

**立法會**  
**Legislative Council**

Ref : CB2/BC/2/11

LC Paper No. CB(2)1469/11-12  
(These minutes have been seen  
by the Administration)

**Bills Committee on Mediation Bill**

**Minutes of the third meeting**  
**held on Friday, 13 January 2012, at 10:45 am**  
**in Conference Room 3 of the Legislative Council Complex**

**Members present** : Dr Hon Margaret NG (Chairman)  
Hon LAU Kong-wah, JP  
Prof Hon Patrick LAU Sau-shing, SBS, JP  
Hon CHEUNG Kwok-che

**Members absent** : Hon Albert HO Chun-yan  
Hon Miriam LAU Kin-ye, GBS, JP  
Hon Abraham SHEK Lai-him, SBS, JP  
Hon Cyd HO Sau-lan

**Public Officers attending** : Department of Justice  
  
Mr Simon LEE  
Deputy Law Officer (Civil Law)  
  
Ms Sou CHIAM  
Deputy Principal Government Counsel  
  
Miss Shandy LIU  
Senior Government Counsel  
(Law Drafting Division)  
  
Miss Venus CHEUNG  
Government Counsel

**Attendance by Invitation** : CEDR Asia Pacific  
  
Mr Danny McFadden  
Managing Director

RICS Hong Kong

Mr Gilbert KWOK  
Chairman of Dispute Resolution Professional  
Group Committee

Professional Mediation Consultancy Centre

Miss Annita MAU  
Director

Methodist Centre

Ms LEE Koon-mei  
Service Co-ordinator

Centre for Restoration of Human Relationships

Miss PAU Choi-chun  
Senior Project Officer

Democratic Alliance for the Betterment and Progress  
of Hong Kong

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Mr Daniel CHOW  
Convener of Mediation Group

Hong Kong Society of Accredited Mediators

Mr Vincent CHAN  
Spokesman

The Democratic Party

Mr Andrew CHIU Ka-yin  
Convener of Community Mediation Task Force

Rainbow Consultancy Limited

Miss Angel HO Wai-yuk  
Director

Hong Kong Family Welfare Society

Ms Amarantha YIP Yun-wan  
Head of Service

Hong Kong Construction Association

Mr Dean Lewis  
Legal Advisor

The Council of Social Development

Mr Nelson LEUNG  
Consultant

The Council of Mediation Development

Mr Henry CHIU  
Secretary

Li & Partners

Mr Edward CHEUNG  
Consultant

Construction Industry Council

Mr Ivan WONG  
Senior Manager – Council Services

Tru-Tight & Associates Limited

Mr WU Chi-cheung  
Managing Director

Hong Kong Construction Arbitration Centre

Miss CHI Man-ho  
Senior Manager

Faculty of Law of the Chinese University of Hong Kong

Prof Martin Doris  
Assistant Professor

Joint Mediation Helpline Office

Mr Alex LAI  
Alternate Director

Hong Kong Institute of Construction Managers

Mr Honby CHAN Siu-hong  
Honorary Secretary

Hong Kong Catholic Marriage Advisory Council

Ms CHOW Siu-ling  
Mediation Service Supervisor

K M Lai & Li

Mr MA Siu-lam  
Partner Solicitor

Hong Kong Mediation Centre

Mr TANG Chi-wang  
President

Faculty of Law of the University of Hong Kong

Ms Anna KOO  
Assistant Professor

The Chartered Institute of Arbitrators (East Asia Branch)

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Mr YEUNG Man-sing  
Vice Chairman / Secretary

EC Harris (HK) Ltd

Mr Ivan CHEUNG  
Partner

Society of Certified Mediators and Negotiators, Ltd

Mr Charles CHAN  
Founding & Present Chairman

School of Law of the City University of Hong Kong

Dr YANG Fan  
Assistant Professor

Hong Kong Bar Association

Mr Robin Egerton

Hong Kong Mediation Council

Mr CHAN Bing-woon  
Committee Chairman

The Law Society of Hong Kong

Mr Norris YANG  
Member of the Mediation Committee

Dr James CHIU Shing-ping  
Accredited Mediator

**Clerk in attendance** : Miss Flora TAI  
Chief Council Secretary (2)3

**Staff in attendance** : Mr YICK Wing-kin  
Assistant Legal Adviser 8

Ms Wendy LO  
Council Secretary (2)3

Mrs Fonny TSANG  
Legislative Assistant (2)3

Ms Avil MA  
Clerical Assistant (2)3

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Action

**I. Meeting with deputations and the Administration**

[LC Paper Nos. CB(2)645/11-12(03), CB(2)802/11-12(01) to (14),  
CB(2)809/11-12(01) to (06) and CB(2)819/11-12(01) to (04)]

The Bills Committee received views from a total of 32 individuals and organizations (index of proceedings attached at **Annex**).

