



Practical Approach to Resolving Dispute In Construction Industry

Mediation

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- Construction Industry needs early and quick resolution in disputes to avoid delay
- Litigation is *post factum*, lengthy procedural steps, not for quick resolution of disputes
- Litigation costly and result unpredictable

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Alternative Dispute Resolution

- Mediation
- Expert Evaluation or Adjudication
- Med-arb
- Dispute Resolution Advisor
- Dispute Resolution Board

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Mediation Clause in Construction Contracts

- Effectiveness in the Airport Core Project
- Value of continuing relationship of Government as employer

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- Mediation is effective and inexpensive
- Settlement rate of 70 - 80%
- Mediation scheme in construction cases in High Court since 2006

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Other Mediation Schemes in the Courts

2000 – Family cases in Family Court

2008 – Company cases in High Court

2008 – Building management cases in Lands Tribunal

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Civil Justice Reform 2009

Underlying objectives:

- Increase costs-effectiveness
- Reasonably expeditions
- To facilitate settlement

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Case Management

- Timetabling with milestones
- Leave to appeal in interlocutory matters
- Encourage ADR

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PD 31 – Mediation

- Voluntary mediation
- Duty of lawyers to advise mediation
- Adverse costs order

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Legal Aid for Mediation

Mediation Ordinance since 2013
(Cap 620)

- Mediation communication confidential
- No disclosure unless within exceptions
and with leave of Court

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Mindset in Mediation

- Not winning or losing, but to resolve dispute
- Give and Take
- “Win-Win”: settlement acceptable to both

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Timing of Mediation

- May settle before or after action or discovery
- No hard and fast rule
- Court will ascertain whether parties and case ready for mediation

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Preparation for Mediation

- Honest appraisal of positions
- Avoid overblown or underated claims
- Pre-meeting with mediator

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Post-mediation

- Narrowing issues even if no full settlement
- May adjust sanctioned payment (i.e. payment into court) after mediation
- Second attempt may increase opportunity for success
- 1/3 of cases settled within 6 months of mediation

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Mediator' s Skill

- Trust and rapport
- Training and accreditation
- Hong Kong Mediation Accreditation Association Limited (HKMAAL)

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~ Thank You ~

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