

**For discussion
on 18 May 2015**

**Legislative Council Panel
on Administration of Justice and Legal Services**

Review of the Implementation of Civil Justice Reform

PURPOSE

This paper briefs Members on the latest position regarding the implementation of the Civil Justice Reform (“CJR”) so far.

BACKGROUND

2. As in many common law jurisdictions, Hong Kong’s civil justice system has to keep abreast with the needs and developments of modern times. The procedural system of justice in Hong Kong is adversarial based, meaning that the court leaves it to the parties themselves to bring cases to court and on the whole lets them define the nature and extent of their dispute. However, this had led to the pace and timetabling of litigation often to be more in the hands of the parties than the court. When unchecked, this had at times resulted in excessive costs, delay and complexity, which had been criticized as being the common faults of the civil justice system.

3. It was against this background that CJR was introduced in 2009. The objectives of CJR are to :

- (a) preserve the best features of the adversarial system but curtailing its excesses. One of the primary ways to achieve this is by promoting the use of greater case management powers by the court. This would prevent tactical manipulation of the rules to delay proceedings and also ensure that court and judicial resources are fairly distributed;
- (b) streamline and improve civil procedures; and
- (c) facilitate early settlement by parties, eliminate unnecessary applications and, where appropriate, penalize such applications.

MONITORING

4. A CJR Monitoring Committee (“Monitoring Committee”) has been established since 2009 to monitor the working of the reformed civil justice system and to make suggestions to the Chief Justice to ensure its effective operation. The Monitoring Committee is chaired by the Chief Judge of the High Court, comprising Judges and Judicial Officers (“JJOs”), representatives from the legal professional bodies, the relevant departments of the Government and an experienced mediator.

5. Monitoring statistics have been compiled for the past five years or so¹ to help monitor the implementation of CJR. The statistics seek to assist in assessing the effectiveness of the CJR in a few areas, such as delay, settlement, mediation, costs matters and litigants in person (“LIPs”).

6. Monitoring statistics have been reported to the Monitoring Committee annually. The Judiciary Administration also reported the position for the first two years of implementation to the Panel on its request in December 2010 and December 2011. Relevant annual information has been posted on the Judiciary’s website and accessible by the public. The latest statistics are at [Annex A](#).

7. A few areas where the effect of the CJR is more apparent during this early period of implementation are highlighted below.

KEY OBSERVATIONS

Change in Culture

8. The key to the success of CJR lies in a change of culture in the conduct of the court proceedings and dispute resolution on the part of Judges and the legal profession. In order to ensure that disputes are effectively resolved, in and out of court, parties and their legal representatives are expected to be less adversarial and more cooperative.

9. The Monitoring Committee notes that the change of culture continued along the right track over the past five years or so. By now, the

¹ Statistics have been collated since April 2009. The first year of the Post-CJR Periods refers to April 2009 to March 2010. The fifth year of the Post-CJR Periods refers to April 2013 to March 2014.

legal profession and the public are much more acquainted with the initiatives under CJR. Judges have taken up their case management roles more seriously to prevent abuses and excesses that may delay trials and increase costs. Parties and their legal representatives have been adopting a more cost-conscious, efficiency-conscious and sensible approach in litigation, as compared with the Pre-CJR Period.

Mediation

10. There was generally a steady increase in the number of mediation cases in the Post-CJR periods which suggest a gradual change of litigation culture. Of the cases going through mediation, the percentage of them resulting in agreements ranged from 38% to 48% during the period from 2011 to 2014. Details are at paragraphs 41 to 49 of Annex A as well as Annex B.

11. With the court's increased emphasis on mediation, more and more litigating parties are aware that mediation would be one of the means of alternative dispute resolution. They are also making more efforts in attempting mediation, particularly for those types of cases which are more conducive to mediation, such as personal injuries ("PIs").

12. While the profession has gradually accepted mediation as a realistic approach in settling disputes, it will probably take some more time for them and their clients to get used to the change of culture completely.

13. In this regard, the Judiciary implemented a new set of Directions for case management summons in 2014. The Directions seek to reinforce the importance of identifying a suitable stage to try mediation. Specifically, under the Directions, parties are asked to report to the court whether they are satisfied that they have sufficient information to advise their client on mediation before exchange of witness statements etc. (or they prefer attempting mediation after the exchange of witness statements), whether they require a mediation briefing before a master, and whether they require a short stay of the proceedings to facilitate mediation.

14. The Judiciary will continue to encourage more use of mediation in certain types of cases. The Judiciary's Mediation Information Office will also continue to assist litigants in considering mediation as an alternative to litigation by providing them with relevant information on mediation.

15. The Judiciary also welcomes the initiatives taken forward by the Government and the profession to promote the use of mediation, including the enactment of the Mediation Ordinance (Cap. 620).

Active Case Management

16. Parties are now more responsive to active case management by Judges. They are also more attuned to the requirements and expectations of the court, such as taking early preparatory actions before trials and putting forward more realistic and practicable case management timetable/actions. They may further curtail procedural excesses as appropriate, e.g. trimming down the volume of case bundles and reducing the number of interlocutory applications.

Sanctioned Payments

17. Sanctioned payment is a CJR initiative which acts as a significant incentive for parties to settle disputes at an earlier stage. Under the initiative, a plaintiff or defendant may make an offer by way of a payment into court to settle claims or issues within claims (under Order 22 of the Rules of the High Court (“RHC”) (Cap. 4A)/Rules of the District Court (“RDC”)(Cap. 336H)) or to settle a party’s entitlement to costs (under Order 62A of the RHC/RDC). There are costs consequences should the sanctioned payment not be bettered.

18. There have been growing acceptance rates of sanctioned payments over the first five years of CJR implementation. For Order 22, the acceptance rates increased from 23% and 43% in the CFI (“Court of First Instance”) and the District Court (“DC”) respectively to 27% and 55%. As regards Order 62A, the acceptance rates similarly increased from 42% and 62% in the CFI and DC respectively to 49% and 72%. Details are set out in paragraphs 32 to 36 of **Annex A**.

Summary Assessment of Costs

19. To promote a sense of reasonable proportion and procedural economy in the conduct of proceedings is one of the underlying objectives of CJR. A crucial part of proper case management is the sensible handling of the issue of costs. CJR mandates that the decision on costs must take the underlying objectives into account.

20. Under CJR, the amended Order 62 of the RHC/RDC provides for summary assessment of costs. The court is empowered, when disposing of an interlocutory application, to (a) make an assessment of costs payable in a summary and broad-brush way, rather than through a process of taxation whereby every item of costs in the receiving party's bill of costs becomes potentially subject to close scrutiny; and (b) order that the payment be made promptly unless otherwise directed by the court. The first feature aims to dispense with the elaborate and lengthy taxation procedures, thereby saving time and costs. The second feature is aimed at discouraging unwarranted interlocutory applications.

21. The number of summary assessments increased significantly by 4.3 times and 2.4 times in the CFI and DC respectively during the first five years of the Post-CJR Periods. This shows the popularity of this new initiative. Details are at paragraphs 52 to 55 of Annex A.

MONITORING COMMITTEE'S OVERALL OBSERVATIONS

22. The Monitoring Committee last met in January 2015 to discuss the latest position regarding the implementation of the CJR. The Monitoring Committees took a consensual view that the implementation of CJR has so far been smooth and satisfactory on the whole. Experience shows that CJR works particularly well for cases which can be more easily settled by nature, e.g. DC cases which are simpler and PI cases where the damages could be assessed with more well-established principles. The impact of CJR on the more complicated cases such as those in the High Court may be less obvious for the time being.

23. The Monitoring Committee also noted that with the court's encouragement, there is a general trend that more and more people are considering mediation as an alternative way of dispute resolution. Further, parties to the legal proceedings and their legal representatives now recognize more the court's case management powers. They are therefore more cost-sensitive and sensible in making applications to the court, and adjournment of trials has been less frequent. There are also less interlocutory appeals. With mechanisms in place such as sanctioned payments, more parties (particularly defendants) are more willing to seriously consider settlement early. Cases are generally settled at an earlier stage.

24. The Monitoring Committee considered that all the above latest developments help save the litigation costs of parties as well as judicial resources, which is one of the underlying objectives of CJR.

25. That said, the Monitoring Committee is mindful that the CJR key indicators are inevitably susceptible to factors not related to CJR, such as the deployment of judicial manpower in specific periods, fluctuation in caseload, different nature of the cases in the CFI and the DC, as well as the challenges posed by the increasing number of LIPs. It would be difficult, if not impossible, to single out the effect of CJR implementation alone. The statistics presented in this paper and its Annexes should therefore be read with caution and interpreted in their proper context. It is inappropriate to attribute any yearly changes solely to CJR. The Monitoring Committee considers that some more time may probably be required to assess the full impact, benefit and effectiveness of the CJR.

VIEWS OF THE LEGAL PROFESSION

26. Besides the Monitoring Committee, the Judiciary has also consulted the Bar Association and the Law Society direct to see if they have any further views. Their organizational views are set out below.

The Bar Association

27. The Bar Association considers that there has been an increasingly noticeable change in the mindset and approach of both the public and the practitioners in embracing the CJR changes. With the active case management role taken on by the Judiciary, this has helped reduce delays and provided an impetus for greater efficiency in the disposal of cases. The expeditious but fair disposal of cases has helped foster greater improvement in the efficiency of the Judiciary machinery. It ultimately ensures that the public have a system of justice that is accessible and functional.

28. Although the CJR changes are still at their early years, the trend appears to suggest that they are not only welcome, but have been well-received by all stakeholders concerned. Besides, introduction of mediation has helped to further shift the focus away from the transitional adversarial litigation approach to one which seeks to promote and facilitate a culture of conciliation and settlement. Mediation has been particularly useful for PI cases.

29. In sum, the Bar Association is encouraged to note that the general prognosis going forward would appear to be positive which augurs well for the administration of justice in Hong Kong generally.

The Law Society

30. The Law Society is taking stock of the various issues arising from the implementation of the CJR, and will provide a detailed response in due course. At the moment, the Law Society takes note of a suggestion that disputes are resolved at an earlier stage than was usually the case pre-CJR. Additional tools for dispute resolutions have been made available such as sanctioned offers, increased focus on case management and early determination of costs via summary assessment etc. There is also a suggestion that CJR has introduced a more disciplined approach to ensuring the timely progress of cases.

31. The Law Society has also made observations to the Judiciary on the introduction of pre-action protocols in PI cases and the suggested adoption of this similar approach for other types of claims of an appropriate nature. The Law Society has been advised that the Judiciary has an open mind on this and will welcome any specific suggestions from the Law Society in this regard.

ACTION REQUIRED

32. Members are invited to note the contents of this paper.

Judiciary Administration
May 2015

**Statistics on the First Five Years' Implementation of
the Civil Justice Reform from 2 April 2009 to 31 March 2014**

I. Purpose

This Annex seeks to set out the key statistics on the implementation of the Civil Justice Reform (“CJR”) for the first five years from 2 April 2009 to 31 March 2014.

II. Background

2. The CJR Monitoring Committee (“the Monitoring Committee”) considers that the collection of relevant statistics would help monitor the implementation of CJR. It has endorsed a list of 32 key indicators in six broad areas for assessment of the effectiveness of CJR. The six broad areas are :

- (a) Delay;
- (b) Settlement;
- (c) Mediation;
- (d) Costs matters;
- (e) Litigants in person (“LIPs”); and
- (f) How some individual changes (introduced by CJR) work out in practice.

Statistics on these 32 key indicators have been collated from available data by

the Judiciary. The Judiciary reported the yearly position¹ of the implementation of CJR to the Monitoring Committee since 2010. This Annex provides the updated position by including relevant findings of the “fifth year of the Post-CJR Periods” (i.e. from 1 April 2013 to 31 March 2014)².

