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Panel on Administration of Justice and Legal Services

**Background prepared by the Legislative Council Secretariat
for the meeting on 22 May 2006**

Pilot Scheme on Mediation of Legally Aided Matrimonial Cases

Purpose

This paper provides background information on the past discussions of the Panel on Administration of Justice and Legal Services on the Pilot Scheme on Mediation of Legally Aided Matrimonial Cases.

Background

2. The Judiciary launched a three-year Pilot Scheme on Family Mediation in May 2000 to test the effectiveness of mediation in resolving matrimonial disputes. The Pilot Scheme was administered by the Mediation Co-ordinator's Office (MCO) of the Judiciary. The Judiciary funded the mediation fees for 930 matrimonial cases, and the cost of the Pilot Scheme was \$6.2 million, exclusive of staff costs. The success rate of the 930 cases was about 78% (with about 68% achieving full settlement and about 10% achieving partial settlement). The Pilot Scheme concluded that mediation helped produce a high users' satisfaction rate and high agreement rate and resulted in saving court time.

3. In tandem, the Chief Justice's Working Party on Civil Justice Reform has examined possible reform in, inter alia, the area of alternative dispute resolution, and issued its final report in March 2004. The Working Party recommends that litigants be provided with better information and support by the Court with a view to encouraging greater use of purely voluntary mediation in conjunction with other appropriate measures to promote court-related mediation.

4. To encourage greater use of mediation as a method of dispute resolution, the Working Party also recommends that the Legal Aid Department (LAD) should have power in suitable cases, subject to further study by the Administration and consultation on the development and promulgation of the detailed rules for the implementation of a scheme, to limit its initial funding of persons who qualify for legal aid to the funding of mediation, alongside its power to fund court proceedings where mediation is inappropriate or has failed.

5. Pending the consideration and implementation of the above recommendations made by the Working Party, the Judiciary will continue to maintain the MCO since the expiry of the Pilot Scheme out of its own funds.

6. In order for the Administration to consider the proposal to extend funding to cover mediation of legally aided matrimonial cases, it needs to establish whether the proposal is justified on grounds of cost-effectiveness and the full implications. The Administration has decided to launch a one-year pilot scheme on mediation of legally aided matrimonial cases.

Discussion of the Panel on the Pilot Scheme on Mediation of Legally Aided Matrimonial Cases

7. The Administration briefed the Panel on the Pilot Scheme on Mediation of Legally Aided Matrimonial Cases and the arrangements for the launching of the Pilot Scheme at its meeting on 28 February 2005. The subject matter was also raised by members at the special meeting on 17 October 2005 when the Panel received a briefing on the Chief Executive's Policy Address 2005-06 by the Director of Administration. The main issues discussed by members are summarised in paragraphs 8 to 17 below.

The Pilot Scheme

8. The Administration advised the Panel that the Pilot Scheme launched on 15 March 2005 would last for one year. The Pilot Scheme was modelled on the Judiciary's three-year Pilot Scheme on Family Mediation, and took into account the specific recommendations of the Civil Service Reform report and the views of the Legal Aid Services Council. The Administration would collect data on about 120 cases for more detailed analysis. As a matrimonial case would take about two years to conclude, the Administration aimed at completing the evaluation of the cases covered under the Pilot Scheme in 2007-08. Further details of the Pilot Scheme are in **Appendix I**.

Voluntary participation in mediation

9. Members considered that mediation should not be imposed against the will of legal aid applicants as a condition for the grant of legal aid for initiating court proceedings.

10. The Administration assured members that the Pilot Scheme would be launched on the basis of voluntary participation. The grant of legal aid for court proceedings would not be affected by whether the case was appropriate for mediation or whether the parties had agreed to undertake mediation. A certificate of legal aid already issued to an applicant would not be withdrawn by LAD on the ground that the applicant had refused mediation. The information leaflet on the Pilot Scheme would clearly explain that participation in the mediation was voluntary. The Administration

had undertaken to consider other channels through which the message could be widely publicised.

Publicity

11. Members considered that the Administration should take proactive measures to promote the Pilot Scheme through various channels and to enhance the public awareness that mediation was an effective means of dispute resolution.

12. Some members expressed concern whether the assigned solicitors would advise their clients of the availability of mediation and encourage them to undertake mediation, as willingness of aided persons to attempt mediation might result in less work for the solicitors. There was a view that the availability of assistance under the Pilot Scheme should be explained to an aided person before assigning a solicitor to him.

13. The Administration advised the Panel that publicity material including information leaflets and Explanatory Notes on the Scheme as well as the relevant forms to be used by assigned solicitors and mediators were being prepared. The assigned solicitors would be provided with an Explanatory Note on details of the Pilot Scheme and their role in the Pilot Scheme. The solicitors were required to advise legal aid applicants of the availability of mediation in accordance with the court's Practice Directions as well as the particulars of the Pilot Scheme. A video on mediation would be made available for viewing by legal aid applicants. Details of the Scheme would also be publicised through LAD's website.

