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Panel on Administration of Justice and Legal Services

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 14 April 2011**

**Development of mediation services and
mediation services for building management cases**

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 and provision of mediation services for building management cases.

Background

2. Following the Chief Executive's announcement in the 2007 Policy Address to develop mediation services in Hong Kong, the Working Group on Mediation ("Working Group") was established by the Secretary for Justice ("SJ") 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 SJ, 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.
4. On 8 February 2010, the Working Group published its Report ("the Report") which contained 48 recommendations for a three-month public consultation. After the end of the public consultation in May 2010, a Mediation Task Force chaired by SJ was set up to assist in considering and implementing these recommendations in the coming 30 months with a view to promoting wider use of mediation.
5. A summary of the 48 recommendations of the Working Group is in **Appendix I**.

Past discussions of the Panel

6. The Panel discussed issues relating to development of mediation services and the work of the Working Group at its meetings on 23 June and 20 October 2008; 22 June 2009; 22 February, 26 April, 22 October and 21 December 2010. The major issues raised by members at these meetings are summarized in the ensuing paragraphs.

Availability of venue for conducting mediation

7. 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.

8. At the meeting on 22 June 2009, DoJ informed members that a pilot scheme would be conducted on 1 July 2009 under which two community centres would be made available for conducting pro-bono mediation free of charge during specified periods. DoJ also advised that subject to the review on the effectiveness of the pilot scheme, consideration could be given to extending the scheme to community centres in other districts. As 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. In this regard, members noted from the Law Society of Hong Kong ("the Law Society") that the venues in the Hong Kong International Arbitration Centre were in great demand and not easy to book. Members also noted that due to cost consideration, a law firm might not be willing to make available its conference rooms for mediation services, for which at least two rooms were required for the parties concerned. The Panel urged the Administration to further explore ways to address the profession's prime concern of lack of suitable mediation venues.

9. At the meeting on 22 February 2010, members noted that pending the outcome of the pilot scheme, the Working Group recommended that at least one community centre in Hong Kong Island, one in Kowloon and one in the New Territories should be made available as community venues for mediation.

Accreditation of mediators and development of regulatory framework

10. The Panel was advised that the Accreditation and Training Sub-group was working on a voluntary draft code of conduct for mediators in Hong Kong and had looked at various options for regulatory enforcement of the mediation code. 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 Sub-group would study whether and, if so, how to implement such a system in Hong Kong. Members were also advised that the Regulatory Framework Sub-group had studied whether Hong Kong should enact a Mediation Ordinance and the proposed contents of such an Ordinance should one be enacted.

11. Members noted that in early 2010, the Hong Kong Mediation Code ("the Code") was promulgated by DoJ. The Code was intended to provide a common standard among mediators and had an important quality assurance role. Twenty-one mediation service providers, including the Hong Kong International Arbitration Centre, the Law Society and the Hong Kong Mediation Centre, had adopted the Code.

12. At the meeting on 22 February 2010, DoJ advised that the Working Group recommended a review of the possibility of setting up a single mediation accrediting body in Hong Kong in the form of a company limited by guarantee in five years taking into account the development of the mediation landscape. Members noted that the Hong Kong Bar Association ("the Bar Association") considered that such an accrediting body should be put in place as soon as possible as there was a risk that different accrediting bodies might open up in the interim, rendering it more difficult to bring them under one umbrella body.

13. In his reply to the written question raised by Mr CHEUNG Kwok-che concerning the system of accrediting mediators at the Council meeting on 23 February 2011, SJ advised that DoJ was working with stakeholders with a view to facilitating the establishment of a single accreditation body and the development of accreditation and training standards in due course. The question raised by Mr CHEUNG and the reply of SJ are in **Appendix II**.

14. On enacting legislation on mediation, DoJ advised that the Regulatory Framework Sub-group proposed that a Mediation Ordinance should be enacted with reference to the regulatory framework for mediation. The proposed ordinance would set out key terminology such as "mediation" and "conciliation" and also cover areas such as confidentiality and privilege, admissibility, immunity of mediators and enforcement of agreement to mediate.

