

**For discussion on
22 July 2014**

**Legislative Council Panel on
Administration of Justice and Legal Services**

Mediation

PURPOSE

This paper aims to summarize the work undertaken by the Steering Committee on Mediation and its three sub-committees on the promotion of mediation in Hong Kong.

BACKGROUND

2. The Steering Committee on Mediation (“Steering Committee”), chaired by the Secretary for Justice and comprising a cross-sector membership, was set up in late 2012. The Steering Committee was preceded by the Working Group on Mediation (February 2008) and the Mediation Task Force (December 2010). The Steering Committee has three Sub-committees, namely: (1) the Regulatory Framework Sub-committee; (2) the Accreditation Sub-committee; and (3) the Public Education and Publicity Sub-committee. These three sub-committees assist the Steering Committee in respect of the monitoring the implementation of the Mediation Ordinance, the accreditation and training of mediators, as well as advising on ongoing and new initiatives to promote and publicize the wider use of mediation in Hong Kong. The setting up of the Steering Committee reflects the long term commitment of the Government to promote the more extensive use of mediation to resolve disputes in Hong

Kong.

3. On 22 January 2013, we briefed the AJLS Panel on the work undertaken by the Mediation Task Force in implementing the recommendations of the Working Group on Mediation¹. On 28 January 2014, we briefed the AJLS Panel on the policy initiatives of the Department of Justice (“DoJ”) which include enhancing the competitiveness of Hong Kong as a centre for international legal and dispute resolution services in the Asia Pacific region².

UPDATE ON THE WORK OF THE STEERING COMMITTEE

1) Regulatory Framework Sub-committee

4. The Regulatory Framework Sub-committee is tasked to, inter alia, monitor the implementation of the Mediation Ordinance (Cap. 620) (“the Ordinance”), put forward guidelines on the exemption for disclosure of mediation communication under s.8(2) of the Ordinance and consider the need for introducing apology legislation in Hong Kong.

Exemption Guidelines

5. The protection of confidentiality of mediation communications is of paramount importance to the maintenance of integrity of mediation as an effective alternative dispute resolution mechanism. At the same time, the availability of information relating to mediation (including confidential mediation communications) for research, evaluation and educational purposes is necessary so as to facilitate the development of mediation in Hong Kong, subject to appropriate safeguards including the protection of the identity of the person to whom the confidential mediation communications relate.

¹ LC Paper No. CB(4)321/12-13(05)

² LC Paper No. CB(4)322/13-14(03)

6. To assist stakeholders in using mediation communications for research, evaluation or educational purposes without breaching section 8(2)(e) of the Ordinance³, the Regulatory Framework Sub-committee has prepared a set of draft guidelines. The draft guidelines were circulated to stakeholders in June 2013 for a 3 months' consultation. During the course of consultation, a total 16 submissions were received. The submissions had been duly considered by a sub-group formed under the Regulatory Framework Sub-committee before the draft guidelines were finalized for consideration by the Steering Committee. The draft guidelines are being considered by the Steering Committee and the finalized version (which will be in both Chinese and English) will be issued to the stakeholders and uploaded onto DoJ's website for reference in due course.

Apology Legislation

7. One of the Terms of Reference of the Regulatory Framework Sub-committee is to consider whether there should be an Apology Ordinance or legislative provisions relating to the making of apologies for the purposes of facilitating settlements. In this respect, an Apology Legislation Sub-group has been formed under the Regulatory Framework Sub-committee to consider the subject.

8. The matter is being studied in depth, including the pros and cons of an apology legislation, apology legislations in various overseas jurisdictions and the current legal landscape of Hong Kong. A draft paper, with various recommendations, has been prepared and is currently under consideration. The recommendations made by the Sub-group will be considered by the Regulatory Framework Sub-committee and the Steering Committee on Mediation in due course. Future work include public consultation and the preparation of the draft legislation, where appropriate.

³ Section 8(2)(e) of the Mediation Ordinance provides that “A person may disclose a mediation communication if the disclosure is made for research, evaluation or educational purposes without revealing, or being likely to reveal, directly or indirectly, the identity of a person to whom the mediation communication relates.”

Monitoring the Operation of the Mediation Ordinance

9. To monitor the operation of the Mediation Ordinance, the Regulatory Framework Sub-committee plans to devise a mechanism that would enable it to have access to and/or collect information relating to the applications to the courts for disclosure of mediation communications or the admission of mediation communications in evidence, and whether there is any abuse of the legislative provisions relating to disclosure of mediation communications, and if so, how such abuse could be prevented or reduced. It will be a long term task of the Steering Committee to monitor the effectiveness of the implementation of the Mediation Ordinance.

