



MEDIATION CONFERENCE 2014

Mediation in the Business sector: Commercial/Insurance/Finance

By way of case study
Mr. Registrar Lung
The Judiciary
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Sharing of views on how mediation can be applied on commercial / insurance / financial cases. Whether these cases are suitable for mediation and the difficulties?
How effective is mediation used in these cases?

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The Final Report of the Working Committee of CJR

The guiding principles

- a. In suitable cases, mediation may result in very substantial savings in costs. (§798)
- b. Mediation can produce flexible and constructive outcome as between the parties which traditional legal remedies cannot offer. (§799)
- c. Mediation also provides the chance of a swifter resolution of the dispute in conditions of confidentiality and in an atmosphere where the parties channeled towards seeking settlement rather than towards inflicting maximum adversarial damage on each other. (§800)

Practice Direction 31.

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The court's view is positive for mediation as alternative resolution of the disputes

- *iRiver Hong Kong Limited v Thakral Corporation (HK) Limited*
CACV252/2007 delivered on 8 August 2008
[§§98-103, 106]
- *Supply Chain & Logistics Technology Limited v NEC Hong Kong Ltd*
HCA1939/2006 by Lam J on 29 January 2009 [§§11-13 & 15]
- *Chong Cheng Lin Courtney v Cathay Pacific Airways Ltd*
HCA898/2007 by Chung J on 27 January 2010 [§11]
- *Golden Eagle International (Group) Ltd v GR Investment Holdings Ltd*
HCA2032/2007 by Lam J on 25 June 2010 [§§30-31, 44]

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The court advised obligation on parties to consider mediation at different stage of proceedings

- *Pacific Long Distance Telephone v New World Telecommunications Ltd* HCA1688/2006 by DHCJ Houghton, SC on 23 May 2012 [§18]

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The difficulties

A. Mindset and proper legal advice

- *iRiver Hong Kong Limited v Thakral Corporation (HK) Limited* CACV252/2007 delivered on 8 August 2008 [§§98-103, 106]
- *Chevalier (Construction) Co Ltd v Take Cheong Engineering Development Ltd* HCA153/2008 by Lam J on 8 June 2011 [§20]
- *Lam Chi Tat, Anthony & Another v Kam Yee Wai, Andrew* [2013] 1 HKLRD 1206 Lam VP 28 January 2013 [§63]

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The difficulties

B. Agreement on the choice of mediator

- *Upplan Co Ltd v Li Ho Ming & Ors*
HCA1915/2009, 5 August 2010 [§§11 & 12]

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The difficulties

C. Minimum level of participation and whether stay the proceedings

- *Resource Development Ltd v Swanbridge Ltd*
HCA1873/2009 by Master Lung on 31 May 2010 [§§7-8 & 10]
- *Hak Tung Alfred Tang v Bloomberg L.P. (a firm) & Ors*
HCA198/2010 by Master Lung on 16 July 2010 [§§11, 13-14]

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The difficulties

D. The apportionment of the costs for mediators among the parties

- *C Y Foundation Group Ltd v Leonora Yung & Ors*
HCA933/2011, 13 April 2012 [§15]



The difficulties

E. Drafting the mediation agreement

- *Champion Concord Ltd & Another v Lau Koon Foo & Another*
FACV16 & 17/2010 delivered on 23 November 2011



How effective is mediation in these cases

There is much room for improvement for mediation in Hong Kong for the time being. The Chairman of the Working Committee, Mr Justice Lam, the VP will announce the results this afternoon. I shall leave the details for the Chairman to tell you.

K W Lung
Registrar, High Court

END – THANK YOU