJ has already provided a draft of the proposed qualification and accreditation for mediators in the GBA to our counterparts for their consideration. A draft set of code of conduct has also been

prepared by the Department for comment by the other two sides. We hope that these drafts will be further discussed in the Working Group meeting soon for them to be approved before the next meeting of the Joint Conference later this year.

West Kowloon Mediation Centre

13. Locally, DoJ implemented the Small Claims Mediation Pilot Scheme in November 2018 at the West Kowloon Mediation Centre with the objective of promoting more extensive use of mediation to resolve disputes and enhancing public awareness of mediation as a means of dispute resolution. The Mediation Pilot Scheme provides mediation services to litigants of cases referred by the Small Claims Tribunal, as well as other suitable cases at a nominal fee of \$200 per party.

14. With the support of the Judiciary, up to April 30, 2021, 966 cases were referred by the Small Claims Tribunal and 56% of those cases submitted an application for mediation. The success rate has been around 50%.

15. The Mediation Pilot Scheme will end in January 2022 and the DoJ will review its effectiveness and sustainability and decide the way forward. The Department will also continue to devise new initiatives to further promote mediation to the general public of Hong Kong.

Today’s Event

16. Returning to today’s programme line-up, besides the keynote speeches from the President of the Law Society of Hong Kong and the Director-General of Invest Hong Kong, you will also hear about the use of mediation in the private wealth sector. As the title suggests, big money comes with big problems, and the wealthiest family surely may prefer settling the disputes confidentially, which is one of the most precious elements of mediation, rather than in a forum that would be

attracting public attention.

17. Following on we will look at how mediation can help resolve healthcare disputes. Amidst the COVID-19 pandemic which is straining our healthcare services sector, it elevates the need for disputes relating to healthcare services to be dealt with amicably. The appropriate use of mediation and sometimes an apology may be an apt prescription in easing disputes, particularly in dealing with patients' relationships.

18. Last but not the least, the benefits of mediation in employees' compensation claims cannot be understated. Speakers will share with us their insights based on their real life experience in dealing with both the employees and the employers in such claims, and how to better facilitate effective communications among parties to achieve an amicable settlement using mediation skills.

Conclusion

19. I am sure the panellists will offer in-depth discussions on each of the topics. I look forward to hearing their insightful sharing today. Undoubtedly, mediation has much potential for us to explore and capitalise on in the future. The DoJ will continue our efforts in promoting mediation locally, regionally and internationally in order to anchor a successful future for Hong Kong.

20. On this note, it is my great pleasure to open the "Mediate First" Pledge Event 2021. May I wish this event every success.

Thank you very much.

Keynote Speech

Ms. Melissa K. Pang, BBS, MH, JP
President of the Law Society of Hong Kong
Partner, Pang & Associates

Secretary for Justice, Director-General of Investment Promotion, Invest Hong Kong, Members of the Legal Professions, Members of the Mediation Community, Distinguished Guests, Ladies and Gentlemen,

Good morning. It is my honour to be speaking on behalf of the Law Society of Hong Kong (“Law Society”) on this solemn occasion.

Mediation as a New Area of Legal Practice

1. This year, the theme of the “Mediate First” Pledge event is “Mediate First – Anchoring the Future”. It reminds me on the first year when the “Mediate First” Pledge event was launched in May 2009. At that time, the legal professions were slightly uncertain about the future of mediation in Hong Kong. Twelve years had passed, since then, much has happened in the development of mediation in Hong Kong.

2. “The future of mediation as a new legal practice” is perhaps one of the most frequently and heavily debated topics among solicitors. While solicitors tend to have different views on different subjects, the Law Society considers that mediation is one of the fast-growing areas of legal practice for solicitors. We strongly encourage solicitors to equip themselves with updated knowledge and skills in mediation; and to practise as Solicitor-mediators and/or Solicitor-mediation-advocates to extend their legal practices in not just Hong Kong but also other jurisdictions or areas, such as the Guangdong-Hong Kong-Macao Greater Bay Area and the Belt and Road Regions.

Solicitor-mediators and Solicitor-mediation-advocates

3. Solicitor-mediators and Solicitor-mediation-advocates are practising

solicitors who have different roles and tasks in mediation.

4. Solicitor-mediators whose skills, knowledge and experience in mediation have attained a given level of competence recognised by the Law Society. They have different sufficient skills in mediation, legal knowledge on court procedures and are very experienced in assisting the parties in identifying and resolving their issues in a productive and systematic manner. Some Solicitor-mediators have, in addition, extensive expertise in certain practice areas, for example, personal injuries, commercial disputes. Their technical skills and legal knowledge are very helpful in resolving disputes in an efficient, effective and economical manner. It is worth noting that Solicitor-mediators are not to act as legal advisers in mediation proceedings.

5. On the other hand, Solicitor-mediation-advocates are legal representatives of the parties in mediation. They completed specialised training in mediation advocacy. Their major task is to advance their clients’ interests in mediation. They have sufficient knowledge and skills in assisting their clients in, among other things, planning and preparing for mediation, and in particular, negotiating for their best interests in the mediation proceedings in a non-adversarial and productive manner.

6. The Law Society considers that mediation and mediation-advocacy will be growing as a very important legal practice area to the solicitors in the very near future.

New Opportunities to the Mediation Community

7. We can see more opportunities are now available in both domestic and international arena for the mediation community, particularly to those who have professional legal knowledge and experience in specified areas of dispute.

8. In the domestic context, the Judiciary and the Department of Justice (“DoJ”) are very supportive to mediation. They have implemented various pilot schemes and issued various practice directions to promote the use of

mediation. For example, the Pilot Mediation Scheme operated at the West Kowloon Mediation Centre provides mediation services to litigants of Small Claims Tribunal cases that are suitable for mediation as well as for other suitable cases. Moreover, eBRAM which is supported by the DoJ provides a brand new online mediation platform. I am sure that the Hong Kong SAR Government will continue to implement more initiatives to support the development of mediation.

9. In the international arena, Hong Kong is positioned to act as an international hub for dispute resolution services, and a regional centre for intellectual property trading under the *“Outline of the 14th Five-Year Plan for National Economic and Social Development of the People’s Republic of China and the Long-Range Objectives Through the Year 2035”* (“14th Five-Year Plan”). It is expected that more initiatives will be put in place by the Hong Kong SAR Government to support us to achieve those objectives. Moreover, the continuous growth of economic and social activities under the 14th Five-Year Plan will lead to more business opportunities to mediators and mediation-advocates, especially in areas such as intellectual property disputes, investor-state disputes, maritime disputes, entertainment disputes and sport disputes.

10. Furthermore, China is a signatory of the United Nations Convention on International Settlement Agreements Resulting from Mediation. This Convention aims to facilitate international trade, and promote the use of mediation for the resolution of cross-border commercial disputes by way of cross-border recognition and enforcement of mediated settlements among convention signatories. Our mediation community will be able to enjoy the benefits of this Convention after China has put it into force, and extended it to Hong Kong.

Closing Remarks

11. In light of the above, I am optimistic about the future development of mediation and strongly recommend all mediation practitioners to continue to equip yourself with the latest knowledge and skills. This will enhance

the overall competitiveness of Hong Kong and strengthen Hong Kong as an international hub of settlement of dispute resolution.

12. Before I conclude, may I express my gratitude to those who have provided your continuous supports to mediation in Hong Kong. Needless to say, the development of mediation could not have been successful without the support of the Judiciary, the DoJ, the legal professions and the mediation community.

13. Once again, thank you for inviting me. I believe you will find today’s event informative and rewarding. I look forward to seeing you very soon.

Thank you.

Keynote Speech

Mr. Stephen Phillips
Director-General of Investment Promotion,
Invest Hong Kong, Hong Kong SAR Government

Ladies and Gentlemen,

Good morning! It really is a great pleasure for me to be joining you here today at the “Mediate First” Pledge Event 2021. In the next few minutes, I would like to share with you some of my thoughts on mediation through the lens of the Invest Hong Kong (“InvestHK”), a department of the Hong Kong SAR Government.

Our mission is to both attract and retain both Mainland and international investment in our city that ranges from multinational corporations to entrepreneurs and startups. Day to day we offer practical advice and support through more than 30 offices worldwide, and the team here in Hong Kong.

A really important component of that pitch to investors we are looking to attract is Hong Kong’s status as a world-class dispute resolution centre. As we support investors in setting up and expanding, it is important that we help them not only to think about the manifest opportunities, but also to take the sensible steps to manage and mitigate risks.

As we all know, there is always the possibility that the best-laid plans end up in a dispute. This is really where mediation is one of the most important tools the companies can use.

Certainly when I look to the future, I believe mediation will only be growing in importance in Asia, as the region leads global economic growth through the engine of China, and the rest of the region.

Allow me perhaps to articulate my reasoning in a little bit more depth by sharing a bit information about the international-Mainland business

community here in Hong Kong and then also what I see as the key drivers of trade and investment going forward.

Hong Kong is home to more than 9 000 international and Mainland companies, of which over 1 500 of them use Hong Kong for cross-border business.

The top four sectors are those you might think of as traditional in Hong Kong: Import/export/wholesaling and retail; financial services; professional services and transportation and logistics.

We also do another survey at the InvestHK, which looks up what is happening in our startup community, and this gives us a glimpse, perhaps of the future shape of Hong Kong’s economy: Fintech; e-commerce/supply chain; digital professional services that include legal tech; data analytics; biotech and life sciences. This startup community is also international in its nature. More than a quarter of them do come outside Hong Kong. In fact, just this week we held our startup festival with participants from more than 100 countries around the world which just shows what a magnet Hong Kong is.

Perhaps now I can turn to the big drivers of growth. I am sure every one with us today is looking forward to a rebound post pandemic.

I am optimistic that this will be the case and that Asia will lead the pack but with the proviso that across the region including here in Hong Kong we have to see vaccination rates increase very rapidly. It is certainly a cloud in my mind that hangs over timing of a rebound.

Also a “but”, I would posit that there is a fair chance that we have not seen the full economic fallout from the pandemic. As economic relief measures are tapered across the world, I think we can expect to see more businesses continuing to struggle, especially small and medium enterprises. Many would definitely be cash strapped and some of them will fail. Clearly that may lead to an uptick in commercial disputes.

But back to the opportunities, when I talk to investors by opportunities, I try to create an image of concentric circles of opportunity with Hong Kong and the heart of it.

This is always also in the context of a number of national policies including the *“Outline of the 14th Five-Year Plan for National Economic and Social Development of the People’s Republic of China and the Long-Range Objectives Through the Year 2035”*, the Guangdong-Hong Kong-Macao Greater Bay Area (“GBA”) and the Belt and Road Initiative, as well as RCEP - the Regional Comprehensive Economic Partnership.

Hong Kong itself continues to offer good opportunities to meet the discerning needs of consumers and sophisticated businesses here in the city. But we have to recognise that it is a relatively small market so company that is investing here very often do so for wider regional opportunity.

The GBA is the foremost amongst those and I would say it is currently the biggest magnet for the foreign direct investment (“FDI”) interest and is too important to ignore. First, the GBA has scale whether you are looking at the population, income per capita, the sophistication and innovation of businesses, the talent and indeed the economic clout. The GBA has also gotten world-class infrastructure in place to have the connectivity and there are many commercial opportunities both in business-to-business space as well as business-to-customer. There are also opportunities to work with Mainland companies from the GBA internationalising very often through Hong Kong.

Also we are seeing a very strong growth in the trade and investment corridor between the GBA and the Association of Southeast Asian Nations (“ASEAN”). Of course underpinning of the GBA is policy support from the Central Government and all of the 11 cities. China itself will continue to be a major driver of FDI through Hong Kong and indeed trade and this is both inbound and outbound.

Beyond being the second largest economy and the attraction of the GBA, there are other areas of strategic importance and strong growth: Jing-Jin-Ji

(JJJ); the Yangtze River Delta, and the Chengdu-Chongqing Economic Circle amongst them. Beyond that, the 10 economies of the ASEAN are also very important and offer high potential growth.

Lastly, the Belt and Road Initiative is opening up new opportunities. These go beyond the infrastructure. In many ways, the pandemic has accelerated the possibility and the viability of a digital Belt and Road.

Indeed this pandemic-induced increase in digital delivery of both products and services is itself a major driver of opportunity but at the same time risk too. This may well increase the volume of disputes, especially as many of these businesses are relatively small and perhaps they do not have skills in cross-border trade and investment that may lead to some opportunities for mediation. Overlaying all of these opportunities is RCEP, which will add fuel to growth across Asia.

So what does this all mean for disputes and mediation? I think we can draw a few conclusions or at least I can draw a few conclusions. Faster growth is going to lead to more trade and investment. Naturally that will lead to more disputes. Second, much of this growth we are going to see is going to be cross-border or cross-boundary and that adds complexity and raises the stakes for disputes.

Third, technology is driving so many changes and opportunities. Startups and scaleups are rapidly internationalising. But not all of them have the skills to do so while managing the risks as effectively as they might. New technologies too may not deliver all they promise to. So the possibility of more disputes may also rise.

Consequently, encouraging more businesses to explore the benefits of mediation surely makes a lot of sense. It is an area where we, the InvestHK, look forward to working with the Department of Justice and the legal professions in collaboration to ensure the investors in Hong Kong both seize the opportunities but manage the risks very effectively.

So, on that note, it just remains for me to thank you for listening and inviting me here today.

Thank you very much indeed!

Panel Session 1:
Big Money Big Problems?
Mediate Disputes in the Family Office and Private Wealth Sectors

(Transcript)

(Mr. Norris Yang)

I am very honoured and pleased to be here today and I wish to thank the Department of Justice (“DoJ”) for inviting me to moderate this very important session. Of course, many thanks to our Secretary for Justice (“SJ”), the Honourable Teresa Cheng Yeuk-wah, GBS, SC, JP and Ms. Christina Cheung, JP the Law Officer. It is very interesting to be able to speak after such important messages from the SJ, Ms. Pang, the President of the Law Society of Hong Kong (“Law Society”), and of course Mr. Stephen Phillips who is from the Invest Hong Kong (“InvestHK”). This puts a lot of pressure on me to see how we can make this event a very meaningful and exciting one, and hopefully a little bit of entertainment for everyone.

Today, we have a very important session on wealth and how people deal with wealth and what kind of dispute they have. Now, mediation is very important for Hong Kong and of course the SJ and Ms. Pang have already discussed various mediation initiatives in Hong Kong and Mr. Phillips has also mentioned a lot about the benefits of using Hong Kong as a mediation hub. Now from my side, it is wonderful to have this event amidst the difficulty with the pandemic, and as I have mentioned, I am very honoured to be here today.

Now, mediation of wealthy clients and families is a very important topic for me personally and I have been conducting mediation for almost two decades. The reason why I keep doing that is because I have a great satisfaction from dealing with mediation and seeing the results. I remember one particular case. Of course because of the confidentiality issues of the case, I cannot tell you too much detail, but it was a particular case where a matriarch of a very prominent family was involved in a mediation about a charitable fund which this family had found, runs and operates.

The matriarch was probably in her early nineties, and every time she came to the mediation and we spoke, it felt that she had a cloud over her head as if it was about to rain but it has not rained yet. The cloud was here and it was muggy and hot. She was so unhappy that you could see in her face and her forehead was just dark. At that time, I was really worried that she might suffer from some physical ailments. The mediation went on for three days, eventually, we did get a settlement. As soon as we announced to her that we had had a settlement, suddenly the sun rose from the ocean, from the mountains behind and it did not rise slowly, but just popped up overhead and then it became a very beautiful day, not too hot, not too cold, and her forehead was just as bright as the sun. It was just wonderful! That was one of the images that I could never quite share with you, because you have to be there to see it.

Another case that I had was a very interesting one with a family that have had disputes for many years. At the end of it, what happened was that the eldest brother hosted a family dinner and invited all the siblings and the lawyers from all parties. It was the first time they have had a family dinner in thirty years. That was just incredible! I was invited as well and really enjoyed it.

Now, today we have 3 speakers who are here with us, and 2 speakers from overseas.

On my left is Mr. Michael Leung, MH, Chief Executive Officer of BOA International Financial Group. He will be talking on the problems of the wealthy. I wish I had their problems, but I have other problems which are the problems of the poor.

Further on is Mr. Dixon Wong. He is the Head of Financial Services and Global Head of Family Office of the InvestHK, and he will be talking about family offices in Hong Kong.

On my furthest left is Ms. Sherlynn Chan, a solicitor and a partner of Deacons in Hong Kong. She will be talking about mediation of families with wealth and also situations where there might be difficulties with the mental

incapacity of the elderly parents.

For overseas speakers, we have Mr. Patrick Yip who is tuning in from New York. He is the Vice Chairman of Deloitte China and an expert in tax and trust and he will be talking about that as well.

From Shanghai, we have Mr. Henry Chen. He is a partner of Dentons in Shanghai and will be talking about mediation and family constitution which I think are very important and interesting topics.

So, I would like to invite Michael to speak. He is the Chief Executive Officer of BOA International Financial Group. Previously he was Chief Information Officer and Chief Operating Officer of China CITIC Bank International and other major banks and worked in senior positions at many multinationals, such as Philips, International Business Machines Corporation (IBM), PricewaterhouseCoopers (PwC) and so forth.

His academic credentials are very impressive with an engineering's degree and awards for his academic achievement. He got a master degree from the Netherlands, a graduate diploma in Bank Management and is currently pursuing a Doctorate in Business Administration. He has also served or is serving a lot of public offices including President of the Hong Kong Computer Society, Executive Committee member and FinTech Committee Chair of the Hong Kong Institute of Bankers, Adjunct Professor of the City University of Hong Kong, Chairman of the Hong Kong Down Syndrome Association which is a very worthwhile charity and amongst other things, Director of the Hong Kong Cyberport. Today I am very pleased to introduce Michael who will speak on "How Money Can Become a Problem for the Wealthy".

(Mr. Michael Leung, MH)

Thank you, Norris!

It is my honour to be sitting here and sharing my thoughts with you. As

Norris said, my profession is banking and that is the reason why I am sitting here today. From time to time, you all have to deal with issues and disputes. In my day-to-day work, I have clients coming to us to discuss the issues that concern them. You will know of the wealth they have, how they look after the wealth, etc. Of course, it is not just money. Disputes could be for many reasons, such as parental rights for children, trade disputes, etc.

But today, I, as a banker, will talk more about private wealth and how we resolve disputes around that. To begin with and to set a scene for the panel, let me spend a few minutes to go over what the issues to address or disputes to resolve could be.

Firstly, I, as a banker in my profession, have to understand how much wealth there is. What is it? In what shape or form is the wealth? When was it acquired? Where is it sitting at the moment? Who owns it? Within the family or within the foundation? Who and why? Why is there? Or why is/are this wealth or these assets owned by the people in the family or in the foundation? How much is that?

The second question is “What are they doing?” What is/are this wealth or these assets doing? Need to do anything? For us as banking professions, we need to know if there is anything we need to do about that. What are the investment strategies? Asset classes? This is obviously the second question when we come across these private wealth clients.

The third question is “How can wealth be better allocated?” This goes back to what I said earlier that they came to us saying that the wealth was neither allocated properly nor distributed fairly among the family members. Last but not least, how is this wealth inherited? It is about succession planning, etc.

Fourthly, how can wealth be preserved to survive the changes in family? In fact, I should say it is not just the changes in family, but also the society and the world as a whole, such as pandemic and finTech.

The fifth question is “How can disputes be avoided in the first place?” If not,

they are mediated and resolved by the family constitution, the disciplines, the rules and the regulations within a family, family office, governance or mediators. Or the disputes are resorted to senior members of the family for resolution.

Last but not least, how can wealth be protected and transformed in the digital era? When we talk about digital era, we talk about innovation with a lot of digital assets, such as cryptocurrency, fan token offering (“FTO”), non-fungible token (“NFT”), etc. In fact, only a few days ago, we came across an issue about cyber security. In the old days, it was all the swindlers but now cybercriminals. So, how do we avoid them? How do we protect our wealth against those cybercrimes?

Now, with all these sorts of issues that we have to deal with, the questions that we, as laymen, non-mediators and non-legal professions, come cross in day-to-day life very often are as below.

First, “Why did daddy leave me so little and so much for my other brothers and sisters? It is just bloody unfair!” Very often we come across clients chatting with us on this sort of complaint or grievance that they have. In fact even my wife worries about it. I got two boys and she was already saying that the two Mrs. Leung, our future daughters-in-law, are going to fight for our assets one day, it will be horrible and it will be a nightmare.

For a sibling who does not agree on the allocation of assets, he/she may say, “I would run the family business. I should because I am smarter and work harder”, “Dad, grandpa or grandma is too old to look after the wealth. People like me as a younger member of the family should look after the wealth” or “Grandpa and grandma are too old that they will be fooled into doing something silly.”

Second, “What asset classes and financial instruments should I invest in order to maximise the returns?” This is my profession. This is what we are supposed to be doing for the clients, and advising them on what to buy and what to choose to invest among so many different products such as primary

and derivative products.

Third, “How can I enhance my family legacy on worthy causes?” I have been involved in non-governmental organisations and charities. I think this is a very important issue on how we can make the family and the legacy of the family go forward.

Now, as we serve our clients in the banking community, we often hear from clients about family affairs that they have to look after as a family office or as a family foundation.

First, family road map, family governance and family expert. All of these are areas that people like me can help. We have a very extensive network of service providers and product suppliers, so we can advise or give choices to the customers in terms of what they can do with their private wealth.

Second, family network. We organise seminars and events like this to introduce peer families and industry leaders to our clients.

Third, family purposes. It is about what I mentioned before about setting in motion with a view to benefiting the society and the environment.

Let’s move to wealth planning challenges. Wealth planning is about how we look after and grow the wealth and it comprises financial planning, wealth structuring, retirement, taxation, succession, relocation and philanthropy.

In-depth financial planning can help you achieve your financial goals.

Wealth structuring. This would involve portfolio allocation, portfolio re-balancing and the stuffs that we do in the wealth management space.

Retirement. How do we plan for the family members’ retirements? Again, it is about succession planning. How do we make sure the next generations can grow to protect and grow the family wealth to provide an affirmative and comfortable future?

Taxation. It is also an important topic that could save you a lot of money. When you move the family office to certain jurisdictions, or spread the risk amongst different jurisdictions, it may be able to save a lot of tax payments. For example, in a tax neutral offshore jurisdiction, you can offer a lot of options to save a lot of taxes.

Succession planning, aforementioned, is passing on your wealth to the next generations.

Relocation. It is about going overseas and being a global operation instead of just staying in one particular jurisdiction. That being said, how do we make sure that we spread the net wide enough across the globe?

Philanthropy. It is your charity courses and charitable engagements as I mentioned earlier. In fact, I am very much involved in this aspect, for example in the Down Syndrome Association.

Last but not least, we, professions of wealth management services, offer our clients the options of products as below.

1. Discretionary mandates;
2. Family office services;
3. Foreign exchange and precious metals;
4. Global custody;
5. Investment advisory mandates;
6. Securities execution and advisory;
7. Structured products;
8. Wealth planning;
9. Lombard lending; and
10. Project finance

In the coming up panel discussion, I can share more about various options, products and instruments that we can offer to family offices in order to protect and grow the private wealth.

