立法會
Legislative Council

LC Paper No. CB(2)2120/03-04
(These minutes have been seen by the Administration)

Ref : CB2/PL/AJLS

Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Monday, 22 March 2004 at 4:30 pm
in Conference Room A of the Legislative Council Building

Members present	:	Hon Margaret NG (Chairman) Hon Jasper TSANG Yok-sing, JP (Deputy Chairman) Hon Albert HO Chun-yan Hon Martin LEE Chu-ming, SC, JP Hon James TO Kun-sun Hon CHAN Kam-lam, JP Hon Miriam LAU Kin-yee, JP Hon Ambrose LAU Hon-chuen, GBS, JP Hon Emily LAU Wai-hing, JP Hon TAM Yiu-chung, GBS, JP
Member absent	:	Hon Audrey EU Yuet-mee, SC, JP
Public officers attending	:	Item IV Mr Bob ALLCOCK Solicitor General Mr Stephen WONG Kai-yi Deputy Solicitor General Miss Michelle TSANG Senior Assistant Solicitor General Legal Policy Division Miss Kitty FUNG Senior Government Counsel

		Items V and VI Judiciary Mr Wilfred TSUI Judiciary Administrator Mr Augustine CHENG Deputy Judiciary Administrator (Operations)
Attendance by invitation	:	The Hong Kong Bar Association Items IV and V Mr Andrew MAK Item VI Ms Lisa REMEDIOS Ms Anita YIP
Clerk in attendance	:	Mrs Percy MA Chief Council Secretary (2)3
Staff in attendance	:	Mr Arthur CHEUNG Senior Assistant Legal Adviser 2 Mr Paul WOO Senior Council Secretary (2)3

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I. Confirmation of minutes of meeting
(LC Paper No. CB(2)1741/03-04)

The minutes of the meeting held on 29 January 2004 were confirmed.

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II. Information papers issued since last meeting

2. Members noted that the following papers had been issued -

(a) LC Paper No. CB(2)1574/03-04 - Civil Justice Reform : Final Report and Executive Summary;

(b) LC Paper No. CB(2)1590/03-04(01) - Letter dated 2 March 2004 from the Administration on the work of the Working Group on Combating Violence; and

(c) LC Paper No. CB(2)1643/03-04(01) - The Law Society of Hong Kong's letter dated 8 March 2004 on "Professional Indemnity Scheme of the Law Society".

3. On paragraph 2(a) above, members noted that the Final Report of the Working Party on Civil Justice Reform was published on 3 March 2004. The Chief Justice had accepted all the recommendations made by the Working Party. It was expected that it would take two to three years to implement the recommendations. The Chairman said that the issue should be put on the list of outstanding items and be followed up in due course.

III. Items for discussion at the next meeting
(LC Paper Nos. CB(2)1743/03-04(01) and (02))

4. Members agreed that the following items should be discussed at the next meeting on 26 April 2004 -

(a) Professional Indemnity Scheme of the Law Society of Hong Kong;

(b) Consultation Paper of Law Reform Commission on Rules for determining domicile; and

(c) Procedure for removal of judges by the Legislative Council under Article 73(7) of the Basic Law.

5. Ms Miriam LAU suggested and members agreed that members of the Panel on Home Affairs should be invited to attend the next meeting for discussion of item (a) above.

IV. Development of Hong Kong as a legal services centre
(LC Paper Nos. CB(2)1644/03-04(01) and (02); 1783/03-04(01))

6. Solicitor General (SG) briefed members on the two papers provided by the

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Administration (LC Paper Nos. CB(2)1644/03-04(01) and (02) respectively). The papers outlined the policy objective of building up Hong Kong as a regional centre for legal services and dispute resolution and the following measures taken to achieve the policy objective -

(a) improving the regulatory framework within which lawyers provided their services in Hong Kong;

(b) making Hong Kong more attractive as a dispute resolution centre;

(c) assisting Hong Kong lawyers to gain access to the Mainland legal market;

(d) promoting understanding in the Mainland and in other countries of the advantages that Hong Kong offered as a regional centre for legal services and dispute resolution; and

(e) undertaking of a socio-legal research into the demand for, and supply of, legal and related services in Hong Kong.

