

Joint Mediation Helpline Office
Report on the Study on the Needs, Practice and Procedures of SME in
Resolving Disputes in Hong Kong

1. Background

- 1.1 For the purpose of studying the common disputes encountered by SMEs in Hong Kong, and their existing dispute resolution system (including company policies, etc.), the Joint Mediation Helpline Office ("JMHO") has obtained funding from the SME Development Fund administered by the Trade and Industry Department of the Hong Kong Government to carry out a project with this goal.
- 1.2 The Project title is "SME Dispute Resolution Centre- Enhancing SMEs' Competitiveness by Resolving Commercial Disputes Effectively". One of the deliverables of the project is to conduct company visits and study, to find out the common disputes SMEs encountered and their way of coping with them.
- 1.3 Findings and suggestions resulted from the visits and study are now summarized in this report.

2. Methodology

- 2.1 During the period from June 2017 to May 2019, JMHO promoted activities to be delivered under this project sponsored by the SME Development Fund during exhibitions, seminars and workshops in Hong Kong. Interested companies signed up with JMHO to join the list of candidates for the purpose of conducting more in-depth interviews and company visits if feasible. JMHO talked to the contact persons of the SME and decided if a particular company would be suitable for conducting researches and interview.
- 2.2 As a result, six companies were selected as interviewees for the current study.
- 2.3 These companies are SMEs from the innovation and technology sector, the construction and renovation sector, and other sectors. By interviewing these companies, better dispute resolution approach for these sectors and SME as a whole is devised.

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2.4 The staff number of the six SMEs ranged from 5 to 21. All of them carried on business in Hong Kong.

3. **Findings**

3.1 The most common type of disputes faced by SMEs in Hong Kong involves internal employer-employee disputes, followed by customer services disputes.

3.1.1 *Employment disputes*

- i. Five out of the six interviewed SMEs reported that the type of disputes which they most frequently encountered involved employer-employee disputes.
- ii. For example, one company expressed grave concerns over the disputes caused by the old and new employment packages adopted by the company at different points of time. Some employees were employed under the old package, which was apparently offered much better welfare to employees. While the newly employed had to adopt the new package which was less favourable. Gradually, the employees were divided into two camps- those under the old package, and those under the new package. The newly employed colleagues felt unfair and deprived of the rightful welfare benefits. On the other hand, those employed under the old package were more senior in the company and very often refused to follow their seniors' instructions. Also, due to the conflicts between the two camps of employees, the employees under different employment packages often refused to communicate directly with the other side (e.g. they only wrote emails to communicate but did not talk to each other). Even minor daily operations (such as turning on and off the air conditioning system or lighting system) could trigger a lot of arguments and tension among the two camps.
- iii. Other companies also expressed that internal conflicts are the most prevalent conflicts that they have to solve in their daily operation.

3.1.2 *Customer disputes*

- i. Three out of the six interviewed SMEs reported that they frequently encountered consumer disputes.

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- ii. One company expressed concerns over some customers who purchased the company's products or services but then reneged on the purchase agreement without proper cause and demanded a refund. There were also suspected incidences of having disgruntled customers spreading malicious statements against the company on the internet to denigrate the company's reputation. All these incidences caused difficulties and embarrassments to the company, and affected the normal business operation.
- iii. Another company also encountered disputes with customers who signed quotations for services but then disputed that the deliverables under the quotation during the implementation of the construction project, saying that the materials used for the deliverables were not up to the standard required. For example, the signed quotation described the use of a certain construction material for delivering the service, but then the customer later required a higher grade (and more expensive) material to be used. The customer said that the quotation should have implied that the customer could change the materials used. Such kind of disputes with customers was prevalent and common.
- iv. It appears that for SMEs in Hong Kong, customers disputes are one of the most prevalent types of conflicts that they have to face in their daily business operation.

3.2 SMEs in Hong Kong have not established a formal conflict management system.

- 3.2.1 All six companies reported that they did not have a formally established internal conflict management system.
- 3.2.2 Four out of six companies said they have not designated any internal officer or department to deal with conflict resolution. The remaining two companies said that they designated the Human Resources (HR) Department, or the HR Department together with the Administrative Department, to handle internal and employment related conflicts. Very often the boss was also involved in deciding how to resolve a conflict.
- 3.2.3 All six companies did not have officers specifically trained for dispute resolution to handle disputes or conflicts for their companies.