Thank you so much!

(Mr. Norris Yang)

Thank you very much, Michael! This is a short but very concise presentation!

Now, we have Patrick who is going to be speaking all the way from New York covering topics of tax and trust, a very important aspects that we will be thinking about.

Patrick, I have known him for quite a few years. He is an experienced international tax partner, Vice Chair of Deloitte China, and specialises in the United States (“US”) international taxation, the Mainland-Hong Kong cross-border taxation and structuring mergers and acquisitions transactions. In addition, he is a specialist in the Foreign Account Tax Compliance Act (“FATCA”) and the Common Reporting Standard (“CRS”).

He was also involved heavily in tax policy discussions with both the Hong Kong and Mainland tax authorities. He holds a number of degrees including Master of Public Administration in Taxation, Bachelor of Business Administration in Accounting with high honours, Master of Laws degree and undergraduate Law degree (Honours) from the University of Cambridge as well as Master of Business Administration (Honours) from the University of Chicago. He is a member of the accounting professional associations, namely the American Institute of Certified Public Accountants and the Hong Kong Institute of Certified Public Accountants (“HKICPA”). Most importantly, he was recognised by “*International Tax Review*” as a Leading Individual in Tax.

So, let me hand over to Patrick to talk about tax, trust, the FATCA and the CRS.

(Mr. Patrick Yip)

Thank Norris for the kind introduction!

To start with, I would like to draw your attention to the title “Tax and Asset Protection Considerations for the Multi-jurisdictional Family”. There are actually quite a few concepts that are hidden that I would like to unpack for all of you.

The first word is “tax”. I am sure that you have heard about this saying from Benjamin Franklin back in the 18th century. He was one of the Founding Fathers of America who said there were two things certain in life: One is tax and the other one is death.

In the 18th century, he was already of the view that tax is something that is non-negotiable. Imagine that we are now in 2021, I do not think Benjamin Franklin could ever have imagined we would now have emails, social media, Wi-Fi, all these high technologies. How would it affect the certainty of taxation? To say the least, nowadays governments around the world have a lot more weapons at their disposals to make sure their subjects are paying their fair share of taxes. So, I would say in terms of enforcement and tax collection, all these things are much more sophisticated today than before.

Then, we come to next phrase - asset protection. Now, you may wonder why tax and asset protection could be connected here. I just like to remind everyone that tax is a legal obligation meaning that you have to fulfil your legal responsibilities that you owe to the government. That means if you do not fulfil those obligations, the governments - maybe one or two governments, depending where your assets and income are located, can come after you. If they come after you, the first thing that they will try to get is your assets.

If your tax planning or your tax arrangements is not properly implemented or properly executed, there is actually quite a high likelihood that your assets are not very well protected. Before I came to New York, I had actually gone to Chicago and a museum therein. One of the exhibit at the museum was about Al Capone, a famous triad boss in Chicago in the first half of the 20th century. He had done a lot of bad things, but eventually he went to jail for tax evasion only.

From governments’ perspective, tax can come in handy in terms of tackling some problematic figures in the society. In a more relatable sense, if you want to protect your assets, please make sure that you have optimal tax arrangements that would make sense and are in line with business realities or business purposes.

Following the word “tax”, your attention is then drawn to the phrase “multi-jurisdictional family”. Why is there this phrase? It is because unlike Benjamin Franklin’s the 18th century, we would typically see in today’s world that many of our clients would have a Chinese passport and a Hong Kong permanent identity card while possessing multiple passports. Their children may be studying in the US in the process of getting their US green cards, or they are planning to buy some properties in Australia and see whether they can also get a permanent resident status in Australia. We can see that in today’s world a family is no longer monolithic, an idea that a person, for example, is a Chinese citizen or Hong Kong resident residing in only one place.

So, why would this be important? For example, you can imagine yourself being a patriarch of a family. In this context, you were a Hongkonger and there was not much for you to worry about in terms of tax and assets because Hong Kong’s tax regime is quite straightforward. However, if most of your assets eventually would go to your children with some of them having foreign passports like the US passport, things would look very different. A lot of our clients would say, “I do not need to worry about that because I can easily set up some offshore companies to hide those assets and nobody will find out.”

Then I would like to draw your attention to what Norris referred to just now. Around the world these days, every government is trying to find out if their citizens or residents are hiding any assets that are beyond the reach of that government.

Typically, governments would want to find out whether their citizens or residents are putting assets into some tax haven companies. That is why we now have the FATCA rules in the US and also the CRS rules in other

countries.

By virtue of those rules, as long as your offshore tax haven companies have bank accounts, maybe in Hong Kong, the US or in whatever country, there is a way for a certain government to know about the details of those bank accounts that could potentially be traced back to the individual. Those details would be exchanged or provided to the government of which that individual is a tax resident.

If you have a bank account or you have an offshore company that has a bank account with hundred million dollars and makes a lot of investment gains every year, the information of that account could potentially be provided to the country where you are a resident of.

Take a simple example. If you were a Chinese resident and owned a tax haven company that in turn owned a bank account in Hong Kong, that bank account information would be provided to the Chinese tax authorities on an annual basis. When they got the information, they would simply say, “Oh, okay. It never came to our attention that this person in our village, township, district and city has ever been so wealthy. Now, we need to find out what happened. Where did he get all this money? All this money is now in Hong Kong.”

That is where I would say, first it started as a tax problem. But later, I will tell my clients that the tax is the smallest problem here. If a problem can be resolved by money, like paying the tax can set you free, then you should consider yourself lucky.

However, if we get into a situation where it cannot be resolved by only money, this gets into asset protection problem on whether you are adequately protected from your creditors, etc. I would say all these things are somehow interrelated.

Let’s bring all these things together to give our audience some sort of idea here.

Now, the US tax system is worldwide because even if your children who have received green cards or became US citizens are working in Hong Kong or China, they would have to pay tax on all of the income, all of the capital gains and all the dividends that they receive. The US tax rate is quite high with top rate 37% plus that 3.8% of net investment income tax. Rumour has it that Biden administration is going to increase the tax rates even further. Estate duty in the US is quite significant. Based on the fair market value of the assets it could be up to 40%. I would also like to take this opportunity to caution the audience here. Please do not assume that you are not an US citizen or resident, then you are outside of the tax in terms of estate tax. For example, a foreign individual, being a non-US individual, owns a condo in San Francisco or stock of Apple, Facebook or the fin stocks. If that person dies, all of those assets are considered as the US property with an estate duty of 40% to be imposed.

I had clients who were a Hong Kong couple without foreign nationality or residency. The husband invested into two stocks in the US amounting to a couple of million Hong Kong dollars a long time ago. By the time he died, it had appreciated significantly to somewhat like HK\$20 million. Then the wife tried to close the account to retrieve the money, but discovered the account in Hong Kong had been frozen by that brokerage firm because “This amount, the 20 million dollars would have to be subject to the US estate duty before the money, the account proceeds can be released,” said the brokerage firm. It was a big shock to my widow client. She, therefore, came to us and we had a sort-out in all these estate duty matters with the US Internal Revenue Service, so that she would get her money back but at a substantially smaller amount after the estate duty.

I would say this happened because the couple did not rethink about tax planning around the US estate duty. This shows the importance of doing some sort of planning, especially if you have assets in high tax jurisdictions such as the US, the United Kingdom (“UK”), Canada, Australia.

Let’s compare Hong Kong with the Mainland. Hong Kong is the most tax friendly place right now. But unfortunately, Hong Kong is also under pressure

in terms of how to compete with other jurisdictions. Right now, there is a proposal to have a minimum tax that would apply to companies across the world. How it would affect Hong Kong is yet to be seen.

Now obviously, the tax rate in the Mainland is higher than in Hong Kong. Tax rates are up to 45% and 20% for salaries and investment income respectively. On the contrary, Hong Kong imposes no tax on investment income. In light of this, it is always good to have offshore income and offshore gains to be subject to tax in Hong Kong because there is no tax in terms of investment income.

Now, if we bring all of these together, I would say I have been fortunate enough for the last ten years that many of the newly rich even the top ones in the Mainland have come to me for advice. Also some of the major shareholders of recent mega initial public offerings (“IPO”) have become our clients. If you look at the prospectuses of all these IPO companies, whether they are mega IPOs or smaller IPOs, they would, more than 90% of the situation, employ offshore family trusts as the most common vehicle through which to hold their listed shares.

Obviously there are a lot of advantages of using an offshore family trust to hold the assets not only because they have tax and asset protection advantages, but also because of succession planning and protection from creditors.

There is a simple example I like to illustrate this point. If you were driving in the US and unfortunately hit someone who happened to be a medical doctor, I can guarantee you that the victim’s family would sue you and ask for more than 100 million dollars for compensation. If you had all the assets under your own name, I am afraid that most of your assets would be included for potential compensation purposes. It would be too late to put your assets into a trust after the accident had happened because obviously you were trying to do something to avoid or evade your compensation responsibility. That is why I always tell people if you want to set up a trust, do it sooner rather than later.

Towards the end of 2018, the Chinese government was thinking about revamping the individual income tax rules. One of the provisions was to say if anyone made a gift to another entity or another person who is not a family member, there would be a possibility that that gift would be subject to tax as if it was a sale. Few months into 2018, people were scrambling to do trusts. It was because there was a concern that transferring property into a trust like a pre-IPO trust would be considered as a taxable transaction. If that was a case, how could you come up with the cash to pay for the capital gains in that transfer? Luckily that provision had been taken out before the final version came out. So we are still doing a lot of trusts now because we do not have that particular clause in the final law. Nobody knows whether this would come back or not. That is why we are still seeing a lot of Mainland clients, especially pre-IPO clients would opt for doing trusts.

Finally, I would have to say that there was a particular provision included in the law that said, “If you are a Chinese national and own an offshore entity that does not pay tax, whatever income that entity derives, that income would be considered as taxable to the individual Chinese shareholder on the current basis, even though there is no actual dividend paid to the shareholder.”

The CRS rules starting that year is the reason why trusts have become so popular rather than holding assets to offshore companies and why that rule matters. There is an exchange of information in which all these tax haven companies’ accounts are sent back to China.

Imagine if the Chinese tax authorities looked at these offshore companies’ bank accounts with a lot of investment gains and asked the shareholder, “Hey, how come you have all these gains and you are not reporting tax?” The shareholder could simply say, “Well, it was because there was no dividend paid to me, so that was why I did not have to pay any tax.”

Now with this new rule, this argument is no longer possible. The tax authorities in China would simply say, “You have to pay tax because that tax haven company without paying any tax is controlled by you, that income is deemed to have been received by you.”

(Mr. Norris Yang)

Thank you very much, Patrick! That was a very comprehensive discussion on tax, the FATCA and the CRS.

Next up, I am very pleased to introduce Dixon, the Head of Financial Services at the InvestHK. In addition, he was actually appointed as the Global Head of Family Office just recently in April 2021 because the Office was set up as an initiative of the InvestHK to promote Hong Kong as a hub for family business which would be very good for Hong Kong. He helps overseas and Mainland financial institutions and family offices to establish or expand their business presence in Hong Kong.

Dixon has had many positions in a number of different departments in an international bank for more than twenty years. He is also an accountant and worked in the assurance and advisory department of one of the big four accounting firms.

Dixon has impressive academic credentials with Bachelor of Laws degree and Master of Business Administration degree. He is also a Fellow Chartered Accountant (FCA, Aust & NZ), Fellow Certified Public Accountant (FCPA, Hong Kong), Fellow Chartered Governance Professional (FCIS/FCG, UK) and Fellow Chartered Secretary (FCS, Hong Kong).

He is also a member of the Hong Kong Trade Development Council Financial Services Advisory Committee and the Steering Committee member of Asian Financial Forum.

Dixon will speak on “Opportunities and Developments of Family Office in Hong Kong”.

(Mr. Dixon Wong)

Thank the DoJ and also Norris for the invitation! I am very glad to speak here today. I think it is a very good timing because the Government is launching the Family Office Unit and I will talk more about this at the later part of the slides.

To start with, for the purpose of education, I will talk more about what family office exactly is. For family office, I think we have long been talking about it here in Hong Kong, and more recently it has become more popular. In short, it is an entity which is set up to manage the wealth and affairs of a family. A host of factors are taken into account on setting up a family office which I will go through that as well.

The purpose of setting up such office is not just for the creation of wealth. I think most of the people may think that Hong Kong is an international financial centre and wealth is important for the people in the city, it makes sense to set up an entity to make money. That is true, but it is only one side of the coin.

On the other side are, other than wealth regeneration or wealth creation, also as explained by other speakers like Michael and Patrick, succession planning, trust, asset protection and more importantly, family constitution. I am sure the rest of our speakers will talk on this in more detail given their legal background.

One of the key elements of having a family office is to ensure the future of the family with members to be trained to take up the family affairs and also the family wealth. That is very important.

The chart is basically showing you that wealth may not survive beyond three generations, what we call in Cantonese “富不過三代”. As you can see, 70% of the wealthy lose control of the assets in the next generation, worse still is the third and the fourth generation. Without a proper planning on family office, constitution and governance, this is the result we can see. I am sure the other speakers will talk about family constitution and governance as well as the typical structure that we can usually see in detail. To put it simply, it would usually involve a family investment advisory board as well as investment management which is tasked to manage the assets, the direct sales and also more importantly the real estate as well as other financial aspects of the family office.

As regards Hong Kong's advantages, Patrick has explained the taxation issues very clearly. Hong Kong is actually having a simple and low tax environment without value-added tax, capital gains tax, estate duty and wine duty tax. Compared to the rest of the world, the public tax of Hong Kong is obviously lower than any other part of the world. There are also tax incentive schemes and regimes available. For example, the corporate treasury centre is one of the key attractions, and so is the latest announcement on the carried interest on the limited partnership regime which I will explain it more.

Being an asset and wealth management hub is another advantage of Hong Kong. Family offices do not merely focus on wealth as I have mentioned earlier, but wealth is definitely one of the concerns. Given that Hong Kong is one of the international financial centres which is a key attraction for family offices, they come here to set up offices. Hong Kong is a popular venue for IPO and private equity ("PE") and also home for 70 of the top 100 global money managers. In terms of IPO, we got more than 150 deals of IPO companies in 2020 ranked the top 5th in the world. In terms of PE asset management, Hong Kong was just second in Asia after the Mainland.

Hong Kong is also a centre for philanthropy and impact investment centre. This factor is one of the key elements for family offices because they usually consider where to invest and why they need to invest. The Government has been providing comprehensive support on this aspect, for example the Green Bond Market, Pilot Bond Grant Scheme, etc. Also, Hong Kong is a centre for philanthropy of more than 15 000 charitable organisations already set up here taking the tax advantage under section 88 of the Inland Revenue Ordinance.

Apart from wealth, obviously Hong Kong is a livable city with different lifestyle options. We were actually Asian's number one and the world's number three in terms of the art market. In terms of Bordeaux wine, we are also very strong on the market share.

Needless to say, one of the considerations for family offices coming to Hong Kong is whether they can hire the right people. We have top universities and accountants qualified under the HKICPA as well as legal professions

providing trust advice, succession planning, taxation services, etc. Hong Kong is, therefore, absolutely a great place for family offices to come over here.

The Asia-Pacific region, where Hong Kong is located, has performed well in terms of the number of high-net-worth (“HNW”) individuals (“HNWIs”) and the financial wealth owned by HNWIs from 2010 to 2019. Both figures have increased about twofold for the ten years.

Stephen has highlighted the Guangdong-Hong Kong-Macao Greater Bay Area (“GBA”) a bit earlier at his speech. I would like to give a quick highlight on this because obviously the GBA is a key wealth creation driver. More than 84 000 ultra-high-net-worth (“UHNW”) families are in Greater China of which more than 19 300 are in the GBA accounting for 20% of Greater China. It is also worth noting that the number of UHNW families in Greater China has increased 20% in the past three years. Needless to say, the GBA scored highly for gross domestic product (GDP) and population.

Touching up what considerations family offices would take into account in establishing offices. The first one is the regulatory legal aspect in relation to the licencing, the tax, the rules, the regulations, etc., accounting for 74%.

The second one is the tax regime accounting for 67%. The concern is whether they would be exposed to tax more significantly compared to other countries.

66% of the interviewers would look at the skills, the capabilities and the professions in the country. Emphasis is placed on whether the talents in the territory can be able to provide family offices with the support and advice they need, meaning that whether the accountants, the lawyers, the tax advisers, etc. would be able to do their parts for family offices, investors and operators.

The Chief Executive, in her Policy Address in November 2020, said that family office business has flourished in recent years and has become an important growth segment in the wealth and asset management industry.

As such, a dedicated team will be set up to step up promotion of our unique advantages. The InvestHK is tasked to set up this team and it is now in the process with a view to having five individual executives to provide this sort of one-stop service to family offices from around the world such as the Mainland, Europe and the US which are interested in establishing a presence in Hong Kong.

Apart from setting up the dedicated team for family offices, the government bureaux/departments and related organisations have made efforts to promote business of the sector. Licencing, as I mentioned earlier, is one of the elements within regulatory consideration for family offices to consider, such as whether they need licences or not, how long it takes to get the licences if any, what the obligations are, and any ongoing requirement they need to follow. There was a clarification of these matters from the Securities and Futures Commission (“SFC”) at their website and we have put it on our website as well.

Limited partnership fund is what family offices usually use as an investment vehicle. In light of this, the Financial Services and the Treasury Bureau (“FSTB”) actively pushed the Limited Partnership Fund Bill and got this bill passed in July last year. We have gotten more than 220 applicants registered in the Companies Registry for 9 months since the commencement of the Limited Partnership Fund Ordinance in August last year. The pace is very obvious, positive and significant. More importantly, in April, the Legislative Council also approved the tax concessions for carried interest earned by PE funds operating in Hong Kong.

In the next few months, the FSTB will also be trying to make a change to attract foreign and overseas incorporated funds to re-domicile in Hong Kong. If that is the case, any funds that are already located or registered overseas would be able to register in Hong Kong.

Our InvestHK works with different Hongkongers and the government bureaux/departments and related organisations, to generate publicity and undertake holistic marketing promotion campaign. We work alongside the Financial Services Development Council (“FSDC”), an advisory body to

the Government on the financial services, and the Hong Kong Monetary Authority.

With regard to licencing, we are also working closely with the SFC to make clarifications to the licencing requirements as I explained earlier.

We are in the process of setting up the dedicated family office team and hiring in Hong Kong as well as in the Mainland including Beijing and Guangzhou and overseas like Europe. It is aimed at having hires with experience and network on the ground so as to draw family offices from overseas to Hong Kong. By doing so, we will be leveraging our overseas resources, for example the Economic and Trade Offices (“ETO”).

More importantly, the “Wealth Management Connect” was announced last year with the trade connections that further enhance Hong Kong as a global offshore Renminbi business hub.

The InvestHK has 33 offices around the world as well as the ETOs, and we are going to hire individuals on the ground in three of the major cities. We have sector teams providing sector specialists who help overseas investors including the Mainland, Europe and the US, if they are interested in setting up service offices in Hong Kong. As for myself, I am looking after the financial services and family offices.

To have global development programme, we want to do more roundtables, panel discussions and forums. Given the COVID-19 pandemic at the present stage, we will explore to do these once the situation permits.

Touching on services provided by the InvestHK, they range from planning, set-up, launch and expansions. We provide services not only for investors and family offices, but also for financial institutions like banks, duty companies, asset managers, PEs and branches of companies. If they are interested in setting up presence in Hong Kong, the InvestHK with my team are more than happy to help.

Resources and materials that we have published recently can be viewed at our websites www.familyoffices.hk and www.investhk.gov.hk.

Thank you very much!

(Mr. Norris Yang)

Thank you very much, Dixon! That was a very informative section on what the InvestHK is doing to promote Hong Kong as a family business hub.

Henry is going to be next speaker. He is the Bar of the Mainland as well as the New York State Bar, Chairman of the Compliance Management Committee of the China Enterprise Culture Improvement Association, and Deputy Chairman of International Risk and Compliance Association. He is a member and senior partner of Dentons in Shanghai and also worked in many very important Mainland law firms and international law firms in the Mainland.

He is also an Editor-in-Chief of *“The Compliance Reviews”*, Independent Director of the import & export entity of ZTE, an Arbitrator of the Hong Kong International Arbitration Centre and an Associate Mediator of the Singapore Mediation Centre.

He has two separate Master of Laws degrees from the New York University School of Law and the East China University of Politics and Law, and his first bachelor degree was from the Suzhou University School of Law.

He is actually an author of two books and many articles, mostly on compliance and risk management. I cannot see why we should not have invited him because he is such a prominent person in the Mainland on these issues. He is also going to talk about mediation, the best alternative dispute resolution (“ADR”) in family constitution, which I think is an important aspect of planning for wealthy families.

(Mr. Henry Chen)

Thank you, Norris! It is a privilege to speak remotely without wearing a facial mask.

For mediation in family constitution, let’s talk about “What is a family constitution?” Family constitution is just like a manual for the operation of a cruise liner, which contains three kinds of access: Family spirit, family enterprise/family business and family wealth.

Like other constitutions provided for governance of relationships of different people, family constitution is for governance of family relationship.

Family constitution is tasked with the following. First, gene decides who has share in family business.

Second, competence decides status in family. By generations, there could be a lot of family members, some of whom would be willing to be part of the big family but some may not be willing to inherit the family business. For those who are willing to stay, there should be a mechanism in the family constitution to decide those who are competent and would be able to be promoted to higher level in the family.

Third, spirits are cultured and nourished via education. Family constitution has an important task for passing down the family culture and the family spirits which would have to be provided in the family constitution as well.

Following the aforementioned tasks of family constitution, the next question is “What constitutes a family constitution?” There are many different ways to constitute a family constitution. It could be constituted on the basis of trust. Here we provide an example of dynasty trust. For a trust established from family constitution, you may see settlors, beneficiaries and administrators of the trust. However, what a family constitution would provide is more than a traditional trust. For constitution, you have the people’s congress or parliament, a supreme court, a president and cabinet. With family constitution, you can set up these institutions as well. Family members

and family enterprises could make up and govern a congress in which the highest power in the family constitution shall be vested. With such power, the congress will be empowered to appoint members to form a supreme court to protect the members of the trust.

There should also be an administrative part consisting of a president, an advisory body and a cabinet stipulated by the family constitution. Together, as an important institutional part of the family constitution, they will be appointed to protect and to run the trust.

Family constitution with the three important tasks mentioned earlier is not something new in the history of Chinese wealthy families. There is a quite well-known family constitution of the family Lee Kum Kee (李錦記) in Hong Kong, or those of other traditional families like Tong Ren Tang (同仁堂). A couplet “炮製雖繁必不敢省人工，品味雖貴必不敢減物力” in Chinese is rendered as “no manpower shall be spared, no matter how complicated the procedures of production are; no material shall be reduced, no matter how much the cost” in English. Family constitution existed in the history for some wealthy families despite the fact that they may not be called “family constitution” but be called something else like “family charter”.

Next topic is mediation or arbitration clauses in a family constitution provided as a kind of ADR for the family members in dispute. The one of the Mitsui family in Japan provides a kind of arbitration as an ADR for family disputes. Some families provides mediation as an ADR for disputes between the family members like the one of the Muriyez family in France in which it is clearly and exclusively stipulated that mediation be adopted as a mechanism to resolve disputes between the family members.

Question arises: Why should we have a family constitution as if we would have biting teeth for our family members? Is family constitution authoritative enough to resolve issues, disputes and conflicts between the family members? The answer is yes. In order to make the biting teeth of family constitution work, a triangle comprising interests, contracts and mediation/arbitration must be established.

Interests and rights. Family constitution provides resolutions for the most fundamental interests and rights of the family members. That is the fundamental motivation for the members to convene and unite under the common interests and rights.

Contracts. Contract provides the contractual parties with their rights and interests, similar to family constitution for the family members. Whenever there is a contract, there could be a breach of contract. Whenever there is a breach of contract, there should be a resolution to resolve the breach.

Mediation/arbitration. Given that method of dispute resolution could be preset as a clause in family constitution, the resolution mechanism for disputes could be mediation or arbitration rather than litigation, so disputes would not be put before courts for trial where every outsider could see what is going on with the family.

With the triangle, the family constitution would be like having the biting-teeth kind of authority in providing solutions for the family members and even resolving disputes between the family members.

For mediators taking part in mediating family disputes under family constitutions, they would have to be equipped with skills, namely listening, speaking, reading and writing. By combining these skills, we would have some kind of mechanism ready to help the mediators mediate those kinds of disputes.

Empathy and setting boundary are skills used in mediation. Owing to time constraints, the methods and the methodologies would be further elaborated when the opportunity arises in the future. Thank you very much!

(Mr. Norris Yang)

Thank Henry for a very good presentation! I think family constitution is a very important aspect of family wealth planning for the future!

Next speaker is Sherlynn. She is a partner of Deacons and an Accredited Mediator of the Hong Kong Mediation Accreditation Association Limited (“HKMAAL”) as well as a Family Mediator. She got many decades of experience advising family tax-related matters.

Sherlynn got a law degree as well. She currently oversees the Family Law and the Vulnerable Client Practice at Deacons and has been appointed by the High Court as committee to manage the financial affairs of persons who do not have proper mental capacity.

She also sat as a deputy district judge in 2014 in the Family Court and is the author of *“A Practical Guide to Mental Health Law in Hong Kong”*.

She is a fellow of the International Academy of Family Lawyers and the Chair of the Mental Health Law Committee of the Law Society, Co-Chair of the Society of Trust and Estate Practitioners (STEP) Hong Kong’s the Mental Health, Elder and Capacity Law Sub-Committee and Co-Founder of the MIP Care Resource Connect - a charity chaired by her and aimed at promoting awareness of issues surrounding mental capacity and connecting resources to careers and family members.

She is obviously very qualified to speak on next topic “Challenges of Family Wealth - Mediation of Inheritance and Mental Capacity Disputes”.

Over to you, Sherlynn.

(Ms. Sherlynn Chan)

Thank Norris for the kind introduction! Thanks to the DoJ for inviting me to speak at the Private Wealth Panel in this year’s “Mediate First” Forum!

Since my topic “Challenges of Family Wealth - Mediation of Inheritance and Mental Capacity Disputes” involves elderly patriarchs and matriarchs, let me ask a few questions for us to think about.

“How many of you have parents or grandparents who are aged 65 or above?
Or over 80?”

“How many of us or parents have bought shares, insurance policies or own a
property in Hong Kong or the Mainland?”

Whether you consider yourself wealthy or not, we are all wealth owners.
Inheritance and mental capacity disputes may be more relevant and relatable
to all of us than we think.

Here is the outline of my session. I will start with some trends of aging
population and dementia followed by some cases of challenges of family
wealth and disputes surrounding mental capacity and family wealth. Then
I will share some cases regarding vulnerable persons being easy targets,
financial elderly abuse and then how mediation can help in our inheritance
and mental capacity disputes.

Let me start by going through some government statistics. The number of
persons aged 65 or above will jump from 18% in 2019 to 31% in 2039, which
is a huge jump in twenty years’ time. The number of persons aged 60 or
above with dementia will have more than tripled from over 100 000 cases in
2009 to over 300 000 cases in 2039.

Furthermore, experts say that the life expectancy for men will go up to 85.6
years and for women to 91.3 years. In summary, by 2039, 1 in every 10
persons aged 65 or above and 1 in 3 persons aged 80 or above will likely have
some degree of dementia.

As regards the increase of HNWIs in Hong Kong, in 2018, the number of
HNWIs reached 153 000 with a total net-worth value of US\$778 billion. In
2019, Hong Kong was ranked second globally just behind New York in terms
of the number of billionaires.

With the rapidly aging population, surge of the dementia cases and substantial
accumulation of wealth and longevity, it is not surprising that the number of

disputes between family members on inheritance matters is also on the rise.

There are common issues faced by families with wealth. Regarding the vulnerability of aged wealth owners, I will be sharing a case of an elderly widow to show how vulnerable elderly persons are when they lose mental capacity. Mental capacity generally refers to the mental competence of an individual to make a particular decision, undertake certain acts or engage in a particular activity to which sometimes we use decision making ability “ 决策能力 ” so that it is easier for people to understand.

“What happens to one’s assets when he/she suddenly loses mental capacity?” “Who can manage the finances of a person without mental capacity?” and “If a person suffers a stroke in the middle of a property transaction or business deal, what can be done?” are relevant to us personally as well as professionally. I mean who will manage our finances and properties when we suddenly lose our decision making ability. Nowadays, as Norris mentioned, we hear young people having a stroke or collapsing into coma while doing just normal exercise. So life is unpredictable.

When a person is incapacitated by reason of mental incapacity of managing his/her properties and affairs, a committee can be appointed by the High Court to help that person manage his/her finances. Usually, the family members are preferred, but in highly contentious family disputes, a neutral independent professional committee will be appointed.

The first case I would like to share with you is *Re: L (2004)*. Madame L was a 74-year-old widow without any children. She suffered from dementia and bipolar and was a regular patient in a psychiatric hospital. Mr. T, a hospital volunteer, frequently visited Madame L and gained her trust over two years’ time. Just a few months before she was officially certified as mentally incapacitated, Madame L had executed a power of attorney granting Mr. T the power to sell her property.

Mr. T conspired with a solicitor’s clerk and went to the garden of Kwai Chung Hospital and asked Madame L to sign an authorisation letter enabling

him to receive and collect the sale proceeds in the absence of any doctors on the spot. As Madame L’s mental condition had deteriorated, a registered social worker at Kwai Chung Hospital found Mr. T’s conduct rather suspicious and made an application to the High Court. As a result, an official solicitor was appointed as committee of Madame L who then took action to set aside the transaction and preserved her assets.

Unfortunately, facts in this case are not uncommon. You can see how vulnerable elderly persons could be, especially those living alone can be easy targets for financial abuse.

Other common disputes could also involve the family members of vulnerable persons. For example, when a patriarch or matriarch suddenly decides to exclude an adult child from management of the family business or make an unequal distribution of gifts, this often results in sibling rivalry and family tension.

I am going to mention briefly a recent judgment delivered in July 2020 involving a Mr. Chow, who was a successful businessman and the founder of an international conglomerate business in the 1970s.

Mr. Chow passed away in 2018 leaving his wife and seven children i.e. six daughters and a son. Three years before he passed away, Mr. Chow had made various gifts of money and properties to his children. Later the same month, he made a will specifically requesting that all his listed companies’ shares be given to his 5th daughter and the residuary estate be shared among his wife and six daughters.

The eldest sister challenged the testamentary capacity of her father when making the said will and she claimed, alternatively, that the father had had no knowledge or approval of the terms of the will, which was contrary to his genuine intentions.

The 5th daughter, upon witnessing the expression of discontent, volunteered to give an undertaking to transfer all the shares to set up a family trust for the

benefits of the family members including the mother and brother. She also undertook to transfer half of her entitlement under residuary estate to her brother.

In cases where there is an actual or perceived unequal distribution of assets under the will, mediation should be encouraged to help the families resolve all or some of these issues in a private and in a less adversarial setting which is more conducive to preserving family relationships and harmony.

Next case involves a sad dispute between the family members challenging the testamentary capacity of Mr. Lam, who was an owner of a well-known electrical retail chain Tai Lin, which is now closed.

In 1987, Mr. Lam made a will in favour of his wife and children. He subsequently made two identical wills in 1999 and 2005 leaving his entire estate of about \$250 million to his cohabitee Ms. Tam.

The subsequent wills left out all the children he had, which meant that Ms. Tam would get the entire estate of \$250 million and none of his children would get a single dollar from the estate.

The widow challenged the mental capacity of Mr. Lam when he had made the 1990 will. The Court held that Mr. Lam had had no capacity to make the will and lacked the capacity to appreciate his moral responsibility to look after his children. In doing so, the Court referred to medical evidence that Mr. Lam had had two strokes which affected his memory and had been assessed by a neurologist that he had no ability to manage a large company business.

Someone may ask, “How can mediation help resolve disputes involving complex family assets passing generation to generation?” Next case is about a patriarch who had passed away in 2018 survived by his wife and four children. His wife had been diagnosed as a mentally incapacitated person in 2020, before she was able to complete the probate of a late husband, lots of the assets were left unadministered.

Two of his sons lived in North America while the daughter and son who stayed in Hong Kong were heavily involved in the father’s business. After the father had passed away, the two sons came back to Hong Kong and discovered that the mother had transferred some gifts and property to the daughter and the younger son.

The issues in dispute were the mental capacity of the mother, care and financial arrangements for the mother, who would continue to operate the father’s business or administer the estate and the validity of the gifts. The two camps eventually agreed to use mediation to resolve the issues of who would continue to operate the father’s business, the validity of the deeds of gift and how to preserve the family legacy.

One of the major causes of mistrust was a lack of transparency of business operations in Hong Kong and in the factories in Shenzhen. The geographical distance between the siblings and lack of communication did not help. In the end, mediation was successful to assist the parties in focusing on common goal which was to look after the best interest of the mother, and then it generated creative options in settling the claims which involved appointing the third generation family members to take part in the running of the family business, drafting up a family constitution and defining the management of family business and ownership of family assets. A clear timetable and road map were set to achieve a win-win situation.

Mediation is indeed an effective tool for dispute resolution, especially for families with wealth. There are mediation tools to help resolve complex family wealth disputes. Among those, active listening and the 5A’s of healthy communication are very important: Attention, Appreciation, Ask, Affection and Affirmation are key ingredients to healthy communication. The impact of powerful words in building up trust and harmony in family relationship can never be underestimated.

We have all heard that prevention is better than cure and I believe that early intervention with the use of mediation can help prevent family disagreements from blowing up into high profile conflicts or at least reduce the impact on

the family.

The key to having a happy intergenerational family is TLC. TLC does not just refer to tender loving care which every relationship needs more, but every successful family wealth planning must also contain TLC: Transparency, Long-term planning and Communication.

Thank you!

(Mr. Norris Yang)

Thank you very much, Sherlynn! We need to have more TLC in everything that we do including at this panel.

(Mr. Norris Yang)

Now comes to a roundtable discussion. The first question is “How has mediation in disputes of wealthy families changed in the past decade?”

This should probably include Hong Kong and the Mainland. Since we are in Hong Kong, let’s ask Sherlynn about what her views regarding this are.

(Ms. Sherlynn Chan)

The major change that we observed is globalisation. In the past, it was just probably about a family home in Hong Kong with another family members residing in the UK or somewhere while possessing some private shares in a company. But in recent years, I have noticed a lot more offshore companies, listed companies, listed company shares, trusts and other corporate vehicles emerging. Also, as the assets are multi-jurisdictional of which Patrick mentioned, it would cause tax compliance and concerns, and result in a much more complex situation.

(Mr. Norris Yang)

Could you share your experience in the Mainland for this particular question, Henry?

(Mr. Henry Chen)

From the stories reported by the media, it seems that the use of mediation to resolve family disputes is not that popular yet in the Mainland, especially for the HNW families. You can see a lot of scandals of these families such as brother-in-law sending some other family members into jail, husband and wife fighting against each other bitterly when divorcing. It seems that they do not have the habit of resolving disputes amicably by mediation. Thus, we would have to educate the people to adopt mediation as an ADR, especially the wealthy families.

(Mr. Norris Yang)

I have seen more of these cases at least in the press. Of course there are a lot of cases that are quite private. What is really important to know and for the public to really understand is that mediation is a private procedure, meaning that it is confidential and so confidential that even the judges or the arbitrators do not know what is happening.

I encourage my clients, my friends and my lawyer friends to include a mediate first clause in contracts or whatever contract signing in trusts or in family constitutions and then to go to arbitration instead of going to court when disputes arise because I think the paparazzi are very happy to see the cases in court. It is really important that if I were a family member, I would not like the dirty linen of my family to be exposed in the press. If we can mediate these cases before they go to court and hopefully much earlier, we can avoid court procedures entirely. That would be very good.

What are your views on early mediation, Sherlynn?

(Ms. Sherlynn Chan)

I am totally for it. In fact, it is interesting to know that in some family constitutions, they also added a clause that whenever there is any family dispute they should go to mediation first. With all the local promotions by the DoJ, I think Hong Kong people are more accepting in using mediation to resolve disputes. Definitely, go mediation, the earlier the better. It does save a lot of legal costs.

(Mr. Norris Yang)

Henry, I understand that the use of facilitative mediation in the Mainland is not as prominent as in Hong Kong. In the Mainland, how does facilitative mediation fare given that it operates in paternal way (家長式) with an elder such as a family patriarch or matriarch acting as a mediator?

(Mr. Henry Chen)

I am a mediator of the Shanghai Commercial Mediation Center (“SCMC”). Mediation is more popular than before in the Mainland. Facilitators taking part in mediation is quite normal for the SCMC where they adopt facilitative mediation in the course.

Mediation with paternal style often takes place in court before a judge makes a judgment. In many events, whether pure facilitative approach or paternal style is suitable, I think there is a long way to go.

Let’s get back to the subject matter of our session today. We could do a lot to promote mediation as an ADR for disputes, especially for the HNW families.

(Mr. Norris Yang)

Thank you very much, Henry! The second question is “Why did dad leave so little for me and so much for my brothers? This is unfair!”

(Mr. Michael Leung, MH)

We have heard this in our day-to-day life, haven't we? It is one of those similar to what I mentioned on my slide earlier. Behind this sort of question, what we come across very often are the questions of course fairness and of succession.

I believe everything has a reason. There must be a reason for your granddad or grandma having this sort of allocation or distribution of wealth. There must also be a reason that you believe “I have smaller share of the wealth than what I should have gotten” and “I work harder and am smarter, why do I get so little?” This is the whole issue of succession we have talked about at this Panel Session.

We assume that the wealth has grown. The wealth or the assets of the family is there and is getting more, bigger and perhaps more complex. For certain reasons, your grandpa believed that your brothers or some other brothers have a greater interest or capability to look after these more complex assets or wealth. These days we talk about digital era with digital assets such as cryptocurrency. Maybe that was the reason.

Mediators have gotten to find out the reason behind this such allocation. This is a typical scenario where mediation or arbitration should, hopefully to avoid the worst scenario, come in place before you get into disputes.

Personally, I have come across similar situation myself. I did not quite ask why I got less than my sister, but thought that if I got less, so be it, then I would work harder to grow this little wealth into a greater amount than my sister's. That was what I did actually. That was the other attitude in a bit of a side story that I would do rather than pursue the question of why I got less. That is a personal experience. Maybe Sherlynn can share her thoughts as well.

(Ms. Sherlynn Chan)

Thank you for sharing your personal experience, Michael!

One of the concepts which is very difficult to get across is that fairness is not equal to equal distribution. Like what Michael just mentioned, there must be a reason for wealth distribution. But a lot of people equate fairness with equal distribution. Most of the time I must admit that in cases where there were a lot of adult sibling rivalries, it was because of the actual or perceived unequal distribution of family wealth.

Obviously fairness is not equal to equal distribution, but the most important thing, like what Michael just mentioned, is not to let bitterness get hold of you because there is a destructive power in holding on and not being able to forgive or let go. That is my experience of mediating between the adult siblings who were not happy with what they had gotten.

(Mr. Norris Yang)

Thank you, Michael and Sherlynn!

Sherlynn has given the example of the Chow's family where a particular daughter had a much larger share of the assets. The reason could be that she was a wonderful administrator, manager and a good businesswoman. I do not know the exact reasons, but what was interesting was that she shared it. Through mediation an agreement was reached. For the other siblings the agreement was a much more equitable distribution than the original allocation under the will. Could you elaborate on that, Sherlynn?

(Ms. Sherlynn Chan)

I would prefer to use another case where mediation was used. The facts between this one and the Chow case are very similar. In this case, some gifts were given to two siblings while the other two siblings did not get the same amount. They used mediation to try to resolve.

First of all, through mediation, we were able to get the underlying concerns. They realised that there was a lot of mistrust because there was no communication owing to the fact that some siblings had lived overseas. This

is a very common scenario under globalisation where family members reside in different parts of the world, and with time zone differences, they do not get to meet each other as often. As a result, mistrust between the siblings was built up.

With mediation, they were able to come up with some distributions of wealth and agreements on how to move forward. For example, how to be able to set aside some gifts or they were able to re-contribute some of the money back into a pool and then agreed to continue with the business. Mediation could help move that forward because once the family came up with their own agreements, they would understand what they did not want. In this case where the mother was mentally incapacitated and was not aware of what was happening, when the siblings were asked to focus on what they would think of what their mother would prefer to see if she had mental capacity, and whether they thought if she would want to see all of them fighting against each other, the siblings would come up with their own agreements or settlement suggestions. We, as mediators, cannot give them advice, but often ask these questions that they will come up with certain issues.

Like Norris’ case where he had the family dinner, I recalled a case where I asked the siblings, “When was the last time you all sat together at the table?” and it was over ten years ago. I felt the fact that mediation could bring them around the table was a very meaningful experience.

(Mr. Norris Yang)

Thank you, Sherlynn!

The third question is “What are the major impacts of Mainland individual income tax reform on the HNWI’s with offshore assets?” Shall we start with Patrick?

(Mr. Patrick Yip)

Thanks, Norris!

I think I alluded to this new change in my earlier presentation. The 2019 individual income tax reform was a major change covering any Chinese tax residence who owns offshore companies that do not pay any local taxes. For example, a company in a tax haven country owns a lot of investable assets without income or gain derived subject to any tax locally. Now, under this new provision in the new law, before all income is actually paid to the shareholder in the form of dividend, it would already be considered as having been received by the shareholder, so it is deemed as taxable.

As you all know, before this new tax rule, a lot of Chinese friends and clients with their offshore assets stuffed into these tax haven companies thinking that no one could find out about these companies. Even if someone could find out about these companies, there would be no actual distribution from these companies by way of dividend, so there should not be any tax problems.

The CRS and these new rules are now combined together to form a very powerful weapon. With this new weapon, the tax authorities would have data under the CRS on one hand and have a new enforcement tool on the other hand.

The enforcement tool is what I just described. From the tax authorities' perspective, they do not need to see an actual dividend coming from these tax haven companies, all they need to see are the accounts and the financial statements of these companies and see whether the companies have paid any tax locally with enough amount and whether there are enough gains. If so, all those gains will be subjected to tax in China. I would say this is a pretty earth-shattering kind of change. If it is not properly dealt with, I am afraid that there will be a lot of enforcement issues and asset protection issues going forward.

(Mr. Norris Yang)

Thank you very much! I am glad that I am not in that category. There are other people so wealthy to have the problems as Michael mentioned. Could I have perhaps Dixon also share his views?

(Mr. Dixon Wong)

Thank you! I am not a tax expert but I try to give a new view on recent individual income tax reform. As I mentioned earlier in my presentation, tax is obviously one of the key considerations for family office operators and investors to consider. The fact that recent individual income tax reform in the Mainland has been effective since early part of 2019 continues to have an impact on tax as well as the estate planning of the UHNW individuals.

Historically a person with a permanent residence status in the Mainland shall pay Mainland income tax on his/her income earnings in the Mainland. The tax reform redefined the concepts of tax residence and domicile.

The Mainland has recently enacted the General Anti-Avoidance Rules known as the GAAR and the Controlled Foreign Corporation Rules known as the CFC Rules to tighten the loopholes in the Mainland’s existing individual income tax legislation meaning it becomes tighter and tighter. That is what I understand.

(Mr. Norris Yang)

Thank you, Dixon!

Could you share with us the actual situation in the Mainland as to “What are the major impacts of Mainland individual income tax reform on the HNWI with offshore assets”, Henry?

(Mr. Henry Chen)

I agree with what other speakers have just talked about. This income tax reform in conjunction with the CRS mechanism would have a great impact on the HNWI in terms of tax filing as well as some other aspects in terms of income.

Since I do not think we have a lot of time to go deeper, I would keep it short. In gist, we would propose to our HNWI clients to manage their risks as early

as possible, otherwise from now on they would have to raise their awareness to do risk management or listen to the experts' opinions about how to do the risk management. Failure to do so could spell big trouble for them.

(Mr. Norris Yang)

That is something that we as well as our clients have to be quite aware of because a lot of people have the same thought as those Hong Kong people in the old days who had immigrated to overseas like Canada, Australia or the US saying, "Well, if we do not know then it would be all right." I believe this mind-set is very dangerous.

Next question is "What have been the trends of UHNW individuals setting up family offices in recent years?" Should we have Dixon and Michael help us with this question?

(Mr. Dixon Wong)

The trend we have seen in recent years is that family office business has developed vigorously and has become an important segment of the growth in the asset and wealth management industry like PE, IPO and security trading. According to a research report published by the FSDC in 2020, the number of single-family offices in Asia, meaning a family owning an entity and running business in terms of the wealth and the family affairs, has grown by 44% between the end of 2017 and July 2019 while the global figure was approximately 38%.

According to a wealth report published by an external source in March 2021, the number of UHNW individuals in Asia increased again by 12% last year surpassing the global number which was 2.4%.

The report also predicted that the number of UHNW individuals in Asia will continue to grow and increase by 39% between 2020 and 2025. This estimation was based on a number of assumptions. By then, about a quarter of UHNW individuals will be in Asia.

In light of the above estimate, we expect this trend to continue to drive the demand for asset and wealth management business in the region including the use of family offices, limited partnership fund regime to manage and inherit wealth.

(Mr. Michael Leung, MH)

In brief, all the numbers already tell the story of which we here in the banking or finance industry feel very much. There are so many PEs and limited partnerships especially those coming from the Mainland to Hong Kong. It is just incredible that this place just cross the border is generating so much wealth on a day-to-day basis that we have people knocking on the door, PEs trying to open bank accounts, etc.

The other thing that is very obvious to us is that the clients, especially those from the Mainland, tend to be more aggressive and tend to ask for more sorts of the growth products. I mentioned already a couple of times about digital assets such as security token offerings known as STO and lately the NFT. Family offices and family trust investment are already into that sort of thing - high growth and of course high-risk areas in investment. That is a trend of pursuing more aggressive and more growth based assets we can see.

