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-yee, 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

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
Convenor 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)

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
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).

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

**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**

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<th>Time Marker</th>
<th>Speaker(s)</th>
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<tr>
<td>000328 - 000541</td>
<td>Chairman</td>
<td>Opening remarks</td>
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| 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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<td>001855 - 002208</td>
<td>Chairman Hong Kong Society of Accredited Mediators</td>
<td>should be established in a transparent, fair and open manner; (c) the definition of &quot;agreement to mediate&quot; in Clause 2 shall prevail in case of any divergence of interpretation of the term in other parts of the Bill; (d) the definition of &quot;meaning of mediation&quot; in Clause 4 should be further clarified to avoid any inadvertent breach of law by untrained mediators in the community; (e) provisions for liability of mediators for dishonest acts should be included in the Bill with reference to section 104 of the Arbitration Ordinance; (f) provisions for immunity for mediators from civil liability should be provided in the Bill; (g) Clause 7 of the Bill might create conflict of interests between mediators and solicitors; and (h) Clause 8 of the Bill was supported.</td>
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<td>002209 - 002607</td>
<td>Chairman The Democratic Party</td>
<td>Presentation of views [LC Paper No. CB(2)802/11-12(03)]</td>
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<td>002608 - 002730</td>
<td>Chairman Rainbow Consultancy Limited</td>
<td>Summary of views presented by Rainbow Consultancy Limited – (a) the Bill was supported; and (b) the Bill should cover the promotional work of mediation in order to encourage the public to resolve disputes by mediation.</td>
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<tr>
<td>002731 - 003047</td>
<td>Chairman Hong Kong Family Welfare Society</td>
<td>Presentation of views [LC Paper No. CB(2)819/11-12(02)]</td>
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<td>003048 - 003347</td>
<td>Chairman Hong Kong Construction Association</td>
<td>Presentation of views [LC Paper Nos. CB(2)645/11-12(03)]</td>
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| 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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<td>005112 - 005235</td>
<td>Chairman Joint Mediation Helpline Office</td>
<td>Summary of views presented by Joint Mediation Helpline Office –</td>
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<td>(a) the early enactment of the Bill was supported; and</td>
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<td>(b) provisions dealing with civil liability and sanctions for breaching the rules of confidentiality and privilege should be included in the Bill.</td>
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<td>005236 - 005511</td>
<td>Chairman Hong Kong Institute of Construction Managers</td>
<td>Presentation of views [LC Paper No. CB(2)802/11-12(07)]</td>
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<td>005512 - 005815</td>
<td>Chairman Hong Kong Catholic Marriage Advisory Council</td>
<td>Presentation of views [LC Paper No. CB(2)809/11-12(05)]</td>
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<td>005816 - 010002</td>
<td>Chairman K M Lai &amp; Li</td>
<td>Presentation of views [LC Paper No. CB(2)802/11-12(08)]</td>
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<td>010003 - 010223</td>
<td>Chairman Hong Kong Mediation Centre</td>
<td>Presentation of views [LC Paper No. CB(2)802/11-12(09)]</td>
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<td>010224 - 010542</td>
<td>Chairman Faculty of Law of the University of Hong Kong</td>
<td>Summary of views presented by Faculty of Law of the University of Hong Kong –</td>
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<td>(a) the Bill was strongly supported as it provided an essential framework for the conduct of mediation without hampering its flexibility;</td>
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<td>(b) the definition of &quot;agreement to mediate&quot; in Clause 2 should be extended to include agreement made orally or by conduct;</td>
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<td>(c) whether the impartial mediator should be accredited or not should be specified in the definition of &quot;meaning of mediation&quot; in Clause 4;</td>
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<td>(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 &quot;meaning of mediation&quot; in Clause 4;</td>
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<td>010543 - 010614</td>
<td>Chairman The Chartered Institute of Arbitrators (East Asia Branch)</td>
<td>(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</td>
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<td>(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.</td>
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<td>010615 - 010941</td>
<td>Chairman EC Harris (HK) Ltd</td>
<td>Presentation of views [LC Paper No. CB(2)809/11-12(03)]</td>
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<td>Summary of views presented by EC Harris (HK) Ltd –</td>
<td>(a) the need to enact a mediation legislation was queried given that there were very few complaints relating to mediation; and</td>
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<td>(b) the inclusion of the provision for immunity to mediators in the Bill was worth consideration.</td>
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<td>010942 - 011342</td>
<td>Chairman Society of Certified Mediators and Negotiators, Ltd</td>
<td>Presentation of views [LC Paper No. CB(2)802/11-12(10)]</td>
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<td>Summary of views presented by School of Law of the City University of Hong Kong –</td>
<td>(a) the Bill was supported as it had dealt with the confidentiality and admissibility of mediation communication in depth; and</td>
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<td>(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.</td>
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<td>011343 - 011654</td>
<td>Chairman School of Law of the City University of Hong Kong</td>
<td>Summary of views presented by School of Law of the City University of Hong Kong –</td>
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<td>011655 - 011723</td>
<td>Chairman Hong Kong Bar Association</td>
<td>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.</td>
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<td>011724 - 011833</td>
<td>Chairman Hong Kong Mediation Council</td>
<td>Presentation of the view that the Bill was fully supported by the Hong Kong Mediation Council.</td>
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<td>011834 - 012242</td>
<td>Chairman The Law Society of Hong Kong</td>
<td>Presentation of views [LC Paper No. CB(2)819/11-12(03)]</td>
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<td>012243 - 012840</td>
<td>Chairman Dr James CHIU Shing-ping</td>
<td>Presentation of views [LC Paper No. CB(2)802/11-12(11)]</td>
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<td>012841 - 013433</td>
<td>Chairman Administration</td>
<td>The Administration's preliminary response to views of deputations as follow –</td>
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<td>(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;</td>
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<td>(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;</td>
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<td>(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;</td>
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<td>(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;</td>
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<td>(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; (f) the Administration was confident that a specified court or tribunal would act as an gatekeeper in exercising sound judgment in granting leave for disclosure or admission of mediation communications in evidence; and (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. The Administration undertook to provide a written response to the views received by the Bills Committee on the Bill.</td>
<td>Admin (para 3 of minutes)</td>
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<td>013434 - 014628</td>
<td>Chairman Mr LAU Kong-wah Professional Mediation Consultancy Centre Society of Certified Mediators and Negotiators, Ltd Dr James CHIU Shing-ping</td>
<td>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. 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. Suggestions of Dr James CHIU Shing-ping on the definition of &quot;mediator&quot; in the Bill.</td>
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<td>014629 - 015042</td>
<td>Chairman Mr CHEUNG Kok-che Democratic Alliance for the Betterment and Progress of Hong Kong Hong Kong Bar Association</td>
<td>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.</td>
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<td>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.</td>
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<td>015043 - 015419</td>
<td>Chairman</td>
<td>The Chairman summarized the main discussions of the Bills Committee on the Bill and proposed the way forward for the scrutiny of the Bill.</td>
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| 015420 - 015822 | Chairman Mr LAU Kong-wah Administration | Mr LAU Kong-wah's enquiries about –
(a) whether the Administration would define the term "professional misconduct" in Clause 8 (3) (b) in the Bill; and
(b) whether consideration would be given to establishing a local mediation body at community level to promote mediation. |                |
|              |            | The Administration responded that –
(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
(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. |                |
| 015823 - 20033 | Chairman | Closing remarks |                |

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