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Panel on Administration of Justice and Legal Services

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 22 December 2014**

**Proposed creation of one supernumerary post of
Deputy Principal Government Counsel in
the Civil Division of the Department of Justice**

Purpose

This paper provides an account of the past discussions of the Panel on Administration of Justice and Legal Services ("the Panel") on the proposed creation of one supernumerary post of Deputy Principal Government Counsel ("DPGC") in the Civil Division ("CD") of the Department of Justice ("DoJ") to take forward the work required in the promotion and development of mediation in Hong Kong.

Background

Development of mediation in Hong Kong

2. Mediation is a dispute resolution process conducted in private by an impartial individual ("the mediator") who is engaged by the parties by consent to facilitate and assist the parties in arriving at a settlement of their dispute. The mediator does not adjudicate on the dispute. The mediator helps the parties identify what really matters in the dispute to the parties and generates options to resolve the dispute for the parties' consideration.

3. The DoJ has over the years been taking measures for the promotion and development of mediation in Hong Kong. Specifically, in 2008 the Working Group on Mediation ("the Working Group"), headed by the Secretary for Justice ("SJ"), was set up to examine the development of the use of mediation in Hong Kong and make recommendations on how to facilitate and encourage its wider use. In December 2010, the Mediation Task Force ("the Task Force"), also chaired by

SJ, was set up to implement the recommendations as published in the Report of the Working Group on Mediation. The Task Force was assisted by three groups working in three specific areas, namely (i) the regulatory aspect, which mainly dealt with matters concerning the development of a regulatory framework for mediation¹ (ii) accreditation and training standards; and (iii) public education and publicity. By October 2012, the Task Force had by and large fulfilled the work set out in its terms of reference in the three areas. Upon completion of the work of the Task Force, a new Steering Committee on Mediation has been set up by SJ in November 2012 to continue with the efforts to foster the development of mediation in Hong Kong.

Staffing arrangements to take forward the work required in the promotion and development of mediation in Hong Kong

4. In 2008 when the Working Group was first set up, a part-time non-civil service DPGC position was created for 12 months to provide secretarial support to the Working Group². When the Working Group decided to seek the views of the public on its recommendations, the DoJ created a six-month full-time non-civil service DPGC position for a period from 26 January 2010 to 26 July 2010 to undertake this specific consultation exercise.

5. To provide the necessary support to the Task Force in taking forward the recommendations of the Working Group, a three-year non-civil service DPGC position at the equivalent rank of DL2 was created in the DoJ in September 2010 with the approval of the Finance Committee of the Legislative Council ("FC") in June 2010. The officer filling the position (who was recruited through an open recruitment exercises) subsequently left the DoJ in early 2012 and no suitable candidate was identified through another open recruitment exercise. In order not to delay the outstanding tasks that needed to be followed up, as an interim staffing arrangement, a six-month supernumerary DPGC post was created under delegated authority for the period from 18 June to 17 December 2012 and the post was filled by a Senior Government Counsel ("SGC") on an acting basis, working under the supervision of a Principal Government Counsel ("PGC"). After the lapse of the six-month supernumerary DPGC post, the mediation related work was handled by a counsel at the SGC level under the supervision of the PGC.

Past discussions

6. The Panel considered the proposed creation of a two-year supernumerary post of DPGC (DL2) in the CD of DoJ for a period from 1 April 2013 to 31 March

¹ The Mediation Ordinance (Cap. 620) was enacted in June 2012 and came into operation on 1 January 2013.

² This post was lapsed on 28 November 2009.

2015 at its meeting held on 22 January 2013. Upon the creation of the DPGC post, the non-civil service DPGC position created in September 2010 would lapse.

7. Members noted from the DoJ that the current level of work to promote and develop mediation in Hong Kong required the dedicated commitment of a counsel at DPGC level. For instance, the subject officer would work closely with stakeholders and other people and bodies from different sectors, including the Judiciary, other government departments, the mediation community and the academia, often at professional and senior levels. The job description of the proposed DPGC post is in **Appendix I**.

8. Members further noted from the DoJ that it had considered alternative staff redeployment other than the creation of the DPGC post but found that not feasible. Given that there were a number of areas of work and tasks to be handled and taking into account the nature of work and the anticipated progress of the development of mediation, the proposed post should be created for two years and a review on the further need for the post would be conducted in due course.

9. Major views/concerns expressed by members and the DoJ's responses are set out in the ensuing paragraphs.

10. Question was raised about the working relationship between the proposed DPGC and the Hong Kong Mediation Accreditation Association Limited ("HKMAAL") which was established in August 2012 with a view to becoming the premier accreditation body for mediators in Hong Kong, discharging accreditation and disciplinary functions and setting standards for training.

