

10 January 2012

(By mail and by e-mail: ftsang@legco.gov.hk)

Ms. Flora Tai
Clerk to Bills Committee
Legislative Council Complex,
1 Legislative Council Road, Central,
Hong Kong.

Dear Ms. Tai,

Bills Committee on Mediation Bill
Meeting on 13 January 2012

Thank you for your letter dated 4 January 2012 inviting Hong Kong Mediation Centre “HKMC” to present its view on the Mediation Bill.

To begin with, we like to accentuate our full support for the positive intent of the Mediation Bill “the bill” to promote, encourage and facilitate the resolution of disputes by mediation; as well as to protect the confidential nature of communications among the parties and mediators throughout the mediation process. HKMC would like to present its views on the confidentiality of mediation communications and liability of mediator for your consideration.

Confidentiality of Mediation Communications

According to the bill, Mediation Communications cannot be disclosed unless Section 8(2), 8(3), 9 and 10 apply. HKMC considers the coverage is too wide. Mediation Communications (such as submissions, expert reports, arguments etc.) are likely required to be disclosed in subsequent proceeding if mediation fails. The principle of confidentiality of Mediation Communications is to avoid a person to disclose mediation communications made by others but not by himself/ herself. HKMC is of the opinion that a subsection shall be introduced under Section 8(2) that “A person may disclose a mediation communication if the communication is made by himself/herself.”



Exclusion of Liability/ Immunity

HKMC is of the opinion that “Mediator shall be liable in law for the consequences of doing or omitting to do an act in the exercise or performance, or the purported exercise or performance, of the function **only if** it is proved that the act was done or omitted to be done dishonestly’ shall be introduced which is similar to Section 104 of Arbitration Ordinance (Chapter 609). Without such protection, mediators may be at risk and thus discourage individual to become a mediator.

We would like to reiterate our support to promote, encourage and facilitate the resolution of disputes by mediation. Your kind attention and careful consideration to the above views is critical to setting the right direction and continuous ethic to bring mediation to a success in the Hong Kong community.

We hope that the above comments can help the legislative council in reviewing the bill. Should you have any queries, please feel free to contact us.

Yours sincerely,

TANG Chi-wang
President
Hong Kong Mediation Centre