

The Speech of His Honour Judge S.T.Poon
at the Mediation Conference:
“The Amazing Changes with the New Mediation Ordinance and
Latest Development in Hong Kong Mediation”
held on 17 December 2013

Secretary for Justice, Mr. Man, Ladies and Gentlemen,

Good morning, I am both delighted and honored to be invited to participate in the opening of this important conference and see so many of you.

In the past few years, I have been witnessing the joint effort put in by different bodies, including the Government, legal practitioners, professional mediators, and various non-government organizations, for the promotion of mediation. It is no doubt that all key stakeholders have been working closely together to develop mediation.

As far as the Judiciary is concerned, we have over 13 years of experiences in the promotion of the use of mediation, particularly in family mediation, which has been considered as well-established and achieving considerable success in terms of high user's satisfaction rate and high settlement rate.

We have been taking mediation seriously. By introducing Practice Direction 31 on Mediation as part of the Civil Justice Reform, parties, including legal practitioners, are prompted to focus their minds on the exploration of mediation at an early stage of litigation and assist the Court to decide on directions regarding the mechanics of mediation. The approach of the Court in dealing with mediation matters and issues has been increasingly adopted by the legal practitioners.

It is never our intention to make mediation mandatory. Amongst others, the litigants will be fully informed of the intrinsic benefits to mediation when attending information sessions organized by the Mediation Information Offices of the Judiciary. Of course, one of the motivations for the parties to attempt mediation is to avoid possible adverse costs order for unreasonable refusal to try mediation. There are now an

increasing number of parties interested in mediation and they do appreciate the benefits of it and welcome mediation as an alternative resolution to their disputes.

The importance and popularity of mediation are ever increasing within the community. The Judiciary will continue with her commitment to support the development of mediation and will be actively encouraging and facilitating parties to use ADR procedure if the Court considers it appropriate.

In June 2012, the Legislative Council enacted the Mediation Ordinance (MO), the first piece of legislation on mediation in HKSAR. It is the pivot of mediation landscape. The Mediation Ordinance, which came into operation on 1 January this year, provides the legislative framework for the conduct of mediation in Hong Kong.

MO, apart from offering a definition of mediation, has set the structure of regulations, such as agreements to mediate, rights and obligations of participants in mediation, codes of conduct and institutional rules.

From the educational point of view, the MO could inform the public about mediation, the nature of it, how it works and what can be achieved by making proper use of mediation as a means of alternative dispute resolution.

With the enactment of MO, we have reached a milestone in the development of mediation services in Hong Kong. The future of mediation however requires the joint efforts of all relevant sectors in the community. With better education, the public generally have high and indeed rising expectations of institutions which serve them. Mediation is a field which is undergoing rapid professionalism, it is thus important to adjust accreditation requirements as appropriate to achieve high level of mediator competence and quality assurance in mediation service delivery.

Last year, the Department of Justice has facilitated the setting up of the Hong Kong Mediation Accreditation Association Limited (“HKMAAL”). It aims to be the premier mediation accreditation body in Hong Kong

discharging accreditation and disciplinary functions. It certainly assists in ensuring the quality of mediators, consistency of standards, enhancing public confidence in mediation service, as well as maintaining the credibility of mediation. HKMAAL has made good progress in all these aspects and has been helping to promote a culture of best practice and professionalism in mediation in Hong Kong. I believe this is the focal point of today's conference.

We are confident that with a legal regime, coupled with our independent Judiciary as well as strong legal and ADR professionals, a mediation-friendly environment will be fostered and Hong Kong will be able to strengthen her position as the centre for international legal and dispute resolution services in the Asia Pacific Region.

Ladies and Gentlemen, in closing, I wish you all a successful and rewarding conference for today. Thank you.