



香港建築師學會
The Hong Kong Institute of Architects

Views of the Hong Kong Institute of Architects on Mediation Bill

In order to facilitate and promote the use of mediation as an alternative dispute resolution in Hong Kong, the Hong Kong Institute of Architects is in support of establishment of Mediation Ordinance.

Upon perusal of the Mediation Bill (the “Bill”), we have the following comments:

Clause 3: Interpretation – Mediation Communication

The term “mediation communication” is widely defined and apparently it included also the settlement agreement generated as a result of mediation. No person is allowed to disclose the mediation communication as provided under Clause 9 of the Bill.

Such a wide interpretation might cause practical difficulties to parties and mediators. For example, the family members of a party may wish to know how the case was settled. Certainly there are also other common situations where the content of settlement agreement is needed to be disclosed. These are all prohibited under the Bill.

We recommend that the confidentiality of settlement agreement to be regulated by parties’ agreement rather than by legislation.

Clause 5: Mediation to Which This Ordinance Applies

This clause provides that the Ordinance does not apply to mediation conducted under another enactment to the extent that it is inconsistent with that enactment.

In this drafting stage, we recommend the Department of Justice to consider what the existing inconsistency is and resolve it in the Mediation Ordinance rather than relying on such a general provision which will cause uncertainty in the future.

Clause 6: Applications to the Government

We believe “Government” means the “Government of the Hong Kong Special Administrative Region”.



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Clause 7: Default Appointment of Mediator

This clause is based on the default appointment procedure under Arbitration Ordinance. It covers only situation where the appointing authority fails to act.

We recommend extending the clause to cover another commonly happened situation where the appointing authority does not exist or cease to exist after the agreement to mediate is entered.

Clause 9: Confidentiality of Mediation Communications

The non-disclosure requirement is the gist of the Bill. However, the clause in its present form would create a lot uncertainties and difficulties. For example, under this clause, a lay person attending the mediation without lawyers may not be allowed to disclose any communication made in the mediation in order to get legal advice, even if those matters are admissible under Clause 10.

As to the exceptions under Clause 9, we understand the rationale behind and do agree that exceptions are required. However, those exceptions are not precise enough to give satisfactory result. For example, a misrepresentation or duress made in the course of mediation is not covered either in cl. 9(2)(d) or (e). Also, a person might be justified to make disclosure to prevent freezing order against his property under cl.9(b).

Clause 10: Admissibility of Mediation Communications in Evidence

This clause provides very wide discretion for the Court to admit mediation communications in evidence. It appears that the clause is aimed to give protection in addition to the existing without prejudice privilege in common law.

Instead of relying on “any other relevant circumstances or matter”, we would recommend more specific guidelines to be given about when a communication is admissible. More certainty is required in order to encourage the parties to speak freely in mediation.