

**For discussion on  
30 March 2009**

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

**Permanent Arrangement for  
Mediation in Legally Aided Matrimonial Cases**

**PURPOSE**

This paper informs Members of the latest development in the implementation of the permanent arrangement for mediation in legally aided matrimonial cases.

**BACKGROUND**

2. At the meeting of the Legislative Council (“LegCo”) Panel on Administration of Justice and Legal Services on 23 June 2008, the Panel supported the proposed permanent arrangement for mediation in legally-aided matrimonial cases. The main features of the proposal are as follows –

- (a) 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.
- (b) 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, the Legal Aid Department (“LAD”) will only fund the legally aided persons’ share of the mediators’ fees. As with all civil legal aid cases, where applicable, the Director of Legal Aid (“DLA”)’s first charge will apply.

- (c) 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 experts.
- (d) The DLA will consider the rates quoted by the mediator on a case-by-case basis and will decide whether the proposed mediators' fees for the particular cases are reasonable. Where necessary, quotes or estimated costs from more than one mediator would be obtained for comparison purposes.
- (e) 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.
- (f) In considering requests for the engagement of mediators, the proposed fees to be charged and the estimated additional number of hours proposed for mediation after the initial 15 hours, 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 there is a potential first charge involved.
- (g) The DLA or the assigned solicitor, as the case may be, may refer suitable cases to the Mediation Coordinator's Office ("MCO") for mediation information session, and the legally aided person and/or the assigned solicitor will liaise with the MCO on the selection of mediators.

3. The Administration thanked the Panel for support of the above proposed permanent arrangement for mediation in legally aided matrimonial cases.

## **LEGISLATIVE AMENDMENTS**

4. Amendments will be made to the Legal Aid Ordinance (Cap. 91) and the Legal Aid Regulations (Cap. 91A) by –

(a) adding the definition of “mediation in matrimonial cases” and “matrimonial cases” in section 2 of Cap. 91;

(b) amending section 6 of Cap. 91 to provide for the funding of mediation in matrimonial cases; and

(c) specifying in Cap. 91A the power of the DLA to give approval for the engagement of mediators.

5. Drafting of the amendment bill is underway. The Administration plans to introduce the bill in LegCo in mid-2009.

**Home Affairs Bureau  
Legal Aid Department  
March 2009**