Views of the Hong Kong Bar Association

7. In response to the Chairman, Mr Andrew MAK said that there was increasing interest among barristers in Hong Kong in recent years in extending their professional services in the Mainland. In this regard, the Bar Association appreciated the efforts made by the Department of Justice (DoJ) in promoting measures which allowed Hong Kong lawyers to have better access to the Mainland legal services market, and looked forward to continued support from DoJ to strengthen Hong Kong's position as a regional centre for legal services.

Views of the Law Society of Hong Kong

8. The Chairman drew members' attention to the letter dated 18 March 2004 from the Law Society to the Panel (LC Paper No. CB(2)1783/03-04(01)). The Law Society had advised that it had implemented a professional development programme which involved exchanges of qualified personnel between law firms in Hong Kong and in the Mainland on a structured basis. It had also entered into mutual co-operation agreements with a number of cities and professions in the Mainland. The Law Society had indicated that it would be happy to attend a future meeting of the Panel to discuss steps that it had taken, and how the Administration might further assist, in promoting legal services in the Mainland.

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Issues raised by members

Development of arbitration and mediation services

9. Ms Miriam LAU referred to paragraphs 23 and 24 of the Administration's paper (LC Paper No. CB(2)1644/03-04(01)), which compared the statistics on arbitration cases conducted in Hong Kong by the Hong Kong International Arbitration Centre (HKIAC) with the situation in London and Singapore. She asked whether the cases included both local dispute cases and cases involving foreign parties from other countries. SG replied that according to information available from HKIAC, the statistics for Hong Kong and London included both domestic as well as international cases. There was, however, no specified information in relation to the cases in Singapore. He undertook to clarify the position in Singapore with HKIAC.

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10. In reply to Ms Miriam LAU, Deputy Solicitor General (DSG) informed members of the breakdown of the major categories of arbitration cases handled by HKIAC in the years 2001 to 2003 as follows -

Cases	2003	2002	2001
Shipping	28	9	11
Commercial	80	190	71
Construction	137	90	195
Joint venture	7	6	7
Others	35	25	23
Total	287	320	307

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11. Ms Miriam LAU requested the Administration to provide a breakdown of the above statistics in terms of domestic cases and cases involving foreign parties.

Gaining access to the Mainland legal services market

12. Mr Albert HO noted that one of the measures introduced under the Closer Economic Partnership Arrangement between the Mainland and Hong Kong (CEPA) was to allow those Hong Kong residents who passed the State Judicial Examination to practise as Mainland lawyers in non-litigation matters only. He pointed out that there was no similar restriction on Mainland lawyers practising in Hong Kong. He asked whether discussions had taken place between the authorities on the possibility of extending the scope of practice to allow Hong Kong lawyers to practise as advocates in the Mainland courts, and if so, the progress of the discussions. Mr HO said that legal practitioners in Hong Kong would certainly welcome the prospect of further expanding their services in the Mainland.

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13. SG responded that he understood that the issue raised by Mr HO had been discussed before CEPA was signed. The concern expressed by the Mainland authorities was that if the door was opened too widely to Hong Kong lawyers, it might cause undesirable impact on the developing legal profession in the Mainland. He added that CEPA was just the initial step to open up the legal services market in the Mainland and it was envisaged that there would be continuous market liberalization to facilitate entry of legal practitioners of Hong Kong into the Mainland market.

14. DSG supplemented that the existing arrangement which restricted the practice of Hong Kong lawyers as Mainland lawyers to "non-litigation matters" meant that Hong Kong lawyers were not allowed to appear in Mainland courts to represent their clients. He said that the Administration would continue its ongoing discussions with the Mainland authorities and reflect the views of the local legal profession to the Mainland authorities.

15. Mr Martin LEE questioned the reasons for prohibiting Hong Kong legal practitioners practising as Mainland lawyers from appearing in the Mainland courts. In his view, the restriction would significantly limit the benefits offered to Hong Kong lawyers under CEPA. Mr Andrew MAK said that the Bar Association was also concerned about the restriction. He said that local barristers supported the opportunity to practise their best skills in advocacy in the Mainland courts.

16. DSG said that under the new measures implemented under CEPA, in addition to allowing Hong Kong residents who passed the relevant examination to practise as Mainland lawyers in non-litigation matters, Hong Kong lawyers were also allowed to be employed by Mainland law firms as Hong Kong legal consultants. The restriction concerning appearance in Mainland courts would not affect the ability of Hong Kong lawyers offering advice to their Mainland clients and Mainland lawyers.