15. Some members queried the need for introducing the proposed mediation ordinance which did not seem to contain any mandatory rules governing the conduct of mediation. They expressed concern about contradiction between legislating on mediation and maintaining the flexibility of the mediation process. DoJ explained that the primary objective of enacting legislation on mediation was to provide a proper framework for the conduct of mediation. Legislating on rules

of confidentiality, including setting out statutory exceptions to the rules and the sanctions for breaching them, could provide clarity and certainty for their operation.

Enhancing the legal profession's understanding of mediation services

16. Members noted the concern among legal practitioners about the onerous requirements imposed on them by the Practice Direction on Mediation ("PD 31") in connection with the implementation of the Civil Justice Reform. Under PD 31 which came into effect on 1 January 2010, for proceedings where all the parties are legally represented, the legal representatives concerned are required to file a Mediation Certificate to, inter alia, confirm that they have explained to their client the availability of mediation services, the procedures involved and the costs of mediation vis-à-vis litigation. The Law Society had expressed the view that to require solicitors to assess the fees that would be incurred in mediation and help the legally-aided client to see whether the fees involved would be disproportionate to what might be recovered was an onus unfairly put on the legal profession. Members considered it important to provide legal practitioners with more information on mediation to enhance their understanding of this ADR procedure. The Administration assured members that the Working Group would work together with other parties to enhance the legal professional's understanding of mediation services.

17. At the meeting on 22 February 2010, DoJ informed members that the Mediation Information Office was established within the Judiciary with effect from 4 January 2010 to provide litigants with relevant information on mediation so as to assist them in considering whether they should attempt mediation in resolving disputes upon the implementation of PD 31.

18. At the meeting on 21 December 2010, DoJ advised that there was concern about sham mediation after the implementation of PD 31. Members noted that the Bar Association and the Law Society had issued a circular to remind their members that participating in sham mediations either as counsel or as a mediator was an act of professional misconduct and might be subject to disciplinary action. The court was also monitoring the situation and the Working Group would consider taking appropriate action if necessary.

Training of mediators

19. In response to the concern about training of mediators on specialized areas which were particularly suited for mediation, such as those concerning building management, professional negligence and sale/supply of consumer goods/services, DoJ advised that the Working Group recognized the importance of enhancing mediation education in relevant university disciplines. Apart from the study of

law, the Working Group considered that mediation education should also be incorporated into other relevant disciplines, such as architecture, civil engineering and social work, where mediation could potentially play an important role in resolving disputes. Such cross-disciplinary education on mediation would help incubate innovative mediation methods in different types of mediation cases.

20. DoJ also advised that there was a significant increase in the number of mediators in Hong Kong in 2009. There were currently over 1,000 accredited mediators in Hong Kong who obtained their qualification through the accreditation schemes run by various bodies.

Impact of development of mediation on right to access to court

21. While indicating support for the development of mediation services, some members stressed that access to court was a fundamental right of Hong Kong residents guaranteed by the Basic Law and such right should not be in any way be eroded by the development of mediation. They considered that mediation services could not substitute the role of the court in resolving disputes and cases involving significant public interests should be resolved by judicial proceedings and not mediation.

22. DoJ assured members that the right of access to court would not be affected adversely by the development of mediation services. In the Final Report of the Chief Justice's Working Party on Civil Justice Reform, it was made clear that certain types of cases, such as those involving constitutional issues, were not suitable for mediation. In addition, cases where there was imbalance in bargaining powers between the parties were also not appropriate for mediation. Under PD 31 which was only applicable to civil disputes, the court would consider making an adverse costs order only in cases where a party had unreasonably failed to engage in mediation. The Working Group believed that at the present stage, mandatory mediation for civil disputes should not be implemented. The issue would be re-visited in the light of experience in developing mediation services.

