

立法會
Legislative Council

LC Paper No. CB(4)95/14-15
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by the Administration)

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Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Tuesday, 22 July 2014, at 4:30 pm
in Conference Room 1 of the Legislative Council Complex

Members present : Dr Hon Priscilla LEUNG Mei-fun, SBS, JP (Chairman)
Hon Dennis KWOK (Deputy Chairman)
Hon Albert HO Chun-yan
Hon TAM Yiu-chung, GBS, JP
Hon Abraham SHEK Lai-him, GBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Starry LEE Wai-king, JP
Hon CHAN Kin-por, BBS, JP
Hon Paul TSE Wai-chun, JP
Hon Alan LEONG Kah-kit, SC
Hon LEUNG Kwok-hung
Hon WONG Yuk-man
Hon Michael TIEN Puk-sun, BBS, JP
Hon NG Leung-sing, SBS, JP
Hon Steven HO Chun-yin
Hon YIU Si-wing
Hon MA Fung-kwok, SBS, JP
Hon Alice MAK Mei-kuen, JP
Dr Hon Elizabeth QUAT, JP
Hon Martin LIAO Cheung-kong, SBS, JP
Hon TANG Ka-piu, JP
Dr Hon CHIANG Lai-wan, JP
Hon CHUNG Kwok-pan
Hon Tony TSE Wai-chuen, BBS

Members Absent : Hon James TO Kun-sun
Hon CHAN Kam-lam, SBS, JP

Hon Emily LAU Wai-hing, JP

Public Officers : Item II
attending

Mr Benedict LAI
Law Officer (Civil Law)
Department of Justice

Mr Simon LEE
Deputy Law officer (Civil Law)
Department of Justice

Ms Jenny FUNG
Senior Assistant Law Officer (Civil Law) (Mediation)
Department of Justice

Miss Venus CHEUNG
Senior Government Counsel (Mediation) (Acting)
Department of Justice

Item III

Mr Frank POON
Solicitor General
Department of Justice

Mr CHEUK Wing-hing
Director of Administration and Development
Department of Justice

Mrs Apollonia LIU
Deputy Director (Special Duties)
Department of Justice

Attendance by : Item II
invitation

Hong Kong Mediation Accreditation Association Limited

Mr John R. BUDGE, SBS, MBE, JP
Chairman

Hong Kong Bar Association

Mr Vod K S CHAN

Member of the Special Committee on Alternative Dispute
Resolution

Item III

Hong Kong International Arbitration Centre

Ms Teresa CHENG, GBS, SC, JP
Chairperson

Ms Chiann BAO
Secretary-General

The Law Society of Hong Kong

Mr Junius HO
Past President and Council Member

Mr Kenneth FOK
Director of Practitioners Affairs

Clerk in attendance : Ms Debbie YAU
Chief Council Secretary (4)5

Staff in attendance : Mr Timothy TSO
Assistant Legal Adviser 2

Ms Shirley TAM
Council Secretary (4)5

Ms Linda MA
Legislative Assistant (4)5

I. Information paper(s) issued since the last meeting

Members noted that no information paper had been issued since the last meeting.

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II. Development of mediation services in Hong Kong

(LC Paper No. CB(4)939/13-14(01) -- Administration's paper on "Mediation"

LC Paper No. CB(4)939/13-14(02) -- Progress report from Hong Kong Mediation Accreditation Association Limited

LC Paper No. CB(4)939/13-14(03) -- Paper on "Development of mediation services in Hong Kong" prepared by the Legislative Council Secretariat (Updated background brief)

Briefing by the Administration

2. At the invitation of the Chairman, Law Officer (Civil Law) ("LO(CL)") briefed members on the Administration's paper which set out the work undertaken by the Steering Committee on Mediation ("the Steering Committee") and its three sub-committees on the promotion of mediation in Hong Kong (LC Paper No. CB(4)939/13-14(01)). He said that the set up of the Working Group on Mediation in 2008 and the Mediation Task Force in 2010, which preceded the Steering Committee, reflected the Government's long term commitment to promote the more extensive use of mediation to resolve disputes in Hong Kong. The Steering Committee worked mainly on three aspects, namely, the regulatory framework of mediation, accreditation and training of mediators and public education and publicity to promote wider use of mediation. In this regard, three sub-committees had been set up to assist in the work of the Steering Committee.

3. LO(CL) further said that following the coming into operation of the Mediation Ordinance (Cap. 620) ("the MO") on 1 January 2013, the Regulatory Framework Sub-committee ("RFS") was tasked to, inter alia, monitor the implementation of the Ordinance, put forward guidelines on the exemption for disclosure of mediation communication under section 8(2)(e) of the MO and consider the need for introducing apology legislation in Hong Kong. To assist stakeholders in using mediation communications for research, evaluation or educational purposes without breaching the MO, RFS circulated a set of draft guidelines it had prepared to stakeholders for consultation. The draft guidelines were being considered by the Steering Committee and the finalized version would be issued to the stakeholders and uploaded onto the website of the Department of Justice ("DoJ") for reference in due course.

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4. LO(CL) also advised that another major area of work of RFS was to consider whether there should be an Apology Ordinance or legislative provisions relating to the making of apologies for the purposes of facilitating settlements. An Apology Legislation Sub-group had been formed to consider the subject in depth, including the pros and cons of an apology legislation, apology legislations in various overseas jurisdictions and the current legal landscape of Hong Kong. A draft paper with various recommendations had been prepared and was currently under consideration. The recommendations made by the Sub-group would be considered by RFS and the Steering Committee in due course. Future work would include public consultation and the preparation of the draft legislation as appropriate.

