

**For discussion on
2 June 2025**

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

Review of the Mediation Regulatory Regime

Purpose

This paper briefs Members on the latest progress of the Department of Justice's ("DoJ") policy initiative under the Chief Executive's 2023 and 2024 Policy Addresses on strengthening the regulatory system on the accreditation and disciplinary matters of the mediation profession.

Background

2. Mediation is a cost-effective and future-looking means of resolving disputes in a mutually acceptable, timely and confidential manner. It has been the long-term policy of DoJ to promote the wider use of mediation to resolve disputes. Since the Civil Justice Reform in 2009, Hong Kong's mediation sector has developed significantly, with growing public recognition of the advantages of mediation in fostering mutually beneficial resolutions for disputing parties.

Legislative Framework

3. In terms of legal infrastructure, the Mediation Ordinance (Cap. 620), which came into operation on 1 January 2013, provides a regulatory framework for the conduct of mediation in Hong Kong without hampering the flexibility of the mediation process. The Apology Ordinance (Cap. 631) came into operation on 1 December 2017, with the objective of promoting and encouraging the making of apologies with a view to preventing the escalation of disputes and facilitating their amicable resolution.

Accreditation of Mediators

4. As regards the accreditation of mediators, the Hong Kong Mediation Accreditation Association Limited ("HKMAAL") was incorporated in 2012 as a non-statutory industry-led accreditation body with a vision of becoming the premier accreditation body with accreditation and disciplinary functions for

mediators in Hong Kong. HKMAAL plays a vital role in ensuring the quality of mediators, consistency of standards, public education about mediation and mediators, enhancing public confidence in mediation services, and maintaining the credibility of mediation. Apart from accreditation matters, HKMAAL is responsible for overseeing the conduct of its panels of mediators and carrying out disciplinary procedures when necessary.

2023 & 2024 Policy Addresses

5. The Government is attentive to the continuous changes and new demands as the mediation market develops and the number of mediators increases. As part of its policy initiatives to deepen the mediation culture in Hong Kong under the 2023 and 2024 Policy Addresses, DoJ has undertaken to conduct a comprehensive review to assess how the current accreditation and regulatory system of the mediation profession can align with the evolving needs of the mediation market, and how it can be strengthened to ensure its relevance and high standards of quality and professionalism. This initiative can solidify Hong Kong's strategic position as a regional centre for international legal and dispute resolution services.

The Working Group on Mediation Regulatory System

6. To this end, in 2024, DoJ established the Working Group on Mediation Regulatory System (“**Working Group**”), chaired by the Secretary for Justice, with members comprising experts from the mediation sector in Hong Kong.

7. The Working Group has conducted a thorough and systematic review of Hong Kong's current regulatory framework for the mediation profession, covering key areas such as accreditation standards, disciplinary procedures, and the structure, role, and functions of HKMAAL.

8. This review, completed in 2024, involved a holistic assessment of the existing mediation framework, including the legislative framework, mediator accreditation mechanisms, and regulatory oversight. The Working Group also considered international practices, drawing insights from the experiences of various jurisdictions to ensure alignment with global best practices. The review examined the following key issues and future development options:

- (i) the advantages and disadvantages of mandating mediation as an exclusively licensed activity with a compulsory mediator accreditation

or licensing regime;

- (ii) the benefits and drawbacks of establishing a statutory body with sole authority over mediation accreditation in Hong Kong; and
- (iii) measures to strengthen HKMAAL's role and functions in contributing to Hong Kong's position as an international legal and dispute resolution center.

9. The review underscores Hong Kong's commitment to fostering a mediation profession that is not only reputable and reliable, but also capable of instilling confidence among both individuals and businesses seeking mediation services in Hong Kong. By maintaining high professional standards and governance, Hong Kong reinforces its position as a preferred hub for mediation in the Asia-Pacific region and beyond.

10. DoJ has considered the views of the Working Group, and the matter has been discussed at the Expert Advisory Group on Legal and Dispute Resolution Services of DoJ ("EAG"), and has received general support. DoJ is collecting further comments from EAG and intends to commence stakeholder consultation within 2025. The Working Group's preliminary recommendations are set out below:

Recommendation 1

It is considered that imposing a licensing regime may be unnecessary, unsuitable and premature in light of the current mediation landscape in Hong Kong. It is recommended that mediation in Hong Kong should remain as a non-licensed activity with no mandatory licensing or accreditation regime for practising as a mediator. We may further explore how the existing mediator accreditation regime can be refined and enhanced in the future, e.g. through the establishment of more mediator panels in specific areas or fields.

- Given the flexible nature of mediation, imposing a licensing regime may be premature and counterproductive. Regulation and the requirement of mandatory licensing of mediation, as matters stand, may deter public use of mediation skills, undermining the initiative of deepening the mediation culture.

- The recommended approach aligns with international trend. Most developed common law jurisdictions do not mandate through legislation the accreditation of mediators, mediation service providers or training providers.
- Even without the imposition of licensing requirements, the use of mediator panels in specific areas or fields, e.g. mediator in court-annexed mediation schemes, accredited family mediator of HKMAAL and GBA Mediators, already sufficiently serves the purpose of ensuring the professionalism of the mediation industry in Hong Kong.
- Overly restrictive policies towards foreign-accredited mediators and mediation bodies in conducting mediation in Hong Kong could limit the diversity of expertise and backgrounds available to parties in Hong Kong.

Recommendation 2

It is recommended that HKMAAL should, at this stage, retain its status as a private company limited by guarantee and continue to effectively perform its intended functions as a premier, industry-led mediation accreditation and regulatory body, with an enhanced role and expanded functions.

