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Panel on Administration of Justice and Legal Services

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 22 February 2010**

Development of mediation services

Purpose

This paper gives a brief account of the past discussions of the Panel on Administration of Justice and Legal Services (the Panel) on the development of mediation services.

Background

2. Following the Chief Executive's announcement in the 2007 Policy Address to develop mediation services in Hong Kong, the Working Group on Mediation (Working Group) was established by the Secretary for Justice (SJ) to review the current development of mediation and to make recommendations on how mediation can be more effectively and extensively used in both commercial disputes and at the community level. Under the chairmanship of SJ, the Working Group comprises representatives from the Department of Justice (DoJ), the Judiciary, the Legal Aid Department, the two legal professional bodies, the three local law schools and relevant mediation bodies.

3. At the meeting on 23 June 2008, the Panel was informed that the Working Group had formed three Sub-groups in April 2008 to consider and make findings on specific issues in three main areas, i.e. regulatory framework, accreditation and training, and public education and publicity. The Sub-groups would submit their reports to the Working Group in 18 months and the Working Group aimed to release its report within two years.

Discussions of the Panel

4. The Panel was briefed on the developments on the work of the Working Group at its meetings on 23 June and 20 October 2008, and 22 June 2009. The major issues raised by members at these meetings are summarized in the ensuing paragraphs.

Availability of venue for conducting mediation

5. Members were concerned about the lack of suitable venues for conducting mediation, in particular community mediation, which would hinder the promotion of mediation as an alternative dispute resolution (ADR) and the development of Hong Kong as a regional ADR centre. Ms Audrey EU suggested that district offices could make available some venues for conducting community mediation, while the Home Affairs Department (HAD) could provide administrative support for mediators working on a pro bono basis.

6. At the meeting on 22 June 2009, the Administration informed members that a pilot scheme would be conducted on 1 July 2009 under which two community centres would be made available for conducting pro-bono mediation free of charge during specified periods. The Administration also advised that subject to the review on the effectiveness of the pilot scheme, consideration could be given to extending the scheme to community centres in other districts. As for international or commercial disputes, the parties concerned could better afford the cost of mediation and venues in the Hong Kong International Arbitration Centre, conference centres or hotels might be considered. In this regard, members noted from the Law Society of Hong Kong that the venues in the Hong Kong International Arbitration Centre were in great demand and not easy to book. Members also noted that due to cost consideration, a law firm might not be willing to make available its conference rooms for mediation services, for which at least two rooms were required for the parties concerned. The Panel urged the Administration to further explore ways to address the profession's prime concern of lack of suitable mediation venues.

Provision of free mediation services on consumer disputes

7. Dr Margaret NG expressed concern about the lack of free legal or mediation services on consumer disputes. It was pointed out that the Reports on the Consultancy Study of the Demand for and Supply of Legal and Related Services published by DoJ in May 2008 revealed that many people in Hong Kong had experienced difficult-to-solve problems in incidents related to consumer matters and had hoped that such disputes could be resolved by mediation, given that legal costs involved would be disproportionate to the amount involved in the disputes. The Administration advised that the relevant part of the Report on the Consultancy Study would be drawn to the attention of the Working Group which would consider how to promote understanding and awareness of mediation services to the community.

8. Noting that all members of the Working Group had a legal background, Dr Margaret NG opined that the membership of the Working Group should be made more diversified, e.g. to include representatives from HAD and Consumer Council to deal with practical issues relating to mediation. The Administration advised the Panel that members of the three Sub-groups consisted of representatives from HAD and the Consumer Council. The Working Group had not ruled out the possibility of inviting experts of various fields to participate in its discussion when there was a need to do so.

Accreditation of mediators and development of regulatory framework

9. The Panel was advised that the Accreditation and Training Sub-group was working on a voluntary draft code of conduct for mediators in Hong Kong and had looked at various options for regulatory enforcement of the mediation code. As regards qualification of mediators, members noted that many overseas countries did not have an accreditation system, and Australia was one of the few countries which had recently adopted an accreditation system for mediators. The Sub-group would study whether and, if so, how to implement such a system in Hong Kong.

10. Members also noted that the Regulatory Framework Sub-group had studied whether Hong Kong should enact a Mediation Ordinance and the proposed contents of such an Ordinance should one be enacted. The proposed contents included confidentiality and privilege, immunity of mediators, enforcement of mediated settlements, model rules for mediation and contents of a mediation agreement.

