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By Fax No: 2840 0716

10 March 2017

Ms Sophie LAU
Clerk to the Bills Committee
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear Ms LAU,

**Bills Committee on the Arbitration and Mediation Legislation
(Third Party Funding) (Amendment) Bill 2016**

**Government's Response to the Issues Raised by the Bills Committee
at the Meeting of 28 February 2017**

At the meeting of the Bills Committee of the Legislative Council held on 28 February 2017, the Government was requested to provide a written response to various follow-up actions, the list of which was subsequently received via your email of 3 March 2017. The Government's response is as follows.

(1) Exclusion of persons practising law or providing legal services from third party funding

2. To begin with, it is pertinent to remind ourselves the following observations highlighted by the Law Reform Commission

(“LRC”) in paragraph 3.36 of its Report on Third Party Funding for Arbitration (“the LRC Report”) as follows:

“The Law Reform Commission considers that it is in the public interest, including that parties be represented by independent counsel focused on their service, and of maintaining the integrity of dispute resolution, that lawyers should focus on their provision of professional services to their clients and should not place themselves in a conflict of interest position by engaging in the business of Third Party Funding. Nor does Hong Kong law currently permit Hong Kong lawyers to charge conditional and contingency fees. The identity of those providing legal services (even if not admitted as lawyers), including on the internet, is expanding, so that similar considerations apply to such providers of legal services.”

3. It is also important to note that the topic of third party funding for arbitration was referred by the Secretary for Justice and the Chief Justice (as Chairman and Member of the LRC respectively) to an LRC’s sub-committee of experts to look at in detail. After engaging all stakeholders through a process of public consultation, the Sub-committee then put forward its recommendations to the LRC for consideration. The LRC, an independent body, published its final recommendations only after an informed examination of the relevant law and policies.

4. The Government agrees with the conclusion stated in paragraph 3.36 of the LRC Report and thus proposes the new section 98G(2) to implement Recommendation 1(5) in the LRC Report by excluding any funding provided either directly or indirectly by a person practising law or providing legal services from the definition of “Third Party Funding” of the Bill.

5. Lawyers in Hong Kong are not generally allowed to charge contingency fees. As already pointed out in the LRC Report, this has been the subject of a separate Law Reform Commission reference: see the *Report on Conditional Fees* (2007). The Government takes the view that to reopen that study at this juncture will generate debates over a separate but controversial subject-matter as well as unnecessarily divert attention to complex policy and practical issues at risk of impeding the expeditious

implementation of the LRC Report.

6. The Government is propagating the current legislative proposal with a view to enhancing access to justice through the facilitation of third party funding for arbitration. At the same time, it must be very cautious and prudent when implementing this reform in order that Hong Kong is not exposed disproportionately to the kind of risks which may threaten its reputation as an international legal and dispute resolution centre. As the saying goes, it takes years to build up a good reputation, but only one bad incident to destroy it. Hence, after very careful consideration, the Government does not see fit in the present legislative exercise to touch on matters which are not really necessary for the purpose of implementing the LRC Report (including issues such as those concerning or relating to allowing the legal profession to provide funding).

7. In this connection, it is also pertinent to observe that the Singapore parliament is likewise taking a very cautious approach when passing the Civil Law (Amendment) Bill to amend their law to permit third-party funding for certain categories of dispute resolution proceedings. The Civil Law (Third-Party Funding) Regulations 2017, which were made under section 5B(8) of the Civil Law Act (as added by Act 2 of 2017) and has become effective on 1 March 2017, provides that the qualifications and other requirements that a qualifying Third-Party Funder must satisfy and continue to satisfy in section 5B(10) of the Civil Law Act are as follows:

- “(a) the Third-Party Funder carries on the **principal** business, in Singapore or elsewhere, of the funding of the costs of dispute resolution proceedings to which the Third-Party Funder is not a party;
- (b) the Third-Party Funder has a paid-up share capital of not less than [S]\$5 million or the equivalent amount in foreign currency or not less than [S]\$5 million or the equivalent amount in foreign currency in managed assets.” (emphasis added)

(See Regulation 4(1) of the Civil Law (Third-Party Funding) Regulations 2017.)