¹ In this Annex, the references to various periods have the following meanings :

- (a) the Pre-CJR Period means the period from 2 April 2008 to 31 March 2009;
- (b) the first year of the Post-CJR Periods means the period from 2 April 2009 to 31 March 2010;
- (c) the second year means the period from 1 April 2010 to 31 March 2011;
- (d) the third year means the period from 1 April 2011 to 31 March 2012;
- (e) the fourth year means the period from 1 April 2012 to 31 March 2013; and
- (f) the fifth year means the period from 1 April 2013 to 31 March 2014.

² In reading the statistics, it is important to bear the following factors in mind :

- (a) Most of the statistics cover all the five years of the Post-CJR Periods. The period is however shorter for some of the statistics;
- (b) To facilitate comparison with the Pre-CJR situation, statistics for the period from 2 April 2008 to 31 March 2009 are also presented where available. However, some Pre-CJR statistics are not available and for such statistics, no comparison can be made of the Pre-CJR and Post-CJR situation;
- (c) The definitions of some of the Pre-CJR statistics are different from the Post-CJR definitions. A simple comparison of these statistics can therefore be misleading. For example, prior to the implementation of CJR, disposal figures were based on party disposal, i.e. a case was treated as disposed of once one party in a case had been disposed of. This definition of disposal was not satisfactory as it did not cater for the situation where multiple parties were involved in a case. Since 2 April 2009, the definition has been refined to the effect that a case is considered as disposed of only when all the parties involved have been disposed of;
- (d) There was a bulge in caseload prior to the implementation of CJR. The last minute rush of cases filed before April 2009 should be noted when considering some of the statistics presented in the paper. For example, it substantially increased the number of interlocutory applications in the first year of the Post-CJR Periods despite the apparent drop in caseload in the same period;
- (e) The CJR initiatives may not have fully applied to those cases which straddle 2 April 2009 and the data for such cases do not represent a comprehensive picture of the impact of CJR; and
- (f) The case population for some key indicators may be very small in comparison with the total caseload.

III. The Overall Context

Table 1.1: Number of Civil Cases and CJR Related Cases Filed in the Court of First Instance (“CFI”)

CFI	Pre-CJR Period	Post-CJR Periods				
		1 st Year	2 nd Year	3 rd Year	4 th Year	5 th Year
Civil cases	24,552 ³	22,715 ⁴	16,047	15,970	17,210	18,910
CJR related cases ⁵	5,431	3,853	3,837	4,371	4,625	5,306

3. In the CFI, the overall annual civil caseload during the Post-CJR Periods was all lower than that of the Pre-CJR Period. The drop in the second and third years was mainly due to a sharp decrease in bankruptcy and companies winding-up cases. The caseload for CJR related cases in the fourth and fifth years of the Post-CJR Periods increased by 6% and 15% year-on-year, mainly because of an increase in such cases as well as an increase in civil actions and personal injuries (“PI”) actions. For the fifth year, the increase was also attributed to an increase in miscellaneous proceedings.

³ The figure is updated to exclude the number of civil cases filed on 1 April 2008 which was wrongly included in past statistics.

⁴ The figure is updated to exclude the number of civil cases filed on 1 April 2009 which was wrongly included in past statistics.

⁵ CJR related cases refer to those cases where CJR is applicable. Amongst all civil cases filed in the CFI, CJR is only applicable to six civil case types, i.e. Civil Action (HCA), Miscellaneous Proceedings (HCMP), Personal Injuries Action (HCPI), Commercial Action (HCCL), Construction and Arbitration Proceedings (HCCT) and Admiralty Action (HCAJ), and where the originating document is a writ or an originating summons.

Table 1.2: Number of Civil Cases and CJR Related Cases Filed in the District Court (“DC”)

DC	Pre-CJR Period	Post-CJR Periods				
		1 st Year	2 nd Year	3 rd Year	4 th Year	5 th Year
Civil cases	29,092 ⁶	24,830 ⁷	22,731	22,079	20,423	20,725
CJR related cases ⁸	19,990	15,765	15,274	15,103	13,573	13,943

4. In the DC, the overall civil caseload and the caseload for the CJR related cases during the first three years of Post-CJR Periods remained more or less at the same level. Nevertheless, in the fourth year of the Post-CJR Periods, the overall civil caseload and the caseload for the CJR related cases dropped by 8% and 10% respectively year-on-year, mainly due to a decrease in civil actions and tax claims. The caseloads in the fifth year of the Post-CJR Periods remained similar as those for the fourth year. A more detailed analysis of the fifth year caseloads indicated that there was an increase in civil actions, whereas tax claims continued with its downward trend.

IV. Specific Aspects of CJR

(A) *Delay*

5. One of the underlying objectives of CJR is to ensure that a case is dealt with as expeditiously as is reasonably practicable. This is achieved by streamlining civil procedures, cutting out unnecessary interlocutory applications, imposing more stringent timetables, a greater use of peremptory orders and a more active approach in dealing with interlocutory applications (particularly where Case Management Conferences (“CMCs”) are concerned).

⁶ The figure is updated to exclude the number of civil cases filed on 1 April 2008 which was wrongly included in past statistics.

⁷ The figure is updated to exclude the number of civil cases filed on 1 April 2009 which was wrongly included in past statistics.

⁸ CJR related cases refer to those cases where CJR is applicable. Amongst all civil cases filed in the DC, CJR is only applicable to six civil case types, i.e. Civil Action (DCCJ), Miscellaneous Proceedings (DCMP), Personal Injuries Action (DCPI), Employee’s Compensation Case (DCEC), Tax Claim (DCTC) and Equal Opportunities Action (DCEO), and where the originating document is a writ (including writ-alike) or an originating summons.

Number of Interlocutory Applications⁹

6. The proliferation of interlocutory applications had been regarded as one of the most serious causes of delay and additional expense in the litigation process. CJR aims to reduce, if not eliminate, the number of interlocutory applications of doubtful or little value.

Table 2.1: Number of interlocutory applications in the CFI

CFI	Pre-CJR Period	Post-CJR Periods				
		1 st Year	2 nd Year	3 rd Year	4 th Year	5 th Year
Number of interlocutory applications	2,786	3,149	2,914	2,992	3,265	3,684

7. In the CFI, the numbers of interlocutory applications listed for hearings during the Pre-CJR Period and the first three years of the Post-CJR Periods were comparable. For the fourth and fifth years, the number increased by 9% and 13% respectively year-on-year, which was broadly consistent with the growth in the caseload for the CJR related cases in those years.

Table 2.2: Number of interlocutory applications in the DC

DC	Pre-CJR Period	Post-CJR Periods				
		1 st Year	2 nd Year	3 rd Year	4 th Year	5 th Year
Number of interlocutory applications	Not available	1,171	1,032	854	838	1,150

8. In the DC, the numbers of interlocutory applications listed for hearings during the first four years of the Post-CJR Periods were on a decreasing trend. Nonetheless, the number of interlocutory applications increased to 1,150 in the fifth year of the Post-CJR Periods mainly due to the increase in the number of interlocutory applications relating to Employees' Compensation ("EC") claims. This was probably in turn due to a larger number of EC cases filed and more EC hearings involving LIPs.

⁹ The number of interlocutory applications listed for hearings does not include those arising from CMCs and Case Management Summons hearings. Interlocutory applications dealt with on paper or additional summons(es)/interlocutory application(s) that may have been taken out at the same listed hearing for an interlocutory application are not counted either.

(a) Number of Case Managements Conferences (“CMCs”)

9. CMC is an important tool of active case management under CJR. At a CMC, the court gives directions leading up to the trial of the action, and fixes a date for a pre-trial review (“PTR”) and / or a trial date or period in which the trial is to take place. It is also the occasion for the court and the parties to discuss in detail the true nature of the issues in the case. In doing so, not only is there more efficient and effective management of the case achieved, this would also facilitate settlements.

Table 3.1: Number of CMCs in the CFI

CFI	Pre-CJR Period	Post-CJR Periods				
		1 st Year	2 nd Year	3 rd Year	4 th Year	5 th Year
	Number of checklist hearings	Number of checklist hearing/ CMCs	Number of CMCs	Number of CMCs	Number of CMCs	Number of CMCs
CJR related cases (excluding PI cases)	779	839	865	771	795	826

10. In the CFI, the numbers of CMCs during the first five years of CJR implementation are comparable and similar to the number of checklist hearings in the Pre-CJR Period.

Table 3.2: Number of CMCs in the DC

DC	Pre-CJR Period	Post-CJR Periods				
		1 st Year	2 nd Year	3 rd Year	4 th Year	5 th Year
	Number of PTR by Master	Number of CMCs	Number of CMCs	Number of CMCs	Number of CMCs	Number of CMCs
CJR related cases (excluding PI cases)	539	648	788	748	590	443

11. In the DC, in streamlining the management of cases, the use of the oral/paper case management summons (“CMS”) has been adopted to resolve case management issues before fixing CMCs. The CMSs were used efficiently and effectively. Further, some simple and straightforward cases (e.g. default of payment of a simple oral loan agreement or claims for goods sold and delivered) were set down for trials in the CMS hearings without any CMCs.

12. In this connection, it can be noted that following a decrease of CMCs to a level similar to the Pre-CJR period in the fourth year, there was a further drop of 25% year-on-year in the fifth year of the Post-CJR Periods.

(b) Number of Milestone Dates Fixed and Then Varied

13. Instead of leaving the progress of actions in the hands of parties (which was the pre-CJR position), the court now assumes much greater control over the progress of actions. Firm timetables are set at an early stage of proceedings. A court-determined timetable takes account of the needs of the particular case and the reasonable requests of the parties. The timetable sets out milestone dates for the major steps in any proceedings, such as the dates for trial and other important hearings. Only in the most exceptional circumstances will a milestone date be changed. This arrangement will reduce delays.

Table 4.1: Number of Milestone Dates Fixed and Then Varied in the CFI

CFI	Post-CJR Periods														
	1 st Year			2 nd Year			3 rd Year			4 th Year			5 th Year		
No. of Hearings	Fixed (a)	Varied (b)	% (b)/(a)	Fixed (a)	Varied (b)	% (b)/(a)	Fixed (a)	Varied (b)	% (b)/(a)	Fixed (a)	Varied (b)	% (b)/(a)	Fixed (a)	Varied (b)	% (b)/(a)
CMC	865	76	9%	916	118	13%	785	100	13%	812	120	15%	830	111	13%
PTR	320	22	7%	287	15	5%	239	16	7%	249	7	3%	251	14	6%
Trial	419	27	6%	476	33	7%	350	27	8%	325	20	6%	371	23	6%

14. In the CFI, the percentages of dates of hearings at milestone stages which were varied in the Post-CJR Periods remained at a reasonably low level.

Table 4.2: Number of Milestone Dates Fixed and Then Varied in the DC

DC	Post-CJR Periods														
	1 st Year			2 nd Year			3 rd Year			4 th Year			5 th Year		
No. of Hearings	Fixed (a)	Varied (b)	% (b)/(a)	Fixed (a)	Varied (b)	% (b)/(a)	Fixed (a)	Varied (b)	% (b)/(a)	Fixed (a)	Varied (b)	% (b)/(a)	Fixed (a)	Varied (b)	% (b)/(a)
CMC	742	30	4%	820	49	6%	782	48	6%	634	38 ¹⁰	6%	464	26	6%
PTR	138	5	4%	168	3	2%	133	2	2%	167	1	1%	179	3	2%
Trial	577	15	3%	496	21	4%	332	15	5%	380	16	4%	349	11	3%

15. In the DC, the percentages of dates of hearings at milestone stages which were varied also remained at a reasonably low level at the Post-CJR Periods.

16. In general, better control and case management by both courts has reduced the delay in the case process. It is however noted that certain factors might still lead to an inevitable variation of CMC dates, e.g. appeals filed against a Master’s decision right before a CMC and late applications by parties etc.

(c) *Average Time Spent*

17. The average periods of time spent on cases from commencement to trial and from the first CMC to end of trial are useful indicators to show how expeditiously cases are being disposed of.

(i) *From commencement to trial*

18. The number of cases with commencement and trial within the Post-CJR Periods is set out below.

¹⁰ 42 varied CMC hearings which were stayed pending the determination of FACV15/2011 and CACV267/2011 were excluded from the calculation.

