

立法會
Legislative Council

Ref : CB2/BC/2/11

LC Paper No. CB(2)1058/11-12
(These minutes have been seen
by the Administration)

Bills Committee on Mediation Bill

Minutes of the first meeting
held on Wednesday, 21 December 2011, at 8:45 am
in Conference Room 2A of the Legislative Council Complex

Members present : Dr Hon Margaret NG (Chairman)
Hon Albert HO Chun-yan
Hon LAU Kong-wah, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon CHEUNG Kwok-che

Members absent : Hon Miriam LAU Kin-yee, GBS, JP
Hon Abraham SHEK Lai-him, SBS, JP
Hon Cyd HO Sau-lan

Public Officers attending : Department of Justice

Mr Simon LEE
Deputy Law Officer (Civil Law)

Ms Sou CHIAM
Deputy Principal Government Counsel

Miss Shandy LIU
Senior Government Counsel
(Law Drafting Division)

Miss Venus CHEUNG
Government Counsel

Clerk in attendance : Miss Flora TAI
Chief Council Secretary (2)3

Staff in attendance : Mr YICK Wing-kin
Assistant Legal Adviser 8

Ms Wendy LO
Council Secretary (2)3

Mrs Fanny TSANG
Legislative Assistant (2)3

Action

I. Election of Chairman

Dr Margaret NG was elected as the Chairman of the Bills Committee.

II. Meeting with the Administration

[LC Paper Nos. CB(3)154/11-12, LS11/11-12, CB(2)644/11-12(01), CB(2)645/11-12(01) to (03) and LegCo Brief]

2. The Bills Committee deliberated (index of proceedings attached at **Annex**).

Follow-up actions required of the Administration

- Admin 3. The Administration was requested to provide the following information –
- (a) a list of mediation groups/organizations and other related professional bodies which had been consulted on the draft Mediation Bill;
 - (b) a list of the existing mediation accrediting organizations in the industry;
 - (c) clarifications to the issues raised by the legal adviser to the Bills Committee regarding the Bill, in particular the reasons for not making provisions for the following matters -
 - (i) sanctions for breaching the rules of confidentiality and privilege;
 - (ii) default appointment of mediators;

Action

- (iii) rules governing the conduct of mediators and the mediation process;
 - (iv) matters relating to accreditation of mediators; and
 - (v) enforcement of mediated settlement agreements.
- (d) the use of mediation in resolving matrimonial and construction disputes and the provision of mediation services by Government departments; and
- (e) the proposal and the timetable for setting up an industry-led mediation accrediting body and the views of the mediation industry on the establishment of such body.

Invitation of public views

4. Members agreed that the Bills Committee should receive views from deputations at a future meeting. Members further agreed that a notice on invitation of public views should be posted on the Legislative Council website and relevant mediation groups/professional bodies would also be invited to that meeting.

(Post-meeting note: The meeting to receive views from deputations on the Bill has been scheduled for 13 January 2012 at 10:45 am.)

Date of next meeting

5. The Bills Committee agreed to schedule another meeting to continue its discussion with the Administration.

(Post-meeting note: The meeting with the Administration has been scheduled for 10 January 2012 at 4:30 pm.)

III. Any other business

6. There being no other business, the meeting ended at 9:52 am.

**Proceedings of the first meeting of the
Bills Committee on Mediation Bill
on Wednesday, 21 December 2011, at 8:45 am
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker(s)	Subject(s)	Action required
000122 - 000219	Mr Albert HO Dr Margaret NG Mr LAU Kong-wah Mr CHEUNG Kwok-che	Election of Chairman	
000220 - 000435	Chairman Mr Albert HO Mr CHEUNG Kwok-che	Opening remarks The need to invite deputations' views on the Bill.	
000436 - 001326	Chairman Administration	Briefing by the Administration on the Bill The Administration was requested to provide a list of mediation groups/organizations and other related professional bodies which had been consulted on the draft Mediation Bill for the Bills Committee's consideration for inviting deputations to give views on the Bill.	Admin (para 3 of minutes)
001327 - 001744	Chairman	The Chairman summarized the main concerns raised by the Panel on Administration of Justice and Legal Services and the two legal professional bodies on the draft Bill and suggested the approach to examine the Bill.	
001745 - 002227	Chairman Assistant Legal Adviser Administration	In response to the questions raised by the Legal Adviser to the Bills Committee on the Bill as detailed in his letter dated 16 December 2011 to the Administration, the Administration advised that – (a) the Bill sought to provide a regulatory framework for the conduct of mediation in Hong Kong and it was hoped that the Bill could be enacted by the end of the current legislative session as mediation had already become an integral part of the civil proceedings following the implementation of Practice Direction 31 on mediation ("PD 31") under which legal representatives had a duty to advise their clients to explore the use of mediation in resolving their disputes;	