8. At the same time, the Legal Profession (Professional Conduct) Rules were amended (the amendments have also come into effect since 1 March 2017) to insert a new Part 5A: Rules Applicable to Third-Party Funding. Under this new Part 5A, the new Rule 49B(1) now provides that:

“A legal practitioner or a law practice must not, directly or indirectly, hold any share or other ownership interest in a Third-Party Funder –

- (a) which the legal practitioner or law practice has introduced or referred to a client of the legal practitioner or law practice in relation to dispute resolution proceedings; or
- (b) which has a third-party funding contract with a client of the legal practitioner or law practice.”

9. It is clear that in Singapore only third party funding provided by professional entities with adequate share capital or managed assets and whose principal business is funding claims will be allowed. Moreover, legal practitioners and legal practices will also be prohibited from holding any share or having ownership interests in relevant third-party funders.

10. After careful consideration of the views of the Members and having considered all relevant circumstances, the Government has come to the conclusion that there should be (at least for the time being) a blanket exclusion of all lawyers and legal services providers from the proposed scheme at this exercise and that the new section 98G(2) in the Bill should be retained.

11. Accordingly, the Government considers that it would be well-advised to proceed on the basis of the current Bill. As stated in paragraphs 5.25 to 5.28 of the LRC Report, there should be a review after 3 years of implementation. We agree to this recommendation too, and are more than happy to conduct such a review. In other words, once the Bill is enacted and third party funding entities start operation, we can then carefully monitor the implementation of the scheme and revisit this

question of whether the legal profession should be allowed to participate as a third party funder. We would therefore urge Members to reject any proposed deletion of the new section 98G(2).

(2) Application of the proposed new Part 10A of the Arbitration Ordinance (Cap. 609) (“New 10A”) to mediation to which the Mediation Ordinance (Cap 620) applies (“MO Mediation”) but not the processes specified in Schedule 1 of Cap. 620 (“specified processes”)

12. The legal and policy considerations for applying New 10A to MO Mediation are set out in paragraphs 28 to 34 of the Government’s letter dated 10 February 2017 to the Assistant Legal Adviser of the Legislative Council.

13. In short, in paragraph 3.48(2) of the LRC Report recommended that consideration should be given whether to make consequential amendments to the Mediation Ordinance (Cap. 620) (“MO”) to extend non-application of the doctrines of maintenance and champerty to **“mediation within the scope of the Mediation Ordinance”**. Having consulted the Steering Committee on Mediation, the Department of Justice agrees that New 10A should be extended to MO Mediation. Otherwise, doubts may arise as to whether the doctrines of champerty and maintenance apply or become applicable to MO Mediation by reason that New 10A only expressly disapplies the doctrines to mediation conducted under the Arbitration Ordinance (Cap. 609) (“AO”).

14. “Mediation” is defined in the MO to mean –

“a **structured process** comprising one or more sessions in which one or more impartial individuals, **without adjudicating** a dispute or any aspect of it, assist the parties to the dispute to do any or all of the following—

- (a) identify the issues in dispute;
- (b) explore and generate options;
- (c) communicate with one another;
- (d) reach an agreement regarding the resolution of the whole, or

part, of the dispute.” (emphasis added)

15. This broad definition of “mediation” will essentially cover all professional mediations conducted in Hong Kong¹.

16. We have considered the specified processes in the context of extending New 10A to MO Mediation.

17. Item 12 of Schedule 1 of the MO concerns mediation proceedings of section 32(3) and 33 of the AO. As New 10A already covers mediation conducted under the AO, exclusion of Item 12 from the scope of extension of New 10A to the MO is appropriate.

18. As regards items 1 to 11 of Schedule 1 of the MO (“Relevant Items”), we attach at **Annex A** a table which briefly summarizes the relevant legislative provisions and our observations on matters set out in the fourth and fifth columns of the table. The conciliation and mediation referred to in these items (individually, “Statutory Conciliation” and collectively, “Statutory Conciliations”) are conducted in accordance with the relevant legislative provisions.

