

**立法會**  
**Legislative Council**

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LC Paper No. CB(4)524/13-14

(These minutes have been  
seen by the Administration)

**Panel on Administration of Justice and Legal Services**

**Minutes of meeting**  
**held on Tuesday, 23 April 2013, at 4:30 pm**  
**in Conference Room 1 of the Legislative Council Complex**

**Members present** : Dr Hon Priscilla LEUNG Mei-fun, JP (Chairman)  
Hon Dennis KWOK (Deputy Chairman)  
Hon Albert HO Chun-yan  
Hon James TO Kun-sun  
Hon TAM Yiu-chung, GBS, JP  
Hon Abraham SHEK Lai-him, SBS, JP  
Hon Cyd HO Sau-lan  
Hon Starry LEE Wai-king, JP  
Hon CHAN Kin-por, BBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon Alan LEONG Kah-kit, SC  
Hon LEUNG Kwok-hung  
Hon WONG Yuk-man  
Hon Michael TIEN Puk-sun, BBS, JP  
Hon NG Leung-sing, SBS, JP  
Hon Steven HO Chun-yin  
Hon YIU Si-wing  
Hon MA Fung-kwok, SBS, JP  
Hon Charles Peter MOK  
Dr Hon Kenneth CHAN Ka-lok  
Hon Alice MAK Mei-kuen, JP  
Dr Hon KWOK Ka-ki  
Dr Hon Elizabeth QUAT, JP  
Hon Martin LIAO Cheung-kong, JP  
Hon TANG Ka-piu  
Dr Hon CHIANG Lai-wan, JP  
Hon CHUNG Kwok-pan  
Hon Tony TSE Wai-chuen

**Members absent** : Hon Emily LAU Wai-hing, JP  
Hon LEE Cheuk-yan

Hon CHAN Kam-lam, SBS, JP  
Hon Ronny TONG Ka-wah, SC  
Hon Kenneth LEUNG

**Public Officers :** Agenda item III  
**attending**

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

Miss Venus CHEUNG  
Government Counsel  
Department of Justice

Agenda item IV

Mr Frank POON, JP  
Solicitor General  
Department of Justice

Mr Peter WONG  
Deputy Solicitor General (General)  
Department of Justice

Ms Adeline WAN  
Senior Assistant Solicitor General  
Department of Justice

Ms Alice CHOY  
Senior Government Counsel  
Department of Justice

**Attendance by :** Item III  
**invitation**

Hong Kong Mediation and Arbitration Centre

Mr Albert SO  
Chairman

Joint Mediation Helpline Office Limited

Mr CHAN Bing-woon, SBS, MBE, JP  
Chairman

Democratic Alliance for the Betterment and Progress of  
Hong Kong ("DAB")

Mr CHOW Sai-ping  
Convenor of the Mediation Group, DAB Professional  
Affairs Committee

Construction Industry Council

Mr Christopher TO  
Executive Director

Hong Kong Catholic Marriage Advisory Council

Mrs Catherine TANG CHOW Siu-ling  
Supervisor of Marriage Mediation & Counselling Service

K M Lai & Li Solicitors & Notaries

Mr MA Siu-lam  
Solicitor Partner

Hong Kong Mediation Accreditation Association Limited

Mr John R BUDGE, SBS, MBE, JP  
Chairman

JC Professional Mediation Practice

Dr James CHIU Shing-ping  
Founder

Rainbow Consultancy Limited

Miss Angel HO Wai-yuk  
Director

Hong Kong Training Professional General Union

Ms Annita MAU  
Deputy Co-ordinator

Tru-Tight & Associates Limited

Mr Raymond WU Chi-cheung  
Managing Director

Centre for Restoration of Human Relationships

Ms Christy PAU Choi-chun  
Senior Project Officer

The Council of Social Development

Mr CHENG Kwan  
Secretary

The Council of Mediation Development

Mr Hammer TSUI  
Consultant

Hong Kong Construction Arbitration Centre

Mr Simon CHEE Wai-hung  
President

School of Law of The City University of Hong Kong

Dr YANG Fan  
LLMArbDR, Programme Leader and Assistant Professor

Methodist Centre

Ms LEE Koon-mei  
Service Co-ordinator

C & L Holdings Ltd

Dr Raymond LEUNG  
Chief Executive Officer

Hong Kong Family Welfare Society

Miss Amarantha YIP  
Head of Service

The Hong Kong Institute of Architects

Mr Eric LAM Tin-cho

Member of Contract and Dispute Resolution Committee  
and Member of Practice, Legal and Finance Issues  
Committee

Faculty of Law of the University of Hong Kong

Prof Anna K C KOO

EC Harris (Hong Kong) Limited

Mr John COCK

Partner

Hong Kong Mediation Centre

Mr Jango CHAN Man-shing

President

The Democratic Party

Mr Andrew CHIU Ka-yin

Convenor of the Community Mediation Task Force

Hong Kong Society of Accredited Mediators

Mr Leo YAU Lut-pong

Spokesman

The Hong Kong Institute of Surveyors

Mr Vincent HO

Vice President

CEDR Asia Pacific

Mr Danny McFADDEN

Managing Director

International Institute of Conflict Engagement and  
Resolution

Hong Kong Shue Yan University

Ms Wendy LUI  
Associate Director

Hong Kong Institute of Construction Managers

Mr TANG Chi-wang  
Vice President

Faculty of Law of the Chinese University of Hong Kong

Prof Martin DORIS

Hong Kong Mediation Council

Mr LEUNG Hing-fung  
Chairperson

Hong Kong Bar Association

Mr Robin EGERTON

Society of Certified Mediators and Negotiators

Mr CHAN Kam-pui  
Chairman

Professional Mediation Consultancy Centre

Mr Denys LOOK  
Director

Hong Kong Mediation Alliance

Ms Maureen CHU  
Panel Co-ordinator

Hong Kong Mediation Profession Staff General Union

Mr Kenneth LAU  
Treasurer

Item IV

Hong Kong Bar Association

Mr Robin EGERTON

**Clerk in attendance** : Miss Mary SO  
Chief Council Secretary (4)2

**Staff in attendance** : Mr Timothy TSO  
Assistant Legal Adviser 2

Ms Cindy CHAN  
Senior Council Secretary (4)2

Ms Rebecca LEE  
Council Secretary (4)2

Ms Mandy WAN  
Administrative Assistant (4)1

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**I. Information paper(s) issued since the last meeting**

[LC Paper Nos. CB(4)534/12-13(01), CB(4)552/12-13(01), CB(4)571/12-13(01) and CB(4)595/12-13(02)]

Members noted the Home Affairs Bureau's paper on "Annual Review of Financial Eligibility Limits of Legal Aid Applicants" [LC Paper No. CB(4)534/12-13(01)].

