

24 April, 2012

Legislative Council Secretariat (Council Business Division 2)
Legislative Council
Central
Hong Kong
Attn: Bills Committee on Mediation Bill

Dear Sirs/Madams,

Re: Meeting of Bills Committee on Mediation Bill on 25 April, 2012

On behalf of Hong Kong Mediation Council of Hong Kong International Arbitration Centre, we write to express our views concerning the Mediation Bill (LC Paper No. CB(3)154/11-12) ("the Bill").

In our experience of mediation, one of major areas of usual concern is confidentiality, which is covered primarily under section 8 in the Bill.

In section 8 of the Bill, disclosure of mediation communication is prohibited, save and except the situations as provided by subsections 8(2) and (3). Subsection (2) basically covers the situations of consent; communication already in public domain; communications otherwise subject to discovery; prevention or minimization of injury or serious harm; research, evaluation or educational purposes and imposition by law. Subsection (3) covers the situations of leave of the court or tribunals.

We are of the view that the situations covered in the Bill are sufficient for the purposes of protection of the users' and the mediator's essential interests and for the advancement of mediation practice through research, evaluation and education. In particular, the way in which they are drafted is in line with international practice and similar provisions could be found in other jurisdictions, such as Australia and Canada.

We understand that a single mediation accreditation body (the Hong Kong Mediation Accreditation Association Limited) will be set up in the near future. In line with the above provisions, we are of the view that the accreditation body will be in a very good position to promulgate and administer the associated requirements concerning the disclosure of mediation communications in the situations of research, evaluation and educational purposes, which requirements will change with time and the details of the requirements should be prepared through close communication with the different educational and relevant bodies. A possible means for imposition of the detailed rules is through a common code of conduct to be applied to all practising mediators in Hong Kong.

We are also of the view that the present way of setting out the principles in the Bill (instead of the detailed requirements) in this regard is appropriate as this is consistent generally with the way in which similar laws are set out in other jurisdictions. We see that it is appropriate for the Bill to be passed and take effect in its present form and the unified guidelines to be administered by the Hong Kong Mediation Accreditation Association Limited could be dealt with after the Bill has taken effect as law as the formation of the guidelines will be a continuing and ever changing process.

We are in full support of the Bill in its present form.

Yours faithfully,

CHAN Bing Woon
Chairperson, Hong Kong Mediation Council
Hong Kong International Arbitration Centre

LEUNG Hing Fung
Vice-Chairperson, Hong Kong Mediation Council
Hong Kong International Arbitration Centre