19. For example, “conciliation” under the Labour Tribunal Ordinance (Cap. 25), Labour Relations Ordinance (Cap. 55) and the Minor Employment Claims Adjudication Board Ordinance (Cap. 453) and “special conciliation” under Cap. 55 are defined to mean, in essence, discussions or actions undertaken by a specified officer to assist the parties to a specified dispute to reach settlement. “Conciliation” and “mediation” is not defined in other pieces of legislation mentioned in the Relevant Items. We also note that the role of the conciliator or mediator in the conciliation or mediation process is not specified in such legislation.

20. As such, the conciliation or mediation process conducted under the legislation referred to in the Relevant Items need not be the same as the mediation process contemplated in the definition of “mediation” under the MO. For the latter, mediation is a structured and non-adjudicative process with the role of the mediator being confined to

¹ Hong Kong Mediation Handbook (2nd edn) para. 10-003.

assisting the parties to identify the relevant issues, explore and generate option, communicate with each other and to reach a settlement agreement. In the case of a Statutory Conciliation, the process and procedures to be adopted and the role to be performed by the conciliator or mediator in the Statutory Conciliation would depend on the specific statutory scheme in question, the objectives to be achieved by the scheme and any rules and guidelines that may be developed for the purposes of that statutory scheme.

21. In addition, we note some unique features of the Statutory Conciliations. For example:

- (i) unlike typical mediation where parties are free to appoint such person or persons as they agree to be the mediator(s), the conciliator or mediator of the Statutory Conciliation is either a prescribed authority or a person (who may be a public officer) appointed by the prescribed authority (see the last column of the attached table);
- (ii) under section 3 of the Labour Relations Ordinance (Cap. 55), conciliation may be conducted if a trade dispute is apprehended but has not yet arisen. This is unlike usual cases where mediation is conducted to resolve disputes that have already arisen;
- (iii) under section 11B of the Labour Relations Ordinance, a mediator may inquire into the causes and circumstances of a trade dispute, visit the relevant premises, conduct interviews with other interested parties and make recommendations on the settlement of the trade dispute. These do not appear to be the typical role of a mediator;
- (iv) under section 17 of the Marriage Reform Ordinance (Cap. 178), a designated public officer may, among other things, interview the parties to a marriage to satisfy himself/herself that the parties wish voluntarily and freely to dissolve the marriage; and

- (v) under section 7 of Cap. 480B, Cap. 487B, Cap. 527B and Cap. 602B, the Equal Opportunities Commission may direct a person to attend a conference for the purpose of endeavouring to settle a matter to which an act relates. This is different from usual mediation which is conducted with voluntary agreement of the parties.

22. Given the special features of Statutory Conciliations and that the Statutory Conciliations form part of various existing self-contained statutory schemes, it is not our policy intention at this stage to extend New 10A to the Statutory Conciliations. For the time being, it seems that application of new 10A to mediation as defined in the MO (other than the specified processes) would cover mediation that are likely to attract third party funding.

23. If the Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Bill is enacted, policy bureaux having carriage of the respective statutory schemes referred to in the Relevant Items may wish to make reference to experience gained from the operation of the new section 7A of the MO and consider whether there should be a review on incorporation of express statutory provision to permit third party funding in the relevant legislation. Should such review be conducted, a policy bureau may also wish to take into account the policy objectives of the specific statutory scheme and circumstances relevant to the operation of that statutory scheme in deciding whether such express provision is warranted.

Yours sincerely,



(LEE Tin-yan)
Senior Assistant Solicitor General (Arbitration)
Legal Policy Division

Schedule 1 of the Mediation Ordinance (Cap 620)
Processes to which the Mediation Ordinance does not apply

	Legislative Provision	Brief Summary of the Legislative Provision	Definition of “conciliation” or “mediation” in the relevant legislation	Is “conciliation” or “mediation” part of a legislative scheme?
1.	Labour Tribunal Ordinance (Cap. 25)			
	Section 6(5)	The Commissioner for Labour may authorize any public officer to assist in conciliation under Cap. 55.	“Conciliation” is defined to mean a discussion or action initiated or undertaken by an authorized officer ¹ for the purpose of reaching a settlement of a claim (section 2).	
	Section 15	<ul style="list-style-type: none"> The Labour Tribunal shall not hear a claim until a certificate is filed or produced to the effect that (i) one or more parties have refused to participate in conciliation; (ii) no settlement has been reached through conciliation or (iii) a settlement is unlikely to be reached in conciliation (section 15(1)). 		<ul style="list-style-type: none"> Yes. Where a claim (as specified in the Schedule of Cap. 25) is filed with the Labour Tribunal, the parties must be invited to participate or otherwise participate in conciliation. The conciliator is the Commissioner for Labour or a public officer² authorized by

