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Dr. the Honourable Margaret Ng
Chairman
Bills Committee on Mediation Bill
Legislative Council Complex
1 Legislative Council Road, Central
Hong Kong

My dear Margaret,

Re: Mediation Bill

I refer to the submissions to the Bills Committee by the Hong Kong Association of Banks ("HKAB") dated 20th January, 2012, and 3rd February, 2012, on the Mediation Bill, and wish to put on record my full support for the positions expressed therein.

I in particular wish to emphasise the banking industry's concern that the present Bill has not excluded mediation conducted under the Financial Dispute Resolution Centre ("FDRC") by specifying the FDRC within the scope of Schedule 1, Processes to Which this Ordinance Does Not Apply. In response (LC Paper No. CB(2)894/11-12(01)), the Administration advised that the processes currently specified in Schedule 1 to the Bill are self-contained statutory schemes, while the rules of the FDRC are administrative in nature. Thus, the Bill should apply to mediation under the FDRC.

The Administration's argument takes form over substance, and fails to appreciate the specific circumstances of the FDRC. A key feature of the FDRC is the compulsory, rather than consensual, nature of mediation on the part of financial institutions regulated by the Hong Kong Monetary Authority and the Securities and Futures Commission. Note also that the FDRC is self-contained, in that it will be governed by comprehensive rules covering acceptance, mediation and arbitration of cases under a board with representatives of the Government, the relevant financial regulators and relevant stakeholder groups. To bring the FDRC under the scope of the present Bill would be to add an extra and unnecessary layer of regulation, and run contrary to the principles under which the FDRC was established.

Finally, may I refer the Bills Committee to the views of the industry articulated in the HKAB submissions mentioned above.

If I may be of any assistance in this regard, please do not hesitate to let me know.

Yours sincerely,

c.c. Ms Julia Leung, Under Secretary of FSTB
Ms Anita Fung, Chairman, HKAB