5. LO(CL) supplemented that the Accreditation Sub-committee was tasked to assist the Steering Committee in monitoring matters concerning the accreditation and regulation of mediators in Hong Kong and advising on issues arising therefrom, including the operation of the Hong Kong Mediation Accreditation Association Limited ("HKMAAL"), in setting its accreditation standards, grandparenting policy, standards of mediation training courses, the establishment of complaint and disciplinary procedure and the establishment of panels or lists of mediators, supervisors, assessors and trainers. HKMAAL had commenced operation on 2 April 2013, and currently had 10 Corporate Members and a total of 2 092 accredited mediators, including family mediators. In addition, there were also 45 assessors and 4 lead assessors on the relevant panels to handle and promote examination matters.

6. In relation to the discharge of disciplinary functions by HKMAAL, LO(CL) said that a set of Disciplinary Rules had been preliminarily approved by HKMAAL. The Disciplinary Rules, together with the complaint mechanism, would be further considered by the Steering Committee with a view to conducting consultation with relevant stakeholders before implementation. In addition, HKMAAL had adopted the Hong Kong Mediation Code ("the Code"), which was promulgated by the Working Group on Mediation in early 2010. The Code aimed to provide a common standard among mediators and to perform an important quality assurance function. With the MO coming into operation, the Steering Committee would continue to work with relevant stakeholders to oversee the adoption and implementation of the Code as well as to review the Code in the light of the experience gained. The Accreditation Sub-committee would also consider whether and when a statutory accreditation body should be set up to replace HKMAAL. As HKMAAL had only been operating for slightly more than a year, it was considered that this question should be explored after having gained more experience from the operation of HKMAAL.

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7. Regarding the Public Education and Publicity Sub-committee ("PEPS") of the Steering Committee, LO(CL) advised that PEPS provided initiatives for the promotion of mediation in Hong Kong. A "Mediation Week" was held in late March 2014. The highlight event was a two-day mediation conference held at the Hong Kong Convention and Exhibition Centre. A total of 46 overseas and local speakers delivered speeches and shared their experience with practitioners and end-users of mediation on the development of mediation. The Right Honourable the Lord Woolf of Barnes was the keynote speaker of the Conference. The Conference attracted more than 1 000 participants and was considered a success. Over 90% of the participants who had responded to the questionnaires collected by Hong Kong Trade Development Council ("HKTDC") after the Conference rated the event either "excellent" or "good". In addition, a total of 48 mediation talks were delivered to the public during the Mediation Week. Nine specific sectors including the Community, Commercial, Construction, Family, Financial, Education, Insurance, Legal Profession and Medical Profession sectors had been identified as the target sectors to further promote the wider use of mediation.

8. LO(CL) further advised that a new Announcement in Public Interest, with both video and audio clips, was produced and broadcast in March 2014 to enhance the awareness of the public on the understanding of mediation and to encourage the wider use of mediation as a means of dispute resolution. The promotion of the "Mediate First" Pledge in the commercial sector, first in 2009 and the second time in 2013, continued and currently 162 corporations had acknowledged the "Mediate First" Pledge. Regarding members' previous concern about community venues for mediation, LO(CL) responded that under the current Pilot Scheme on Community Venue for Mediation, two community venues, namely, Henry G. Leong Yaumatei Community Centre and the Leighton Hill Community Hall, had been made available for public use for mediation purpose. In June 2014, a new venue at the Urban Renewal Resource Centre at Fuk Tsun Street in Tai Kok Tsui had also been made available for residents in the service areas of the Urban Renewal Authority for holding mediation relating to disputes on urban renewal, building repair and maintenance, property valuation and construction etc.

9. On mediation training within the Government, LO(CL) advised that DoJ had been organizing seminars for its counsel and para-legals. The training included mediation advocacy skill, experience sharing and seminars. DoJ had also nominated 13 government counsel and one para-legal to attend three 40-hour mediation training courses to enable them to better understand the role of a mediator and the process of mediation. DoJ had also organized a number of seminars or training sessions for other Government departments to increase their awareness of mediation as an alternative to litigation and their roles in the mediation process. The seminars were organized in conjunction with the Civil

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Service Training and Development Institute of the Civil Service Bureau. Four seminars and one experience sharing session on mediation had so far been organized with a turnout of about 1 000 civil servants. The seminars and experience sharing sessions had been well received and the feedback was very positive. A tailor-made mediation seminar was conducted for the Government Logistics Department which aimed at equipping their officers with the necessary knowledge and skills in handling mediation in their work and 93 officers had attended the seminar.

Briefing by the Hong Kong Mediation Accreditation Association Limited

10. At the invitation of the Chairman, Mr John BUDGE, Chairman of HKMAAL briefed members on the progress report from HKMAAL (LC Paper No. CB(4)939/13-14(02)). He reported that HKMAAL was established as purely an accreditation and disciplinary body for mediators. It currently had 10 Corporate Members and on its panel more than 90% of the total number of accredited mediators came from the Corporate Members of HKMAAL. In response to Mr Albert HO's written question raised at the Council meeting of 24 April 2013 expressing concern on whether the professional development of mediation services would be dominated by the legal profession, Mr BUDGE assured that accreditation of mediators would not be confined to persons of legal background but a diverse background including commercial, construction, accountancy, finance, medical and social work sectors.