II) Accreditation Sub-committee

10. The Terms of Reference of the Accreditation Sub-committee are to assist the Steering Committee in monitoring matters concerning the accreditation and regulation of mediators in Hong Kong and advising on issues arising therefrom, including the operation of the Hong Kong Mediation Accreditation Association Limited (“HKMAAL”), the formulation of accreditation standards, the formulation of grandparenting policy and procedure, the formulation of standards of mediation training courses, the establishment of complaint and disciplinary procedure, the establishment of panels or lists of mediators, supervisors, assessors, trainers and the review of the Mediation Code.

HKMAAL

11. HKMAAL commenced formal operation on 2 April 2013. Since then, the Accreditation Sub-committee has been monitoring the operation of HKMAAL in setting its accreditation standards, grandparenting policy, standards of mediation training courses, the establishment of complaint and disciplinary procedures and the establishment of panels or lists of mediator, supervisors, assessors and trainers. In this connection, HKMAAL has been providing updated progress report to the Sub-committee on a regular basis.

12. At present, HKMAAL has 10 Corporate Members, including the 4 Founder Members (Hong Kong Law Society, the Hong Kong Bar Association, the Hong Kong International Arbitration Centre and the Hong Kong Mediation Centre), the Hong Kong Institute of Arbitrators, the Centre for Effective Dispute Resolution (Asia Pacific), the Hong Kong Institute of Architects, the Hong Kong Institute of Surveyors, the Hong Kong Institution of Engineers and the Hong Kong Institute of Construction Managers.

13. Since its operation in April 2013, HKMAAL has put in place policies on grandparenting and accreditation standards of mediators. As at 11 July 2014, HKMAAL has a total of 2092 accredited mediators, of which 1990 were migrated from Corporate Members and 102 were accredited under the HKMAAL accreditation policy. Of the 2092 accredited mediators, 1849 are general mediators, 197 are family mediators and 46 are family mediation supervisors. There are also 45 assessors and 4 lead assessors on the relevant panels.

Mediation Training Courses

14. The Sub-Committee has also overseen the formulation of standards of mediation training courses of HKMAAL. As at 11 July 2014, there are 15 Training Course Providers who have obtained HKMAAL Stage 1 Accreditation for their General Mediation Training Course and 2 Training Course Providers who have obtained HKMAAL Accreditation for their Conversion Course for General Mediators to become Family Mediators. HKMAAL has since July 2013 accredited 60 training courses. With a view to facilitating more people to become family mediators, the Family Mediation Supervision Pilot Scheme⁴ for the purpose of matching supervision cases with Family Mediation Trainees in fulfillment of the Stage 2 Accreditation Requirements of Family Mediators has commenced on 2 July 2014.

⁴ Under the Scheme, the Judiciary will refer suitable cases to HKMAAL for matching suitable Family Mediation Trainees with Family Mediation Supervisors for the purpose of assessment.

Mediation Code

15. HKMAAL has adopted the Mediation Code, which was promulgated by the Working Group on Mediation in early 2010. The Code aims to provide a common standard among mediators and to perform an important quality assurance function. A number of mediation service providers have also adopted the Code. The Steering Committee will continue to work with relevant stakeholders to oversee the adoption and implementation of the Code as well as the review of the Code in the light of the experience gained.

Disciplinary Rules

16. In relation to the discharge of disciplinary functions by HKMAAL, a set of Disciplinary Rules has been preliminary approved by HKMAAL at its Council meeting held on 21 May 2014. The Disciplinary Rules, together with the complaint mechanism, will be further considered by the Steering Committee.

Statutory Accreditation Body

17. One of the Terms of Reference of the Accreditation Sub-committee is to consider whether and when a statutory accreditation body should be set up to replace HKMAAL. As HKMAAL has only been operating for slightly more than a year and that the setting up of a statutory body requires detailed consideration of numerous complicated issues, it is considered that this question should be explored after having gained more experience from the operation of HKMAAL.

18. The Sub-committee will continue to monitor the organization and operation of HKMAAL and consider the issue on whether and when to set up a statutory body to replace HKMAAL.

III) Public Education and Publicity Sub-committee

19. The Public Education and Publicity Sub-committee provides initiatives for the promotion of mediation in Hong Kong.

Mediation Week 2014

20. A “Mediation Week”⁵ was held between 20 and 27 March 2014. The highlight event was a 2-day mediation conference themed “Mediate First for a Win-Win Solution” held at the Hong Kong Convention and Exhibition Centre on 20 and 21 March 2014. A total of 46 overseas and local speakers delivered speeches and shared their experience with practitioners and end-users of mediation on the development of mediation. The Right Honourable the Lord Woolf of Barnes was the keynote speaker of the Conference. The Conference attracted more than 1000 participants⁶ and was considered a success. From the questionnaires collected by Hong Kong Trade Development Council (“HKTDC”) after the Conference, over 90% of the participants who had responded rated the Conference either “excellent” or “good”. This was the third⁷ time such a mediation conference had been organized in Hong Kong, although the previous two conferences were on a comparatively smaller scale.