17. Mr Martin LEE asked whether the prohibition against Hong Kong lawyers appearing in Mainland courts resulted from a fear that Hong Kong lawyers would do their best to protect the interests of their clients without fear or favour, whereas their counterparts on the Mainland could not do so. DSG responded that there was no information or evidence to suggest an answer to Mr LEE's question.

18. Mr Martin LEE opined that it was important that clients should be able to make their own choices in appointing legal representatives who would represent their real interests in litigation. He said that the Administration should reflect this view to the Mainland authorities. DSG agreed.

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Reciprocal enforcement of arbitration awards between the Mainland and Hong Kong

19. Ms Emily LAU noted from paragraph 16 of the Administration's paper that between the operative date of the "Memorandum of Understanding on the Arrangement concerning Mutual Enforcement of Arbitration Awards between the Mainland and the Hong Kong Special Administrative Region" on 1 February 2000 and 17 September 2003, a total of 56 applications for enforcement of Mainland arbitration awards were made and 53 of them were successful. She enquired about the reasons for the three unsuccessful applications.

20. SG said that the law on enforcement of arbitration awards provided for a defence to enforcement in certain circumstances. Thus, the defendant in the original case could apply to a Hong Kong court against enforcement of the award in Hong Kong. This could result in a number of applications being set aside.

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21. The Chairman requested the Administration to provide the written court judgments on the three unsuccessful applications for enforcement of Mainland arbitration awards in Hong Kong, if any, for the Panel's consideration.

22. Ms Emily LAU asked for statistics on the number of applications for enforcement of Hong Kong arbitration awards in the Mainland.

23. DSG said that it was not easy to obtain conclusive statistics on applications to the Mainland courts for enforcement of Hong Kong arbitration awards, in view of the large number of courts on the Mainland. He informed members that the Working Party on the Review of the Enforcement of Hong Kong Arbitration Awards in the Mainland, on which DoJ was represented, had conducted a survey amongst Hong Kong legal practitioners on the difficulties encountered in applying for enforcement of arbitration awards in the Mainland. The problems identified by practitioners included the lack of transparency in the Mainland court system, the complicated procedures for making applications for enforcement, the defence put forward by the other parties against enforcement, and the difficulties of locating assets held by the parties in the Mainland etc. Some local practitioners also expressed the view that the Mainland law implicitly discouraged the use of arbitration as a means of resolving disputes. He assured members that the Administration would continue to reflect the views of the local legal profession and other stakeholders, including arbitrators and mediators, to the Mainland authorities.

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24. Ms Emily LAU opined that the Administration should make further attempts to obtain useful information on enforcement of arbitration awards, including the number of arbitration awards enforced in the Mainland, in order to give a fuller picture of how the mechanism for reciprocal enforcement was operating and whether the system was operating satisfactorily. DSG agreed to explore the possibility of getting information for the Panel's consideration.

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Proposed reciprocal enforcement of judgments in commercial matters between the Mainland and Hong Kong

25. Ms Emily LAU enquired about the progress of establishing a mechanism for reciprocal enforcement of judgements in commercial matters with the Mainland.

26. SG informed members that DoJ had held two rounds of informal meetings with the Mainland authorities to discuss the scope of the arrangement and the technicalities involved in the recognition and enforcement of judgments in both jurisdictions. He said that in view of the differences in the legal and judicial systems of Hong Kong and the Mainland, the finalization of the arrangement should not be rushed in order to allow sufficient time for both jurisdictions to explain to each other how their respective systems worked. Such differences concerned, for example, the understanding of the concept of finality of judgment and the statutory requirements and procedures for reviewing court decisions after the ruling had been given etc. SG said that positive developments were taking place in the consultation with the Mainland authorities, but it was difficult to foresee at this stage when an appropriate arrangement could be concluded.

Notaries public and China appointed attesting officers

27. Mr Martin LEE asked why members of the Hong Kong Society of Notaries were not automatically qualified as China appointed attesting officers. SG replied that the law providing for the qualifications and powers of notaries public was a domestic Hong Kong law. Whether another jurisdiction recognized the status and qualifications of members of a Hong Kong professional body was a matter for that jurisdiction concerned, taking into account the fact that the professional persons in the two places worked under different systems and that their roles and function might not be the same.