11. Noting that professional indemnity insurance for all HKMAAL mediators had been a matter of concern in the past to some Legislative Council ("LegCo") Members, Mr John BUDGE advised that HKMAAL had made some good progress on the matter and it would report the outcome to the Panel in due course. Regarding the Code, Mr BUDGE said that as the Code had been in use for some time, it was now an opportune time to review and update it to better serve the purpose. HKMAAL was also obtaining international input to its work and was making good progress in this direction. He took the opportunity to thank DoJ and the Judiciary for providing assistance to HKMAAL and supporting its work, for instance, arranging a High Court Judge to sit as its Council Member. On the way forward, Mr BUDGE said that it was very important to establish the brand of HKMAAL and he looked forward that HKMAAL would soon operate its independent Secretariat which was currently serviced by the Hong Kong International Arbitration Centre ("HKIAC").

Views of the Hong Kong Bar Association

12. At the invitation of the Chairman, Mr Vod CHAN of the Hong Kong Bar Association ("HKBA") said that HKBA was in support of the work of DoJ and HKMAAL in promoting mediation in Hong Kong.

Discussion

Accreditation and background of mediators

13. Considering that substantial resources had been provided to promote the use of mediation in Hong Kong yet without achieving the intended result of resolving disputes effectively in a win-win scenario, Mr WONG Yuk-man noted with concern that mediation service had been dominated by the legal profession. He enquired about measures taken by the Administration to ensure that mediation service would be provided by mediators from different fields. LO(CL) explained that out of the 10 Corporate Members of HKMAAL, only two were from the legal profession, namely, the Law Society of Hong Kong ("the Law Society") and HKBA. Other Corporate Members were from different fields including architecture, surveying, engineering and construction. Mr WONG expressed support for the work of HKMAAL, in particular on accreditation of mediators, standardization of disciplinary rules, and the establishment of a statutory body to replace HKMAAL as soon as practicable. As the MO did not require mediation to be conducted by mediators accredited by HKMAAL, Mr WONG urged the Administration to provide support to those parties who chose to resolve their disputes through mediators not accredited by HKMAAL.

14. Mr Albert HO reiterated that accreditation of mediators should not be confined to persons of legal background as relevant expertise from different fields, such as social welfare, medical and psychology, was required on the conduct of mediation over a wide variety of subjects under dispute. On the other hand, it would be necessary to ensure the consistency of standards and the quality of mediators. He enquired about the reasons for not including social worker in the corporate membership of HKMAAL. With regard to the "grandfathering" policy, i.e. if mediators were to be accredited and migrated to HKMAAL, Mr HO enquired about the measures put in place to ensure the quality and standard of those mediators.

15. Mr John BUDGE responded that he did not have the relevant statistics on the background of mediators in HKMAAL at hand but to his understanding, a substantial number of family mediators were social workers coming from the social welfare field, and a vast majority of mediators in matrimonial cases were qualified social workers. In construction cases, a vast majority of mediators appointed were qualified engineers, surveyors and architects. He assured that the background of mediators was not confined to the legal profession and HKMAAL was seeing a balance of accredited mediators from different professional background. Regarding the reasons for not having a social welfare organization as a Corporate Member of HKMAAL, Mr BUDGE said that most of the mediators accredited by HKIAC, which was now one of HKMAAL's Corporate Members, were social workers and they had migrated to

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HKMAAL. Besides, a very senior social worker from the Hong Kong Family Welfare Association was also a member of the Accreditation Sub-committee.

16. Mr John BUDGE assured members that HKMAAL would ensure the consistency of standards and the quality of mediators. For mediators who had migrated to it, HKMAAL would ensure that they were trained and assessed in a similar manner as other accredited mediators, so that HKMAAL could keep up with the standard and discipline of mediators. On the criteria for admitting as Corporate Members of HKMAAL, corporations should themselves have accredited mediators by a panel of mediators who had gone through usually a 40-hour course of training and two assessments. In response to the Chairman's enquiry, Mr BUDGE advised that at present, HKMAAL had 10 Corporate Members, including the Law Society, HKBA, HKIAC, the Hong Kong Mediation Centre, the Hong Kong Institute of Arbitrators, the Centre for Effective Dispute Resolution (Asia Pacific) ("CEDR"), the Hong Kong Institute of Architects, the Hong Kong Institute of Surveyors, the Hong Kong Institution of Engineers and the Hong Kong Institute of Construction Managers. LO(CL) supplemented that regarding prospective mediators who wish to be accredited by HKMAAL, to ensure their standard, they had to go through a 40-hour training course and stringent assessments.

17. Noting that the legal professional appeared to have dominated the mediation practice and that HKMAAL had a total of 2 092 accredited mediators, of which 1 990 were migrated from Corporate Members, Mr CHUNG Kwok-pan enquired about the professional background of those 1 990 mediators. LO(CL) advised that out of the 10 Corporate Members of HKMAAL, only two had legal professional background. The list of accredited mediators of HKMAAL, which Mr CHUNG was referring to, comprised people from diverse background, including teachers and social workers etc. Mr John BUDGE supplemented that he did not have the information requested by Mr CHUNG at hand as HKMAAL accredited mediators on their passing the relevant examinations without stipulating any requirement on their background or professional qualifications. The Chairman requested the Administration to co-ordinate with HKMAAL and provide statistics on mediators accredited by HKMAAL grouped by their background and professional qualifications.