(Mr. Norris Yang)

Thank you very much, Michael!

Would Henry and Patrick please answer, “Do wealthy families from the Mainland begin to use family constitutions as governance rules for their family members?”

(Mr. Henry Chen)

The answer is “yes”. Indeed there are some mega families who are used to using family constitutions or family charters to govern their family relationships, especially because they want to have their family cultures and

spirits to be inherited from generation to generation.

(Mr. Patrick Yip)

We have seen that some older and traditional wealthy families with a few generations may use family constitutions or family charters, but it is still not very popular with the technology type or the startup type wealthy people because they are generally relatively young that they may not have thought about doing this yet. Thus I would agree with Henry that the mega rich and traditional type families would be more interested in doing something like that.

(Mr. Norris Yang)

Thank you very much, Henry and Patrick!

May we invite Sherlynn to answer, “What should one do in order to include the use of mediation in family wealth planning?”

(Ms. Sherlynn Chan)

While drafting a family constitution and governance, if the family wealth is in part of their planning, they can include a clause on both using mediation and providing training to the next generation. I think that would help.

(Mr. Norris Yang)

Given that Sherlynn is the only legal person who deals with family mediation other than me in Hong Kong, would Sherlynn please share your thoughts on, “Is mediation settlement agreement enforceable outside Hong Kong?”

(Ms. Sherlynn Chan)

We all know that mediated agreement is a contractual relations, it is, therefore, binding as a contract and not as a judgment unless the mediated

agreement is made into a court order. As I am only practising in Hong Kong, I cannot say whether other jurisdictions would recognise this mediated agreement. But if it is based on a contractual agreement on which the parties are relying, they can challenge a breach of agreement should a situation arise. How about you, Norris?

(Mr. Norris Yang)

It is probably not the case for normal settlement agreement. If it is an international commercial transaction, the United Nations Convention on International Settlement Agreements Resulting from Mediation (“UN Convention on Mediated Settlement Agreements”) with China being a member will kick in. This is a very complex issue which the DoJ will look at another time.

(Mr. Henry Chen)

I have a supplement to the first question “How has mediation in disputes of wealthy families changed in the past decade?”

As regards how to promote mediation to HNW families in the Mainland, we can assign resources to private bankers and some insurance companies who are brokers and salespeople in the Mainland to pick up mediation as skill with a goal to promote mediation as an effective ADR to resolve disputes between family members. As such, they could be really good connectors to achieve their goal.

(Mr. Norris Yang)

Thank you, Henry!

Another question is “What is the crucial factor(s) leading to successful mediation in family disputes, especially when both parties think that they deserve more?”

I remember something called 5A's, neutrality, mutuality and TLC. Sherlynn, please.

(Ms. Sherlynn Chan)

Apart from active listening and good communication, there is “attention” in the 5A's. Sometimes you have to pay attention to small problems before they get blown up into big problems. You are paying attention to these issues and showing your interests, especially for intergenerational disputes. A lot of times the younger generation would say that they do not feel acknowledged and the senior members neither understand nor feel hurt. I think the 5A's are very important.

In terms of mediation skills, apart from normalising, neutralising and mutualising, I always use visualising. Sometimes, I allow the parties to look at a picture like pie chart. If it is an estate inheritance claim, you can see from the chart that the size of slice/bar representing the assets shrinks and gets smaller and smaller if every one is continuing on with litigation without agreeing and moving on leading to the assets frozen. A lot of times visualising will help the families see what the reality is and sometimes helps them come up with some mutually agreed options.

(Mr. Norris Yang)

Yes, creativity is really important. Do not get stuck just because it has not worked in the past. Let's look for something new that works.

Next question is “With globalisation of family network and business, would that mean we need to rely more on using the UN Convention on Mediated Settlement Agreements to ensure the execution part of the settlement agreement for mediation? What kind of tips could be given in negotiating an agreement with a view that taxation matter can be a huge number affecting the final option?”

On the first part regarding the UN Convention on Mediated Settlement

Agreements, it is for international commercial mediation and works like the New York Convention. Parties and countries which have signed on as members of the Convention will be able to use mediation settlement agreement conductive where they are to be enforceable in other member states. So, do try and see if that works for you.

In terms of taxation matter, “What kind of tips could be given in negotiating an agreement with a view that taxation matter can be a huge number affecting the final option?”

Why don’t I ask Patrick to bring up what kind of point we really need to think about when it comes to taxation in any of these agreements?

(Mr. Patrick Yip)

In a lot of these cases, usually there would be a partition of assets that would probably be based on the value of the assets that you have agreed on. However, if you do not take into consideration the after-tax value of these assets, there may be the separation or the allocation of the value may not be appropriate.

For example, if the assets are actually in the US, you think that you can dispose of that and split the proceeds. Perhaps the tax implications would be really high, what you will get back would be much less than what you have expected, then the eventual split-up of the values will not be equal.

(Mr. Norris Yang)

Thank you very much, Patrick!

Here is another question “What are the professional family mediation training programmes available to people who are interested in obtaining certification?”

There are two types of certifications under the HKMAAL system: General

Mediator and Family Mediator. Perhaps I will get Sherlynn to explain the differences because she is both a General Mediator and a Family Mediator on the HKMAAL panel.

(Ms. Sherlynn Chan)

The difference is the time that we spent in the training owing to handling high conflict emotions. In commercial or general mediation, a lot of times is spent on the outcome meaning how people can resolve either contractual disputes or compensation/monetary claims.

In family mediation, it deals with a lot of emotions and bitterness and these can really escalate. Sometimes both parties may not be ready for family mediation. Sometimes one party may be ready while the other may not. In those situations, we need to be very delicate in handling and understanding these needs.

(Mr. Norris Yang)

General Mediator course takes 40 hours with two live role plays to pass while 64 hours are required for Family Mediator course with two real live cases.

(Ms. Sherlynn Chan)

Actually I did two live cases in Family Mediator course, one of which lasted for 20 hours. My supervisor told me that it just happened to be one of the very difficult cases.

(Mr. Norris Yang)

Thank you!

“For mediation of trusts, specific legislation is generally required to deal with the court’s ultimate jurisdiction and the position of the minor and the unborn. A trust might be in Guernsey, the Bahamas and the British Virgin Islands, and

children might be in somewhere else. Would the panel advocate (1) changing the Hong Kong Trust Law and/or (2) using other trust jurisdictions?”

Is that okay, Patrick? Would you consider that there are changes to the Hong Kong Trust Law or that people use Hong Kong as a jurisdiction for the trust?

(Mr. Patrick Yip)

Usually, I only advise on tax. However, I have come across clients asking about this sort of question and our general response is that obviously he/she needs to consult his/her legal advisors. However, based on our experience, it really depends on whether the trust jurisdiction has a large amount of case law to demonstrate or to illustrate how such a situation will be resolved.

Of course Hong Kong is a great location but I think Hong Kong may not have the same sort of case law for this long period of time to clearly show what sort of ruling will be possible under this situation.

By looking at the longevity of the case law or the case history of that particular location, one should be able to decide on the jurisdiction.

(Mr. Norris Yang)

I know there is a lot of case law in Hong Kong but we do look at case law from all of the common law jurisdictions when we do not have enough case law in Hong Kong. Would Patrick and Sherlynn recommend changing trust laws into using Hong Kong law?

(Mr. Patrick Yip)

Again, it depends on the client and the particular situation such as what sort of concern the client has in particular. Hong Kong could be a good location for that.

(Ms. Sherlynn Chan)

I think we are promoting more for the Hong Kong trusts.

(Mr. Dixon Wong)

Absolutely. We are also working together with the Hong Kong Trustees' Association. In the next few months, we will be doing a lot of webinars together on a series of family office related topics, so I think it is time.

(Mr. Norris Yang)

We started the webinar off with speakers talking about wealth, five Ws namely what, when, where, who and why, performance of assets, how we can preserve wealth and avoid disputes by using mediation, protection of wealth and important matters about digitalisation of some of the wealth.

Then we had Patrick speak and share with us on tax residence and rationales, the CRS and the FATCA, asset protection and solution using trust structures and tax.

Dixon helped us with what the InvestHK is doing with family office and talked about the advantages of Hong Kong as a base because it has a simple and low tax regime. I understand that we were ranked number two in the world in the private wealth management; number one in IPO in the world for 7 years out of the last 11 years in terms of our listing and number two in PE in Asia after the Mainland. We do a lot of philanthropy and green bonds and have lots of advantages by leveraging the government support, professional services and the GBA with the Mainland helping us. The InvestHK of course being the frontier of the Hong Kong SAR government department to promote this, is doing a phenomenal job promoting all of these things for us and for Hong Kong.

Then Henry shared with us family constitution and the supreme court of dynasty trust. It is better to go to the supreme court of dynasty trust rather than to the Hong Kong Court of Final Appeal which is very expensive. But

I guess if you are HNW or UHNW, you would not mind paying for that. By the way, I was wondering what UHNW is and still do not quite understand whether it means 1 million dollars or 1 billion dollars. Henry talked about listening, speaking, reading and writing, empathy and boundary as well.

Sherlynn shared with us trend of aging population in dementia of which I am scared I might have sometime soon. Hong Kong was ranked number two behind New York in terms of the number of billionaires. She also shared with us case studies and tools for mediating such disputes.

I thank Michael, Patrick, Dixon, Henry and Sherlynn for sharing with us today. I want to thank the DoJ, the staff who has worked very hard with us, the technical staff, all the IT people here, video people, the translators and all the questions from every one and every one from the panel.

Thank you very much!

Panel Session 2:
Mediation in Healthcare Disputes: A Viable Alternative

Opening

Prof. Sophia Chan, JP
Secretary for Food and Health, Hong Kong SAR Government

Secretary for Justice, Distinguished Guests, my Fellow Colleagues, Ladies and Gentlemen,

It is indeed my great honour and pleasure to deliver the Opening Remarks for this Panel Session of the “Mediate First” Pledge Event 2021 Webinar organised by the Department of Justice (“DoJ”). I am glad that we have another occasion at this Event to discuss the important subject of the benefits of using mediation to resolve healthcare disputes.

Today, we have healthcare professionals from different specialties joining as speakers or audience online. I would like to take this opportunity to thank members of our healthcare sector for their contribution to Hong Kong during this unprecedented and also challenging time of the COVID-19 pandemic.

The topic of this Panel Discussion is “Mediation in Healthcare Disputes: A Viable Alternative”. Reliable healthcare services are indispensable in our daily lives but sometimes mishaps happen. It is therefore essential that we learn how to better handle disputes and work together with the aggrieved towards an amicable resolution. May we ask ourselves: What do the patients and their families need? And what can we, as healthcare professionals, offer other than prescriptions and treatment?

Experience tells us that disputes often arise from misunderstanding and inadequate communication.¹ Willingness to explain how mishaps happened upfront can aptly address the emotions and also the concerns of the aggrieved, and may halt disputes from escalating or even steer the parties towards an early resolution.

¹ <https://www3.ha.org.hk/haconvention/hac2012/proceedings/downloads/S12.1.pdf>

I would like to briefly mention, at this juncture, some overseas examples for reference. For example, in the United States, the innovative Disclosure, Apology and Offer model² promotes healthcare organisations to proactively offering disclosure and apologies when the standard of care falls short. Research showed that it helped substantially reduce settlement time and also payment.³ Similar studies in the United Kingdom, Canada and France also showed that early communication and effective apology may bring improvements to patient-healthcare professional relationships.

In Hong Kong, the Hospital Authority (“HA”) strongly encourages open disclosure of incidents with an aim to achieving the vision of “Healthy People, Happy Staff, Trusted by the Community”.⁴ With the enactment of the Apology Ordinance and the Mediation Ordinance, hospitals and practitioners have, in appropriate cases, offered early apologies and incident explanations to address concerns of the aggrieved. The Ordinances have no doubt facilitated open disclosure, as well as early amicable resolution or settlement in many cases.

Recognising the benefits of mediation, the HA has been applying mediation skills in conflict resolution, and organising trainings on effective communication and applied mediation skills to enhance conflict prevention, management and also resolution.⁵ Private healthcare professional groups have also been supportive in the promotion of mediation and also applied mediation skills.

2 S.K. Bell, P. B. Smulowitz, A.C. Woodward, M. M. Mello, A.M. Duva, R.C. Boothman and K. Sands *Disclosure, Apology and Offer Programs: Stakeholders’ Views of Barriers to and Strategies for Broad Implementation* The Milbank Quarterly, Vol. 90, NO. 4, 2012 (pp. 682-705) available at :

<https://www.ncbi.nlm.nih.gov/pmc/articles/PMC3530738/pdf/milq0090-0682.pdf>

3 As per the introduction of an apology and disclosure agreement in 2001 at the University of Michigan Health Service. Boothman, M., Blackwell, A., Campbell, D., Commiskey, E., & Anderson, S. (2009) *A better approach to medical malpractice claims? The University of Michigan experience.* Journal of Health Life Science Law, Jan (2), 125-59.

4 <https://www.medicalprotection.org/hongkong/casebook-resources/casebook/casebook-september-2013/open-disclosure-the-road-to-success;>

https://www.ha.org.hk/haho/ho/cc/sereview_panel_en.pdf

5 [https://www3.ha.org.hk/haconvention/hac2018/ebook/fullversion/files/basic-html/page173.html;](https://www3.ha.org.hk/haconvention/hac2018/ebook/fullversion/files/basic-html/page173.html)
<https://www3.ha.org.hk/haconvention/hac2012/proceedings/downloads/S12.1.pdf>

The Food and Health Bureau is a staunch supporter of the game-changing approach in healthcare dispute resolution. Through identifying the needs for explanations and emotional acknowledgments of the aggrieved, hospitals and practitioners may consider promptly and also suitably in responding with disclosure, apologies or other interpersonal support. I sincerely hope that the DoJ's initiatives in promoting the wider use of mediation and apology will bring positive changes to the patient-healthcare professional relationships in Hong Kong. I am confident that together we can build an amicable and trusting environment to resolve the healthcare disputes.

I look to all of you for your support in the Government's work in the promotion of mediation. I look forward to a very insightful discussion today.

Thank you.

**Panel Session 2:
Mediation in Healthcare Disputes: A Viable Alternative**

Armchair Discussion

(Transcript)

(Dr. Peter Pang)

First of all, I would like to welcome everyone to the Panel Session 2, “Mediation in Healthcare Disputes: A Viable Alternative”. I would like to introduce to you our distinguished panellists.

The one next to me is Dr. Hong Fung, JP. He is the Executive Director and Chief Executive Officer of the CUHK Medical Centre, Professor of Practice in Health Services Management at the Jockey Club School of Public Health and Primary Care, the Chinese University of Hong Kong. He has been Cluster Chief Executive of the New Territories East Cluster and Hospital Chief Executive of the Prince of Wales Hospital at the Hospital Authority (“HA”) for more than ten years. He was my boss.

The one next to Dr. Fung is Ms. Yi-tan Mok. She is a nurse by profession. She is the Department Operations Manager (Surgical and Operating Theatre Services) at the Hong Kong Children’s Hospital. She is an Accredited Mediator and has provided mediation training courses for the administrative staff of the HA, various colleges and universities. She is the writer of “**禁令**”.

Next one is Ms. Fion Lee. She is the Chief Manager of Patient Relations and Engagement Department of the HA. She shares the same vision with the HA, “Healthy people, Happy Staff, Trusted by the Community”. Fion works on building a positive complaint culture and ensuring accessibility and effectiveness of the HA’s complaint management system.

Then we have Dr. Danny Lee. He is a general surgeon in private practice, and an Accredited Mediator of the Hong Kong Mediation Accreditation Association Limited. He is a fully qualified general surgeon and has spent

ten years studying law and arbitration just for interest. He is the Chairman of the Preliminary Investigation Committee (2) of the Medical Council of Hong Kong (“Medical Council”).

The last panellist is Dr. Ludwig Tsoi. He is the Consultant of the Accident and Emergency Department of the Queen Mary Hospital. He holds a Master of Laws degree, with a special interest in dispute resolution. He is an Accredited Mediator in general and family mediation. He is a member of the Regulatory Framework and Accreditation Sub-committee of the Steering Committee on Mediation. He is the incumbent President of the Hong Kong Society for Healthcare Mediation.

In fact, our panel has discussed that we would like this session to talk about three stories, actual stories that we came across in our daily practice and the medical field. Now, I would like to open the floor for our panellists. Yi-tan please.

(Ms. Yi-tan Mok)

Working relationships between medical staff and patients or their relatives based on the ability to deal with differences. Dealing with differences requires dual development and techniques of balancing interests and communicating effectively. Patients and their families are often aware of the level of teamwork and collaboration within the unit, and dependent upon the ability of the healthcare staff to respond to their concerns.

Here, I share with you an example. During the COVID-19 pandemic, many patients’ families could not visit the patients staying in hospitals. With this visitation policy in place, a woman was admitted to hospital, and her husband could not visit her. He looked very desperate and was restlessly pacing outside the ward. Before the story goes on, let me tell you something about mediation first. Mediation is a conflict resolution process in which a neutral person facilitates communication, development of understanding and generation of options for creative dispute resolution. Unlike a judge, the mediator does not design the outcome of the dispute.

In the clinical care setting, many conflicts arise in the normal course of care delivery. Fion, I know you are very experienced in patient relations, can you tell us more about this?

(Ms. Fion Lee)

In healthcare, a major reason for complaint is the abruptness caused by unexpected clinical outcome and unknown clinical treatment. Also, disputes arise from some non-clinical matters like discrepancy in expectation of the visiting arrangement and the consultation logistic, etc.

(Ms. Yi-tan Mok)

Yes, absolutely. Common examples include conflicts relating to end-of-life decision-making, differences regarding plan of care, scheduling and assignment making, visiting hours, access to equipment and supplies and also placement of patients. Serious disputes can arise when a medical error or adverse outcome occurs or when a patient's family is in conflict with clinical team. So, it is uncommon for people to clearly identify what is driving their discomfort. We have two things to explore, the first one is observed needs, and the second one is possible unspoken psychological needs.

Let's go back to the example. In the scenario, the patient's husband was asking, "Will I be able to come back to see her if I leave? My friend said I may only be able to see her by using zoom once a week, is it true? Have you taken care of her before? She had a really good nurse last time. When will the doctor be here for rounds? Has he seen her scans yet?" So, what do you think, Fion?

(Ms. Fion Lee)

In this case, the husband did have mixed feelings. On the one hand, he was worried about the clinical treatment of his wife. On the other hand, he also felt insecure because he was unable to visit her. Further, he may feel frustrated or even irresponsible because he was not able to take care of his wife.

(Ms. Yi-tan Mok)

Yes, so those are the observed needs of the husband and Fion has also mentioned his psychological needs. So, effective techniques for improving collaboration and resolving conflicts include listening for understanding, reframing, elevating the definition of the problem, and creating clear agreements. The techniques listed below are but a few complimentary tools that are useful in managing healthcare conflicts. Technique 1 is listening for understanding. Listening for understanding is more than just receiving information. It is a multi-layered technique that entails listening without judgment, without planning for a response, and without devising solution or offering advice. Can you share with us your experience, Fion?

(Ms. Fion Lee)

In active listening, we do have to use our ears, our eyes as well as our hearts. We have to listen to what is said and the tone of expression. We have to use our eyes to observe the body gesture, and also pay attention to the cues to understand the underlying meaning. Lastly, of course we need to use our hearts to feel the real needs of the communicator.

(Ms. Yi-tan Mok)

Next step is to decide how to respond to the information. De-escalating a person who is upset allows him/her to better hear your comments. Mediators frequently use reframing to create a safe space for individuals to engage in difficult conversations. There are four steps in reframing a statement. The first is acknowledging the emotions, the second is removing the inflammatory language, the third is restating the problem or issue and the fourth is requesting or waiting for clarification or validation from the speaker. Here, let me try to reframe a statement with Fion with the above techniques and steps.

The statement is “What are they doing around here? Could anyone answer my question?”

(Ms. Fion Lee)

If he/she is really looking for information, I would reframe it as “What information would be helpful to you?”

(Ms. Yi-tan Mok)

It is Technique 2 - reframing. We now have Technique 3 that is finding a common ground. It is a principle of mediation that enables individuals to find a starting point to pave way for further agreement. In the example, the patient’s husband was asking something like “I have promised my wife to take care of her. You doctors and nurses do not allow me to visit the patient because of the COVID-19 policy.” And the clinical staff said, “The COVID-19 policy is for protecting the patients in the hospital from being infected by visitors”. Fion, if you were the nurse, how would you reframe in this situation and try to find a common ground for these two sides?

(Ms. Fion Lee)

I would say, “Mr. Husband, actually to provide the appropriate care and protect the patient is very important to you as well as to the healthcare team.”

(Ms. Yi-tan Mok)

Absolutely. The common ground is providing care and protecting the patients which is important for all of us. When trust has been damaged between the people involved in the conflict, it is necessary to slowly allow them to regain trust through a series of commitments. Unlike a real mediation process, there may be no need to sign any agreement between the patient and the clinical staff, and it could only be a verbal agreement. Collaborative working relations are important in establishing these environments, in ensuring safe patient care and in decreasing costs associated with unresolved conflicts.

Going back to our scenario. During the COVID-19 pandemic, many patients’ families could not visit the patients. Would you mind having a role play with me, Fion? I will act as the nurse and you play the husband.

(Ms. Fion Lee)

“Nurse, I need to know if my wife is being taken care of and that no one is going to do any harm to her. If I cannot see her, I will not be able to know what happens to her.”

(Ms. Yi-tan Mok)

“It sounds like this is a pretty scary situation for you. What is your worry?”

(Ms. Fion Lee)

“I am afraid of losing her. I am afraid that she will die.”

(Ms. Yi-tan Mok)

“We have mobile equipment for the patients to do video conferencing with their families. You may contact our nurse station whenever you are ready. You could see her every day, even when you are at the office. Talk to her and let her know you are caring about her. Is that something you would like to do?”

(Ms. Fion Lee)

“Yes, it will be very helpful. Thank you for your understanding.”

(Ms. Yi-tan Mok)

Integrating the techniques used by mediators can foster collaboration. Better working relations can improve patient outcomes, improve retention and recruitment of staff and improve patient satisfaction.

Lastly, I would like to share with you a personal story. I used to be very defensive in the past. I was working in an operating theatre. In such a rush environment, I lost my temper very easily. A few years ago, I started to learn to be a mediator. I was very interested in reframing, a technique which needs practices. It refrains particular individuals who do not comfortably get

along with people from using words as an insult or attack. After I learnt this reframing skill, I reframe my wordings and emotions whenever I encounter with my colleagues. As a result, people surrounding me are more willing to listen to me and my comments. I am managing two departments in the hospital now and still use this technique every day. I believe mediation skills are life skills for all of us. Thank you.

(Dr. Peter Pang)

Thank Yi-tan and Fion for talking about this! I just realised the fact that we have a lot happening before a patient sees a doctor and you have been very good at solving a lot of these issues. Just learning from Yi-tan about reframing, not only should you reframe for responding to others, but also for responding to yourself.