28. Ms Miriam LAU declared herself as both a notary public and a China appointed attesting officer. She said that notaries public and China appointed attesting officers performed different functions. For example, unlike a notary public, a China appointed attesting officer was required to carry out certain investigative duties where necessary. She further advised that a person had to pass a qualifying examination before he could be appointed as a China appointed attesting officer. Such examinations were held from time to time and the last one was held several years ago. She informed members that at present, there were about 300 China appointed attesting officers in Hong Kong. Senior Assistant Solicitor General (Legal Policy Division) added that there was an open system for local lawyers to sit for the examination and apply for appointment as China appointed attesting officers.

Consultancy study on the demand for and supply of legal and related services

29. SG informed members that Professor Hazel GENN, author of the UK study

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"*Paths to Justice : What People Do and Think About Going to Law*" referred to in Appendix I of LC Paper No. CB(2)1644/03-04(02), had agreed to serve on the Consultative Committee on the consultancy study.

30. SG advised members that the purpose of the consultancy study was to obtain empirical findings on, firstly, how people in Hong Kong handled their legal problems, and secondly, the types and substance of legal services available and the demand for legal services, with a view to ascertaining if there was any mismatch of demand and supply in certain areas. Hence, the study would consist of two major surveys to examine the actual demand for and supply of legal services in Hong Kong. It was hoped that the information collected would provide a useful basis upon which efforts could be made to assist members of the community who were in need of legal services. He added that the consultants engaged to conduct the study would not be asked to make policy proposals as to how to deal with the problems identified. Policy decisions would be made by the Administration and other stakeholders after taking into account the fact-finding results of the study.

31. In response to Ms Emily LAU, SG informed members that the cost of the consultancy study was yet to be finalized, pending negotiation with the short-listed organizations on the undertaking of the study. It was expected that the cost would be in excess of $3 million but below $10 million, and hence did not require approval by the Finance Committee. SG further advised that the six short-listed consultants included commercial research companies and consultancy bodies connected to the universities. He undertook to report to the Panel on the progress of the study in due course.

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32. Ms Emily LAU requested the Administration to provide information on the cost of the consultancy study, the consultant selected to conduct the study and other relevant details to the Panel in due course.

V. Performance of Court Interpreters
(LC Paper Nos. CB(2)1592/03-04(01))

33. The Chairman said that the item arose from a recent criminal trial in the Shatin Magistrates' Courts. The Magistrate ordered the case to be re-tried because he was not satisfied with the performance of the part-time Court Interpreter (CI) who provided interpretation of the Indonesian language into Cantonese. The Chairman invited the Judiciary Administrator (JA) to introduce the paper provided by the Judiciary Administration (LC Paper Nos. CB(2)1592/03-04(01)).

34. JA briefed members on the paper which highlighted -

(a) the existing establishment of CIs;

(b) qualifications and recruitment, terms of condition and training of CIs;

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(c) provision of interpretation service in proceedings where uncommon languages/dialects were used;

(d) monitoring of performance of CIs; and

(e) statistics on complaints against CIs.

Issues raised by members

35. Ms Emily LAU said that CIs should provide faithful and accurate interpretation in court proceedings. They played a very important role in ensuring the conduct of a fair trial, particularly in proceedings where uncommon languages were used by the parties and the trial judge and the parties' legal representatives were not familiar with such languages. Ms LAU considered that a high standard of interpretation had to be maintained and an effective mechanism to monitor the performance of CIs was essential.

36. Ms Emily LAU referred to paragraph 20 of the Judiciary Administration's paper, which stated that judges, court clerks and full time CIs on duty helped to monitor the performance of part-time CIs by giving feedback to the Part-time Interpreters Unit. She requested JA to provide statistics on the feedback which had been made. JA replied that comprehensive statistics sought by Ms LAU might not be available because in most cases, queries about inaccuracies in interpretation were reported to the judge in the course of the trial and the matters were dealt with immediately. He noted Ms LAU's request and agreed to find out if relevant information was available.