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- 3.2.4 Five out of the six companies reported that in the past three years, they have not resorted to litigation, arbitration, conciliation or mediation for resolving conflicts. The remaining company said it had tried arbitration and mediation for resolving construction related conflicts.
- 3.2.5 Then, how would SMEs in Hong Kong normally react when conflicts arose? All six companies said they would refer the matter to the management, who would then decide how to deal with the conflicts. In addition, some of them said their companies adopted “open door policies” for receiving employees’ complaints, or set up an internal “hotline” for employees to file complaints.
- 3.2.6 One company elaborated that, for employee disputes, it was inclined to give in to the employees’ demands, or, if this was not possible, asked the relevant employee to resign (but not dismissed that employee unless his performance was too bad to justify). Some ex-employees complained to the Labour Department, and the company usually decided to give in, and offered the ex-employee more than what he or she deserved in order to put an end to the conflict. This approach had caused substantial uneasiness and discomfort in the HR department, which became suspicious of its own ability to cope with these employees’ disputes, and cultivated a feeling of incompetence and inability to achieve good management results.

3.3 SMEs in Hong Kong seldom use mediation for resolving disputes.

- 3.3.1 Five out of the six companies said they have not used mediation to resolve their conflicts.
- 3.3.2 In general, the most common reason given for not using mediation was due to a lack of knowledge of mediation. Another common reason given was that the parties in dispute could not agree on the use of mediation, or on the appointment of mediator, therefore did not use mediation.
- 3.3.3 For external conflicts, one company also mentioned that the contracts it signed had stipulated the use of other dispute resolution methods (presumably arbitration or litigation) for dealing with conflicts under the contracts.
- 3.3.4 For internal conflicts, one of these five companies elaborated that, for employee related disputes, the company believed that it would be more effective if the conflict

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was to be determined by senior employees- as employees would not listen to an independent third parties but would succumb to their seniors who have more power within the organisation. Also, considering the complex nature of employee disputes, this company thought that mediation would not be a better alternative than having the conflict finally resolved by senior management’s decision.

3.3.5 The remaining company opined that arbitration appeared to be more effective in resolving its conflicts with customers, which are usually construction related disputes.

4. Discussion

4.1 Many SMEs in Hong Kong are still confined to power-based negotiation when resolving conflicts.

4.1.1 From the findings above, we can observe that SMEs in Hong Kong are accustomed to conventional dispute resolution methods. These mainly include right-based negotiations and conciliations, especially for internal, employee-related conflicts. The way they handled these conflicts is very often to ask senior (or HR department officers) to talk to the disputants and see if they can accept to settle at the demands advanced by the employees. In case the conflicts cannot be resolved, the matter will usually be escalated to senior management to make a management decision on the employees involved, e.g. asking the employees involved to resign, or simply give in to what the employees demanded. These approaches focus primarily on parties’ power within an organization, and their legal rights and obligations, which in some case tend to escalate those disputes rather than resolving them in an amicable, win-win manner.

4.1.2 If SMEs in Hong Kong can be advised of more options in handling conflicts, and widen their choices available (instead of using conventional methods of giving in or outright termination of employment), they can be more flexible and more well-equipped to handle conflicts of different natures. For example, when handling employee disputes, SMEs may attempt to agree to engage an independent, third party mediator. This can avoid the SME from getting stuck in an established, power-based relationship (employer-employee relationship) which can hamper their visions in deciphering the underlying needs and concerns behind an employee’s “demands”.

