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13 April 2017

By email & by post
Total No. of pages: 2 + enclosures

The Hon Dennis Kwok Wing-hang
Room 813
Legislative Council Complex
1 Legislative Council Road
Central
Hong Kong

Dear *Dennis*,

Arbitration and Mediation Legislation
(Third Party Funding) (Amendment) Bill 2016 (“Bill”)
(Proposed Committee Stage Amendments (“CSAs”) to the
Proposed Section 98G(2) of the Arbitration Ordinance (Cap. 609) (“AO”))

I refer to the captioned matter and the deliberation of the Bills Committee (“BC”) formed in January 2017 under your chairmanship. We are grateful for the views of BC Members given in the three BC meetings held in February and March 2017.

Having carefully considered the views of the BC Members on the proposed section 98G(2) of the AO (which excludes the provision of arbitration funding by lawyers and persons providing legal services from the definition of “third party funding of arbitration”) and with a view to striking a proper balance by ensuring that legitimate concerns over possible conflict of interest are sufficiently addressed, the Government is now minded to propose Committee Stage Amendments (“CSAs”) to the effect that:

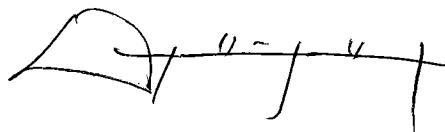
- (a) the proposed section 98G(2) be deleted (with the proposed section 98G(1) consequentially renumbered as section 98G);
and
- (b) a new proposed section 98NA be inserted after the proposed section 98N under Division 3 of the new Part 10A.

The proposed CSAs have been sent to the Clerk to the BC today. A copy of our letter to the BC is at **Annex**. In short, after the proposed CSAs, only lawyers acting for a party in the relevant arbitration or mediation would be prohibited from providing third party funding therefor.

As we intend to resume the Second Reading of the Bill as soon as possible, we have in parallel sought the comments of relevant legal and dispute resolution bodies¹ on the above proposal by Friday, 5 May 2017, so that we may take them into account in finalising the CSAs.

Meanwhile, if any further information is required, please feel free to let us know.

Yours sincerely,



(Peter H H Wong)
Solicitor General (Ag.)

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¹ They include: Chartered Institute of Arbitrators (East Asia Branch), China International Economic and Trade Arbitration Commission Hong Kong Arbitration Center, China Maritime Arbitration Commission Hong Kong Arbitration Center, Hong Kong Bar Association, Hong Kong Institute of Arbitrators, Hong Kong International Arbitration Centre, International Court of Arbitration of the International Chamber of Commerce – Asia Office and The Law Society of Hong Kong.

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By Fax No: 2840 0716

13 April 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 (“Bill”)
(Proposed Committee Stage Amendments to the Proposed
Section 98G(2) of the Arbitration Ordinance (Cap. 609) (“AO”))

Please be advised that after very careful consideration, the Government is minded to propose Committee Stage Amendments (“CSAs”) to the effect that, in relation to the provisions to be added by the Bill to the AO,

- (a) the proposed section 98G(2) be deleted (with the proposed section 98G(1) consequentially renumbered as section 98G);

and

- (b) a new proposed section 98NA be inserted after the proposed section 98N under Division 3 of the new Part 10A.

— A copy of the draft CSAs is attached.

In formulating the draft CSAs, the Government has taken into account the views expressed by Members at the meetings of the Bills Committee, the last of which was held on 14 March 2017, very seriously and seeks to strike a proper balance by ensuring that legitimate concerns over identified situations of conflict of interest are sufficiently addressed.

We should be grateful if you can bring this to the attention of the Chairman and other Members of the Bills Committee.

Yours sincerely,

A handwritten signature in black ink, consisting of a stylized 'B' followed by a long horizontal stroke.

(Bernard YUE)
Senior Assistant Solicitor General (Arbitration) (Ag.)

**Arbitration and Mediation Legislation
(Third Party Funding) (Amendment) Bill 2016**

CSAs re. lawyers' funding

Proposed section 98G(2) deleted

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

- (1)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
 - (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.~~

...

¹ With the proposed section 98G(2) deleted, the proposed section 98G(1), being the only subsection remaining, will be renumbered as section 98G when the Amendment Ordinance is published in the Gazette.

New proposed section 98NA added after section 98N

98NA. