

立法會
Legislative Council

Ref : CB2/BC/2/11

LC Paper No. CB(2)2462/11-12
(These minutes have been seen
by the Administration)

Bills Committee on Mediation Bill

Minutes of the sixth meeting
held on Wednesday, 28 March 2012, at 8:30 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
Hon Miriam LAU Kin-ye, GBS, JP
Prof Hon Patrick LAU Sau-shing, SBS, JP
Hon CHEUNG Kwok-che
- Members absent** : 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)
Miss Shandy LIU
Senior Government Counsel (Law Drafting Division)
Miss Venus CHEUNG
Government Counsel
Miss Rachel DAI
Government Counsel
The Mediation Ordinance Group of the Mediation Task Force

Mr Rimsky YUEN, SC
Chairman

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. Confirmation of minutes of meeting

[LC Paper Nos. CB(2)1468/11-12 and CB(2)1469/11-12]

The minutes of the meetings held on 10 and 13 January 2012 were confirmed.

II. Meeting with the Administration

[LC Paper Nos. CB(3)154/11-12, CB(2)644/11-12(01),
CB(2)1492/11-12(01), CB(2)1499/11-12(01) to (06) and
CB(2)1540/11-12(01)]

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 –

- (a) respond to the suggestion of providing expressly for guidelines in clause (8)(2)(e) of the Bill for the disclosure of mediation communications for research, evaluation or educational purposes; and
- (b) provide information on the progress for the setting up of the single non-statutory industry-led accreditation body for mediators in Hong Kong.

Action

III. Any other business

Date of next meeting

4. The Bills Committee agreed to hold the next meeting on 17 April 2012 at 8:30 am.

(Post-meeting note: The meeting with the Administration has been rescheduled for 25 April 2012 at 8:30 am.)

5. There being no other business, the meeting ended at 10:20 am.

Council Business Division 2
Legislative Council Secretariat
27 June 2012

**Proceedings of the sixth meeting of the
Bills Committee on Mediation Bill
on Wednesday, 28 March 2012, at 8:30 am
in Conference Room 2A of the Legislative Council Complex**

Time Marker	Speaker(s)	Subject(s)	Action required
000215 - 000358	Chairman	Opening remarks	
000359 - 000410	Chairman	Confirmation of minutes	
000411 - 000850	Chairman Administration Assistant Legal Adviser	Regarding Schedule 1 to the Mediation Bill ("Processes to Which this Ordinance Does not Apply"), the Administration's explanation that the fact that whether a mediation/conciliation process had been referred to in existing legislation was the primary consideration in compiling Schedule 1 and those mediation/conciliation processes proposed to be included in Schedule 1 had all been clearly stipulated in other existing legislation.	
000851 - 001137	Chairman Clerk Administration	Letter from the Hong Kong Association of Banks ("HKAB") [LC Paper No. CB(2)969/11-12(01)] and the Administration's responses to the representation made by HKAB [LC Paper No. CB(2)1499/11-12(03)].	
001138 - 002641	Chairman Administration Mr Rimsky YUEN	<p>Submission from the Hong Kong Mediation Council and further submission from the Hong Kong Bar Association [LC Paper Nos. CB(2)1499/11-12(05) - (06)]</p> <p>The Administration's briefing on its responses to the representations made by the Law Society of Hong Kong ("the Law Society") regarding the definition of mediation, inclusion of clause 7 in the proposed Bill and the exception under clause 8(2)(e) for the disclosure of mediation communications [LC Paper No. CB(2)1499/11-12(04)].</p> <p>Regarding clause 8(2)(e) which provided for the disclosure of mediation communications for research, evaluation or educational purposes without revealing, or likely to reveal the identity of a person to whom the mediation communication relates, the views of the Chairman of the Mediation Ordinance Group of the Mediation Task Force that –</p> <p>(a) while the confidentiality of mediation communications was crucial, there was a need to include clause 8(2)(e) in the Bill to provide for the</p>	