**Admin** 2. The Administration was requested to provide a written response to the views received by the Bills Committee on the Bill.

Action

3. There being no other business, the meeting ended at 12:45 pm.

*(Post-meeting note: The next meeting with the Administration was scheduled for 1 February 2012 at 8:30 am)*

Council Business Division 2  
Legislative Council Secretariat  
21 March 2012

**Proceedings of the third meeting of the  
Bills Committee on Mediation Bill  
on Friday, 13 January 2012, at 10:45 am  
in Conference Room 3 of the Legislative Council Complex**

<b>Time Marker</b>	<b>Speaker(s)</b>	<b>Subject(s)</b>	<b>Action required</b>
000328 - 000541	Chairman	Opening remarks	
000542 - 000949	Chairman CEDR Asia Pacific	Presentation of views [LC Paper No. CB(2)819/11-12(01)]	
000950 - 001028	Chairman RICS Hong Kong	Presentation of the view that a simple mechanism similar to the enforcement of an arbitration award should be included in the Bill.	
001029 - 001315	Chairman Professional Mediation Consultancy Centre	Presentation of views [LC Paper No. CB(2)802/11-12(01)]	
001316 - 001544	Chairman Methodist Centre	Summary of views presented by Methodist Centre –  (a) the Bill was supported;  (b) elements of mediation between offender and victims of crime, in particular the provision for sanctions for breaching the rule of confidentiality to protect the interests of the parties, should be included in the Bill; and  (c) the content of "reasonable grounds" under Clause 8(d) should be clarified.	
001545 - 001612	Chairman Centre for Restoration of Human Relationships	Expression of the view that the Centre for Restoration of Human Relationships would keep in view whether the current practice of mediation conducted at school level would be affected by the enactment of the Bill.	
001613 - 001854	Chairman Democratic Alliance for the Betterment and Progress of Hong Kong	Summary of views presented by Democratic Alliance for the Betterment and Progress of Hong Kong –  (a) the early enactment of the Bill was supported;  (b) the single non-statutory industry-led mediation accreditation body for mediators	

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		<p>should be established in a transparent, fair and open manner;</p> <p>(c) the definition of "agreement to mediate" in Clause 2 shall prevail in case of any divergence of interpretation of the term in other parts of the Bill;</p> <p>(d) the definition of "meaning of mediation" in Clause 4 should be further clarified to avoid any inadvertent breach of law by untrained mediators in the community;</p> <p>(e) provisions for liability of mediators for dishonest acts should be included in the Bill with reference to section 104 of the Arbitration Ordinance;</p> <p>(f) provisions for immunity for mediators from civil liability should be provided in the Bill;</p> <p>(g) Clause 7 of the Bill might create conflict of interests between mediators and solicitors; and</p> <p>(h) Clause 8 of the Bill was supported.</p>	
001855 - 002208	Chairman Hong Kong Society of Accredited Mediators	Presentation of views [LC Paper No. CB(2)802/11-12(02)]	
002209 - 002607	Chairman The Democratic Party	Presentation of views [LC Paper No. CB(2)802/11-12(03)]	
002608 - 002730	Chairman Rainbow Consultancy Limited	<p>Summary of views presented by Rainbow Consultancy Limited –</p> <p>(a) the Bill was supported; and</p> <p>(b) the Bill should cover the promotional work of mediation in order to encourage the public to resolve disputes by mediation.</p>	
002731 - 003047	Chairman Hong Kong Family Welfare Society	Presentation of views [LC Paper No. CB(2)819/11-12(02)]	
003048 - 003347	Chairman Hong Kong Construction Association	Presentation of views [LC Paper Nos. CB(2)645/11-12(03)]	