- The recommended approach aligns with international trend. Most developed common law jurisdictions do not have an exclusive statutory body responsible for accrediting and regulating mediators, mediation service providers or training providers. Instead, these jurisdictions tend to rely on voluntary systems and adopt a self-regulated, industry-led approach when it comes to accreditation and regulation of the mediation profession.
- The recommended approach can remove the concern of spill-over effect on arbitration or risks of over-regulation, potentially impacting Hong Kong's attractiveness as a dispute resolution hub.
- There has been a lack of consensus within the mediation community to establish a statutorily designated single regulatory body for mediation, which is a radical shift of the current mediation landscape.
- HKMAAL, even if remaining as a non-statutory body, can effectively discharge mediator accreditation and disciplinary functions.

Recommendation 3

It is recommended that HKMAAL be granted statutory default appointing power in the absence of an agreed choice of a mediator through legislative amendments. As in the case of the Hong Kong International Arbitration Centre, an express reference to HKMAAL in the legislation would give HKMAAL formal legal recognition and statutory power, thus reinforcing its authoritative status which is conducive to its taking a lead role in furthering the development of mediation in Hong Kong.

- There is a successful precedent that could serve as a model, namely the power given to HKIAC under section 32 of the Arbitration Ordinance (Cap. 609) to appoint mediators in an arbitration agreement.
- The recommended approach would allow HKMAAL to streamline the mediation process by facilitating the appointment of qualified mediators, thus improving efficiency in case administration, particularly for time-sensitive disputes and promoting greater use of mediation.

Recommendation 4

A well-established and well-drafted code of conduct for mediators is paramount to ensuring the quality of mediators. It is recommended that HKMAAL complete the review of the Mediation Code, and going forward, take ownership and responsibility of reviewing, managing and administering it. This would better regulate the conduct of HKMAAL-accredited mediators, and provide a consistent professional standard for mediators.

- HKMAAL's assumption of the responsibility for reviewing, managing, and administering the Mediation Code would present a significant opportunity to solidify its authority as the leading industry-led accreditation and regulatory body in Hong Kong, positioning it to better serve the development of mediation in the region.

Recommendation 5

To maximise the utility of the Mediation Code, it is recommended that promotional efforts should be made to encourage the parties to adopt the Mediation Code in their mediation agreements as the professional standard of

mediators, thereby providing certainty regarding the applicable professional standard in a particular mediation.

- With the Mediation Code as part of the contractual obligations, mediators would explicitly agree to abide by the professional standards and ethical guidelines set forth in the Mediation Code, which were essentially set down and administered by HKMAAL.
- The intended effect is that as the premier industry-led accreditation body, HKMAAL would not only regulate its accredited mediators but also the mediators conducting mediation in Hong Kong who voluntarily adhere to the Mediation Code through mediation agreements, which include international mediators who have not obtained HKMAAL accreditation.
- The Mediation Code would serve as a reference point for the expected level of professional conduct in mediation in Hong Kong, enhancing public confidence and consistency in mediation processes. This certainty can increase Hong Kong's attractiveness as a dispute resolution hub.

Recommendation 6

In conjunction with the review of the Mediation Code, it is recommended that HKMAAL finalise and implement a robust complaint handling and disciplinary framework enforcing the Mediation Code. Subject to the principle of confidentiality, HKMAAL should take proactive and systematic steps to publicise a database of its disciplinary findings on its official website.

- This aims to provide clarity, structure, and fairness in addressing complaints against mediators, ensuring that disciplinary processes are transparent, consistent, and accessible to all stakeholders.
- The transparency provided by a public database of disciplinary findings, subject to the confidentiality principle, would not only enhance public awareness of the standards applied, enable parties to make informed choices on the choice of mediators, but also serve as a deterrence against potential misconduct, ultimately enhancing public trust in Hong Kong's mediation profession.
- Further, this development would strengthen HKMAAL's ability to enforce disciplinary measures against mediators who fail to meet the professional

standards outlined in the Mediation Code. By handling complaints and adjudicating cases of misconduct, HKMAAL would reinforce its position as a credible and effective regulatory body.

Recommendation 7

It is recommended that HKMAAL actively participate in global discussions on dispute resolution as a representative of the Hong Kong mediation industry in international conferences, seminars, and symposiums, and foster partnerships with other mediation institutions worldwide.

Where appropriate, HKMAAL might explore the possibility of reviewing its governance structure to better align with its evolving role and functions as recommended above.

- As Hong Kong solidifies its status as an international dispute resolution hub, and as mediators and legal practitioners navigate complex international legal frameworks and cultural nuances, the need for exchanges with global mediation institutions becomes clear.
- By participating in international conferences and forums, HKMAAL can facilitate knowledge sharing and enhance Hong Kong's visibility as a preferred mediation venue.
- The partnerships with other mediation institutions worldwide can elevate mediation standards in Hong Kong and expose local mediators to international best practices.

11. Building on its findings and recommendations, as well as input from the mediation community, the Working Group aims to propose suitable measures to enhance the mediation regulatory system by the end of 2025. This proactive approach ensures that Hong Kong's mediation framework remains adaptive, competitive, and responsive to the evolving needs of practitioners and users, on local, regional and international levels.

Conclusion

12. Mediation is the future. DoJ is dedicated to promoting mediation as an efficient and effective out-of-court dispute resolution means. DoJ will steadfastly continue to take forward the initiative to strengthen mediation

professionalism and enhance Hong Kong's status as a leading international legal and dispute resolution centre as well as the capital of mediation.

Department of Justice
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