Provision of mediation services for building management cases

23. At the meeting on 27 April 2009, the Judiciary Administration ("JA") briefed members on the findings of the evaluation of the pilot scheme for building management cases in the Lands Tribunal launched on 1 January 2008. Members noted that one of the objectives of the pilot scheme was to facilitate expeditious disposal of building management cases through the use of mediation. JA advised that in the light of the positive outcome of the pilot scheme, the Lands Tribunal would adopt the measures taken in the Pilot Scheme as the standard practice with effect from 1 July 2009. It was recommended that solicitors should explore mediation with their clients in all represented building management cases in the

Lands Tribunal. For cases where one or both parties were unrepresented litigants, the Lands Tribunal might, on the application of a party or on its own motion, as appropriate, give directions that the parties should follow the relevant procedure on mediation.

24. In response to members' concern about the adequacy of the support services provided by the Judiciary on promoting the use of mediation in building management cases in the Lands Tribunal after the end of the pilot scheme, JA informed the Panel that it had set up a Building Management Mediation Co-ordinator's Office ("BMMCO") in the Lands Tribunal to provide information and enquiry services for parties who were willing to attempt voluntary mediation before or after they issued proceedings in the Lands Tribunal. The actual mediation service would be provided by private mediators outside the Judiciary. In that regard, BMMCO maintained a list of accredited mediators who were willing to participate in the pilot scheme, whether on a pro bono or fee-charging basis and all the support services provided by BMMCO would continue after the pilot scheme.

25. Some members expressed concern that fewer parties would be willing to attempt to resolve their disputes through mediation after all the quota for pro bono service in the pilot scheme had been used up. They also suggested that as success in mediating settlement would bring about much savings in judicial resources, the saved public resources resulting from the use of mediation in the Lands Tribunal should be allocated for promoting and facilitating mediation in building management cases. JA was requested to provide information on the estimated savings on judicial resources in monetary terms resulting from the successfully mediated cases in the pilot scheme.

26. JA advised that the experience in the pilot scheme on family mediation launched a few years ago showed that some parties were still willing to use mediation service to resolve disputes even though such service was no longer provided free of charge after the pilot scheme had ended. The most important considerations were whether a particular case was suitable for mediation and whether mediation would be an efficient and cost effective means of resolving the dispute. On the estimated savings on judicial resources, JA further explained that the court time saved as a result of mediation in the pilot scheme was estimated at 25 court days. However, this might not result in corresponding savings on judicial resources in monetary terms as the Judiciary had continued to deploy the same level of judicial resources at the Lands Tribunal to hear cases. The positive effect of achieving such savings in court time would be the reduction in waiting time for cases in the Lands Tribunal.

27. At the meeting on 22 October 2010, some members suggested that the Administration should implement practicable measures to facilitate expeditious

resolution of building management disputes, having regard to the increasing number of disputes concerning building management and compulsory land sale. They considered that the Administration should consider the provision of free mediation service for such cases at the district level and opined that HAD staff should offer assistance in facilitating the settlement of building management disputes.

28. The Home Affairs Bureau explained that the Administration recognized the need to work out a mechanism to facilitate the resolution of building management disputes at the district level. To this end, it was proposed in the Policy Address for 2010-2011 that a panel of advisors be established to provide owners involved in building management disputes with impartial and authoritative advice. As HAD staff did not have a background in legal studies or relevant professional training, there was difficulty in offering professional mediation services beyond the assistance currently provided in resolving disputes.

29. DoJ advised that a number of pilot schemes had been/would be in place to promote the use of mediation in resolving specific types of disputes such as the pilot scheme for building management cases in the Lands Tribunal launched in 2008 and adopted permanent with effect from 1 July 2009. In respect of compulsory land sale cases, the Development Bureau had been working closely with the mediation service providers to set up a pilot scheme to facilitate parties involved in or contemplating compulsory sale applications under the Land (Compulsory Sale for Redevelopment) Ordinance to undertake mediation on a voluntary basis. Apart from the Government, the mediation service providers had also collaborated to set up the Joint Mediation Helpline Office to provide a one-stop mediation referral service for parties in need of mediation service. DoJ also considered it more practicable to have HAD staff referring cases to relevant non-governmental organizations for mediation than to have them trained as mediators. The Administration would explore means to improve referral services to help members of the public gain access to mediation services.