2. Members also noted the letter from Dr Kenneth CHAN dated 8 April 2013 proposing to discuss the issue of "Enactment of archive law and code of access to information" [LC Paper No. CB(4)552/12-13(01)].

3. At the request of the Chairman, Mr TAM Yiu-chung, in his capacity as Chairman of the Panel on Constitutional Affairs ("CA Panel"), agreed that the issue be referred to the CA Panel for follow-up having regard to the fact that the issue was within the ambit of the CA Panel.

*(Post-meeting note:* The letter from Dr Kenneth CHAN dated 8 April 2013 proposing to discuss the issue of "Enactment of archive law and

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code of access to information" was issued to members of the CA Panel vide LC Paper No. CB(2)1061/12-13(01) on 2 May 2013.)

4. In response to the letter from Mr Dennis KWOK dated 16 April 2013 proposing to discuss the issue of "Adjustment to the scale rates", the Chairman suggested that the issue be included in the Panel's list of outstanding items for discussion. Members agreed.

5. At the invitation of the Chairman, Mr LEUNG Kwok-hung and Mr WONG Yuk-man said that they proposed to discuss about the Judiciary's arrangements for Masters to handle court cases, citing a case of an appeal handled by a Master as referred to in their letter dated 22 April 2013 [LC Paper No. CB(4)595/12-13(02)]. Mr WONG also said that as the background information contained in the appendices attached to the case was substantial and useful for members to understand the issue in question, he did not understand why the Chairman did not pass onto the Secretariat the appendices attached to the case for tabling at the meeting today.

6. The Chairman responded that she attended the case conference with Mr WONG Yuk-man and Mr LEUNG Kwok-hung as arranged by the Public Complaints Office on 22 April 2013 and was given the relevant information of the case in question. She however considered that as the appendices attached to the case were voluminous, members should extract and attach the relevant papers to their letter if they intended to raise the issue with the Panel Chairman.

7. Mr Dennis KWOK did not subscribe to the view that the Panel should discuss about the arrangement of the Judiciary for a Master to handle a court case. He said that the fundamental principle of separation of powers should be respected and the Panel should refrain from intervening in the judicial operation. If individual members considered it appropriate, he would however suggest that the Panel could review the mechanism in place for the Judiciary to handle complaints against judicial conduct.

8. Mr Martin LIAO said that as limited information was given in the letter of Mr LEUNG Kwok-hung and Mr WONG Yuk-man, he would have reservation if the Panel decided to discuss about the arrangement of the Judiciary for a Master to handle a court case.

9. Mr TAM Yiu-chung opined that it was not appropriate for the Panel to deal with individual complaint cases against judicial conduct. Mr TAM said that members should be given further information on the issue in question and be allowed sufficient time to read through the relevant papers before a decision be made.



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10. The Chairman concluded that the issue in question would be deferred to the next regular meeting, pending further information from Mr LEUNG Kwok-hung and Mr WONG Yuk-man.

**II. Date of next meeting and items for discussion**

[LC Paper Nos. CB(4)571/12-13(02) and (03)]

11. Members agreed to discuss the following items proposed by the Administration at the next regular meeting scheduled for Tuesday, 28 May 2013, at 4:30 pm –

- (a) Right of abode issues of children born in Hong Kong to Mainland parents both of whom are not Hong Kong permanent residents; and
- (b) Handling of sexual offences cases.

12. In respect of the issue of "Right of abode issues of children born in Hong Kong to Mainland parents both of whom are not Hong Kong permanent residents", the Chairman said that the Secretary for Justice and representatives from the Security Bureau would be invited to come to brief members how the Administration planned to follow up the issue. As agreed at the Panel meeting on 26 March 2013 and with the concurrence of Mr IP Kwok-him, Chairman of the Panel on Security, members of the Panel on Security and other Members would also be invited to join the regular meeting in May 2013 for discussion of this item.

13. In respect of the issue of "Handling of sexual offences cases", Dr Elizabeth QUAT proposed and members agreed to invite deputations to attend the regular meeting in May 2013 to give views on the measures taken by the Administration in this regard.

14. To allow sufficient time for discussion, the Chairman suggested and members agreed to extend the duration of the regular meeting on 28 May 2013 from 6:30 pm to 7:30 pm.

**III. Provision of mediation services in Hong Kong**

[LC Paper Nos. CB(4)321/12-13(05) and CB(4)571/12-13(04)]

Views of deputations

15. The Chairman said that she gave instruction in law but not mediation at a local university.

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16. At the invitation of the Chairman, the following 36 deputations presented their views on the provision of mediation services in Hong Kong -

- (a) Hong Kong Mediation and Arbitration Centre
- (b) Joint Mediation Helpline Office Limited
- (c) Democratic Alliance for the Betterment and Progress of Hong Kong
- (d) Construction Industry Council
- (e) Hong Kong Catholic Marriage Advisory Council
- (f) K M Lai & Li Solicitors & Notaries
- (g) Hong Kong Mediation Accreditation Association Limited
- (h) JC Professional Mediation Practice
- (i) Rainbow Consultancy Limited
- (j) Hong Kong Training Professional General Union
- (k) Tru-Tight & Associates Limited
- (l) Centre for Restoration of Human Relationships
- (m) The Council of Social Development
- (n) The Council of Mediation Development
- (o) Hong Kong Construction Arbitration Centre
- (p) School of Law of The City University of Hong Kong
- (q) Methodist Centre
- (r) C & L Holdings Ltd
- (s) Hong Kong Family Welfare Society
- (t) The Hong Kong Institute of Architects