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		<p>gathering of information for research and evaluation purposes to facilitate the development of mediation in Hong Kong which was still in its embryonic stage;</p> <p>(b) the provision of clause 8(2)(e) in the Bill was generally supported during the public consultation exercise on the draft Bill;</p> <p>(c) having considered the possibility that the identities of parties to mediation might be revealed, given that Hong Kong was a small place and cases might be widely reported by media, the Mediation Ordinance Group considered that the relevant provision should be drafted in a more stringent manner when compared with similar provisions in other jurisdictions in order to prohibit the disclosure of mediation communications when there was a likelihood to reveal, both directly or indirectly, the identities of the persons concerned;</p> <p>(d) in order to strike a balance between safeguarding the confidentiality of mediation communications and providing a legal basis for the disclosure of information for research, evaluation and educational purposes, the Mediation Ordinance Group suggested that, after the enactment of the Bill, guidelines might be provided to assist mediators and researchers in the universities proposing to use mediation communications for research, evaluation or educational purposes to comply with clause 8(2)(e) ("the proposed guidelines"); and</p> <p>(e) such guidelines could be incorporated into a Code of Conduct for Mediators to be introduced.</p>	
002642 - 003714	Chairman Ms Miriam LAU Mr Rimsky YUEN Administration	<p>Ms Miriam LAU's view that the proposed legislation and guidelines might not afford enough protection to the parties concerned as their identities might still be revealed due to the fact that Hong Kong was a small place. Her enquiry about the views of HKAB and the Law Society on the Administration's stance in this regard.</p> <p>The advice of the Chairman of the Mediation Ordinance Group of the Mediation Task Force that –</p> <p>(a) the proposed guidelines sought to assist mediators and researchers to comply with clause 8(2)(e),</p>	

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		<p>same as the issuance of guidelines on disclosure of arbitration cases and the regular publication of arbitration awards on an anonymous basis;</p> <p>(b) in order to protect the anonymity of the parties concerned, mediators in overseas would most often obliterate the names of the parties involved in the mediation and modify the details of the case before disclosure to the public including for research and teaching purposes;</p> <p>(c) while some of the members of the Law Society expressed concern about clause 8(2)(e), the mediation group of the Law Society did not raise particular concern about the provision during the meeting with the Administration and the Mediation Ordinance Group; and</p> <p>(d) the Mediation Ordinance Group and the Administration would meet with HKAB shortly to exchange views on the matter.</p> <p>The Chairman's views that the disclosure of mediation communications for research, evaluation and educational purposes was crucial in facilitating the development of mediation but how such disclosure should be made in order to protect the anonymity of the parties concerned should be explored.</p> <p>Regarding the query of the Law Society about the appropriateness for disclosure of mediation communications in family mediation under clause 8(2)(e) where an appeal of a case was being heard in the court, the Administration advised that issues relating to the timing of disclosure of mediation communications could be addressed in the proposed guidelines.</p>	
003715 - 004504	Chairman Mr Patrick LAU Mr Rimsky YUEN Administration	<p>Mr Patrick LAU's enquiries about the legal effect of the proposed guidelines and the sanctions for failure to comply with the guidelines.</p> <p>The advice of the Chairman of the Mediation Ordinance Group of the Mediation Task Force that –</p> <p>(a) although the proposed guidelines was not intended to have legal effect, disciplinary actions could be taken by the future single non-statutory industry-led accreditation body for mediators against mediators who failed to comply with the proposed guidelines;</p>	

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		<p>(b) mediators who were members of other professional bodies, such as the Bar Association, might also face internal disciplinary actions of these professional bodies for breaching relevant codes of practice;</p> <p>(c) the affected party could resort to civil remedies including injunction and damages for breach of confidentiality of mediation communication; and</p> <p>(d) having considered the overseas experiences and the civil remedies available to the parties affected in Hong Kong, the Mediation Ordinance Group considered that there was no need to include in the Bill express sanctions for breach of confidentiality of mediation communication.</p>	
004505 - 004933	Chairman Mr CHEUNG Kwok-che Mr Rimsky YUEN	<p>Mr CHEUNG Kwok-che's expression of support for allowing disclosure of mediation communications in an appropriate manner for research, evaluation or educational purposes. His enquiries on –</p> <p>(a) how to address the potential risk that the identities of parties concerned would be revealed if a unique mediation case was selected for academic studies; and</p> <p>(b) whether information on mediation cases would need to be provided by individual mediation organizations to the single accreditation body for mediators for the selection and publication of cases for research, evaluation or educational purposes.</p> <p>The advice of the Chairman of the Mediation Ordinance Group of the Mediation Task Force that –</p> <p>(a) it would be open to parties to agree to a more stringent disclosure regime for implementing clause 8(2)(e); and</p> <p>(b) after enactment of the Bill, a comprehensive mechanism to collect information on mediation cases for empirical research could be established after the setting up of the single accreditation body for mediators for the better development of mediation in Hong Kong.</p>	
004934 - 005245	Chairman Mr Rimsky YUEN Administration	In response to the concern of the Chairman that parties to mediation might need to consult lawyers in the process of mediation, the Administration affirmed that it	