Provision of mediation services on consumer disputes and employment cases

30. 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. DoJ 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.

31. Noting that all members of the Working Group had a legal background, Dr Margaret 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.

32. In response to members' suggestion that assistance should be provided to employees during the mediation process, particularly in respect of advice on the settlement amount, DoJ advised that relevant trade unions and non-governmental organizations would be able to offer assistance to the employees concerned. For employees who were legally-aided, their assigned legal representatives would provide them with any necessary assistance and advice concerning settlement by mediation, and the cost of mediation would also be covered by legal aid.

Latest development

33. The Administration will brief the Panel on the implementation progress of the recommendations in the Report of the Working Group and the provision of mediation services for building management cases at the upcoming meeting on 14 April 2011.

Relevant papers

34. A list of the relevant papers which are available on the Legislative Council website is in **Appendix III**.

Extract from the Executive Summary of the Working Group on Mediation Report

Summary of Recommendations

Recommendation 1

A clear and workable definition of mediation be agreed upon. Some degree of flexibility in the definition of mediation should be maintained so that future application and development of mediation in Hong Kong will not be unnecessarily restricted.

Recommendation 2

The use of the words “mediation” and “conciliation” within the Hong Kong legislation should be reviewed, in particular in the Chinese text, to remove any inconsistency.

Recommendation 3

An “Umbrella” mediation awareness programme which targets the general public with information on the modes and process of mediation be implemented through the use of sector specific mediation publicity campaigns such as those targeting the business and commercial sector, communities, youth and elderly. Such sector specific campaigns should focus on the modes of mediation that are effective and relevant to the specific sector.

Recommendation 4

Given the many parties involved in the promotion of and public education on mediation and the good work that they have been engaged in, it is recommended that these parties be encouraged to continue their important promotional and public education work. These diverse parties should actively seek to collaborate with each other and pool their efforts and expertise together where the opportunity arises, as concerted efforts would carry greater and more lasting impact.

Recommendation 5

Mediation information and training for frontline dispute resolvers (such as police officers, social workers, family psychologists, correctional officers and lawyers) should be supported as such training will assist them in their day-to-day work and having a good understanding of mediation will assist them to be effective dispute resolvers or mediation referrers. It will also assist them in promoting mediation as a means to resolve conflicts harmoniously at the community level.

Recommendation 6

Further promotion of the ‘Mediate First’ Pledge should be encouraged within the business and commercial sectors given its initial success.

Recommendation 7

The 'Mediate First' Pledge to be promoted to different sectors of the community and its website (www.mediatefirst.hk) be maintained, updated and made interactive in order to provide support to those who subscribe to the Pledge and interested members of the public.

Recommendation 8

The pace of promoting mediation should take into account the readiness of mediators, the maturity of the infrastructural support, and the needs of mediation users. The course of the promotion may be divided into 3 stages: Stage 1 (Awareness Building), Stage 2 (Intensified and Targeted Publicity), and Stage 3 (Mass Outreach). As development migrates from Stage 1 to Stage 2, the pace of promoting mediation should be stepped up. Given the competing demands for Government publicity resources, the support and concerted efforts of all parties involved in mediation should be enlisted.

Recommendation 9

Mediation pilot schemes be considered for disputes in areas such as in the workplace and employment, intellectual property, banking and financial services, medical malpractice and healthcare, child protection, environmental, urban planning, land use and re-development.

Recommendation 10

The experience and statistics from the operation of the Lehman Brothers-related Investment Products Dispute Mediation and Arbitration Scheme be analysed to identify the factors that are conducive to the success of this scheme, its limitations and the lessons to be learnt for the future.