11. The DoJ advised that the proposed DPGC would work closely with HKMAAL in monitoring the accreditation and training of mediators, but he/she would not serve as a member of HKMAAL. The DoJ further advised that HKMAAL was formed by four professional bodies which were closely involved in the development of mediation in Hong Kong. Some members of these four professional bodies were also appointed as members of the Steering Committee on Mediation and its Accreditation Sub-committee. As one of the main duties of the proposed DPGC was to provide secretariat and research support to the Steering Committee and its sub-committees, the DoJ considered that such working relationship could enable the proposed DPGC to establish close contact with all stakeholders, including HKMAAL and relevant professional bodies.

12. On pitching the proposed post at the DPGC level, the DoJ explained that the proposed DPGC would take forward the heavy and extensive duties which included working with all relevant stakeholders in monitoring the implementation of the Mediation Ordinance, the development of accreditation and training of mediators, and the promotion of mediation in Hong Kong. The areas of work

involved were specialized and the issues to be dealt with might touch on the vested interests of stakeholders which were complex and sensitive. For example, the proposed DPGC was tasked to monitor the development of a proper accreditation system and training requirements for mediators, and in this regard, the incumbent of the proposed post should ensure that the needs of practising mediators were duly taken care of so that they would not be excluded from the new accreditation system.

13. Noting that the proposed post would need the support of two time-limited non-directorate posts, i.e. a SGC and a Personal Secretary I ("PS I"), questions were raised about the financial implications of the three posts and whether additional posts would be created in future to support the work of the DPGC.

14. The DoJ advised that the full annual average staff cost of the proposed DPGC post was \$2,383,000 and that of the SGC and PS I posts was \$2,171,000, including salaries and on-cost. Should there be a need to create additional posts in the DoJ to assist the work of the DPGC in future, the DoJ would follow established procedures.

15. In closing, members agreed that the DoJ could submit the staffing proposal to the Establishment Subcommittee for consideration³.

Latest position

16. At the meeting of the Panel on 22 December 2014, the DoJ will seek members' views on the proposed creation of a permanent DPGC post in the DoJ, in place of an existing supernumerary DPGC post which will expire on 31 March 2015, to provide continued support to SJ in taking forward the work required for the promotion and development of the wider use of mediation in Hong Kong.

Relevant papers

17. A list of the relevant paper is in **Appendix II**.

Council Business Division 4
Legislative Council Secretariat
16 December 2014

³ At its meeting held on 30 January 2013, the Establishment Subcommittee recommended the staffing proposal for approval by the FC. At its meeting held on 15 March 2013, FC approved the staffing proposal.

Job Description
Deputy Principal Government Counsel (Mediation)

Rank : Deputy Principal Government Counsel (DL2)

Responsible to : Deputy Law Officer (Civil Law)

Main duties and responsibilities

1. To provide secretariat and research support to the Steering Committee on Mediation and its three Sub-committees, including but not limited to the following –
 - (a) working with relevant stakeholders to monitor the implementation of the Mediation Ordinance (Cap. 620) and advising on issues arising therefrom, as well as considering the need for an Apology legislation;
 - (b) working with stakeholders to keep in view and monitor the development of the system of accrediting mediators;
 - (c) working with relevant parties to consider and advise on ongoing and new initiatives for the promotion and development of mediation in Hong Kong; and
 - (d) working with relevant parties for initiating pilot mediation schemes in different sectors.
2. To advise on and assist in the promotion of the more extensive use of mediation in Hong Kong as appropriate.
3. To provide support and advice as appropriate to Counsel of the Department of Justice on the use of mediation.
4. To liaise with other Government bureaux/departments for the provision of appropriate briefings and training for their officers for the promotion of more extensive use of mediation to resolve disputes involving the Government.
5. To undertake such other duties as may be assigned from time to time.

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List of relevant papers

| Date | Meeting | References |
|-----------------|---|--|
| 22 January 2013 | Panel on Administration of Justice and Legal Services | <p>Administration's paper on "Proposed creation of one supernumerary post of Deputy Principal Government Counsel (DL2) in the Civil Division of the Department of Justice" LC Paper No. CB(4)321/12-13(08)</p> <p>Speaking note of Ms Maureen E MUELLER of The Law Society of Hong Kong (English version only) LC Paper No. CB(4)354/12-13(01)</p> <p>Minutes of meeting LC Paper No. CB(4)688/12-13</p> |
| 30 January 2013 | Establishment Subcommittee | <p>Proposal on the creation of one supernumerary post of Deputy Principal Government Counsel (DL2) in the Civil Division of the Department of Justice EC(2012-13)18</p> <p>Minutes of meeting LC Paper No. ESC29/12-13</p> |
| 15 March 2013 | Finance Committee | <p>Minutes of meeting LC Paper No. FC180/12-13</p> |