

Government launches consultation on mediation development  
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The Government has launched a three-month consultation on the way forward to facilitate the more effective and extensive application of mediation in both commercial disputes and those at the community level. This followed the publication of a report of the cross-sector Working Group on Mediation chaired by the Secretary for Justice, Mr Wong Yan Lung, SC.

Announcing the report at a press conference today (February 8), Mr Wong said that the Working Group had reviewed and considered many important issues that were fundamental to the greater use of mediation in Hong Kong, taking into account overseas and local experience.

"The time, costs, acrimony and uncertainty involved in traditional litigation raise hard issues as to whether the present dispute resolution process is adequate to meet the needs of justice and efficiency. Increasingly, mediation is considered the alternative or even the preferred method." Mr Wong said.

The Working Group recommends that there should be a stand-alone Mediation Ordinance which aims at providing a proper legal framework for the conduct of mediation without hampering the flexibility of the mediation process.

The proposed ordinance should set out its objectives and underlying principles, as well as key terminology such as "mediation" and "mediator".

It should also include provisions dealing with the rules of confidentiality and privilege, as well as setting out the statutory exceptions to the rules and the sanctions for breaching the rules of confidentiality and privilege.

The Working Group has no objection in principle to include model rules in the proposed ordinance, although it thinks that this is not really necessary. However, any model mediation rules so included should only serve as a guide and not be made mandatory. To maintain flexibility of the mediation process, parties can choose their own mediation rules.

The Working Group does not consider it necessary to include in the proposed ordinance a statutory mechanism for enforcing mediated settlement agreements, as such

settlements can be enforced by the courts as contracts where necessary.

The Working Group believes that at this stage, the Judiciary should not provide mediation services nor introduce compulsory referral to mediation. However, these issues should be revisited in future after consultation with the Judiciary. The Working Group supports the provision of legal aid for mediation to legally aided persons when they are willing to participate in mediation.

On accreditation of mediators, the Working Group considers it desirable to establish a single body for accrediting mediators to ensure quality of mediators and consistency of standards, educate the public about mediators and mediation, enhance public confidence in mediation services and maintain credibility of mediation. However, it considers that currently the time is not right to prescribe a standardised system of accrediting mediators and that the emphasis should be on the provision of appropriate mediation information to potential mediation users to assist them in deciding whether to choose mediation to resolve disputes and choosing competent mediators. The Working Group recommends to review the possibility of a single mediation accrediting body in Hong Kong in five years.

The Hong Kong Mediation Code for mediators in Hong Kong prepared by the Accreditation and Training Sub-group of the Working Group has received support from many mediation service providers. The Working Group recommends wide promulgation of the Code and mediation service providers should be encouraged to adopt the Code and set up robust complaints and disciplinary processes to enforce the Code. To this end, the Secretary for Justice has already written to mediation service providers in Hong Kong.

The Public Education and Publicity Sub-group of the Working Group launched on May 7, 2009 a very successful "Mediate First" Pledge campaign with more than 100 companies and trade organisations pledging to consider the use of mediation first before resorting to other means to resolve disputes. The Working Group recommends that given its initial success, the "Mediate First" Pledge should continue to be encouraged within the business and commercial sector, and be promoted to different sectors of the community.

A Pilot Project on Community Venues for Mediation

was implemented by the same Sub-group last May to provide block booking of community venues to be made available for the conduct of mediation, especially for community mediation conducted by pro bono mediators. Pending the outcome of the Pilot Project, the Working Group recommends that there should be at least one community centre in Hong Kong Island, one in Kowloon and one in the New Territories to be made available as community venues for mediation.

The Working Group encourages the universities to consider enhancing mediation education and considers the question of mediation being incorporated into compulsory courses in the Law Faculties be revisited when the mediation landscape becomes more mature. Furthermore, it recommends that introduction of mediation education within primary and secondary schools, as well as expansion of the Peer Mediation Projects, should be considered.

Mr Wong stressed that the Working Group, in addition to the consideration of the fundamental issues relating to the further development of mediation in Hong Kong and the deliberation of the recommendations in the Report, had taken concrete steps to promote mediation, including the launching of the "Mediate First" campaign, promulgation of the Hong Kong Mediation Code as a voluntary code of conduct, as well as instituting the pilot scheme on Community Venues for Mediation.

"With these well-defined directions and concerted efforts, we believe a major milestone has been reached in the development of mediation services in Hong Kong" he said.

Mr Wong paid tribute to members of the Working Group and the three sub-groups respectively under the able leadership of Mr Fred Kan, Mr Lester Huang and Mr Rimsky Yuen, SC, for their dedication and initiatives.

The Report of the Working Group and the executive summary are available on the Department of Justice's website ([www.doj.gov.hk](http://www.doj.gov.hk)). Members of the public are welcome to send their comments in writing by May 8, 2010 to the following address:

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