Table 5.1: Average Time from Commencement to Trial in the CFI

CFI	Post-CJR Periods				
	1 st Year	1 st & 2 nd Years (Accumulative)	1 st , 2 nd & 3 rd Years (Accumulative)	1 st , 2 nd , 3 rd & 4 th Years (Accumulative)	1 st , 2 nd , 3 rd , 4 th & 5 th Years (Accumulative)
Number of Trial Hearings	16	70	163	295	475
Average Time from Commencement to Trial (days)	167	277	436	583	699
Year-on-year change on Average Time (days)		+ 110	+ 159	+ 147	+ 116

19. There was a rising trend for the average time from commencement to trial during the five years of the Post-CJR Periods. This is probably because, among other factors, some existing complicated cases may take more time before trial and more new complicated cases may be added onto the data pool. On the other hand, it should be noted that the increase in the average processing time has gently moderated from 159 days in the third year to 147 days in the fourth year, and further down to 116 days in the fifth year. Looking ahead, there is a chance that the average time could further improve when more judicial manpower is made available. The Judiciary will continue to monitor the trend closely.

Table 5.2: Average Time from Commencement to Trial in the DC

DC	Post-CJR Periods				
	1 st Year	1 st & 2 nd Years (Accumulative)	1 st , 2 nd & 3 rd Years (Accumulative)	1 st , 2 nd , 3 rd & 4 th Years (Accumulative)	1 st , 2 nd , 3 rd , 4 th & 5 th Years (Accumulative)
Number of Trial Hearings	16	158	332	550	787
Average Time from Commencement to Trial (days)	134	345	434	515	549
Year-on-year change on Average Time (days)		+ 211	+ 89	+ 81	+ 34

20. Similar to the CFI, the average time from commencement to trial continued to rise partly because more complicated cases were added to the data pool in the DC. Besides, the increase in the average processing time also gently moderated from 89 days in the third year to 81 days in the fourth year, and more drastically down to 34 days in the fifth year. Looking ahead, similar trend of improvement as that for the CFI as set out in paragraph 19 above is also possible in the DC. The Judiciary will continue to monitor the trend closely.

(ii) *From the first CMC to end of trial*

Table 6.1: Average Time from First CMC to End of Trial in the CFI

CFI	Post-CJR Periods				
	1 st Year	2 nd Year	3 rd Year	4 th Year	5 th Year
Disposal Date					
Number of cases disposed of	8	67	83	91	101
Average time required (days)	150	349	435	546	548

21. The above table captures cases commenced any time in the Post-CJR Periods and disposed in the respective year of the Post-CJR Periods. As a larger pool of cases (including the more complicated ones) is captured when the number of years taken into account increases, the average time is likely to lengthen. But, the Judiciary sees good signs that the average time required for disposing of cases in the fifth year seemed to be flattening off, as compared with that for the fourth year.

Table 6.2: Average Time from First CMC to End of Trial in the DC

DC	Post-CJR Periods				
	1 st Year	2 nd Year	3 rd Year	4 th Year	5 th Year
Disposal Date					
Number of cases disposed of	23	126	103	98	129
Average time required (days)	181	224	283	280	255

22. Similar to the CFI, as a larger pool of cases (including the more complicated ones) is captured as the number of years taken into account increases, the average time is likely to lengthen. But, there was also a positive sign that the average time for disposing of the cases in the fourth and fifth years was dropping, as compared with that for the third year.

(iii) *Duration of trial*

23. Statistical data on two indicators, “Days fixed” and “Actual days spent”, are shown below.

Table 7.1: Duration of Trial in the CFI

CFI	Pre-CJR Period	Post-CJR Periods				
		1 st Year	2 nd Year	3 rd Year	4 th Year	5 th Year
Average number of days fixed	4.89	5.51	5.30	5.49	5.95	5.19
Average number of days spent	4.02	3.08	3.88	4.40	4.28	3.98

24. For the CFI, the average number of days fixed and spent for trials fluctuated over the first five years of the Post-CJR Periods. Regardless, the average numbers of days fixed for the first five years in the Post-CJR Periods were all longer than that in the Pre-CJR Period, reflecting in general an increase in the complexity of cases though the exact combination of cases of different complexity in each year may differ. The Judiciary also notes that the average number of days actually spent in the fourth and fifth years registered a year-on-year decrease; and so was the average number of days fixed in the fifth year. These reflect the growing efforts of the Judges, Judicial Officers and stakeholders to compress the timetable during the pre-trial stage etc. by, for example, minimizing any over-estimation of trial days and narrowing down the issues.

25. It is also noted that more cases could be disposed of at an earlier stage during the Post-CJR Periods than the Pre-CJR Period. As a result, delay in the litigation process has been avoided and less costs incurred. These are positive signs that the intended results of CJR were being achieved.

Table 7.2: Duration of Trial in the DC

DC	Pre-CJR Period	Post-CJR Periods				
		1 st Year	2 nd Year	3 rd Year	4 th Year	5 th Year
Average number of days fixed	2.60	2.45	2.88	2.84	3.17	3.29
Average number of days spent	2.49	2.23	2.53	2.30	2.55	3.00

26. For the DC, there was a relatively stable trend for both the average numbers of days fixed and the actual days spent on trials, though both showed a gradual upward trend during the Post-CJR Periods. This suggests a growing complexity in the cases, which may partly be due to the increasing number of LIPs. The average numbers of days fixed and the corresponding average numbers of days actually spent were very close. This probably reflects the relatively simpler nature of the DC cases in comparison with those in the CFI, which means easier estimation of trial time.

27. Similar to the CFI, the Judiciary also notes that more cases could now be disposed of at an earlier stage, which should result in less litigation time and costs.

(B) Settlement

28. A just settlement for the right reasons involves a timely settlement. Prior to CJR, the majority of the settlements did not occur until the eve of trial. Often, it was only when counsel was fully instructed in a case that a serious evaluation of the merits took place, leading to settlements being made.

(a) Admission under Order 13A

29. Order 13A provides a new procedure for a defendant in a money claim (both liquidated and unliquidated) to make admission and propose payment terms as to time and instalments to satisfy the claim.

Table 8.1: Admission under Order 13A in the CFI

CFI	Post-CJR Periods				
	1 st Year	2 nd Year	3 rd Year	4 th Year	5 th Year
Number of CJR related cases filed (monetary claim only)	1,757	1,711	2,032	2,133	2,346
Number of admissions made ¹¹	39	19	29	10	18
Number of applications for instalment ¹¹	15	8	11	2	6
Number of cases disposed of by Order 13A ¹²	13	6	2	1	4

¹¹ Figures on (i) number of admissions made and (ii) number of applications for instalment include cases with their documents Form 16-Admission (liquidated amount) under O.13A/ Form 16C-Admission (unliquidated amount) under O.13A filed within the reporting period regardless of their case filing dates.

¹² Figures on number of cases disposed of by Order 13A include cases with their case filing dates within the reporting period and disposed of as at the report generation date, and therefore may be subject to change. Figures cited therein at Table 8.1 were generated approximately one to two months after the end date of each year in the Post-CJR Periods. To have a full picture on the operation of Order 13A procedure, figures with position updated as at 20 May 2014 were 15, 6, 3, 1 and 4 respectively for the first, second, third, fourth and fifth years of the Post-CJR Periods.

30. In the CFI, during the Post-CJR Periods, the number of applications of Order 13A and number of cases settled by Order 13A were very low. As the CFI cases normally involve relatively higher amounts of claims, the incentive for defendants to make an admission under Order 13A may be relatively lower.

Table 8.2: Admission under Order 13A in the DC

DC	Post-CJR Periods				
	1 st Year	2 nd Year	3 rd Year	4 th Year	5 th Year
Number of CJR related cases filed (monetary claim only)	14,155	13,874	13,665	12,212	12,604
Number of admissions made ¹³	364	312	414	300	263
Number of applications for instalment ¹³	300	255	313	185	175
Number of cases disposed of by Order 13A ¹⁴	197	152	203	146	135

31. In the DC, during the Post-CJR Periods, there was some fluctuation in the number of applications of Order 13A and the number of cases settled by Order 13A. In particular, there was a drop in both numbers for the fourth and fifth years. For the fourth year, it was mainly due to a drop for civil actions and tax claims, which constituted a great majority of the cases settled by Order 13A. For the fifth year, the drop largely came from a decrease in tax claims, though partly offset by an increase from civil actions.

(b) Sanctioned Payments

32. The making of a sanctioned payment is an offer made by way of a payment into court. Prior to CJR, only defendants could offer to settle by making a payment into court. Under CJR, both plaintiffs and defendants are able to make sanctioned payments, whether to settle claims or issues within

¹³ Figures on (i) number of admissions made and (ii) number of applications for instalment include cases with their documents Form 16-Admission (liquidated amount) under O.13A/ Form 16C-Admission (unliquidated amount) under O.13A filed within the reporting period regardless of their case filing dates.

¹⁴ Figures on number of cases disposed of by Order 13A include cases with their case filing dates within the reporting period and disposed of as at the report generation date, and therefore may be subject to change. Figures cited therein at Table 8.2 were generated approximately one to two months after the end date of each year in the Post-CJR Periods. To have a full picture on the operation of Order 13A procedure, figures with position updated as at 20 May 2014 were 212, 178, 225, 159 and 135 respectively for the first, second, third, fourth and fifth years of the Post-CJR Periods.

claims (under Order 22) or to settle a party’s entitlement to costs (under Order 62A). There are costs consequences should the sanctioned payment not be bettered. Sanctioned payment acts as a significant incentive for parties to settle disputes at an earlier stage. This is regarded as an important measure in the just and expeditious resolution of disputes.

(i) *Order 22*

Table 9.1: Number of Order 22 Sanctioned Payments Made and Accepted¹⁵ in the CFI

CFI	Pre-CJR Period	Post-CJR Periods									
		1 st Year		2 nd Year		3 rd Year		4 th Year		5 th Year	
	Payment-in made	Number of Sanctioned Payments									
		Made	<i>Accepted</i>	Made	<i>Accepted</i>	Made	<i>Accepted</i>	Made	<i>Accepted</i>	Made	<i>Accepted</i>
Number of payment-in/ Order 22 sanctioned payments (excluding PI cases)	151	127	<i>15</i>	100	<i>11</i>	99	<i>24</i>	96	<i>26</i>	82	<i>17</i>
Number of payment-in/ Order 22 sanctioned payments (PI cases only)	826	1,786	<i>420</i>	1,255	<i>326</i>	1,160	<i>283</i>	1,353	<i>361</i>	1,600	<i>445</i>
Total	977	1,913	<i>435</i>	1,355	<i>337</i>	1,259	<i>307</i>	1,449	<i>387</i>	1,682	<i>462</i>
Overall Acceptance Rate			<i>23%</i>		<i>25%</i>		<i>24%</i>		<i>27%</i>		<i>27%</i>

¹⁵ Figures on number of Order 22 Sanctioned Payment Accepted (*in italic*) include those Form 23-Notice Of Sanctioned Payment under O.22 accepted by way of the filing of Form 24-Notice Of Acceptance Of Sanctioned Payment under O.22 within/ beyond the prescribed time of 28 days as at the report generation date, and therefore may be subject to change. Figures cited therein at Table 9.1 were generated approximately one to two months after the end date of each year in the Post-CJR Periods. To have a full picture on the operation of Order 22 procedure, total figures with position updated as at 20 May 2014 were 528, 411, 413, 486 and 462 respectively for the first, second, third, fourth and fifth years of the Post-CJR Periods.

