

立法會
Legislative Council

LC Paper No. CB(4) 571/12-13 (04)

Ref : CB4/PL/AJLS

Panel on Administration of Justice and Legal Services

**Updated background brief prepared by the Legislative Council Secretariat
for the meeting on 23 April 2013**

Development of mediation services

Purpose

This paper provides background information on the development of mediation services and summarizes past discussions of the Panel on Administration of Justice and Legal Services ("the Panel") on the matter.

Background

2. Mediation is a dispute resolution process that is used 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") to map out plans to employ mediation more extensively and effectively in handling higher-end commercial disputes and relatively small scale local disputes.

Working Group on Mediation

3. On 8 February 2010, the Working Group published its Report¹ for a three-month public consultation. The 48 recommendations contained in the Report covered the three important areas of (i) regulatory framework, (ii) accreditation and training and (iii) public education and publicity.

4. As the feedbacks on the Working Group's Report were positive and constructive, instead of publishing a further report, the Working Group proceeded directly to further consider those recommendations in the Report

¹ A summary of the 48 recommendations of the Working Group is in Appendix I to LC Paper No. CB(2)1480/10-11(10).

which require further deliberations after taking into account the public feedback received and to implement those which received general support.

Mediation Task Force

5. The Mediation Task Force ("the Task Force") chaired by SJ and with cross-sector membership was set up in December 2010 to assist in considering and implementing the various recommendations of the Working Group. The Task Force was assisted by three groups working in the three specific areas referred to in paragraph 3 above. By October 2012, the Task Force had by and large fulfilled the work set out in its terms of reference of the three areas². The work of the Task Force in respect of the three areas is summarized below.

Regulatory framework

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

7. The Mediation Bill, which seeks "to promote, encourage and facilitate the resolution of disputes by mediation" and "to protect the confidential nature of mediation communications", was introduced into the Legislative Council ("LegCo") on 30 November 2011. The Bills Committee formed to scrutinize the Bill held seven meetings to study the Bill in detail and considered views from more than 40 organizations or individuals. The Bill was passed by LegCo on 15 June 2012. By way of a notice published in the gazette on 19 October 2012, the Mediation Ordinance (Cap. 620) came into operation on 1 January 2013.

Accreditation and training

8. At present, accredited mediators practicing in Hong Kong are accredited by different mediation accrediting organizations, local and overseas alike, each adopting its own set of training and accreditation requirements.

9. In early 2010, the Hong Kong Mediation Code was promulgated by the Department of Justice ("DoJ"). The Code is intended to provide a common standard among mediators and has an important quality assurance role. Twenty-one mediation service providers have since adopted the Code.

² A list of the recommendations in the Working Group's Report and the status of their recommendations is in Annex A of LC Paper No. CB(4)321/12-13(05).

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

11. The Hong Kong Mediation Accreditation Association Limited ("HKMAAL") (香港調解資歷評審協會有限公司), a non-profit-making company limited by guarantee, was incorporated on 28 August 2012. The founder members of HKMAAL are the Hong Kong Bar Association, the Law Society of Hong Kong, the Hong Kong International Arbitration Centre and the Hong Kong Mediation Centre ("HKMC").

12. HKMAAL was established as a non-statutory, industry-led body with a view to becoming the premier accreditation body for mediators in Hong Kong, discharging accreditation and disciplinary functions. Whilst it would set standards for training and accreditation, HKMAAL itself would not provide training courses. Members of HKMAAL are organizations, and it is intended that a member of HKMAAL would have to abandon its own accreditation system once being admitted (so as to eventually build up a single accreditation system in Hong Kong). HKMAAL commenced its business on 2 April 2013.

Public education and publicity

13. The Task Force had, in collaboration with the Judiciary, other Government Departments, mediation bodies and stakeholders, implemented various initiatives, including the production of an Announcement in the Public Interest (API) which was broadcast in December 2011, and the holding of the "Mediate First" Conference on 11 and 12 May 2012 which aimed at raising public awareness of mediation. More than 200 people attended each of the two-day conference.

