

For discussion
on 14 April 2011

Legislative Council Panel on Administration of Justice and Legal Services

Development of Mediation Services

PURPOSE

This paper provides a briefing on the work being undertaken by the Department of Justice to implement the recommendations of the Working Group on Mediation ('Working Group').

WORKING GROUP ON MEDIATION

2. In the 2007-08 Policy Address, the Chief Executive announced the establishment of a cross-sector working group headed by the Secretary for Justice to map out plans to employ mediation more extensively and effectively in handling higher-end commercial disputes and relatively small scale local disputes.

3. On 8 February 2010, the Working Group published its Report ('Report'). The 48 recommendations contained in the Report covered the three important areas of training and accreditation, regulatory framework and publicity and public education.

4. We briefed the AJLS Panel on the progress of the work of the Working Group in June 2008, June 2009 and of the Working Group's recommendations in February 2010 respectively.

PUBLIC CONSULTATION

5. The Report was issued for public consultation for three months in February 2010. We received positive and constructive feedback on the 48 recommendations.

6. There were 88 written submissions received of which 38 were from organizations which included the Law Society of Hong Kong, the Hong Kong

Bar Association, the Hong Kong Mediation Council, the Hong Kong Mediation Centre, the Hong Kong International Arbitration Centre, the Hong Kong Federation of Trade Unions, the Hong Kong Institution of Engineers, the Hong Kong Institute of Certified Public Accountants, the Chinese Chamber of Commerce, the Hong Kong Association of Banks, Hong Kong Dental Association, Hong Kong Family Welfare Society and the Hong Kong Council of Social Service.

MEDIATION TASK FORCE

7. Instead of publishing a further report, we have proceeded directly to further consider those recommendations in the Report which required further deliberations after taking into account the public feedback received and to implement those which received general support. We have set up a Mediation Task Force ('Task Force') for the purpose. The Chairman of the Task Force is the Secretary for Justice. The Membership and Terms of Reference of the Task Force are at Annex A.

8. The Task Force has held two meetings, the first on the 9 December 2010 and the second on the 14 March 2011. It is assisted in its work by three groups working specifically and reporting back to the Task Force on the following three areas:

- Accreditation
- Mediation Ordinance
- Public Education and Publicity

DEVELOPMENT OF A SYSTEM OF ACCREDITING MEDIATORS

9. At present, accredited mediators practicing in Hong Kong are accredited by different mediation accrediting organisations, local and overseas alike, each adopting its own set of training and accreditation requirements. Local organisations which provide mediation accreditation include, among others –

- The Hong Kong International Arbitration Centre
- The Law Society of Hong Kong
- The Hong Kong Mediation Centre
- The Hong Kong Institute of Surveyors
- The Royal Institution of Chartered Surveyors Hong Kong
- Hong Kong Institute of Architects.

10. In early 2010, the Hong Kong Mediation Code was promulgated by the Working Group. The Code is intended to provide a common standard among mediators and has an important quality assurance role. Twenty-one mediation service providers, including those listed above, have adopted the Code.

11. The Working Group in its Report recommended that the establishment of a single accreditation body would be desirable and could assist in ensuring the quality of mediators, consistency of standards, education of the public about mediation and mediators, enhancing public confidence in mediation services and maintaining the credibility of mediation.¹ Nonetheless, it noted that “the time is not right to prescribe a standardized system of accrediting mediators” and “the emphasis should be on the provision of appropriate mediation information to potential users of mediation that will enable them to decide whether to choose mediation to resolve disputes and also assist them to be better able to choose competent mediators”.² The Report recommended that the possibility for establishing such a body be reviewed in five years.³ The majority of the submissions received in respect of the public consultation, however, urged that a single accreditation body be set up as soon as possible rather than reviewing such a need in five years.

12. As there are a number of mediation service providers in Hong Kong, local and overseas alike, it is important for the service providers to work together on the formation of an accreditation body and to agree on mutually acceptable professional standards, including training standards.

13. The Task Force in its first meeting noted that there were different approaches which might be considered for achieving the objective of a single accreditation body. For example, one approach was that of a centralized body which would conduct mediator training and assessments and provided mediators. Another was an umbrella type single accreditation body which would be inclusive of various mediation service providers. It was important to find a model that was best suited for Hong Kong.

¹ Recommendation 25 of the Report of the Working Group on Mediation, Department of Justice, February 2010. See paras 6.12 to 6.16 at pages 59 to 60.

² Recommendation 26 of the Report of the Working Group on Mediation, Department of Justice, February 2010. See paras 6.37 to 6.38 at page 64.

³ Recommendation 28 of the Report of the Working Group on Mediation, Department of Justice, February 2010. See paras 6.49 to 6.54 at pages 67 to 69.

14. In its second meeting, the Task Force considered that it was premature to provide a statutory scheme for the establishment of a single accreditation body at this stage in the development of mediation in Hong Kong. It considered, however, that a non statutory industry led single accreditation body should be supported.

15. The Accreditation Group of the Task Force is deliberating on the terms and conditions of the setting up of such an industry led accreditation body.