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		would propose an amendment to the Bill to expressly allow the disclosure of mediation communications for the purpose of seeking legal advice.	
005246 - 005651	Chairman Mr Rimsky YUEN Administration	<p>The Chairman's enquiry on whether the parties to mediation were required to agree by contract on the confidentiality of mediation communications.</p> <p>The advice of the Chairman of the Mediation Ordinance Group of the Mediation Task Force that to maintain the confidentiality of mediation communications, provisions on confidentiality requirements would be included in an agreement to mediate under the current practice and any participants to the mediation could be requested to sign a confidentiality agreement.</p> <p>The Administration's advice that a party to mediation might disclose sensitive information to the mediator for his evaluation of the case but the mediator should not disclose any such information except as provided in clause 8(2) and (3). The proposed guidelines would assist mediators in enhancing their skills in handling such matters.</p>	
005652 - 010654	Chairman Ms Miriam LAU Mr Rimsky YUEN	<p>Regarding clause 8(2)(e), Ms Miriam LAU's enquiries about –</p> <ul style="list-style-type: none"> (a) the meaning of the word "evaluation"; (b) whether there were any restrictions on the timing of disclosure of mediation communications for research, evaluation or educational purposes as such disclosure might have an impact on other on-going mediation cases of similar nature and appeal cases being heard in court; and (c) whether there was any mechanism regulating the disclosure of mediation communications under clause 8(2)(e), such as consent must be obtained from the parties concerned for the disclosure of mediation communications. <p>The advice of the Chairman of the Mediation Ordinance Group of the Mediation Task Force that –</p> <ul style="list-style-type: none"> (a) "evaluation" might refer to the assessment of, say, mediation service providers of the effectiveness of mediation to resolve particular types of civil disputes, for the development of mediation; 	

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		<p>(b) while the proposed guidelines would address the timing and mechanism for the disclosure of mediation communications under clause 8(2)(e), disclosure of information that might have an impact on other on-going cases was also prohibited under common law;</p> <p>(c) it was envisaged that most of the information collected under clause 8(2)(e) would be statistics only and the chance for disclosure of details of cases for empirical research purpose was rather slim;</p> <p>(d) information with educational value would be used with adequate disguise for teaching purpose according to the overseas practice; and</p> <p>(e) in countries where the development of mediation was booming, such as New Zealand, Australia and the United States, mediators would exchange information about mediation for research and teaching purposes and relevant guidelines had been drawn up to regulate the exchange of such information.</p> <p>Referring to its response to the representation made by HKAB [LC Paper No. CB(2)1499/11-12(03)] regarding clause 8(2)(e), the Administration stressed that in order to abide by the requirement not to reveal parties' identity under clause 8(2)(e), if there was concern that any specific matter in the mediation communication might be prone to revealing the identity of the persons concerned and therefore should not be disclosed for research, evaluation and educational purposes, it was open to the parties to agree by contract to a more stringent disclosure regime for implementing clause 8(2)(e).</p>	
010655 - 011129	Chairman Administration	<p>The Chairman's enquiry as to whether clause 8(2)(e) should provide expressly for the proposed guidelines.</p> <p>The Administration's views that the express provision of the proposed guidelines in the Mediation Ordinance to be enacted at this stage might hamper the flexibility of mediation and that the guidelines should be developed after the establishment of the single accreditation body for mediators.</p>	

