



**Court-based
Alternative Dispute Resolution /
Mediation in Hong Kong**

7 November 2023

**The Hon Mr Justice Johnson LAM
Permanent Judge of the Court of Final Appeal**

Mediator-assisted Financial Dispute Resolution (MFDR)/ Children Dispute Resolution (MCDR)

- The Family Court has since the Court of Appeal decision in *LLC v LMWA* [2019] 2 HKLRD 529 conducted a number of FDR/CDR with the assistance of a family mediator (“M-FDR/CDR”)
- This mode of alternative dispute resolution (“ADR”) provides a more flexible framework for family disputes to be resolved amicably and economically

MFDR / CDR

Key Features

- Not to replace mediation
- Complementary with mediation
- A without-prejudice and non-adjudicative process
- Provide the rooms for flexibility to cater for the needs of the parties in resolving their disputes

Lawyers' Role

- Advise their clients to conduct family litigation sensibly and proportionately, include the use of ADR process, e.g M-FDR/CDR
- Assist the Presiding Judge and the mediator in exploring potential options for solving impasses
- Help their respective clients to take ownership and responsibility for the disputes in order to motivate them to find an acceptable solution

Parties' Role

- Try to settle their disputes with as little hostility as possible by way of mediation including M-FDR/CDR
- Observe the principles of proportionality and procedural economy

Mediator's Role

- Acts as a neutral facilitator assisting the parties to understand their respective needs and explore available options to settle their disputes
- Works more on the emotions and iron out the details with the parties

Presiding Judge's Role

- Determines whether a case is suitable for MFDR/CDR
- In an authoritative position, gives useful views and steers from a legal point of view

Without Prejudice Process

- M-FDR/CDR is protected by the without prejudice privilege, and communications between the mediator and the parties are mediation communication protected by confidentiality under section 8 of the Mediation Ordinance (Cap 620)

<https://www.elegislation.gov.hk/hk/cap620> (cap 620)

Synergy between Judge and Mediator

- Same Goal through Different Roles and Perspectives:
 - Judge and Mediator have the same goal in assisting the parties to resolve dispute through different perspectives
- Effective prior communication between Judge and Mediator :
 - Build up rapport and mutual trust
- Issue of confidentiality:
 - Prior consent from parties
 - Waiver on the issue of confidentiality between mediator and Judge

Court Hearing Process

- Objective evaluation of the case and alternative options
- Mediators conducting mediation with the parties in Court's facilities
- Mediator and parties reporting back, seeking further views from Presiding Judge
- The Presiding Judge and the mediator work hand-in-hand with the parties and their lawyers to search for a satisfactory solution

Statistics of MFDR/MCDR

(from 2019 to Oct 2023)

Type	Cases
MFDR	41
MCDR	3
MFDR+MCDR	1
Total no. of MFDR + MCDR:	45



Type	Cases
HCMC	2
FCMC	43
Total	45
Full & Partial settlements	27
Ongoing cases	10

Success Rate =
 $27/35 = 77\%$

Case Settlement Conference & Mediator Assisted Case Settlement Conference

- Case Settlement Conference (CSC) implemented since Jan 2021
- Mediator assisted Case Settlement Conference (MCSC) implemented since Jan 2023

https://www.judiciary.hk/doc/en/court_services_facilities/Guidance%20Note%20for%20CSC_20221216.pdf (CSC Guidance Note 2023)

Key Features of CSC and MCSC

- Aim: settle dispute OR narrow down issues of dispute
- An opportunity for all parties to focus on settlement

Key Features of CSC and MCSC

- The court, in an impartial and authoritative role, could assist the parties to face the options they could pursue realistically
- Parties are more receptive to having meaningful settlement discussions

Key Features of CSC and MCSC

- Not to replace mediation
- Can be complementary with mediation

Court Hearing Process

- Chambers hearing not open to public
- Without prejudice
- Chaired by MCSC Judge / CSC Master
- CSC Master / MCSC Judge will have no further involvement in the case if no settlement is reached

CSC Master's Role

CSC Master assists the parties to achieve a settlement by, for example:

- assisting all parties to focus on the core issues
- facilitating the expression of parties' real concerns and the listening of the other party's real concerns
- reviewing the process of any without prejudice negotiation (including any sanctioned offers and payments) between the parties, and with the consent of the parties, any unsuccessful mediation to identify obstacles for impasses

MCSC Judge's Role

MCSC Judge assists the parties to achieve a settlement by, for example:

- providing authoritative views on disputed issues and, if appropriate, direction for discussion
- through the process, maximizing the synergy with the mediator