¹ “Authorized officer” is a public officer who has been authorized by the Commissioner for Labour under section 6(5) to assist in conciliation (section

² Under the Interpretation and General Clauses Ordinance (Cap. 1), “public officer” means any person holding an office of emolument under the Government, whether such office be permanent or temporary

	Legislative Provision	Brief Summary of the Legislative Provision	Definition of “conciliation” or “mediation” in the relevant legislation	Is “conciliation” or “mediation” part of a legislative scheme?
		<ul style="list-style-type: none"> • The Labour Tribunal may adjourn a hearing if all parties to a claim have agreed to do so for the purpose of conciliation (section 15(3)). • After the adjournment, the Commissioner for Labour may hold conciliation for the parties (section 15(4)). • The Commissioner for Labour has to advise the Labour Tribunal if there is settlement or no reasonable likelihood of settlement (section 15(5)). • The Commissioner for Labour has to advise the Labour Tribunal of progress of conciliation (section 15(6)). • If settlement is reached, the settlement has to be reduced in writing and filed with Labour Tribunal (section 15(7) and (8)). 		the Commissioner for Labour under section 6(5).

	Legislative Provision	Brief Summary of the Legislative Provision	Definition of “conciliation” or “mediation” in the relevant legislation	Is “conciliation” or “mediation” part of a legislative scheme?
	Section 25(3)(e)	If a representative claim ³ is brought against the same defendant, the representative is deemed to have been authorized to agree to hold or take part in conciliation.		
2.	Apprenticeship Ordinance (Cap. 47)			
	Section 39	If a dispute arises between the parties to a registered contract of apprenticeship regarding an alleged breach of contract, any party may refer the dispute to the Director of Apprenticeship for conciliation.		<ul style="list-style-type: none"> • Yes. The provision enables parties to a dispute to refer the dispute to the Director of Apprenticeship for conciliation. • The conciliator is the Director of Apprenticeship.
3.	Part 2 of Labour Relations Ordinance (Cap. 55)			
	Section 3	If a trade dispute exists or is apprehended, the Commissioner for Labour may, with the object of promoting settlement, inquire into the causes and circumstances of the dispute and authorize a conciliation	“Conciliation” is defined to mean “a discussion or action initiated or undertaken by a conciliation officer to assist the parties to a trade dispute to reach a settlement of the trade dispute” (section 2).	<ul style="list-style-type: none"> • Yes. The conciliation is part of a statutory process which enables the Commissioner for Labour to handle a trade dispute or an apprehended trade dispute. • The conciliation officer is an

³ If 2 or more persons have claims against the same defendant, the claims may be brought in the name of one person as representative for some or all of them.

	Legislative Provision	Brief Summary of the Legislative Provision	Definition of “conciliation” or “mediation” in the relevant legislation	Is “conciliation” or “mediation” part of a legislative scheme?
		officer to undertake conciliation.		officer of the Labour Relations Division of the Labour Department who is authorized by the Commissioner for Labour to initiate or undertake conciliation.
	Section 4	A conciliation officer has to report to the Commissioner for Labour if no settlement is reached and has to set out in the report information which he/she considers will be of assistance to the Commissioner for Labour.		
	Section 5	On receipt of a report under section 4, the Commissioner for Labour may authorize a special conciliation officer to undertake conciliation.	“Special conciliation” is defined to mean “a discussion or action initiated or undertaken by a special conciliation officer to assist the parties to a trade dispute to reach a settlement of the trade dispute” (section 2).	<ul style="list-style-type: none"> • Yes. The special conciliation is part of a statutory process which enables the Commissioner for Labour to handle a trade dispute or an apprehended trade dispute. • The special conciliation officer is a senior officer of the Labour Relations Division of the Labour Department or any other

