

LCQ9: Mediation

Following is a question by the Hon Tam Yiu-chung and a written reply by the Secretary for Justice, Mr Rimsky Yuen, SC, in the Legislative Council today (June 10):

Question:

The authorities set up the Steering Committee on Mediation (the Steering Committee) in late 2012 to promote the more extensive use of mediation to resolve disputes. The Steering Committee has three sub-committees, namely the Regulatory Framework Sub-committee, the Public Education and Publicity Sub-committee and the Accreditation Sub-committee. One of the functions and powers of the Accreditation Sub-committee is to consider whether and when a statutory accreditation body is to be set up to replace the Hong Kong Mediation Accreditation Association Limited (HKMAAL) which was established in April 2013 and charged with functions including setting accreditation standards for mediators. The authorities indicated in July last year that as HKMAAL had only been operating for a short period of time and that the setting up of a statutory body required detailed consideration of numerous complicated issues, more experience should be gained from the operation of HKMAAL before issues relating to the setting up of a statutory accreditation body to replace HKMAAL are studied. In this connection, will the Government inform this Council:

(1) whether it has compiled statistics on the utilisation of mediation services; if it has, of the total number of mediation cases (including those cases in which the parties to legal proceedings were required by the court to conduct mediation, or cases in which mediation was conducted with the assistance of mediation service providers) as well as the numbers of parties and mediators involved, in the past three years and, among them, the percentage of cases reaching agreement (set out the information by type of cases); if it

has not compiled such statistics, the reasons for that, and how the authorities assess the utilisation of mediation services by means of objective data;

(2) whether it has set an annual target, say 50 per cent, on the percentage, among the mediation cases, of cases reaching agreement after mediation; if it has, of the target; if not, how the authorities assess the effectiveness of mediation services;

(3) given that HKMAAL has operated for more than two years since its establishment, whether the authorities have assessed if it is opportune to conduct a study on the setting up of a statutory accreditation body; if the assessment outcome is in the affirmative, when the study will commence; if the assessment outcome is in the negative, of the reasons for that;

(4) for those mediators whose qualifications have not been accredited by HKMAAL, how the authorities assess their qualifications and monitor their conduct in the mediation process as well as the way in which they handle conflicts of interests;

(5) of the mechanisms currently adopted by the authorities for handling complaints about the following matters: (i) the conduct of mediators whose qualifications have not been accredited by HKMAAL, (ii) the operation of organisations which have not joined HKMAAL as members, and (iii) the quality of mediation courses provided by such organisations; and

(6) whether it has considered promoting mediation services in the community, so as to encourage members of the public to make more use of such services to resolve disputes; if it has, of the details; if not, the reasons for that?

Reply:

President,

(1) As mediation is a confidential process and may be conducted before or after the commencement of court proceedings, it is difficult to compile overall statistics on the total number of mediation cases. However, the Department of Justice (DoJ) has all along kept in view statistical data kept by relevant organisations. Based on statistics and information provided by the Judiciary, the Joint Mediation Helpline Office (JMHO), the Hong Kong Mediation Centre (HKMC) and the Hong Kong International Arbitration Centre (HKIAC), the position on the use of mediation in Hong Kong is as follows:

Judiciary

Number of cases with mediation

	2012	2013	2014
Court of First Instance	575	637	632
District Court	349	441	397
Total	924	1 078	1 029

Percentage of cases with agreement after mediation*

	2012	2013	2014
Court of First Instance	38%	45%	48%
District Court	42%	42%	45%
Average success rate	40%	44%	47%

* Based on the cases with full/partial settlement

Percentage of cases with full settlement after mediation#

	2012	2013	2014
Court of First Instance	46%	57%	65%
District Court	52%	54%	65%
Average success rate	49%	56%	65%

The figures include cases not immediately settled through mediation but settled within six months afterwards.

JMHO

Between 2012 and 2014, the JMHO processed 310 cases. Of these cases, mediation was completed in 78 cases with a success rate of 52 per cent. The number of parties involved in the mediation was usually two to three.

Case type	Number of cases
-----	-----
Finance/Banking	46
Business/Partnership	32
Title to property	31
Debt	29
Personal injury and death	27
Construction/Decoration	27
Tenancy agreement	20
Inheritance	19
Goods and Services	16
Employment/Remuneration	13
Professional negligence	12
Insurance	8
Building management	7
Damage to property	5
Nuisance	5
Intellectual property	4
Defamation	3
Land title	3
Complaints about government policies	2
Neighbourhood disputes	1
-----	---
Total	310

HKMC

Between 2012 and May 2015, the HKMC handled 62 mediation cases. The total number of mediators involved was 96. The

mediation cases include business, contracts, water seepage, personal injury and death, neighbourhood disputes, employment, tenancy, adverse possession, shareholders' disputes, construction, building management, workplace conflicts and defamation.

HKIAC

Between 2012 and May 2015, the HKIAC handled a total of 74 mediation cases. The total number of mediators involved was 75.

Case type	Number of mediation cases
-----	-----
Family	3
Business	45
Personal Injury and death	8
Construction	16
Tenancy	2
-----	--
Total	74

As shown by the data from the Judiciary and the mediation service providers in the above, mediation has been used in Hong Kong for different types of disputes. The DoJ will continue to provide support to the Steering Committee on Mediation (Steering Committee) in consolidating the work in various areas, including the provision of an environment and legal support conducive to mediation, enhancing the awareness and interest of the public in the use of mediation and nurturing a mediation culture in Hong Kong with sustained efforts.

