

# **立法會**

## ***Legislative Council***

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

**Meeting on 6 November 2012**

### **Background brief on issues relating to the Mediation Ordinance**

#### **Purpose**

This paper summarizes some of the major concerns relating to the commencement of the Mediation Ordinance ("the Ordinance") which were raised by Members in the course of scrutinizing the relevant Bill.

#### **Background**

2. Mediation is a dispute resolution process to resolve disputes other than through litigation in the courts. In the 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 to assist in implementing the recommendations of the Working Group that received wide public support with a view to promoting wider use of mediation in Hong Kong. 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 ("LegCo") 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.

### **Accreditation and quality of mediators**

3. Members of the Bills Committee consider that in addition to putting in place the legislative framework, it is also necessary for the Administration to work out the accreditation system of mediators and other assistance relating to mediation.

#### Definition of "mediator"

4. Under the Ordinance, a mediator means an impartial individual who conducts mediation. Some members have queried how the quality of mediators can be ensured if any person who claims to be impartial is able to assume the role of a mediator. They have suggested that a mediator should be defined as an impartial individual who has completed the mediation training course recognized by the four major mediation service providers. The Administration however has considered it not appropriate to do so at this stage, as the suggestion would exclude many practising mediators (e.g. those who have received training overseas, have been accredited by other agencies or who have not received formal training but with practical mediation experience) from the practice of mediation, thereby limiting the public's choice of mediators.

#### Accreditation and training of mediators

5. Some members have expressed disagreement with the Administration's position that matters relating to accreditation of mediators can be dealt with at a later stage after enactment of the Bill. They consider that given the diversity in qualifications and background of practising mediators, the Administration should set a timetable for developing a system of accrediting mediators so as to ensure the professionalism of mediators. Some other members however consider that as mediation does not involve the adjudication of disputes and the expertise and experience required for mediation in different fields vary, there is no urgent need to establish a standardized accreditation system for mediators at this stage.

#### Establishment of a single non-statutory industry-led accrediting body for mediators

6. The Bills Committee noted that although the legislation would not contain provisions relating to accreditation of mediators, the Administration was

working with stakeholders on the development of a single non-statutory industry-led accreditation body for mediators. The Administration had also confirmed that the legislation would not affect the current practices of mediation.

7. As informed by the Administration, the aforesaid accrediting body will be set up in the form of a company limited by guarantee, i.e. the Hong Kong Mediation Accreditation Association Limited ("HKMAAL"). The council of HKMAAL will comprise not more than 10 council members including (a) four ex-officio members (each to be nominated by the Law Society of Hong Kong, the Hong Kong Bar Association, the Hong Kong Mediation Centre and the Hong Kong International Arbitration Centre being the founding members); (b) not more than four other members elected by members of HKMAAL; and (c) two co-opted members who are not members of HKMAAL. As a condition for membership, the mediation service providers will give up their existing individual accreditation system and future mediators will be accredited through HKMAAL only. It is hoped that HKMAAL, when established, will be the default appointing body of mediator when the parties cannot agree on the appointment of a mediator. According to the Administration, the draft Memorandum and Articles of Association of HKMAAL would be finalized for registration with the Companies Registry within this year if no further significant issues arise.

8. On the council membership of HKMAAL, some members are concerned about limiting the council membership to 10 members and the possibility of conflict of interests if the conditions for membership are to be determined by the four founding members. They have suggested that a review should be conducted in a few years after the establishment of HKMAAL on whether the ex-officio membership of its council should be maintained or whether all its council members should be elected by members of HKMAAL. It is also suggested that provisions relating to HKMAAL, once it is formed, should be incorporated into the Mediation Ordinance. Members also stress that the process to establish HKMAAL and its future operation should be transparent and open.

9. Regarding the role of the Administration after the establishment of HKMAAL, members were informed that the Department of Justice will continue to participate actively in the process to set up HKMAAL and to facilitate the development of mediation service in Hong Kong. The Bills Committee has agreed that the Panel on Administration of Justice and Legal Services should follow up the relevant issues after enactment of the Bill.

10. At the Second Reading debate on the Bill, SJ elaborated that the Accreditation Group under the Mediation Task Force had laid down the terms of reference for HKMAAL in the following three aspects: first, to establish

HKMAAL and its council, as well as to recruit members; second, with reference to the existing standards and practices of major mediation service providers, to set up the accreditation standard for mediators and formulate an appropriate policy to transfer the existing panel of accredited mediators of the major mediation service providers to the panel of HKMAAL; and third, with reference to the existing practices of the major mediation service providers, to develop the accreditation system of mediators for HKMAAL.

11. SJ also stressed that the framework and participants of HKMAAL are not limited to the legal profession. Given the diversities in the background of mediators and the fact that they have acquired qualifications through existing accreditation bodies, HKMAAL will be pluralistic and provide mediators in different fields.

### **Education and publicity**

12. On the education and publicity initiatives to enable the community to gain a better understanding on mediation, SJ stated during the Second Reading debate that these initiatives included an Announcement in the Public Interest aired on television, the provision of free or low-cost venues for mediation at community centres, and organizing international conferences to foster international exchanges.

### **Latest position**

13. According to section 1(2) of the Mediation Ordinance (No. 15 of 2012), the Ordinance will commence on a date to be appointed by SJ by notice published in the gazette. The Mediation Ordinance (Commencement) Notice (L.N. 167), which was gazetted on 19 October 2012, appoints 1 January 2013 as the day on which the Ordinance will come into operation. When L.N. 167 was considered by the House Committee at its meeting on 26 October 2012, a member raised concern about the accreditation and training of mediators, and how the quality of mediators could be ensured. A subcommittee was formed to study the Notice.