Table 9.2: Number of CJR Related Cases Disposed of by Order 22 Sanctioned Payments in the CFI

CFI	Post-CJR Periods				
	1 st Year	2 nd Year	3 rd Year	4 th Year	5 th Year
Number of cases filed (excluding PI cases)	3,247	3,101	3,442	3,670	4,237
Number of cases filed (PI cases only)	606	736	929	955	1,069
Total number of cases filed	3,853	3,837	4,371	4,625	5,306
Number of cases (excluding PI cases) disposed of by Order 22 sanctioned payment	2	2	8	8	6
Number of cases (PI cases only) disposed of by Order 22 sanctioned payment	51	58	54	71	57
Total Number of cases disposed of by Order 22¹⁶	53	60	62	79	63

33. For the CFI, during the Post-CJR Periods, the numbers of sanctioned payments made, the numbers of payments accepted and the numbers of cases disposed of by Order 22 did not show much fluctuation or any significant trend. Nevertheless, out of the sanctioned payments made in the Post-CJR Periods, the percentage of sanctioned payments accepted showed an overall gradual rising trend, with 23% (435 cases over 1,913 cases) in the first year and reaching 27% (462 cases over 1,682 cases) in the fifth year. It seems that more parties were willing to adopt this procedure with a view to facilitating settlement in general.

¹⁶ Figures on number of cases disposed of by Order 22 include cases with their case filing dates within the reporting period and disposed of as at the report generation date, and therefore may be subject to change. Figures cited therein at Table 9.2 were generated approximately one to two months after the end date of each year in the Post-CJR Periods. To have a full picture on the operation of Order 22 procedure, figures with position updated as at 20 May 2014 were 178, 199, 213, 213 and 63 respectively for the first, second, third, fourth and fifth years of the Post-CJR Periods.

Table 9.3: Number of Order 22 Sanctioned Payment Made and Accepted¹⁷ in the DC

DC	Pre-CJR Period	Post-CJR Periods									
		1 st Year		2 nd Year		3 rd Year		4 th Year		5 th Year	
	Payment-in made	Number of Sanctioned Payment									
Made		<i>Accepted</i>	Made	<i>Accepted</i>	Made	<i>Accepted</i>	Made	<i>Accepted</i>	Made	<i>Accepted</i>	
Number of payment-in/ Order 22 sanctioned payments (excluding PI and employee's compensation ("EC") cases)	221	207	<i>55</i>	224	<i>87</i>	270	<i>131</i>	158	<i>63</i>	223	<i>87</i>
Number of payment-in/ Order 22 sanctioned payments (PI cases only)	2,025	2,518	<i>1,012</i>	2,489	<i>1,157</i>	2,620	<i>1,256</i>	3,025	<i>1,460</i>	3,165	<i>1,556</i>
Number of payment-in/ Order 22 sanctioned payments (EC cases only)	1,070	1,398	<i>702</i>	1,304	<i>774</i>	1,608	<i>1,033</i>	1,821	<i>1,128</i>	2,366	<i>1,528</i>
Total	3,316	4,123	<i>1,769</i>	4,017	<i>2,018</i>	4,498	<i>2,420</i>	5,004	<i>2,651</i>	5,754	<i>3,171</i>
Overall Acceptance Rate			<i>43%</i>		<i>50%</i>		<i>54%</i>		<i>53%</i>		<i>55%</i>

¹⁷ Figures on number of Order 22 Sanctioned Payment Accepted (*in italic*) include those Form 23-Notice of Sanctioned Payment under O.22 accepted by way of the filing of Form 24-Notice of Acceptance of Sanctioned Payment under O.22 within/ beyond the prescribed time of 28 days as at the report generation date, and therefore may be subject to change. Figures cited therein at Table 9.3 were generated approximately one to two months after the end date of each year in the Post-CJR Periods. To have a full picture on the operation of Order 22 procedure, total figures with position updated as at 20 May 2014 were 1,905, 2,236, 2,667, 2,929 and 3,171 respectively for the first, second, third, fourth and fifth years of the Post-CJR Periods.

Table 9.4: Number of CJR Related Cases Disposed of by Order 22 Sanctioned Payment in the DC

DC	Post-CJR Periods				
	1 st Year	2 nd Year	3 rd Year	4 th Year	5 th Year
Number of cases filed (excluding PI and EC cases)	12,360	11,094	10,345	8,539	8,703
Number of cases filed (PI cases only)	1,965	2,432	2,666	2,729	2,821
Number of cases filed (EC cases only)	1,440	1,748	2,092	2,305	2,419
Total number of cases filed	15,765	15,274	15,103	13,573	13,943
Number of cases (excluding PI and EC cases) disposed of by Order 22 sanctioned payment	35	27	43	30	42
Number of cases (PI cases only) disposed of by Order 22 sanctioned payment	319	292	469	694	565
Number of cases (EC cases only) disposed of by Order 22 sanctioned payment	378	382	539	518	609
Total number of cases disposed of by Order 22¹⁸	732	701	1,051	1,242	1,216

34. For the DC, similar to that for the CFI, out of the sanctioned payments made in the Post-CJR Periods, the percentage of sanctioned payments accepted was also on a rising trend, from 43% (1,769 cases over 4,123 cases) in the first year to 55% (3,171 cases over 5,754 cases) in the fifth year. Even though some Order 22 offers might have been accepted by other means such as consent orders and hence not covered in the above statistics, the relatively high number of cases known to have been disposed of by Order 22 since the third year of the Post-CJR Periods has been sustained in the fourth and fifth years. The smaller amounts of claims and easier assessment of the likely damages for the DC cases may explain the continued popularity of Order 22 in the DC.

¹⁸ Figures on number of cases disposed of by Order 22 include cases with their case filing dates within the reporting period and disposed of as at the report generation date, and therefore may be subject to change. Figures cited therein at Table 9.4 were generated approximately one to two months after the end date of each year in the Post-CJR Periods. To have a full picture on the operation of Order 22 procedure, figures with position updated as at 20 May 2014 were 1,286, 1,716, 2,228, 2,260 and 1,216 respectively for the first, second, third, fourth and fifth years of the Post-CJR Periods.

(ii) Order 62A

Table 10.1: Number of Order 62A Sanctioned Payment on Costs Made and Accepted¹⁹ in the CFI

CFI	Post-CJR Periods									
	1 st Year		2 nd Year		3 rd Year		4 th Year		5 th Year	
	Made	<i>Accepted</i>	Made	<i>Accepted</i>	Made	<i>Accepted</i>	Made	<i>Accepted</i>	Made	<i>Accepted</i>
Number of Order 62A sanctioned payments (with bills filed)	78	<i>15</i>	64	<i>18</i>	60	<i>21</i>	50	<i>16</i>	38	<i>12</i>
Number of Order 62A sanctioned payments (without bills filed)	155	<i>84</i>	212	<i>102</i>	164	<i>81</i>	160	<i>94</i>	233	<i>120</i>
Total	233	<i>99</i>	276	<i>120</i>	224	<i>102</i>	210	<i>110</i>	271	<i>132</i>
Overall Acceptance Rate		42%		43%		46%		52%		49%

35. In the CFI, the number of Order 62A sanctioned payments on costs made and the number of payments accepted remained at a similar level during the five years of the Post-CJR Periods. Nevertheless, similar to Order 22 sanctioned payments, the acceptance rate for Order 62A sanctioned payments was generally on a rising trend during the Post-CJR Periods, from 42% in the first year to 49% in the fifth year.

¹⁹ Figures on number of Order 62A Sanctioned Payment Accepted (*in italic*) include those Form 93-Notice of Sanctioned Payment under O.62A accepted by way of the filing of Form 93A-Notice of Acceptance of Sanctioned Payment under O.62A within/ beyond the prescribed time of 14 days as at the report generation date, and therefore may be subject to change. Figures cited therein at Table 10.1 were generated approximately one to two months after the end date of each year in the Post-CJR Periods. To have a full picture on the operation of Order 62A procedure, total figures with position updated as at 20 May 2014 were 102, 127, 108, 118 and 132 respectively for the first, second, third, fourth and fifth years of the Post-CJR Periods.

Table 10.2: Number of Order 62A Sanctioned Payment on Costs Made and Accepted²⁰ in the DC

DC	Post-CJR Periods									
	1 st Year		2 nd Year		3 rd Year		4 th Year		5 th Year	
	Made	<i>Accepted</i>	Made	<i>Accepted</i>	Made	<i>Accepted</i>	Made	<i>Accepted</i>	Made	<i>Accepted</i>
Number of Order 62A sanctioned payments (with bills filed)	97	<i>32</i>	83	<i>28</i>	57	<i>30</i>	58	<i>17</i>	83	<i>30</i>
Number of Order 62A sanctioned payments (without bills filed)	646	<i>427</i>	808	<i>539</i>	881	<i>619</i>	1,044	<i>757</i>	1,329	<i>987</i>
Total	743	<i>459</i>	891	<i>567</i>	938	<i>649</i>	1,102	<i>774</i>	1,412	<i>1,017</i>
Overall Acceptance Rate		62%		64%		69%		70%		72%

36. In the DC, there was a clear increasing trend in the number of Order 62A sanctioned payments on costs made and the number of payments accepted during the five years of the Post-CJR Periods. Moreover, a similar rising trend was observed for the acceptance rate of Order 62A sanctioned payments, with 62% in the first year rising to 72% in the fifth year.

(c) Sanctioned Offer

37. Sanctioned offer is an offer made (otherwise than by way of a payment into court) to settle claims or issues within claims (under Order 22) or a party's entitlement to costs (under Order 62A). Again, there are costs consequences should the sanctioned offer not be bettered after trial. It operates in a similar way and brings about similar benefits as the scheme of sanctioned payments.

38. The Judiciary does not have statistics on sanctioned offers, since they involve dealings between the parties outside the court, and there is no requirement for the parties to inform the court of the making of a sanctioned offer.

²⁰ Figures on number of Order 62A Sanctioned Payment Accepted (*in italic*) include those Form 93-Notice of Sanctioned Payment under O.62A accepted by way of the filing of Form 93A-Notice of Acceptance of Sanctioned Payment under O.62A within/ beyond the prescribed time of 14 days as at the report generation date, and therefore may be subject to change. Figures cited therein at Table 10.2 were generated approximately one to two months after the end date of each year in the Post-CJR Periods. To have a full picture on the operation of Order 62A procedure, total figures with position updated as at 20 May 2014 were 482, 584, 668, 787 and 1,017 respectively for the first, second, third, fourth and fifth years of the Post-CJR Periods.

The Judiciary has however gathered some information through questionnaires²¹. The Judiciary has also tried to collate from the Department of Justice (“DoJ”) and the Legal Aid Department (“LAD”) of the Government information relating to cases under their respective purview as below.

Table 11.1: Number of Order 22 and Order 62A Sanctioned Offers Received and Accepted by DoJ

	Post-CJR Periods					
	3 rd Year		4 th Year		5 th Year	
	Received	<i>Accepted</i>	Received	<i>Accepted</i>	Received	<i>Accepted</i>
Order 22	46	8	11	7	18	2
Order 62A	6	3	2	2	4	0
Total	52	11	13	9	22	2

39. DoJ has been collecting the statistics for cases under its purview since the third year of the Post-CJR Periods. The total number of sanctioned offers received and accepted fluctuated from year to year during the third to fifth years of the Post-CJR Periods and there does not seem to be any general pattern so far.

²¹ The court Registry has been sending out questionnaires since July 2009 to collect voluntary feedback on sanctioned offers after settlement has been reached among some or all of the parties. Over the past few years, the average response rate was 37% for the CFI and 51% for the DC. The information so collated may not therefore present a comprehensive picture.

Over the past few years up to end March 2014, for the CFI, the number of sanctioned offers made and accepted under Order 22 fluctuated, but with a more stabilizing trend over the third to fifth years of the Post-CJR Periods. On the other hand, the number of sanctioned offers made and accepted under Order 62A showed a slight decreasing trend. For the DC, the number of sanctioned offers made and accepted under Order 22 showed a decreasing trend. On the other hand, the number of offers made under Order 62A showed a decreasing trend, while the number accepted increased during the third to fifth year of the Post-CJR Periods.

Table 11.2: Number of Sanctioned Offers handled by LAD and Number of Cases settled by Sanctioned Offers

	Post-CJR Periods				
	1 st Year	2 nd Year	3 rd Year	4 th Year	5 th Year
Number of legally aided cases handled in-house	132	151	99	171	103
Number of cases settled by sanctioned offer	0	0	1	2	1

40. Out of the number of cases handled by LAD in-house, the numbers settled by sanctioned offers remained low over the first five years of the Post-CJR Periods.