JA

37. In response to the Chairman, Mr Andrew MAK said that if the legal representative of a party detected a misinterpretation in the course of the proceedings, the matter would be brought to the attention of the trial judge immediately. The judge would handle the matter taking into account, inter alia, the representations made by the legal representatives of both sides. If a mistake was discovered after a hearing and the mistake was considered to have adverse impact on the fairness of trial, the matter could be brought up in the appeal.

38. The Chairman said that in the Magistrates' case in question, the problem was discovered by the Magistrate as he happened to know the Indonesian language. The Chairman was concerned that in proceedings where an uncommon foreign language or dialect was used and the language was not known to all parties including the judge, serious misinterpretations made by CIs might have gone unnoticed. She opined that the mechanism for monitoring the performance of CIs should be reviewed and improved. On-the-job training for full-time and part-time CIs should also be strengthened.

39. Referring to the entry requirements for recruitment of CIs, the Chairman

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pointed out that the candidates were not required to have professional skills and training on interpretation, court experience and knowledge in the judicial and legal system in Hong Kong. The Chairman opined that such requirements might also be relevant to the work of CIs.

40. JA said that the duty of a CI, first and foremost, was that he must interpret faithfully and accurately, without addition or omission, everything said in court. A CI should interpret directly and fully what was said in court, and should not even try to clarify issues by communicating directly with the witnesses. Hence, language proficiency was the most essential requirement, while knowledge of the legal and judicial system in Hong Kong etc was not absolutely necessary. Regarding training of CIs, JA agreed that it should be constantly reviewed and improved.

41. Ms Emily LAU noted that assessments of the performance of CIs were made regularly. She opined that strengthened measures should be introduced, such as random on-the-spot assessments of the interpretation in court. Moreover, the standard of interpretation could be monitored by having the interpretation in court audio-recorded and appraised subsequently by the supervisors.

42. JA said that the Judiciary was well aware of the importance of the work of CIs and assured that ongoing measures would be taken to review and improve training and monitoring of the performance of CIs. He added that visits made by supervising officers to courts to observe the performance and behaviour of CIs included ad hoc visits.

43. The Chairman and Ms Miriam LAU agreed that random checking of recorded interpretation of CIs by the supervising officers was a practical and effective means of monitoring the quality of performance of CIs. Ms Miriam LAU pointed out that visits to courts to observe the performance of CIs, particularly the part-time CIs, might not be useful, if the assessing supervisors did not know the language used in the proceedings.

44. Mr Albert HO opined that in view of the increasing number of people from some South-Asian countries in Hong Kong, such as the Philippines, India, Pakistan, Nepal etc, more intensive training should be provided to CIs to strengthen their interpretation skills in the languages of these countries. He said that the training up of a pool of interpreters proficient in these languages would not only be useful to the Judiciary, but also to other Government departments like the Immigration Department and the Police.

45. JA responded that in recruiting part-time interpreters for a foreign language, all suitable applicants were required to take written and oral entrance tests. Recommendations were also sought from the relevant Consulate for appointment of an examiner who spoke the foreign language. He said that at present, the Judiciary had maintained a list of part-time CIs and there were no serious

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difficulties in getting part-time CIs to provide interpretation of an uncommon foreign language.

46. The Chairman invited the Judiciary Administration to take note of the views expressed by members and requested JA to explain in writing the measures to be introduced to improve training and monitoring of the performance of CIs, particularly the part-time interpreters.

JA

VI. Evaluation Study on The Pilot Scheme on Family Mediation
(LC Paper Nos. CB(2)1381/03-04(01) and 1717/03-04(01))

47. JA briefed members on the Judiciary Administration's paper which took stock of the performance of the three-year Pilot Scheme on Family Mediation (the Pilot Scheme) launched in May 2000 (LC Paper No CB(2)1717/03-04(01)). The paper also set out the main findings in the Final Report on The Evaluation Study on The Pilot Scheme on Family Mediation (the Final Report) undertaken by the Polytechnic University of Hong Kong (LC Paper No. CB(2)1381/03-04(01)) and the way forward for mediation services.

Issues raised by members

Cost effectiveness of the Pilot Scheme

48. In response to Mr CHAN Kam-lam, JA said that as stated in Chapter Ten of the Final Report, there were 551 mediation cases in the Pilot Scheme in which a full agreement had been reached by the end of April 2003. Based on certain assumptions, this resulted in a total of 1 123 hearing hours (or 204.3 court days) saved. He added that on average, it took 10 hours mediation time for a successful case to reach full settlement.