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18. Mr Dennis KWOK said that the legal profession expressed support for the work of HKMAAL and thanked Mr John BUDGE for his contribution in setting up HKMAAL and promoting mediation in Hong Kong. Regarding the concern raised by some members that the legal profession appeared to have dominated the mediation practice, Mr KWOK requested HKBA to share their experience on the mediation service provided by its members. Mr Vod CHAN advised that according to his experience, practicing mediators came with different background and the parties using mediation had chosen the mediators according to their background and professional qualifications. As explained by

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DoJ and HKMAAL, his understanding was that mediators were not required to have particular professional qualifications or background for enlisting on the list of accredited mediators. Mr KWOK remarked that the engagement of more professionals from different fields in mediation practice would help to promote the use and development of mediation in Hong Kong.

Funding of Hong Kong Mediation Accreditation Association Limited

19. Mr TAM Yiu-chung expressed concern about the funding of HKMAAL. As revealed in its progress report, to increase financial support from various sources, HKMAAL was considering whether to create more categories of specialist panel membership, whether practicing and non-practicing mediators should charge different fees and whether HKMAAL should engage itself in other fee-generating business. He enquired whether HKMAAL had estimated the revenue generated after these measures were implemented and the extent to which existing services would be affected, including the lack of manpower and increase in mediation fees. Mr John BUDGE responded that HKMAAL, being an industry-led body, was self-sufficient and self-sustaining. HKMAAL was considering the creation of more categories of specialist panel membership, which should not lead to a very substantial fee increase. Nevertheless, HKMAAL had no plan to request for financial support from the Administration.

Protection of confidentiality of mediation communications

20. Mr WONG Yuk-man expressed reservation on the protection of confidentiality of mediation communications under section 8(2)(e) of the MO which provided that "a person may disclose a mediation communication if the disclosure is made for research, evaluation or educational purposes without revealing, or being likely to reveal, directly or indirectly, the identity of a person to whom the mediation communication relates". He was of the view that the Administration should exercise prudence in the implementation of section 8(2)(e) as it was still possible for the parties to the relevant mediation proceedings to uncover the identity of the person(s) to whom the mediation communication was related.

(At this juncture, a member of the public shouted in the Public Gallery and the Chairman suspended the meeting to resume order. The meeting resumed after 2 minutes.)

21. Taking note of Mr WONG Yuk-man's concern, LO(CL) advised that to assist stakeholders in using mediation communications for research, evaluation or educational purposes without breaching the MO, RFS had prepared a set of draft guidelines which were being considered by the Steering Committee and the finalized version would be issued to the stakeholders and uploaded onto the website of DoJ for reference in due course. Mr WONG noted that the draft

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guidelines prepared had been circulated to stakeholders in June 2013 for three months' consultation. He asked about the identity and number of the stakeholders concerned and the reason(s) for not conducting a public consultation. He opined that if the Government considered that the matter was only related to a handful of stakeholders, mediation should be allowed to develop on its own course without Government's interference.

22. Regarding the protection of confidentiality of mediation communications under section 8(2)(e) of the MO, the Chairman said that similar protection was afforded to arbitration communications. Some disputes, such as family and medical disputes, might involve emotional impacts on parties. To protect these parties from being identified by other people, an option should be allowed not to use those cases for research, evaluation or educational purposes.

Apology legislation

23. Mr WONG Yuk-man cast doubt on the feasibility of enacting mandatory apology legislation and the effectiveness of resolving disputes involving parties who were forced to make apologies.

24. Mr Martin LIAO declared that he was a mediator accredited by the CEDR. He enquired about the scope of the proposed apology legislation, including whether it would be applied in mediation cases only or extended to cover litigation and arbitration cases, and whether it would be binding on both the public and the private sector, including the Government. He also enquired whether mandatory apology would form part of the judgment of litigation and/or outcome of mediation cases, which might upset the objective of conducting mediation in the first place as forced apology would not help resolve disputes. Mr LIAO also expressed concern on the rationale for enacting apology legislation, and whether it would be formulated from a pure legal perspective or would involve ethical considerations.

25. LO(CL) responded that the proposed apology legislation, if pursued, should be of a wide scope applying to different aspects including litigation cases. The Apology Legislation Sub-group had recently been formed and would hold its first meeting shortly. The Administration would convey the views and concerns of Mr Martin LIAO to the Sub-group for consideration. The Chairman remarked that she had attended the Mediation Conference organized by the Administration recently and was of the view that the discussions relating to apology legislation had provided useful information of overseas practices for Hong Kong's reference. She urged the Administration to provide those references to the Panel on submission of the proposed legislation. LO(CL) replied that the proposed legislation, if pursued, would make reference to overseas apology legislations and public consultation would be conducted on the draft legislation before it was introduced into the LegCo.

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26. Mr Albert HO opined that an apology would provide an appropriate remedy to particular types of cases such as medical, libel and slander claims. He was in support of having legislative provisions on making apologies for the purpose of facilitating settlements without admitting liability, and did not subscribe to having mandatory judgmental provisions forcing parties to apologize. The Chairman added that some flexibility should be allowed in drafting the apology legislation, such as whether the apology should be made mandatory, accommodation of different expectations of the parties including the making of apologies or payment of damages for settlement of different disputes.