Recommendation 11

The initiative of the insurance industry in the establishment of the New Insurance Mediation Pilot Scheme ("NIMPS") is worthy of support. The Federation of Insurers should be encouraged to analyse and share its experience in operating NIMPS, in particular the factors that are conducive to its success and the lessons to be learnt. The sharing of success stories would be a very effective means of promoting mediation.

Recommendation 12

Further promotion and expansion of family mediation services in Hong Kong should be supported. Consideration should be given to support NGOs providing family mediation services to the community. Development of Collaborative Practice as a less adversarial means of resolving family disputes could be explored further.

Recommendation 13

The challenges posed by unrepresented litigants in court should be further studied and more statistical data made available so that promotion of mediation to unrepresented litigants may be better supported.

Recommendation 14

Special efforts should be made to promote mediation to unrepresented litigants in court including the provision of mediation information and the promotion of the 'Mediate First' website (www.mediatefirst.hk) to them through the Mediation Information Office and the Resource Centre for Unrepresented Litigants in the High Court.

Recommendation 15

Further support and expansion of the current Restorative Justice and Mediation Programmes throughout the community in Hong Kong should be encouraged.

Recommendation 16

Pending the outcome of the Pilot Project on Community Venues for Mediation, 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.

Recommendation 17

Recognising the competing demands on the school curriculum, the potential introduction of mediation education within the primary and secondary schools warrants serious examination and it is recommended that consideration be given to support the expansion of the Peer Mediation Project.

Recommendation 18

The Bar Association and the Law Society should be invited to consider the content and coverage of mediation training for their members as part of their ongoing professional development and whether such training should be made compulsory.

Recommendation 19

In order to foster the further development of mediation knowledge in the legal profession, consideration should be given to revisit the question of mediation being incorporated into compulsory courses at PCLL, LL.B and J.D. programmes at a later stage when the mediation landscape becomes more mature.

Recommendation 20

Subject to resource and curriculum constraints, the Universities should consider enhancing the current elective mediation courses and the mediation element in other courses within the Law Faculties at both the undergraduate and postgraduate levels.

Recommendation 21

The Universities should be invited to consider offering common core courses on mediation and dispute resolution within the first year undergraduate University programme through an integrated interdisciplinary approach to educating students about the process and skills of mediation.

Recommendation 22

The Law Faculties of the three Universities (University of Hong Kong, Chinese University of Hong Kong, and City University of Hong Kong) should be encouraged to proceed with the development of the proposed “Hong Kong Mediation Competition”.

Recommendation 23

Early Dispute Resolution (“EDR”) systems could be beneficial for organisations, universities and other tertiary institutions in Hong Kong to give due consideration in order to help resolve conflicts and minimise dispute resolution costs within organisations and institutions.

Recommendation 24

An Announcement in the Public Interest be produced and aired on television for the promotion of mediation. More publicity via radio, printed media and new media platform should also be pursued. Educational programmes on mediation targeted at youth should be strengthened and special efforts be made to approach television stations and script-writers to consider including mediation in their television drama productions.

Recommendation 25

The establishment of a single body for accrediting mediators is desirable and can assist to ensure the quality of mediators, consistency of standards, education of the public about mediators and mediation, build public confidence in mediation services and maintain the credibility of mediation.

Recommendation 26

It is considered that currently the time is 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 users of mediation that will enable them to decide whether to choose mediation to resolve disputes and also assist them to be better able to choose competent mediators.

Recommendation 27

There should be wide promulgation of the Hong Kong Mediation Code which is a code of conduct for mediators in Hong Kong and mediation service providers are encouraged to adopt the Code and set up robust complaints and disciplinary processes to enforce the Code.

Recommendation 28

A single mediation accrediting body in Hong Kong could be in the form of a company limited by guarantee. The possibility for establishing this body should be reviewed in 5 years.

Recommendation 29

Information on the Continuing Professional Development requirements (if any) of mediator accrediting organisations should be made available to the public.

