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11 April 2017

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The Hon. Dennis Kwok
Chairman to the Bills Committee,
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Dear 

Re: Bills Committee on Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Bill 2016

1. Thank you for your letter of 24 March 2017.
2. In your letter, you advise that during the meetings of the Bills Committee, a majority of members expressed concern about section 98G(2) (of the *Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Bill 2016* ("the Bill")). We understand the concern relates to whether this section is too stringent and, therefore, it is proposed to delete it. We also understand that the effect of this amendment (to delete section 98G(2) of the Bill) is to make it clear that third party funding of arbitration can include the provision of arbitration funding directly or indirectly by a person practising law or providing legal services whether in Hong Kong or elsewhere. The Bills Committee invites submissions on the above Committee Stage Amendment.

3. Section 98G of the Bill provides that (with italics supplied):

98G. Meaning of *third party funding of arbitration*

- (1) Third party funding of arbitration is the provision of arbitration funding for an arbitration —

- (a) under a funding agreement;
- (b) to a funded party;
- (c) by a third party funder; and

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(d) in return for the third party funder receiving a financial benefit only if the arbitration is successful within the meaning of the funding agreement.

(2) *However, third party funding of arbitration does not include the provision of arbitration funding directly or indirectly by a person practising law, or providing legal services, whether in Hong Kong or elsewhere.*

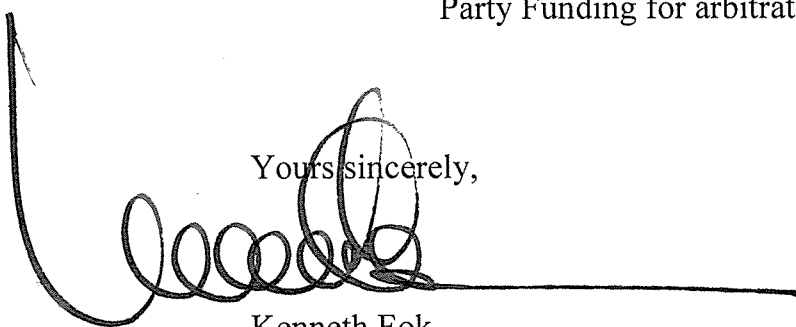
4. We have considered the above. In our view, there should be no prohibition on the provision of arbitration funding directly or indirectly by a person practising law or providing legal services in Hong Kong or elsewhere. We, therefore, in principle support the deletion of section 98G(2) of the Bill.

5. In our view, there is no reason to restrict arbitration funding by a solicitor or a law firm, *so long as* he/it is not involved in the case. If there is a concern about a potential conflict of interest, we would point out that legal practitioners are bound by professional rules governing conflicts of interest. Further, all third party funders of arbitration will be required to comply with the Code of Practice (which includes provision for funded parties to obtain independent legal advice regarding funding agreements and for funders to have procedures to manage conflicts).

6. The exclusion of persons practising law or providing legal services from the provision of arbitration funding could also inadvertently have a negative impact on:

- (a) the quality of legal services available to arbitration funders; and
- (b) Hong Kong's efforts to become a competitive hub for Third Party Funding for arbitration.

Yours sincerely,

A handwritten signature in black ink, consisting of a series of loops and a long horizontal stroke extending to the right.

Kenneth Fok
Director of Practitioners Affairs
The Law Society of Hong Kong