

Recommendations of the Report of the Working Group on Mediation

No.	Recommendation of the Working Group Report	Remarks
1	A clear and workable definition of mediation be agreed upon. Some degree of flexibility in the definition of mediation should be maintained so that future application and development of mediation in Hong Kong will not be unnecessarily restricted.	- Mediation is defined in section 4 of the Mediation Ordinance.
2	The use of the words “mediation” and “conciliation” within the Hong Kong legislation should be reviewed, in particular in the Chinese text, to remove any inconsistency.	- Schedule 1 of the Mediation Ordinance contains a list of processes, which are stand alone statutory processes to which the Ordinance does not apply. Schedule 2 of the Ordinance contains consequential amendments, particularly to uniform and remove any inconsistency of the Chinese rendition of the word mediation as “調解” in existing legislations.
3	An „Umbrella“ mediation awareness programme which targets the general public with information on the modes and process of mediation be implemented through the use of sector specific mediation publicity campaigns such as those targeting the business and commercial sector, communities, youth and elderly. Such sector specific campaigns should focus on the modes of mediation that are effective and relevant to the specific sector.	<ul style="list-style-type: none"> - Members of the Public Education and Publicity Group are actively involved in the mediation promotion activities in different sectors to which they belong. - Mediation workshops have been organized by community mediators to promote mediation at community level. - Mediation schemes were introduced in different sectors, e.g. New Insurance Mediation Pilot Scheme („NIMPS“) Pilot Mediation Scheme under the Land (Compulsory Sale for

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		<p>Redevelopment) Ordinance, Financial Dispute Resolution Scheme.</p> <ul style="list-style-type: none"> - Pro-bono mediation schemes are organized by different mediation service providers to promote the use of mediation to resolve disputes in different sectors.
4	<p>Given the many parties involved in the promotion of and public education on mediation and the good work that they have been engaged in, it is recommended that these parties be encouraged to continue their important promotional and public education work. These diverse parties should actively seek to collaborate with each other and pool their efforts and expertise together where the opportunity arises, as concerted efforts would carry greater and more lasting impact.</p>	<ul style="list-style-type: none"> - The „Mediate First“ Conference, organized by the Hong Kong International Arbitration Centre, Hong Kong Mediation Council in conjunction with the Department of Justice and with the support of the Judiciary, was successfully held on 11 and 12 May 2012. The two-day conference held at the Hong Kong Convention and Exhibition Centre aimed at raising public awareness of mediation and providing an opportunity for overseas and local mediation experts to share their experience. More than 200 people invited by stakeholders attended each of the two day conference. - „Mediation in Hong Kong and Shanghai – Options and Possibilities“, jointly organized by Shanghai Commercial Mediation Centre, Hong Kong Mediation Council and Joint Mediation Helpline Office was successfully held on 3 March 2012 in Shanghai. - The 3rd Asian Mediation Association Conference hosted by the Hong Kong Mediation Centre is scheduled to be held on 13 &

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		14 June 2013 at the Hong Kong University.
5	Mediation information and training for frontline dispute resolvers (such as police officers, social workers, family psychologists, correctional officers and lawyers) should be supported as such training will assist them in their day-to-day work and having a good understanding of mediation will assist them to be effective dispute resolvers or mediation referrers. It will also assist them in promoting mediation as a means to resolve conflicts harmoniously at the community level.	- Various mediation bodies have provided mediation training to frontline dispute resolvers including police officers to enable them to become more effective dispute resolvers and mediation referrers.
6	Further promotion of the „Mediate First“ Pledge should be encouraged within the business and commercial sectors given its initial success.	- Further promotion of the „Mediate First“ Pledge will be held.
7	The „Mediate First“ Pledge to be promoted to different sectors of the community and its website (www.mediatefirst.hk) be maintained, updated and made interactive in order to provide support to those who subscribe to the Pledge and interested members of the public.	- The website of the „Mediate First“ Pledge will be revamped.
8	The pace of promoting mediation should take into account the readiness of mediators, the maturity of the infrastructural support, and the needs of mediation users.	- The development of mediation in Hong Kong is now lying between Stage 2 and Stage 3 and is moving towards Stage 3. Promotion targeted at general public through media should

