

**For discussion on  
23 June 2008**

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

**Proposal on the Permanent Arrangement for  
Mediation in Legally Aided Matrimonial Cases**

**PURPOSE**

This paper informs Members of the main features of the proposed permanent arrangement for mediation in legally aided matrimonial cases.

**BACKGROUND**

2. Mediation provides a non-contentious and alternative means of settling civil disputes. It promotes social harmony by encouraging parties involved to engage in constructive dialogue. Disputes are settled in private and conducted in confidence without having to be addressed in court.
3. Following the Judiciary's three-year pilot scheme on mediation in matrimonial cases which ended in 2003, the Legal Aid Department ("LAD") after consultation with the Legislative Council Panel on Administration of Justice and Legal Services ("AJLS Panel") launched a one-year pilot scheme on mediation in matrimonial cases in March 2005 ("the Pilot Scheme"). The Pilot Scheme's objective was to establish whether extending funding to cover mediation of legally aided matrimonial cases was justified.
4. The evaluation and findings of the Pilot Scheme were presented to the AJLS Panel which supported the Administration's proposal to provide funding for mediation in legally aided matrimonial cases on a permanent basis.
5. The establishment of the permanent arrangement demonstrates the Administration's commitment in promoting mediation in Hong Kong as an adjunct to litigation in line with the current world trend. Separately, the

Department of Justice and the Judiciary are working closely in promoting the wider use of mediation to resolve disputes in Hong Kong. The cross-sector Working Group on Mediation (“Working Group”) headed by the Secretary for Justice was set up in early 2008 to consider the overall strategy to promote the development of mediation services in Hong Kong. The permanent arrangement to cover mediation in matrimonial cases complements the work of the Working Group.

## **THE PROPOSAL ON PERMANENT ARRANGEMENT**

6. Under the permanent arrangement, mediation will not be a mandatory pre-condition for the granting of legal aid for legal representation, as it is intended to be an adjunct to litigation and an alternative channel to dispute resolution between the parties. A solicitor will be assigned to the legally aided person irrespective of whether the legally aided person wishes to attempt mediation.

7. In line with the current legal aid policy which requires that only persons who pass the means and merits tests will be eligible for legal aid, LAD will only finance the legally aided persons’ share of the mediators’ fees. As legally aided persons may be required to contribute towards the costs and expenses incurred by LAD, mediators’ fees would be recovered from the contribution paid and/or money or properties recovered or preserved in the legally aided proceedings. In other words, as with all civil legal aid cases, the Director of Legal Aid (“DLA”)’s first charge will apply.

8. The DLA will give approval to the engagement of a mediator in the same manner as approval is sought and given for the engagement of medical or safety experts.

9. The DLA will consider the hourly rate quoted by the mediator on a case-by-case basis. In line with the practice for other disbursements such as medical experts’ fees, the DLA will decide whether the proposed mediators’ fees for particular cases are reasonable. Where necessary, quotes or estimated cost from more than one mediator would be obtained for comparison purposes.

10. The number of hours allowed for the mediation process for each case is initially capped at 15 hours per case. Additional hours required for

completing the mediation process and the additional costs incurred will be subject to the further approval of the DLA on a case-by-case basis.

11. In considering approval for the mediators to be engaged, the fees to be charged and the number of additional hours to be allowed for mediation, the DLA will take into account factors such as the nature and complexity of the disputes in question which require mediation; the benefits to the legally aided person in proportion to the costs involved and whether first charge is involved.

12. Under the permanent arrangement, the DLA or the assigned solicitor, as the case may be, will refer suitable cases to the Mediation Coordinator's Office ("MCO") for mediation, and the legally aided person and/or the assigned solicitor will liaise with the MCO on the selection of mediators.

13. At present, the Legal Aid Ordinance (Laws of Hong Kong, Chapter 91) provides legal representation in courts and tribunals as specified therein. Legislative amendments are needed to cover mediation in matrimonial cases where legal aid has been granted.

## **WAY FORWARD**

14. The Administration is now consulting the Legal Aid Services Council ("LASC"), the two legal professions and relevant mediation bodies on the above arrangement. Subject to views from this Panel, the LASC and the relevant stakeholders by the end of August 2008, the Administration will commence work on the legislative amendments, with a view to introducing the amendments during the new term of the Legislative Council.

**Home Affairs Bureau  
Legal Aid Department  
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