Time Marker	Speaker(s)	Subject(s)	Action required
003348 – 003438	Chairman The Council of Social Development	Presentation of views [LC Paper Nos. CB(2)802/11-12(04) and 809/11-12(01)]	
003439 - 003729	Chairman The Council of Mediation Development	Presentation of views [LC Paper Nos. CB(2)802/11-12(05) and 809/11-12(02)]	
003730 - 004124	Chairman Li & Partners	Presentation of views [LC Paper No. CB(2)850/11-12(01)]	
004125 - 004329	Chairman Construction Industry Council	Summary of views presented by Construction Industry Council –  (a) the Bill was supported;  (b) provisions for immunity for mediators from civil liability should be provided in the Bill as some experienced part-time mediators might not be able to take out professional indemnity insurance due to the high cost incurred; and  (c) a single independent mediation accreditation body should be established for the development of the accreditation system for mediators.	
004330 - 004725	Chairman Tru-Tight & Associates Limited	Presentation of views [LC Paper No. CB(2)802/11-12(06)]	
004726 - 004749	Chairman Hong Kong Construction Arbitration Centre	Presentation of the view that the Bill was fully supported by the Hong Kong Construction Arbitration Centre.	
004750 - 005111	Chairman Professor Martin Doris Faculty of Law of the Chinese University of Hong Kong	Summary of views of Professor Martin Doris –  (a) consideration should be given to extending the scope of the Bill to cover conciliation with a view to clarifying the differences between mediation and conciliation and enhancing the development of codes of conduct of mediators and conciliators; and  (b) the increasing trend of the conduct of mediation and conciliation by electronic means should be taken into account in drafting the Bill.	

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005112 - 005235	Chairman Joint Mediation Helpline Office	Summary of views presented by Joint Mediation Helpline Office –  (a) the early enactment of the Bill was supported; and  (b) provisions dealing with civil liability and sanctions for breaching the rules of confidentiality and privilege should be included in the Bill.	
005236 - 005511	Chairman Hong Kong Institute of Construction Managers	Presentation of views [LC Paper No. CB(2)802/11-12(07)]	
005512 - 005815	Chairman Hong Kong Catholic Marriage Advisory Council	Presentation of views [LC Paper No. CB(2)809/11-12(05)]	
005816 - 010002	Chairman K M Lai & Li	Presentation of views [LC Paper No. CB(2)802/11-12(08)]	
010003 - 010223	Chairman Hong Kong Mediation Centre	Presentation of views [LC Paper No. CB(2)802/11-12(09)]	
010224 - 010542	Chairman Faculty of Law of the University of Hong Kong	Summary of views presented by Faculty of Law of the University of Hong Kong –  (a) the Bill was strongly supported as it provided an essential framework for the conduct of mediation without hampering its flexibility;  (b) the definition of "agreement to mediate" in Clause 2 should be extended to include agreement made orally or by conduct;  (c) whether the impartial mediator should be accredited or not should be specified in the definition of "meaning of mediation" in Clause 4;  (d) the essence that a genuine attempt was made by the parties concerned to reach an agreement to resolve a dispute should also be included in the definition of "meaning of mediation" in Clause 4;	

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		<p>(e) the implication of Clause 8(2) on the common practice of including a contractual provision in an agreement to mediate that required the parties to a dispute to comply with the rule of confidentiality should be clarified; and</p> <p>(f) it was odd that the consent of a person other than a party to the mediation or the mediator should be obtained for the disclosure of a mediation communication given that the rule of confidentiality should be applied to the parties to a dispute only.</p>	
010543 - 010614	Chairman The Chartered Institute of Arbitrators (East Asia Branch)	Presentation of views [LC Paper No. CB(2)809/11-12(03)]	
010615 - 010941	Chairman EC Harris (HK) Ltd	<p>Summary of views presented by EC Harris (HK) Ltd –</p> <p>(a) the need to enact a mediation legislation was queried given that there were very few complaints relating to mediation; and</p> <p>(b) the inclusion of the provision for immunity to mediators in the Bill was worth consideration.</p>	
010942 - 011342	Chairman Society of Certified Mediators and Negotiators, Ltd	Presentation of views [LC Paper No. CB(2)802/11-12(10)]	
011343 - 011654	Chairman School of Law of the City University of Hong Kong	<p>Summary of views presented by School of Law of the City University of Hong Kong –</p> <p>(a) the Bill was supported as it had dealt with the confidentiality and admissibility of mediation communication in depth; and</p> <p>(b) Hong Kong should adopt a mechanism similar to the procedure under the People's Mediation Law of the People Republic of China whereby parties might jointly apply to the People's Court for judicial confirmation of a mediation agreement reached by a people's mediation commission.</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
011655 - 011723	Chairman Hong Kong Bar Association	Presentation of the view that the Bill had provided a proper framework for the conduct and development of mediation in Hong Kong and was supported by the Hong Kong Bar Association.	
011724 - 011833	Chairman Hong Kong Mediation Council	Presentation of the view that the Bill was fully supported by the Hong Kong Mediation Council.	
011834 - 012242	Chairman The Law Society of Hong Kong	Presentation of views [LC Paper No. CB(2)819/11-12(03)]	
012243 - 012840	Chairman Dr James CHIU Shing-ping	Presentation of views [LC Paper No. CB(2)802/11-12(11)]	
012841 - 013433	Chairman Administration	<p>The Administration's preliminary response to views of deputations as follow –</p> <ul style="list-style-type: none"> <li>(a) the views expressed by the deputations on the draft Mediation Bill during the public consultation exercise in June 2011 had been carefully considered and incorporated into the Bill as far as practicable by the Administration;</li> <li>(b) the Bill was drafted in a concise manner with a view to providing a statutory framework for the conduct of mediation in Hong Kong without hampering the flexibility of the mediation process as recommended by the Working Group on Mediation chaired by the Secretary for Justice;</li> <li>(c) as the platform for the further development of mediation, the Bill had set out key definitions of various terms concerning mediation and differentiated mediation from conciliation;</li> <li>(d) the Administration recognized the importance of the accreditation and training of the mediators and was working with stakeholders to facilitate the establishment of a single non-statutory industry-led accreditation body for mediators;</li> </ul>	

