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***Legislative Council***

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**Paper for the House Committee meeting on 30 November 2012**

**Report of the Subcommittee on  
Mediation Ordinance (Commencement) Notice**

**Purpose**

This paper reports on the deliberations of the Subcommittee on Mediation Ordinance (Commencement) Notice ("the Commencement Notice").

**Background**

2. In his 2007-2008 Policy Address, the Chief Executive announced the establishment of a cross-sector working group headed by the Secretary for Justice ("SJ") ("the Working Group") to review the development of mediation and to map out plans to employ mediation more extensively and effectively in both commercial disputes and at the community level. On 8 February 2010, the Working Group published its Report for three-month public consultation. The 48 recommendations contained in the Working Group's Report covered the three important areas of training and accreditation, regulatory framework and publicity and public education. A Mediation Task Force chaired by SJ was set up in December 2010 to assist in implementing the recommendations of the Working Group that received wide public support. According to the Administration, there was overwhelming support for the enactment of a Mediation Ordinance. It was against this background that the Mediation Bill ("the Bill") was introduced into the Legislative Council on 30 November 2011. The Bill had been scrutinized by a Bills Committee and was passed at the Council meeting on 15 June 2012 with a number of Committee Stage amendments moved by the Administration.

## **The Commencement Notice**

3. According to section 1(2) of the Mediation Ordinance (No. 15 of 2012) ("the Ordinance"), the Ordinance will come into operation on a day to be appointed by SJ by notice published in the Gazette. The Commencement Notice (L.N.167 of 2012), which was gazetted on 19 October 2012, appoints 1 January 2013 as the day on which the Ordinance will come into operation.

## **The Subcommittee**

4. At the House Committee meeting held on 26 October 2012, Members agreed to form a subcommittee to study the Commencement Notice. The membership list of the Subcommittee is at the **Appendix**. Under the chairmanship of Hon Dennis KWOK, the Subcommittee held two meetings with the Administration. The Hong Kong Mediation Accreditation Association Limited ("HKMAAL") was also invited to take part in one of the meetings. To allow sufficient time for scrutiny, a resolution was passed at the Council meeting on 14 November 2012 to extend the scrutiny period for the Commencement Notice to 12 December 2012.

## **Deliberations of the Subcommittee**

5. The Subcommittee supports the enactment of the Ordinance to provide a legal framework for mediation in Hong Kong. Nevertheless, some members are concerned about the readiness on the part of the stakeholders including the Government and HKMAAL when the Ordinance commences operation on 1 January 2013. They have sought information on the progress of work of HKMAAL, in particular the formulation of accreditation and training standards of mediators.

## **The role of HKMAAL**

6. The establishment of a single body for accrediting mediators was one of the recommendations in the Report of the Working Group published in February 2010. Whilst the Working Group noted that "the time [was] not right to prescribe a standardized system of accrediting mediators<sup>1</sup>", the majority of the submissions received during public consultation urged that a single accreditation body be set up as soon as possible. To take the recommendation forward, the Mediation Task Force chaired by SJ and its Accreditation Group worked with the major mediation stakeholders to facilitate the establishment of

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<sup>1</sup> Recommendation 26 of the Report of the Working Group.

a non-statutory, industry-led accreditation body for mediators. As a result, HKMAAL was incorporated on 28 August 2012 as a company limited by guarantee. Its four founder members are the Hong Kong Bar Association, the Law Society of Hong Kong ("the Law Society"), the Hong Kong International Arbitration Centre ("HKIAC") and the Hong Kong Mediation Centre ("HKMC"). These four professional bodies are closely involved in the development and promotion of mediation in Hong Kong, including the development and maintenance of standards of training for mediators.

7. Noting that the Ordinance does not contain provisions relating to the accreditation of mediators and that HKMAAL will operate independently as the single non-statutory industry-led accreditation body, some members are concerned that the Administration will not be able to exercise any role in overseeing HKMAAL's operations and the standards for accreditation of mediators. There is also concern about disagreement which may arise among the four founder members of HKMAAL, as well as the possibility of unhealthy competition among member organizations of HKMAAL in the provision of mediation service.

8. The Administration has advised that its role is to facilitate the establishment of HKMAAL in collaboration with stakeholders, and will continue to monitor the accreditation and training of mediators in Hong Kong. As informed by the Department of Justice ("DoJ"), the four founder members of HKMAAL are the leading organizations working with a common goal to further develop and promote mediation in Hong Kong. A briefing was conducted by HKMAAL for stakeholders on 11 October 2012 to explain its objectives and functions and there was active participation by many organizations involved in mediation work<sup>2</sup>. DoJ has indicated that it will keep in view future developments, in particular whether there will be any unhealthy competition in the provision of mediation services. Members also note that HKMAAL is not tasked to resolve disputes, if any, between its members. It is a regulatory body mainly responsible for accreditation standards and discipline of mediators.

### Financial resources

9. Noting that HKMAAL has been set up as a private company limited by guarantee, some members have enquired whether the Government will inject a sum of seed money to fund its early operation such as the setting up of a secretariat. DoJ has confirmed that HKMAAL will not be publicly funded; but in case there is a request from HKMAAL for financial assistance, it will be duly considered by the Administration. The Subcommittee notes from HKMAAL

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<sup>2</sup> The organizations and individuals who had submitted views to the Bills Committee on Mediation Bill were invited to attend the briefing.

that it has no intention to seek government funding and will operate as a self-financing body. The Subcommittee also notes from the Chairman of HKMAAL that after successfully establishing itself, the next step forward for HKMAAL is to seek statutory backing.

