

Mediation Bill to be gazetted

The Mediation Bill, which seeks to establish a proper legislative framework for conducting mediation without hampering the flexibility of the mediation process and to assist in the promotion of the more extensive and effective use of mediation in Hong Kong, will be gazetted on Friday (November 18).

The Bill aims to promote, encourage and facilitate the resolution of disputes by mediation and to protect the confidentiality of mediation communications. It is one of the recommendations of the Working Group on Mediation chaired by the Secretary for Justice. The Working Group published its 48 recommendations in its Report in February 2010 for a three-month public consultation.

Mediation is increasingly used in many different jurisdictions around the world to resolve disputes other than through litigation in the courts. The enactment of mediation legislation can fortify Hong Kong's status as an international dispute resolution centre.

Explaining the meaning of "mediation" in the Bill today (November 16), a spokesman for the Department of Justice said, "Mediation is a structured process in which a mediator, without adjudicating a dispute, assists the parties to the dispute to identify the issue in dispute, explore options and communicate with one another with a view to reaching a resolution.

"The Bill is necessary to provide legal certainty regarding confidentiality of mediation communications and admissibility of mediation communications in evidence," the spokesman added.

Mediation communication is confidential and must not be disclosed except under specified circumstances. They may be

disclosed, for example, with the consent of all parties and the mediator or where there are reasonable grounds to believe that the disclosure is necessary to prevent danger of injury to a person or of serious harm to the well being of a child.

In the absence of the exceptional circumstances set out in the Bill, a person who seeks to disclose mediation communications may do so only for certain justifiable purposes with the leave of a specific court or tribunal.

A person must also apply for leave of the court or tribunal in order to adduce mediation communications in any proceedings. The Bill sets out matters that the court or tribunal must take into account in granting leave for a mediation communication to be disclosed or admitted in evidence.

The Bill also seeks to standardise the terminology and Chinese renditions for "mediation" and "conciliation" used in existing ordinances.

The recommendation to enact legislation on mediation received overwhelming support during the three-month public consultation after it was published in the Report of the Working Group on Mediation in February 2010. The Bill was prepared with the advice of the Secretary for Justice's Mediation Task Force and its Mediation Ordinance Group. Two consultation sessions on the draft Bill were held with stakeholders in June this year. Stakeholders expressed general support for the proposed Bill and suggested refinements. The matter was reported to the Administration of Justice and Legal Services Panel of the Legislative Council in July 2011.

The Bill will be introduced in the Legislative Council on November 30.

Ends/Wednesday, November 16, 2011