

SUPPLEMENTAL NOTE FOR THE GUIDANCE NOTE ON CASE SETTLEMENT CONFERENCE

Introduction

1. This Supplemental Note may be read in conjunction with the “Guidance Note for Case Settlement Conference in Civil Cases in the District Court” issued on 16 December 2020.

The Purpose of Case Settlement Conference (“CSC”)

2. Adjudication is not the only means of resolving disputes. One essential aspect of the civil justice reform is the facilitation of settlement where there is a reasonable prospect of resolving the case by a satisfactory alternative to the Court process.
3. Under the Rules of the District Court, the Court has a duty to proactively manage cases to encourage the parties to co-operate with each other in the conduct of the proceedings, to narrow down the issues in dispute, and to encourage the use of Alternative Dispute Resolution (“ADR”). The parties and their legal representatives are correspondingly under a duty to assist the Court in case management.
4. CSCs, which are attended by the lay parties personally, present a unique opportunity in the legal proceedings for the parties to have a face-to-face dialogue to discuss their case.
5. Given the limited resources of the Court, the Court will be selective in directing cases for the CSC process. If the parties have already attended a mediation before a professionally accredited mediator and there is no reasonable prospect of settlement or narrowing the issues in dispute at a CSC, they are encouraged to make known that fact (as well as other relevant circumstances) in their Timetabling Questionnaire for the Court’s consideration.

The Role of CSC masters

6. The CSC will be listed before a master (“CSC master”) sitting in chambers (not open to the public). Unlike ordinary masters at the District Court, they will not deal with contested case management

issues or interlocutory applications in the case except those for the purpose of settlement. The whole CSC hearing will be a without prejudice process.

7. On the other hand, CSC masters are experienced in mediation. Whilst they are not conducting mediation at the CSC, they possess the techniques and skills to facilitate constructive dialogue between the parties to explore options to settle their dispute and to narrow down the issues. Hence, the CSC master may:
 - (a) after hearing lawyers representing such party, address a party directly; and
 - (b) review and evaluate with them any previous settlement discussions.
8. Basic information such as those contained in a CSC bundle and the costs statements will enable the legal representatives to take stock and conduct a cost and benefit analysis with their client prior to attending the CSC. Such information will also be useful to the CSC master in appreciating each party's position and in assisting the parties to formulate realistic options.
9. Settlement has to be consensual. In the event that no settlement is reached, the CSC master will direct the case to progress to the next stage and will have no further involvement with the case.

Right and access to legal representation at a CSC

10. The legal representatives of a party (if any) play a collaborative role in the case management process. Apart from advising on the merits of their case and costs implications, they are expected to discuss ADR strategy with their client. Practice Direction 31, the mechanism for consideration of mediation, is in place to enable the legal representatives to advise their client and to initiate inter-partes discussion on mediation before the CSC.
11. As the CSC master is not going to adjudicate on the dispute, it is not necessary for the legal representatives to present and argue their case. Rather, they should attend the hearing with a collaborative mindset

and address the Court and provide assistance and advice to their client accordingly.

12. If a situation has arisen where the legal representatives would like to discuss with their client privately, a request may be made to the CSC master for a short break. There will be facilities for the parties to discuss privately with their legal representatives at the CSC.

Without prejudice nature of CSCs

13. CSCs are conducted on a without prejudice basis.
 - (a) Evidence of anything said or any admission made in the course of the CSC shall not be admissible in later proceedings (the usual rules on without prejudice negotiation will apply).
 - (b) Audio recordings and transcripts (if any) will also not be allowed to be disclosed unless with the consent of the parties and the leave of the Court.
14. If no settlement is reached, the CSC bundle will be returned to the parties and not retained by the Court and the CSC master will have no further involvement with the case.
15. Given the above, the parties can safely discuss options in settling their case at a CSC.

Further information about CSC

16. For further background information, please refer to the speech of the Hon Mr. Justice Lam, VP entitled “Case Settlement Conference Pilot Scheme”, delivered on 5 November 2020 at the Hong Kong Legal Week 2020, available at the Judiciary website (<https://mediation.judiciary.hk/en/speeches.html>).

Dated this 16th of December 2020

(Justin Ko)
Chief District Judge