	Legislative Provision	Brief Summary of the Legislative Provision	Definition of “conciliation” or “mediation” in the relevant legislation	Is “conciliation” or “mediation” part of a legislative scheme?
				public officer or person who is authorized by the Commissioner of Labour to initiate or undertake special conciliation.
	Section 7	A special conciliation officer has to report to the Commissioner for Labour if no settlement is reached and has to set out in the report information which he/she considers will be of assistance to the Commissioner for Labour and facts that appeared to the special conciliation officer as agreed or disputed by the parties.		
4.	Part 2A of Labour Relations Ordinance (Cap. 55)			
	Section 11A	Where a trade dispute exists, the Commissioner for Labour may appoint a mediator or a board of mediator to mediate the dispute.	No.	Yes. The mediation is part of a statutory process which enables the Commissioner for Labour to handle a trade dispute.
	Section 11B	A mediator may inquire into the causes and circumstances of a trade dispute; visit premises where relevant		

	Legislative Provision	Brief Summary of the Legislative Provision	Definition of “conciliation” or “mediation” in the relevant legislation	Is “conciliation” or “mediation” part of a legislative scheme?
		parties are employed; conduct interviews with relevant parties; make observations and do other things as the mediator considers will assist mediating the dispute; make recommendations to the parties and make the recommendations public.		
5	Marriage Reform Ordinance (Cap. 178)			
	Section 17	<ul style="list-style-type: none"> Parties who have filed a notice of intention to dissolve a marriage have to appear before a designated public officer to whom the notice was given to satisfy him that each of the parties wishes voluntarily and freely to dissolve the marriage. The designated officer may dissolve the marriage if no notice of changed intention has been given; the parties understand the effect of dissolution and freely and voluntarily desire to dissolve 	Not applicable.	<ul style="list-style-type: none"> Yes. The designated public officer has to be satisfied that the parties to a marriage voluntarily and freely desire to dissolve the marriage. The designated public office is a public officer designed by the Chief Executive under section 22.

	Legislative Provision	Brief Summary of the Legislative Provision	Definition of “conciliation” or “mediation” in the relevant legislation	Is “conciliation” or “mediation” part of a legislative scheme?
		the marriage.		
	Section 18	The designated public office (i) has to interview each party to the marriage in the presence of each other and in the absence of each other; (ii) may require the parties or any of them to appear before him in other occasions and may require any or both of them to provide further information.		
6.	The Ombudsman Ordinance (Cap. 397)			
	Section 11B	<ul style="list-style-type: none"> The Ombudsman may deal with a complaint to him/her by mediation if he/she is of the opinion that the complaint involves no, or only minor, maladministration. The Ombudsman may authorize any person whom he/she considers necessary for the efficient carrying out of his/her functions under the Ordinance to be the mediator. 	No.	<ul style="list-style-type: none"> Yes. The mediation is part of the process in handling complaints made to the Ombudsman under Cap. 397. The mediator may be the Ombudsman or a person authorized by the Ombudsman.

	Legislative Provision	Brief Summary of the Legislative Provision	Definition of “conciliation” or “mediation” in the relevant legislation	Is “conciliation” or “mediation” part of a legislative scheme?
		<ul style="list-style-type: none"> Participation in the mediation is voluntary and the parties may withdraw from mediation any time. The mediator may terminate the mediation at any time. 		
7.	Minor Employment Claims Adjudication Board Ordinance (Cap. 453)			
	Section 4(6)	The Commissioner for Labour may authorize any public officer to assist in conciliation.	“Conciliation” is defined to mean “a discussion or action initiated or undertaken by an authorized officer for the purpose of reaching a settlement of a dispute in respect of which a claim may be brought” (section 2)	<ul style="list-style-type: none"> Yes. Where proceedings are brought before the Minor Employment Claims Adjudication Board, the claimant and the defendant must be invited to participate in or otherwise participate in conciliation. The conciliator is a public officer⁴ authorized by the Commissioner for Labour under section 6(5).