Enhancing the legal profession's understanding of mediation services

11. Members noted the concern among legal practitioners about the onerous requirements imposed on them by the Practice Direction on Mediation in connection with the implementation of the Civil Justice Reform. Under the Practice Direction which came into effect on 1 January 2010, for proceedings where all the parties are legally represented, the legal representatives concerned are required to file a Mediation Certificate to, inter alia, confirm that they have explained to their client the availability of mediation services, the procedures involved and the costs of mediation vis-à-vis litigation. The Law Society had expressed the view that to require solicitors to assess the fees that would be incurred in mediation and help the legally-aided client to see whether the fees involved would be disproportionate to what might be recovered was an onus unfairly put on the legal profession. Members considered it important to provide legal practitioners with more information on mediation to enhance their understanding of this ADR procedure. The Administration assured members that the Working Group would work together with other parties to enhance the legal professional's understanding of mediation services.

Latest development

12. DoJ will brief the Panel on the findings and recommendations in the report of the Working Group at the upcoming meeting on 22 February 2010.

13. In support of the implementation of the new Practice Direction on Mediation, a new Mediation Information Office has been set up in the High Court Building with effect from 4 January 2010 to provide litigants with relevant information on mediation. The Judiciary Administration will also brief members on the new Mediation Information Office at the upcoming meeting on 22 February 2010.

Relevant papers

14. A list of the relevant papers which are available on the LegCo website (<http://www.legco.gov.hk>) is in the **Appendix**.

Council Business Division 2
Legislative Council Secretariat
12 February 2010

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Relevant documents

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper</u>
Panel on Administration of Justice and Legal Services	22 October 2007	<p>Paper provided by the Administration on 2007-2008 policy initiatives of the Department of Justice" (paragraphs 12 to 14) [LC Paper No. CB(2)45/07-08(03)] http://www.legco.gov.hk/yr07-08/english/panels/ajls/papers/aj1022cb2-45-3-e.pdf</p> <p>Minutes of meeting (paragraphs 27 to 32) [LC Paper No. CB(2)402/07-08] http://www.legco.gov.hk/yr07-08/english/panels/ajls/minutes/aj071022.pdf</p>
	23 June 2008	<p>Administration's paper on "Development of mediation services" [LC Paper No. CB(2)2327/07-08(04)] http://www.legco.gov.hk/yr07-08/english/panels/ajls/papers/aj0623cb2-2327-4-e.pdf</p> <p>Minutes of meeting (paragraphs 14 to 24) [LC Paper No. CB(2)2826/07-08] http://www.legco.gov.hk/yr07-08/english/panels/ajls/minutes/aj080623.pdf</p>
	20 October 2008	<p>Paper provided by the Administration on 2008-2009 policy initiatives of the Department of Justice" (paragraphs 11 to 12) [LC Paper No. CB(2)71/08-09(02)] http://www.legco.gov.hk/yr08-09/english/panels/ajls/papers/aj1020cb2-71-2-e.pdf</p> <p>Minutes of meeting (paragraphs 19 to 28) [LC Paper No. CB(2)367/08-09] http://www.legco.gov.hk/yr08-09/english/panels/ajls/minutes/aj20081020.pdf</p>

<u>Meeting</u>	<u>Meeting Date</u>	<u>Paper</u>
	22 June 2009	<p>Background brief prepared by the LegCo Secretariat on "Development of mediation services" [LC Paper No. CB(2)1904/08-09(08)] http://www.legco.gov.hk/yr08-09/english/panels/ajls/papers/aj0622cb2-1904-8-e.pdf</p> <p>Administration's paper on "Development of mediation services" [LC Paper No. CB(2)1904/08-09(07)] http://www.legco.gov.hk/yr08-09/english/panels/ajls/papers/aj0622cb2-1904-7-e.pdf</p> <p>Minutes of meeting (paragraphs 36 to 42) [LC Paper No. CB(2)2341/08-09] http://www.legco.gov.hk/yr08-09/english/panels/ajls/minutes/aj20090622.pdf</p> <p><u>Follow-up papers</u></p> <p>Letter dated 8 May 2009 from the Law Society of Hong Kong to the Director of Legal Aid (DLA) concerning the policy on appointment of mediators in legally-aided cases and DLA's reply dated 14 May 2009 [LC Paper Nos. CB(2)2016/08-09(02) and (03)] <i>(English version only)</i> http://www.legco.gov.hk/yr08-09/english/panels/ajls/papers/aj0622cb2-2016-2-e.pdf http://www.legco.gov.hk/yr08-09/english/panels/ajls/papers/aj0622cb2-2016-3-e.pdf</p>