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Panel on Administration of Justice and Legal Services

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 22 June 2009**

Development of mediation services

Purpose

This paper gives a brief account of the past discussions of the Panel on Administration of Justice and Legal Services (the Panel) on the development of mediation services.

Background

2. Following the Chief Executive's announcement to develop mediation services in Hong Kong in the 2007 Policy Address, the Working Group on Mediation (Working Group) was established by the Secretary for Justice (S for J) to review the current development of mediation and to make recommendations on how mediation can be more effectively and extensively used in both commercial disputes and at the community level. Under the chairmanship of S for J, the Working Group comprises representatives from the Department of Justice (DoJ), the Judiciary, the Legal Aid Department, the two legal professional bodies, the three local law schools, and relevant mediation bodies.

3. At the meeting on 23 June 2008, the Panel was informed that the Working Group had formed three Sub-groups in April 2008 to consider and make findings on specific issues in three main areas, i.e. regulatory framework, accreditation and training, and public education and publicity. The Sub-groups would submit their reports to the Working Group in 18 months and the Working Group aimed to release its report within two years.

Discussions of the Panel

4. The Panel was briefed on the progress of developments in mediation services at its meetings on 23 June and 20 October 2008. The major issues raised by members are summarized in the ensuing paragraphs.

Availability of venue for conducting mediation

5. Members were concerned about the lack of suitable venues for conducting mediation, in particular community mediation, which would hinder the promotion of mediation as an alternative dispute resolution (ADR) and the development of Hong Kong as a regional ADR centre. Ms Audrey EU suggested that district offices could make available some venues for conducting community mediation, while the Home Affairs Department (HAD) could provide administrative support for mediators working on a pro bono basis. In this regard, members were advised that for community disputes such as building management disputes, it would not be cost-effective to rent a venue for mediation. The Administration would explore whether venues were available in Government premises (e.g. community centre) and in private premises (e.g. management office of an estate). For international or commercial disputes, the parties concerned could better afford the cost of mediation and venues in the Hong Kong International Arbitration Centre, conference centres or hotels might be considered. The Administration also advised that the Public Education and Publicity Sub-group would study how to resolve the problem and make recommendations to the Working Group.

Provision of free mediation services on consumer disputes

6. Dr Margaret NG expressed concern about the lack of free legal or mediation services on consumer disputes. It was pointed out that the Reports on the Consultancy Study of the Demand for and Supply of Legal and Related Services published by DoJ in May 2008 revealed that many people in Hong Kong had experienced difficult-to-solve problems in incidents related to consumer matters and had hoped that such disputes could be resolved by mediation, given that legal costs involved would be disproportionate to the amount involved in the disputes. The Administration advised that the relevant part of the Report on the Consultancy Study would be drawn to the attention of the Working Group which would consider how to promote understanding and awareness of mediation services to the community.

7. Noting that all members of the Working Group had a legal background, Dr NG opined that the membership of the Working Group should be made more diversified, e.g. to include representatives from HAD and Consumer Council to deal with practical issues relating to mediation. The Administration advised the Panel that members of the three Sub-groups consisted of representatives from HAD and the Consumer Council. The Working Group had not ruled out the possibility of inviting experts of various fields to participate in its discussion when there was a need to do so.

Accreditation of mediators and development of regulatory framework

8. Regarding the specific issues studied by the Accreditation and Training Sub-group and the Regulatory Framework Sub-group, the Panel was advised that the regulatory framework for mediation was a complex issue which required in-depth study by the Regulatory Framework Sub-group. For instance, whether enforcement of mediation agreement should be regulated by law would make a big difference. As regards

qualification of mediators, members noted that many overseas countries did not have an accreditation system, and Australia was one of the few countries which had recently adopted an accreditation system for mediators. The Accreditation and Training Sub-group would study whether and if so how to implement such a system in Hong Kong.

Enhancing the legal profession's understanding of mediation services

9. Members noted the concern among legal practitioners about the onerous requirements imposed on them by the Practice Direction on Mediation in connection with the implementation of the Civil Justice Reform. In proceedings where all the parties were legally represented, solicitors concerned were required to file a Mediation Certificate to, inter alia, confirm that they had explained to their client the availability of mediation services, the procedures involved and its costs vis-à-vis litigation, with a view to encouraging greater use of mediation. Members considered it important to provide legal practitioners with more information on mediation to enhance their understanding of this ADR procedure. Members were advised that the implementation of the said Practice Direction had been deferred from 2 April 2009 to 1 January 2010 with a view to enabling solicitors to better prepare themselves in this regard. The Administration also advised that the Working Group would work together with other parties to enhance the legal professional's understanding of mediation services.

Latest development

10. The Administration will report to the Panel on the latest developments in mediation services at the upcoming meeting on 22 June 2009.

Relevant papers

11. A list of the relevant papers which are available on the LegCo website (<http://www.legco.gov.hk>) is in **Appendix**.

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Relevant documents

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper</u>
Panel on Administration of Justice and Legal Services	22 October 2007	Paper provided by the Administration on 2007-2008 policy initiatives of the Department of Justice" (paragraphs 12 to 14) [LC Paper No. CB(2)45/07-08(03)] Minutes of meeting (paragraphs 27 to 32) [LC Paper No. CB(2)402/07-08]
	23 June 2008	Administration's paper on "Development of mediation services" [LC Paper No. CB(2)2327/07-08(04)] Minutes of meeting (paragraphs 14 to 24) [LC Paper No. CB(2)2826/07-08]
	20 October 2008	Paper provided by the Administration on 2008-2009 policy initiatives of the Department of Justice" (paragraphs 11 to 12) [LC Paper No. CB(2)71/08-09(02)] Minutes of meeting (paragraphs 19 to 28) [LC Paper No. CB(2)367/08-09]