⁴ Under the Interpretation and General Clauses Ordinance (Cap. 1), “public officer” means any person holding an office of emolument under the Government, whether such office be permanent or temporary

	Legislative Provision	Brief Summary of the Legislative Provision	Definition of “conciliation” or “mediation” in the relevant legislation	Is “conciliation” or “mediation” part of a legislative scheme?
	Section 14	The Minor Employment Claims Adjudication Board shall not hear a claim ⁵ until a certificate is filed to the effect that (i) one or more of the parties to the claim have refused to participate in conciliation; (ii) conciliation has not resulted in settlement; (iii) conciliation is unlikely to result in settlement or (iv) conciliation may prejudice a party’s interest.		
8.	Sex Discrimination Ordinance (Cap. 480)			
	Section 64	One of the functions of the Equal Opportunities Commission is to encourage parties who are concerned with an allegation of unlawful act to settle the matter by conciliation (section 64(1)(d)). The Commission may engage the services of such person as it thinks fit		

⁵ The claims that may be heard by the Minor Employment Claims Adjudication Board is set out in the Schedule to Cap. 453.

	Legislative Provision	Brief Summary of the Legislative Provision	Definition of “conciliation” or “mediation” in the relevant legislation	Is “conciliation” or “mediation” part of a legislative scheme?
		to carry out any matter related to the performance of its functions or the exercise of its powers under section 84 (section 64(2)(e)).		
	Section 84(3)	Where a complaint is lodged with the Equal Opportunities Commission, the Commission is required to investigate into the act concerned and endeavour, by conciliation, to effect a settlement of the matter.	No.	<ul style="list-style-type: none"> • Yes. Attempts to conciliate are part of the statutory process in handling complaints lodged with the Equal Opportunities Commission under Cap. 480. • The conciliator may be the Commission, a person to whom the Commission has delegated its functions or a person engaged by the Commission (sections 64(2)(e) and 67).
	Section 85(1)	If there has not been a settlement of the subject matter of the complaint, any person may seek assistance from the Equal Opportunities Commission in respect of proceedings that may be instituted by that person.		
	Section 7 of	The Equal Opportunities Commission		Yes. Attempts to conciliate are part

	Legislative Provision	Brief Summary of the Legislative Provision	Definition of “conciliation” or “mediation” in the relevant legislation	Is “conciliation” or “mediation” part of a legislative scheme?
	Cap.480B	may, for the purpose of endeavouring to settle a matter, direct a person to attend a conference.		of the statutory process in handling complaints lodged with the Equal Opportunities Commission under Cap. 480.
	Section 8 of Cap. 480B	The person presiding at the conference (“Presiding Officer”) may determine the order of the proceedings and the manner of conducting the conference (section 8(2)). If the Presiding Officer is of the opinion that the matter cannot be settled by conciliation or the matter has not been settled through conciliation, he/she is required to refer the matter to the Commission with a report on any investigation made into the matter (section 8(4)).	No.	
9.	Disability Discrimination Ordinance (Cap. 487)			
	Section 62(1)(d)	One of the functions of the Equal Opportunities Commission is encourage persons who are concerned with an alleged unlawful act under the		

	Legislative Provision	Brief Summary of the Legislative Provision	Definition of “conciliation” or “mediation” in the relevant legislation	Is “conciliation” or “mediation” part of a legislative scheme?
		Ordinance to settle the matter by conciliation.		
	Section 80(3)	Where a complaint is lodged with the Equal Opportunities Commission, the Commission is required to investigate into the act concerned and endeavour, by conciliation, to effect a settlement of the matter.	No.	<ul style="list-style-type: none"> • Yes. Attempts to conciliate are part of the statutory process in handling complaints lodged with the Equal Opportunities Commission under Cap. 487. • The conciliator may be the Commission, a person to whom the Commission has delegated its functions or a person engaged by the Commission (see definition of “conciliator” in section 2).
	Section 85(1)	If there has not been a settlement of the subject matter of the complaint, any person may seek assistance from the Equal Opportunities Commission in respect of proceedings that may be instituted by that person.		
	Section 7 of Cap.487B	The Equal Opportunities Commission may, for the purpose of endeavouring to settle a matter, direct a person to		