Ludwig is an emergency consultant. You must see a lot of very charged patients and relatives coming over. Can you share with us, Ludwig?

(Dr. Ludwig Tsoi)

Let me tell you a story about how mediation could benefit the healthcare workers in the midst of delivering our care. A lady aged 62 was admitted through the emergency department to a hospital because of abdominal distension and vomiting. She was diagnosed with cancer of colon and was presented with intestinal obstruction. So, an emergency laparotomy was arranged. After the operation, she was admitted to the intensive care unit (“ICU”).

Unfortunately, her condition was complicated by pneumonia which is a quite common complication in the ICU care after operation. Eventually she died 10 days after the operation. This is not the end of the story. The relatives got very angry about the outcome although there was no medical mishap. Particularly, the son was very angry and what could he do? The most extreme way would be to turn his anger into violence, and a slightly better route was to seek remedies through the legal system meaning going to court and finding

lawyers. The third way was to approach the newspapers and the media. The last one, but definitely not the least, was that he could communicate with the hospital because there is a system in the hospital.

(Dr. Peter Pang)

Let’s ask Dr. Fung if he has come across situations where a patient became violent and hurt the staff when he was a hospital chief.

(Dr. Hong Fung, JP)

Yes, especially in recent years, people in Hong Kong have tended to be a lot more aggressive whenever there is something that they dislike. Actually there is a very common exhibition of violent behaviours in terms of verbal and physical violence. It is important for us to teach the staff how to defend and protect themselves on the one hand and actually help to address the immediate emotional issues of the patients and all the relatives on the other hand.

(Dr. Peter Pang)

This sounds to be a very common day-to-day thing. Isn’t it, Ludwig?

(Dr. Ludwig Tsoi)

Yes, indeed. Let’s get back to the story of the 62-year-old lady.

Clinical team and the hospital need to communicate very well with a lot of different parties when mishaps happen. First, communicate with the relatives. In order to build trust, we have to keep the door of communication open. Second, we also need to communicate with the front-line staff. The surgeon, the emergency physician and also the ICU staff tried very hard to save that patient’s life. Unfortunately, the patient died eventually.

Third, we also need to communicate with the management because if the son

had approached the media, the management would have wanted to know what had happened and the sequence of the event.

Fourth, we also need to communicate with the public. Probably the public also notice that the HA will issue press releases to address medical issues. Sometimes the message could be distorted if it is not disclosed in a proper channel. Therefore, the press releases serve as the proper channel in the HA to release information in a timely manner.

At last, it is to communicate with the media, which is the most challenging, we would say, it is a Pandora's Box. If it had not been taken good care of, the issue could have turned into a nightmare leading to loss of confidence in the clinical staff, the hospital and the management.

Regarding violence, actually it is not something new. For the past ten to twenty years, we have seen the escalation of violence in hospitals.

Nowadays, under a culture of rights protection, people would easily think that their rights are being violated and want to defend themselves. With this change of culture, if a person's anger is not handled appropriately, this will result in a serious problem especially for the front-line staff. Thus, how to self-defend is a part of training for them as well as for the emergency department staff and surgeons.

For the status of healthcare workers in the past ten to twenty years, they have not seemed to be as highly esteemed by the public as before. Twenty years ago, if a doctor had spoken in front of camera, people would have regarded him/her as an authority to whom they would listen. Nowadays, while society is changing with emerging of different key opinion leaders, doctors talking about healthcare matters are not as esteemed as they were before, and it means that people might take their words with a grain of salt.

Regarding the impression of doctors by the public, doctors in the Mainland, for example, received red pockets previously causing bad image of healthcare professions.

With regard to motivation, we do not know whether the violence or anger is triggered by monetary compensation or an emotional expression.

Let's move to the second channel they could use namely legal route. Let's invite Danny to share with us.

(Dr. Danny Lee)

There is a growing trend that the patients or the relatives taking the matters to court for adjudication. The primary distinction between civil litigation and disciplinary action is that civil litigation is compensatory in nature.

The court system could compensate for the loss or the damage the patient has suffered while disciplinary action aims to regulate the doctor's conduct or standard. So there is a material difference in terms of the outcome. In civil litigation, the outcome is mostly monetary damages while disciplinary action results in taking away the doctor's licence. Disciplinary action is, therefore, an individual liability rather than a liability of the institution. So, there is a distinction between the two.

(Dr. Peter Pang)

Danny, if a patient brings the case to the disciplinary board, he may not benefit from the outcome at all, is that right?

(Dr. Danny Lee)

The patient may not get any compensation in that sense. The disciplinary board i.e. the Medical Council can impose sanction on the doctor varying from the lightest sanction i.e. issuing a warning letter, to the most serious one i.e. taking away the licence of the doctor for life. I think the complainant may be disappointed if he is looking for financial compensation, apologies or detailed explanation from the regulatory body because it is not supposed to do that but only to regulate the doctor's conduct.

(Dr. Peter Pang)

With the statement of the disciplinary board, the patient or the relatives cannot go back to a civil court and claim on the things?

(Dr. Danny Lee)

That may not be the case as these are separate routes. The patient or the relatives can take action through civil litigation route. At the same time, they can also file a complaint against individual doctor in the Medical Council. It is because we are dealing with two different matters. One is to compensate and to prevent the recurrence of the mishap, which is the idea of civil litigation.

While the regulatory body regulates the doctor's behaviours, conducts, moral standards, etc, it is not aimed to offer compensation in terms of financial compensation to the patient.

(Dr. Peter Pang)

This sounds like a very important concept we need to know.

(Dr. Ludwig Tsoi)

If this type of so-called complaint is elevated to court, there will be monetary compensation. In Hong Kong, doctors can get an indemnity covered by insurance company or the Medical Protection Society Limited (MPS). However, the disciplinary board action against individual doctor is very personal. The doctor's licence may be at stake if professional misconduct is found.

(Dr. Danny Lee)

I just want to supplement the comment by Ludwig. If this case happens in the HA, the HA, being the employer of the medical staff, will be responsible for all the liabilities incurred in the claim. In the case of private hospitals, if you are suing a hospital, they will pay for the damages if the claim is successful.

However, there are two types for individual practitioners in private hospitals. The first type is a medical practitioner being an employee of a private hospital. Then, the private hospital, being the employer, will be responsible for the liabilities incurred in the medical activities.

However, if a medical practitioner works as a visiting doctor, he/she does not have an employment relations with the private hospital. Then, the medical doctor will be responsible for his/her own liabilities and this is exactly what Ludwig said about the medical indemnity insurance. Therefore, private doctors will obviously purchase medical indemnity insurance to cover their practices, so this is the concept.

(Dr. Ludwig Tsoi)

Let’s go back to the story of the 62-year-old lady. The relatives could go to the hospital for communication first before elevating the matter. Actually there is a legal framework to support this now. The Mediation Ordinance (Cap. 620) has commenced operation in 2013, with the objectives to promote, encourage and facilitate the resolution of disputes by mediation, and to protect the confidential nature of mediation communications. That was the skills mentioned by Yi-tan just now.

Also, there is the second piece of legislation made effective in 2017. The objective of the Apology Ordinance is to promote and encourage making apologies with a view to preventing the escalation of disputes and facilitating their amicable resolution. This is the background of why we can use mediation in healthcare disputes. Previously, our doctors, nurses and administrators were afraid of making apologies, because we had gotten an impression from lawyers that making apology is equal to an admission of the liabilities, meaning you have done something wrong and you need to go to court. But this is not true.

Back to the case, with the good work done by the hospital and the team, the son approached the patient relations office (“PRO”) of the hospital and requested a meeting with the clinical team to demand an explanation for his

mother's death. It was good for the hospital that the son did not approach the media and the legal system neither did he act violently for ventilation. He could ventilate in the healthcare system because he had some trust in the system no matter how little the trust was. Further trust could be built upon that little trust.

The clinical team reviewed the case and concluded that there was no concern regarding the clinical management. So, the son was very angry and what could he do next? This case happened in a public hospital. If it happened in a private one, how would the private hospital system respond? Maybe Dr. Fung could enlighten us.

(Dr. Hong Fung, JP)

In general, the private health system has been much more responsive and sensitive to people's emotions as compared to the past. The response is usually much quicker trying to deal with the problems and address the patients' concerns in a very speedy manner. It goes a long way in terms of addressing the emotions of the patients and also directing towards the resolution.

Sometimes, if a patient or the relatives has banged on somebody's door and gets a bulk of replies or the response comes a few days after, it will accumulate the emotions and would turn things worse. My observation is that, you do not hear so many complaints against private hospitals or private practitioners in general because they are much more responsive.

Of course in the public sector, doctors, nurses and the system do face a problem which they have lots of patients and are overloaded, making it difficult to be efficient in terms of being responsive. I think it is something that we can work on through the system and try to improve.

It is a very important aspect when talking about mediation as a means for dispute resolution. It is equally, if not more important to try to prevent disputes from happening. The skill is there. Going for prevention is always better.

(Dr. Ludwig Tsoi)

I definitely say prevention is a better choice. So, the reason why I need to bring this up is because in the story of the 62-year-old lady, from the clinical team’s point of view, they were doctors and they just treated the patient’s disease. The patient had cancer and the surgery was done with the tumour resected. The patient died not because of their operation but because of natural death, chest infection.

Let’s pause here. I wonder whether the surgeon and the ICU team understood why the relatives were so angry. From the clinical team’s point of view, there was no wrongdoing on the part of the medical staff and the relatives were just venting the anger at the medical staff. When conducting training, we have to let the clinical staff understand that humans do have feelings and that there is no wrong feeling. Everyone has the right to own his/her feelings. Some patients could be angry because appointments in out-patient department have been cancelled and/or delayed with a view to avoiding overcrowding in the time of COVID-19 pandemic.

Sometimes people would feel jealous. We have seen a complaint involving two very jealous sisters coming to the hospital. One got the treatment before the other one, and it also erupted into a complaint.

Sometimes sadness could be the cause. A wife called an ambulance one hour after her husband had collapsed at home because she tried to revive her husband herself. After arriving at the hospital, the wife was very angry at us because we could not resuscitate her husband.

However, after half an hour of communication, the wife told us, “Was I the one at fault because I delayed the ambulance resuscitation for an hour?” That was a guilty feeling.

There are different sorts of human emotions. For example, sometimes medical staff got sick or their families had hospital appointments. They would think they had similar experiences, but had not gotten angry in the occasions. They could not understand why the patients or their relatives got angry about this

as they could not get into the shoes of the relatives.

The first thing to do is acknowledgement. Ignoring somebody's feeling is one thing, acknowledging is the opposite. "Acknowledgement can be the best medicine we have. It makes things better even when they can't be made right." It is a quote from Megan Devine, a prolific writer like Yi-tan. Her favourite topic is grief and let's talk about grief.

For example, in a medical mishap where somebody dies, there will be a process of sadness. In academic terminology, we call it "grieving process" which comprises denial followed by anger and then depression, bargaining and eventually acceptance. This is the classic model of grief but we do not see it very often in real life. We often see the relatives jump from one stage to another and then back to the previous stage as with the son in my story.

Some people at the stage of denial could jump to the depression stage, then from depression to bargaining and back to anger. If you are good at geometry, you could notice that there is no direct connection between anger and acceptance in the grief diagram. It is important to note that there is no bidirectional movement of these two stages. That means somebody who is angry could not go into acceptance right the way. He has to go through other stage like bargaining, denial even depression before accepting this.

In the case where someone he loves has died. While we are still encountering the man who is very angry, we do not expect that he calms down and accepts the very unfortunate outcome at once. We, as mediators, need to help him go through one stage to other stage, meaning that we have to manage our patients' anger. "Where there is anger, there is always pain underneath." I hope the audience could take and remember this. However, our staff may also say, "I am angry too, he also triggered my anger." For our clinical and front-line staff, we have to manage our own anger. "When you are angry, count to ten before you speak; if very angry, count to a hundred" - a quote from Thomas Jefferson.

For myself, the highest record is counting to one thousand because there

could have been a dire consequence if I had not managed my own anger at that moment. Then it was very likely I would have done something very stupid and I would have regretted it for the rest of my life.

We can do something to help our patients or the relatives acknowledge the feelings or emotions. Making use of a room with good lighting and furniture, putting a pot of plant and flower with good smell and fragrance, or some snacks, candies, chocolate bars and some drinks could also ease the tension and hopefully help them acknowledge their emotions at a more comfortable setting.

In the western world, they talk about different emotions very early on, but for Chinese, we never talk about how to understand our emotions in primary and secondary schools, especially for the new generation. When you ask them how they do today, they just reply, “I am okay.” Actually, “okay” is so ambiguous that I do not understand what “okay” means.

As human, we have different emotions. For mediators, we need to understand and learn about different phrases to describe these emotions in order to help our patients and the relatives to understand what they are going through. The mediator needs to hear the emotions felt by the parties and then fully explore them. Once this happens the barriers come down and progress can be made.

(Dr. Peter Pang)

In the busy clinical setting like a noisy ward, can we really practise this, Ludwig?

(Dr. Ludwig Tsoi)

We need tools, like a room with good lighting and very comfortable arm chairs. Sometimes wallpaper and giving the relatives a glass of warm water could also help.

(Dr. Peter Pang)

When you come to the point where you need to bring some bad news or have an interview with an angry patient, do you need to make a setting first before starting the conversation?

(Dr. Ludwig Tsoi)

Correct. Psychology theory could help us understand this. According to the very famous Maslow's Hierarchy of Needs, there are five layers of needs, but we could divide it into three broad categories with the most basic one being physical needs. In our case, physical needs were to keep living, whether or not the doctor could treat the cancer and save the patient's life.

The second level is psychological needs. They were related to whether the medical staff in our case understood the emotions and psychological needs of the relatives.

The top level is spiritual needs which are even higher-up. If we still have resources and training, we may touch upon the point.

The least is that we have to not just address the physical needs in order to treat the patients well. Even if we cannot cure somebody's disease, we also can cure their psychological wounds.

In Chinese, we have a word “聽” (listen) comprising three essential parts: Ear (耳) on the left, eye (目 rotates in 90 degrees as 四) at the top right corner and a heart (心) at the bottom right corner. This means when we listen to a patient, we are not just using our ears but also eyes and heart to listen. This is a frequently used phrase “先了解心情，後解決事情” rendered as “connection before solution” in English which is also used in the training of communication kit by the HA. Could Fion enlighten us on this?

(Ms. Fion Lee)

Dr. K.L. Chung, our Director of Quality and Safety, always reminds us that

we are in a people business. Whenever people come to us, we have to know who they are, what they want and address their emotions and feelings before tackling the issues. It is because it is not the right time to say what is right and what is wrong. By doing so, it helps us build relationships and trust and also focus on the most important thing.

In many cases, even though some incidents happened or the care was not provided to the best possible extent, the problems could be solved more easily on the basis of trust if we were able to address the emotions of the patients and their families so as to establish good relationships.

(Dr. Ludwig Tsoi)

Thank you! Let's get back to our case. Two extreme reasons i.e. “nobody's fault that somebody dies” and “to err is human” could be offered as the explanations of the patient's death. However, we do not have to be so extreme by using a technique called “Open Disclosure” in the HA that we can follow a protocol including apologies. Saying sorry does not mean admitting liability that doctors and nurses will be encouraged to make timely apologies.

Going back to the communication as mentioned before, we need to communicate with different parties. For surgery, it is called “Informed Consent” which means to provide the patients and the relatives with adequate information about risks, benefits and alternatives about the disease or surgery and to reserve time for questions and answers.

Lastly, acknowledging the emotions. The patients and the relatives may fear, sometimes have psychological needs and very deep down concerns before surgeries. This aspect should be addressed beforehand. For the PRO, we need to assist the clinical team to bring the message to the families.

I would say mediation is very useful but it is not panacea and not suitable for violent or psychiatric patients. It replaces neither medical legal/disciplinary process nor root cause analysis.

Regarding the ending of our story, after resolving the emotions of the son, he asked, “Doctor, do I need to take colonoscopy? I also worry about having cancer.” After addressing the emotions, the very deep down concerns of the patients or the relatives can be revealed.

(Dr. Peter Pang)

Thank you, Ludwig! In fact, I can see the importance of dealing with emotions from what the panellists have said. I also identify the need to look after our emotions or else it could cause more problems.

If things elevate and proceed to next step, they go to civil litigation or the disciplinary board. Regarding this aspect, please tell us your story, Danny.

(Dr. Danny Lee)

Thanks for Peter and Ludwig’s wonderful story to illustrate very well on the emotional part! Now, I want to turn to other aspect, a story that happened in the private sector. It is a case where complication happened after a relatively simple surgery causing a patient to require further treatments, prolonged hospitalisation and additional treatment expenses. Ms. A, a 35-year-old lady, underwent an emergency laparoscopic appendectomy for removal of an inflamed appendicitis in a private hospital, and the surgery was done by Dr. S.

Unfortunately, on the second day after the surgery, the problem could not be resolved, high fever and persistent abdominal pain were developed. Further investigations including computed tomography (CT) scan showed abscess around the removed area. This was a complication after the surgery with the remaining sepsis. Thus, a further surgery was indicated and done by the conventional “Open Method” where an abdominal incision was made to remove the leaking appendix stump and further resection of part of the colon was necessary to salvage the complication. This was a relatively standard procedure to salvage the complication.

The patient finally recovered but the surgery left her an ugly scar of 8 inches

unfortunately. More strikingly was a big hospital bill of HK\$180,000. This was an adverse event after a relatively simple surgery.

For Ms. A, she was not happy and had grievances which turned into a complaint because of the emotions involved. Now, she was claiming that the incident happened because Dr. S had not done his job well nor informed her about the potential risks and complication of the surgery. Furthermore, Dr. S had not performed the surgery well and failed to manage the complication in a timely manner.

Further, the additional investigation and surgery fees were much higher than the initial quotation at the very beginning. The additional surgery caused her multiple disabilities namely wound pain and scar that she could no longer work normally. She was demanding a full explanation on what had happened and why, and also apologies from Dr. S and the hospital as well as financial compensation. She also claimed that if no satisfactory resolution was achieved, she would file a complaint to the Medical Council against Dr. S and launch a civil claim against Dr. S and the hospital.

Of course Dr. S was not happy about the complaint and allegation made against him. From Dr. S’ perspective, he had mentioned to Ms. A about the risks of the surgery which included postoperative infection sepsis. More importantly, a consent form had been signed by Ms. A before the surgery. She should have claimed that she had been informed about the potential complication pre-surgery. Furthermore, post-operative complication, in Dr. S’ view, was very common and it was a known complication after appendectomy.

Basically, from Dr. S’ perspective, like many other well-respected professionals, his position was that “I did nothing wrong, I did everything by the book and it was just a common complication after surgery. I have no issue and do not want to talk to Ms. A any more because trust has been broken.”

From the hospital’s perspective, although Dr. S had admission and operating privileges in the hospital, he was not the hospital’s employee. It is a very

common situation where a doctor has several clinical privileges in a private hospital but he/she is not in fact an employee of that hospital. The patient relations officer agreed to assist Ms. A to communicate with Dr. S and the hospital administration.

Pausing here, I would like to ask Dr. Fung. As a hospital chief, what do you think about the situation? In what way can mediation help in this situation?

(Dr. Hong Fung, JP)

As mentioned, the patient obviously got the feeling of unhappiness. From Dr. S' perspective, it was enough that the informed consent had been given. We can, however, see that informed consent is generally non-specific. For the patient, it was, therefore, difficult to associate what happened owing to the surgery with what had been explained before the surgery. That was the reason why the patient was angry.

From the management perspective, I usually put up a stand badge that I would put the patients' interests first and always consider how to help the patients as much as possible both emotionally and physically. Obviously, physical helps are also important to the patients.

So we would put the patient first, address her emotions, help her go through her healing journey. It was not just the visible wound and scar, but also something deep down in the heart as well. That would be my priority. Then, address the possible issues in relation to compensation later.

From the hospital's perspective, the compensation bit was the easiest because it was covered by insurance. Even if we are required by the patients to give compensations, we do not worry about the financial issue very much.

The other thing was that we had to address the doctor's needs as well. From his perspective, he had done nothing wrong and he had his own anger too. In dispute like this, both the doctor and patient are victims. We have to treat both of them. I think it was the same whether the incident happened in public or private hospitals.

(Dr. Peter Pang)

Dr. Fung, you are talking about using mediation to help. Do you have an in-house mediator or have to resort to external mediators? If the mediator is in-house, would he/she be seen as not being impartial?

(Dr. Hong Fung, JP)

Many years ago, we have started to introduce and teach mediation to our staff including those at the Prince of Wales Hospital. As I said, it is very important to respond immediately and speedily to the emotional needs of the patients. For that matter, you cannot wait for a third person and have to do it yourself. That was why we have started teaching and providing training to the staff to learn about mediation skills, so that they are able to develop competence and a variety of important skills like active listening, acknowledgement and reframing to tackle issues. The staff have to practise onsite. They cannot wait for a third person, nor can they delegate the mediation to a third person. When we talk about the mediation process, I take it that a lot of the “mediation process” should take place immediately to address the patients’ needs instead of waiting for an official mediator to step in.

(Dr. Ludwig Tsoi)

I concur with Dr. Fung’s comment. When we escalate an issue to legal means, we may engage a mediator to resolve the conflict. On the contrary, we should also give thoughts to practise mediation in the hospital setting, with a view to addressing issues in relation to communications and helping the front-line staff to address and resolve heated debates by applying mediation skills for de-escalation, in order to avoid escalation into a legal matter.

(Dr. Danny Lee)

Thank Dr. Fung and Ludwig for your comments! Unfortunately, things may not turn out as you wish. It is also my experience that doctors, being professional, stand very firm on their professional standpoint. It is not easy to ask them to come to the mediation and communication table. I would

like to take this opportunity to share with colleagues and other healthcare professionals some background information that may help them to reconsider their position before turning down any opportunities to communicate with their patients.

First, adverse events are very common in clinical practice. For adverse events, we use it loosely, that it covers anything unintended or unwanted happens during or after a medical treatment, that is harmful to the patient or a change in the treatment plan. Some adverse events are preventable and some are not. For example, complication after surgery may not always be preventable even if the surgery itself has been performed with due care and skill. It is because the disease may progress like Ludwig's example of the patient having a chest infection after the surgery. Adverse events are very common in the hospital setting. Study estimated around 10% of all hospital admissions would result in having some kinds of adverse events.

Second, complaints after adverse events are generally not related to professional negligent events. There may be no medical mishap or medical error so to speak, for the patients to launch a complaint. They made complaints not because there had been a medical error, but because they had received a lack of care, inadequate information or miscommunication. They sued because they had not had enough information and nobody had explained to them, and the patients wanted somebody to explain and apologise to them. These were the key messages from all these international studies that the Secretary for Food and Health mentioned in the opening remarks. I think they are relevant background information for healthcare professionals to consider before they turn down any further communication opportunities.

More importantly, when the patients or the relatives take actions against their healthcare professionals, what they want are truthful explanations and apologies, individual and organisation accountability, prevention of recurrence of mishap and financial compensations.