Recommendation 30

Whenever the question of an appropriate mediator arises in court, the Judiciary might suggest that the parties consider selecting a mediator (of whatever qualifications or accreditation) who has at least subscribed to the Hong Kong Mediation Code.

Recommendation 31

Encouragement should be given for experienced mediators to assist newly accredited mediators to obtain practical mediation experience.

Recommendation 32

Hong Kong should have legislation on mediation, which should be aimed at providing a proper legal framework for the conduct of mediation in Hong Kong. However, the legislation should not hamper the flexibility of the mediation process.

Recommendation 33

There should be the enactment of a Mediation Ordinance, instead of introducing legislative provisions relating to mediation into the existing Arbitration Ordinance or other Ordinances.

Recommendation 34

There should be an interpretation section in the Proposed Mediation Ordinance setting out the key terminology such as 'mediation' and 'mediator'. As regards the expressions 'mediation agreement' and 'mediated settlement agreement', they should be defined if the Proposed Mediation Ordinance is to contain provisions dealing with their enforcement.

Recommendation 35

There should be a section in the Proposed Mediation Ordinance setting out its objectives and underlying principles.

Recommendation 36

The Working Group does not recommend the introduction of legislative provisions dealing with enforcement of a mediation agreement. However, if it is considered appropriate to introduce such legislative provisions, the enforcement scheme can be designed along the lines of the scheme for enforcing arbitration agreements (i.e. a stay of proceedings pending mediation).

Recommendation 37

There is no need for the Proposed Mediation Ordinance to include any provisions to deal with the mediation process, save that there should be: (a) a provision dealing with the appointment of the mediator along the line of clause 32 of the Draft Arbitration Bill; and (b) a provision (similar to section 2F of the Arbitration Ordinance) that sections 44, 45 and 47 of the Legal Practitioners Ordinance do not apply so that non-lawyers or foreign lawyers can participate in mediation conducted in Hong Kong.

Recommendation 38

The Proposed Mediation Ordinance should 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.

Recommendation 39

The issue of whether to grant mediator immunity from civil suits is a controversial one. Although it is not recommended that such immunity be granted, it may be desirable to allow partial immunity, especially in respect of *pro bono* or community mediation.

Recommendation 40

It is not necessary to introduce legislative provisions to suspend the running of limitation periods during the mediation process.

Recommendation 41

It is not necessary to include in the Proposed Mediation Ordinance a statutory mechanism for enforcing mediated settlement agreements. Where necessary, enforcement of mediated settlement agreements can be left to the court as in ordinary cases of enforcement of contracts.

Recommendation 42

Whilst not really necessary, there is in principle no objection to include a set of model mediation rules in the Proposed Mediation Ordinance. However, any model mediation rules so included should only serve as a guide and should not be made mandatory. To maintain flexibility of the mediation process, parties should be at liberty to adopt such mediation rules as they deem fit.

Recommendation 43

The question of whether there should be an Apology Ordinance or legislative provisions dealing with the making of apologies for the purpose of enhancing settlement deserves fuller consideration by an appropriate body.

Recommendation 44

Unless there are specific exceptions that can be properly justified, the Government should be bound by the Proposed Mediation Ordinance.

Recommendation 45

Compulsory referral to mediation by the court should not be introduced at this stage, but the issue should be revisited when mediation in Hong Kong is more developed.

Recommendation 46

At this stage, the Judiciary should not provide mediation services. However, the question should be revisited in future after consultation with the Judiciary (whether as part of the review of the implementation of the Civil Justice Reform or as a separate review).

Recommendation 47

It would not be necessary to include in the Proposed Mediation Ordinance provisions for cross-boundary enforcement of mediated settlement agreements.

Recommendation 48

Legal aid should be provided to legally aided persons when they are willing to participate in mediation.