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		<p>(b) time was needed to establish a single non-statutory industry-led mediation accreditation body for mediators and the Accreditation Group of the Mediation Task Force set up to facilitate the formation of the single accrediting body considered that the requirements of existing accrediting bodies and the development of the mediation landscape should be taken into account when establishing such a body;</p> <p>(c) there were different mediation accrediting organizations in Hong Kong to accredit mediators at present; and</p> <p>(d) the Administration would provide clarifications to the questions raised by the Legal Adviser to the Bills Committee, in particular the reasons for not making provisions for the following matters –</p> <ul style="list-style-type: none"> (i) sanctions for breaching the rules of confidentiality and privilege; (ii) default appointment of mediators; (iii) rules governing the conduct of mediators and the mediation process; (iv) matters relating to accreditation of mediators; and (v) enforcement of mediated settlement agreements. <p>At the request of the Chairman, the Administration undertook to provide a list of the existing mediation accrediting organizations in the industry.</p>	<p>Admin (para 3 of minutes)</p>
002228 - 003137	Mr LAU Kong-wah Administration	Mr LAU Kong-wah considered that the Administration should step up the promotional and public education work on mediation in the community. He further expressed concern about the implementation of the proposed legislation in the absence of relevant provisions on accreditation of mediators and rules governing the conduct of mediators and the mediation process in the Bill.	

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		<p>The Administration responded that –</p> <ul style="list-style-type: none"> (a) promotional and public education work would be stepped up to promote mediation as a means of resolving disputes. An Announcement of Public Interests would soon be arranged to be broadcasted on television and radio to promote the use of mediation; (b) at present, mediation services were provided to the public through various channels/organizations as follows – <ul style="list-style-type: none"> (i) the Hong Kong Mediation Centre; (ii) the Hong Kong Mediation Council of the Hong Kong International Arbitration Centre; (iii) panel of accredited general mediators and lists of mediators provided by the Law Society of Hong Kong and the Hong Kong Bar Association respectively; (iv) the Joint Mediation Helpline Office Ltd. located in the High Court Building; and (v) the Judiciary's Mediation Information Office which provided information on mediation to litigants in civil proceedings. (c) the Administration noted the trend of resolving disputes in civil proceedings by mediation and considered that legislating on mediation to provide a legal framework for the development of mediation should be the first step to promote mediation; and (d) the Administration would continue to work with stakeholders on the establishment of a single non-statutory industry-led accreditation body for mediators taking into account the requirements of existing accrediting bodies and the development of the mediation landscape. 	
003138 - 003144	Mr LAU Kong-wah Administration	Mr LAU Kong-wah considered that the Administration should not focus merely on the legislation work on mediation. He stressed the need for the Administration to work out the accreditation	

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		<p>system of mediators and other issues relating to mediation in tandem to provide a solid basis for the implementation of the legislation. He also considered that the promotional work of mediation should be spearheaded by the Administration instead of relevant professional bodies in the industry.</p> <p>The Administration responded that –</p> <ul style="list-style-type: none"> (a) mediation had long been adopted to resolve matrimonial and construction disputes. The Administration aimed to promote the wider use of mediation to other areas; (b) the Judiciary had promoted actively the use of mediation with the implementation of PD 31 and the establishment of the Mediation Information Office in the High Court; (c) a Mediation Task Force was also set up by the Administration with a view to promoting wider use of mediation; and (d) the Administration would continue its other areas of work in promoting mediation while working on the legislation on mediation. 	
003145 - 003755	Chairman Administration	<p>The Chairman summarized the mediation services available to the public at present. She echoed the view that the Administration should not only concentrate on the legislative aspect of mediation but also other areas of work as well. She held the view that the promotion of mediation should not be taken up by the Judiciary as its main duty was to handle traditional judicial proceedings.</p> <p>At the request of the Chairman, the Administration agreed to provide information on the use of mediation in resolving matrimonial and construction disputes and the provision of mediation services by Government departments.</p>	Admin (para 3 of minutes)
003756 - 004739	Prof Patrick LAU Administration Chairman	<p>Prof Patrick LAU enquired –</p> <ul style="list-style-type: none"> (a) whether the current accreditation of the practicing mediators would be recognized after enactment of the Bill; 	