From Ludwig's presentation about civil claim and disciplinary action, the hospital may not offer the patient all of these solutions. For example in

civil claim, the patient would get financial compensation if successful, but how about apologies? How about accountability, prevention of recurrence and disciplinary action? The Medical Council cannot impose the doctor to apologise to the patient, or to reconstruct the hospital’s system so as to prevent future recurrence. But mediation can sometimes do all of these and this is another reason to consider.

In the case I mentioned earlier, Ms. A threatened to sue if there was no satisfactory resolution. It is very common that the patients threaten to sue after adverse events. They always demand explanations and financial compensations. If information or apologies have not given adequately or timely by the healthcare professionals, they will take further actions. The reality is that complaints could be easily made to the Medical Council. What you need to do is to download the form from the internet and submit it. However, often the process and outcome are disappointing for both the complainant and the doctor. Why is that so?

Looking at the current system, it is a three-stage complaint system involving complicated legal proceedings which is very time consuming. Even for a straight forward case, it may take up to two to three years for the case to arrive at the inquiry level. The complaint system is also similar to the court system which is adversarial meaning that it finds out who is right or wrong without any middle ground. The outcome is, therefore, not always predictable. There is no statutory definition of misconduct in a professional respect in Hong Kong under the Medical Registration Ordinance (Cap. 161). We follow case law. For any conduct falling short of reasonable medical practitioner in Hong Kong, we consider it misconduct in a professional respect. This creates some uncertainty because it is a peer standard.

I list here some common allegations that the Medical Council receives every year, for example inappropriate prescription of drugs, conducting unnecessary or inappropriate treatment or surgery, failure to properly or timely diagnose of illness and doctor’s unprofessional attitude and poor doctor-patient communication. You will see a variety of allegations of misconduct from simple miscommunication to very complicated allegation like unnecessary

surgery. The outcome is not certain most of the time and you cannot predict it at the outset.

We know that doctors are very busy in their work and we always complain that there are not enough doctors in Hong Kong. Disregard for the outcome of the complaint, the doctor has to pay the transaction costs. What I mention is a tactical consideration for doctors to consider. We are talking about years of auditing journey in the Medical Council for investigation and inquiry which is difficult for both the complainant and the doctor. For the intangible costs, for example psychological stress, time lost to prepare the medical reports, answering the experts' questions and damages to the reputation, damages to the doctor-patient relationship, these are very costly matters to the doctor. In the long-term public costs, for example resources to be reallocated to the disciplinary proceedings as well as doctors practising defensive medicine, these are the costs to be borne by the wider public.

There are lot of transaction costs when a patient files a complaint to the Medical Council. It is very simple to take the matter to the Medical Council, but behind the scene is that it involves a lot of efforts to determine the transaction costs. Maybe it is a bit realistic to consider that, but indeed we have to pay effort, time, not to mention potential psychological stress to deal with the complaint that takes years to complete. So these were all the tactical considerations for Dr. S to reconsider his position again when encountering a situation like that.

After listening to these background information and the current complaint system, what would Dr. S choose? Using the mediation skills we learnt from Yi-tan and Fion and the benefits of the apology legislation to provide a truthful explanation and/or apologies (as appropriate) at the outset, preventing escalation into a complaint/litigation to the disciplinary body? Or keeping fingers crossed and maintaining the position. I would to ask Ludwig, what would you choose?

(Dr. Ludwig Tsoi)

The cause of the problem is that during the medical training of doctors, the focus is on curing diseases. In the case of a mishap, there is no material touching upon training the medical students to deal with this type of unfortunate and unexpected outcome. It was the reason why for the past ten years, we, the medical community in Hong Kong, have been advocating mediation and communication training so as to bridge the training gap to help our front-line staff.

In the case of a mishap, what's done is done. What needs to be done is to let the patient and the relatives know that actually the doctor cares. Touching upon this point, I think the reason why the doctor was refraining from communication was not because he did not care, but because he had, perhaps, a sort of mind-set by the knowledge gained from lawyers that making apologies will incriminate himself as the one who has made mistake or medical error. This sort of mentality seems to persist in the local medical community. I think it takes time to let the new generation of doctors know that with the legal framework of the Apology Ordinance, they can make timely apologies to address the emotional needs of the patients or the relatives and to de-escalate the event at the right time.

(Dr. Hong Fung, JP)

What Ludwig answered is just either A or B. I would say that keeping fingers crossed and maintaining the position are definitely not the course that we should adopt. From the hospital management perspective, the victim of this sort of dispute is not just the patient, but the doctor as well. It is important for the hospital management to be able to support and accompany the doctor through the process. It is also equally, if not more important, to both adopt mediation skills, and know how and when to deliver apologies. The doctor should not walk alone during the course and the hospital must support him.

(Dr. Danny Lee)

Thank you very much, Dr. Fung! I think that is an important message

regarding the fact that the hospital chief is willing to support the doctor.

(Dr. Peter Pang)

As a sensible doctor, you should choose either one. I want to see you in another settings except in the Medical Council. Today, we learn quite a bit of the tricks and how to do it. I can summarise in two sentences: “You have to identify emotions” and “do it quickly”. If you adopt this stance, we can hopefully avoid seeing you in the Medical Council.

(Dr. Danny Lee)

Thank Peter for your comments! You will not see me anyway as I am only at the Preliminary Investigation Committee.

I agree that emotions are one thing. From doctors’ perspective, when this kind of dispute happens, they fear going through the complaint process. While litigation is another, a complaint to the disciplinary body is something that is very personal.

Of course, like Dr. Fung has just said, the hospital will support the doctor through the process, but the Medical Council hearing is very personal. The hospital can support the doctor, but at the end of the day, it is the doctor himself/herself sitting at the Inquiry Panel to answer all the questions and being subjected to the sanction to be imposed. This is a very important message for doctors to think again when something bad happens. Do not hide but try to communicate with the patients and settle the disputes by using mediation skills and the apology legislation as Ludwig has just mentioned. Let me make a short remarks here, “Saying sorry does not necessarily mean you admit liability.”

Of course the apology legislation encourages us to communicate or even offer apologies as appropriate when the situation requires. That does not mean you are compelled to offer apologies in all the circumstances. This is not the idea. The idea is to give you a backup. In case you are worried that

having apologised upfront will cause you trouble in terms of future legal proceedings, then the apology legislation will ease your mind. That is an important key message.

(Dr. Peter Pang)

Thank you, Danny! We are about to end this Panel Session and thank all the panellists for their shares, experience and insights! What we discussed just now would certainly be the cornerstone to build a better future for medical care. May our medical care be better made with mediation.

Thank you very much!

討論環節（三）： 僱員補償索償爭議中調解的應用

引言

(謄本)

(羅偉雄博士)

大家好，我是羅博士，很高興今日出席「調解為先 立足未來」的網上研討會，跟大家分享關於調解的工作。調解被譽為最有效以及最能夠滿足當時人需要的爭議解決方式。香港經過三十年的發展，已經成功建立調解的專業領域。香港的調解專業服務非常完備，覆蓋的範疇由家事、社區糾紛、百億大元的工程或金融糾紛、香港境內的糾紛、跨境貿易投資、以至投資者與國家甚或是國家與國家之間一些貿易的糾紛。香港的調解專業服務在上述範疇取得相當好的成果，亦在國際調解的發展屬世界先驅。香港除了積極參與聯合國國際貿易法委員會《聯合國關於調解所產生的國際和解協議公約》，又稱《新加坡公約》的草擬工作，以及推動中國和亞太區加入《和解協議公約》外，更長時間協助中國內地和亞太區多個國家發展專業的調解，包括設計及建設調解的制度，設立調解的機構，以及培訓專業的調解人才。

此外，香港的調解專業業界與全世界超過300個調解仲裁機構、政府機構及商企有著十分緊密的合作。十多年來，香港律政司、司法機構以及調解專業業界的努力之下，調解與其他爭議解決方式，包括訴訟、仲裁、談判都能非常緊密地涵接和配合，充分發揮香港作為國際爭議解決和法律的中心，以及國際金融貿易中心的功能。

大家亦認同預防糾紛勝於事後解決爭議。有見及此，香港的調解專業業界循這方面積極發展，與多個專業界別及商界合作，以滿足各種界別及行業的需要。我和全世界300多個合作機構都很有信心使用香港高端的爭議解決及風險管理專業服務，並認同這是國

際最佳的選擇。在2021年“調解為先”承諾書活動網絡研討會之中，我們剛剛聽到很多專家對於「以調解解決家族辦公室及私人財富的糾紛」，以及醫療糾紛的討論。在這個環節中，我們將討論關於僱員補償索償爭議中調解的應用。

我們非常榮幸邀請到六位具代表性的明星級專家，包括香港特別行政區政府法律援助署署長鄭寶昌先生, JP、香港特別行政區政府勞工處僱員補償科執行組高級勞工事務主任馬國權先生、亞洲保險有限公司高級副總裁、賠償部主管及安我保險有限公司賠償部主管馮詠敏女士、嘉民大中華區人力資源總監黃家傑先生、韓潤桑律師樓合夥人鐘浩怡律師，以及富勤保險(香港)有限公司賠償部總監周林輝先生。

我們會從多名專家、政府、僱主、人力資源專家、保險業人員、保險公司、律師及專業調解員的角度，全方位及深入討論關於使用調解處理僱員索償爭議的優點、各持份者所需要的協助、可達成各種持份者的期望、現有政府的資源及改善的空間，以及如何準備最好的調解結果。

首先，我們邀請第一位嘉賓，法律援助署鄭署長來跟各位進行專題探討討論。

鄭署長擁有政治科學及法學學位，並取得澳洲新南威爾斯高級法律學院、英格蘭及威爾斯高級法院，以及香港特別行政區高等法院的律師資格。鄭署長於1987年10月加入法律援助署工作，2013年9月獲任命為法律援助署署長，亦是民事法律制度改革委員會會員、律政司轄下調解督導委員會及規管架構小組委員、香港調解資歷評審協會有限公司調解資歷評審委員會會員，同時也是律師公會「公益法律服務及社區工作嘉許計劃」的評審員，並於2014年擔任第三屆亞洲調解協會會議籌備委員會榮譽委員，亦曾參與多個調解工作小組及委員會的工作。

現在有請鄭署長為我們進行專題討論。

**討論環節（三）：
僱員補償索償爭議中調解的應用**

開場環節

**鄺寶昌先生, JP
香港特別行政區政府法律援助署署長**

(謄本)

多謝羅博士及律政司的朋友給予我機會，讓我可以在此分享我們法律援助署將調解應用於案件處理的經驗。眾所周知，民事訴訟改革於2009年4月2日開始生效，當時法律援助署大力支持於官司方面使用調解。除了訴訟，調解也納入法律援助的覆蓋範圍。此後我們亦修改了條例，規定每位獲得法律援助的民事訴訟案件的申請人都須先嘗試進行調解。若申請人未能對不接受調解的情況作出合理解釋，有機會被終止法律援助，因為調解對民事訴訟案件十分重要。我稍後會解釋箇中原因。在過去八年間，法律援助署每年批出進行調解的個案超過900單。換言之，我們每年有900宗案件進行了調解。

在此，我想分享一些關於本部門的統計資料。所有獲批法律援助的民事訴訟案件，超過八成都曾進行調解，其中大部分與人身傷亡有關，婚姻訴訟案件次之，勞工賠償案件居三。

總括所有獲批法律援助的民事訴訟案件中，成功進行調解且免卻進行訴訟程序的案件佔百分之五十七，其中人身傷亡案件成功進行調解佔百分之六十三，勞工賠償案件成功進行調解佔百分之六十一，婚姻訴訟案件成功進行調解佔百分之四十五。

已完成的案件中，每宗勞工賠償案件平均以4.5個小時完成調解，費用平均約為港幣11,342元。每宗人身傷亡案件平均需4.8個小時完成，費用平均約為港幣14,263元。由此可見，成功的調解可以

免卻不必要的訴訟程序。這證明調解所花的時間及金錢是值得的，僱主及僱員雙方亦從中達致雙贏。

關於法律援助署處理的案件，我先集中解說勞工賠償案件。我們處理勞工賠償案件的原則是盡快令雙方進行和解，因為勞工賠償案件一般會附帶疏忽賠償案件，所以盡快解決勞工賠償案件可令傷者於最快時間獲取部分賠償，而涉及金額較大的疏忽賠償案件則大多需要進行耗時較長的訴訟程序。假設勞工賠償案件及疏忽賠償案件的答辯人分別屬於不同的單位，通常就需要分別進行兩次調解。若兩宗案件的答辯人是同一間保險公司，好處就是一次調解可同時處理勞工賠償案件及疏忽賠償案件的庭外和解。分開進行調解的案件中，人身傷亡案件較勞工賠償案件更多需要使用調解，原因是後者的性質比較簡單，雙方較少爭議，更便於在庭外進行和解。

我們大部分的調解員也擁有相關的經驗，部分是律師及退休法官，這對進行調解有所幫助。最後，我認為調解員的經驗和技巧是成功調解的主要因素，而調解亦需要雙方主動參與，並真心樂意地進行調解，這是相當重要的。

以上是我今天的內容，多謝大家。

(羅偉雄博士)

非常感謝鄭署長令大家了解到香港政府擁有非常完善的法援制度，協助市民處理僱員補償爭議索償，而調解服務亦已被納入法律援助的保障。鄭署長提及的數據顯示以調解解決僱員補償索償爭議的成功率非常高，處理時間也相當快。同時，和解的結果可以令雙方滿意。鄭署長亦提及到，如果雙方要達成和解，有賴於兩個重要的因素，一是調解員的專業態度及技巧，二是參與人士全心全意地希望解決問題，他們的高參與度亦會有助達成和解。再一次多謝鄭署長提供調解的錦囊。

我們現在有請另一位演講者，勞工處僱員補償科執行組高級勞工事務主任馬國權先生。馬先生於1991年加入政府工作，是一名經驗豐富的勞工事務管理人員，多年來曾服務於不同的勞工事務範疇，包括勞工關係及僱員補償，現時為分科主管，負責監督《僱員補償條例》下工傷個案的處理工作。他亦是「改善高風險行業僱員工傷保障專責小組」轄下的「處理受傷個案小組」的成員。

**討論環節（三）：
僱員補償索償爭議中調解的應用**

開場環節

**馬國權先生
香港特別行政區政府勞工處
高級勞工事務主任(僱員補償)(執行1)**

(謄本)

多謝羅博士。大家好，我是勞工處的馬國權，很榮幸可以藉著律政司所安排的這個研討會，跟各位線上參與者分享一些關於工傷爭議調解方面的事項。今天我分享的內容主要有三點。第一點是在處理工傷爭議的個案時，在不同階段中所出現的不同種類爭議。第二點是現行解決爭議的渠道和方法。第三點是調解或調解員在工傷爭議中所發揮的作用。

第一點，處理工傷的環節。現時處理工傷爭議主要分為三大階段。

第一個階段是確認補償責任，當中涉及需要確認是否曾發生工傷，或確認僱傭雙方關係。在本階段，普遍的爭議是僱主僱員之間的關係；工傷發生時有沒有人看見，或是否曾經發生過引致僱員受傷的工傷個案。這些爭議一般會在本階段中出現。

當確認僱主的責任後，處理工傷爭議的程序進入第二階段。此時，受傷僱員需要確認本身的工作收入、傷患部位及類別。有時候，工作收入的爭議會比較多的，因為僱員的工作收入可能會包括林林總總的項目，除了一般的月薪，可能還會有花紅及獎金。受傷之前的一段時間，他所收取的金額有多少？有多少是需要補償中計算進去？這些方面經常會出現爭議。至於傷患部位方面，除涉及肢體上的損傷，如傷者的頭部遭受撞擊，受傷僱員有

時候會聲稱因這次受傷而引致他精神上出現了一些創傷。究竟這些精神上的創傷跟意外本身有多大的關係？能否算作工傷中可以賠償的一部分？這些方面也經常出現爭議的。

釐清責任、僱員收入及確認傷患後，程序便進入第三階段。關於該宗工傷個案中受傷僱員的受損程度，以及根據該受損的程度去計算的補償金額上，不同的爭議會出現。

上述三大階段中的不同爭議涉及不同方面。有些是事實上的爭議，即是事情有沒有發生；有些是醫學上的爭議，即是傷患的程度或傷患跟工傷的關係，以及有些爭議是傷者主觀感受。如果上述的爭議未能有效地解決，個案將會難以完結，亦會影響該宗工傷個案不同持份者的權益。

既然有這麼多爭議，工傷個案的爭議會如何處理？一般來說有兩個大方向：第一，勞工處。勞工處會主動介入，搜集資料，澄清可能會出現的誤會，以及向僱傭雙方提供意見。第二，勞工處介入後，個案仍然有未能解決的爭議，便會轉介到法院尋求仲裁。現行的方法在處理個案的成效上，雖然就澄清事實和提供意見上，勞工處提供的服務解決不少爭議，但僅在事實上的爭議才會比較有效。勞工處既沒有角色，亦不適合站在僱主或僱員任何一方的角度，就著雙方各自的利益去建議他們作出取捨。故此，勞工處在利益取捨的爭議上，能夠介入或提供協助的空間是比較少的。根據我們的經驗，在這種情況下，有不少個案最後須轉介到法院尋求仲裁。

我在此分享一些數據。在任何時間，甚至是我跟大家說話的這段時間內，我們正在處理的工傷個案大約有兩萬多宗，而這兩萬多宗個案當中有三成，即約六至七千宗個案，是勞工處正在處理或正待法院仲裁的不同爭議個案。如果通過調解，大量這類爭議個案便能以更有效的方式及更少的時間得到解決。

最後一點，現時調解在工傷個案處理流程中的角色。在律政司近

年來的推廣下，調解已更多應用於處理工傷爭議。在我們的角度上看，調解或調解員還有很多尚待強化的空間。我們各方可以在相關方面再加強合作，而我們非常期待調解員可在處理整個工傷個案流程中，成為一個更重要的持份者。

這次網絡研討會讓我們這些不同界別的持份者一起探討調解服務如何應用在工傷爭議上。得益於律政司近年的推廣，根據以往個案所顯示，調解越來越受到重視，且被認可為有效解決爭議的方法。跟訴訟相比，調解既可省卻時間和訟費，亦免卻雙方在面對訴訟時的壓力。我在此推介調解作為解決爭議的方法。

感謝各位嘉賓講者就這個議題分享他們的意見。我也藉著這個機會表達勞工處，其相關機構及合作伙伴，包括勞工處統籌，有各方參與的「改善高風險行業僱員工傷保障專責小組」及「僱員補償保險工作小組」、保險業監管局和僱員補償聯保計劃管理局，非常支持這次活動，也支持以調解解決工傷爭議，亦欣見調解在處理工傷爭議上擔當更重要的角色。

我的分享到此為止。祝大家工作順利，亦祝願這次的網絡研討會圓滿成功！

多謝。

討論環節（三）： 僱員補償索償爭議中調解的應用

討論環節

(謄本)

(羅偉雄博士)

非常感謝馬先生清楚地講解勞工處對僱員補償索償所作出的安排。他亦特別提及，調解協助處理事實上的爭議以外，亦對處理雙方的情緒、不同觀點及需求都有顯著的幫助。透過勞工處過去數年的努力，調解在處理爭議上已有長足的進展，未來亦有相當多的發展空間，例如加強調解就僱員補償方面所發揮的作用，以及協助“調解為先”的計劃良好發展。

接著，我們很榮幸邀請到四位專業的嘉賓分享他們對如何在僱員補償索償爭議中使用調解的的經驗或看法。第一位嘉賓是富勤保險(香港)有限公司賠償部總監周林輝先生，**Kenneth**。他擁有超過二十年保險業索償管理的豐富經驗，專門負責再保險、責任保險索償及訴訟的案件。他亦曾多次擔任保險及有關協會的技術及諮詢委員會成員，並為香港保險業聯會僱員補償聯保計劃索償委員會之首任召集人。他亦是人身傷亡及醫療事故法律協會的委員，也曾擔任香港和解中心的理事及副會長。他是香港調解資歷評審協會有限公司及香港和解中心名冊的評審及首席導師，現時亦為多個調解課程擔任導師。2020年，他與調解員馮詠敏小姐合著《解決爭議的藝術》。在「2018年調解周」中，他亦被邀請為「以調解解決僱員補償索償的爭議」研討會的其中一位客席講者。現在有請**Kenneth**。

(周林輝先生)

多謝羅博士。今天我跟大家分享僱員索償的情況。站在傷者的角度，當他面對工傷時，身體上的殘缺已經影響他的情緒。不過，

站著保險公司的立場，他們只會根據保險條款的文字上處理問題，可能未能理解傷者實際上的傷勢和受傷程度，或者情緒是否需要輔導。保險公司對此有兩個主流取向。第一個是比較傳統的方式：根據文件細則衡量事件，評估傷者的傷勢以計算補償。這個取向對傷者的同理心會比較少。第二個主流取向是較為進取的方法。如果保險公司審核文件後評估傷者的傷勢頗為嚴重，會從中協調為傷者提供康復治療的服務，再安排註冊護士評估傷勢情況，希望在治療的黃金時間內為傷者提供適切的治療，從而減輕傷者的傷勢及降低傷殘率。這種方法可達致雙贏的局面，一方面對傷者來說，他較為感受到人情味，而令一方面亦可確認傷者接受必須及專業的治療。此外，由於公營醫療系統的資源可能較為緊張，所以由保險公司為傷者免費提供額外的私營醫療服務，可令傷者省卻輪候公營醫療服務的時間，同時亦為傷者提供更適切的治療，從而及早控制傷勢及加快康復的進度。對保險公司來說，他們可藉此相對地減低賠償率而得益，而雙方的對抗性也可因此減低。

(羅偉雄博士)

多謝Kenneth。接下來第二位嘉賓是韓潤桑律師樓合夥人鍾浩怡律師，Nelson。他於2000年成為香港律師，並於2012年成為認可調解員。除了於2002至2004年間於醫院管理局法律事務部工作外，他一直都是私人執業。他曾獲邀擔任香港中文大學訪問學人，於中醫學院講授醫事法，亦由2018年起於教育大學教育政策及領導學系中協助教育局講授校長法律課程。他專長於民事侵權法、醫事法及教育法。此外，他亦多次以調解員及訟方代表律師的身份參與各類型民事索償的調解會議，也有於政府中協助擔任半司法職務，現時為屋宇署上訴委員會主席團成員及精神健康上訴審裁處委員。有請Nelson。

(鍾浩怡律師)

多謝羅博士。今天主要跟大家分享，作為工傷案件代表原告或傷

者的律師如何藉著調解幫助傷者及保險公司完滿地解決事件。常見的情況是，絕大多數傷者在事件的初期都會感到徬徨及憂心。傷勢比較嚴重的傷者尤其對未來感到不確定。如果比較幸運的話，相關的僱主願意繼續支付工傷病假錢，或提供醫療上的支援。正如剛才Kenneth所說，在香港，僱主被要求強制購買僱員補償保險，所以傷者很多時候亦會從中得到補償。一般來說，保險公司會在事件初期作出行動以協助傷者，但有時未必能夠得到傷者的信任。因此，我們亦會在過程中向傷者解釋情況。首先，根據《僱員保障條例》，傷者有法律責任跟保險公司合作，進行醫學上的身體檢驗。第二，保險公司亦需清楚了解傷者的情況，才能跟傷者進行和解程序。經過這個程序，保險公司才能採取適當的方法幫助傷者，在此亦有機會需要使用調解令雙方進行協商，從而解決事件。

