



# Hong Kong Mediation Centre

## 香港和解中心

17 July, 2009.

Dr. Hon. Ng,

**Re: Reform of the Law of Arbitration and the draft Arbitration Bill**

Hong Kong Mediation Centre (HKMC) is the only non-profit organization which has been promoting mediation for the last ten years in Hong Kong. Please find enclosed our 10<sup>th</sup> Anniversary booklet for your easy reference. We truly believe that mediation can assist Hong Kong in becoming a more harmonious society and through this belief that we had continued to promulgate mediation as an alternate means to resolve disputes in our society.

It has come to our attention that the amendment to the present Arbitration Bill has included clauses that affects the future development of mediation in Hong Kong. The first reading went through LEGCO on 8 July, 2009. It is HKMC's position that we support the amendment in principle.

However, our society and other professional institutes have progressed substantially throughout these years in both arbitration and mediation. Comments from the Hong Kong Institute of Surveyors (HKIS) and Mr. Anderson Chan, Barrister both indicate during consultation that under Clause 13 of the Bill, HKIAC is no longer the only competent authority to appoint arbitrator in Hong Kong. Other professional institutes including the Law Society, Hong Kong Institute of Architects, Hong Kong Institute of Engineers, Hong Kong Institute of Arbitrators, the Hong Kong Bar Association, Hong Kong Institute of Construction Managers, HKIS, and HKMC are all very experienced in handling appointment for domestic arbitration and mediation. They have been administrating their own appointment systems in the past years and frequently making respective appointments. It is therefore other organizations should also be included as competent appointing authorities to the appointment of arbitrators or mediators.

Furthermore, it is our belief that the whole amendment bill must respect end users' decision in

Room 1304, 13/F, Gold & Silver Commercial Building, 12-18 Mercer Street, Central, Hong Kong

Tel : (852) 2866 1800 Fax : (852) 2866 1299

Website: [www.mediationcentre.org.hk](http://www.mediationcentre.org.hk) E-mail: [admin@mediationcentre.com.hk](mailto:admin@mediationcentre.com.hk)



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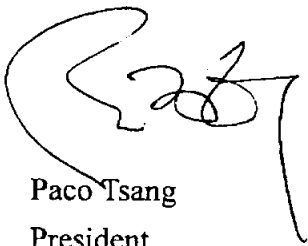
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the process of appointment of the arbitrator/mediator. If parties fail to appoint their arbitrator/mediator, it is still the parties' decision to decide where they want their arbitrator/mediator to be appointed from. If parties further fail to agree on the organization of appointment then parties may be referred to HKIAC for appointment. The whole amendment of the Bill is intended to be user friendly and therefore end users' decision needs to be respected.

In the amended Bill, Division 2, Clause 32, regarding the appointment of mediator, when parties fail to appoint their own mediator, it is again only referred to HKIAC for appointment. We believe that HKMC has been promoting and making appointment for mediation for the last ten years and the only NGO which has full time staff for administrating and promoting mediation in Hong Kong. We believe that HKMC will be more suited for this purpose. It is most regretful to see that the Working Party does not even have representatives of the HKMC present when mediation was being discussed and is included in the amendment of the Arbitration Bill. It is therefore our belief that HKMC must be included as competent authority to make such appointment when parties fail to agree on their mediator. If not, parties are not given the option of choosing their own appointment authority. We therefore appreciate that you as representatives of our community to take these two important amendments into consideration and make necessary amendment in Division 2 of the proposed Bill accordingly.

We look forward to your favorable reply and if you have any questions, please feel free to contact us accordingly.

Sincerely Yours,



Paco Tsang  
President