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	<p>The course of the promotion may be divided into 3 stages: Stage 1 (Awareness Building), Stage 2 (Intensified and Targeted Publicity), and Stage 3 (Mass Outreach). As development migrates from Stage 1 to Stage 2, the pace of promoting mediation should be stepped up. Given the competing demands for Government publicity resources, the support and concerted efforts of all parties involved in mediation should be enlisted.</p>	<p>continue and further efforts should be made to facilitate intensive collaboration between mediation bodies in the promotion of mediation and provision of mediation services to members of the public.</p>
9	<p>Mediation pilot schemes be considered for disputes in areas such as in the workplace and employment, intellectual property, banking and financial services, medical malpractice and healthcare, child protection, environmental, urban planning, land use and re-development.</p>	<ul style="list-style-type: none"> - The Pilot Mediation Scheme under the Land (Compulsory Sale for Redevelopment) Ordinance, administered by the Joint Mediation Helpline Office Limited, was introduced in 2011. - The Financial Dispute Resolution Scheme, administered by the Financial Dispute Resolution Centre („FDRC“), was introduced in June 2012.
10	<p>The experience and statistics from the operation of the Lehman Brothers-related Investment Products Dispute Mediation and Arbitration Scheme be analysed to identify the factors that are conducive to the success of this scheme, its limitations and the lessons to be learnt for the future.</p>	<ul style="list-style-type: none"> - Following the success of the Lehman Brothers-related Investment Products Dispute Mediation and Arbitration Scheme, the FDRC was set up in June 2012 to administer an independent Financial Dispute Resolution Scheme for consumers to resolve monetary disputes with financial services providers.
11	<p>The initiative of the insurance industry in the establishment of the New Insurance Mediation Pilot</p>	<ul style="list-style-type: none"> - The NIMPS was introduced in 2007 with a view to promoting the use of mediation in resolving employees’ compensation and

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	<p>Scheme („NIMPS“) is worthy of support. The Federation of Insurers should be encouraged to analyse and share its experience in operating NIMPS, in particular the factors that are conducive to its success and the lessons to be learnt. The sharing of success stories would be a very effective means of promoting mediation.</p>	<p>work related personal injuries claims. The NIMPS has successfully resolved 34 dispute cases, 9 through mediation and 25 through negotiations. The Federation of Insurers has reviewed the NIMPS and concluded that it has served the purposes of demonstrating the benefits of mediation and how it should work in the context of Hong Kong. It decided to bring NIMPS to a close in November 2011 and leave it to the market to develop a commercially viable and sustainable model.</p>
12	<p>Further promotion and expansion of family mediation services in Hong Kong should be supported. Consideration should be given to support Non-governmental Organizations („NGOs“) providing family mediation services to the community. Development of Collaborative Practice as a less adversarial means of resolving family disputes could be explored further.</p>	<ul style="list-style-type: none"> - The Hong Kong Family Welfare Society has been actively involved in providing family mediation services in Hong Kong and the Public Education and Publicity Group and the Mediation Task Force are supportive of its work. - The Family Council has set up the Pilot Scheme on Family Mediation Service 2012 to sponsor interested organizations in the provision of family mediation services from August 2012 to July 2013. NGOs can make use of the funding to expand their services to the sandwich class and the low income group. Further support to the NGOs after expiry of the pilot scheme should be considered. - After the first training course on collaborative training organised by the Hong Kong Family Law Association in 2010, the Hong Kong Collaborative Practice Group was established in

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		<p>February 2011.</p> <ul style="list-style-type: none"> - „The Second Children’s Issues Forum“ was held on 27 and 28 August 2012. The main focus was the development of non-adversarial dispute resolution processes around the world that promote the interests of children and allow their voices to be effectively heard and considered.
13	<p>The challenges posed by unrepresented litigants in court should be further studied and more statistical data made available so that promotion of mediation to unrepresented litigants may be better supported.</p>	<ul style="list-style-type: none"> - The Mediation Information Office („MIO“) of the Judiciary has scheduled information sessions for litigants and members of the public. Judges and Judicial officers also referred the case parties to the information sessions. - An in-house users’ opinion survey has been launched since the operation of the MIO. The statistics showed that the information sessions on promoting mediation have been well received by the parties. From January 2010 to April 2012, MIO received 873 returns and 84% of parties either strongly agreed or agreed that information sessions have helped to enhance their understanding on mediation. 97% of parties would recommend the information sessions to their friends in similar situations as theirs. - The Judiciary’s Working Party on Mediation chaired by the Honourable Mr Justice Lam, JA has closely monitored the implementation of Practice Direction 31 and would continue to