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- (u) Faculty of Law of The University of Hong Kong
- (v) EC Harris (Hong Kong) Limited
- (w) Hong Kong Mediation Centre
- (x) The Democratic Party
- (y) Hong Kong Society of Accredited Mediators
- (z) The Hong Kong Institute of Surveyors
- (aa) CEDR Asia Pacific
- (bb) International Institute of Conflict Engagement and Resolution,  
Hong Kong Shue Yan University
- (cc) Hong Kong Institute of Construction Managers
- (dd) Faculty of Law of The Chinese University of Hong Kong
- (ee) Hong Kong Mediation Council
- (ff) Hong Kong Bar Association
- (gg) Society of Certified Mediators and Negotiators
- (hh) Professional Mediation Consultancy Centre
- (ii) Hong Kong Mediation Alliance
- (jj) Hong Kong Mediation Profession Staff General Union

17. Members also noted the written submissions from the following organizations –

- (a) The Chartered Institute of Arbitrators (East Asia Branch)
- (b) The Hong Kong Institution of Engineers
- (c) The Law Society of Hong Kong

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A summary of the views of deputations is in the **Appendix**.

Discussion

18. On the question of establishing a standardized system of accrediting mediators, Mr Dennis KWOK said that the Hong Kong Mediation Accreditation Association Limited ("HKMAAL") should address the common concerns shared by deputations.

19. Mr John BUDGE, in his capacity as Chairman of the HKMAAL, responded that he took note of the views and comments made by deputations at the meeting today and would discuss it with members of the Council of the HKMAAL. He assured members that the views of various stakeholders would be given due consideration in the formulation of the standardized accreditation system for mediators. To his understanding, very few overseas jurisdictions had in place an overarching accreditation body for accrediting mediators and there were practical reasons behind such a phenomenon. As the HKMAAL only came into operation after its incorporation on 28 August 2012, there remained a huge amount of preparatory work to be undertaken by the HKMAAL. Notwithstanding the above, he was optimistic that as the practice of mediation was still developing in Hong Kong and with the good will of the mediation service providers, the HKMAAL would be able to, in tandem with DoJ and various stakeholders, come up with a standardized accreditation system for mediators which would be beneficial to members of the public and the mediation sector in Hong Kong as a whole.

20. Mr TANG Ka-piu opined that although the establishment of a single accreditation body was greatly supported by the mediation sector, the fact that the Council of HKMAAL only comprised representatives from the four founder members, namely the Hong Kong Bar Association, the Law Society of Hong Kong, the Hong Kong International Arbitration Centre ("HKIAC") and the Hong Kong Mediation Centre ("HKMC"), was a cause for concern. He worried that the HKMAAL would set up a new accreditation system which attached great importance to the academic/professional qualification requirement of mediators, as a result of which, many practicing mediators who did not possess the required qualifications would not be able to continue with their practice and the service charges for the use of mediation would be raised. Moreover, Mr TANG questioned whether the practice of those community mediators who provided their services on a pro bono basis would be affected after the HKMAAL's accreditation system came into operation. Separately, Mr TANG was concerned that competition would cease to exist in the provision

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of mediation services if the HKMAAL was to become a statutory accreditation body for mediators in Hong Kong and more dispute cases were assigned by DoJ to members of the HKMAAL. In this regard, Mr TANG urged that although the HKMAAL was now operating independently, DoJ should keep in view the future development and operation of the HKMAAL.

21. Mr CHUNG Kwok-pan was of the view that as the HKMAAL had yet to formulate the standards for accrediting mediators, there should be arrangements for existing mediation training courses to tie in with the new accreditation standards. Noting that members of the Council of the HKMAAL mostly came from the legal professional and arbitration bodies, Mr CHUNG expressed concern whether the HKMAAL had the relevant expertise to discharge its regulatory and disciplinary functions effectively over the conduct of mediation in a wide variety of disputes, such as land transactions, professional/medical negligence and family matters. Mr CHUNG was also concerned that future criteria adopted by the HKMAAL for admitting its members would favour the legal profession.

22. Ms Alice MAK said that mediation process differed from litigation process in which the latter required legal representation which came with higher costs. Ms MAK held the view that while accreditation was important to ensure the good quality of mediators, the accreditation standards should not serve as a hurdle to those practicing mediators who received no formal instruction in law. She urged that DoJ should monitor the setting up and future operation of the HKMAAL's accreditation system, ensuring that accredited mediators came from various backgrounds and were able to meet various needs of clients.

23. Mr LEUNG Kwok-hung said that to encourage the resolution of disputes by mediation, DoJ should not only require parties to litigation proceedings to consider using mediation to resolve their disputes, but should also take measures to enhance public confidence in mediation services. On the issue of admitting new members by the HKMAAL, he opined that the DoJ and the HKMAAL should address the concern of mediation service providers by announcing the criteria for admission of new members as soon as possible.

24. The Chairman said that mediation had long been an efficient and cost-effective means to resolution of disputes at community level with practicing mediators coming from various backgrounds. The enactment of the Mediation Ordinance had been a cornerstone in the development of mediation in Hong Kong. To continue with previous efforts of the mediation service providers and DoJ, she called on DoJ and the HKMAAL to ensure participation of practicing mediators and various stakeholders in the setting up of the new accreditation system. Although she was an arbitrator of China International

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Economic and Trade Arbitration Commission and a member of the Bar Association, the Chairman considered that the future development of mediation in Hong Kong could hardly be fostered without active participation of professionals other than the legal and arbitration professions.

25. In response to members' query as to the membership of the Council of the HKMAAL, Mr John BUDGE explained that as the four founder members had the largest number of mediators and a significant involvement in the promotion and development of mediation in Hong Kong, the then Mediation Task Force took the view that it was appropriate for these four professional bodies to form the core of the HKMAAL Accredited Mediators to prepare for the incorporation of the HKMAAL. He further clarified that HKIAC and HKMC had mediators coming from a diverse background including commercial, construction, accountancy, finance, human resources, psychology and social work. Mr BUDGE advised that one should not confuse member organizations of the HKMAAL, being a regulatory and disciplinary body, with mediators who were members of a mediation service provider. Regarding the work of the HKMAAL, Mr BUDGE said that the HKMAAL had set up Committee, Working Party and Working Group with cross-sector membership to assist the HKMAAL in respect of mediator accreditation and assessment as well as the membership of the HKMAAL. In a forum held last week, the HKMAAL met with mediation service providers to explain to them the latest progress of the work of the HKMAAL including its membership. As at April 2013, another nine mediation service providers were invited to join the HKMAAL.