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- 4.1.3 Without such additional options for resolving conflicts, if the disputes are escalated to later, more advanced stages (e.g. litigation) and the disputants come across information about mediation through their legal advisors and/ or the Judiciary, they have already incurred substantial costs and time. Moreover, the relationships between the parties would have already been damaged. These external factors may reduce their incentive to try mediation at the later stage. Therefore, it is advisable for SMEs to widen their attempts in different dispute resolution methods, in particular mediation, in order to save their time and cost for resolving disputes in their daily operations.
- 4.1.4 In contrast, many overseas corporations will overcome these problems by incorporating a dispute resolution clause in their commercial contracts, establishing company policies and providing training to their employees to facilitate the use of mediation before they resort to right-based dispute resolution approaches. However, it appears that these procedural options are not generally available to the SMEs in Hong Kong.
- 4.2 Few resources available to SMEs in Hong Kong to get acquainted with mediation services and for utilizing mediation to resolve disputes.
- 4.2.1 In Hong Kong, there are few resources and support provided to SMEs for attempting to use mediation to resolve disputes. SMEs in Hong Kong, in general, have limited financial resources to spend on the dispute resolution. Yet, SMEs are constantly in need for education, advice and guidance for managing internal conflicts and/ or escalated disputes.
- 4.2.2 More resources should be devoted to internal training of mediation skills for HR or administrative officers to equip them with mediation skills in coping with both internal and external conflicts at early stages. More resources should be deployed to independent third party organizations for providing mediation information and services to the SMEs in need in Hong Kong.
- 4.2.3 It appears that SMEs are in need of a one-stop, easily accessed, dedicated centre with appropriate expertise and which aims at providing free helpline, consultation and resources to increase SMEs' accessibility, skills and knowledge to utilize mediation.
- 4.2.4 As an example, in USA, there are dedicated centres, e.g. International Institute for Conflict Prevention and Resolution and Harvard Negotiation Project, established to

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share resources and provide continuous support, research, and best practice to enhance the competence of business entities in dealing with disputes in a cost-effective manner. Yet in Hong Kong, such establishments are not available to assist local SMEs.

5. Suggestions and further studies

5.1 SMEs should adopt an internal conflict management system and procedures to deal with conflicts with a more diversified and systematic approach.

5.1.1 Our above findings coincided with a pilot study conducted in Florida in USA, of workplace leaders' and managers' awareness, perception, and use of conflict management systems and strategies. The US study found that there was a lack of a clear definition of the issues, the absence of integrated conflict management systems within most organizations, and dissatisfaction with antiquated grievance systems. All these were echoed in the findings in the current study.

5.1.2 Given this prevalent phenomenon, it is suggested that a structured and well-designed conflict management system should be introduced in commercial organisations, especially SMEs with limited resources which are less able or ready to face escalated conflicts in courts.

5.1.3 It is beyond the scope of the current report to suggest to SMEs in Hong Kong the details and components of a full-blown conflict management system. Instead, we highlight a few salient below, which may be viewed as the goals and guidelines to further work on for the purpose of developing a tailor-made, complete internal conflict management system for SMEs in Hong Kong:

i. In general, a conflict management system may be classified as either one of the following three approaches: Power-based, Right-based, or Interest-based.

(a) For Power-based approach (e.g. senior management adjudication), it tests the strength of different parties, and may trigger unpredictable outcomes and involves high execution cost.

(b) For Right-based approach (e.g. litigation), it emphasized right/ wrong outcome, and is less flexible in taking into account the disputants underlying concerns and needs for the purpose of understanding and pinpointing the issues correctly.

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- (c) For Interest-based approach (e.g. mediation), it focuses on the needs of the disputants, and is more flexible in developing customized and amicable solutions to conflicts.
- ii. *It is suggested that for SMEs in Hong Kong, an effective conflict management or dispute resolution system emphasizing an interest-based approach to dispute resolution should be adopted.*
- (a) The goal should be to maximize the extent to which conflicts or disputes are resolved by satisfying the essential interests of the parties involved (e.g. employees' concerns on employment packages, or customers' concerns on satisfactory service performance, etc.). Such resolutions should occur within a framework that preserves and protects the key rights of all stakeholders (e.g. employers, employees, customers, etc.).
- (b) Under this approach, the solution to a conflict should also be creative in order to understand and address the legitimate interests of all stakeholders. In most situations, the emphasis should be how to increase the degree to best meet all parties' needs. It is important to have the system reinforce and nurture win/win solutions. For example, in employee related, disputes, if the underlying concerns about unfairness in employment packages are not resolved, it is futile to handle the quarrels over daily encounters in office between them. On the other hand, if the management's concerns of heightened expenses caused by blanket increase in employees welfare can be considered, the company will have more incentive to negotiate with the employees on any creative options to resolve their problems.
- (c) The ultimate goal is to resolve and dissolve the conflicts at the core, and thus avoid having them escalated to a level of power or right based approach, which will trigger significant resources, cost, time and pressure to SMEs.
- iii. *It is suggested that the interest-based approach can be an alternative to the current power-based approach adopted by most SMEs in Hong Kong, especially for handling employer-employee conflicts.*
- (a) Under power-based approach, e.g. referring all internal conflicts to senior management to decide or adjudicate, employees of different situations or lower