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		<p>promote the wider use of mediation to facilitate early and satisfactory settlement of disputes.</p> <ul style="list-style-type: none"> - The evaluation reports on the Pilot Scheme on Family Mediation and the Pilot Scheme for Building Management Cases in the Lands Tribunal published by the Judiciary provide useful statistical data for reference.
14	<p>Special efforts should be made to promote mediation to unrepresented litigants in court including the provision of mediation information and the promotion of the „Mediate First“ website (www.mediatefirst.hk) to them through the Mediation Information Office and the Resource Centre for Unrepresented Litigants in the High Court.</p>	<ul style="list-style-type: none"> - The MIO serves as a focal point of enquiry for all court-related mediation. - A mediation webpage has been launched since January 2010 on the Judiciary’s website. The contents of the thematic videos and leaflets on mediation, related judgments and publications have been uploaded to this dedicated mediation webpage. The links to other related professional bodies and the „Mediate First“ website are placed in this webpage. In view of the high access rate to the mediation webpage, it is believed that the webpage serves as a valuable platform to deliver the messages of mediation to the court users and public. Information about mediation is also available in the Resource Centre for Unrepresented Litigants.
15	<p>Further support and expansion of the current Restorative Justice and Mediation Programmes throughout the</p>	<ul style="list-style-type: none"> - The Hong Kong Family Welfare Society has launched a „Life Cycle Mediation Education Project“ to cultivate the general public mediation skills and knowledge for prevention and

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	community in Hong Kong should be encouraged.	handling of disputes at different life stages and in different social contexts.
16	Pending the outcome of the Pilot Project on Community Venues for Mediation, 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 Pilot Project with Henry G Leong Yaumatei Community Centre and the Leighton Hill Community Hall used as community venues for mediation is on-going. Efforts will continue to be made to streamline or expand the Pilot Project.
17	Recognising the competing demands on the school curriculum, the potential introduction of mediation education within the primary and secondary schools warrants serious examination and it is recommended that consideration be given to support the expansion of the Peer Mediation Project.	<ul style="list-style-type: none"> - The Hong Kong Family Welfare Society is actively involved in the promotion of Peer Mediation and the Public Education and Publicity Group and the Mediation Task Force are supportive of its work. - The Quality Education Fund provided funding support to try out a Peer Mediation Project in primary schools in Nov 2011-Oct 2012. The feedback is encouraging. - Efforts have been made by the Hong Kong Family Welfare Society to promote Peer Mediation and Mediation Education to schools and through training of school principals and teachers. The response is very positive. However, due to the competing demands on the school time and school curriculum, it needs the directive of the Education Bureau to encourage schools to implement these initiatives on a regular basis.

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18	The Bar Association and the Law Society should be invited to consider the content and coverage of mediation training for their members as part of their ongoing professional development and whether such training should be made compulsory.	- The Bar Association and the Law Society regularly organized mediator skills training courses to their members.
19	In order to foster the further development of mediation knowledge in the legal profession, consideration should be given to revisit the question of mediation being incorporated into compulsory courses at PCLL, LL.B and J.D. programmes at a later stage when the mediation landscape becomes more mature.	- The proposal is receiving attention and being looked into by the various law schools. Commitment of university heads is required to move this matter forward.
20	Subject to resource and curriculum constraints, the Universities should consider enhancing the current elective mediation courses and the mediation element in other courses within the Law Faculties at both the undergraduate and postgraduate levels.	- The universities currently provided programmes with Alternative Dispute Resolution („ADR“)mediation elements at undergraduate and postgraduate levels. Further enhancement should be encouraged.
21	The Universities should be invited to consider offering common core courses on mediation and dispute resolution within the first year undergraduate University programme through an integrated interdisciplinary approach to educating students about the process and skills of mediation.	- Courses on mediation are now offered as electives. Commitment of university heads is required to move this matter forward.