26. Deputy Law Officer (Civil Law) ("DLO(CL)") advised that to further promote and facilitate wider use of mediation in Hong Kong, a new Steering Committee on Mediation ("Steering Committee") chaired by SJ and with cross-sector membership has been set up in November 2012. DoJ noted the general support for a single accreditation body for mediators to ensure the consistency of standards, quality of mediators and credibility of mediation. With respect to the views and concerns expressed by depositions concerning the accreditation and regulation of practicing mediators in Hong Kong and the existence of competition in the provision of mediation services, DoJ would convey them to the Steering Committee for consideration. DoJ would continue to implement, in collaboration with the Judiciary and other departments, organizations and stakeholders, the on-going and new publicity initiatives upon advice of the Steering Committee. DLO(CL) supplemented that the Steering Committee expected to receive the progress report of the HKMAAL in June 2013 including the timetable on the implementation of HKMAAL's various proposals.

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27. The Chairman thanked the deputations for their valuable views. She concluded that the Panel would look forward to the progress report of the HKMAAL and recommendations of the Steering Committee on taking forward the HKMAAL's proposals on mediator accreditation and assessment, as well as training of mediators.

**IV. Promotion of Hong Kong as a regional legal and arbitration services hub**

[LC Paper No. CB(4)571/12-13(16)]

Briefing by the Administration

28. At the invitation of the Chairman, the Solicitor General ("SG") briefed members on the policy of the Administration to promote Hong Kong as a legal and arbitration services centre in the Asia Pacific region and the measures taken by DoJ to implement the policy, details of which were set out in the DoJ's paper [LC Paper No. CB(4)571/12-13(16)].

Views of the Hong Kong Bar Association

29. Mr Robin EGERTON said that the Bar Association welcomed the progress made by DoJ in the promotion of arbitration services. He suggested that the Administration could consider encouraging the use of arbitration in ancillary relief disputes in divorce which mostly concerned financial disputes. He believed that the use of arbitration could enable the parties concerned to resolve financial disputes privately and would in turn relieve the demand for judicial resources.

Discussion

30. Mr CHUNG Kwok-pan asked what attractions Hong Kong held for world class arbitration organizations to come to establish offices in Hong Kong, having regard to the fact that Hong Kong was a relatively small market for arbitration and that the arbitration rules and procedures adopted in the Mainland were quite different from those adopted by other jurisdictions.

31. SG advised that Hong Kong had earned international recognition and reputation over its rule of law and legal system among other jurisdictions in the Asia Pacific Region and had attracted many well qualified legal and arbitration professionals to practise and provide world class services in Hong Kong for clients in the region. Enacted in 2010 and effective since June 2011, the

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Arbitration Ordinance (Cap. 609) was in line with international standards and had also enhanced the statutory framework for arbitration in Hong Kong. DoJ recognized that enforceability of arbitral awards was a highly relevant consideration when parties considered where to arbitrate. It had thus spared no efforts in enhancing the enforcement network for arbitral awards. These included the conclusion between the Hong Kong Special Administrative Region ("HKSAR") and the Macao SAR of an Arrangement Concerning Reciprocal Recognition and Enforcement of Arbitral Awards ("the Arrangement"). To implement the Arrangement, the Arbitration (Amendment) Bill 2013 would be introduced into the Legislative Council on 24 April 2013. DoJ had also successfully removed any previous doubts concerning the enforceability of Hong Kong arbitral awards in India when the Indian Government declared in March 2012 that the People's Republic of China (including Hong Kong and Macao) was a reciprocating partner for the purposes of enforcement of arbitral awards in India under the New York Convention. Arising from the national policy on the "going-out" of Mainland enterprises, the demand for arbitration services would increase greatly. DoJ would next actively explore the possibility of enlarging Hong Kong's enforcement network to cover the Greater China Region including Taiwan.

32. Mr Dennis KWOK asked, apart from encouraging the use of arbitration services, what other measures would be taken by DoJ to promote Hong Kong as a regional centre for legal and arbitration services. Mr KWOK also enquired about the progress of allowing Mainland enterprises to choose Hong Kong laws as the applicable law for their commercial contracts and hence to choose arbitration as a means of resolving commercial disputes.

33. In reply, SG advised that Mainland enterprises were allowed to conduct arbitration in places outside the Mainland if the disputes involved "foreign" elements. DoJ had raised with the Mainland authorities the issue of implementation of pilot measures in Qianhai and Nansha to allow Mainland enterprises to choose to conduct arbitration in Hong Kong even though the disputes did not involve any "foreign" element. As the legal system of Hong Kong had won confidence of the local and overseas communities, DoJ believed that many Mainland enterprises would be willing to choose Hong Kong as the place for conducting arbitration if necessary. This would in turn generate business opportunities for legal practitioners and relevant service providers in Hong Kong as their services would also be required in the preparation and conduct of arbitral proceedings. In addition, DoJ had, through mutual consultation with the Supreme People's Court, made arrangement in July 2006 for the recognition and enforcement of judgments in civil and commercial matters pursuant to choice of court agreements made between the parties concerned, as a result of which, overseas enterprises would be encouraged to



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consider choosing Hong Kong as the forum to resolve their disputes thereby benefiting the legal profession in Hong Kong.

34. Mr Michael TIEN noted that after the major re-vamp of the Arbitration Ordinance in June 2011, the new Arbitration Ordinance effectively extended the application of the United Nations Commission on International Trade Law (UNCITRAL) Model Law to all arbitrations in Hong Kong. This helped to reinforce Hong Kong's position as a leading arbitration centre in Asia Pacific and encourage more enterprises to choose to conduct international arbitration in Hong Kong. Against this background, Mr TIEN enquired about the increase in the number of arbitration and the resultant increase in annual income of arbitrators in Hong Kong, as well as how this translated into the gross domestic product of the local economy.