21. During the Mediation Week, 24 mediation talks were delivered to interested primary and secondary schools students; 6 family mediation related talks and free consultations services were available to the public; and 18 seminars, workshops, experience sharing sessions and open day events were organized. The Mediation Week events, targeting 9 specific sectors⁸ were organized or co-organized by stakeholders through the Steering Committee.

⁵ More information about the Mediation Week is available at “www.mediatefirst.doj.gov.hk”

⁶ The attendance figure was based on the headcounts over the 2 days of the Conference provided by HKTDC.

⁷ The first Mediation Conference, themed “Mediation in Hong Kong: The Way Forward” was held on 30 Nov and 1 Dec 2007. The second Mediation Conference, themed “Mediate First” was held on 11-12 May 2012.

⁸ Nine sectors including Community, Commercial, Construction, Family, Financial, Education, Insurance, Legal Profession and Medical Profession have been identified as the target sectors to further promote the wider use of mediation during the Mediation Week.

Announcement in Public Interest (API)

22. A new API, with both video and audio clips, was produced and broadcasted in March 2014 to enhance the awareness of the public on the understanding of mediation and to encourage the wider use of mediation as a means of dispute resolution.

Future Initiatives

23. The publicity activities of the Mediation Week have generated further interest in and demands for more seminars and workshops to enhance public education on the wider use of mediation.

24. In this respect, the Public Education and Publicity Sub-committee has proposed new promotional initiatives specific to Small and Medium Enterprises (SME), Education, Medical and Community.

Targeted Areas	Proposed Promotion Initiatives
SME	To facilitate and provide support to mediation bodies for the participation in the yearly event – “The World SME Expo” organized by the HKTDC in December 2014 to promote mediation.
Education	To further promote mediation to schools, including students, teachers, principals and parents groups.
Medical	To further promote mediation to the medical sector including the consideration to devise a medical mediation scheme.
Community	To organize seminars and role plays at the community level to enhance public education on the use of mediation.

Community Venues for Mediation

25. It is believed that the availability of a suitable venue for conducting mediation at low cost will facilitate the wider use of mediation. Currently, under the Pilot Scheme on Community Venue for Mediation, two

community venues namely Henry G. Leong Yaumatei Community Centre and the Leighton Hill Community Hall have been made available for booking at a standard hourly fee of \$48 by the public for mediation purpose. The fee will be waived for pro bono mediators.

26. In June 2014, with the assistance of the Home Affairs Department, a new venue at the Urban Renewal Resource Centre (“URRC”) at No. 6 Fuk Tsun Street in Tai Kok Tsui has been made available for residents in the service areas of the Urban Renewal Authority for holding mediations relating to disputes on urban renewal, building repair and maintenance, property valuation, construction, etc.

27. The Public Education and Publicity Sub-committee will continue to monitor the effectiveness of the use of the community venues for mediation.

Mediation Training within Government

Training / Seminars organized for DoJ Counsel and Para-legals

28. DoJ has been organizing seminars for its counsel and para-legals. The seminars aim to equip counsel with the necessary advocacy skills in representing their clients in mediation and to provide para-legals with the necessary knowledge on mediation so as to enable them to render quality supporting service to counsel, and Government departments. The training includes (a) Mediation Advocacy Skill training; (b) experience sharing; and (c) seminar. So far, two mediation advocacy skills training and two experience sharing sessions on mediation have been organized for DoJ counsel and one seminar has been organized for its para-legals.

29. To enable DoJ counsel and para-legals to better understand the role of a mediator and the process of mediation, DoJ has nominated 13 government counsel and one para-legal to attend three 40-hour mediation training courses held in January, February and May 2014 respectively.

Training / Seminars organized for other Civil Servants

30. To promote and develop the more extensive use of mediation by the Government, DoJ has organized a number of seminars or training sessions for other Government departments to increase their awareness of mediation as an alternative to litigation and their roles in the mediation process. The seminars were organized in conjunction with the Civil Service Training and Development Institute (CSTDI) of the Civil Service Bureau. The seminars were conducted by speakers who were accredited mediators with substantial mediation experience and in mediation training. The seminars were attended by directorate officers and senior officers as well as the middle ranking officers. Four seminars and one experience sharing session on mediation have so far been organized with a turnout of a total of 925 civil servants. The seminars and experience sharing sessions have been well received and the feedback was very positive.

Tailor Made Training for Individual Government Departments

31. A tailor-made mediation seminar was conducted for the Government Logistics Department (“GLD”) in November 2013, which aimed at equipping GLD officers with the necessary knowledge and skills in handling mediation in their work. The seminar was attended by 93 GLD officers.

WAY FORWARD

32. The Steering Committee will continue to promote and develop mediation in Hong Kong. Towards this end, we will enhance public education and publicity regarding the use of mediation, and monitor the implementation of the Mediation Ordinance and the operation of the HKMAAL as a regulatory body.