	Legislative Provision	Brief Summary of the Legislative Provision	Definition of “conciliation” or “mediation” in the relevant legislation	Is “conciliation” or “mediation” part of a legislative scheme?
		attend a conference.		
	Section 8 of Cap. 487B	<p>The person presiding at the conference (“Presiding Officer”) may determine the order of the proceedings and the manner of conducting the conference (section 8(2)).</p> <p>If the Presiding Officer is of the opinion that the matter cannot be settled by conciliation or the matter has not been settled through conciliation, he/she is required to refer the matter to the Equal Opportunities Commission with a report on any investigation made into the matter (section 8(4)).</p>	No.	
10.	Family Status Discrimination Ordinance (Cap. 527)			
	Section 44(1)(c)	One of the functions of the Equal Opportunities Commission is encourage persons who are concerned with an alleged unlawful act under the Ordinance to settle the matter by conciliation.		
	Section 62(3)	Where a complaint is lodged with the	No.	

	Legislative Provision	Brief Summary of the Legislative Provision	Definition of “conciliation” or “mediation” in the relevant legislation	Is “conciliation” or “mediation” part of a legislative scheme?
		Equal Opportunities Commission, the Commission is required to investigate into the act concerned and endeavour, by conciliation, to effect a settlement of the matter.		
	Section 85(1)	If there has not been a settlement of the subject matter of the complaint, any person may seek assistance from the Equal Opportunities Commission in respect of proceedings that may be instituted by that person.		
	Section 7 of Cap.527B	The Equal Opportunities Commission may, for the purpose of endeavouring to settle a matter, direct a person to attend a conference.		
	Section 8 of Cap. 527B	The person presiding at the conference (“Presiding Officer”) may determine the order of the proceedings and the manner of conducting the conference (section 8(2)). If the Presiding Officer is of the opinion that the matter cannot be settled by conciliation or the matter	No.	

	Legislative Provision	Brief Summary of the Legislative Provision	Definition of “conciliation” or “mediation” in the relevant legislation	Is “conciliation” or “mediation” part of a legislative scheme?
		has not been settled through conciliation, he/she is required to refer the matter to the Equal Opportunities Commission with a report on any investigation made into the matter (section 8(4)).		
11.	Race Discrimination Ordinance (Cap. 602)			
	Section 59(1)(d)	One of the functions of the Equal Opportunities Commission is encourage persons who are concerned with an alleged unlawful act under the Ordinance to settle the matter by conciliation.		
	Section 78(3)	Where a complaint is lodged with the Equal Opportunities Commission, the Commission is required to investigate into the act concerned and endeavour, by conciliation, to effect a settlement of the matter.	No.	<ul style="list-style-type: none"> • Yes. Attempts to conciliate are part of the statutory process in handling complaints lodged with the Equal Opportunities Commission under Cap. 602. • The conciliator is the person engaged by the Equal Opportunities Commission under section 64(2)(e) of Cap. 480 (see definition of

	Legislative Provision	Brief Summary of the Legislative Provision	Definition of “conciliation” or “mediation” in the relevant legislation	Is “conciliation” or “mediation” part of a legislative scheme?
				“conciliator” in section 2).
	Section 79(1)	If there has not been a settlement of the subject matter of the complaint, any person may seek assistance from the Equal Opportunities Commission in respect of proceedings that may be instituted by that person.		
	Section 7 of Cap.602B	The Equal Opportunities Commission may, for the purpose of endeavouring to settle a matter, direct a person to attend a conference.		Yes. Attempts to conciliate are part of the statutory process in handling complaints lodged with the Equal Opportunities Commission under Cap. 602.
	Section 8 of Cap. 602B	The person presiding at the conference (“Presiding Officer”) may determine the order of the proceedings and the manner of conducting the conference (section 8(2)). If the Presiding Officer is of the opinion that the matter cannot be settled by conciliation or the matter has not been settled through conciliation, he/she is required to refer the matter to the Equal Opportunities	No.	

	Legislative Provision	Brief Summary of the Legislative Provision	Definition of “conciliation” or “mediation” in the relevant legislation	Is “conciliation” or “mediation” part of a legislative scheme?
		Commission with a report on any investigation made into the matter (section 8(4)).		

March 2017

Department of Justice

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