35. SG advised that as revealed in the HKIAC's annual reports, the number of institutional arbitrations in Hong Kong did not increase significantly. The HKIAC's annual reports however did not provide figures on *ad hoc* arbitrations that were arranged solely between the arbitrators and the parties without the help of an arbitration institution. SG further advised that as enterprises were free to appoint arbitrators, as well as foreign legal advisors or non-legal representatives to represent them in arbitrations, DoJ had difficulty in obtaining information on these arbitrations and arbitrators due to the confidentiality of arbitration proceedings. Nonetheless, the setting up in Hong Kong of the Asia Office of the Secretariat of the International Court of Arbitration of the International Chamber of Commerce in November 2008 and of the first branch office of the China International Economic and Trade Arbitration Commission ("CIETAC") outside the Mainland in September 2012 constituted a vote of confidence and bore testimony to the attraction of Hong Kong as a centre for international arbitration. The branch office of CIETAC also conducted arbitration in Hong Kong. In addition, the Hague Conference on Private International Law, a leading global inter-governmental organization in the field of private international law, set up its Asia Pacific Regional Office in Hong Kong in December 2012. The Regional Office served to enhance legal cooperation among jurisdictions in the region. In view of the above, DoJ was optimistic about the future development and growth of the arbitration sector in Hong Kong. As regards the economic benefits brought about by the growth of the arbitration sector, SG said that the local economy would benefit from the expenses of the arbitrators and witnesses relating to accommodation, meals, communications and local transport and any other costs related to the conduct of arbitration, such as rental of hearing venues, court reporting services and interpreters, etc. He further added that there were more than 10 000 lawyers, including foreign lawyers, providing legal and arbitration services in Hong Kong.

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36. The Chairman said that according to her experience as an arbitrator of CIETAC, as arbitration proceedings were conducted in private and was generally confidential, the use of arbitration as an alternative dispute resolution was popular among many Mainland and overseas enterprises, having regard to the preservation of their reputation. Moreover, arbitration awards could be enforced internationally more easily than court judgments. The Chairman further said that as the rule of law and legal system in Hong Kong were highly praised among Mainland and international enterprises, DoJ should capitalize on the advantage enjoyed by Hong Kong legal profession and seek to further enhance Hong Kong's status as a regional centre for legal and arbitration services.

**V. Any other business**

37. There being no other business, the meeting ended at 7:20 pm.

Council Business Division 4  
Legislative Council Secretariat  
28 March 2014

**Panel on Administration of Justice and Legal Services**

Meeting on Tuesday, 23 April 2013, at 4:30 pm

Provision of mediation services in Hong Kong

Summary of views and concerns expressed by deputations

<b>No.</b>	<b>Name of deputation</b>	<b>Major views and concerns</b>
1.	Hong Kong Mediation and Arbitration Centre [LC Paper No. CB(4)592/12-13(01)]	<ul style="list-style-type: none"> <li>- To tie in with the development of international commercial dispute resolution and facilitate the enforcement of mediated settlement agreements in Hong Kong, the Administration should consider making legislation to provide for the entry of an arbitration award to record a mediated settlement agreement.</li> <li>- Currently, restrictions were placed on disclosure of confidential mediation communications under the arrangement set out in section 8(3) of the Mediation Ordinance (Cap. 620). This might impose substantial difficulties on members of the public who wished to lodge a complaint of professional misconduct against a mediator.</li> <li>- Given the diverse areas of mediation practice, it was questionable whether mediation should become a regulated activity in future and that an individual who did not qualify as an accredited mediator should be prohibited from</li> </ul>

No.	Name of deputation	Major views and concerns
		practising mediation in Hong Kong.
2.	Joint Mediation Helpline Office Limited	<ul style="list-style-type: none"> <li>- The mediation industry was in need of resources and support from the Administration.</li> <li>- In view of the rapid expansion of mediation industry and the lack of consistency in the accreditation of mediators over the past years, concern was raised as to the quality of mediators and mediation services.</li> </ul>
3.	Democratic Alliance for the Betterment and Progress of Hong Kong	<ul style="list-style-type: none"> <li>- There was a need for the Hong Kong Mediation Accreditation Association Limited ("the HKMAAL") to strike a balance between safeguarding the minimum standards of mediation practice and appreciating the specific skills and experience required from mediators.</li> <li>- Fees for mediation might increase sharply if the HKMAAL raised the accreditation standards.</li> <li>- Practising mediators who wished to seek accreditation by the HKMAAL should be given the options to meet the accreditation requirements through assessment or continuing education.</li> <li>- As the Council of the HKMAAL would have the power to accredit training courses for mediators, the HKMAAL should critically examine the criteria for admitting members to its Council and take measures to ensure a wide representation of its membership.</li> </ul>

No.	Name of deputation	Major views and concerns
		<ul style="list-style-type: none"> <li>- There should be concerted efforts amongst various bureaux/departments in promoting the use of mediation for dispute resolution.</li> </ul>
4.	Construction Industry Council	<ul style="list-style-type: none"> <li>- Supported the Administration's proposal to set up a non-statutory industry-led single accreditation body for the assessment and accreditation of mediators in Hong Kong.</li> </ul>
5.	Hong Kong Catholic Marriage Advisory Council	<ul style="list-style-type: none"> <li>- In light of growing number of family disputes and separating couples who had difficulties in making arrangements for their children and/or the resolution of financial matters, the Administration was urged to divert resources to the development and wider use of family mediation at the community level.</li> </ul>
6.	K M Lai & Li Solicitors & Notaries [LC Paper No. CB(4)571/12-13(05)]	<ul style="list-style-type: none"> <li>- Supported the setting up of a central organization for the accreditation and training of mediators.</li> <li>- To safeguard the standards of mediators, the accreditation criteria should include academic qualification, language ability, relevance of experience in the corresponding area of practice. In addition, an attachment in the form of a one-year apprenticeship/pupillage/traineeship scheme would be useful for newly accredited mediators to acquire the relevant experience/skills in their professional development.</li> <li>- The Administration was urged to step up the promotion of the use of mediation.</li> </ul>
7.	Hong Kong Mediation Accreditation Association	<ul style="list-style-type: none"> <li>- In admitting members, the factors to be taken into account included: (a) the objectives and activities of the organization; (b) the industry or sector to which</li> </ul>