49. Mr Albert HO said that he was generally satisfied with the success rate of the Pilot Scheme and wished that greater use of mediation as an alternative means of dispute resolution could be encouraged. He asked whether there was any indication to show the willingness of people to take part in mediation to resolve family disputes.

50. JA responded that no specific analysis had been done in this respect. Nonetheless, as shown in the Final Report, the three-year Pilot Scheme ended up with a total of 1 085 cases, of which about 15% fell through at the intake stage. A total of 930 cases eventually completed the mediation process. These figures could be compared with the number of divorce cases, i.e. about 15 000 per year. He added that the results of a Users' Satisfaction Survey on the Pilot Scheme conducted by the research team showed that the service users were on the whole positive about the mediation service, and considered that mediation was a viable option for settling family disputes.

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51. Ms Miriam LAU opined that the number of cases which had completed the mediation process under the Pilot Scheme was an encouraging figure, taking into account the fact that many divorce cases did not give rise to disputes and hence did not require mediation service in the first place.

52. Ms Miriam LAU added that mediation, which was a non-adversarial approach for resolving disputes, helped the parties to come to agreement on mutually acceptable arrangements. The parties would be more likely to comply with the settlement reached as it was one which the parties had voluntarily agreed upon. She opined that mediation should be encouraged as a means to resolve disputes, and mediation services could be further developed to cover a wider area of cases such as building management disputes.

53. Mr Albert HO asked whether the research team had analysed the reasons for the parties refusing to take part in mediation. JA replied that there was no such information in the Final Report. He agreed to find out from the research team if there was the relevant information and if available to provide it for members' reference.

JA

Legal aid for mediation

54. Ms Lisa REMEDIOS noted that the Chief Justice's Working Party on Civil Justice Reform (the Working Party) had examined, inter alia, the issue of grant of legal aid for mediation to facilitate greater use of mediation as an alternative method of dispute resolution. In this connection, the Working Party had made a recommendation in its Final Report on Civil Justice Reform inviting the Administration to consider whether mediation should be made a condition of legal aid in suitable cases (paragraph 28 of LC Paper No. CB(2)1717/03-04(01)). She said that the legal profession wished to know the Administration's stance on the Working Party's recommendation.

55. The Chairman pointed out that at present, the Legal Aid Ordinance did not provide for funding of mediation cases by legal aid. Nevertheless, there might be legal aid funded cases which involved mediation in the course of litigation. She asked the Clerk to write to the Administration to request information on the following -

(a) the Administration's position on the Working Party's recommendation concerning legal aid for mediation; and

(b) past cases, if any, in which legal aid was granted for mediation in the course of litigation.

(*Post-meeting note* : A letter was sent to the Director of Administration on 30 March 2004.)

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56. In response to Ms Lisa REMEDIOS, the Chairman said that according to the Final Report of the Working Party published in March 2004, the Working Party did not support introducing mandatory mediation by legislation.

Qualified mediators

57. The Chairman noted that over the period of the Pilot Scheme, 73 qualified mediators had registered with the Mediation Co-ordinator's Office to handle cases referred for mediation under the Scheme. She requested JA to provide the total number of qualified mediators in Hong Kong for the Panel's information.

JA

58. Ms Miriam LAU asked why HKIAC was the authority responsible for accreditation of mediators. JA responded that HKIAC was a recognized body which had been actively promoting arbitration and mediation as alternative means of resolving disputes in Hong Kong. The Hong Kong Mediation Council, a division of HKIAC, provided support to the Pilot Scheme on Family Mediation. It was considered appropriate for mediators be accredited by HKIAC for the purpose of the Pilot Scheme.

59. On the suggestion of Ms Miriam LAU, the Chairman asked the Clerk to write to HKIAC for information on the local and overseas practices for accreditation of mediators.

(*Post-meeting note* : The information provided by HKIAC was issued to the Panel vide LC Paper Nos. CB(2)2017/03-04(01) to (03) on 15 April 2004).

60. The meeting ended at 6:35 pm.

Council Business Division 2
Legislative Council Secretariat
23 April 2004