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		<p>(b) about the role of the existing various Tribunals (e.g. The Small Claims Tribunal, The Appeal Tribunal (Building) and The Immigration Tribunal) which encouraged the parties concerned to resolve disputes through mediation after enactment of the Bill; and</p> <p>(c) whether the Administration would consider setting up a Mediation Tribunal for handling common disputes such as water seepage problem.</p> <p>The Administration responded that –</p> <p>(a) although the Bill would not contain provisions relating to accreditation of mediators, the Administration was working with stakeholders on the development of a single non-statutory industry-led accreditation body for mediators;</p> <p>(b) the legislation would not affect the current practices of mediation given that mediation was mainly voluntary and of a facilitative nature without adjudicating a dispute;</p> <p>(c) the parties to disputes at the Tribunals at present were encouraged to resolve their disputes through negotiation instead of mediation which required an impartial mediator; and</p> <p>(d) while there was an increasing trend of using mediation to settle building management disputes including water seepage disputes, there was no proposal on establishment of a Mediation Tribunal which would involve complex issues that required careful consideration such as the prudent use of public fund and the structure of the Tribunal.</p> <p>Prof Patrick LAU further enquired whether mediation would be made mandatory by the courts after enactment of the Bill.</p> <p>The Administration responded that –</p> <p>(a) mediation was a voluntary process in Hong Kong, same as other overseas jurisdictions and would not be made mandatory by the courts after enactment of the Bill; and</p>	

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		<p>(b) mediation was not made a mandatory process in civil proceedings under PD 31 as the parties to a litigation could refuse to engage in mediation and the court would not make any adverse costs order against the refusing party if the court was satisfied that it was reasonable for that party to do so.</p> <p>In response to the Chairman, the Administration affirmed that the Bill only sought to provide a proper statutory framework for the conduct of mediation in Hong Kong and address some of the areas in which the law was uncertain, such as confidentiality, disclosure of mediation communications and admissibility of mediation communications in evidence.</p>	
004740 - 005635	Mr CHEUNG Kwok-che Chairman Administration	<p>Mr CHEUNG Kwok-che expressed disagreement with the Administration's view that matters relating to accreditation of mediators could be dealt with at a later stage after enactment of the Bill. Expressing concern over the diversities in qualifications and background of practicing mediators in the industry and variations on the mediation costs, he considered that a system of accrediting mediators should be worked out to ensure the professionalism of mediators. He requested the Administration to provide a timetable for developing an accreditation system of mediators.</p> <p>The Administration responded that –</p> <p>(a) while the Administration did not have a timetable for prescribing by law an accreditation system of mediators, the Accreditation Group of the Mediation Task Force had all along been tasked to work on a single non-statutory industry-led accreditation body for mediators.</p> <p>(b) the Hong Kong Mediation Code ("the Code") promulgated by Department of Justice in 2010 which provided a common standard among mediators and governed the conduct of mediations was adopted by over 20 mediation service providers which had set up their own disciplinary processes to enforce the Code; and</p>	

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		<p>(c) the single non-statutory industry-led mediation accreditation body for mediators to be set up could enhance the development of professionalism of mediators in future and such kind of professional bodies were normally set up by the industries themselves.</p> <p>Mr CHEUNG Kwok-che considered that the Administration should take the lead in assisting the mediation industry to establish the single mediation accrediting body and urged the Administration to provide relevant timetable for its work. The Administration reiterated that the Accreditation Group of the Mediation Task Force had been working with the stakeholders on that aspect.</p>	
005636 – 010256	Chairman Administration	<p>The Chairman’s view that while there was unanimous support in the community for the promotion of wider use of mediation, there were diverse views on whether the system of accrediting mediators should be solely developed by a single industry-led mediation accrediting body or with the participation of other existing accrediting organizations. She sought elaboration on how the Administration would address the concerns over the role of the existing accrediting organizations after the establishment of the umbrella accrediting body.</p> <p>The Administration reiterated that the Accreditation Group of Mediation Task Force had all along been tasked to work on the setting up of the single non-statutory industry-led accreditation body for mediators and had been working with stakeholders. The Administration stressed that there were different mediation service providers in Hong Kong to provide trainings to mediators for the provision of mediation services. It was expected that the establishment of a single non-statutory industry-led accrediting body would further assist in promoting the development of mediation in future.</p> <p>The Chairman requested the Administration to provide information on the concept and the timetable for setting up an industry-led mediation accrediting body and the views of the mediation industry on the establishment of such body.</p>	Admin (para 3 of minutes)

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010257 – 010735	Chairman Mr CHEUNG Kwok-che	The Chairman summarized the follow-up actions to be taken by the Administration. The Bill Committee agreed to invite public views on the Bill. Date of next meeting with the Administration and arrangements for receiving public views.	

Council Business Division 2
Legislative Council Secretariat
13 February 2012