

香 港 調 解 會
The Hong Kong Mediation Council
(a division of the Hong Kong International Arbitration Centre)

19 March 2011

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

Dear Sirs

Submissions to the Bills Committee

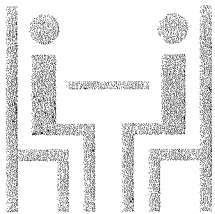
We note that various comments have been submitted to the Bills Committee after the Mediation Bill has been introduced into the Legislative Council. We are particularly concerned about the comments made by the Hong Kong Association of Banks (“HKAB”).

We understand that HKAB suggests that mediation administered by the Financial Dispute Resolution Centre (the “FDRC Scheme”), to which financial institutions (“FIs”) who are Authorized Institutions of Monetary Authority (“HKMA”) and Licensed Corporations under the Securities and Futures Commissions (“SFC”) are members, should be excluded from the Mediation Ordinance, on the premises that:

- Their joining of the FDRC Scheme is not **voluntary**; and
- The FDRC Scheme is quasi-statutory.

We do not consider the premises above are good reasons to carve the FDRC Scheme out of the Mediation Ordinance. Our reasons are set out below:-

- (1) It is clear from overseas jurisdictions that **referral** to mediation need not be voluntary. In fact, many mandatory mediation schemes are very successful, especially for court mandated mediation schemes. The Report on Mediation published by the Secretary for Justice’s Working Group on Mediation in 2010 made clear that compulsory referral should be revisited in future. The Mediation



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Bill at the moment does not expressly spell out whether **referral** to mediation is voluntary or compulsory. We consider this is necessary to leave room for future development of mediation in Hong Kong.

- (2) The use of the the term '**voluntary**' by the HKAB may be somewhat misleading in that it gives an impression to the public that FIs are forced to settle disputes with their customers by way of mediation. This is not the case. We understand that whilst referral to the FDRC Scheme is compulsory on the part of the FIs if the claimant wished to refer a case to the FDRC, there is no coercion whatsoever by the mediator, FDRC or any entity as to whether they will settle the case. It is entirely up to the FIs to decide the way they wish to negotiate during the mediation process and the terms in which they wish to settle the case.
- (3) It is true that the FDRC Scheme is to be administered by an institution but this *per se* is not a sound reason to exclude it from the Mediation Ordinance. There are plenty other schemes such as those administered by the Hong Kong Arbitration International Centre, the International Chamber of Commerce and the Joint Mediation Helpline Office which also fall within the ambit of the Mediation Bill notwithstanding these schemes are administered in accordance with their respective terms of reference and mediation rules. It is incorrect to label the FDRC Scheme as '*quasi-statutory*'.

We reiterate our support for the enactment of a Mediation Ordinance and that it should apply to the FDRC Scheme in order to avoid unnecessary confusion and to properly safeguard public interest.

Yours sincerely

Chairman

Hong Kong Mediation Council