



Recent Development in Mediation in the Hong Kong Litigation Landscape

The Honourable Mr Justice Lam



iRiver HK v Thakral [2008] 4 HKLRD 1000

- Damages awarded \$1 m
- Costs incurred \$4.7m
- Dispute arisen in 2004, appeal concluded in 2008
- Court of Appeal expressed regret that the parties had not explored mediation



Changes after CJR

- “The new Order 1A sets out the underlying objectives of the rules and Order 1B sets out the power of the court in case management. Parties and their lawyers have a duty to assist the court to further the underlying objectives. They will be well advised to have the above comments on ADR in mind in making attempts to resolve their dispute effectively.”



The new RHC and RDC

- Order 1A, rule 1: Underlying objectives
- (a) to increase the cost-effectiveness
- (c) to promote a sense of reasonable proportion and procedural economy
- (e) to facilitate the settlement of dispute



Case management duty of the court

Active case management includes:

- encouraging the parties to use an ADR procedure if the Court considers that appropriate, and facilitating the use of such a procedure
- helping the parties to settle the whole or part of the case
- The parties to any proceedings and their legal representatives shall assist the court to further the underlying objectives



How to discharge these duties?

- The court has to be proactive in case management
- Case management includes exploring ADR when appropriate
- Invite parties to address on costs estimates and proportionality to claim



Main features of the PD

- Mediation Certificate
- Mediation Notice and Response
- Court directions on Mediation mechanics
- Interim stay
- Costs sanction



Mediation Certificate

- To focus the minds of the parties on exploration of mediation
- To facilitate lawyers in advising clients on mediation
- To provide information to court for assessing whether mediation is appropriate and whether refusal is reasonable



Mediation Notice & Response

- A mechanism to facilitate parties to enter into dialogue on mediation
- Identify areas of agreement and disagreement on mediation
- To assist the court in deciding what directions should be made on mediation mechanics and interim stay



Costs sanction

- "In many instances, adversarial litigation is only one of the modes to resolve a dispute and it may not be the best mode. If there is an alternative by which the dispute may be resolved in a more cost effective, timely and satisfactory manner but a party insists on resorting to litigation despite suggestion from the court to explore that alternative, in effect he is adopting a potentially more expensive and time-consuming mode in dealing with the same subject matter that may cause greater attrition to all parties." Supply Chain & Logistics v NEC



Supporting facilities of the Judiciary

- Mediation Information Office
- Mediation webpage
- Mediation videos
- Mediation pamphlets



Litigation is not the only way to resolve disputes. Parties can also consider ADR after commencement of legal proceedings.

Thank You