

**For discussion on
22 January 2013**

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

Mediation

PURPOSE

This paper provides a briefing on the work undertaken by the Mediation Task Force (Task Force) in implementing the recommendations of the Working Group on Mediation (Working Group).

BACKGROUND

2. The Department of Justice (DoJ) has over the years been heavily involved in the promotion and development of mediation in Hong Kong. We briefed the Legislative Council (LegCo) Panel on Administration of Justice and Legal Services (AJLS Panel) on the progress of the Working Group's deliberations and the main recommendations in its Report in June 2008¹, June 2009² and February 2010³.

3. In April 2011, we briefed the AJLS Panel on the work being undertaken by the Task Force⁴ to implement the recommendations in the Working Group's Report. The Task Force was assisted by three groups working in three specific areas, namely (i) the regulatory aspect, which

¹ See LC Paper No. CB(2)2327/07-08(04)

² See LC Paper No. CB(2)1904/08-09(07)

³ See LC Paper No. CB(2)950/09-10(06)

⁴ See LC Paper No. CB(2)1480/10-11(08)

mainly dealt with matters concerning the Mediation Ordinance; (ii) accreditation and training standards; and (iii) public education and publicity. By October 2012, the Task Force had by and large fulfilled the work set out in its terms of reference in the three areas. The work of the Task Force in respect of the three areas is summarized below.

MEDIATION ORDINANCE

4. The Mediation Bill (the Bill) was introduced to LegCo on 30 November 2011. The Bills Committee formed to scrutinise the Bill held seven meetings to study the Bill in detail and considered views received from more than 40 organizations or individuals⁵. The second reading of the Mediation Bill was resumed on 15 June 2012 and it was passed on the same day.

5. The objects of the Mediation Ordinance (Cap. 620) (the Ordinance) are “to promote, encourage and facilitate the resolution of disputes by mediation” and “to protect the confidential nature of mediation communications”⁶. The key provision of the Ordinance concerns confidentiality of mediation communications, which is a crucial aspect of mediation.

6. By a notice published in the gazette on 19 October 2012, the Secretary for Justice appointed 1 January 2013 as the day the Ordinance came into operation⁷. In other words, the Ordinance has already come into operation.

⁵ See Report of the Bills Committee on Mediation Bill dated 10 May 2011 (LC Paper No. [CB\(2\)1943/11-12](#))

⁶ Section 3 of the Ordinance.

⁷ Section 1(2) of the Ordinance and LN 167 of 2012. A Subcommittee on Mediation Ordinance (Commencement) Notice (the Subcommittee) was formed to study the Commencement Notice. After holding two meetings on 6 and 16 November 2012, the Subcommittee did not object to the Commencement Notice and did not propose any amendment to it. See LC Paper No. CB(4)191/12-13 for Report of the Subcommittee.

ACCREDITATION

7. Quality of mediators is crucial in maintaining public confidence in the mediation process. Accreditation and training, in turn, are important to ensure the good quality of mediators. The majority of the submissions received during the public consultation of the Working Group's Report urged for the establishment of a single accreditation body as soon as possible.

8. The Hong Kong Mediation Accreditation Association Limited (HKMAAL) (香港調解資歷評審協會有限公司), a non-profit-making company limited by guarantee, was incorporated on 28 August 2012. The founder members of HKMAAL are the Hong Kong Bar Association, the Law Society of Hong Kong, the Hong Kong International Arbitration Centre and the Hong Kong Mediation Centre. These professional bodies are the major stakeholders and their members are closely involved in the development and promotion of the use of mediation in Hong Kong. In particular, the Law Society of Hong Kong, the Hong Kong International Arbitration Centre and the Hong Kong Mediation Centre have much experience in operating their respective accrediting systems.

9. HKMAAL was established as a non-statutory, industry-led body with a view to becoming the premier accreditation body for mediators in Hong Kong, discharging accreditation and disciplinary functions. Whilst it will set standards for training and accreditation, HKMAAL itself will not provide training courses. Members of HKMAAL are organizations, and it is intended that a member of HKMAAL would have to abandon its own accreditation system once being admitted (so as to eventually build up a single accreditation system in Hong Kong).

PUBLIC EDUCATION AND PUBLICITY

10. The Task Force had, in collaboration with the Judiciary, other Government Departments, mediation bodies and stakeholders, implemented various initiatives, including the production of an Announcement in the

Public Interest (API) which was broadcast in December 2011⁸, and the holding of the “Mediate First” Conference on 11 and 12 May 2012.

11. The “Mediate First” Conference was held in May 2012 with the support of DoJ, the Judiciary and the Hong Kong Mediation Council of the Hong Kong International Arbitration Centre. The conference 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 attended each of the two-day conference, and the lively discussions at the conference clearly indicated stakeholders’ strong support for the further promotion and development of mediation and the establishment of a single accreditation body for mediators in Hong Kong in order to ensure the standard of mediators.

WAY FORWARD

12. The Task Force has to date implemented most of the key recommendations and by and large fulfilled its Terms of Reference. A list of the recommendations in the Report and the status of their implementation are summarized at **Annex A**.

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13. At the last meeting of the Mediation Task Force meeting held on 20 September 2012, Members agreed and strongly supported the continuation of the present efforts initiated by DoJ to foster the development of mediation in Hong Kong.

14. Upon wrapping up of the work of the Task Force, a new Steering Committee on Mediation (Steering Committee) chaired by SJ and with cross-sector membership has been set up to further promote and develop mediation in Hong Kong. The Terms of Reference of the Steering Committee and its Membership are at **Annex B**. To assist the Steering Committee, three Sub-committees have been formed with respective terms

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⁸ The theme of the API was “Mediate First to Resolve your Disputes” with the message conveyed that when two arguing sides choose to litigate, the knot in their dispute may get even tighter, but with mediation, the knot can be untied.

of reference to monitor the implementation of the Mediation Ordinance and the accreditation and training of mediators, and to advise on ongoing and new initiatives to promote and publicize the wider use of mediation. The Steering Committee will continue with the Administration's efforts to promote and develop mediation in Hong Kong.

Department of Justice
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