No.	Name of deputation	Major views and concerns
	Limited [LC Paper No. CB(4)592/12-13(02)]	<p>the organization belonged; (c) the number of members of the organization and the criteria for its membership; (d) the governance of the organization; (e) the number of years the organization had been established; (f) whether the organization was a branch or associated body of another organization; if yes, the relevance of such other organization by reference to the factors set out in the aforesaid; and (g) if the organization was a mediation service provider, the types of services provided, records of the services provided and whether the organization had established a panel or list of mediators.</p> <ul style="list-style-type: none"> <li>- The HKMAAL expected to be in a position to announce a new set of standardized criteria for accrediting mediators in June 2013.</li> </ul>
8.	JC Professional Mediation Practice [LC Paper No. CB(4)571/12-13(06)]	<ul style="list-style-type: none"> <li>- Supported that a single accreditation body for mediators was necessary to monitor the standards of mediation training courses as well as quality of mediators.</li> <li>- As regards the professional training of mediators, emphasis should be placed on the knowledge in writing settlement agreements. Consideration should also be given to studying the feasibility of introducing a degree course in mediation. In addition, the establishment of a fellowship of mediators should be considered.</li> <li>- Currently, section 8(2)(d) of the Mediation Ordinance provided for the disclosure of confidential mediation communications in the circumstance that that would prevent or minimize the danger of serious harm to the well-being of a child. Suggestion was made that the well-being of the elderly should also be covered in the aforesaid provision.</li> </ul>

No.	Name of deputation	Major views and concerns
		<ul style="list-style-type: none"> <li>- Although mediators were encouraged to take out professional indemnity insurance, the choice of insurance plans available in the market was very limited.</li> <li>- To foster the development of mediation in Hong Kong, a central registry should be set up and tasked with the responsibility to collect and analyze data pertaining to the practice and use of mediation in Hong Kong for the purpose of publishing periodic reports from time to time.</li> </ul>
9.	Rainbow Consultancy Limited [LC Paper No. CB(4)571/12-13(07)]	<ul style="list-style-type: none"> <li>- Concern was raised as to the possible conflict of interest in the circumstance that a practitioner was appointed as a mediator for a dispute and subsequently served as a legal representative of either party to the same dispute upon termination of the related mediation.</li> <li>- More public education campaigns should be sponsored by the Administration with a view to enhancing public awareness and recognition of mediation in Hong Kong.</li> <li>- For newly accredited mediators, practice opportunities would be necessary for their continued professional development. The introduction of a traineeship scheme similar to that of the legal practice should be explored.</li> </ul>
10.	Hong Kong Training Professional General Union	<ul style="list-style-type: none"> <li>- To avoid possible conflict of interests, no assessors of mediation courses should be appointed from among mediation course providers. Similarly, no members serving on the Mediation Accreditation Committee of the HKMAAL should</li> </ul>

No.	Name of deputation	Major views and concerns
		<p>concurrently act as assessors of mediation courses.</p> <ul style="list-style-type: none"> <li>- There should be more transparency in the formulation of accreditation policies and relevant measures by the HKMAAL.</li> <li>- The Administration should keep in constant review the overall demand and provision of mediation services in Hong Kong and ensure the allocation of resources in a fair manner.</li> </ul>
11.	Tru-Tight & Associates Limited	<ul style="list-style-type: none"> <li>- Consideration should be given to designating a hotline for members of the public to lodge complaints against individual accredited mediators and establishing a single complaint handing mechanism in this regard.</li> <li>- In view of wide public concern over disputes related to serious water seepage and building management, the Administration was urged to step up publicity efforts to encourage the use of mediation for resolving such disputes.</li> </ul>
12.	Centre for Restoration of Human Relationships	<ul style="list-style-type: none"> <li>- As mediation was an effective, flexible and relatively inexpensive means for dispute resolution, the Administration should consider promoting wider use of mediation in community disputes, such as referral of cases from social workers and through school referral.</li> </ul>
13.	The Council of Social Development [LC Paper No. CB(4)571/12-13(08)]	<ul style="list-style-type: none"> <li>- To foster the development of international commercial mediation, legislation should be made to facilitate the reciprocal recognition of accredited mediators between the Mainland and Hong Kong, and the reciprocal recognition and enforcement of mediated-settlement agreements.</li> </ul>



No.	Name of deputation	Major views and concerns
		<ul style="list-style-type: none"> <li>- Concern was raised as to the situation whereby the Hong Kong Mediation Centre, the Hong Kong International Arbitration Centre, the Hong Kong Bar Association and The Law Society of Hong Kong, being the Founder Members of the HKMAAL entrusted with the responsibility and power to accredit mediation courses, might enjoy an unfair competitive edge over other mediation course providers in providing training of mediators.</li> </ul>
14.	<p>The Council of Mediation Development [LC Paper No. CB(4)571/12-13(09)]</p>	<ul style="list-style-type: none"> <li>- The Administration should implement measures to promote the use of local mediation services by the Mainland enterprises.</li> <li>- In view of excessive cross-border economic activities between Hong Kong and the Mainland, the Administration should see to it that the local regulatory regime of mediation practice would be able to meet the international standards as well as the related requirements for mediation practice in the Mainland.</li> <li>- Supported the setting up of a regulatory authority for mediation practice in Hong Kong and that the composition of the authority should include representatives from the Administration, the relevant professionals, the mediation industry as well as members of the public.</li> </ul>
15.	<p>Hong Kong Construction Arbitration Centre [LC Paper No. CB(4)571/12-13(10)]</p>	<ul style="list-style-type: none"> <li>- The Administration was urged to implement measures to foster the development of specialized mediation services in various areas of practice, particularly the construction industry.</li> <li>- Given the complexity of construction contracts and their subcontracts, specialist</li> </ul>