Provision of legal aid for mediation

14. Members considered that the pilot schemes conducted by the Judiciary and the Administration would provide valuable reference for the Administration in deciding whether funding of mediation to resolve disputes should become a standing feature of the legal aid system. Apart from financial considerations, the degree of users' satisfaction with the mediation service was an important factor which should be taken into account.

Cost-effectiveness

15. The Administration advised the Panel that as at 8 October 2005, 89 cases were referred to the MCO to attend information session. Of these cases, only 21 agreed to proceed to mediation, and another 17 were being processed.

16. In view of the small number of cases which proceeded to mediation, members had expressed concern about the effectiveness of the Pilot Scheme and requested the Administration to provide a progress report to the Panel in mid June 2006. The Administration was also requested to –

- (a) assess the rate of compliance with the agreements reached on the cases under the pilot schemes of the Judiciary and the Administration respectively, and the effectiveness of the two schemes; and
- (b) compare the nature of cases and profiles of the users of the two pilot schemes.

17. Members noted that in line with the Judiciary's Pilot Scheme, the number of hours for mediation under the Administration's Pilot Scheme would be capped at 15 hours per case at a mediation fee of \$600 per hour. The total costs of the 120 cases under the Administration's Pilot Scheme would be about \$1 million. Members asked whether the cost of funding the mediation cases under the Pilot Scheme would be less than the cost of providing legal aid for initiating court proceedings for such cases. The Administration advised that the cost-effectiveness of the Pilot Scheme would be assessed upon its completion.

Latest position

18. The Administration will provide an interim progress report on the Pilot Scheme to the Panel for discussion at the meeting on 22 May 2006.

Relevant papers

19. A list of the relevant papers is in **Appendix II** for members' easy reference. These papers are available on the LegCo website (<http://www.legco.gov.hk>).

For information

LegCo Panel on Administration of Justice and Legal Services

**Pilot Scheme on Mediation of
Legally Aided Matrimonial Cases**

PURPOSE

The Administration will launch a Pilot Scheme on mediation of legally aided matrimonial cases (Pilot Scheme). This paper informs Members of the arrangements.

BACKGROUND

2. Concerned by the increasing number of divorce petitions, the Judiciary launched a 3-year pilot in May 2000 to test the effectiveness of mediation in resolving matrimonial disputes. The Judiciary funded the mediation fees for 930 matrimonial cases during the period. The cost of the pilot scheme then, exclusive of staff costs, was \$6.2 million. The Judiciary's pilot scheme concluded that mediation helped produce a high users' satisfaction rate and high agreement rate and resulted in saving court time. In this regard, mediation is considered as a viable option for family dispute resolution in Hong Kong.

3. In tandem, the Chief Justice's Working Party on Civil Justice Reform has examined possible reform in, inter alia, the area of alternative dispute resolution, including mediation, and issued its final report in March 2004. To encourage greater use of mediation, one of its recommendations is for the Legal Aid Department (LAD) to have power in suitable cases, subject to further study by the Administration and consultation on the promulgation of the detailed rules for the implementation of the scheme, to limit its initial funding of persons who qualify for legal aid to the funding of mediation, alongside its power to fund court proceedings where mediation is inappropriate or where mediation has failed. The final report also notes the need for the Administration to conduct its own pilot scheme to evaluate the cost-effectiveness of the proposal before deciding on the way forward.

4. From a legal aid policy perspective, before the Administration considers extending funding to cover mediation of legally aided matrimonial cases, it needs to establish if the proposal is justified on grounds of cost-effectiveness and the full implications. Against this background, we propose to launch a pilot scheme on mediation of legally aided matrimonial cases.

THE PILOT SCHEME

Scope & Features of the Pilot Scheme

5. The Judiciary's existing facilities established since its pilot in 2000 – including a Mediation Coordinator's Office (MCO) and its panel of mediators with track record in providing the service, are designed for and apply to mediation service of matrimonial cases only. The Administration's Pilot Scheme will model on the Judiciary's pilot scheme, and takes into account the specific recommendations of the Civil Justice Reform report and the views of the Legal Aid Services Council. The Administration will also ensure that assigned solicitors comply with the Practice Directions issued by the court requiring solicitors to advise their divorcing/separating clients of the availability of mediation.

6. The Judiciary's MCO currently conducts information sessions for applicants and respondents of matrimonial proceedings and refers cases considered suitable for mediation to the accredited mediators on its panel. The Administration's Pilot Scheme will operate using the existing services provided by the MCO. Legally aided persons and the other parties will be invited to join the Pilot Scheme on a voluntary basis. Main features of the Scheme are set out in **Annex**.

Evaluation of the Pilot Scheme

7. There will be a Steering Committee comprising representatives from the Administration Wing, LAD, the Judiciary and the Home Affairs Bureau to oversee the Pilot Scheme. The Steering Committee will also evaluate the Pilot Scheme in the following areas –

- (a) The resources implications of providing legal aid for mediation of matrimonial cases, including individual cost components (e.g. lawyers' cost, mediators cost) as well as the duration for completing the legally aided cases; and

- (b) the operational and legislative requirements if the Pilot Scheme were to turn into a standing feature of legal aid service.