(C) Mediation

41. One of the initiatives under CJR is to promote the wider use of mediation to facilitate early and satisfactory settlement of disputes. A Practice Direction 31 on “Mediation” applicable to all relevant civil cases in the CFI and the DC came into effect on 1 January 2010.

42. The Judiciary has since 2011 collated detailed statistics relating to mediation, including data relating to time, costs and success rates of mediation etc. Details are at **Annex B**.

43. As indicated in the above statistics, there is generally a steady increase in the number of mediation cases in the Post-CJR Periods which suggest a gradual change of litigation culture. Of the cases going through mediation, the percentage of them resulting in agreements ranged from 38% to 48% during the period from 2011 to 2014. With the court’s increased emphasis on mediation, more and more litigating parties are aware that mediation would be one of the means of alternative dispute resolution. They are also making more efforts in attempting mediation, particularly for those types of cases which are more conducive to mediation.

44. While the profession has gradually accepted mediation as a realistic approach in settling disputes, it will probably take some more time for them and their clients to get used to the change of culture completely.

45. In this regard, the Judiciary implemented a new set of Directions for case management summons in 2014. The Directions seek to reinforce the importance of identifying a suitable stage to try mediation. The Judiciary will also continue to encourage more use of mediation in certain types of cases.

46. The Judiciary welcomes the initiatives taken forward by the Government and the profession to promote the use of mediation. The Mediation Ordinance, which has come into effect since January 2013, seeks to provide a regulatory framework for mediation. The Ordinance sets out a clearer regime regarding important issues such as confidentiality and admissibility of mediation communications.

47. On the profession's side, the Hong Kong Mediation Accreditation Association Limited, which is a non-statutory industry-led body, has been established. It is a premier accreditation body for mediators in Hong Kong in discharging accreditation and disciplinary functions. Its establishment has helped boost the public's confidence in mediation and encourage them to attempt mediation.

48. The Judiciary's Mediation Information Office will continue to assist litigants in considering mediation as an alternative to litigation by providing them with relevant information on mediation, including the new initiatives above.

49. With collective efforts, it is hoped that the public confidence in mediation will be further enhanced.

(D) Costs Matters

50. To promote a sense of reasonable proportion and procedural economy in the conduct of proceedings is one of the underlying objectives of CJR. A crucial part of proper case management is the sensible handling of the issue of costs. CJR mandates that the decision on costs must take the underlying objectives into account.

51. So far, relatively few problems have been encountered in the determination of costs by the courts. The full impact of the reforms here has, however, yet to be seen.

(a) Summary Assessment of Costs

52. Under CJR, the amended Order 62 provides for summary assessment of costs. The court is empowered, when disposing of an interlocutory

application, to (a) make an assessment of costs payable in a summary and broad-brush way, rather than through a process of taxation whereby every item of costs in the receiving party's bill of costs becomes potentially subject to close scrutiny; and (b) order that the payment be made promptly unless otherwise directed by the court. The first feature aims to dispense with the elaborate and lengthy taxation procedures, thereby saving time and costs. The second feature is aimed at discouraging unwarranted interlocutory applications.

Table 12.1: Number of Summary Assessments of Costs in the CFI

CFI	Post-CJR Periods				
	1 st Year	2 nd Year	3 rd Year	4 th Year	5 th Year
Number of Summary Assessment of Costs	373	1,130 ²²	1,594 ²³	1,809 ²⁴	1,974 ²⁵

53. In the CFI, the number of summary assessments during the Post-CJR Periods increased significantly over the first five years of the Post-CJR Periods, with an accumulative increase of 4.29 times (1,974 cases over 373 cases).

²² With effect from September 2010, the systems have been enhanced to differentiate the summary assessment of costs by standard costs order made, i.e. without costs data details required and non-standard costs order made, i.e. with costs data details required. Amongst the 1,130 summary assessments of costs made in the CFI, there were 512 non-standard costs orders made with costs data details required, which included 117 records with oral applications from receiving parties but without supplying the statements of costs during hearings. The remaining 618 were standard costs orders.

²³ Amongst the 1,594 summary assessments of costs made in the CFI, there were 484 non-standard costs orders made with costs data details required, which included 121 records with oral applications from receiving parties but without supplying the statements of costs during hearings. The remaining 1,110 were standard costs orders.

²⁴ Amongst the 1,809 summary assessments of costs made in the CFI, there were 468 non-standard costs orders made with costs data details required, which included 146 records with oral applications from receiving parties but without supplying the statements of costs during hearings. The remaining 1,341 were standard costs orders.

²⁵ Amongst the 1,974 summary assessments of costs made in the CFI, there were 488 non-standard costs orders made with costs data details required, which included 125 records with oral applications from receiving parties but without supplying the statements of costs during hearings. The remaining 1,486 were standard costs orders.

Table 12.2: Number of Summary Assessments of Costs in the DC

DC	Post-CJR Periods				
	1 st Year	2 nd Year	3 rd Year	4 th Year	5 th Year
Number of Summary Assessment of Costs	1,103	2,222 ²⁶	3,119 ²⁷	2,476 ²⁸	2,641 ²⁹

54. In the DC, the number of summary assessment of costs fluctuated during the first five years of the Post-CJR Periods. But, on the whole, there was an accumulative increase of 2.39 times (2,641 cases over 1,103 cases).

55. It is a good sign to observe the growing number of summary assessments in general during the Post-CJR Periods. This new CJR initiative is invariably done for all interlocutory applications heard by Masters in both court levels.

(b) Taxation

56. The total number of provisional taxations by Chief Judicial Clerks, provisional taxations by Masters (without hearing) and formal taxations by Masters (with hearing) during the Post-CJR Periods are set out in the tables below.

²⁶ With effect from September 2010, the systems have been enhanced to differentiate the summary assessment of costs by standard costs order made, i.e. without costs data details required and non-standard costs order made, i.e. with costs data details required. Amongst the 2,222 summary assessments of costs made in the DC, there were 869 non-standard costs orders made with costs data details required, which included 287 records with oral applications from receiving parties but without supplying the statements of costs during hearings. The remaining 1,353 were standard costs orders.

²⁷ Amongst the 3,119 summary assessments of costs made in the DC, there were 769 non-standard costs orders made with costs data details required, which included 561 records with oral applications from receiving parties but without supplying the statements of costs during hearings. The remaining 2,350 were standard costs orders.

²⁸ Amongst the 2,476 summary assessments of costs made in the DC, there were 426 non-standard costs orders made with costs data details required, which included 271 records with oral applications from receiving parties but without supplying the statements of costs during hearings. The remaining 2,050 were standard costs orders.

²⁹ Amongst the 2,641 summary assessments of costs made in the DC, there were 415 non-standard costs orders made with costs data details required, which included 251 records with oral applications from receiving parties but without supplying the statements of costs during hearings. The remaining 2,226 were standard costs orders.

Table 13.1: Number of Taxations in the HC³⁰

HC	Post-CJR Periods				
	1 st Year	2 nd Year	3 rd Year	4 th Year	5 th Year
Provisional taxation by Chief Judicial Clerks	202	104	124	82	93
Provisional Taxation by Masters (without hearing)	133	98	89	66	61
Formal Taxation by Masters (with hearing) ³¹	206	141	177	175	187
Total	541	343³²	390³²	323³²	341³²

Table 13.2: Number of Taxations in the DC³³

DC	Post-CJR Periods				
	1 st Year	2 nd Year	3 rd Year	4 th Year	5 th Year
Provisional taxation by Chief Judicial Clerks	134	99	91	99	56
Provisional Taxation by Masters (without hearing)	24	70	39	31	21
Formal Taxation by Masters (with hearing) ³¹	98	129	108	126	145
Total	256	298³²	238³²	256³²	222³²

57. The number of taxations in the HC fluctuated during the Post-CJR Periods, while there was an overall downward trend in the DC. This was probably the result of the increased use of summary assessments as well as the extensive application of sanctioned payments. All these are moving along the right direction.

(i) *Provisional Taxation by Chief Judicial Clerks*

58. Under CJR, a Chief Judicial Clerk is empowered to conduct a provisional taxation if the amount of the bill of costs does not exceed

³⁰ Figures on number of taxations include bills (other than those criminal in nature) originated at other court levels and taxed in the HC.

³¹ There may be double counting in the statistics as parties might apply for taxation hearings after taxation without hearing. However, there should not be many of such cases.

³² The taxation figures captured here include all taxation bills handled by Chief Judicial Clerks and Masters, including those bills which require further actions after their handling (e.g. filing of allocatur).

³³ Figures on number of taxations include bills (other than those criminal in nature) originated at other court levels and taxed in the DC.

HK\$200,000. This initiative is intended to save time and costs through reducing the number of bills for taxation by Masters.

59. For the HC, the number of bills taxed and disposed of on paper without hearing by Chief Judicial Clerks fluctuated from year to year during the first five years of the Post-CJR Periods. No significant pattern can be observed and more time is required before a concrete conclusion can be drawn.

60. For the DC, the number for paper disposals by Chief Judicial Clerks without hearing remained similar in the second to fourth years of the Post-CJR Periods, though there was a drop in the fifth year.

(ii) Provisional Taxation on Paper by Masters³⁴

61. Provisional taxation by Masters is a new initiative under CJR. Under this new measure, a taxing Master can (a) conduct a provisional taxation on paper without a hearing and (b) make an order nisi as to the amount of costs to be awarded. The order nisi becomes absolute 14 days after it is made unless a party applies within the 14-day period for a hearing. Upon taxation, if the amount allowed does not materially exceed the amount allowed under the order nisi, the taxing Master may order the party who applied for the hearing to pay the costs of the hearing. Provisional taxation by Masters seeks to save time and costs through reducing the number of bills for formal taxation hearings.

62. In the HC, during the Post-CJR Periods, a total of 447 bills were taxed and disposed of on paper without hearing by Masters. The number of bills taxed and disposed of on paper each year without hearing by Masters was on a mild downward trend.

63. In the DC, during the Post-CJR Periods, a total of 185 bills in the DC were taxed and disposed of on paper without hearing by Masters. Similar to the CFI, the number of bills taxed and disposed of on paper without hearing by Masters was on a general decreasing trend.

(iii) Average Disposal Time

64. The numbers of bills filed and average disposal time for taxed bills during the Pre-CJR Period and Post-CJR Periods are set out in the tables below.

³⁴ Provisional taxation by Masters here refers to the provisional taxations submitted under Order 62, but not those submitted as interlocutory applications under Order 32, rule 11A.

Table 14.1: Number of bills filed and average disposal time for taxed bills in the HC³⁵

HC	Pre-CJR Period	Post-CJR Periods				
		1 st Year	2 nd Year	3 rd Year	4 th Year	5 th Year
Number of bills filed	1,152	712	702	577	541	588
Number of bills taxed ³⁶	647	623	331	370 ³⁷	314	337
Average Disposal Time (Days)	115	133	137	143	173	187

Table 14.2: Number of bills filed and average disposal time for taxed bills in the DC³⁸

DC	Pre-CJR Period	Post-CJR Periods				
		1 st Year	2 nd Year	3 rd Year	4 th Year	5 th Year
Number of bills filed	957	545	409	395	408	391
Number of bills taxed ³⁶	316	342	265	219 ³⁹	240 ⁴⁰	202
Average Disposal Time (Days)	83	128	129	137	156	178

65. The average disposal time in both the HC and the DC increased over the first five years of the Post-CJR Periods. This seems reasonable as the simple and straightforward bills should have been disposed of by summary assessments. The remaining more complex bills should therefore normally take a longer time to be taxed. Moreover, in the HC, there seemed to be a growing

³⁵ Figures on number of taxations include bills (other than those criminal in nature) originated at other court levels and taxed in the HC.

³⁶ Figures on number of bills taxed include bills taxed within the reporting period regardless of their bill filing dates.

³⁷ Four bills which exceptionally required more than three years for completing the taxation process were excluded from the calculation. Their delay was due to reasons beyond control.

³⁸ Figures on number of taxations include bills (other than those criminal in nature) originated at other court levels and taxed in the DC.

