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Panel on Administration of Justice and Legal Services

Meeting on 14 May 2021

**Background brief on
Mediation initiatives of the Department of Justice**

Purpose

This paper provides background information on the mediation initiatives of the Department of Justice ("DoJ") and development of mediation services in Hong Kong, and summarizes the major views and concerns expressed by members of the Panel on Administration of Justice and Legal Services ("the Panel") on the matter in previous discussions.

Background

2. Enacted in June 2012 and came into operation on 1 January 2013, the Mediation Ordinance (Cap. 620) provides a regulatory framework for the conduct of mediation in Hong Kong without hampering the flexibility of the mediation process. Its objects are to promote, encourage and facilitate the resolution of disputes by mediation, and to protect the confidential nature of mediation communications.

3. According to the Administration, mediation had the benefits of identifying the common goal and focusing on the interests of those concerned in search for a solution that would be acceptable to them. The Steering Committee on Mediation ("the Steering Committee"), chaired by the Secretary for Justice and with cross-sector membership, was set up in November 2012 to further promote and develop mediation in Hong Kong. The developments in relation to the Steering Committee's work in promoting mediation in recent years included the promotion of the use of evaluative mediation, "Mediate First" Pledge campaign, Mediation Week and Mediation Conference, the setting up of the West Kowloon Mediation Centre together with the launch of a Pilot Mediation Scheme.

4. An investment agreement was signed between the Hong Kong Special Administrative Region ("HKSAR") Government and the Ministry of Commerce in June 2017 ("the Investment Agreement") to enhance the Mainland and Hong Kong Closer Economic Partnership Arrangement framework through expansion of market access commitments to non-services sectors and introduction of obligations on investment protection. A "Mediation Mechanism for Investment Disputes" was provided which encouraged Mainland investors to use Hong Kong mediation services to resolve cross-boundary investment disputes relating to the Investment Agreement. Hong Kong investors might also appoint designated Mainland mediation institutions and mediators to assist in resolving similar disputes. The mechanism promotes the broader use of mediation in cross-boundary dispute resolution. The mutually agreed lists of mediation institutions and mediators of both sides were announced in December 2018. A set of mediation rules for adoption by designated mediation institutions and mediators of the respective sides were also announced and put in place in December 2018.

Discussions of the Panel

5. At the Panel meeting on 29 January 2018, members supported DoJ's priorities given to proactively promoting HKSAR as an international centre of legal and dispute resolution services in the context of the Belt and Road Initiative ("BRI") and the development of the Guangdong-Hong Kong-Macao Greater Bay Area ("GBA"), and hoped that Hong Kong could capitalize on the opportunities arising thereof. The Administration advised that it would, together with relevant stakeholders, continue to promote in the Mainland the strengths of HKSAR as an international centre of legal and dispute resolution services and the role that such services could play in BRI and GBA development.

6. In response to members' enquiries on how it would enhance the existing financial dispute resolution framework and investor protection, and promote Hong Kong's financial dispute resolution services in the Mainland and overseas, the Administration advised that the Financial Dispute Resolution Centre ("FDRC") aimed to facilitate the resolution of financial disputes between the financial institutions and their customers amicably by way of mediation first and, if unsuccessful, arbitration next. According to the Administration, FDRC had an over 80% success rate in 2016 in mediating financial disputes between investors and the financial institutions.

7. At the Panel meeting on 25 March 2019, the Administration briefed members on how Hong Kong's legal and dispute resolution professionals might leverage opportunities in the GBA development and briefly introduced the capacity building work carried out by DoJ and the sector. According to the

Administration, the sector had expressed the wish for the HKSAR Government to study the feasibility of establishing the GBA Mediation Centre together with the relevant Mainland government authorities. Some members indicated support for establishing the GBA Mediation Centre as it would establish a unified mediators' accreditation system and mediation rules for member organizations, and provide a platform for learning and exchanges for the mediation sector with GBA. The GBA Mediation Platform would also have a positive impact on professions other than the legal sector, such as the engineering sector. The Administration advised that it would actively pursue the relevant work and discuss the proposal of setting up the GBA Mediation Platform with the Mainland and Macao authorities.

8. At the Panel meeting on 22 March 2021, the Administration briefed members on recent developments for Hong Kong's legal and dispute resolution services in GBA. The Administration reported that, to enhance the confidence of mediation users within GBA and strengthen Hong Kong's role as a leading centre for international legal and dispute resolution services in the Asia Pacific region, DoJ and the relevant government legal departments in the Mainland and Macao had endorsed the proposal to set up a GBA Mediation Platform at the second Guangdong-Hong Kong-Macao Bay Area Legal Departments Joint Conference. The GBA Mediation Platform shall be an authoritative platform for high-level exchange and cooperation among the legal departments of the three governments of Guangdong, Hong Kong and Macao to facilitate the use of mediation and discharge the role of a standard-setting body with a view to promoting the wider use of mediation within the GBA.

Latest position

9. At the Panel meeting on 14 May 2021, the Administration will report on the progress of a number of mediation initiatives undertaken by DoJ to further develop and enhance the use of mediation in Hong Kong and to promote the mediation services of Hong Kong, as part of its continuous efforts to enhance Hong Kong's role as a leading centre for international legal and dispute resolution services in the Asia Pacific Region.

Relevant papers

10. A list of relevant papers is in **Appendix**.

Mediation initiatives of the Department of Justice

List of relevant papers

Meeting	Date	Item	LC Paper No.
Panel on Administration of Justice and Legal Services	29 January 2018 (Item I)	<u>Administration's paper</u>	CB(4)537/17-18(01)
		<u>Minutes of meeting</u>	CB(4)445/18-19
	25 March 2019 (Item III)	<u>Administration's paper</u>	CB(4)665/18-19(03)
		<u>Minutes of meeting</u>	CB(4)1176/18-19
	25 March 2019 (Item IV)	<u>Administration's paper</u>	CB(4)665/18-19(04)
		<u>Minutes of meeting</u>	CB(4)1176/18-19
	22 March 2021 (Item IV)	<u>Administration's paper</u>	CB(4)648/20-21(05)
		<u>Background brief</u>	CB(4)648/20-21(06)

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