Mediation training courses

27. Mr YIU Si-wing expressed concern about mediation conducted by staff of public bodies who might not have received professional training on mediation. These bodies included the Consumer Council, the Travel Industry Council of Hong Kong and the Insurance Authority to be established in future. He enquired whether the Administration would provide mediation training to the staff of public bodies. LO(CL) advised that the Steering Committee was not tasked to provide training on mediation and the Accreditation Sub-committee of HKMAAL oversaw the formulation of standards of mediation training courses. As at July 2014, 15 mediation training course providers had obtained HKMAAL Stage 1 Accreditation for their general mediation training course and two providers had obtained HKMAAL Accreditation for their conversion course for General Mediators to become Family Mediators. Public bodies which conducted mediation should enrol their staff to receive training from accredited mediation training course providers. Mr YIU urged the Administration to take a more proactive role in ensuring that mediators of public bodies would meet the standard set by HKMAAL.

28. The Chairman declared that she was teaching in City University of Hong Kong which provided mediation courses since early 1990s. She said that mediation had long been an alternative means for the less financially affordable parties to resolve family, building management and medical disputes. She remarked that Hong Kong was very much behind in developing mediation when compared to other overseas jurisdictions but had been making quick progress such as proposing the drafting of apology legislation. She opined that as three local universities had been providing training programmes in mediation for some years, HKMAAL should consider collaborating with them in upgrading the standards for training and promoting mediation in Hong Kong.

Mediation conducted by commercial sector

29. Mr YIU Si-wing enquired about the circumstances under which mediation was conducted between consumers and commercial corporations. Deputy Law Officer (Civil Law) ("DLO(CL)") advised that consumers and

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commercial corporations usually engaged in mediation arranged by the corporations themselves or the Consumer Council. The Administration had not participated in the mediation so conducted as its objective was to promote the use of mediation by parties to resolve their disputes. In response to Mr YIU's request, the Administration undertook to provide a written response on the number of applications for mediation services in respect of disputes relating to consumers in 2013 as far as practicable.

30. Mr CHUNG Kwok-pan expressed concern about the increase in the use of mediation to resolve disputes in the commercial sector, having regard to the high legal cost incurred in litigation. Noting that currently only 162 corporations had signed up the "Mediate First" Pledge, Mr CHUNG enquired about the number of mediators with commercial background and the measures taken by the Administration to promote the use of mediation in settling disputes in the commercial sector which comprised of tens of thousands of corporations. DLO(CL) advised that as set out in paragraph 24 of the Administration's paper, PEPS had proposed a new promotional initiative specific to Small and Medium Enterprises ("SMEs"), i.e. to facilitate and provide support to mediation bodies for participation in the yearly event "The World SME Expo" organized by the HKTDC in December 2014 to promote "Mediate First".

Promotion of mediation

31. Ms Starry LEE said that she acknowledged the work of the Administration in promoting mediation which was an alternative and cost-effective means to resolve disputes when comparing with litigation. However, as she observed, the promotion efforts had not yet reached community levels. She enquired about public use of community venues for mediation and measures taken by the Administration to promote the use of mediation in commercial (in particular relating to SMEs), building management and family disputes. LO(CL) replied that SMEs were one of the target groups for promoting the use of mediation in the coming year. DoJ had also co-operated with the Home Affairs Department ("HAD") to promote the use of mediation in building management disputes, including locating and providing suitable community venues for mediation. Regarding family disputes, he believed that HKMAAL would continue to ensure the standard of appropriate training courses to enhance the supply of accredited family mediators. Mr John BUDGE supplemented that Hong Kong was quite late in terms of promoting mediation when compared to overseas jurisdictions and HKMAAL would continue to support the promotion of mediation in Hong Kong by accrediting more mediators.

32. Noting that there were currently over 2 000 accredited mediators, Dr CHIANG Lai-wan enquired about measures taken by HKMAAL to assist mediators in promoting their practice and to assist the public in appointing

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appropriate mediators to resolve their disputes, such as the setting up of mediation consultation centres. Mr John BUDGE responded that as the HKMAAL was an accreditation and disciplinary body, its scope of work did not cover the promotion of mediation practice. There were many other bodies in Hong Kong, such as the Hong Kong Mediation Centre, the Hong Kong Mediation Council, promoting mediators' practice. He noted that some accredited mediators had not yet handled any mediation case but they could be disciples in promoting mediation as they were convinced about the advantages of mediation. As Hong Kong was in an early stage of promoting mediation, more mediation work would be envisaged in the foreseeable future, probably with the assistance of the Corporate Members of HKMAAL which were more experienced in mediation.

33. LO(CL) supplemented that enhancing publicity and public education on mediation was important task for the Steering Committee. With the promotional efforts of the Government, more mediation work should be forthcoming. HAD had also assisted in arranging mediation service through the District Building Management Liaison Teams (地區大廈管理聯絡小組). In addition, some members of district organizations might also be mediators themselves who would also assist in promoting mediation.