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		<p>(e) regarding the views on the provisions for confidentiality and admissibility of mediation communication in evidence, the Administration considered that it had struck an appropriate balance between the need to keep mediation communications confidential and the need for disclosure in individual cases;</p> <p>(f) the Administration was confident that a specified court or tribunal would act as a gatekeeper in exercising sound judgment in granting leave for disclosure or admission of mediation communications in evidence; and</p> <p>(g) on the recommendation that a separate accreditation body should be put in place for family mediation, the Administration considered it more appropriate to establish a single accreditation body to standardize the accreditation system for mediators rather than to set up different regulatory systems for mediation in specific industries.</p> <p>The Administration undertook to provide a written response to the views received by the Bills Committee on the Bill.</p>	<p><b>Admin</b> (para 3 of minutes)</p>
013434 - 014628	<p>Chairman Mr LAU Kong-wah Professional Mediation Consultancy Centre Society of Certified Mediators and Negotiators, Ltd Dr James CHIU Shing-ping</p>	<p>Elaboration of views by Professional Mediation Consultancy Centre on the need to enhance the enforceability of mediated settlement agreement and to promote wider use of mediation to resolve disputes in the community.</p> <p>Elaboration of views by Society of Certified Mediators and Negotiators, Ltd on the need to address the issues of accreditation and declaration of interests by mediators.</p> <p>Suggestions of Dr James CHIU Shing-ping on the definition of "mediator" in the Bill.</p>	
014629 - 015042	<p>Chairman Mr CHEUNG Kok-che Democratic Alliance for the Betterment and Progress of Hong Kong Hong Kong Bar Association</p>	<p>Reiteration of views by Democratic Alliance for the Betterment and Progress of Hong Kong that the single non-statutory industry-led mediation accreditation body for mediators should be established as soon as possible in a transparent and open manner.</p>	

Time Marker	Speaker(s)	Subject(s)	Action required
		Elaboration of views by the Hong Kong Bar Association that the early enactment of the Bill could enhance the development of mediation in Hong Kong.	
015043 - 015419	Chairman	The Chairman summarized the main discussions of the Bills Committee on the Bill and proposed the way forward for the scrutiny of the Bill.	
015420 - 015822	Chairman Mr LAU Kong-wah Administration	<p>Mr LAU Kong-wah's enquiries about –</p> <p>(a) whether the Administration would define the term "professional misconduct" in Clause 8 (3) (b) in the Bill; and</p> <p>(b) whether consideration would be given to establishing a local mediation body at community level to promote mediation.</p> <p>The Administration responded that –</p> <p>(a) complaints about the misconduct of mediators could be made to the relevant mediation service providers as mediators were usually required to observe the professional code of conduct prescribed by the mediation service providers to which they belonged; and</p> <p>(b) there was no proposal on the establishment of a local mediation body at the community level as it would involve complex issues that required careful consideration such as the prudent use of public fund and the structure of such body.</p>	
015823 - 20033	Chairman	Closing remarks	