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22	The Law Faculties of the three Universities (University of Hong Kong, Chinese University of Hong Kong, and City University of Hong Kong) should be encouraged to proceed with the development of the proposed “Hong Kong Mediation Competition”.	<ul style="list-style-type: none"> - City University of Hong Kong has been running the International ADR Mooting Competition since 2010 and intends to organise the „Asia-Pacific Mediation Conference 2012: Mediation and its impact on National Legal Systems“ in November 2012. - The establishment of the proposed “Hong Kong Mediation Competition” to be administered jointly by the three Universities should be encouraged.
23	Early Dispute Resolution („EDR“) systems could be beneficial for organisations, universities and other tertiary institutions in Hong Kong to give due consideration in order to help resolve conflicts and minimise dispute resolution costs within organisations and institutions.	<ul style="list-style-type: none"> - In some organizations, the concept of early dispute resolution is being introduced by developing complaint handling mechanism in which complaints are handled by management personnel who have undertaken mediation training (e.g. Hospital Authority, Vocational Training Council).
24	An Announcement in the Public Interest be produced and aired on television for the promotion of mediation. More publicity via radio, printed media and new media platform should also be pursued. Educational programmes on mediation targeted at youth should be strengthened and special efforts be made to approach television stations and script-writers to consider including mediation in their television drama productions.	<ul style="list-style-type: none"> - The broadcasting of the Announcement in the Public Interest („API“) for the promotion of mediation was launched on 22 December 2011. - Another API will be produced to sustain and reinforce the message of „mediate first“ to the public. - Posters and leaflets will be produced to promote mediation. - The possibility of producing a video to explain how mediation works in real-life situations and to highlight the roles and

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		responsibilities of the parties involved will be explored.
25	The establishment of a single body for accrediting mediators is desirable and can assist to ensure the quality of mediators, consistency of standards, education of the public about mediators and mediation, build public confidence in mediation services and maintain the credibility of mediation.	- Hong Kong Mediation Accreditation Association Limited („HKMAAL“), a non-statutory industry-led accreditation body, was incorporated on 28 August 2012 as a company limited by guarantee.
26	It is considered 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 users of mediation that will enable them to decide whether to choose mediation to resolve disputes and also assist them to be better able to choose competent mediators.	<ul style="list-style-type: none"> - The majority of the submissions received in the public consultation expressed that a single accreditation body should be set up as soon as possible. The Mediation Task Force considered that the establishment of a non-statutory industry-led accreditation body should be supported. - HKMAAL, a non-statutory industry-led accreditation body, was incorporated on 28 August 2012.
27	There should be wide promulgation of the Hong Kong Mediation Code which is a code of conduct for mediators in Hong Kong and mediation service providers are encouraged to adopt the Code and set up robust complaints and disciplinary processes to enforce the Code.	- A number of mediation service providers have already adopted the Hong Kong Mediation Code.
28	A single mediation accrediting body in Hong Kong could be in the form of a company limited by guarantee. The	- HKMAAL was incorporated on 28 August 2012 as a company limited by guarantee.

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	possibility for establishing this body should be reviewed in 5 years.	
29	Information on the Continuing Professional Development requirements (if any) of mediator accrediting organisations should be made available to the public.	- Major mediator accrediting organizations require their panel members to fulfill certain Continuing Professional Development („CPD“) requirements. Information on the CPD requirement is available from the respective mediation accrediting organisations.
30	Whenever the question of an appropriate mediator arises in court, the Judiciary might suggest that the parties consider selecting a mediator (of whatever qualifications or accreditation) who has at least subscribed to the Hong Kong Mediation Code.	- The Judiciary has set up the MIO in the High Court Building to assist parties in understanding the nature of mediation and how it will help litigants to resolve their disputes. Computer terminals with access to the Judiciary website, interlinked with the websites of other professional bodies are provided at the MIO and videos on mediation, booklets and relevant materials related to mediation are available to users.
31	Encouragement should be given for experienced mediators to assist newly accredited mediators to obtain practical mediation experience.	- The suggestion has been conveyed to main mediation service providers.
32	Hong Kong should have legislation on mediation, which should be aimed at providing a proper legal framework for the conduct of mediation in Hong Kong. However, the legislation should not hamper the flexibility of the	- The Mediation Ordinance was enacted in June 2012. By a notice published in the gazette on 19 October 2012, the Secretary for Justice has appointed 1 January 2013 as the day the Ordinance comes into operation.

