

Bills Committee on Mediation Bill

Committee Stage Amendments proposed by the Administration

Introduction

In the Administration's response to issues raised at the meeting held on 7 February 2012 (LC Paper No. CB(2)1499/11-12(01)), we attached our proposed Committee Stage Amendments (CSAs), in the form of marked-up revisions to the Mediation Bill ("the Bill"), for Members' consideration. The proposed CSAs are now presented in the conventional format at the **Annex** for Members' further reference.

Disclosure of mediation communications for the purpose of seeking legal advice

2. We note that there may be situations where parties to mediation have not instructed lawyers to assist them in the first place and wish to consult lawyers after the commencement of the mediation. As a party may need to disclose mediation communications to the lawyer in order to obtain the legal advice required, at issue is whether such disclosure of mediation communications is allowed.

3. As previously explained, we consider that there is no justification to restrict parties' access to legal advice and that the provisions of the Bill should not suggest any restriction to the rights of parties to seek legal advice. We will

therefore propose amendments to clause 8(2) of the Bill to add an additional paragraph to expressly allow the disclosure of mediation communications for the purpose of seeking legal advice.

Cross-reference to sections 32 and 33 of the Arbitration Ordinance (Cap. 609)

4. In the Administration's response to issues raised at the meetings held on 10 January 2012 and 1 February 2012 (LC Paper No. CB(2)955/11-12(01)), we have explained the implications of excluding mediation proceedings referred to in sections 32 and 33 of the Arbitration Ordinance (Cap. 609) from the application of the Bill.

5. Since neither subsection (1) nor (2) of section 32 of Cap. 609 refers to any "mediation proceedings", and as section 32 only mentions this expression in subsection (3), item 12 of Schedule 1 to the Bill should not have the effect of excluding from the application of the Bill any mediation conducted by a mediator appointed by the Hong Kong International Arbitration Centre under the default appointment mechanism mentioned in section 32(1) and (2) of Cap. 609 if the mediation in question does not constitute "mediation proceedings" in the context of "med-arb" and "arb-med-arb" as specified in sections 32(3) and 33(2) of Cap. 609. However, to avoid any doubt, we will propose a technical amendment to item 12 of Schedule 1 to the Bill by replacing the general reference to section "32" of Cap. 609 with a specific reference to section "32(3)".

Department of Justice

April 2012

Mediation Bill

Committee Stage

Amendments to be moved by the Secretary for Justice

| <u>Clause</u> | <u>Amendment Proposed</u> |
|------------------------|---|
| 8(2)(e) | By deleting “relates; or” and substituting “relates;”. |
| 8(2) | By adding – “(ea) the disclosure is made for the purpose of seeking legal advice; or”. |
| Schedule 1, item 12 | By deleting “32” and substituting “32(3)”. |