³⁹ Two bills which exceptionally required more than three years for completing the taxation process were excluded from the calculation. Their delay was due to reasons beyond control.

⁴⁰ One bill which exceptionally required more than three years for completing the taxation process was excluded from the calculation. Its delay was due to reasons beyond control.

trend for taxation bills of larger amounts which also increased the complexity of the taxation work. In the DC, a growing number of LIPs and minor non-compliances with the rules or court’s instructions are also some of the key contributing factors.

(c) Costs Claimed and Costs Allowed

(i) Under taxation

66. The percentage of costs claimed which were allowed under taxation in the HC and the DC during the Post-CJR Periods are set out in the tables below.

Table 15.1: Costs Claimed and Costs Allowed under Taxation in the HC⁴¹

HC	Post-CJR Periods				
	1 st Year	2 nd Year	3 rd Year	4 th Year	5 th Year
Percentage allowed (Total costs allowed / Total costs claimed)	Number of bills taxed	Number of bills taxed	Number of bills taxed	Number of bills taxed	Number of bills taxed
≤ 20%	18 (3%)	4 (2%)	0 (0%)	0 (0%)	4 (2%)
> 20% - 40%	27 (5%)	11 (4%)	8 (3%)	20 (9%)	11 (4%)
> 40% - 60%	73 (14%)	38 (15%)	34 (12%)	26 (12%)	52 (21%)
> 60% - 80%	146 (27%)	75 (29%)	75 (27%)	74 (35%)	108 (44%)
> 80%	277 (51%)	129 (50%)	165 (59%)	94 (44%)	73 (29%)
Total	541 (100%)	257 (100%)	282 (100%)	214 (100%)	248 (100%)

67. In the HC, for the first five years, for bills which were taxed with more than 60% of the total costs claimed, the annual percentage figures were comparable in the region of 73% to 86%.

⁴¹ Figures on number of taxations include bills (other than those criminal in nature) originated at other court levels and taxed in the HC.

Table 15.2: Costs Claimed and Costs Allowed under Taxation in the DC⁴²

DC	Post-CJR Periods				
	1 st Year	2 nd Year	3 rd Year	4 th Year	5 th Year
Percentage allowed (Total costs allowed / Total costs claimed)	Number of bills taxed	Number of bills taxed	Number of bills taxed	Number of bills taxed	Number of bills taxed
≤ 20%	7 (3%)	2 (1%)	1 (1%)	1 (1%)	0 (0%)
> 20% - 40%	12 (5%)	7 (4%)	6 (4%)	8 (5%)	5 (4%)
> 40% - 60%	60 (23%)	33 (18%)	27 (17%)	26 (16%)	26 (20%)
> 60% - 80%	108 (42%)	85 (48%)	69 (43%)	70 (43%)	53 (42%)
> 80%	69 (27%)	53 (29%)	57 (35%)	57 (35%)	43 (34%)
Total	256 (100%)	180 (100%)	160 (100%)	162 (100%)	127 (100%)

68. In the case of the DC, more than one-third of the bills taxed were allowed with more than 80% of the total costs claimed in the third to the fifth years of the Post-CJR Periods. The narrower gap between the total costs allowed and claimed, as compared to the HC, can probably be attributed to the easier and possibly more certain preparation of costs claimed because of the simpler nature of DC cases.

(ii) Under summary assessment of costs

69. Statistics on the percentage of costs claimed over costs allowed under summary assessment of costs in the CFI and the DC during the Post-CJR Periods are set out in the tables below.

⁴² Figures on number of taxations include bills (other than those criminal in nature) originated at other court levels and taxed in the DC.

Table 16.1: Costs Claimed and Costs Allowed under Summary Assessment of Costs in the CFI

CFI	Post-CJR Periods				
	1 st Year	2 nd Year	3 rd Year	4 th Year	5 th Year
Percentage allowed (Total costs allowed / Total costs claimed)	Number of summary assessment	Number of summary assessment	Number of summary assessment	Number of summary assessment	Number of summary assessment
≤ 20%	13 (3%)	7 (2%)	10 (3%)	3 (0.9%)	7 (2%)
> 20% - 40%	36 (10%)	26 (6%)	19 (5%)	21 (6.5%)	32 (9%)
> 40% - 60%	66 (18%)	71 (18%)	64 (18%)	61 (18.9%)	53 (14%)
> 60% - 80%	106 (28%)	98 (25%)	101 (28%)	103 (32.0%)	104 (29%)
> 80%	152 (41%)	193 (49%)	169 (46%)	134 (41.6%)	167 (46%)
Total	373⁴³ (100%)	395⁴³ (100%)	363⁴³ (100%)	322⁴³ (100%)	363⁴³ (100%)

70. In the CFI, the percentage figures show that the pattern of distribution remained more or less the same during the Post-CJR Periods.

⁴³ A receiving party might orally apply for costs without supplying a statement of costs during a hearing. In that regard, there normally was no “Total Costs Claimed” for the application but only with “Total Costs Allowed” granted by the court. In the first year of the Post-CJR Periods, these applications could not be identified owing to system constraint and were subsumed under the category of >80%. From the second year of the Post-CJR Periods onwards, systems were enhanced to give effect to capture and identify these applications. In the second, third, fourth and fifth years of the Post-CJR Periods, there were 117, 121, 146 and 125 records of this kind respectively which had not been included in the table.

Table 16.2: Costs Claimed and Costs Allowed under Summary Assessment of Costs in the DC

DC	Post-CJR Periods				
	1 st Year	2 nd Year	3 rd Year	4 th Year	5 th Year
Percentage allowed (Total costs allowed / Total costs claimed)	Number of summary assessment	Number of summary assessment	Number of summary assessment	Number of summary assessment	Number of summary assessment
≤ 20%	0 (N/A)	4 (1%)	1 (0.5%)	1 (1%)	5 (3%)
> 20% - 40%	12 (1%)	14 (2%)	18 (8.7%)	15 (10%)	19 (12%)
> 40% - 60%	15 (1%)	30 (5%)	35 (16.8%)	23 (15%)	40 (24%)
> 60% - 80%	33 (3%)	46 (8%)	61 (29.3%)	63 (40%)	35 (21%)
> 80%	1,043 ⁴⁴ (95%)	488 (84%)	93 (44.7%)	53 (34%)	65 (40%)
Total	1,103⁴⁵ (100%)	582⁴⁵(100%)	208⁴⁵(100%)	155⁴⁵(100%)	164⁴⁵(100%)

71. In the case of the DC, the figures in the first year of the Post-CJR Periods were not directly comparable with those in the second to fifth years. This is because of the exclusion since the second year of the large number of cases involving litigants in person where only verbal claims were made during hearing with no statement of costs submitted. In the third to fifth years, the percentage of cases with the costs allowed amounting to over 60% of the costs claimed ranged from 61% to 74%.

(E) Litigants in Person

72. The number of hearings involving LIPs has been on the rise in general. This presents a challenge to the courts. A multi-faceted approach is being

⁴⁴ In the case of the DC, most of the assessments (about 95%) fell within this range of percentage allowed versus costs claimed. The high percentage in the DC was due to the vast number of cases (652) of summary assessments with cost amount claimed less than or equal to \$1,000. These cases mainly involve litigants in person for which the usual amount of \$200/\$100 is allowed. The exceptionally high percentage in the first year also included cases where there was no statement of costs and the verbal claims made during hearing were input to the computer system as equal to the amount allowed. The system was enhanced to exclude such cases in the second, third, fourth and fifth years for analysis.

⁴⁵ A receiving party might orally apply for costs without supplying a statement of costs during a hearing. In that regard, there normally was no “Total Costs Claimed” for the application but only with “Total Costs Allowed” granted by the court. In the first year of the Post-CJR Periods, these applications could not be identified owing to system constraint and were subsumed under the category of >80%. From the second year of the Post-CJR Periods onwards, systems were enhanced to capture and identify these applications. In the second, third, fourth and fifth years of the Post-CJR Periods, there were 287, 561, 271 and 251 records of this kind respectively which had not been included in the table.

adopted. The change of culture in the conduct of dispute resolution and the use of mediation will contribute to the solution. The provision of legal aid will also help. Separately, the Government’s pilot scheme on LIPs should also be able to provide assistance for LIPs.

73. The number of hearings involving LIPs being heard at different stages (i.e. interlocutory applications, CMS, CMCs, PTRs and trials) are set out below.

Table 17.1: Number of Hearings Involving LIPs⁴⁶ Being Heard at Different Stages in the CFI

CFI	Post-CJR Periods				
	1 st Year	2 nd Year	3 rd Year	4 th Year	5 th Year
Interlocutory applications (% against total hearings)	942 (36.9%)	916 (39.5%)	954 (40.7%)	1,064 (41.5%)	1,543 (52.0%)
Case management summons (% against total hearings)	60 (26.2%)	69 (26.3%)	60 (23.3%)	85 (32.1%)	86 (32.3%)
CMC (% against total hearings)	125 (18.0%)	161 (23.1%)	102 (17.7%)	125 (21.1%)	129 (20.3%)
PTR (% against total hearings)	62 (26.0%)	58 (25.4%)	42 (22.3%)	43 (20.7%)	61 (28.4%)
Trial (% against total hearings)	82 (34.3%)	76 (35.0%)	46 (27.5%)	41 (22.9%)	76 (34.9%)

74. In the CFI, among the various stages of litigation, there was a general increasing trend for the percentage of hearings involving LIPs in interlocutory applications over the first five years of the Post-CJR Periods. On the other hand, except for the fifth year, the percentages of hearings involving LIPs at the stages of PTR and trial were on a general decreasing trend during the Post-CJR Periods. This apparently indicates that litigating parties prefer engaging legal representatives during these late stages of litigation, though other factors such as affordability may also come into play.

⁴⁶ Figures on number of hearings include hearings under the respective stages of litigation (i.e. interlocutory applications, CMS, CMC, PTR or trial) with their heard dates within the reporting period. Any one of the parties not legally represented in the hearing will be counted as hearing involving unrepresented litigants (LIPs).

Table 17.2: Number of Hearings Involving LIPs⁴⁷ Being Heard at Different Stages in the DC

DC	Post-CJR Periods				
	1 st Year	2 nd Year	3 rd Year	4 th Year	5 th Year
Interlocutory applications (% against total hearings)	428 (48.9%)	443 (51.4%)	354 (50.7%)	355 (54.0%)	487 (55.4%)
Case management summons (% against total hearings)	432 (60.2%)	330 (61.2%)	292 (62.9%)	289 (65.5%)	241 (54.6%)
CMC (% against total hearings)	327 (50.2%)	364 (53.8%)	304 (50.5%)	243 (51.7%)	205 (53.2%)
PTR (% against total hearings)	81 (65.9%)	67 (46.2%)	69 (61.6%)	85 (56.7%)	74 (47.1%)
Trial (% against total hearings)	159 (52.7%)	148 (47.4%)	124 (61.4%)	135 (57.9%)	112 (51.4%)

75. In the DC, the difference in the percentages of hearings involving LIPs at different stages of litigation was less obvious than that in the CFI. There was a mild increasing trend for the percentage of hearings involving LIPs in interlocutory applications, as compared with other stages of litigation. As regards the percentages of hearings involving LIPs at the PTR and trial stages, there seemed to be more year-on-year fluctuations and there was not a clear trend. More time may be required for further observation before more concrete conclusions can be drawn.

76. With the implementation of CJR, the Judiciary continues to provide appropriate assistance for LIPs. The facilities and services in the Resource Centre for Unrepresented Litigants serve to assist them in dealing with the court rules and procedures in the conduct of their cases under CJR.

Table 18.1: Number of enquiries at Resource Centre

	Pre-CJR Period	Post-CJR Periods				
		1 st Year	2 nd Year	3 rd Year	4 th Year	5 th Year
Number of enquiries at Resource Centre	13,893	15,189	14,339	13,888	15,483	17,713

⁴⁷ Figures on number of hearings include hearings under the respective stages of litigation (i.e. interlocutory applications, CMS, CMC, PTR or trial) with their heard dates within the reporting period. Any one of the parties not legally represented in the hearing will be counted as hearing involving LIPs.