Implementation Timetable

8. We aim to launch the Pilot Scheme in the first quarter of 2005. The Pilot Scheme will last for one year, enabling us to collect data on about 120 cases for more detailed analysis.

9. Taking into account that a matrimonial case takes about two years to complete, we aim at completing the evaluation of about 120 cases covered under the Pilot Scheme by the first quarter of 2007.

WAY FORWARD

10. LAD will draw up a panel of mediators modeled on the Judiciary's pilot scheme. It will issue information leaflets to publicise the Pilot Scheme, and require assigned solicitors to advise legally aided persons of the availability of the Pilot Scheme and encourage them to use mediation to resolve family disputes. It will also request the assistance of the Law Society to help publicise the Scheme amongst its members particularly those who are also legal aid practitioners.

Administration Wing
Chief Secretary for Administration's Office

December 2004

**Proposed Essential Features of the Pilot Scheme
on Mediation of Legally Aided Matrimonial Cases**

(A) Roles of different parties in the Pilot Scheme

LAD

LAD will administer the Pilot Scheme. Its main roles are to –

- conduct the usual means and merits tests on the legal aid applicants and inform those who have passed the tests of the Pilot Scheme;
- assign solicitors to the legally aided persons as is the case now once it decides to grant legal aid;
- maintain a panel of mediators who are on the Mediation Coordinator's Office (MCO)'s panel of mediators and who accept the terms and conditions for assignments from LAD under the Pilot Scheme;
- approve funding beyond the specified hours of funded mediation in suitable cases;
- monitor the development of the cases concerned and ensure the assigned solicitors and mediators act in accordance with the requirements of the Pilot Scheme; and
- collect the necessary data for the evaluation of the Pilot Scheme.

Legally Aided person

2. The legally aided person and the other party involved in a matrimonial case are invited to join the Pilot Scheme on a voluntary basis. They may choose a mediator out of a list of those who are accredited and have agreed to participate in the Pilot Scheme. For cases considered suitable for mediation, they may join before or after the commencement of proceedings.

Assigned solicitor

3. The assigned solicitor is required to advise the legally aided person of the availability of mediation in accordance with the court's Practice Directions and of the Pilot Scheme . He will also advise the legally aided person in the course of mediation as and when necessary, and appear on behalf of him in subsequent court proceedings. Where the legally aided person has indicated his unwillingness to attempt mediation, the assigned solicitor will inform LAD of the reasons given by him.

Mediator

4. The mediator renders mediation service at a fixed rate per hour. He reports to LAD on the outcome of the mediation and, if necessary, seeks LAD's approval to extend the number of hours of mediation funded by the Pilot Scheme beyond the specified hours.

MCO

5. The Judiciary's MCO will assist in providing information sessions for the legally aided person and the other party, and assessing whether the case is suitable for mediation, based on the guidelines adopted in the Judiciary's pilot scheme. Should a case be identified as suitable for mediation and if the parties so agree, the MCO will assist them to choose a mediator from a list of accredited mediators who have agreed to participate in the Administration's Pilot Scheme. The MCO will also report to LAD on whether the parties agree to mediate, and if so, the name of the mediator chosen by the parties.

(B) Other logistical arrangements

Number of hours of mediation

6. In line with the Judiciary's pilot scheme, the number of hours for mediation under the Administration's Pilot Scheme will be capped at 15 hours per case. Based on the mediator's report, LAD may approve funding beyond the initial 15 hours in suitable cases (e.g. where it is considered that the extension would facilitate an agreement between parties concerned).

Level of mediators' fees

7. Under its pilot scheme, the mediator fee paid by the Judiciary was \$600 per hour. We understand from the Judiciary that it had little difficulty in engaging mediators at this rate. We will adopt the same rate for the Administration's Pilot Scheme.

Payment of mediators' fees

8. In order to encourage the legally aided person and the other party to adopt mediation and participate in the Administration's Pilot Scheme, LAD will bear the mediators' fees for both sides. The mediators' fees incurred will not be recovered from the legally aided person.

Appendix II

Pilot Scheme on Mediation of Legally Aided Matrimonial Cases

Relevant papers

LC Paper No.	Papers/Documents
<u>Paper provided by the Administration</u>	
CB(2)507/04-05(01)	-- Administration's paper on "Pilot Scheme on Mediation of Legally aided Matrimonial Cases"
CB(2)29/05-06(01)	-- Administration's paper on "Policy Initiative of the Administration Wing, Chief Secretary for Administration's Office"
<u>Minutes of meetings of Panel on Administration of Justice and Legal Services</u>	
CB(2)1254/04-05	-- Minutes of meeting on 28 February 2005
CB(2)677/05-06	-- Minutes of special meeting on 17 October 2005