

LCQ20: Mediation Service

Following is a question by Hon Cheung Kwok-che and a written reply by the Secretary for Justice, Mr Wong Yan Lung, SC, in the Legislative Council today (February 23):

Question :

Some members of the public have relayed to me that their demand for mediation service is on the increase, but related systems ranging from training to accreditation of mediators are still confusing, resulting in the public not knowing how to choose mediation service. In this connection, will the Government inform this Council:

(a) given that the Secretary for Justice has indicated that one of the duties of the newly established mediation task force is to develop a system of accrediting mediators, of the details of the work plans of this task force in this regard, and the Government's plan for developing a training system for professional mediators;

(b) given that it has been learnt that there is a huge backlog of mediation cases on Lehman Brothers-related minibonds, and even though many aggrieved investors (victims) are willing to accept mediation service, they generally have to wait for as long as two years, how the Government will solve this bottleneck problem in mediation service so that the bargaining power of the victims will not be undermined; and

(c) given that the Government published the Report of the Working Group on Mediation (the Report) and announced launching a three-month public consultation on February 8, 2010, of the public views collected during consultation; whether the Government will publish a final report on the results of the consultation, and the next step of implementing the recommendations of the Report?

Reply:

President,

(a) At present, accredited mediators practising in Hong Kong are accredited by different mediation accrediting organisations, local and overseas alike, each adopting its own set of training and accreditation requirements. Local service providers which have mediation accreditation include, among others -

- * The Hong Kong International Arbitration Centre;
 - * The Law Society of Hong Kong;
 - * The Hong Kong Mediation Centre;
 - * The Hong Kong Institute of Surveyors;
 - * The Royal Institution of Chartered Surveyors Hong Kong;
- and
- * Hong Kong Institute of Architects.

In early 2010, the Hong Kong Mediation Code was promulgated. The Code is intended to provide a common standard among mediators and has an important quality assurance role. Twenty-one mediation service providers, including those listed above, have adopted the Code.

The Working Group on Mediation set up in 2008 to review, inter alia, the development and provision of mediation services in Hong Kong did examine the accreditation and training of mediators. In its Report published for public consultation in February 2010, one of its recommendations was that the establishment of a single accreditation body would be desirable and could assist in ensuring the quality of mediators, consistency of standards, education of the public about mediation and mediators, enhancing public confidence in mediation services and maintaining the credibility of mediation (Note 1). Nonetheless, it noted that "the time is not right to prescribe a standardised system of accrediting mediators" and "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" (Note 2). The Report recommended that the possibility for establishing such a body be reviewed in five years (Note 3). The majority of the submissions received in respect of the public consultation, however, demanded a single accreditation body to be set up as soon as possible rather than reviewing such a need in five years.

As there are a number of mediation service providers in Hong Kong, local and overseas alike, it is important for the service providers to work together on the formation of an accreditation body and to agree on mutually acceptable professional standards, including training standards. It is noted that there are different approaches which may be considered for achieving the objective. For example, one approach is that of a centralised body which will conduct mediator training and assessments and provide mediators. Another is an umbrella type single accreditation body which would be inclusive of various mediation service providers. It is important to find a model that best suits Hong Kong. Towards this end, the Department of Justice is working closely with the various stakeholders with a view to facilitating the establishing of a single accreditation body and the development of accreditation and training standards in due course.

(b) According to the Hong Kong Monetary Authority (HKMA), it has engaged the Hong Kong International Arbitration Centre (HKIAC) to make available mediation and arbitration services under the Lehman-Brothers-related Products Dispute Mediation and Arbitration Scheme. The HKMA will co-ordinate referrals and pay the share of the fee for these services on behalf of:

* investors whose complaints in relation to the sale of the products have already been referred by the HKMA to the

Securities and Futures Commission (SFC) for it to decide whether to take any further action, or

* investors whose complaint has resulted in a finding against a relevant individual or executive officer by either the HKMA or the SFC.

According to the statistics provided to the HKMA by the HKIAC, since the introduction of the services in November 2008, the HKIAC has received 351 referral cases, of which 291 have been completed. The completed cases consist of 91 successful mediation cases; 9 failed mediation cases; 147 withdrawn cases which had been settled between the banks and the investors before the mediation began; and 44 cases for which the banks did not agree to mediation.

As at mid-February, there are 60 cases being handled by the HKIAC, of which 55 cases are about to start mediation while the remaining 5 are pending banks' agreement to mediation. Of the 60 cases, the earliest one reached the HKIAC in May 2010. No cases have been pending mediation for one or two years. Because mediation is a voluntary process, it can begin only when banks have agreed to mediation. Once both parties agree to mediation, the mediator appointed by the parties will begin the process as soon as practicable and will use best endeavours to conclude the mediation within 21 calendar days of appointment. Experience indicates that the HKIAC was usually able to complete mediation within a month after receiving a bank's agreement to mediation. Some cases required longer time to complete, mainly because it took time to wait for banks' responses on whether they agree to mediation.

(c) Following the publication of the Report of the Working Group on Mediation for public consultation in February 2010, the Department of Justice has received positive and constructive feedbacks on the 48 recommendations. Instead of publishing a further report, we have proceeded directly to further consider those recommendations in the Report which

require further deliberations after taking into account the public feedback received, and to implement those which received general support. A Mediation Task Force chaired by me has now been set up to assist in considering and implementing the various recommendations. In the coming 30 months, we will -

- * work with stakeholders to keep in view the development of the system of accrediting mediators;

- * work out the details of the proposed mediation legislation taking into account the development of the mediation landscape. It is envisaged that the legislation would set out a framework for the conduct of mediation;

- * work with relevant stakeholders to oversee the adoption and implementation of the Hong Kong Mediation Code and to review the operation of the Code in the light of experience;

- * work with mediation service providers, professional bodies, community organisations, other stakeholders and Government Bureaux and Departments to take forward the various public education and publicity initiatives recommended by the Working Group, including building on the Mediate First initiative, conducting matching programmes for community venues and mediation users, and fostering the wider use of community mediation; and

- * work with relevant parties to further explore the opportunities for initiating pilot mediation schemes in different sectors.

Notes:

1. Recommendation 25 of the Report of the Working Group on Mediation, Department of Justice, February 2010. See paras 6.12 to 6.16 at pages 59 to 60.

2. Recommendation 26 of the Report of the Working Group on Mediation. See paras 6.37 to 6.38 at page 64.

3. Recommendation 28 of the Report of the Working Group on Mediation. See paras 6.49 to 6.54 at pages 67 to 69.

Ends/Wednesday, February 23, 2011