(2) The Steering Committee which was established to further enhance the development of mediation in Hong Kong, has not set any targets for the success rates of mediation. As a matter of fact, the effectiveness of the use of mediation in Hong

Kong may not be fully reflected from the success rates alone. The experience of other jurisdictions is that they have not set any target for success rates either. From the data provided by the Judiciary website, the average success rate of mediation cases for the past three years was 44 per cent. Taking into account cases which were not settled immediately through mediation but were settled within six months afterwards, the success rate reached 57 per cent. For the mediation cases handled by JMHO, the success rate was 52 per cent. It can therefore be seen that mediation is effective. In some cases where the parties may not be able to solve their dispute immediately through mediation, the process provides a communication platform which enables the parties to narrow their differences or review their own situation, paving the way for further negotiation with a view to reaching an ultimate settlement. Based on the relevant data and information, the Steering Committee will consider the way forward on further promoting the use of mediation.

(3) The Hong Kong Mediation Accreditation Association Limited (HKMAAL) is a non-statutory industry-led accreditation body for mediators, incorporated in August 2012 as a company limited by guarantee. The functions of the HKMAAL include formulating accreditation standards, training requirements and disciplinary mechanisms for mediators.

The Steering Committee and its Accreditation Sub-committee have been monitoring the operation of the HKMAAL, including discussion on whether to set up a statutory body. The Steering Committee believes that the issue as to whether to set up a statutory body requires thorough consideration (such as how to strike a balance between statutory regulation and operational flexibility, whether the setting up of a statutory body is the best form of regulation) and also the need to consider the views of other stakeholders and the situations faced by other similar organisations.

Since the HKMAAL has only been in operation for about

two years, more operational experience needs to be gained before assessing the practical need and feasibility for setting up a statutory body. The Steering Committee will continue to monitor the development of the HKMAAL.

(4) In 2010, the Mediation Task Force, chaired by the then Secretary for Justice, promulgated the Hong Kong Mediation Code (the Code) which aims to provide a common standard among mediators and to ensure the quality of the mediation service provided. Individual mediation service providers have also adopted the Code as the code of practice for their mediators.

With the implementation of the Mediation Ordinance in January 2013, the Code is being reviewed by the Steering Committee and its Accreditation Sub-committee. The HKMAAL has also set up a dedicated team to thoroughly review any proposed amendments to update the Code and will consult relevant stakeholders and report its recommendations to the Steering Committee.

One of the features of mediation is voluntariness. In other words, parties to disputes are free to decide whether to engage mediators accredited by HKMAAL or not. Nonetheless, mediators who are not accredited by HKMAAL are still required to comply with the statutory requirements governing the conduct of mediation under the Mediation Ordinance, such as the confidentiality requirement etc. Furthermore, mediators of a mediation service provider which has adopted the Code as the code of practice for its mediators have to comply with the requirements provided therein. Generally speaking, mediators are required to observe the ethics or rules of the mediation organisations or professional bodies to which they belong. Where personal misconduct or impropriety in handling conflict of interest is involved, the mediators concerned may be subjected to investigation by their mediation organisations or professional bodies. Mediators and parties to a mediation would usually need to enter into agreements for the provision of mediation service, complainants may also

consider taking appropriate legal proceedings to pursue their complaints.

(5) One of the functions of HKMAAL is to formulate accreditation standards for mediators as well as to set training requirements for approving mediation training courses. Mediation training course providers have to apply to HKMAAL and have their courses assessed and approved before the training courses are HKMAAL accredited. Any person who wishes to become a HKMAAL accredited mediator must complete a HKMAAL accredited training course.

Any improper conduct by a mediation organisation which is not a corporate member of HKMAAL or by an organisation conducting training courses not accredited by HKMAAL may be pursued through legal proceedings or complaints made to an appropriate authority such as the Consumer Council.

(6) The Public Education and Publicity Sub-committee of the Steering Committee is tasked to undertake initiatives for the promotion and development of mediation and implement new publicity initiatives. A recent Announcement in the Public Interests, with both video and audio clips, was produced and broadcasted in March 2014 to enhance public understanding of mediation and to encourage the wider use of mediation as a means of dispute resolution.

The Home Affairs Department (HAD), through the District Building Management Liaison Teams, assists owners to resolve disputes of building management through enhancement of communication and mediation services. During the Mediation Week held in March 2014, with the assistance from the HAD, two seminars and workshops were organised at the community level on the use of mediation to resolve building management disputes.

Since March 2015, the HAD in collaboration with the HKMC and the Hong Kong Mediation Council has launched the Free

Mediation Service Pilot Scheme for Building Management to arrange professional mediators to provide a maximum of 15 hours of free professional mediation services for the parties concerned who would like to resolve disputes on building management through mediation.

From 2001, the Hong Kong Family Welfare Society has promoted a Peer Mediation training scheme in a number of secondary schools in Hong Kong. Under the scheme, a group of students who have received mediation training will help other students resolve conflicts through rational and peaceful means, so that both parties will reach a settlement leading to a win-win situation.

During the Mediation Week held in March 2014, the Hong Kong Family Welfare Society, with the support from Hong Kong Institute of Mediation and the General Interest Group of Hong Kong Mediation Council, organised mediation talks to the participating schools with the theme of "Managing conflicts, planting the seeds of peace" for primary and secondary schools to enable students to learn more about the benefits of mediation.

The Public Education and Publicity Sub-committee will continue to organise publicity activities to enhance the public awareness of the use of mediation at the community level.

Ends/Wednesday, June 10, 2015