

Speech by SJ at "Mediate First" Pledge Event 2021 (English only)(with photo)

Following is the speech by the Secretary for Justice, Ms Teresa Cheng, SC, at the "Mediate First" Pledge Event 2021 entitled "Mediate First – Anchoring the Future" today (May 28):

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.

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 pledgee pledges to explore the use of mediation first before resorting to other means of dispute resolution.

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.

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 Department of Justice 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.

The department's past initiatives have been well received 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

Mediation as a flexible dispute resolution means that emphasises 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 a frank discussion about the issues, the parties will have a greater chance of restoring their relationship and continuing to collaborate in the future.

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.

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 and legal and mediation practitioners attended the training and had intellectual and professional exchanges on investment mediation.

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 Greater Bay Area

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).

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.

The 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 and for them to be approved before the next meeting of the Joint Conference later this year.

West Kowloon Mediation Centre

Locally, the Department of Justice 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.

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

The Mediation Pilot Scheme will end in January 2022 and the Department of Justice 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

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 most wealthy 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.

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.

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

I am sure that 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 Department of Justice will continue our efforts in promoting mediation locally, regionally and internationally in order to anchor a successful future for Hong Kong.

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.