有個案的傷者工作能力未能恢復，心態及情緒因而影響。部分傷者會在事件初期患上創傷後遺症，有部分的症候可以漸漸消失。不過，如果創傷後遺症未能康復，會導致抑鬱及鬱燥。我們亦會嘗試透過傷者的家屬，為傷者提供情緒上的支援，令他較容易接受以和解方式解決事件。

當然有時候也會出現一些較困難的情況。不論是有心還是無意，部分僱主未有按程序申報工傷，並私底下與傷者簽訂一些和解的協議，令傷者不清楚自己擁有的權益。我們亦曾處理過這方面的問題。因為我們都曾分別代表原告或傷者處理案件，所以對兩者的立場亦比較了解。我暫時先說這些，稍後再跟大家分享其他事宜。

(羅偉雄博士)

多謝Nelson。我稍後再向Nelson請教有關僱員會面對的困難和需要。接下來有請亞洲保險有限公司高級副總裁、賠償部主管及安我保險有限公司之賠償部主管馮詠敏女士。馮女士持有法律博士、法學碩士及工商管理碩士的學位，在一般保險業的索償管理

擁有超過十五年豐富經驗，專門負責建立理賠評估準則，處理理賠策略，管理程序和工作流程審查，提供培訓和處理訴訟案件。她現任香港保險業聯會意外保險公會主席、一般保險總會委員及睿智2028成員，亦為香港保險投訴局名譽顧問。同時她也是香港調解資歷評審協會有限公司及香港和解中心名冊內之評審、首席導師，以及多間學院的保險學講師。有請馮女士。

(馮詠敏女士)

多謝羅博士。今天想跟大家分享，在僱員補償個案，或稱為工傷個案，我們作為保險公司所擔當的角色。

自2010年起，司法機構《實務指示31》鼓勵當事人雙方進行調解。我也想藉著這個機會說明調解不一定需要在司法程序期間才可以進行，僱主及僱員亦可按需要，在事件進入司法程序之前進行調解。我們作為保險公司，很多時候在工傷個案中擔任僱主和僱員之間溝通的橋樑。

正如剛才Nelson所說，當意外發生之後，僱員普遍都因受傷感到徬徨，不清楚如何處理工傷及申報病假。我想告訴大家，我們保險公司有時亦會協助受傷僱員康復。其實僱傭雙方皆不願看到意外的發生，因此保險公司會提供適切的治療予傷者，減低傷者的徬徨，以及協助傷者盡快康復以重新投入職場，這些對僱員、僱主及保險公司來說都是一個三贏的方案。在意外發生的時候，三者其實是合作的夥伴。正如勞工處馬先生所提及，僱員補償案件於責任上的爭議其實不算很多。保險公司擁有完整的資訊了解工傷個案後，尤其是責任並非爭議的項目，便可憑藉本身的足夠資源為傷者提供適切的支援，有需要可以安排物理治療，希望令傷者在康復的黃金時間內痊癒。這遠比事件後的賠償談判更為重要。

除了安排物理治療外，保險公司亦會按情況提供醫生進行評估，以專業角度分析傷者情況，提供適切的康復治療，以及評估傷者

是否適合於現時的工作崗位。這個醫療評估不僅對保險公司重要，對傷者來說亦十分重要。因為部分個案的傷者會認為自己不能再繼續工作，或在心理上憂慮自己不適合工作，所以專業的醫療評估有助傷者更容易接受事實。保險公司亦會協助傷者安排復工的計劃，工作會由簡易的工序開始，待傷者慢慢恢復信心才重回意外前的工作崗位。這安排往往可以令傷者更為滿意，避免因工傷而意志消沉或需要接受精神上治療。保險公司、僱員及僱主三方在事件發生後，需要開心見誠溝通。這是一個十分重要的合作空間，各方不需要互相猜忌。不管那是僱主或僱員的疏忽，我們的最終目的是希望得到事件的真相，以便我們保險公司評估是否需要為傷者提供康復治療的協助，以及資源上能否配合，從而令傷者可以重回工作崗位。

同時，作為保險公司的代表，我們亦需在個案上作出合理的評估。有部分個案的僱主在進入司法程序之前，已經要求保險公司安排專業調解員在平等的平台下，以專業角度分析和理解案件。這往往較事件進入司法程序後才進行調解，有更和諧的氣氛，僱員亦較易感到滿意。只要有爭議，我們都可以使用調解去解決事情。憑著調解員的協助，僱員可在調解會議中向僱主分享自身的擔憂，亦可向僱主提供建議，以便日後制定措施避免事件再次發生。我認為這是一個三贏的方案。

(羅偉雄博士)

多謝馮女士的分享。她帶出一個重要的信息：我們需要透過調解來營造良好的環境和氣氛，讓參與各方可以有效地表達自己的看法及關注的地方。更重要的是，調解可讓各方理解大家的想法及不滿意的地方，提供抒發己見的良好機會。接下來的嘉賓會從人力資源業界和僱主的角度，分享對僱員補償的看法。下一位講者是嘉民大中華區人力資源總監黃家傑先生，Benjamin。

嘉民是一間具規模的資產投資及管理的澳洲上市公司。Benjamin在進入嘉民工作前，任職香港嘉華國際地產集團的首席人力資源

官，亦曾在德國克諾爾制動系統公司擔任亞太區人力資源總監，德國克諾爾制動系統公司是一間軌道交通和商用車行業的公司。此前他曾在各大企業工作，包括靦殼、澳紐銀行、奧迪斯電梯等等。他亦擁有超過廿多年在蘇州、上海、天津及香港的豐富資歷，並且是澳洲註冊會計師、工商管理碩士，以及澳洲和香港人力資源委員會的委員。他在人力資源業界方面涉及多元不同領域，在文化、培訓與發展、僱員敬業和鼓勵方面都有資深經驗，亦與法國商學院合作建立了企業高級管理人員領導力的培訓課程。他接受了不同人力資源的雜誌及傳媒的訪問及參加專題討論，同時亦為年青人提供職業指導。有請Benjamin。

(黃家傑先生)

多謝羅博士的介紹。我在此說明，我今天的分享不代表公司的立場。

工傷通常涉及工作上的潛在危險。如建築行業或其他行業的僱主未有做足安全措施，而構成潛在危險，便需糾正及改善，避免工傷意外發生。當不幸發生工傷意外時，檢討的焦點便不會是上述事項，而是個別工傷個案的發生成因。同時，人力資源部門會關注及處理受傷僱員的情緒。如公司做到了上述事情，便可避免爭議。

僱主及僱員之間的勞動爭議是一件很難處理的事情。國際勞工組織提議，解決勞動爭議需以對話和溝通為前題。除此以外，我認為處理這類爭議時，首要考慮是僱員的福祉，而僱主需亦考慮到自身商業品牌及其聲譽。對雙方來說，圓滿解決爭議是雙贏的局面。

僱傭雙方皆不希望發生工傷。當工傷意外發生後，首要考慮的是僱員健康，僱主應按僱員的需要而盡力協助。不過，有時候雙方在溝通過程中出現狀況才令爭議升級。故此，發生爭議時，雙方便應坦誠溝通對話。過程中，僱主需以僱員的角度處理爭議，同

時亦會考慮自身品牌的情況。如果爭議需要進入司法程序，便會浪費金錢和時間，對雙方都沒有好處。總括而言，今天的主題「調解為先 立足未來」絕對是處理爭議的正確方向。多謝大家。

(羅偉雄博士)

多謝Benjamin。他以資深的人力資源總監角度看到，很多跨國企業都相當重視僱員的健康及安全。根據過往的經驗，不同的意外可能會導致申索，當然我們希望能夠有效地避免這種情況發生。不過，如果爭議出現，我們可以使用調解解決爭議的情況，調解的過程中亦需考慮到傷者的情緒及其他需要。

他亦提到了另一個很好的見解：預防就是解決爭議的最好方法。如何在處理工傷個案的過程中使用調解以預防爭議，是我們需要探討的部分。

今天在座不同界別的嘉賓可以在不同的角度上進行分析，當中包括保險公司、保險代理、法律專業人員、律師及人力資源管理人員，從而讓我們能夠更深入地了解到僱員補償索償爭議中調解的應用。首先請問Kenneth，保險公司於僱員補償事件中擔當著甚麼角色？

(周林輝先生)

多謝羅博士提出這問題。保險公司作為商業機構，只擔任承保人的角色。投保者(即僱主)，購買保險單後，如果他的僱員不幸受傷，他就需要根據法例賠償。關於法例上所謂金錢上的損失，由於保險公司持有僱員工傷補償保險單，就能為僱主承擔金錢上的保障。當工傷事件發生後，僱主將相關資料向勞工處呈報外，亦需同時將資料呈報予保險公司。當保險公司收到資料後，便會作出審核賠償及協助處理賠償。保險公司在事件上的角色是一個代表僱主的財務承擔者。

(羅偉雄博士)

保險公司會負責事件上的賠償，亦會按傷者的需要提供援助措施。接下來請教馮女士，保險代表在調解過程起了甚麼作用？

(馮詠敏女士)

我們參與調解的過程中，承擔了僱主在工傷個案中補償的責任—支付合理的賠償。勞工保險包括，根據勞工法例對傷者提供一筆合理的賠償；對個案進行調查，以了解僱主在工傷個案中是否有疏忽，從而引申至僱主在法律上的責任，並衍生普通法下疏忽所產生的賠償。

我們在進行調解時，最終的保額賠償也是由保險公司支付。因此，工傷個案上，保險公司亦會積極參與其中，既協助僱主處理法律文件，亦協助僱員的身體康復，務求令大家的損失減至最低。

(羅偉雄博士)

一個合理的賠償，對僱主是公平，對僱員是更大的保障。如果僱員在事件中有需要尋求專業意見的話，是否可向保險公司代表了解甚麼是合理期望？

(馮詠敏女士)

僱主及僱員之間都需要溝通。部分個案的傷者會主動聯絡保險公司，或保險公司委派一位同事去聯絡傷者，向後者解釋個案依據《僱員保障條例》，該傷者所受保障的範圍。有一些工傷個案，保險公司或僱主甚至會選擇與傷者進行談判，商討賠償方案。

當我們認為未能解決事件時，亦會考慮選擇使用調解協助解決事情。雖然談判是解決這種問題的最直接方法，但傷者認為保險公司是代表僱主，並涉及利益關係，中立性並不足夠。此外，由於

有時我們未能和傷者建立同理心，所以未能令傷者意會到大家是同一方。調解員在這情況下以第三者提供協助，是會比較合適。這樣可令傷者感覺到，個案得到公平公正的處理，任何一方皆不會受到偏袒。調解正提供了一個溝通的平台，讓雙方比較容易達成和解。

(羅偉雄博士)

承接著馮女士所說，調解員在調解過程中協助雙方解決爭議，不會偏袒其中一方，讓雙方在更公平的情況下交換各自的看法。更重要的是，調解員要製造一個空間及環境，讓雙方進行溝通以釋除誤會及不清楚的地方。調解員亦要協助雙方持有合理的期望，讓他們管理自己的期望及爭取最大的利益回報。保險賠償過程當中，僱員有甚麼顧慮？這部分請教一下Nelson。

(鍾浩怡律師)

一般工傷個案中，我們都會假定僱員不會自行令到自己受傷。大部分尋求律師協助的傷者都認為康復比賠償更加重要。不過，身體經過受傷後恢復到本來狀態的機會不是很高。從醫學角度上看，如傷者年紀不輕，身體受傷會引發隱患及身體的勞損，傷者因而未能百分百重拾以前工作的能力。傷者對此會感到沮喪，心理上亦會受到打擊。在這些工傷個案，我們亦希望調解可以處理到這些情況，而處理情緒的次序亦應較賠償優先，因為處理情緒對解決爭議有一個相當正面的幫助。

(羅偉雄博士)

可否進一步解釋僱員在補償索償之中，他們面對最大的困難是甚麼？

(鍾浩怡律師)

我認為最大的困難是情緒上的困擾。很多時候，他們十分關注日後能否重回工作崗位，大部分傷者都是希望重回工作崗位的。有一些傷者經過公營或私營醫生的評估，知道自己不適合重回原本的工作崗位，這會令他們的情緒變差。我們會建議傷者聽從醫生的建議，縱然工作崗位有所改變，亦可嘗試恢復有限度工作，從而令他們覺得自己是有用之軀，想法亦會轉趨正面。工傷案件中，僱員大多寧願選擇恢復工作能力和重回工作崗位而不是賠償，因為他們擔心賠償未必能夠支撐日後生活。

總括而言，他們最大的困難是情緒及心理。故此，為傷者提供情緒支援是非常重要的。除此之外，傷勢亦是另一個十分顯著的困難。

(羅偉雄博士)

因為意外發生了便不能回頭，所以僱員的情緒受到相當大打擊。相關的持份者處理工傷補償時，除了賠償之外，亦需留意是否有其他支援可協助傷者。我們了解工傷個案中僱員的角度後，接著便討論僱主的角度。僱主最大的關注是甚麼？有請Benjamin分享他的看法。

(黃家傑先生)

僱主最大的關注一定是僱員的健康，以及按當時的情況去處理緊急的個案。首先，受傷僱員的身體的情況需要適時處理。同時，僱主須依照法例於14天內申報工傷事故，而涉及死亡情況須在事發的7天內呈報。此外，僱主亦須按照法例向受傷僱員發放五分之四的工資，以維持僱員生計。至於經裁定的工傷醫療費用，僱主須要在21天內向僱員支付。香港擁有完善的法制，勞工處、勞資審裁處及小額薪酬索償仲裁處向僱員提供完善，且收費水平合理的服務。

今天的主題是解決勞動爭議，而“調解為先”的做法正好能夠快速解決爭議。僱員賠償方面，僱主亦需作出適切的處理，同時亦須遵守法例，以我所見，部分的公司都能做到的。不過，因為一部分公司的做法有落差，所以才會出現剛才各位所提及的個案。

(羅偉雄博士)

以我所見，僱主十分關注僱員的健康情況。上述法例的要求是一個公平的安排，亦能夠保護僱員。當然，大部分的僱主都會認為僱員是公司重要的資產。受傷僱員對工傷個案處理過程感到舒適及滿意，對公司來說亦十分重要。

下一部分，我們會更深入討論“調解為先”，我們都知道出現爭議時，有很多方法可以使用，其中最簡單的就是訴訟。如使用訴訟處理僱員補償索償的時候，會有甚麼局限？在座各位的見解如何？我們首先有請Kenneth分享他的看法。

(周林輝先生)

訴訟是追討賠償的其中一種方法，其有效性受到法律的保障。不過，所花的時間有時會曠日持久。故此，時間亦是大家需要考慮的因素。處理工傷意外時，我們的關注事項應該是受傷僱員的情緒。曠日持久的處理，加上訴訟本身的風險，容易令其情緒未能及時平伏。故此，訴訟是否對受傷僱員、僱主及保險公司有好處？訴訟的考慮因素大致上可分為四個層面。

第一是金錢。因訴訟涉及法律團隊，所需要的費用亦會隨時間慢慢增加。

第二是關係。僱主認為僱員優秀，才會聘用。如不幸發生工傷意外，雙方關係會有何改變？正如Nelson所說，如果僱主及保險公司能在僱員發生工傷後及時地提供醫療支援，雖然或許未能令受傷僱員百分百康復，但可盡量降低傷殘程度。這較法庭上互相搏

奕的訴訟，更能使雙方保持良好關係。

第三是可行方案的分析。訴訟只有勝負之分，而法庭只會對金錢賠償方面作出裁決。如使用談判或調解，各方在過程可以構思與金錢無關的不同方案，例如雙方繼續保持僱傭關係的方案，僱員因能繼續受聘而平伏情緒。談判或調解增加制定方案時的彈性。

最後就是結果。訴訟中，只有一方能夠勝出，而另一方亦有可能提出上訴，令事件持續下去，訴訟費用亦會隨之而增加。最後，勝出一方亦只能獲得法庭判其所得的部分訴訟賠償，這樣對勝出一方而言都是損失。負方除了要承擔訴訟費用外，還須支付雙方的律師費。

綜合來看，調解是一個較適合的方案。

(羅偉雄博士)

多謝Kenneth。承接剛才的題目，我再請教Nelson以法律代表的角度說明，訴訟對當事人構成甚麼局限？

(鍾浩怡律師)

我在此分享一宗工傷索償案件。這宗案件涉及一名員工遭鋸機鋸去一隻手，因而喪失工作能力。高等法院審訊這宗案件的當天早上，雙方代表的大律師在開庭之前，在庭外達成和解，而案件亦隨之改為內庭聆訊。法官透過翻譯人員語重心長地告訴傷者，縱然傷者在事件中失去一隻手，但法庭的裁決只能夠提供使傷者得到金錢的補償，而不能令其殘障得以復原，希望傷者能夠適切地協調日後的生活。此例子說明，法庭在訴訟上只能提供金錢的補償。調解則會有其他的考量因素，從而創造更多不同的方案。無可否認，調解比訴訟產生更多樣化的解決方案。

(羅偉雄博士)

那麼，賠償個案的訴訟一般需時多久？

(鍾浩怡律師)

這視乎不同個案而定，時間可長可短。有些個案處理需時不長，因為傷者的病假只有數個月，隨後便會去到判傷程序。如僱傭任何一方反對判傷的結果，受傷僱員便須驗傷。此時，不論有沒有法律代表，僱主、僱員及保險公司都大概知道賠償的程度。

有些工傷個案處理需時較長，因受傷僱員的傷勢變得複雜，所以相關的病假可長達三至四年。這段頗長的時間亦會令受傷僱員一直擔心日後自身的情況，情緒因而受到影響。情緒上的影響亦需經精神科醫生檢驗，才能確定與工傷個案之間的關係。這些都是訴訟時間延長的原因。不論工傷僱員補償案件，還是疏忽所引致的索償，法庭亦需依照程序處理。每個程序以星期或月來計算，以致訴訟處理時間延長，甚至有時需時數年以上。

公平來說，有時候進行調解，我們亦需等待檢驗報告的結果，才可以準確計算出賠償方案。

(羅偉雄博士)

訴訟處理時間過長可能是傷者難以接受的狀況。請 Benjamin 以僱主及人力資源業界的角度，說明訴訟的局限。

(黃家傑先生)

正如講者剛才所說，局限就是金錢及時間。鄭署長剛才提及的數據顯示，調解平均只需要4.5小時，大約一萬元的成本便可處理一個案件。反之，訴訟涉及的時間以年計算，雙方亦需要花大量金錢聘請律師研究相關案例並處理法律程序，負方更需要支付雙方的律師費，綜合費用可以達百萬元。由此可見，調解很明顯是較

為可取的方法。

關於情緒上的處理，以離婚官司案件為例子，判決只涉及訴訟費及贍養費，忽略孩子情感和情緒上的需要。調解是一個非常好的工具，既處理到訴訟未能處理的地方，也能夠節省金錢和時間，對雙方而言也有好處。因此，雙方沒有必要捨易取難，花時間和金錢去進行訴訟。

(羅偉雄博士)

多謝Benjamin。各位講者不僅解釋了訴訟的局限，亦帶出調解的好處。不過我想澄清，剛才鄭署長所提到的是，調解會議一般需要4.5小時。調解員在調解前通常需花數星期的時間去準備，例如了解案件；當時人的心理狀況以及雙方的期望和需要。不過，這沒有改變調解較訴訟更節省金錢和時間的優勢。更重要的是，調解擁有彈性及可以帶出不同的結果。

調解的目標是解決問題，而訴訟的目標是判決如何處理事件，而非解決問題。現在有請馮女士為我們總結調解帶來的好處。

(馮詠敏女士)

調解有不同的好處，包括節省金錢及時間。不過，大家往往忽略了訴訟的時間和壓力。即使僱傭雙方尋求法律代表的協助並得到專業的意見，但雙方在準備訴訟期間，亦需向法律代表提供有效的材料和基本的資料，包括事件發生的情況或相片，以便法律代表準備訴訟，而搜集資料的過程上亦已經花上不少時間。故此，訴訟的時間不僅是等待官司的時間，還有準備訴訟的時間。

訴訟的壓力源自審訊過程中的盤問以及判決的不確定性。即使受傷僱員獲判勝訴，但所獲的賠償亦未必如預期。如僱主敗訴，則需要承擔法律上的賠償和訴訟費，而訴訟的費用一般會較賠償費為高。

我們作為保險公司，不僅著重一個合理賠償，還希望所支付的金錢是用得其所。保險公司應該且有責任根據《僱員補償條例》，支付賠償費用予傷者，不需要作無謂的拖延。不過，在處理賠償的過程中，我們亦希望可以節省到不必要的費用，這是我們一個很重要的任務。

在情緒的處理上，我們亦盡量希望減低雙方的壓力。不過，訴訟令受傷僱員在法庭上重提數年前所發生的意外，對心理上造成沖擊。同時，僱主希望保密公司的內部程序，但進行訴訟時就須要披露相關資訊。相反，調解保障了資料的保密性，亦免除訴訟對雙方帶來的壓力，也可以節省時間和金錢，還可以帶來金錢以外的方案。有些個案的受傷僱員只是想得到法例上應有的賠償，且可以返回原來的工作崗位，而非大額的賠償。調解正好令雙方探討這些方案。

(羅偉雄博士)

多謝馮女士使我們明白到調解所帶來的好處。至於訴訟，僱主和僱員雙方需要考慮到訴訟會消耗大量時間及精神，導致未能集中於各自的工作及業務運作。這些無形成本往往可能比訴訟的費用來得更高。

現在有請Benjamin分享海外國家的公司或機構處理工傷爭議的方法。

(黃家傑先生)

不同的地方存在很多差異。以中國內地為例，由於內地採用成文法，所以處理工傷爭議的方法與普通法地區有所不同。

香港是普通法地區。假設僱員在上班途中發生工傷意外，香港公司會對因工作關係而駕駛或操作由僱主安排或提供的交通工具，往返其居所及工作地點的直接途中的僱員作出賠償。在內地，

國內公司只會向提供機動車(汽車、電單車)予僱員的案件作出賠償，自行車及飲酒駕駛則不包括在賠償範圍。成文法下，這些內容已清楚列明。總括而言，成文法和普通法各有優點。

此外，江蘇省《工傷保險條例》列明，若僱員於工傷後引致傷殘並主動辭職，僱主需支付傷殘津貼予僱員，計算上限為七十八歲。2017年，中華人民共和國人力資源社會和保障部令（第33條），就著《勞動人事爭議仲裁辦案規則》作出了修改，指出在進行仲裁階段前，必須先經過調解處理，在法律上認可調解的結果。我認為這一措施帶來了良好的影響。

澳洲是普通法地區，設有「公平工作委員會」，簡單來說就是澳洲的「工作場所關係法」法庭，一站式專門負責處理訴訟及上訴案件，但不會處理涉及聯邦法律及或工業行動的案件。這是一個有效的架構。

以上均是值得參考的做法。

(羅偉雄博士)

各個地方都有針對僱員受傷後賠償的方法。除了仲裁外，內地很多地區也引入了調解，香港對此提供大量支援。過去兩年，香港為內地的人力資源及勞動仲裁機構培訓超過500位調解員，這亦有助內地企業以香港有效的調解系統來協助處理一些較嚴重的勞動爭議。請Nelson以法律代表的角度說明，如果僱員希望在索償的過程中使用調解，他應如何選擇代表自己的法律人員？

(鍾浩怡律師)

在這情況下，僱員不一定需尋求法律人員的協助。不過，如果僱員認為需要一位法律代表，調解員的背景不是必然的選擇條件。經常處理工傷和意外索償的法律人員及大部份傷者均不希望案件

進入最後的訴訟階段。站在傷者的角度，這對傷者造成很大的心理壓力。對法律人員而言，當獲得足夠的案件資訊後，便希望盡快達成和解，從而處理下一宗案件。這既節省了訴訟程序，亦為律師事務所帶來更大的好處。

傷者選擇法律代表時，要考慮相關人員的經驗。同樣重要的是，法律代表需願意處理案件的前期準備工作，而促使案件盡快完結。他亦需能夠疏導僱員的情緒，以及向僱員分析案件的情況和面對的風險，這樣較只是解釋賠償方案更加重要。

(羅偉雄博士)

多謝Nelson。訴訟及調解的過程有十分大的差異，各自覆蓋不同的範疇。

僱員選擇法律人員作為代表處理索償案件時，法律代表很大機會使用調解。因此，法律人員需清楚理解調解的運作及目標，並需要滿足傷者在訴訟之外的需求。香港律師會鼓勵律師熟悉調解的程序，以調解代理人的身份，有效地協助處理調解的事宜。

最後，再次感謝四位專業人士為我們提供調解的資訊，從而說明調解在僱員補償索償爭議個案中發揮了重大的作用。香港的爭議解決服務十分進步，希望未來更廣受世界各地選擇使用。

多謝大家。

Closing Remarks

Dr. James Ding

**Commissioner, Inclusive Dispute Avoidance and Resolution Office,
Department of Justice, Hong Kong SAR Government**

Distinguished Guests, Ladies and Gentlemen,

May I, on behalf of the Department of Justice (“DoJ”), thank you all for joining us online today at the “Mediate First” Pledge Event 2021.