Annex

Employed females aged 15 to 59 working 35 hours or more per week and with monthly employment earnings less than 50% of the median

<i>Year</i>	<i>Population</i>	<i>Percentage in Female Labour Force</i>	<i>Percentage in Overall Labour Force</i>
2005	101 300	6.4%	2.9%
2006	135 900	8.4%	3.8%
2007	128 300	7.7%	3.5%
2008	104 000	6.1%	2.9%
2009	92 800	5.4%	2.5%

Note:

Data excludes foreign domestic helpers.

Source:

The Census and Statistics Department.

Mediation Service

20. **MR CHEUNG KWOK-CHE** (in Chinese): *President, some members of the public have relayed to me that their demand for mediation service is on the increase, but related systems ranging from training to accreditation of mediators are still confusing, resulting in the public not knowing how to choose mediation service. In this connection, will the Government inform this Council:*

- (a) *given that the Secretary for Justice has indicated that one of the duties of the newly established mediation task force is to develop a system of accrediting mediators, of the details of the work plans of this task force in this regard, and the Government's plan for developing a training system for professional mediators;*
- (b) *given that it has been learnt that there is a huge backlog of mediation cases on Lehman Brothers-related minibonds, and even though many aggrieved investors (victims) are willing to accept mediation service, they generally have to wait for as long as two*

years, how the Government will solve this bottleneck problem in mediation service so that the bargaining power of the victims will not be undermined; and

- (c) *given that the Government published the Report of the Working Group on Mediation (the Report) and announced launching a three-month public consultation on 8 February 2010, of the public views collected during consultation; whether the Government will publish a final report on the results of the consultation, and the next step of implementing the recommendations of the Report?*

SECRETARY FOR JUSTICE (in Chinese): President,

- (a) At present, accredited mediators practising in Hong Kong are accredited by different mediation accrediting organizations, local and overseas alike, each adopting its own set of training and accreditation requirements. Local service providers which have mediation accreditation include, among others:
- The Hong Kong International Arbitration Centre (HKIAC)
 - The Law Society of Hong Kong
 - The Hong Kong Mediation Centre
 - The Hong Kong Institute of Surveyors
 - The Royal Institution of Chartered Surveyors Hong Kong
 - Hong Kong Institute of Architects

In early 2010, the Hong Kong Mediation Code was promulgated. The Code is intended to provide a common standard among mediators and has an important quality assurance role. Twenty-one mediation service providers, including those listed above, have adopted the Code.

The Working Group on Mediation set up in 2008 to review, *inter alia*, the development and provision of mediation services in Hong Kong did examine the accreditation and training of mediators. In its Report published for public consultation in February 2010, one of its recommendations was that the establishment of a single accreditation body would be desirable and could assist in ensuring the quality of mediators, consistency of standards, education of the public about mediation and mediators, enhancing public confidence in mediation services and maintaining the credibility of mediation⁽¹⁾. Nonetheless, it noted that "the time is not right to prescribe a standardized system of accrediting mediators" and "the emphasis should be on the provision of appropriate mediation information to potential users of mediation that will enable them to decide whether to choose mediation to resolve disputes and also assist them to be better able to choose competent mediators"⁽²⁾. The Report recommended that the possibility for establishing such a body be reviewed in five years⁽³⁾. The majority of the submissions received in respect of the public consultation, however, demanded a single accreditation body to be set up as soon as possible rather than reviewing such a need in five years.

As there are a number of mediation service providers in Hong Kong, local and overseas alike, it is important for the service providers to work together on the formation of an accreditation body and to agree on mutually acceptable professional standards, including training standards. It is noted that there are different approaches which may be considered for achieving the objective. For example, one approach is that of a centralized body which will conduct mediator training and assessments and provide mediators. Another is an umbrella type single accreditation body which would be inclusive of various mediation service providers. It is important to find a model that best suits Hong Kong. Towards this end, the Department of Justice is working closely with the various stakeholders with a view to facilitating the establishing of a single accreditation body and the development of accreditation and training standards in due course.