Other issues

34. Mr Dennis KWOK expressed concern about complaints of judges and legal professionals on "pretended" use of mediation by some litigation parties when they were required to conduct mediation by the courts in some proceedings. Those parties might have appointed non-HKMAAL mediators to conduct mediation very loosely, and reported to the courts that mediation had failed to resolve the disputes. He enquired about the measures taken by the Administration to prevent parties from "pretending" to conduct mediation. LO(CL) advised that the courts had taken note of and gravely condemned such malpractices, in particular in the early stage of introducing mediation to court proceedings. He referred to Practice Direction 31 on Mediation ("PD 31") promulgated by the Chief Justice, which required parties to civil proceedings to which PD 31 applied to consider engaging in mediation for settlement of the relevant disputes. Regarding measures to prevent parties from "pretending" to conduct mediation ordered by the courts, LO(CL) said that the courts would consider making an adverse costs order in cases where a party had unreasonably failed to engage in mediation.

35. LO(CL) provided some statistics from the courts which supported that mediation was an effective means of resolving disputes between parties. In 2013, the percentage of cases successfully resolved by mediation in the Court of First Instance of the High Court was 45%, in the Family Court was 69% and in the District Court was 42%. Regarding the percentage of the type of cases

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successfully resolved by mediation, building management cases was 52%. LO(CL) remarked that the encouraging statistics had upset the misconception of some professionals that conducting mediation was not an effective way of resolving disputes.

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36. Summing up the discussion, the Chairman requested for information on the amount of time and money spent by parties to mediation through which the disputes were successfully resolved, and the projected savings amount if the cases were to go through court proceedings. The Administration undertook to provide the requested information.

III. Provision of accommodation support for law-related organizations in the West Wing of the former Central Government Offices and the former French Mission Building

(LC Paper No. CB(4)939/13-14(04) -- Administration's paper on "Provision of accommodation support for law-related organizations in the West Wing of the former Central Government Offices and the former French Mission Building")

Declaration of interests

37. The Chairman declared that she was an arbitrator of the China International Economic and Trade Arbitration Commission. She also dealt with the cases of international arbitration in Hong Kong. Mr Dennis KWOK declared that he also handled arbitration cases.

Briefing by the Administration

38. At the invitation of the Chairman, the Director of Administration and Development ("D of AD") of DoJ briefed members on the Government's plan to provide some space in the West Wing of the former Central Government Offices ("West Wing") and the former French Mission Building ("FMB") to law-related organizations ("LROs") to enable such LROs to develop their services as well as to create a favourable environment to attract more international legal and dispute resolution institutions to set up offices in Hong Kong. D of AD also introduced the principles and framework for the provision of accommodation to LROs, including the eligibility and selection criteria, the mechanism and selection criteria, factors for considering space allocation, rental arrangement, oversight requirements and the implementation timetable. Details of the above

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were set out in the Administration's paper (LC Paper No. CB(4)939/13-14(04)).

39. D of AD stressed that the implementation of the above measures would adhere to two major principles. One of which was that the LROs receiving accommodation support should contribute to enhancing Hong Kong's position as a legal services hub in the Asia-Pacific region and strengthening Hong Kong's role as an international legal services centre, so as to achieve the policy objective stated in the Chief Executive's 2013 and 2014 Policy Addresses and the Financial Secretary's 2014 Budget Speech. In addition, given that both the West Wing and FMB were located in Central with high commercial value, extreme caution would be exercised in considering space allocation to ensure prudent use of valuable land resources. He also added that the Administration would approach prospective LROs in around Q3 2014 to Q1 2015 and invite their applications for accommodation in the two buildings.

Views of HKIAC

Background of HKIAC

40. Ms Teresa CHENG, Chairperson of HKIAC introduced to members the background of HKIAC. HKIAC was established in 1985 and currently located in the Exchange Square. It was now an icon in Hong Kong for the development of dispute resolution. Besides arbitration, HKIAC also handled international mediation and was prepared to provide adjudication services. It also arranged frequent promotions in overseas about its services and facilities, highlighting Hong Kong's strengths in respect of law and order, legal system, quality of lawyers and judicial independence. Ms Teresa CHENG also highlighted that HKIAC's premises was installed with state-of-the-art hearing facilities which enhanced Hong Kong's image as a regional arbitration centre and became a preferred location for holding arbitration hearings.

HKIAC's response on Government's policy and measures

41. On the Government policy to provide space in the West Wing and FMB to enhance Hong Kong's position as a regional legal services hub, Ms Teresa CHENG expressed support to this policy and considered that a successful dispute resolution system would also boost the development of financial and business sectors of a city, and London and New York were cases in point. She also believed that with its rich international experiences, HKIAC would be able to help Hong Kong achieve this policy objective. However, she cautioned that the Administration should take into consideration the financial sustainability of the policy itself and individual institutions to take forward the policy, as she understood that some overseas governments, such as Singapore and Malaysia, had invested a lot of resources, both tangible and intangible, in similar policies. She requested the Administration to consider the financial sustainability of

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LROs when determining the level of management fees of the allotted space.

42. Ms Teresa CHENG highlighted the advantages of the present premises of HKIAC. Firstly, the location of Exchange Square was highly accessible to and from the airport such that parties attending the arbitration hearings could leave Hong Kong on the same day. She hoped that the future premises of HKIAC in the West Wing or FMB would be equally accessible. Secondly, there were now three large hearing rooms in HKIAC ranging from 100 m² to 130 m² in size such that hearings with more participants and documents could be held in bigger rooms. Ms CHENG therefore cast doubt whether the Government's plan to assign an area of 100 m² for ancillary facilities in the future premises would be big enough for holding those arbitration hearings.