77. The number of enquiries at the Resource Centre increased by 11% and 14% year-on-year respectively in the fourth and fifth years of the Post-CJR Periods, after a general mild declining trend in the first three years. This is probably because there were more cases in the fourth and fifth years in the CFI and people were getting more and more familiar with the services provided by the Resource Centre.

(F) How Some “Individual Changes” Work Out In Practice

(a) Appeals

(i) Number of Applications for Leave to Appeal

78. The numbers of applications for leave to appeal against CFI’s interlocutory decisions handled by the Court of Appeal during the Post-CJR Periods are set out in the table below.

Table 19.1: Number of Applications for Leave to Appeal against CFI’s Interlocutory Decisions handled by the Court of Appeal⁴⁸

	Pre-CJR Period	Post-CJR Periods				
		1 st Year	2 nd Year	3 rd Year	4 th Year	5 th Year
Number of leave applications	22	52	49	65	55	49

79. The numbers of applications for leave to appeal fluctuated from year to year during the first five years of the Post-CJR Periods, and there was a drop of about 11% year-on-year in the fifth year.

⁴⁸ Figures in this table only include the applications for leave to appeal from the CFI handled by the Court of Appeal, but not such leave applications examined by CFI judges.

(ii) Number of Interlocutory Appeals

Table 20.1: Number of Interlocutory Appeals from the CFI to the Court of Appeal⁴⁹

	Pre-CJR Period	Post-CJR Periods				
		1 st Year	2 nd Year	3 rd Year	4 th Year	5 th Year
Number of Interlocutory Appeals	179	78	61	62	28	12

80. The numbers of interlocutory appeals filed during the Post-CJR Periods dropped significantly during the five years of the Post-CJR Periods⁵⁰. The year-on-year drop in the fifth year was as high as 57%. This shows that more stringent requirement of leave seems to have successfully reduced the number of unmeritorious interlocutory appeals from the CFI to the Court of Appeal and CJR is moving towards the right direction. That said, more efforts are now needed to handle such leave applications.

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⁴⁹ Figures in this table include all interlocutory appeals with leave granted either by the CFI Judges or the Court of Appeal. As its basis is different from that for Table 19.1 above, the figures in this table may not be a subset of those figures in Table 19.1.

⁵⁰ The number of interlocutory appeals in the fourth year decreased drastically year-on-year by 60%. One of the possible reasons was the directions given by the Chief Judge of the High Court in February 2012 after a judgment indicating that appeals filed pursuant to Order 59 rule 21 of the Rules of the High Court (Cap. 4A) would be treated as final appeals (*Champion Concord Ltd and Another v Lau Koon Foo and Another; Lau Koon Foo v Champion Concord Ltd and Another* [2011] 14 HKCFAR 837). As such, those appeals were excluded from the category of interlocutory appeals above and be re-classified as final appeals.

Annex B

Mediation Statistics for the Civil Justice Reform Cases

The statistics below are collated by the Judiciary since 2011. Unlike the other Civil Justice Reform (“CJR”) statistics, the figures in this annex are prepared on a calendar year basis, rather than from 1 April of a year to 31 March of the following year.

2. Various Practice Directions set out a mechanism to facilitate parties to enter into dialogue on mediation. Empirical data is also collected from cases in court where mediation has taken place. The number of mediation related documents and that of cases directed by the court to report progress of mediation, together with summary of the mediation reports of those cases, where Civil Justice Reform is applicable (“CJR related cases”), are tabulated below. It should be noted that: a) only those mediation reports filed with filing date falls within the reporting period would be included; and b) some cases have undergone mediation without proceeding further with the proceedings.

3. Please also note that mediation services are provided by mediators in the private sector. Parties would usually directly approach the accredited mediators or professional bodies outside the Judiciary to seek mediation.

Number of Mediation related documents filed in the Court of First Instance (“CFI”)¹

	2011	2012	2013	2014
Mediation Certificate	2,759	2,977	2,878	3,271
Mediation Notice	1,030	1,146	1,164	1,223
Mediation Response	949	1,062	1,031	1,078
Mediation Minutes	444	508	541	602

¹ It only includes cases commenced by the 6 CJR related case types in the CFI, i.e. Civil Action (HCA), Admiralty Action (HCAJ), Commercial Action (HCCL), Construction and Arbitration Proceedings (HCCT), Miscellaneous Proceedings (HCMP) and Personal Injuries Action (HCPI).

Number of Mediation related documents filed in the District Court (“DC”)²

	2011	2012	2013	2014
Mediation Certificate	8,810	9,126	9,014	9,628
Mediation Notice	1,459	1,663	1,714	1,742
Mediation Response	1,008	1,127	1,196	1,214
Mediation Minutes	223	308	372	440

Number of cases directed by the Court to report the Progress of Mediation in the CFI

	2011	2012	2013	2014
CJR related cases (excluding HCPI cases)	338	244	195	151
CJR related cases (HCPI cases only)	802	795	677	796
Total	1,140	1,039	872	947

Number of cases directed by the Court to report the Progress of Mediation in the DC

	2011	2012	2013	2014
CJR related cases (excluding DCPI cases)	419	381	409	368
CJR related cases (DCPI cases only)	1,751	1,614	1,504	1,418
Total	2,170	1,995	1,913	1,786

² It only includes cases commenced by the 6 CJR related case types in the DC, i.e. Civil Action (DCCJ), Employee’s Compensation Case (DCEC), Equal Opportunities Action (DCEO), Miscellaneous Proceedings (DCMP), Personal Injuries Action (DCPI) and Tax Claim (DCTC).

Average Duration between the date of Appointing Mediator to the date of Completion of the Whole Mediation Process (in days) for Cases filed in the CFI³

Year	Days⁴
2011	Not Available
2012	39
2013	43
2014	40

Average Duration between the date of Appointing Mediator to the date of Completion of the Whole Mediation Process (in days) for Cases filed in the DC³

Year	Days⁴
2011	Not Available
2012	27
2013	29
2014	33

³ It only refers to the number of cases with mediation reports/ letters filed with filing date falls within the captioned period.

⁴ It is arrived by having the total number of days reported for the mediation process, divided by the number of cases with duration reported over that year.

Summary of Mediation Reports filed in the CFI in 2011⁵

4. Out of the mediated cases, 38% had resulted in agreements. 62% of the mediated cases did not lead to any agreement.

5. It took, on the average, 5 hours to reach a full agreement, 9 hours to reach a partial agreement and 5 hours to reach no agreement. Partial agreement cases required longer time to settle, reflecting that perhaps these involved difficult and complicated issues.

6. 132 reported cases did not go through mediation because they could settle or round up their cases on their own motions through case management procedures.

7. Regarding the cost of mediated cases, it was, on average HK\$17,000 per case / HK\$3,100 per hour for a case with full agreement; HK\$30,100 per case / HK\$3,400 per hour for a case with partial agreement and HK\$17,500 per case / HK\$3,800 per hour for a case without agreement.

⁵ It only refers to the number of cases with mediation reports/ letters filed with filing date falls in year 2011.

CFI in 2011⁶	Number of cases (%)	Average Time spent on Mediation per case (hour)	Average Cost of Mediation per case (HK\$)
Cases with Full agreement	144 (34%)	5	\$17,000 per case/ \$3,100 per hour
Cases with Partial agreement	15 (4%)	9	\$30,100 per case/ \$3,400 per hour
Total number of cases with full/partial agreement	159 (38%)	-	-
Cases with No agreement	262 (62%)	5	\$17,500 per case/ \$3,800 per hour
Sub-total (Cases with Mediation)		421	
Cases settled/ withdrawn/ discontinued without mediation ⁷		132	
Others (e.g. mediation adjourned, etc)		4	
Total:		557	

⁶ It only refers to the number of cases with mediation reports/ letters filed with filing date falls in year 2011.

⁷ Amongst the mediation reports filed in year 2011, 132 cases with notification to the Court that despite the Court's suggestion, the cases were settled/ withdrawn/ discontinued without mediation.

Summary of Mediation Reports filed in the DC in 2011⁸

8. Out of the mediated cases, 48% had resulted in agreements. 52% of the mediated cases did not lead to any agreement.

9. It took, on the average, 6 hours to reach a full agreement, 6 hours to reach a partial agreement and 4 hours to reach no agreement.

10. 806 reported cases did not go through mediation because they could settle or round up their cases on their own motions through case management procedures.

11. Regarding the cost of mediated cases, it was, on average HK\$14,300 per case / HK\$2,500 per hour for a case with full agreement; HK\$23,800 per case / HK\$4,000 per hour for a case with partial agreement and HK\$10,400 per case / HK\$2,500 per hour for a case without agreement.

⁸ It only refers to the number of cases with mediation reports/ letters filed with filing date falls in year 2011.

DC in 2011⁹	Number of cases (%)	Average Time spent on Mediation per case (hour)	Average Cost of Mediation per case (HK\$)
Cases with Full agreement	120 (46%)	6	\$14,300 per case/ \$2,500 per hour
Cases with Partial agreement	4 (2%)	6	\$23,800 per case/ \$4,000 per hour
Total number of cases with full/partial agreement	124 (48%)	-	-
Cases with No agreement	135 (52%)	4	\$10,400 per case/ \$2,500 per hour
Sub-total (Cases with Mediation)		259	
Cases settled/ withdrawn/ discontinued without mediation ¹⁰		806	
Others (e.g. mediation adjourned, etc)		5	
Total:		1,070	

⁹ It only refers to the number of cases with mediation reports/ letters filed with filing date falls in year 2011.

¹⁰ Amongst the mediation reports filed in year 2011, 806 cases with notification to the Court that despite the Court's suggestion, the cases were settled/ withdrawn/ discontinued without mediation.

Summary of Mediation Reports filed in the CFI in 2012¹¹

12. Out of the mediated cases, 38% had resulted in agreements. 62% of the mediated cases did not lead to any agreement. However, out of the mediated cases without any agreement, 49 cases eventually disposed of within 6 months.

13. Ultimately the settlement rate was **46%**. It was measured by adding the number of cases with settlement by mediation and those not settling through mediation but disposed of within 6 months afterwards, divided by the total number of cases with mediation over that year.

14. In addition, 191 reported cases did not go through mediation because they could settle or round up their cases on their own motions through case management procedures.

15. Out of the mediated cases, it took, on the average, 6 hours to reach a full agreement, 4 hours to reach a partial agreement and 5 hours to reach no agreement.

16. Regarding the cost of mediated cases, it was, on average HK\$18,200 per case / HK\$3,200 per hour for a case with full agreement; HK\$19,500 per case / HK\$4,400 per hour for a case with partial agreement and HK\$17,100 per case / HK\$3,600 per hour for a case without agreement.

¹¹ It only refers to the number of cases with mediation reports/ letters filed with filing date falls in year 2012.

CFI in 2012¹²	Number of cases (%)	Average Time spent on Mediation per case (hour)	Average Cost of Mediation per case (HK\$)
Cases with Full agreement	212 (37%)	6	\$18,200 per case/ \$3,200 per hour
Cases with Partial agreement	5 (1%)	4	\$19,500 per case/ \$4,400 per hour
Total number of cases with full/partial agreement	217 (38%)	-	-
Cases with No agreement	358 (62%)	5	\$17,100 per case/ \$3,600 per hour
Sub-total (Cases with Mediation)	575		
Cases not settled through mediation but disposed of within 6 months	49		
Total number of cases with settlement/ rate¹³	266 (46%)		
Cases settled/ withdrawn/ discontinued without mediation ¹⁴	191		
Others (e.g. mediation adjourned, etc)	0		
Total:	766		

¹² It only refers to the number of cases with mediation reports/ letters filed with filing date falls in year 2012.

¹³ It is measured by adding the number of cases with settlement (full or partial) by mediation and those not settling through mediation but disposed of within 6 months afterwards, divided by the total number of cases with mediation over that year.