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		The Administration was requested to consider the need to provide expressly for such guidelines in clause 8(2)(e).	Admin (para. 2 of the minutes)
011130 - 011749	Chairman Administration Mr Rimsky YUEN	<p>Mr Patrick LAU's enquiry about the progress of the establishment of the single accreditation body for mediators.</p> <p>The Administration's advice that the Accreditation Subgroup of the Mediation Task Force was working towards the setting up of the single accreditation body for mediators in the form of a company limited by guarantee and it was expected that the Articles of Association of the accreditation body would soon be finalized.</p> <p>The advice of the Chairman of the Mediation Ordinance Group of the Mediation Task Force that –</p> <p>(a) as the major mediation service providers were still working towards the formation of the single accreditation body for mediators in the form of a company limited by guarantee, the original draft clauses providing for the establishment of such an organization and designating the organization as the default appointing body for mediators had not been included in the Bill;</p> <p>(b) the proposed structure and membership of the single accreditation body for mediators was generally supported by the major mediation service providers and it was expected that the organization would be established within six months if no further issues arose in the drafting of the relevant documents; and</p> <p>(c) it was proposed that, as a condition of the membership, the mediation service providers would give up their existing individual accreditation and future mediators would be accredited through the single accreditation body for mediators only.</p>	
011750 - 012718	Chairman Mr LAU Kong-wah Mr Rimsky YUEN Administration	<p>LC Paper Nos. CB(2)1492/11-12(01), CB(2)1499/11-12(02) to (04)</p> <p>Mr LAU Kong-wah's enquiry about the present status regarding the establishment of the single accreditation body.</p>	

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		<p>The advice of the Chairman of the Mediation Ordinance Group of the Mediation Task Force that –</p> <p>(a) a member from the four major mediation service providers, i.e. the Law Society, the Bar Association, the Hong Kong Mediation Centre and the Hong Kong International Arbitration Centre, would be the founding council members of the single accreditation body;</p> <p>(b) representatives from the organizations under the Joint Mediation Helpline Office other than the four in (a) above would also be invited to join the single accreditation body; and</p> <p>(c) the council of the single accreditation body would consist of not more than 10 council members, including a member from each of the 4 major mediation service providers referred to in (a) above and two co-opted members who were not members of the single accreditation body.</p> <p>The Administration was requested to provide information on the progress for the setting up of the single accreditation body for mediators in Hong Kong.</p>	<p>Admin (para. 2 of the minutes)</p>
011750 - 013800	Mr LAU Kong-wah Administration Chairman Mr Rimsky YUEN	<p>Mr LAU Kong-wah's view that provisions about the single accreditation body for mediators would be added to the enacted Mediation Ordinance as soon as possible after the formation of such organization.</p> <p>The Administration's advice that the need to add new provisions about the organization to the Mediation Ordinance would be reviewed in future.</p> <p>The Chairman's suggestion that after enactment of the Bill, the Panel on Administration of Justice and Legal Services could follow up on the relevant issues.</p> <p>Mr LAU Kong-wah's request that the Administration should provide detailed information and timetable on the review of the Mediation Ordinance during the Second Reading debate on the Bill.</p> <p>The assurance of the Chairman of the Mediation Ordinance Group of the Mediation Task Force that it was the view of the Mediation Task Force that provisions providing for the establishment of the single</p>	

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		accreditation body for mediators and designating the single accreditation body as the default appointing body for mediators would be incorporated into the Mediation Ordinance with a view to enhancing the legitimacy of that body after some experience with its operation.	
013801 - 014918	Chairman Administration Mr LAU Kong-wah Mr Rimsky YUEN	<p>The Administration's briefing on its responses to the representation made by HKAB, in particular on clause 8(2)(e) as detailed in LC Paper No. CB(2)1499/11-12(03).</p> <p>The Chairman's view that the Administration's explanation could address the concerns of HKAB in general.</p> <p>The view of the Chairman of the Mediation Ordinance Group of the Mediation Task Force (as detailed in LC Paper No. CB(2)1499/11-12(03)) that it was open to HKAB to formulate a stringent disclosure regime by the terms of Reference of the Financial Dispute Resolution Centre Limited or other contractual means to address its concerns.</p>	
014919 - 015130	Chairman Mr LAU Kong-wah	<p>Closing remarks</p> <p>Date of next meeting</p>	