43. Noting the Administration's views that the proximity of LROs with each other at the West Wing and FMB would create synergy in their operations and facilitate the holding of joint events with DoJ, Ms Teresa CHENG stressed that safeguarding the independence of LROs from the Government as well as from each other was also of utmost importance. In respect of the committee to be set up by the Administration to consider the details of providing accommodation support to LROs, she suggested including some dispute resolution service providers as the members of such committee to facilitate the committee's understanding on the views of global users of arbitration services and facilities of Hong Kong.

Views of the Law Society

44. Mr Junius HO, Past President and Council Member of the Law Society expressed support to the Government's decision on providing accommodation support to LROs. He said that while the Law Society had more than 9 000 members and was the largest service provider/user of legal practice in Hong Kong, it was actually in need of the Administration's support on accommodation. He noted the Administration's plan to set aside about 1 000 m² from the West Wing for accommodating other suitable but yet to be identified LROs between now and 2017, and hoped that the Administration would consider the application from the Law Society as it should fully meet the selection criteria and was planning to set up a service centre at the West Wing, providing reception for receiving overseas guest and training services. In fact, it had raised a request to the Chief Executive before he took his office to let the Law Society to set up such a service centre at the West Wing if space could be made available to ease the present problem of over-crowdedness of its existing office.

45. Mr Junius HO shared the concern of Ms Teresa CHENG on the floor size of ancillary facilities and pointed out that an area of 100 m² would be too small for the arrangement of training, and as venues for mediation/arbitration. Given that the proposed "legal hub" would provide a good environment for continuous

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professional training for members of the Law Society, he suggested increasing that area to 500 m². He also hoped that as the usage of mediation services would increase, sufficient area for ancillary facilities could be allocated for this purpose.

Discussion

Concerns on relocating HKIAC

46. Both the Chairman and Mr Dennis KWOK concurred that HKIAC was indispensable in the development of disputes resolution services in Hong Kong. Mr Dennis KWOK learnt that HKIAC had recently spent some HK\$12 million on renovating its current centre in Exchange Square which was commended by users as one of the best in its kind in the world, he enquired Ms Teresa CHENG if there were any concerns on the proposed relocation of HKIAC to the West Wing or FMB.

47. Ms Teresa CHENG reiterated that HKIAC was currently located at a prime and highly accessible location which was its major advantage for holding hearings as compared to that of overseas arbitration centres. Moreover, the centre at Exchange Square was installed with state-of-the-art hearing facilities, such as video conferencing system, telephone recording system, noise barriers installation and a library, which were appealing to international large corporations and they chose to have arbitration hearings conducted in Hong Kong.

48. Noting the proposal about HKIAC's relocation, Ms Teresa CHENG expressed grave concern about the cost of renovation and installation of audio and video systems for the new centre, and the need to maintain its high accessibility for overseas users. She said that HKIAC could not afford to lose these advantages. In view of the above, both the Chairman and Mr Dennis KWOK shared Ms CHENG's concern and urged the Administration to provide sufficient resources to HKIAC to renovate its new centre at the West Wing or FMB to the required standard same as the existing premises so that its current advantages facilities could be maintained. Ms CHENG was also worried if the accessibility between the West Wing/FMB and the airport would be less good than that between Exchange Square and the airport, users might choose not to use the services in Hong Kong.

49. In response, the Solicitor General ("SG") said that the concerns raised by Ms Teresa CHENG were well noted. He considered that as the West Wing and FMB were both located in Hong Kong's prime locations, it was expected that international arbitrators taking part in HKIAC's arbitration hearings would not be affected upon its relocation. In terms of renovating the new office of HKIAC, the renovation works for the building(s) concerned would be so

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planned to enable that the current standard of the centre's facilities could be maintained after the relocation.

50. D of AD added that in the interest of time, the Administration had already been communicating with HKIAC on the proposal of its relocation to FMB. Hence, the Administration was aware of the concerns of the HKIAC, and was of the view that they could be addressed. For example, the Administration would conduct a study of the traffic arrangements for both FMB and the West Wing such that apart from the West Wing, the FMB would also be easily accessible by car. As regards HKIAC's concern regarding the sufficiency of hearing facilities, D of AD clarified that the area currently planned to be provided to the HKIAC already included space for its hearing facilities.

51. Given that FMB was a heritage building, the Chairman was worried about the high cost of maintenance and enquired if the Administration would bear the cost of FMB's maintenance after HKIAC's relocation. D of AD pointed out that as the allocatee of the premises, the Administration would be responsible for the maintenance of building structural elements, built-in electrical and mechanical systems, and heritage elements of FMB, while the tenants would mainly be responsible for the maintenance of any fitting-out works and fixtures they put in on the premises. He added that the Administration would also take the opportunity to upgrade the infrastructure of the West Wing and FMB so as to minimize future maintenance cost.

52. The Chairman queried whether HKIAC could reject the relocation proposal and remain to continue operation at the current venue. In response, D of AD explained that HKIAC was currently located at a government-owned premises and the rental income foregone as a result was more than HK\$20 million per year, or about HK\$100 million for four/five years.

Space allocation

53. Mr Tony TSE said that he supported the Government's decision on providing accommodation to LROs. Noting that an area of 4 500 m² would be provided to LROs for their accommodation at the West Wing and FMB, he enquired if the space provided could be increased.