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	mediation process.	
33	There should be the enactment of a Mediation Ordinance, instead of introducing legislative provisions relating to mediation into the existing Arbitration Ordinance or other Ordinances.	- The Mediation Ordinance enacted in June 2012 is a standalone legislation.
34	There should be an interpretation section in the Proposed Mediation Ordinance 13 setting out the key terminology such as „mediation“ and „mediator“. As regards the expressions „mediation agreement“ and „mediated settlement agreement“, they should be defined if the Proposed Mediation Ordinance is to contain provisions dealing with their enforcement.	- Section 2 of the Mediation Ordinance reflects this recommendation.
35	There should be a section in the Proposed Mediation Ordinance setting out its objectives and underlying principles.	- The objects of the Mediation Ordinance are set out in section 3 of the Ordinance.
36	The Working Group does not recommend the introduction of legislative provisions dealing with enforcement of a mediation agreement. However, if it is considered appropriate to introduce such legislative provisions, the enforcement scheme can be designed along the lines of the scheme for enforcing arbitration agreements (i.e. a stay of	- The Mediation Ordinance does not include such a provision.

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	proceedings pending mediation).	
37	There is no need for the Proposed Mediation Ordinance to include any provisions to deal with the mediation process, save that there should be: (a) a provision dealing with the appointment of the mediator along the line of clause 32 of the Draft Arbitration Bill; and (b) a provision (similar to section 2F of the Arbitration Ordinance) that sections 44, 45 and 47 of the Legal Practitioners Ordinance do not apply so that non-lawyers or foreign lawyers can participate in mediation conducted in Hong Kong.	- Section 7 of the Mediation Ordinance reflects this recommendation.
38	The Proposed Mediation Ordinance should 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.	<ul style="list-style-type: none"> - Section 8 of the Mediation Ordinance sets out the rules of confidentiality and the exceptions to the disclosure of mediation communications. - The Mediation Ordinance Group and the Mediation Task Force have considered and decided against the recommendation to provide for sanctions for breaching the rules of confidentiality after consideration of the feedback received during the public consultation and the relevant laws in other jurisdictions.
39	The issue of whether to grant mediator immunity from civil suits is a controversial one. Although it is not recommended that such immunity be granted, it may be desirable to allow partial immunity, especially in respect of	- The Mediation Ordinance Group and the Mediation Task Force have considered the recommendation and concluded that immunity or partial immunity to mediators are not justifiable as

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	<i>pro bono</i> or community mediation.	mediators do not adjudicate or give advice.
40	It is not necessary to introduce legislative provisions to suspend the running of limitation periods during the mediation process.	- The Mediation Ordinance does not include any provision to suspend the running of the limitation period.
41	It is not necessary to include in the Proposed Mediation Ordinance a statutory mechanism for enforcing mediated settlement agreements. Where necessary, enforcement of mediated settlement agreements can be left to the court as in ordinary cases of enforcement of contracts.	- The Mediation Ordinance does not include such a provision.
42	Whilst not really necessary, there is in principle no objection to include a set of model mediation rules in the Proposed Mediation Ordinance. However, any model mediation rules so included should only serve as a guide and should not be made mandatory. To maintain flexibility of the mediation process, parties should be at liberty to adopt such mediation rules as they deem fit.	- The Mediation Ordinance Group and the Mediation Task Force has considered the recommendation and are of the view that guidelines could be published by the single accreditation body when formed.
43	The question of whether there should be an Apology Ordinance or legislative provisions dealing with the making of apologies for the purpose of enhancing settlement deserves fuller consideration by an appropriate body.	- For future consideration.

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44	Unless there are specific exceptions that can be properly justified, the Government should be bound by the Proposed Mediation Ordinance.	- Section 6 of the Mediation Ordinance provides that the Ordinance applies to the Government
45	Compulsory referral to mediation by the court should not be introduced at this stage, but the issue should be revisited when mediation in Hong Kong is more developed.	- The promulgation of the Practice Direction 31 is an active step taken by the Judiciary to encourage parties to attempt mediations. The recommendation would be revisited subject to future mediation development in Hong Kong.
46	At this stage, the Judiciary should not provide mediation services. However, the question should be revisited in future after consultation with the Judiciary (whether as part of the review of the implementation of the Civil Justice Reform or as a separate review).	- The Judiciary does not provide mediation service. The MIO has been set up by the Judiciary to assist parties to understand mediation.
47	It would not be necessary to include in the Proposed Mediation Ordinance provisions for cross-boundary enforcement of mediated settlement agreements.	- Section 5 of the Mediation Ordinance provides that the Ordinance applies to mediation conducted partly or wholly in Hong Kong.
48	Legal aid should be provided to legally aided persons when they are willing to participate in mediation.	- For the purpose of legal aid, mediation expenses or mediator's fees were treated in the same way as expert's fees and were regarded as disbursements incidental to the legally aided proceedings.