Steering Committee on Mediation

14. Upon wrapping up of the work of the Task Force, a new Steering Committee on Mediation ("the Steering Committee") chaired by SJ and with cross-sector membership was set up in November 2012 to further promote and

develop mediation in Hong Kong. To assist the Steering Committee, three Sub-committees were formed to monitor the implementation of the Mediation Ordinance and the accreditation and training of mediators, and to advise on ongoing and new initiatives to promote and publicize the wider use of mediation.

Past discussions

15. The Panel discussed issues relating to the development of mediation services at its meetings held between June 2008 and January 2013. The major concerns and views expressed by members are summarized in the ensuing paragraphs.

Accreditation and training of mediators

16. Concern was raised as to whether mediators who were accredited by organizations other than HKMAAL would in future no longer be allowed to practise mediation in Hong Kong.

17. The DoJ advised that the Mediation Ordinance did not contain provisions relating to the accreditation and training of mediators. Whilst HKMAAL would set standards for training and accreditation of mediators, there was no statutory requirement for a person to be accredited by HKMAAL before the person undertook mediation and organizations which did not join HKMAAL as members could continue to train and accredit mediators.

18. A member considered that in formulating its standards for accrediting mediation training courses, HKMAAL should develop plans to collaborate with local universities that offered training programmes in mediation.

19. Noting that HKMAAL was established to create the premier accreditation body for mediators in Hong Kong, members hoped that accreditation of mediators by HKMAAL would not be confined to people from certain background as to do so would hamper the development of mediation in Hong Kong.

20. The DoJ advised that it would, through the Steering Committee, work closely with HKMAAL to further develop accreditation of mediators in Hong Kong and to see to it that the accreditation requirements were reasonable. The DoJ further advised that to its understanding, HKMAAL would take an inclusive approach in accrediting mediators.

21. To better assess whether the accreditation requirements to be developed by HKMAAL were fair and reasonable on the one hand and would ensure the quality of mediators on the other, a member suggested that a survey should be conducted to find out the background of the accredited mediators, such as their academic qualifications and areas of practice and whether providing mediation services was their main income.

Mediation service for building management cases

22. Members noted that to help owners and Owners' Corporations to resolve building management disputes through mediation, a Building Management Mediation Co-ordinator's Office ("BMMCO") was set up by the Judiciary in the Lands Tribunal in January 2008. The BMMCO holds information sessions on mediation and helps the litigants seek mediation to resolve their disputes. Members further noted that staff of the District Offices of the Home Affairs Department ("HAD") may refer owners to any of the 10 Property Management Advisory Centres operated by the Hong Kong Housing Society for free consultations with lawyers. If the disputes persist and the parties concerned are willing to resolve their disputes through mediation service, HAD will refer them to the free mediation scheme operated in collaboration with the Hong Kong Mediation Council and HKMC.

23. Members urged the DoJ and the Administration to step up efforts in the promotion of mediation to resolve building management disputes, including providing more venues for community mediation, and helping members of the public gain access to mediation services.

24. The DoJ advised that it was the Administration's plan to continue the provision of free mediation service for building management cases and would expand such service where necessary as well as helping members of the public gain access to mediation services. As regards venues for mediation, the DoJ advised that the District Facilities Management Committees of the Yau Tsim Mong District Council and the Wan Chai District Council had approved the use of venues and facilities at the Henry G Leong Yaumatei Community Centre and Leighton Hill Community Hall respectively as community venues for mediation. If mediation was conducted in these two community venues on a pro bono basis, fees for using the venues and facilities would be waived. To support the policy initiative to promote the wider use of mediation to resolve community disputes including building management disputes, the HAD would continue to render support to the DoJ in the publicity of mediation services and, in consultation with relevant District Councils, consider providing more suitable venues for community mediation.