54. D of AD explained that the 4 500 m² was an estimation subject to the outcome of technical studies to be carried out, but that would probably be the maximum net floor area available for allocation to LROs. He said that the Administration would set up a committee to consider the details of the mechanism and implementation of the accommodation provision and it would work out the exact area to be provided to LROs in due course. He added that the space actually allocated would be subject to the application situation of

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LROs.

55. Noting that the area currently occupied by the four LROs with accommodation under DoJ's sponsorship was about 2 050 m², Mr CHUNG Kwok-pan said that on this basis, the area of about 4 500 m² available at the West Wing and FMB might accommodate about eight to 10 LROs which were far too few for establishing the area as a "legal hub". He enquired about the number of local and international LROs that the Administration expected to accommodate at the West Wing and FMB.

56. D of AD explained that out of the 2 050 m² currently occupied by the four LROs with accommodation support provided by DoJ, HKIAC took up about 1 400 m² while the other three LROs were occupying about 200 m² each. He added that as LROs were rarely as large as HKIAC and most required an area between 100m² to 200 m² only, it was expected that the West Wing and FMB would accommodate more than 10 LROs. SG also pointed out that the Government's provision of accommodation in the West Wing and FMB was planned on the basis of LROs envisaged in the coming few years. After the space available at the West Wing and FMB had been fully taken up, the Administration might consider providing accommodation to other deserving LROs at other locations.

57. In respect of the target group of international institutions suitable for setting up offices in the West Wing and FMB, D of AD informed members that the Administration currently had in mind more than ten such institutions, but for better management of expectation, it would not be appropriate to disclose their names at this stage. SG added that in line with the policy objective to enhance Hong Kong's position as an international legal services and dispute resolution centre, in the provision of accommodation in West Wing and FMB, the Administration would accord priority to international legal, arbitration and mediation institutions which might decide to set up offices in Hong Kong.

Rental

58. Mr Tony TSE enquired about the circumstances under which LROs would be allowed to pay nominal rental for such accommodation. In response, D of AD explained that the Administration might consider offering accommodation to the selected LROs at nominal rental if they met the criteria set out in paragraph 11 of the Administration's paper and if their financial position warranted such treatment.

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59. Mr Tony TSE requested the Administration to provide written response about the actual vis-à-vis nominal rental payable by the selected LROs which would be allocated space in the West Wing and FMB, and if any other types of financial assistance had been provided to LRO tenants such as HKIAC.

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Provision of accommodation support to other industries

60. Mr Abraham SHEK opposed to the Government's decision on providing accommodation to LROs. He criticized that it was an unfair policy to give such support only to organizations of law-related industries but not other industries. It was also unfair to the public who would be deprived of the opportunities to use FMB but the maintenance cost of this heritage building was to be borne by public monies. Noting that about 1 000 m² would be allocated for LROs to be identified between now and late 2017, he doubted the justification for DoJ and other LROs to take up both the West Wing and FMB, without leaving some space for organizations of other industries with immediate needs. He considered that given the aim of the Administration was to establish the area as a "legal hub", it should focus more on its software development instead of merely physical venues.

61. D of AD explained that the measures on providing accommodation to LROs stemmed from a recommendation made by the Law Reform Commission in 1982, which suggested that the adoption of commercial arbitrations in Hong Kong could be enhanced by several measures, including the provision of accommodation support. SG added that the Administration also adopted the policy to enhance Hong Kong's position as a legal services hub in the Asia-Pacific region which was stated in the Chief Executive's 2013 and 2014 Policy Addresses and the Financial Secretary's 2014 Budget Speech. For these reasons, the accommodation support currently planned by DoJ was intended for LROs only.

Admin

62. Both Mr Abraham SHEK and Mr Tony TSE requested the Administration to provide a written response whether similar accommodation support would be provided to other professional bodies, such as those relating to innovative design. D of AD undertook to relay members' request for follow-up by the bureaux concerned.

Motion

63. Mr Dennis KWOK proposed the following motion—

"That this Panel urges the Government to give full support and resources to the Hong Kong International Arbitration Centre and other international arbitration bodies so as to enable Hong Kong to become the leading international dispute resolution centre in the Asia Pacific region."

"本委員會促請政府全力支持及提供足夠資源予香港國際仲裁中心及其他國際仲裁機構，以讓香港成為亞太區內主要的解決爭議的中心。"

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64. The Chairman ruled that the proposed motion was directly related to the agenda item under discussion and members agreed that the motion should be dealt with at the meeting. At Hon Abraham SHEK's enquiry, Mr Dennis KWOK clarified that the "resources" stated in the motion referred to accommodation resources. In reply to Mr Tony TSE's enquiry, Mr KWOK explained that the "other international arbitration bodies" referred to some famous international arbitration organizations such as the International Court of Arbitration of the International Chamber of Commerce and the London Court of International Arbitration.

65. The Chairman put the motion to vote. Of the members present, five voted for and no member voted against the motion. One member abstained. As no member claimed a division of the vote, the Chairman declared that the motion was passed.

(Post-meeting note: The wording of the motion was circulated to members vide LC Paper No. CB(4)962/13-14(01) on 23 July 2014. The Administration's response to the motion was issued to members vide LC Paper No. CB(4)1076/13-14(01) on 24 September 2014.)

Summing up

66. The Chairman concluded that the Administration did not fully address the questions raised by members in respect of the Government's measures on providing accommodation support to LROs and the Panel would follow up with the Administration accordingly.

IV. Any other business

67. There being no other business, the meeting ended at 6:45 pm.