

**Resolve2Win**

**“Legal Services of Hong Kong, Opportunities for All”**

# Why Mediate: Development of Mediation in Hong Kong

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## Civil Justice Reform (2009)

### Underlying Objectives

- a) To increase the cost-effectiveness of any practice and procedure to be followed in relation to civil proceedings before the Court;
- b) To ensure that a case is dealt with as expeditiously as is reasonably practicable;
- c) To promote a sense of reasonable proportion and procedural economy in the conduct of proceedings;
- d) To ensure fairness between the parties;
- e) To facilitate the settlement of disputes; and
- f) To ensure that the resources of the Court are distributed fairly.

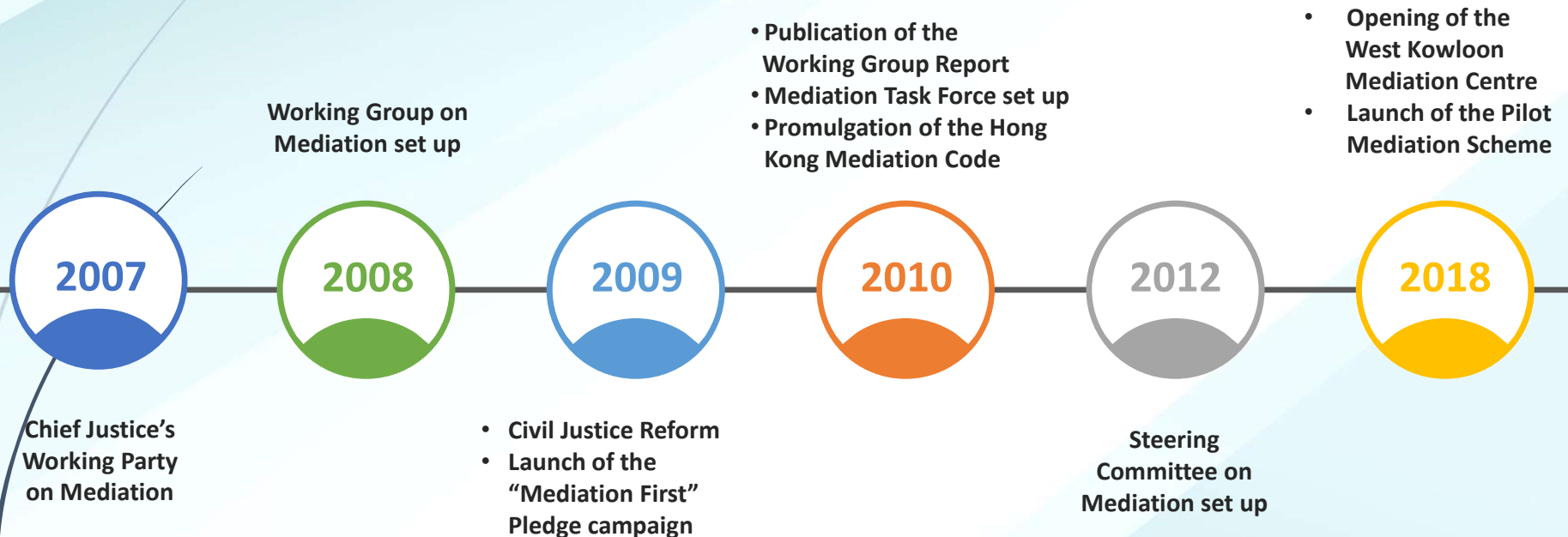
## Civil Justice Reform (2009) (cont'd)

The Hon Chief Justice Mr Andrew Li (as he then was) at the Ceremonial Opening of the Legal Year 2009:

“An objective of the reformed system is to facilitate the settlement of disputes and the court has the duty as part of active case management to further that objective by encouraging and facilitating the use of an alternative resolution procedure, such as mediation, if the court considers that appropriate. The parties and their legal representatives have the duty of assisting the court in this regard.”

“It must be strongly emphasised that the promotion of mediation as an alternative and complementary method of dispute resolution to litigation is plainly in the public interest. Its benefits are well known; the reduction in stress, the saving of time and costs and the achievement of a satisfactory solution. Having regard to its development in many jurisdictions, it must now be regarded as an indispensable feature of a credible legal system.”

## Key Developments of Mediation in Hong Kong



*\*Various sector-specific pilot schemes on mediation were launched over the years (construction, family, building management, personal injuries, estate proceedings, small claims, land compulsory sale, etc.)*

## Some early developments from 2000 - 2008

- ▶ **2000:** Mediation Co-ordinator's Office set up in Family to implement the pilot scheme on Family Mediation
  
- ▶ **2007:** Chief Justice's Working Party on Mediation
  - ▶ To consider how consensual mediation of civil disputes may be facilitated in various levels of courts
  
- ▶ **2008:** Setting up the Building Management Mediation Co-ordinator's Office within the Lands Tribunal

## 2008-2010: Working Group on Mediation

- ▶ Set up by the Secretary for Justice in 2008
- ▶ Report published in Feb 2010
  - ✓ 48 Recommendations
  - ✓ Regulatory Framework
  - ✓ Accreditation and Training
  - ✓ Public Education and Publicity  
(Announcement in Public Interest)
- ▶ The Working Group also promulgated the Hong Kong Mediation Code – The Code is intended to provide a common standard among mediators and to serve an important quality assurance function. Various mediation service providers have already adopted the Code.