How to start CSC / MCSC

- Party driven
- Court's direction
- Consent of all parties required for a MCSC

Mediator's Note for MFDR/CDR and CSC

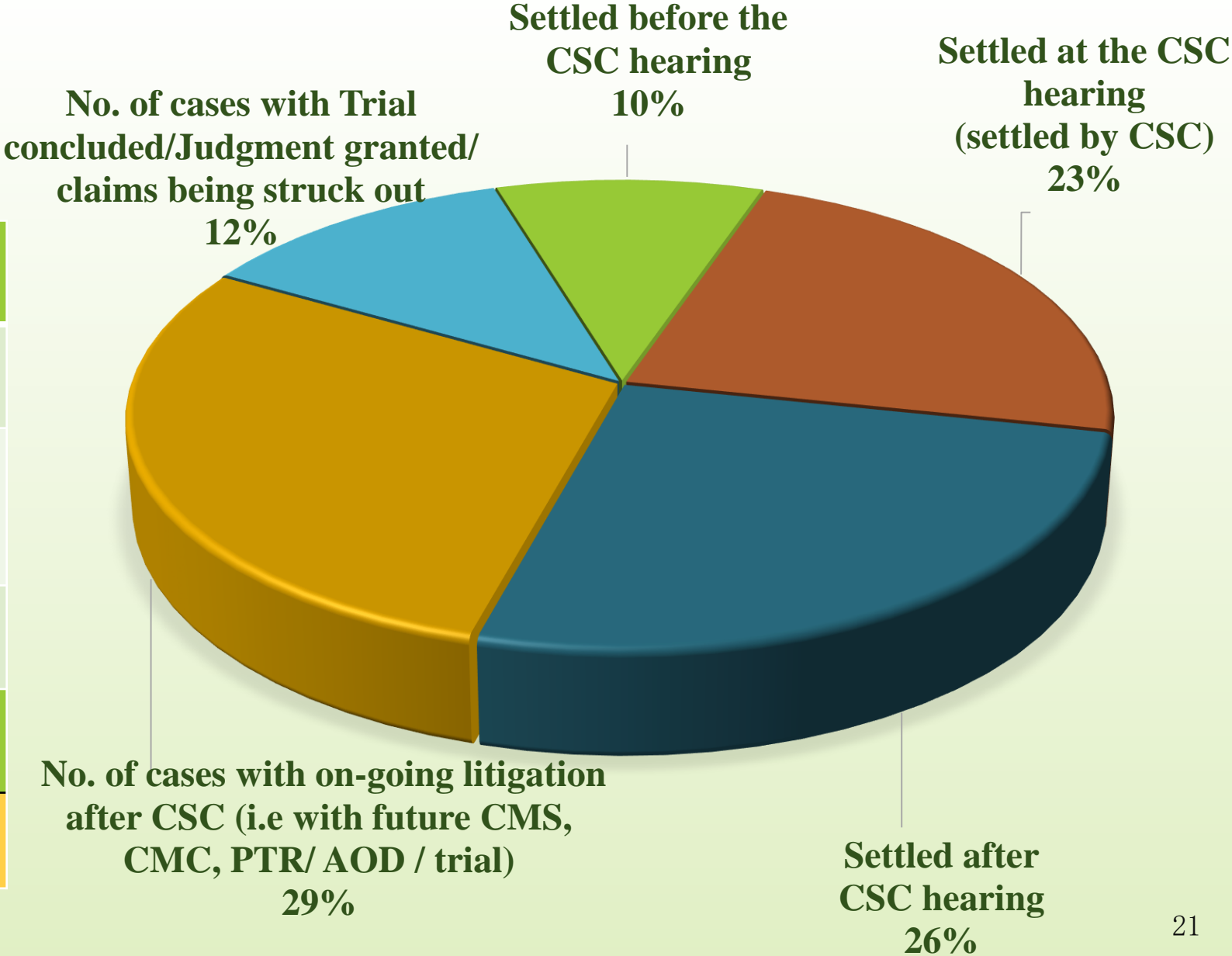
- Identify the outstanding issues which the mediator considers useful to bring to the Judge/Master
- Consent for the disclosure of the information contained in the Mediator's Note should have been given by the parties

DISTRIBUTION OF CASES OF CSC

Statistical findings (Jan 2021 – Sept 2023)

Settlement

(a) No. of cases settled by CSC	227
No. of cases settled before the CSC hearing	37
No. of cases settled at the CSC hearing	90
No. of cases settled after CSC hearing	100
(b) Total No. of cases handled by CSC	384
Total (= $\frac{(a)}{(b)} \times 100\%$)	59%



Promotion of Synergy
between Court and Mediator
in Commercial
Dispute Resolution