

LC: Speech by SJ in moving Second Reading of Mediation Bill

Following is the speech (English translation) by the Secretary for Justice, Mr Wong Yan Lung, SC, in moving the Second Reading of the Mediation Bill in the Legislative Council meeting today (November 30):

President,

I move that the Mediation Bill be read a second time.

Background

Mediation is a process to resolve disputes other than by way of litigation in the courts. It is increasingly used in many jurisdictions around the world. In my visits to the Justice Departments of many other jurisdictions, they are also taking various steps to promote and facilitate the use of mediation. These steps include the provision of a regulatory framework to support the conduct of mediation.

Mediation is not new to Hong Kong; it is widely used by parties to construction and family disputes. Following the promulgation of the Practice Direction 31 on Mediation by the Judiciary in February 2009, which came into effect in 2010, mediation has further established itself as a form of dispute resolution in Hong Kong.

The Working Group on Mediation that I chaired published its Report in February 2010 with 48 recommendations for a three-month public consultation. One of the recommendations is to enact a Mediation Ordinance. The Mediation Bill presently before LegCo is aimed at providing a legal framework for the conduct of mediation without hampering the flexibility of the mediation process, and to address some of the issues in which the existing law is uncertain, such as confidentiality and admissibility of mediation

communications. We believe that the enactment of the Mediation Bill will promote the wider and more effective use of mediation to resolve disputes and strengthen Hong Kong's status as an international dispute resolution centre.

There was overwhelming support for the enactment of a Mediation Ordinance during the public consultation of the recommendations of the Report of the Working Group on Mediation. The Mediation Task Force which I set up has considered and deliberated on the provisions of the proposed mediation legislation and two consultation sessions were held with stakeholders in June 2011. The Administration of Justice and Legal Services Panel was consulted on the legislative proposal in July 2011 and had indicated support for the Bill.

Contents of the Bill

I will now give an outline of the main provisions of the Mediation Bill.

Firstly, "mediation" is defined in the Bill in order to state clearly what constitutes "mediation". It is distinguishable from arbitration and litigation as a mediator does not adjudicate a dispute or any part of it.

The importance of confidentiality in mediation is given prominence in the Bill because it is one of the main reasons why parties choose mediation over litigation. Mediation communications are confidential and must not be disclosed except in limited circumstances. While the definition of "mediation communication" expressly excludes an agreement to mediate or a mediated settlement agreement, in practice, parties to mediation may still agree among themselves that their agreement to mediate or mediated settlement agreement be treated as confidential.

The Bill makes it clear that the assistance or support provided to a party in mediation does not constitute an infringement of certain provisions in the Legal Practitioners Ordinance (Cap. 159). This is in line with the Arbitration Ordinance and will serve to attract more parties to choose Hong Kong as the place to conduct mediation and promote Hong Kong as an international centre for dispute resolution.

The Bill deals with the confidentiality of mediation communications by forbidding the disclosure of a mediation communication. In order to strike a balance, the limited instances where a person may disclose a mediation communication are expressly set out in the Bill.

The Bill also restricts the use of mediation communications in any proceedings by requiring the leave of a specified court or tribunal before mediation communications may be adduced in evidence.

The Bill also provides for consequential amendments to ensure the consistent use of the terminology used in existing Ordinances so that the Chinese rendition of "mediation" will be "調解" and the Chinese rendition of "conciliation" will be "調停".

Conclusion

President, this Bill will set out the platform for the development of mediation in Hong Kong and represents a significant milestone in the promotion of mediation. It is the product of the diligent and conscientious work of Members of the Working Group on Mediation, the Mediation Task Force, their sub groups, various organisations (including trade, consumer organisations and NGOs) and many others including the Administration of Justice and Legal Services Panel of this Council.

With these remarks, I would like to appeal to Members to support the Bill.

Ends/Wednesday, November 30, 2011