

**For discussion
on 21 July 2011**

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

**Development of Mediation Services
Proposed Mediation Bill**

Purpose

At the meeting of the Panel on Administration of Justice and Legal Services (“Panel”) on 19 April 2011, the Department of Justice (“DoJ”) provided a briefing on the work being undertaken by DoJ to implement the recommendations of the Working Group on Mediation (“Working Group”). DoJ indicated that the Administration might seek to introduce a Mediation Bill into the Legislative Council towards the end of this year.

Background

2. The Mediation Task Force (“Task Force”), comprising members of Judiciary, the legal profession and major mediation service providers, has been set up to consider those recommendations of the Working Group which required further deliberations after taking into account the public feedback received and to implement those which received general support. In respect of the recommendation that Hong Kong should have legislation on mediation to provide a proper legal framework for the conduct of mediation in Hong Kong without hampering the flexibility of the mediation process¹, the Task Force together with its Mediation Ordinance Group have carefully considered how the recommendation can be implemented, taking into account the feedback received from members of the public and stakeholders during the 3 months’ public consultation held in 2010 following the release of the Report of the Working Group.

¹ Recommendation 32 of the Report of the Working Group on Mediation, Department of Justice, February 2010. See paras.7.4 to 7.26 at pages 74 to 80.

Proposed Mediation Bill

3. As reported to the Panel by DoJ on 19 April 2011, the Administration intends to introduce the proposed Mediation Bill into the Legislative Council towards the end of this year. The proposed Mediation Bill will provide a regulatory framework in respect of certain aspects of the conduct of mediation in Hong Kong.

4. It is intended that the proposed Mediation Bill will achieve the following objectives:-

- (a) to promote, encourage and facilitate the resolution of disputes by mediation; and
- (b) to protect the confidential nature of mediation.

5. It is envisaged that the proposed Mediation Bill may make provisions for the following:-

- (a) the meaning of mediation;
- (b) the default appointment of mediators;
- (c) confidentiality of mediation communications; and
- (d) admissibility of mediation communications in evidence.

6. It is intended that the proposed Mediation Bill will apply to mediation under an agreement in writing to mediate if the place of mediation is Hong Kong. Without affecting the flexibility of mediation or fettering its development, a provision to the effect that a mediator will not have the power to adjudicate will be considered. While mediation communications will be confidential, consideration will be given to certain exceptions including those applicable for the purposes of enforcing or challenging a mediated settlement agreement.

7. An industry-led company limited by guarantee will be referred to in the proposed Mediation Bill as default appointing authority of mediators.² It is envisaged that this company will eventually take on the role of the premier accreditation body for mediators in Hong Kong. However, at this stage, it is considered prudent to facilitate the establishment of this industry-led initiative before consideration is given to provide for any statutory provisions required to support the functions and operation of the body as a single accreditation body.

Consultation

8. We have conducted two consultation meetings on the working draft provisions with mediation stakeholders on the 29 and 30 June 2011. The Law Society of Hong Kong and the Hong Kong Bar Association are generally in support of the draft Mediation Bill and have put forward comments on how it can be improved upon. Constructive comments have also been received from other stakeholders.

The Way Forward

9. The Task Force will review the working draft provisions in the light of the comments received and the Administration will seek to introduce the Mediation Bill into the Legislative Council towards the end of this year.

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July 2011

² The power to appoint by default will be engaged if the person who is given the power to appoint by virtue of an agreement refuses to make the appointment or does not appoint within the time specified to do so in the agreement or, if no time is so specified, within a reasonable time after being requested by any party to the agreement to appoint.