## Key Developments in 2009 & 2010

### **2009:**

- Provision of Legal Aid for Mediation
- Launch of “**Mediation First**” **Pledge** (the Pledge) to encourage the use of mediation as the first step to resolve disputes
  - The [Pledge](#) is a non-legally binding commitment by pledgees to first explore the use of mediation to resolve disputes before resorting to other means of dispute resolution, such as court litigation

### **2010:**

- Opening of the [Mediation Information Office \(Judiciary\)](#)

## 2011: Establishment of the Financial Dispute Resolution Centre



- ▶ An independent and impartial organisation administering the Financial Dispute Resolution Scheme (“FDRS”) which requires financial institutions, members of the FDRS, to resolve monetary disputes with their customers through mediation and/or arbitration
- ▶ Mission: To provide **independent and impartial mediation and arbitration services**, primarily through a “Mediation First, Arbitration Next” approach



## 2010-2012: Mediation Task Force

- ▶ Set up by the Secretary for Justice to implement the recommendations of the Working Group
- ▶ Mediation Ordinance (Chapter 620 of the Laws of Hong Kong)
  - “Section 4. Meaning of mediation*
    - (1) For the purposes of this Ordinance, mediation is a structured process comprising one or more sessions in which one or more impartial individuals, without adjudicating a dispute or any aspect of it, assist the parties to the dispute to do any or all of the following—*
      - (a) identify the issues in dispute;*
      - (b) explore and generate options;*
      - (c) communicate with one another;*
      - (d) reach an agreement regarding the resolution of the whole, or part, of the dispute.”*
- ▶ Hong Kong Mediation Accreditation Association Limited (HKMAAL)

## 2012: Steering Committee on Mediation

- ▶ To further foster the development of mediation in Hong Kong, the **Secretary for Justice** has set up a Steering Committee on Mediation in 2012, comprising members from different sectors of the community to advise on and assist in the further promotion and development of mediation in and of Hong Kong.

## 2017: Apology Ordinance (Chapter 631 of the Laws of Hong Kong)

- ▶ **1<sup>st</sup> Apology Law** in Asia
- ▶ To promote and encourage the making of apologies with a view to preventing the escalation of disputes and facilitating their amicable resolution.
- ▶ Section 7 provides that in most civil proceedings an apology **does not constitute an express or implied admission of fault or liability** and must not be taken into account in determining fault, liability or any other issue to the prejudice of the apology maker
- ▶ Section 8 provides that an apology is **generally not admissible as evidence** for determining fault, liability or any other issue to the prejudice of the apology maker

## 2018: West Kowloon Mediation Centre (WKMC)

- Unique facility dedicated to mediation
- Opened on 8 November 2018 together with the launch of a **Pilot Mediation Scheme**
- The Pilot Mediation Scheme was operated at the WKMC by an independent co-ordinator appointed by the Government, to provide mediation services **to litigants of Small Claims Tribunal** cases that are suitable for mediation and other suitable cases
- The Pilot Scheme (ended on 30 June 2022) was a great success with over 50 percent of cases settled after mediation

## 2022: Integrated Mediation Office (West Kowloon)

- ▶ Commenced operation in **July 2022** at the premises of the WKMC
- ▶ An **extension of the Judiciary's existing Integrated Mediation Office**
- ▶ For facilitating the greater use of mediation services primarily for cases in the **Small Claims Tribunal (SCT)**.
- ▶ Adjudicators of the SCT will identify suitable cases for referral to the Office for mediation services to be arranged free of charge.



## Cross-boundary Mediation Services

### ➤ CEPA Mediation Mechanism for Investment Disputes

- Resolution through mediation of an investment dispute arising from the CEPA Investment Agreement between a Hong Kong investor and the Mainland / a Mainland investment and Hong Kong

### ➤ Greater Bay Area Mediation Platform

- Authoritative platform for high-level exchange and cooperation among the legal departments of Guangdong, Hong Kong and Macao discharging the role of a standard-setting body with a view to promoting the wider use of mediation within the region

## Cross-boundary Mediation Services (cont'd)

- ▶ The HKSARG established the **Guangdong-Hong Kong-Macao Greater Bay Area (GBA) Task Force** on 7 Jan 2023
  - ▶ to provide advice on the facilitation of the convergence of legal practices and the strengthening of mutual legal assistance between the mainland cities in the GBA and Hong Kong
  - ▶ to take part in the establishment of an online mediation platform and the promotion of the use of LawTech in the GBA

## International Mediation Services

### ▶ Investment Law and Investor-State Mediator Training Course

- ✓ To build up a team of investment mediators in Asia to handle international investment disputes
- ✓ Attended by government officials from Mainland China, ASEAN countries (including Thailand), the Middle East, Africa, South America and Hong Kong, as well as local and overseas legal and mediation practitioners



## International Mediation Services (cont'd)

- ▶ International Organization for Mediation (“IOMed”) Preparatory Office
  - ✓ Established in Hong Kong in February 2023 to carry out preparatory work for the establishment of IOMed pursuant to the Joint Statement on the Future Establishment of the International Organization for Mediation signed last year by China and the relevant states
  - ✓ “The IOMed should be open to all countries in the world” (Foreign Minister Qin Gang, at the inauguration ceremony of the IOMed Preparatory Office on 16 February 2023)

## So... Why Mediate?

- Enhance access to justice
- “Win-Win” situation
- Lower costs
- Faster
- Focus on interests and needs
- Suitable for wide scope of disputes – local, cross-boundary and international

## Looking ahead...

*“Peace, development and cooperation for **win-win results** is the prevailing trend of our times.”*

Foreign Minister Qin Gang

- ▶ We will continue to promote the use of mediation within and outside Hong Kong towards a more peaceful and harmonious society.

Thank you!