PROPOSED MEDIATION LEGISLATION

16. The Working Group in its Report recommended that Hong Kong should have legislation on mediation, which should be aimed at providing a proper legal framework for the conduct of mediation in Hong Kong. However, the legislation should not hamper the flexibility of the mediation process.⁴

17. There was overwhelming support from the public consultation for the enactment of a Mediation Ordinance. The Law Society of Hong Kong submitted that, *“Mediators must work within the framework of a legal system which will require legislation to provide the framework on how mediation is defined, applied and practiced.”* The Bar Association also supported the recommendation. The Consumer Council agreed that, *“...a proper legal framework can provide a good platform for further development of mediation in Hong Kong.”* The Mediation Council of the Hong Kong International Arbitration Centre supported the recommendation and stated that, *“A clear legal framework will be conducive to the healthy development of mediation. Therefore, Government should take steps to enact the mediation legislation as soon as possible. There is no reason for any delay.”*

18. The Task Force at its first meeting set up the Mediation Ordinance Group to consider the views gathered during the public consultation in respect of the proposed Mediation Ordinance.

19. The Task Force together with its Mediation Ordinance Group has been working on the contents of the proposed Mediation Ordinance. It is considered that primarily the Bill would provide some clarification on what was

⁴ Recommendation 32 of the Report of the Working Group on Mediation, Department of Justice, February 2010. See paras 7.4 to 7.26 at pages 74 to 80.

meant by mediation so that there was no confusion. Secondly, the Bill would cover confidentiality provisions and thirdly, the Bill would cover privilege in mediation. These provisions are essential and are concerned with the infrastructural aspects applicable to the conduct of in Hong Kong.

20. We will seek to introduce the Mediation Bill into the Legislative Council towards the end of this year.

PUBLIC EDUCATION AND PUBLICITY INITIATIVES

21. There was general support for the Working Group's recommendations in respect of public education and publicity of mediation in Hong Kong. We recognise that successful public education and publicity requires the concerted efforts of all stakeholders.

22. There was much support for the Pilot Project on Community Venues for Mediation to continue. This Pilot Project was started in 2009, following mediation service providers such as the Hong Kong Bar Association, some community mediators and some members of the Legislative Council voicing their concerns about the difficulties in finding suitable venues for mediation. Currently the Pilot Project has the use of specific time slots in the Leighton Hill Community Centre in Happy Valley and the Henry G. Leong Community Centre in Yau Ma Tei for mediation.

23. The Public Education and Publicity Group of the Task Force has focussed, in collaboration with other individuals, organisations and the community, on the implementation of the various recommendations. Currently, among various promotional ideas, the Task Force and its Public Education and Publicity Group will proceed with the implementation of the following initiatives:

- Proposal to hold the second Mediation In Hong Kong Conference in 2012⁵; and
- Proposal to produce an Announcement in the Public Interest ('API') to be broadcast on television for the promotion of mediation

⁵ The First Mediation In Hong Kong Conference was held in December 2007. It was jointly organised by various organisations and stakeholders including the Department of Justice, the Judiciary, the Law Society of Hong Kong, the Hong Kong Bar Association, the Hong Kong Mediation Council, the Hong Kong International Arbitration Centre, the Hong Kong Mediation Centre, the University of Hong Kong and the Cheung Kong Centre for Negotiation and Dispute Resolution.

WORK PROGRAMME

24. In the coming two years, we will –
- work with mediation stakeholders to keep in view the development of the system of accrediting mediators;
 - work out the details of the proposed mediation legislation taking into account the development of the mediation landscape. It is envisaged that the legislation would set out a framework for the conduct of mediation;
 - work with relevant stakeholders to oversee the adoption and implementation of the Hong Kong Mediation Code and to review the operation of the Code in the light of experience;
 - work with mediation service providers, professional bodies, community organizations, other stakeholders and Government Bureaux and Departments to take forward the various public education and publicity initiatives recommended by the Working Group, including the production of an API on mediation, identifying community venues for mediation users, and fostering the wider use of community mediation; and
 - work with relevant parties to further explore the opportunities for initiating pilot mediation schemes in different sectors.

ADVICE SOUGHT

25. Members are invited to note the progress on the implementation of the recommendations in the Report.

Department of Justice
April 2011

**Mediation Task Force
Membership**

Chairman

Mr. Wong Yan Lung, SC, JP, Secretary for Justice

Members

The Hon. Mr. Justice Lam Man Hon, Johnson

Mr. Rimsky Yuen, SC, JP

Mr. John Budge, SBS, MBE, JP

Mr. Chan Bing Woon, SBS, JP

Dr. Leung Hai Ming, Raymond

Ir. To Wing, Christopher

Professor Nadja Alexander

Mrs. Tan Kam Mi Wah, Pamela, JP
Director of Home Affairs

Mr. Thomas Edward Kwong
Deputy Director, Legal Aid Department

Mr. Benedict Lai, JP
Law Officer (Civil Law), Department of Justice

Secretary

Ms. Sou Chiam
Deputy Principal Government Counsel, Department of Justice

Mediation Task Force Terms of Reference

The terms of reference of the Mediation Task Force are as follows:-

To advise on and assist in the implementation of the recommendations set out in the Report of the Working Group on Mediation (“the recommendations”) and, in particular, to,

- (a) Review the recommendations and the submissions received during the public consultation following the publication of the said Report (“the consultation”);
- (b) Consider and advise on how the recommendations endorsed by the consultation should be implemented;
- (c) Consider and deliberate on the recommendations which have generated disagreement or divergent views during the consultation, with a view to resolving the way forward on implementation with or without modification;
- (d) Assist in the implementation of the recommendations with or without modification in any manner as the Task Force considers appropriate;
- (e) Liaise with professional bodies, mediation service providers, and other stakeholders regarding,
 - (i) public education and promotion of mediation,
 - (ii) accreditation and training of mediators through the establishment of a single accreditation body, and
 - (iii) regulatory framework for mediation through the enactment of a Mediation Ordinance; and
- (f) Conduct, or engage experts to conduct, such studies as may be required.