No.	Name of deputation	Major views and concerns
		<p>knowledge was required from mediators in this regard. There was a need to further strengthen professional training of mediators in mediating construction-related disputes.</p>
16.	School of Law of City University of Hong Kong	<ul style="list-style-type: none"> <li>- Supportive of the proposal to set up a single accreditation body for mediators in Hong Kong to safeguard the standards of mediators.</li> <li>- All stakeholders should be well informed of how the accreditation criteria and standards for mediators and mediation training courses were to be formulated and updated from time to time.</li> <li>- Hoped to be informed of the HKMAAL's plan and measures to enhance public awareness of mediation and recognition of mediators in Hong Kong.</li> </ul>
17.	Methodist Centre [LC Paper No. CB(4)571/12-13(11)]	<ul style="list-style-type: none"> <li>- With the permission of the Youth Justice Conferencing of Queensland, Australia, the Victim-Offender Mediation had been implemented in Hong Kong for more than six years. As evidenced by the positive feedback received, the Victim-Offender Mediation was useful in the Hong Kong context and that more resources should be put to encourage wider use of the Victim-Offender Mediation.</li> </ul>
18.	C & L Holdings Ltd	<ul style="list-style-type: none"> <li>- The Administration should put in greater publicity efforts to enhance public awareness on mediation and promote the use of mediation by government departments.</li> <li>- Consideration should be given to incorporating mediation courses into the</li> </ul>

No.	Name of deputation	Major views and concerns
		<p>professional training of the civil service.</p> <ul style="list-style-type: none"> <li>- Whilst supporting the proposal of the setting up of a single accreditation body for mediators in Hong Kong, the transparency and engagement of all stakeholders should be ensured in the formulation of the accreditation criteria and standards.</li> </ul>
19.	<p>Hong Kong Family Welfare Society [LC Paper No. CB(4)592/12-13(03)]</p>	<ul style="list-style-type: none"> <li>- To upkeep the professional standards of family mediators, the existing requirements prescribed by the Hong Kong International Arbitration Centre should continue to serve as the minimum requirements for the accreditation of family mediators in Hong Kong.</li> <li>- Considering that many of their clients were underprivileged people and that they were in desperate need of government subsidies in the use of family mediation services, a review of the level of government subsidies should be conducted.</li> </ul>
20.	<p>The Hong Kong Institute of Architects</p>	<ul style="list-style-type: none"> <li>- Given that architects had an inherent role in the construction and building services contracts and a profound knowledge in the construction process, architects were in a better position to play the role of a mediator in mediating construction disputes. The Administration was urged to take measures to help architects in their pursuit of an accreditation for mediators.</li> <li>- The Administration should take the lead to promote the use of mediation by government departments in construction disputes.</li> </ul>
21.	<p>Faculty of Law of the</p>	<ul style="list-style-type: none"> <li>- To tie in with the implementation of the Civil Justice Reform, the Faculty of</li> </ul>

No.	Name of deputation	Major views and concerns
	University of Hong Kong	<p>Law of the University of Hong Kong had been offering courses on alternative dispute resolution and negotiation at both the undergraduate and the masters degree level since 2007. The offering of these courses was aimed to enhance the understanding by legal practitioners of the alternative dispute resolution procedure and hence prepare them for offering advice to clients on the use of mediation in accordance with the Practice Direction 31.</p> <ul style="list-style-type: none"> <li>- Welcomed the opportunities to collaborate with the HKMAAL to formulate standards for the training of mediators.</li> <li>- Stood ready to work with the Administration in the promotion of mediation services.</li> </ul>
22.	EC Harris (Hong Kong) Limited	<ul style="list-style-type: none"> <li>- Supported the proposal of the setting up of a single accreditation body and the introduction of a uniform set of standards for the accreditation and training of mediators in Hong Kong in order that practising mediators were no longer required to hold multiple accreditations granted by various accreditation bodies.</li> <li>- Although the standards of accredited mediators were to be maintained through the impending accreditation system of the HKMAAL, parties to a dispute should continue to be given the flexibility to appoint non-accredited mediators if deemed appropriate.</li> </ul>
23.	Hong Kong Mediation Centre	<ul style="list-style-type: none"> <li>- More publicity campaigns needed to be launched to facilitate the understanding by the general public of the role and functions performed by mediators and the mediation process.</li> </ul>

No.	Name of deputation	Major views and concerns
24.	The Democratic Party	<ul style="list-style-type: none"> <li>- Concern was raised as to the lack of understanding by members of the public of how a suitable mediator was to be identified and how a mediated-settlement agreement was to be reached.</li> <li>- To upkeep the standards and professionalism of mediators, there was a need for a single accreditation body for mediators in Hong Kong, the responsibility of which should include disciplinary function against any established professional misconduct of mediators.</li> </ul>
25.	Hong Kong Society of Accredited Mediators [LC Paper No. CB(4)571/12-13(12)]	<ul style="list-style-type: none"> <li>- Supported the proposal of introducing a uniform set of standards for the accreditation and training of mediators, and code of practice for mediation practice in Hong Kong.</li> <li>- The HKMAAL was urged to strengthen the communication and exchange with various accreditation bodies both locally and internationally with a view to fostering continuing professional development of mediators.</li> <li>- The Administration should step up publicity efforts to inform the general public that the HKMAAL was established to act as a single accreditation body for mediators in Hong Kong, and that mediation was an effective means to resolve commercial disputes as well as civil disputes at the community level, such as building management, education and employment.</li> </ul>
26.	The Hong Kong Institute of Surveyors	<ul style="list-style-type: none"> <li>- Being one of the founding members of the Joint Mediation Helpline Office set up in 2010 through an initiative by the Department of Justice and a key</li> </ul>

No.	Name of deputation	Major views and concerns
	[LC Paper No. CB(4)592/12-13(04)]	<p>stakeholder of the local construction and real estate industry, the Hong Kong Institute of Surveyors should be qualified as a member of the Council of the HKMAAL, hence undertaking accreditation assessment of mediators in the field of construction and real estate industry.</p> <ul style="list-style-type: none"> <li>- As prescribed by the HKMAAL, an organization had to give up its own accreditation function upon admission as a member of the HKMAAL. Such a requirement prescribed by the HKMAAL was inappropriate and not in the best interest of those practising mediators who had already been accredited by other accreditation bodies.</li> <li>- Since 2005, the Hong Kong Institute of Surveyors and the Hong Kong Institute of Architects had maintained a joint list of mediators with accreditation granted by the Hong Kong International Arbitration Centre. There was no legitimate reason why these accredited mediators should be subject to the accreditation by the HKMAAL.</li> </ul>
27.	CEDR Asia Pacific	<ul style="list-style-type: none"> <li>- The setting up of a single accreditation body and a uniform set of accreditation standards for mediators was of paramount importance to the development of mediation in Hong Kong.</li> <li>- It would work with the Steering Committee on Mediation under the chairmanship of the Secretary for Justice, and the Mediation Accreditation Committee of the HKMAAL in setting and reviewing the standards for the accreditation of mediators.</li> </ul>