¹⁴ Amongst the mediation reports/ letters filed in year 2012, 191 cases with notification to the Court that despite the Court's suggestion, the cases were settled/ withdrawn/ discontinued without mediation.

Summary of Mediation Reports filed in the DC in 2012¹⁵

17. Out of the mediated cases, 42% had resulted in agreements. 58% of the mediated cases did not lead to any agreement. However, out of the mediated cases without any agreement, 33 cases eventually disposed of within 6 months.

18. Ultimately the settlement rate was **52%**. It was measured by adding the number of cases with settlement by mediation and those not settling through mediation but disposed of within 6 months afterwards, divided by the total number of cases with mediation over that year.

19. In addition, 1,362 reported cases did not go through mediation because they could settle or round up their cases on their own motions through case management procedures.

20. Out of the mediated cases, it took, on the average, 5 hours to reach a full agreement, 3 hours to reach a partial agreement and 4 hours to reach no agreement.

21. Regarding the cost of mediated cases, it was, on average HK\$13,100 per case / HK\$2,900 per hour for a case with full agreement; HK\$11,700 per case / HK\$3,700 per hour for a case with partial agreement and HK\$11,400 per case / HK\$3,100 per hour for a case without agreement.

¹⁵ It only refers to the number of cases with mediation reports/ letters filed with filing date falls in year 2012.

DC in 2012¹⁶	Number of cases (%)	Average Time spent on Mediation per case (hour)	Average Cost of Mediation per case (HK\$)
Cases with Full agreement	141 (40%)	5	\$13,100 per case/ \$2,900 per hour
Cases with Partial agreement	6 (2%)	3	\$11,700 per case/ \$3,700 per hour
Total number of cases with full/partial agreement	147 (42%)	-	-
Cases with No agreement	202 (58%)	4	\$11,400 per case/ \$3,100 per hour
Sub-total (Cases with Mediation)	349		
Cases not settled through mediation but disposed of within 6 months	33		
Total number of cases with settlement/ rate¹⁷	180 (52%)		
Cases settled/ withdrawn/ discontinued without mediation ¹⁸	1,362		
Others (e.g. mediation adjourned, etc)	1		
Total:	1,712		

¹⁶ It only refers to the number of cases with mediation reports/ letters filed with filing date falls in year 2012.

¹⁷ It is measured by adding the number of cases with settlement (full or partial) by mediation and those not settling through mediation but disposed of within 6 months afterwards, divided by the total number of cases with mediation over that year.

¹⁸ Amongst the mediation reports/ letters filed in year 2012, 1,362 cases with notification to the Court that despite the Court's suggestion, the cases were settled/ withdrawn/ discontinued without mediation.

Summary of Mediation Reports filed in the CFI in 2013¹⁹

22. Out of the mediated cases, 45% had resulted in agreements. 55% of the mediated cases did not lead to any agreement. However, out of the mediated cases without any agreement, 77 cases eventually disposed of within 6 months.

23. Ultimately the settlement rate was **57%**. It was measured by adding the number of cases with settlement by mediation and those not settling through mediation but disposed of within 6 months afterwards, divided by the total number of cases with mediation over that year.

24. In addition, 139 reported cases did not go through mediation because they could settle or round up their cases on their own motions through case management procedures.

25. Out of the mediated cases, it took, on the average, 5 hours to reach a full agreement, 7 hours to reach a partial agreement and 4 hours to reach no agreement.

26. Regarding the cost of mediated cases, it was, on average HK\$17,300 per case / HK\$3,400 per hour for a case with full agreement; HK\$23,500 per case / HK\$3,200 per hour for a case with partial agreement and HK\$15,200 per case / HK\$3,900 per hour for a case without agreement.

¹⁹ It only refers to the number of cases with mediation reports/ letters filed with filing date falls in year 2013.

CFI in 2013²⁰	Number of cases (%)	Average Time spent on Mediation per case (hour)	Average Cost of Mediation per case (HK\$)
Cases with Full agreement	281 (44%)	5	\$17,300 per case/ \$3,400 per hour
Cases with Partial agreement	5 (1%)	7	\$23,500 per case/ \$3,200 per hour
Total number of cases with full/partial agreement	286 (45%)	-	-
Cases with No agreement	351 (55%)	4	\$15,200 per case/ \$3,900 per hour
Sub-total (Cases with Mediation)		637	
Cases not settled through mediation but disposed of within 6 months		77	
Total number of cases with settlement/ rate²¹		363 (57%)	
Cases settled/ withdrawn/ discontinued without mediation ²²		139	
Others (e.g. mediation adjourned, etc)		3	
Total:		779	

²⁰ It only refers to the number of cases with mediation reports/ letters filed with filing date falls in year 2013.

²¹ It is measured by adding the number of cases with settlement (full or partial) by mediation and those not settling through mediation but disposed of within 6 months afterwards, divided by the total number of cases with mediation over that year.

²² Amongst the mediation reports/ letters filed in year 2013, 139 cases with notification to the Court that despite the Court's suggestion, the cases were settled/ withdrawn/ discontinued without mediation.

Summary of Mediation Reports filed in the DC in 2013²³

27. Out of the mediated cases, 42% had resulted in agreements. 58% of the mediated cases did not lead to any agreement. However, out of the mediated cases without any agreement, 54 cases eventually disposed of within 6 months.

28. Ultimately the settlement rate was **54%**. It was measured by adding the number of cases with settlement by mediation and those not settling through mediation but disposed of within 6 months afterwards, divided by the total number of cases with mediation over that year.

29. In addition, 1,154 reported cases did not go through mediation because they could settle or round up their cases on their own motions through case management procedures.

30. Out of the mediated cases, it took, on the average, 5 hours to reach a full agreement, 5 hours to reach a partial agreement and 3 hours to reach no agreement.

31. Regarding the cost of mediated cases, it was, on average HK\$13,800 per case / HK\$2,900 per hour for a case with full agreement; HK\$17,400 per case / HK\$3,200 per hour for a case with partial agreement and HK\$10,400 per case / HK\$3,000 per hour for a case without agreement.

²³ It only refers to the number of cases with mediation reports/ letters filed with filing date falls in year 2013.

DC in 2013²⁴	Number of cases (%)	Average Time spent on Mediation per case (hour)	Average Cost of Mediation per case (HK\$)
Cases with Full agreement	181 (41%)	5	\$13,800 per case/ \$2,900 per hour
Cases with Partial agreement	5 (1%)	5	\$17,400 per case/ \$3,200 per hour
Total number of cases with full/partial agreement	186 (42%)	-	-
Cases with No agreement	255 (58%)	3	\$10,400 per case/ \$3,000 per hour
Sub-total (Cases with Mediation)		441	
Cases not settled through mediation but disposed of within 6 months		54	
Total number of cases with settlement/ rate²⁵		240 (54%)	
Cases settled/ withdrawn/ discontinued without mediation ²⁶		1,154	
Others (e.g. mediation adjourned, etc)		2	
Total:		1,597	

²⁴ It only refers to the number of cases with mediation reports/ letters filed with filing date falls in year 2013.

²⁵ It is measured by adding the number of cases with settlement (full or partial) by mediation and those not settling through mediation but disposed of within 6 months afterwards, divided by the total number of cases with mediation over that year.

²⁶ Amongst the mediation reports/ letters filed in year 2013, 1,154 cases with notification to the Court that despite the Court's suggestion, the cases were settled/ withdrawn/ discontinued without mediation.

Summary of Mediation Reports filed in the Court of First Instance in 2014²⁷

32. Out of the mediated cases, 48% had resulted in agreements. 52% of the mediated cases did not lead to any agreement. However, out of the mediated cases without any agreement, 106 cases eventually disposed of within 6 months.

33. Ultimately the settlement rate was **65%**. It was measured by adding the number of cases with settlement by mediation and those not settling through mediation but disposed of within 6 months afterwards, divided by the total number of cases with mediation over that year.

34. In addition, 172 reported cases did not go through mediation because they could settle or round up their cases on their own motions through case management procedures.

35. Out of the mediated cases, it took, on the average, 5 hours to reach a full agreement, 5 hours to reach a partial agreement and 4 hours to reach no agreement.

36. Regarding the cost of mediated cases, it was, on average HK\$18,400 per case / HK\$3,800 per hour for a case with full agreement; HK\$11,000 per case / HK\$2,400 per hour for a case with partial agreement and HK\$17,400 per case / HK\$4,200 per hour for a case without agreement.

²⁷ It only refers to the number of cases with mediation reports/ letters filed with filing date falls in year 2014.

CFI in 2014²⁸	Number of cases (%)	Average Time spent on Mediation per case (hour)	Average Cost of Mediation per case (HK\$)
Cases with Full agreement	301 (47%)	5	\$18,400 per case/ \$3,800 per hour
Cases with Partial agreement	4 (1%)	5	\$11,000 per case/ \$2,400 per hour
Total number of cases with full/partial agreement	305 (48%)	-	-
Cases with No agreement	327 (52%)	4	\$17,400 per case/ \$4,200 per hour
Sub-total (Cases with Mediation)	632		
Cases not settled through mediation but disposed of within 6 months	106		
Total number of cases with settlement/ rate²⁹	411 (65%)		
Cases settled/ withdrawn/ discontinued without mediation ³⁰	172		
Others (e.g. mediation adjourned, etc)	1		
Total:	805		

²⁸ It only refers to the number of cases with mediation reports/ letters filed with filing date falls in year 2014.

²⁹ It is measured by adding the number of cases with settlement (full or partial) by mediation and those not settling through mediation but disposed of within 6 months afterwards, divided by the total number of cases with mediation over that year.

³⁰ Amongst the mediation reports/ letters filed in year 2014, 172 cases with notification to the Court that despite the Court's suggestion, the cases were settled/ withdrawn/ discontinued without mediation.

Summary of Mediation Reports filed in the District Court in 2014³¹

37. Out of the mediated cases, 45% had resulted in agreements. 55% of the mediated cases did not lead to any agreement. However, out of the mediated cases without any agreement, 78 cases eventually disposed of within 6 months.

38. Ultimately the settlement rate was **65%**. It was measured by adding the number of cases with settlement by mediation and those not settling through mediation but disposed of within 6 months afterwards, divided by the total number of cases with mediation over that year.

39. In addition, 1,078 reported cases did not go through mediation because they could settle or round up their cases on their own motions through case management procedures.

40. Out of the mediated cases, it took, on the average, 4 hours to reach a full agreement, 7 hours to reach a partial agreement and 4 hours to reach no agreement.

41. Regarding the cost of mediated cases, it was, on average HK\$12,900 per case / HK\$3,000 per hour for a case with full agreement; HK\$14,500 per case / HK\$2,200 per hour for a case with partial agreement and HK\$10,500 per case / HK\$3,100 per hour for a case without agreement.

³¹ It only refers to the number of cases with mediation reports/ letters filed with filing date falls in year 2014.

DC in 2014³²	Number of cases (%)	Average Time spent on Mediation per case (hour)	Average Cost of Mediation per case (HK\$)
Cases with Full agreement	175 (44%)	4	\$12,900 per case/ \$3,000 per hour
Cases with Partial agreement	3 (1%)	7	\$14,500 per case/ \$2,200 per hour
Total number of cases with full/partial agreement	178 (45%)	-	-
Cases with No agreement	219 (55%)	4	\$10,500 per case/ \$3,100 per hour
Sub-total (Cases with Mediation)		397	
Cases not settled through mediation but disposed of within 6 months		78	
Total number of cases with settlement/ rate³³		256 (65%)	
Cases settled/ withdrawn/ discontinued without mediation ³⁴		1,078	
Others (e.g. mediation adjourned, etc)		4	
Total:		1,479	

³² It only refers to the number of cases with mediation reports/ letters filed with filing date falls in year 2014.

³³ It is measured by adding the number of cases with settlement (full or partial) by mediation and those not settling through mediation but disposed of within 6 months afterwards, divided by the total number of cases with mediation over that year.

³⁴ Amongst the mediation reports/ letters filed in year 2014, 1,078 cases with notification to the Court that despite the Court's suggestion, the cases were settled/ withdrawn/ discontinued without mediation.