

For discussion
on 22 February 2010

LegCo Panel on Administration of Justice and Legal Services

Development of mediation services

This paper sets out the main recommendations of the Secretary for Justice's cross-sector Working Group on Mediation ('Working Group').

Working Group on Mediation

2. Following the announcement at the October 2007 Policy Address of the Chief Executive, the Working Group was established in 2008 to map out plans to employ mediation more extensively and effectively in Hong Kong in handling higher-end commercial disputes and relatively small scale local disputes. The Working Group under the chairmanship of the Secretary for Justice held its first meeting on 26 February 2008 and its tenth meeting on 14 December 2009. The Working Group worked closely with its three Sub-groups and considered issues in the following areas:

- Public Education and Publicity
- Accreditation and Training
- Regulatory Framework

We briefed the AJLS Panel on the progress of the Working Group's deliberations on two occasions in June 2008 and June 2009.

The Report of the Working Group on Mediation

3. On 8 February 2010, the Working Group published its Report which contains 48 recommendations. The Report was sent to Members on the same day. The Report provided an overview of the current development of mediation in Hong Kong and covered the different topics within the Terms of Reference of the Working Group.

4. On the regulatory front, the Working Group recommended that there should be a stand-alone Mediation Ordinance to provide a proper legal framework for the conduct of mediation without hampering the flexibility of the mediation process.

5. The Working Group also proposed that the Mediation Ordinance (“the proposed Ordinance”) should set out its objectives and underlying principles, as well as key terminology such as ‘mediation’ and ‘mediator’. It should also include provisions dealing with the rules of confidentiality and privilege, as well as setting out the statutory exceptions to the rules and the sanctions for breaching the rules of confidentiality and privilege.

6. As a matter of principle, the Working Group has no objection to include model rules in the proposed Ordinance, although it considers that this is not strictly necessary. Any model mediation rules so included should only serve as a guide and not be mandatory such that parties can choose their own mediation rules. In respect of enforcement of mediation settlement agreements, the Working Group does not consider it necessary to include in the proposed Ordinance a statutory mechanism for enforcing mediated settlement agreements as such settlements can be enforced by the courts as contracts where necessary.

7. The Working Group believes that at this stage, the Judiciary should not provide mediation services nor introduce compulsory referral to mediation. However, these issues should be revisited after consultation with the Judiciary. The Working Group supports the provision of legal aid for mediation to legally aided persons when they are willing to participate in mediation.

8. On accreditation of mediators, the Working Group considered it desirable to establish a single body for accrediting mediators to ensure quality of mediators and consistency of standards, educate the public about mediators and mediation, enhance public confidence in mediation services and maintain credibility of mediation.

9. However, the Working Group considered that currently the time was not right to prescribe a standardised system of accrediting mediators and that the emphasis should be on the provision of appropriate mediation information to potential mediation users to assist them in deciding whether to choose mediation to resolve disputes and choosing competent mediators. It recommended a review of the possibility of a single mediation accrediting body in Hong Kong in five years.

10. The Hong Kong Mediation Code ('Code') which is an ethical code of conduct for mediators in Hong Kong has received support from many mediation service providers in Hong Kong. The Working Group recommended a wide promulgation of the Code to mediation service providers. The Secretary for Justice has written to mediation service providers and encouraged them to adopt the Code and set up robust complaints and disciplinary processes to enforce the Code.

11. On publicity and public education, the Public Education and Publicity Sub-group of the Working Group launched on 7 May 2009 a very successful 'Mediate First' Pledge campaign with more than 100 companies and trade organisations pledging to consider the use of mediation first before resorting to other means to resolve disputes. The Working Group recommended that given its initial success, the 'Mediate First' Pledge campaign should continue to be encouraged within the business and commercial sector, and be promoted to different sectors of the community.

12. A Pilot Project on Community Venues for Mediation was implemented by the same Sub-group in May 2009 to provide block booking of community venues to be made available for the conduct of mediation, especially for community mediation conducted by pro bono mediators. Pending the outcome of the Pilot Project, the Working Group recommended that there should be at least one community centre in Hong Kong Island, one in Kowloon and one in the New Territories to be made available as community venues for mediation.

13. The Working Group also encouraged Universities to consider enhancing mediation education and considered the question of mediation being incorporated into compulsory courses in the Law faculties be revisited when the mediation landscape becomes more mature.

Furthermore, it recommended that introduction of mediation education within primary and secondary schools, as well as expansion of the Peer Mediation Projects, should be considered.

Public Consultation on the Report of the Working Group on Mediation

14. A 3-month public consultation on the Report was launched on the 8 February 2010. At the end of the consultation in May 2010, we will deliberate on the comments received in order to map the way forward and seek to implement the recommendations.

Department of Justice
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