Enhancing the legal profession's understanding of mediation services

25. Members noted the concern amongst legal practitioners about the onerous requirements imposed on them by the Practice Direction on Mediation ("PD 31")³ in connection with the implementation of the Civil Justice Reform. The Law Society of Hong Kong had expressed the view that to require solicitors to assess the fees that would be incurred in mediation and help the legally-aided client to see whether the fees involved would be disproportionate to what might be recovered was an onus unfairly put on the legal profession. Members considered it important to provide legal practitioners with more information on mediation to enhance their understanding of this alternative dispute resolution procedure.

26. The Administration assured members that the Working Group would work together with other parties to enhance the legal professional's understanding of mediation services. With effect from 4 January 2010, the Mediation Information Office was established within the Judiciary to provide litigants with relevant information on mediation so as to assist them in considering whether they should attempt mediation in resolving disputes.

Impact of development of mediation on right to access to court

27. Some members stressed that access to court was a fundamental right of Hong Kong residents guaranteed by the Basic Law and such right should not be in any way be eroded by the development of mediation. They considered that mediation services could not substitute the role of the court in resolving disputes and cases involving significant public interests should be resolved by judicial proceedings and not mediation.

28. The DoJ assured members that the right of access to court would not be affected adversely by the development of mediation services. In the Final Report of the Chief Justice's Working Party on Civil Justice Reform, it was made clear that certain types of cases, such as those involving constitutional issues, were not suitable for mediation. In addition, cases where there was imbalance in bargaining powers between the parties were also not appropriate for mediation. Under PD 31 which was only applicable to civil disputes, the court would consider making an adverse costs order only in cases where a party had unreasonably failed to engage in mediation. The Working Group believed that at the present stage, mandatory mediation for civil disputes should not be

³ Under Practice Direction 31 which came into effect on 1 January 2010, for proceedings where all the parties are legally represented, the legal representatives concerned are required to file a Mediation Certificate to, inter alia, confirm that they have explained to their client the availability of mediation services, the procedures involved and the costs of mediation vis-à-vis litigation.

implemented. The issue would be re-visited in the light of experience in developing mediation services.

Provision of mediation services on consumer disputes and employment cases

29. Concern was raised about the lack of free legal or mediation services on consumer disputes. As pointed out in the Report on the Consultancy Study of the Demand for and Supply of Legal and Related Services published by the DoJ in May 2008, many people in Hong Kong had experienced difficult-to-solve problems in incidents related to consumer matters and they hoped that such disputes could be resolved by mediation, given that legal costs involved would be disproportionate to the amount involved in the disputes.

30. The DoJ agreed to draw the relevant part of the Report on the Consultancy Study to the attention of the Working Group for consideration on how to promote understanding and awareness of mediation services to the community.

31. In response to members' suggestion that assistance should be provided to employees during the mediation process, particularly in respect of advice on the settlement amount, the DoJ advised that relevant trade unions and non-governmental organizations would be able to offer assistance to the employees concerned. For employees who were legally-aided, their assigned legal representatives would provide them with any necessary assistance and advice concerning settlement by mediation, and the cost of mediation would also be covered by legal aid.

Latest position

32. At the coming Panel meeting on 23 April 2013, the Panel will meet with organizations/individuals and the Administration to exchange views on the provision of mediation services in Hong Kong.

Development of mediation services

List of relevant papers

Meeting	Meeting Date	Paper
Panel on Administration of Justice and Legal Services	23 June 2008	Agenda Minutes
	20 October 2008	Agenda Minutes
	22 June 2009	Agenda Minutes
	22 February 2010	Agenda Minutes
	26 April 2010	Agenda Minutes
	22 October 2010	Agenda Minutes
	21 December 2010	Agenda Minutes
	19 April 2011	Agenda Minutes Follow-up paper [LC Paper No. CB(2)1597/11-12(01)]
	21 July 2011	Agenda Minutes
	22 January 2013	Agenda