#### Readiness of HKMAAL to commence operation

10. The Subcommittee notes that HKMAAL is working on matters including the admission of members and the formulation of an accreditation system and the grandparenting policy. One of the major concerns of members is the readiness or otherwise of HKMAAL to commence operation, in tandem with the coming into force of the Ordinance on 1 January 2013. As advised by the Chairman of HKMAAL, a lot of groundwork needs to be done<sup>3</sup>. HKMAAL was in the course of considering bids to set up its secretariat and launching its own website. It cannot be confirmed that HKMAAL will be ready to perform its accreditation functions by 1 January 2013. Nevertheless, as the Ordinance does not contain provisions relating to HKMAAL or the accreditation of mediators, both DoJ and HKMAAL have advised that the commencement of the Ordinance is unrelated to the operation of HKMAAL. The commencement of the Ordinance needs not be subject to the readiness of HKMAAL.

#### Training and accreditation of mediators

11. As HKMAAL is still working on its accreditation system, some members have enquired on the availability of accredited mediators, and whether mediators currently accredited by other bodies can still practise after commencement of the Ordinance. DoJ has advised that since the legislation does not require mediators to be accredited by HKMAAL, the commencement of the Ordinance will not affect the practice of mediators accredited by bodies other than HKMAAL. DoJ has also noted that the public can continue to have access to information on mediation services and accredited mediators through the existing established channels such as the Mediation Information Office of the Judiciary and the Joint Mediation Helpline Office set up by eight organizations involved in providing mediation services. The founder members of HKMAAL also maintain lists of accredited mediators.

12. A member considers that HKMAAL (which is not a course-provider itself) should develop plans to collaborate with the academic sector, notably the University Grants Committee-funded institutions that currently offer training programmes in mediation, in formulating its standards for accrediting mediation

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<sup>3</sup> The position as reported by the Chairman of HKMAAL when attending the meeting of the Subcommittee on 16 November 2012.

training courses. HKMAAL has indicated that it is aware of the need to work closely with universities. Some of the mediation training courses approved by the Law Society and HKIAC (two of the founder members of HKMAAL) for the purpose of accrediting mediators are in fact run by local universities. On whether the subject of mediation has been given sufficient coverage in the academic programmes offered by local universities, the Administration has advised that negotiation skills and mediation has been included in the law programmes offered by universities. Besides, peer mediation is also promoted in some primary and secondary schools.

13. The Subcommittee also considers it important for the Administration/HKMAAL to manage public expectation and to send a clear message to interested parties that completion of a mediation course may not necessarily or automatically confer on the person concerned a qualification to practise as a mediator accredited by HKMAAL. Some members recalled past complaints in which the qualifications awarded by tertiary institutions were not recognized by the professional body concerned. They urge the Administration/HKMAAL to take steps to avoid similar recurrence in relation to the training and accreditation of mediators, given that a large number of degree and sub-degree programmes are being offered by post-secondary institutions.

14. According to the Chairman of HKMAAL, mediation has drawn a great deal of interest from the community, but the current proliferation of mediation accreditation bodies is unsatisfactory. The establishment of HKMAAL will provide an overarching premier accreditation body and help ensure that future accredited mediators meet recognized standards. Some Subcommittee members and HKMAAL also note that many people attend mediation courses in order to acquire the relevant knowledge to help them in their own profession and daily work, but without the intention to practise as full-time mediators.

15. In response to members' enquiry, DoJ has informed the Subcommittee that according to a review of their respective lists, there are over 2 000 mediators accredited by the Law Society, HKIAC and HKMC<sup>4</sup>. As regards members' view that mediators in other professions and fields (such as architecture, surveying, construction etc.) should not be excluded from HKMAAL, the Chairman of HKMAAL has assured the Subcommittee that the future participants of HKMAAL will not be limited to a single profession such as the legal sector. He also refers to a recent batch of applications for accreditation comprising applicants from different professions.

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<sup>4</sup> Some mediators are accredited by more than one of the three founder members of HKMAAL.

### Other preparatory work for the commencement of the Ordinance

16. The Subcommittee has sought information on other actions that need to be completed to pave the way for the commencement of the Ordinance. As advised by DoJ, the Judiciary and the Labour Department, which will be affected by the consequential and related amendments specified in Schedule 2 to the Ordinance, will need to make amendments to relevant terms in their official forms and publications. Both the Judiciary and the Labour Department have confirmed that the revised forms and publications will be ready for use and they are content with the proposed commencement date of 1 January 2013.

### Operation of HKMAAL and the Ordinance

17. The Subcommittee notes that the future operation of HKMAAL and the development of mediation as an alternative means of dispute resolution in Hong Kong are important policy issues that should be monitored. Members agree that the Panel on Administration of Justice and Legal Services should be invited to follow up relevant issues related to HKMAAL and the Ordinance, including exchanging views further with the deputations that have submitted views to the former Bills Committee on Mediation Bill.

### **Recommendation**

18. The Subcommittee does not object to the Commencement Notice and will not propose any amendment to it.

### **Advice sought**

19. Members are invited to note the deliberations of the Subcommittee.

**Subcommittee on Mediation Ordinance (Commencement) Notice**

**Membership list**

**Chairman** Hon Dennis KWOK

**Members** Hon James TO Kun-sun  
Hon TAM Yiu-chung, GBS, JP  
Hon Cyd HO Sau-lan  
Dr Hon Priscilla LEUNG Mei-fun, JP  
Hon CHEUNG Kwok-che  
Hon Tony TSE Wai-chuen

(Total : 7 Members)

**Clerk** Miss Polly YEUNG

**Legal Adviser** Mr YICK Wing-kin

**Date** 6 November 2012