2. Hong Kong enjoys the unique position as the only common law jurisdiction in China under the “One Country, Two Systems” principle as enshrined in our Basic Law. This has helped to provide a business-friendly and predictable legal framework for investors and traders. As such, Hong Kong has been and will continue to be a deal-making hub in the Asia-Pacific region.

3. In addition to being a deal-making hub, Hong Kong is also a hub for dispute resolution. As the Secretary for Justice said in today’s opening remarks, “Hong Kong’s position as an international legal and dispute resolution services hub will be further enhanced with the opportunities presented under the Belt and Road Initiative and the Guangdong-Hong Kong-Macao Greater Bay Area (“GBA”)”. In this connection, development and promotion of mediation is one of our key initiatives. We do not only provide a comprehensive legislative framework such as our Mediation Ordinance and Apology Ordinance, but also cultivate a “Mediate First” culture in the community, as evidenced by the event today.

4. During the panel discussions today, we can clearly see the value of mediation as a highly effective tool for achieving harmonious resolution of conflicts arising in different sectors¹. This echoes our long time campaign of the “Mediate First” Pledge since 2009, and today, we are glad to showcase why and how “Mediate First” will

¹ <https://pressreleases.responsesource.com/news/101234/mediation-continues-its-success-despite-the-challenges-of-the-pandemic/>

become the go-to approach when one intends to resolve his/her disputes in the future.

The Private Wealth Session

5. This morning, we heard from prominent speakers in the private wealth and asset management sector sharing their invaluable insights about the use of mediation in resolving monetary disputes in families, sometimes between generations.

6. We have come to know that disputes arising from the family arrangements can be highly personal and emotional which are, most of the time, not desirable to be resolved through traditional means of dispute resolution such as litigation.

7. This is where mediation comes into play. Mediation offers confidentiality, creative options to be adopted which could not be otherwise offered, and a prospect to preserve family harmony. In particular, mediation may keep the disputes away from the media, which makes mediation a highly preferred mode of dispute resolution in family settings. Mediation process is also interest-based and any settlement reached could address the concerns of all members of the family involved. Therefore, it is not unusual to find a mediation clause in the rules governing family interests.

The Healthcare Session

8. In the afternoon, we have also heard how mediation can help in a different setting, the clinical settings.

9. I recall an impressive quote during the panel discussion that “acknowledgment can be the best medicine we have.” It is perfectly natural for us, human beings, to experience an emotional ride in a matter of life and death. This is where mediation comes in. We learn from the case studies in the panel that suitable mediation techniques

may be integrated to foster communication, by recognising and acknowledging the feelings and emotions involved in disputes between medical staff and patients in the healthcare sector.

10. The case studies have also demonstrated that healthcare practitioners could enhance mutual understanding and communication under the mediation and apology legislation which could prevent the disputes from escalating. Better communication also facilitates better collaboration, which helps to build up the foundation for trust and confidence in the medical process and outcomes. Healthcare practitioners can very much benefit from deploying the skills of mediation.

The Employees' Compensation Claims Session

11. Our last panel revisited a topic which was discussed in the Mediation Week 2018, that is “How Mediation Could Play a Key Role in Resolving Employees' Compensation Disputes”. Experienced mediators and practitioners shared with us their experience on how mediation can assist employees injured at work.

12. Not only that mediation helps injured workers to save time and costs, it can also help preserve their relations with their employers as mutually agreeable outcomes can be reached through mediation. With the support from the Legal Aid Department on the use of mediation in legally aided cases, we will continue to promote “Mediate First” so that a “win-win” situation can be achieved for all parties concerned.

The Way Forward

13. Just as today's theme goes, “Mediate First – Anchoring the Future”, and as we have unlocked potentials in 2019, we are now ready to anchor the future and let me introduce to you some of our recent and new initiatives for the promotion of wider use of mediation.

14. Mediation has been widely used in cross-border disputes. In addition to the Mediation Mechanism for Investment Disputes of the Mainland and Hong Kong Closer Economic Partnership Arrangement (CEPA) Investment Agreement, we worked closely with the Guangdong and Macao legal departments to establish the GBA Mediation Platform. The development of the GBA Mediation Platform is in full swing, and we will endeavour to roll out concrete initiatives to facilitate the use of mediation in the GBA in the near future.

15. To take a step further, we are planning to organise the “Mediate First” Pledge Signing Ceremony 2021 in Shanghai, during the 5th Shanghai-Hong Kong Commercial Mediation Forum co-organised with the Shanghai Commercial Mediation Center. This will be the second time the “Mediate First” Pledge Signing Ceremony to be held in Shanghai, and we are excited that more enterprises in the Mainland can come to appreciate the importance and benefits of “Mediate First”. We would also actively consider holding more similar events in other jurisdictions in the future to further promote the use of mediation in different parts of the world.

16. We hold the belief that “the youth is the hope of our future”, therefore we strive to develop a positive and constructive mindset among students in dispute resolution. The ICC International Commercial Mediation Competition – Hong Kong 2021 co-organised with the International Chamber of Commerce – Hong Kong for university students will be held in the fourth quarter this year.

17. In fact, the ICC Mediation Competition was held online very successfully last year with the technical support by eBRAM International Online Dispute Resolution Centre Limited (“eBRAM Centre”). eBRAM Centre also operates the COVID-19 Online Dispute Resolution Scheme which provides for online dispute resolution services for parties in COVID-19 related disputes. The Scheme also covers mediation and is in line with the “Mediate First” Pledge. Under the Scheme, a party would only need to pay HK\$200 as registration

fee and the fees for mediators are fully subsidised by the Government. I would encourage you to make good use of the Scheme and try online mediation which is probably one of the future trends for mediation in the digital economy.

Conclusion

18. To conclude today's event, I would like to express our gratitude on behalf of the DoJ and the Steering Committee on Mediation, for your support, participation and contribution. My heartfelt thanks also go to the speakers and moderators who have engaged us in very lively discussions and provided us with a lot of food for thought, as well as to all the supporting organisations which have provided tremendous support along the way. Last but not least, I must thank all my colleagues who have worked tirelessly for organising this event.

19. I hope that the valuable insights shared by our distinguished speakers can serve as a fuel for the future development of mediation in Hong Kong and the region, and for those who participate from outside Hong Kong may also bring home this vital concept - "Mediate First" to your home jurisdictions.

Thank you very much.

典禮

歡迎辭及 “調解為先” 徽號發布短片

張錦慧女士, JP

香港特別行政區政府律政司民事法律專員

律政司司長、各位嘉賓及網上觀眾：

大家好！首先，我謹代表律政司歡迎各位參加2021年“調解為先”承諾書典禮，同時亦感謝各位積極參與剛剛圓滿結束的“調解為先”承諾書活動網絡研討會。

為推廣香港的調解服務，律政司早於2009年5月舉辦第一屆“調解為先”承諾書活動，旨在鼓勵社會各界別、公司、組織及機構承諾在使用其他方法解決爭議前，首先考慮採用調解。其後《調解條例》於2013年正式生效，律政司自同年開始每兩年一屆舉辦“調解為先”承諾書活動，加強大眾對《調解條例》及調解作為可行有效的爭議解決方法的認知，以及鼓勵各界更廣泛使用調解解決爭議。今年活動經已踏入第六屆，我對此感到很高興，並衷心感謝各界在過往11年支持律政司推動調解，以及參與其中的活動。

主題：立足未來

今屆活動主題為「調解為先 立足未來」。正如剛才網絡研討會的討論，調解的種類及應用範疇非常廣泛。律政司一直不遺餘力向社會不同領域和界別推動採用調解。截至今年5月，已經有超過40名不同界別的個人、公司或團體成為新的“調解為先”承諾人，當中包括會計、保險、體育、測量、創科、教育等。他們同意首先考慮採用調解這種靈活的方法解決爭議，然後才採用其他爭議解決方法或進行訴訟。由此可見，各行各業都樂於嘗試採用調解作為首項解決爭議的方法。目前已簽署“調解為先”承諾書

的人數累計已經突破700名，成績令人鼓舞。展望將來，對於如何在香港更進一步普及調解應用，令香港踏足於國際調解發展的道路上，律政司會在這方面繼續努力，令更多人了解調解的好處。

星徽獎勵計劃

為鼓勵承諾人履行承諾書，律政司於2017年6月推出“調解為先”承諾書星徽獎勵計劃。承諾人如在過去兩年內，採用符合獎勵準則的措施，例如在合約中加入調解條款，為職員安排有關調解的培訓，採用以調解技巧處理糾紛的員工指引，以調解或調解技巧處理顧客投訴或職場衝突，向僱員、商業伙伴及客戶提供調解的資料等，律政司都會頒發星徽予承諾人，以作表揚。

今屆一共有34間不同界別的公司、組織及機構獲頒發星徽，包括保險、測量建築、物業管理、金融經貿、教育、宗教、醫學、法律及爭議解決等，以表揚他們在過去的兩年一直不遺餘力地推動採用調解，並身體力行應用調解。我代表律政司衷心感謝各位獲獎者對香港調解發展的貢獻。

「香港品牌」：香港以外的“調解為先”承諾書系列活動

除了在本港積極推廣調解外，律政司同時亦將“調解為先”的概念帶到香港以外地區，以推廣香港的調解服務。2019年8月，香港以外首個“調解為先”承諾書活動於上海舉行，由律政司、上海市法學會和上海經貿商事調解中心合辦，主題為「商事糾紛 調解優先—滬港商事調解研討會」。會上滬港兩地法律及調解知名人士共同努力探討商事調解模式，以促進滬港兩地良好的經商環境。是次活動吸引了來自不同界別，包括法院、調解中心、調解員、企業代表、律師、行業協會代表等超過180人參加，當中約80名個人或企業簽署“調解為先”承諾書。

其後，2019年11月律政司再度把活動帶出香港，於深圳前海舉行主題為「國際商事調解：國際經驗與中國實踐」的第四屆前海法

智論壇¹，與深圳市司法局和深圳市前海深港現代服務業合作區管理局（前海管理局）合辦“調解為先”承諾書簽署儀式，吸引了超過20間企業及組織簽署“調解為先”承諾書。

我們展望不久將來可以將“調解為先”這個香港品牌帶到更遠的地方，向國際宣揚香港調解服務的優勢。

新“調解為先”徽號

自律政司開始推廣“調解為先”的概念，活動現今已踏入第12年。為了與時並進，立足未來，今年我們推出新的“調解為先”徽號。新徽號以象徵寧靜平和的藍色作為主調，背景以維港的天際線來突顯香港調解服務的專業性。中心部分的心形圖案由雙方握手的線條所組成：握手象徵團結、合作及和平，心形圖案則代表和諧及誠懇，這些元素均為調解不可或缺的特質。新的字體設計更突顯“調解為先”的主題及「香港品牌」的獨特性。希望各位可以細心欣賞隨後播出的“調解為先”徽號發布短片。

結語

最後，我再次衷心感謝今年“調解為先”承諾書活動的所有支持機構及參加人士對香港調解發展的參與和貢獻。展望未來，我們希望能夠繼續努力，令香港調解服務達到「調解為先 立足未來」，鞏固香港作為國際法律和爭議解決服務中心的地位。我期望日後會有更多各界人士加入我們，成為協助調解發展的一份子，合力推動調解！

多謝各位！

¹ 第四屆前海法智論壇由深圳市中級人民法院、深圳市司法局、前海管理局和深圳市法學會主辦。

“Mediate First” Pledge Event 2021
Mediate First - Anchoring the Future

Programme

Time	Activity
MEDIATION FORUM	
09:30-09:40	Opening Remarks The Honourable Teresa Cheng Yeuk-wah, GBS, SC, JP Secretary for Justice, Hong Kong SAR Government
09:40-09:50	Keynote Speech Ms. Melissa K. Pang, BBS, MH, JP President of the Law Society of Hong Kong; Partner, Pang & Associates
09:50-10:00	Keynote Speech Mr. Stephen Phillips Director-General of Investment Promotion, Invest Hong Kong, Hong Kong SAR Government
10:00-12:30	Panel Session 1: Big Money Big Problems? Mediate Disputes in the Family Office and Private Wealth Sectors Moderator: Mr. Norris Yang Senior Consultant and Founder, Yang Chan & Jamison LLP, Hong Kong (associated with Deloitte Legal); Chairman, Communications and Publicity Committee, Hong Kong Mediation Accreditation Association Limited; Chairman, International Negotiation Mediation Society Macau; Executive Director, ADR International Limited

	<p>Speakers:</p> <p>Ms. Sherlynn Chan Partner, Deacons; Family Mediator (HKMAAL)</p> <p>Mr. Henry Chen Senior Partner, Dentons (Shanghai); Arbitrator (HKIAC); Mediator (SCMC)</p> <p>Mr. Michael Leung, MH Chief Executive Officer, BOA International Financial Group</p> <p>Mr. Dixon Wong Head of Financial Services and Global Head of Family Office, Invest Hong Kong, Hong Kong SAR Government</p> <p>Mr. Patrick Yip Vice Chair & International Tax Partner, Deloitte China</p>
<p>12:30-14:00</p>	<p>Lunch Break</p>
<p>14:00-15:40</p>	<p>Panel Session 2: Mediation in Healthcare Disputes: A Viable Alternative</p> <p>Moderator: Dr. Peter Pang Honorary Clinical Assistant Professor of the Department of Surgery, CUHK; Vice-Chairman of the Public Education and Publicity Sub-committee of the Steering Committee on Mediation; Accredited Mediator (HKMAAL)</p>

	<p>Speakers:</p> <p>Opening</p> <p>Prof. Sophia Chan, JP Secretary for Food and Health, Hong Kong SAR Government</p> <p>Armchair Discussion</p> <p>Dr. Hong Fung, JP Executive Director and Chief Executive Officer, CUHK Medical Centre; Professor of Practice in Health Services Management, Jockey Club School of Public Health & Primary Care, CUHK</p> <p>Dr. Danny Lee Chairman of the Preliminary Investigation Committee (2) of the Medical Council of Hong Kong; Accredited Mediator (HKMAAL)</p> <p>Ms. Fion Lee Chief Manager (Patient Relations & Engagement), Hospital Authority Head Office</p> <p>Ms. Yi-tan Mok Department Operation Manager, Hospital Authority; Accredited Mediator (HKMAAL)</p> <p>Dr. Ludwig Tsoi President of the Hong Kong Society for Healthcare Mediation; Member of the Regulatory Framework & Accreditation Sub-committee of the Steering Committee on Mediation</p>
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15:40-17:20

Panel Session 3: Use of Mediation for Employees’ Compensation Claims

Moderator: Dr. Francis Law

President, Hong Kong Mediation Centre;
 President, Academy of International Dispute Resolution and Professional Negotiation;
 Founding Chairman, Mainland - Hong Kong Joint Mediation Center

Speakers:

[Opening](#)

Mr. Thomas Edward Kwong, JP

Director of Legal Aid, Hong Kong SAR Government

Mr. Ma Kwok Kuen

Senior Labour Officer (Compensation)(Operations 1), Operations Section (1), Employees’ Compensation Division, Labour Department, Hong Kong SAR Government

[Armchair Discussion](#)

Mr. Kenneth Chow

Chief Claims Officer, Claims Division, Falcon Insurance Company (Hong Kong) Ltd

Mr. Nelson Chung

Partner, Hon & Co., Solicitors and Notaries

Ms. Fanny Fung

Senior Vice President, Head of Claims of Asia Insurance Co., Ltd;
 Head of Claims of Avo Insurance Company Limited

Mr. Benjamin Wong

Human Resources Director, Greater China of Goodman

<p>17:20-17:30</p>	<p>Closing Remarks</p> <p>Dr. James Ding Commissioner, Inclusive Dispute Avoidance and Resolution Office, Department of Justice, Hong Kong SAR Government</p>
<p style="text-align: center;">CEREMONY</p>	
<p>17:30-17:40</p>	<p>Welcoming Remarks and the Official Launch of the “Mediate First” Logo</p> <p>Ms. Christina Cheung, JP Law Officer (Civil Law), Department of Justice, Hong Kong SAR Government</p>
<p>17:40-17:50</p>	<p>Star Logo Award Presentation Ceremony & Signing Ceremony of the “Mediate First” Pledge</p>
<p>17:50-18:00</p>	<p>Virtual Networking Session</p>

2021年“調解為先”承諾書活動
調解為先 立足未來

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節目表

時間	活動
調解論壇	
09:30-09:40	<p>開幕致辭</p> <p>鄭若驊女士, GBS, SC, JP 香港特別行政區政府律政司司長</p>
09:40-09:50	<p>主題演講</p> <p>彭韻僖女士, BBS, MH, JP 香港律師會會長； 彭耀樟律師事務所合夥人</p>
09:50-10:00	<p>主題演講</p> <p>傅仲森先生 香港特別行政區政府投資推廣署署長</p>
10:00-12:30	<p>討論環節（一）：大富之家多煩惱？ 以調解解決家族辦公室及私人財富的糾紛</p> <p>主持人：楊洪鈞律師 香港勤信律師事務所創辦人及高級顧問（與德勤法律聯繫）； 香港調解資歷評審協會有限公司傳訊及宣傳委員會主席； 澳門國際談判調解學會主席； 協寧國際事務有限公司行政董事</p>

	<p>講者：</p> <p>陳連基律師 的近律師行合夥人； 家事調解員（香港調解資歷評審協會）</p> <p>陳立彤律師 大成（上海）律師事務所高級合夥人； 仲裁員（香港國際仲裁中心）； 調解員（上海經貿商事調解中心）</p> <p>梁建文先生, MH 亞銀國際金融集團首席執行官</p> <p>黃恆德先生 香港特別行政區政府投資推廣署 財經金融行業主管兼家族辦公室環球主管</p> <p>葉偉文先生 德勤中國副主席及國際稅務合夥人</p>
12:30-14:00	午飯時間
14:00-15:40	<p>討論環節（二）：醫療糾紛：調解一可行之選</p> <p>主持人：彭志宏醫生 香港中文大學外科學系榮譽臨床助理教授； 調解督導委員會轄下公眾教育及宣傳小組委員會副主席； 認可調解員（香港調解資歷評審協會）</p> <p>講者：</p> <p><u>開場環節</u></p> <p>陳肇始教授, JP 香港特別行政區政府食物及衛生局局長</p>

	<p>討論環節</p> <p>馮康醫生, JP 香港中文大學醫院執行董事及行政總裁； 香港中文大學醫學院賽馬會公共衛生及基層醫療學院專業應用教授</p> <p>李偉雄醫生 香港醫務委員會初步偵訊委員會 (2) 主席； 認可調解員 (香港調解資歷評審協會)</p> <p>李慧敏女士 醫院管理局總辦事處總行政經理 (病人關係)</p> <p>莫依丹女士 醫院管理局部門運作經理； 認可調解員 (香港調解資歷評審協會)</p> <p>蔡振興醫生 香港醫療調解學會會長； 調解督導委員會轄下規管架構及資格評審小組委員會委員</p>
<p>15:40-17:20</p>	<p>討論環節 (三): 僱員補償索償爭議中調解的應用</p> <p>主持人: 羅偉雄博士 香港和解中心會長； 國際爭議解決及專業談判研究院院長； 內地—香港聯合調解中心創會主席</p> <p>講者:</p> <p>開場環節</p> <p>鄭寶昌先生, JP 香港特別行政區政府法律援助署署長</p>

	<p>馬國權先生 香港特別行政區政府勞工處僱員補償科執行組(1) 高級勞工事務主任(僱員補償)(執行1)</p> <p>討論環節</p> <p>周林輝先生 富勤保險(香港)有限公司賠償部總監</p> <p>鍾浩怡律師 韓潤燊律師樓合夥人</p> <p>馮詠敏女士 亞洲保險有限公司高級副總裁、賠償部主管； 安我保險有限公司賠償部主管</p> <p>黃家傑先生 嘉民大中華區人力資源總監</p>
17:20-17:30	<p>閉幕致辭</p> <p>丁國榮博士 香港特別行政區政府律政司普惠避免及解決爭議辦公室主任</p>
典禮	
17:30-17:40	<p>歡迎辭及“調解為先”徽號發布短片</p> <p>張錦慧女士, JP 香港特別行政區政府律政司民事法律專員</p>
17:40-17:50	星徽獎勵計劃頒獎典禮及“調解為先”承諾書簽署典禮
17:50-18:00	線上自由交流

“Mediate First” Pledge Event 2021 2021年“調解為先”承諾書活動

MEDIATE FIRST - ANCHORING THE FUTURE 調解為先 立足未來

28 May 2021 • 2021年5月28日

Organised by 主辦機構：



律政司
Department of Justice

Supported by 支持機構：

亞洲排解爭端學院
Asia Conflict
Resolution Institute





IDAR Office



IDAR Office



普惠避免及解决争议办公室

