

立法會
Legislative Council

Ref : CB4/SS/4/12

LC Paper No. CB(4)165/12-13

(These minutes have been seen
by the Administration)

Subcommittee on Mediation Ordinance (Commencement) Notice

**Minutes of the first meeting
held on Tuesday, 6 November 2012, at 4:30 pm
in Conference Room 2A of the Legislative Council Complex**

Members present : Hon Dennis KWOK (Chairman)
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

Public Officers attending : Item II

Mr Simon LEE
Deputy Law Officer (Civil Law)
Department of Justice

Ms Angela HO
Deputy Principal Government Counsel (Acting)
Department of Justice

Miss Rachel DAI
Government Counsel
Department of Justice

Clerk in attendance : Miss Polly YEUNG
Chief Council Secretary (4) 4

Staff in attendance : Mr YICK Wing-kin
Assistant Legal Adviser 8

Mr KWONG Kam-fai
Senior Council Secretary (4)4

Ms Esther CHEUNG
Council Secretary (4)4

Ms Sandy HAU
Legislative Assistant (4)3

Action

I. Election of Chairman

Ms Cyd HO, the member present who had the highest precedence, presided at the meeting and called for nominations for the chairmanship of the Subcommittee. Mr CHEUNG Kwok-che nominated Mr Dennis KWOK and the nomination was seconded by Dr Priscilla LEUNG. Mr Dennis KWOK accepted the nomination. There being no other nomination, Mr Dennis KWOK was declared Chairman of the Subcommittee.

II. Meeting with the Administration

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| (LC Paper No. CB(4)104/12-13(02) | -- Paper provided by the Administration |
| L.N. 167 of 2012 | -- Mediation Ordinance (Commencement) Notice |
| LC Paper No. LS5/12-13 | -- Legal Service Division Report |
| LC Paper No. CB(2)1943/11-12) | -- Report of the Bills Committee on Mediation Bill for the House Committee meeting on 11 May 2012 |
| Ordinance No. 15 of 2012 | -- Mediation Ordinance |
| LC Paper No. CB(4)104/12-13(03) | -- Background brief prepared by the Legislative Council Secretariat) |

Action

2. The Subcommittee deliberated (index of proceedings attached at **Annex**).

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3. To facilitate members' further discussion at the next meeting, the Administration was requested to take the follow-up action below -

- (a) to provide information on the number of mediators accredited by three of the founder members of Hong Kong Mediation Accreditation Association Limited ("HKMAAL"), namely the Law Society of Hong Kong, the Hong Kong International Arbitration Centre and the Hong Kong Mediation Centre;
- (b) to provide information on the number of mediator accrediting organizations in Hong Kong other than the founder members of HKMAAL, and the number of accredited mediators of these organizations;
- (c) to convey members' view to HKMAAL that it should develop plans to collaborate with the academic sector, in particular the universities that currently provide training programmes on mediation, in formulating its accreditation system and standards for mediation training; and
- (d) to provide a checklist of the actions/tasks that should have been accomplished to pave the way for the commencement of the Mediation Ordinance on 1 January 2013. These may include introducing consequential amendments to relevant terms in official documentation by the Judiciary and other government departments such as the Labour Department.

III. Any other business

Date of next meeting

4. Members decided to schedule a further meeting with the Administration and representatives of HKMAAL. The Chairman asked the Secretariat to invite members to indicate their availability for different time-slots, and he would decide on the date of the next meeting in the light of members' returns.

(Post-meeting note: Members were invited to indicate their availability for meeting at the time-slots set out in a circular issued vide LC Paper No. CB(4)119/12-13 dated 7 November 2012. In the light of members' returns, the Chairman directed that the next meeting would be held on 16 November 2012 at 8:30 am.)

Action

Legislative timetable

5. Members agreed that the Chairman of the Subcommittee should move a motion at the Council meeting of 14 November 2012 to extend the scrutiny period of the Commencement Notice from 21 November 2012 to 12 December 2012.
6. There being no other business, the meeting ended at 5:40 pm.

Council Business Division 4
Legislative Council Secretariat
19 November 2012

**Proceedings of the meeting of the
Subcommittee on Mediation Ordinance (Commencement) Notice
on Tuesday, 6 November 2012, at 4:30 pm
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject	Action required
000000 - 000224	Ms Cyd HO Mr CHEUNG Kwok-che Dr Priscilla LEUNG Mr Dennis KWOK	Election of Chairman	
000225 - 000357	Chairman	Opening remarks	
000358 - 000946	Administration	Briefing by the Administration on its information paper (LC Paper No. CB(4)104/12-13(02)).	
000947 - 002736	Mr CHEUNG Kwok-che Administration Chairman	<p>Mr CHEUNG's enquiries about the status, functions, membership and accreditation policy of Hong Kong Mediation Accreditation Association Limited ("HKMAAL").</p> <p>The Administration's explanation that -</p> <p>(a) HKMAAL was a non-statutory and industry-led body in the form of a company limited by guarantee.</p> <p>(b) Admission of members and formulation of the accreditation system were among HKMAAL's tasks since its incorporation in August 2012.</p> <p>The Administration was requested to provide the number of mediator accrediting organizations in Hong Kong other than the founder members of HKMAAL and the number of accredited mediators of these organizations.</p> <p>Mr CHEUNG's suggestion to invite stakeholders to express their views on the work of HKMAAL, including matters related to accreditation policy and membership.</p> <p>Members noted that mediation services had been included as one of the items for discussion by the Panel on Administration of Justice and Legal Services ("AJLS Panel").</p>	The Administration to provide information under paragraph 3(b) of minutes
002737 - 003431	Mr Tony TSE Administration	<p>Mr TSE's view that HKMAAL should collaborate with the existing mediation organizations in the process of formulating its policies on accreditation and membership, and that HKMAAL should help foster a healthy competitive environment for different mediation service providers.</p> <p>The Administration was requested to provide information on the number of mediators accredited by three of the founder members of HKMAAL, namely the Law Society of Hong Kong, the Hong Kong International Arbitration Centre and the Hong Kong Mediation Centre.</p>	The Administration to provide information under paragraph 3(a) of minutes