- (1) Recommendation 25 of the Report, Department of Justice, February 2010. See paragraphs 6.12 to 6.16 at pages 59 to 60.
- (2) Recommendation 26 of the Report. See paragraphs 6.37 to 6.38 at page 64.
- (3) Recommendation 28 of the Report. See paragraphs 6.49 to 6.54 at pages 67 to 69.

- (b) According to the Hong Kong Monetary Authority (HKMA), it has engaged the HKIAC to make available mediation and arbitration services under the Lehman-Brothers-related Products Dispute Mediation and Arbitration Scheme. The HKMA will co-ordinate referrals and pay the share of the fee for these services on behalf of:
- investors whose complaints in relation to the sale of the products have already been referred by the HKMA to the Securities and Futures Commission (SFC) for it to decide whether to take any further action; or
 - investors whose complaint has resulted in a finding against a relevant individual or executive officer by either the HKMA or the SFC.

According to the statistics provided to the HKMA by the HKIAC, since the introduction of the services in November 2008, the HKIAC has received 351 referral cases, of which 291 have been completed. The completed cases consist of 91 successful mediation cases; nine failed mediation cases; 147 withdrawn cases which had been settled between the banks and the investors before the mediation began; and 44 cases for which the banks did not agree to mediation.

As at mid-February, there are 60 cases being handled by the HKIAC, of which 55 cases are about to start mediation while the remaining five are pending banks' agreement to mediation. Of the 60 cases, the earliest one reached the HKIAC in May 2010. No cases have been pending mediation for one or two years. Because mediation is a voluntary process, it can begin only when banks have agreed to mediation. Once both parties agree to mediation, the mediator appointed by the parties will begin the process as soon as practicable and will use best endeavours to conclude the mediation within 21 calendar days of appointment. Experience indicates that the HKIAC was usually able to complete mediation within a month after receiving a bank's agreement to mediation. Some cases required longer time to complete, mainly because it took time to wait for banks' responses on whether they agree to mediation.

- (c) Following the publication of the Report for public consultation in February 2010, the Department of Justice has received positive and constructive feedbacks on the 48 recommendations. Instead of publishing a further report, we have proceeded directly to further consider those recommendations in the Report which require further deliberations after taking into account the public feedback received, and to implement those which received general support. A Mediation Task Force chaired by me has now been set up to assist in considering and implementing the various recommendations. In the coming 30 months, we will:
- work with stakeholders to keep in view the development of the system of accrediting mediators;
 - work out the details of the proposed mediation legislation taking into account the development of the mediation landscape. It is envisaged that the legislation would set out a framework for the conduct of mediation;
 - work with relevant stakeholders to oversee the adoption and implementation of the Hong Kong Mediation Code and to review the operation of the Code in the light of experience;
 - work with mediation service providers, professional bodies, community organizations, other stakeholders and government bureaux and departments to take forward the various public education and publicity initiatives recommended by the Working Group, including building on the Mediate First initiative, conducting matching programmes for community venues and mediation users, and fostering the wider use of community mediation; and
 - work with relevant parties to further explore the opportunities for initiating pilot mediation schemes in different sectors.

**Relevant papers on development of mediation services and
mediation services for building management cases**

Committee	Date of meeting	Paper
Panel on Administration of Justice and Legal Services ("AJLS Panel")	22.10.2007 (Item III)	Agenda Minutes
	23.6.2008 (Item IV)	Agenda Minutes
	20.10.2008 (Item I)	Agenda Minutes
	27.4.2009 (Item IV)	Agenda Minutes CB(2)1837/08-09(01)
	22.6.2009 (Item VII)	Agenda Minutes CB(2)2016/08-09(02) CB(2)2016/08-09(03)
	22.2.2010 (Items V and VI)	Agenda Minutes
	26.4.2010 (Item V)	Agenda Minutes
Legislative Council	26.5.2010	Official Record of Proceedings Pages 226 - 311(Motion)
AJLS Panel	22.10.2010 (Item I)	Agenda Minutes
	21.12.2010 (Item V)	Agenda Minutes