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rank may succumb but then harbor grievances and dissatisfaction, which will be exposed as negative behaviours (e.g. low team spirit, malicious gossips, quarrels, passive resistance, non-communication, etc.) resulting in poor performance within the company. In contrast, if their internal needs have been considered and dealt with, the employees may harbor less grievances and therefore minimize the various types of negative behaviours. Productivity within the company can be preserved to serve the best interest of all parties.

5.2 SME should adopt a good practice of dispute resolution

5.2.1 To cope with the current situation where many SMEs in Hong Kong are facing currently, including being stuck at using traditional, antiquated power based approach in dealing with conflicts, we suggest that incentives and procedural support should be provided for using consensual, non-adjudicative means of dispute resolution methods:

- i. Mediation training and education to be provided to different levels of employees of SMEs, to enhance their negotiation and mediation techniques so as to equip them with the necessary skills and knowledges for using cost-effective dispute resolution methods. The quality of those who handle disputes is an important practical element for the effectiveness of a dispute resolution system, including adequate training to meet the requirements and needs of different parties when dealing with conflicts.
- ii. Apart from training and education, there should also be new company policies formulated to encourage good practice of dispute resolution. Various features of good practice in designing a dispute resolution process should be taken into account. These include:
 - (a) A simple and clear procedure so the parties will be able to understand and utilize the procedures;
 - (b) Offering a range of services that responds to different needs of the users (e.g. employees). For example, for employee disputes which cannot be resolved internally through discussion with seniors, the company can offer a different kind of dispute resolution process, such as those involving the assistance of third parties such as conciliation/mediation and arbitration. For other disputants who do not know their need for which kind of resolution procedures, the company can

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offer various complementary services, such as the provision of information, advice, counselling, training, facilitation and investigation. This versatile and flexible approach in conflict resolution can ensure a higher effectiveness and better accessibility of dispute resolution mechanisms and processes.

- (c) Acknowledging and understanding that the independence of mediator may be crucial when resolving conflicts among employees. To engage an independent mediator for certain internal conflicts can change the perception of the employees, especially in cases where the employees bear grudges due to human resources fairness issues.

5.3. Chambers of commerce may establish panels of ombudsperson to assist SMEs in resolving conflicts.

5.3.1 Since SMEs do not have sufficient resources to tackle internal or external conflicts, it is suggested that chambers of commerce in Hong Kong may allocate some resources to assist their SME members to resolve the disputes they encounter - by setting up panels of ombudspersons.

5.3.2 The concept of ombudspersons has been adopted in overseas countries, to resolve various types of disputes on an impartial and confidential basis. It is suggested that in Hong Kong, when a SME faces disputes which it is not equipped to handle, it can apply to a chamber of commerce for deployment of an ombudsperson for assistance.

5.3.3 An ombudsperson deployed by a chamber of commerce can attend the SME who applies for such services, and listen to the parties concerned about the facts and issues involved, on an impartial and confidential basis. He or she may investigate into the incidences and make independent suggestions to the relevant parties or SME on methods of resolution. This may avoid the SME from either resorting to traditional methods (such as only having the boss deciding internal dispute resolution outcomes) or litigious approaches (such as commencing court proceedings).

6 **Closing**

6.3 SMEs are the driving force of economic development in Hong Kong. Resources for Hong Kong SMEs to cope with conflict situations, whether internal or external, are not sufficient in Hong Kong, and it is a prevalent phenomenon that most SMEs

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continue to adopt the traditional method of dispute resolution (such as power-based approach and referring all types of conflicts to senior management for adjudication and determination).

- 6.4 To introduce more dispute resolution options, such as third party mediation, and to develop a structured and clear internal conflict management system is advisable.
- 6.5 Further promotion of mediation is necessary as many SMEs are not familiar with the process and unaccustomed to using mediation in resolving conflicts.
- 6.6 More resources should also be allocated to the discussion and design of best practice conflict resolution policies for SMEs to use, in order to equip the SMEs in Hong Kong to manage conflicts and disputes with less cost, higher efficiency and better results.

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