Time marker	Speaker	Subject	Action required
003432 - 003830	Mr Tony TSE Administration	<p>Mr TSE's enquiry about the availability of accredited mediators before HKMAAL completed its formulation of accreditation system and HKMAAL's timetable of completing its preparatory work.</p> <p>The Administration's response -</p> <p>(a) The public would continue to have access to information on mediation services and accredited mediators through the existing 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 maintained lists of accredited mediators.</p> <p>(b) Being an industry-led body, HKMAAL was undertaking its work independently. The Administration would continue to monitor the progress of the accreditation of mediators and provision of mediation services.</p>	
003831 - 004451	Dr Priscilla LEUNG Administration	<p>Dr LEUNG's views –</p> <p>(a) Mediation had been used in resolving disputes related to Lehman Brothers and disputes arising from the implementation of the Land (Compulsory Sale for Redevelopment) Ordinance.</p> <p>(b) AJLS Panel would consider inviting stakeholders to a meeting to express their views on the implementation of the Mediation Ordinance.</p> <p>Dr LEUNG declared that she taught law courses at the university.</p> <p>Dr LEUNG's enquiry on whether HKMAAL had sought collaboration with the academic sector in formulating its accreditation system and standards for mediation training.</p> <p>The Administration's response –</p> <p>(a) The experience from cases related to Lehman Brothers and the Land (Compulsory Sale for Redevelopment) Ordinance had shown that the specific nature of the disputes might require specialized knowledge on the part of the mediators concerned.</p> <p>(b) It was noted that negotiation skills and mediation had been included in law programmes conducted by universities.</p> <p>(c) Peer mediation was also promoted in some primary and secondary schools.</p>	

Time marker	Speaker	Subject	Action required
004452 - 004824	Dr Priscilla LEUNG Administration Chairman	<p>Dr LEUNG's views that HKMAAL should develop plans to collaborate with the academic sector, in particular the universities that currently provide training programmes on mediation, in formulating its accreditation system and standards for mediation training.</p> <p>The Administration was asked to convey this view to HKMAAL for follow-up.</p>	The Administration to take action under paragraph 3(c) of minutes
004825 - 010339	Ms Cyd HO Administration Chairman	<p>Ms HO's suggestion to invite deputations that had submitted views to the Bills Committee on the Mediation Bill to express their views on whether the Mediation Ordinance should be commenced on 1 January 2013.</p> <p>Ms HO's enquiry on the actions/tasks that should have been completed before the Mediation Ordinance commenced operation on 1 January 2013, including any grandparenting policy. Her suggestion that AJLS Panel should review the progress of these actions/tasks.</p> <p>The Administration's response -</p> <ul style="list-style-type: none"> (a) It was HKMAAL's functions to work on admission of members, formulating the accreditation system and the grandparenting policy. (b) Progress of HKMAAL's work would be reported to AJLS Panel in due course. (c) The Mediation Ordinance did not contain provisions in relation to the work of HKMAAL. There was no need for the commencement of the Mediation Ordinance to be subject to the operation of HKMAAL. (d) In preparation for the commencement of the Mediation Ordinance, consequential amendments to relevant terms in official documentation had to be made by the Judiciary and other government departments such as the Labour Department. <p>Ms HO's stance that she would need information on the readiness of the Administration and HKMAAL to bring the Mediation Ordinance into operation, before she could decide whether or not to support the Commencement Notice.</p> <p>Ms HO's suggestion to schedule a further meeting which should also be attended by representatives of HKMAAL.</p>	
010340 - 010444	Dr Priscilla LEUNG Administration	Dr LEUNG's view that the experience of different organizations providing mediation service and mediation training should be consolidated for the benefit of the public.	

Time marker	Speaker	Subject	Action required
010445 - 010554	Chairman Ms Cyd HO Administration	The Administration was requested to provide a checklist of the actions/tasks that should have been accomplished to pave the way for the commencement of the Mediation Ordinance on 1 January 2013.	The Administration to provide information under paragraph 3(d) of minutes
010555 - 011123	Chairman Dr Priscilla LEUNG Ms Cyd HO Mr CHEUNG Kwok-che	Members' decision to schedule a further meeting which should be attended by the Administration and the representatives of HKMAAL. Members' views that the AJLS Panel would monitor the implementation of the Mediation Ordinance and meet with deputations, if necessary. Members agreed that the Subcommittee Chairman would move a motion at the Council meeting of 14 November 2012 to extend the scrutiny period to 12 December 2012.	

Council Business Division 4
Legislative Council Secretariat
19 November 2012