<b>No.</b>	<b>Name of deputation</b>	<b>Major views and concerns</b>
28.	International Institute of Conflict Engagement and Resolution, Hong Kong Shue Yan University	<ul style="list-style-type: none"> <li>- There was a need to critically examine the role played by legal practitioners in mediation advocacy.</li> <li>- Apart from setting the accreditation standards, the HKMAAL should consider developing a set of mediation rules and code of practice governing the mediation practice in Hong Kong.</li> <li>- As online mediation services had been growing in popularity in other countries and regions, there was a need for the Administration to consider overseas experience in making the relevant legislation and fostering the development of online mediation services in Hong Kong.</li> <li>- The HKMAAL should formulate separate sets of criteria and standards for the accreditation of general mediators and family mediators, as specialist knowledge of family law and dynamics was required from the latter.</li> <li>- An enquiry was made as to whether the HKMAAL would, in formulating the accreditation standards of mediators, consider adopting the corresponding descriptors under the Qualification Framework.</li> </ul>
29.	Hong Kong Institute of Construction Managers	<ul style="list-style-type: none"> <li>- Supported the proposal of setting up a single accreditation body for mediators in Hong Kong in order to upkeep the standards of mediators.</li> <li>- As part of the public education, consideration should be given to offering mediation courses at the undergraduate level. In addition, the concept of mediation practice could also be included in the curriculum of the Liberal</li> </ul>

No.	Name of deputation	Major views and concerns
		<p>Studies subject of the secondary education.</p> <ul style="list-style-type: none"> <li>- There was a lack of community venues which were available for conducting mediation on a pro-bono basis and accessible to members of the public.</li> </ul>
30.	<p>Faculty of Law of the Chinese University of Hong Kong [LC Paper No. CB(4)571/12-13(14)]</p>	<ul style="list-style-type: none"> <li>- To tie in with the recent development of the provision of online mediation services in the United States and the European Union ("the EU"), more resources should be allocated to undertake sustained research in alternative dispute resolution ("ADR") and online dispute resolution ("ODR").</li> <li>- As the Financial Dispute Resolution scheme had proved to be very effective since its introduction in June 2012, the Administration was urged to consider widening the scheme to include other sectors, such as the insurance industry.</li> <li>- In the EU, Member States had endorsed the development of an interactive website dedicated to ADR/ODR services across the EU. To foster the development of mediation in Hong Kong, there was a need to develop a Government sponsored ADR/ODR web platform.</li> </ul>
31.	<p>Hong Kong Mediation Council</p>	<ul style="list-style-type: none"> <li>- To ensure a fair and healthy development of mediation in Hong Kong, the HKMAAL should set out the accreditation criteria for consultation with all stakeholders before finalization of the accreditation standards.</li> <li>- To safeguard the standards of mediators and protect the interest of mediation users, the HKMAAL should set high standards for the accreditation and training of mediators.</li> </ul>



No.	Name of deputation	Major views and concerns
		<ul style="list-style-type: none"> <li>- To serve the public interest, mediation practices which had proved to be effective, particularly in resolving civil disputes at the community level, should continue to be provided in future.</li> </ul>
32.	The Hong Kong Bar Association	<ul style="list-style-type: none"> <li>- The setting up of a single accreditation body for mediators in Hong Kong was conducive to maintaining the high standards and professionalism of mediation practices.</li> </ul>
33.	Society of Certified Mediators and Negotiators Ltd [LC Paper No. CB(4)592/12-13(05)]	<ul style="list-style-type: none"> <li>- A query was raised as to why the HKMAAL Founder Members only comprised four organizations from the legal and mediation profession.</li> <li>- As the HKMAAL was established to set and review the standards for accrediting mediators and mediation training courses, it should take measures to provide a wide representation of its membership.</li> <li>- The HKMAAL should appreciate the large number of mediation models and approaches recognized and adopted internationally in formulating its own accreditation requirements.</li> <li>- An increasing number of individuals had attended mediation training and hence obtained accreditation as mediators. The Administration was urged to critically examine whether there was a risk of an excess of supply over demand in the provision of mediation services.</li> </ul>
34.	Professional Mediation	<ul style="list-style-type: none"> <li>- The choice of mediation users might be greatly restricted in future if the</li> </ul>

No.	Name of deputation	Major views and concerns
	Consultancy Centre	<p>impending accreditation standards of the HKMAAL were set too high.</p> <ul style="list-style-type: none"> <li>- To ensure a healthy development of mediation in Hong Kong, the HKMAAL should adopt an inclusive approach in admitting members and accrediting mediators.</li> </ul>
35.	Hong Kong Mediation Alliance	<ul style="list-style-type: none"> <li>- Currently, referral of cases by the Lands Tribunal was only made to a small number of mediators. The Judiciary and the Department of Justice should implement measures to ensure that the Tribunal's referral was made in an open and fair manner.</li> <li>- As mediation was suitable in many cases, parties to disputes heard by the Small Claims Tribunal should be encouraged to employ mediation to resolve disputes.</li> </ul>
36.	HK Mediation Profession Staff General Union	<ul style="list-style-type: none"> <li>- Being a staff union representing many practising mediators, the HK Mediation Profession Staff General Union had the responsibility to defend the rights and protect the interest of its members. Some of its members were not given any opportunities to practice mediation years after they had obtained the accreditation.</li> <li>- After the HKMAAL had introduced its own accreditation scheme, those practising mediators who were not accredited by the HKMAAL should be allowed to continue with their practice.</li> <li>- The Administration should see to it that government departments and government-subsidized public bodies, such as the Hospital Authority, were</li> </ul>

<b>No.</b>	<b>Name of deputation</b>	<b>Major views and concerns</b>
		<p>actively seeking to resolve disputes through mediation.</p> <ul style="list-style-type: none"> <li>- The Administration was urged to adopt a strategic approach in promoting the use of mediation in various areas, including the compulsory sale for redevelopment and land disputes.</li> </ul>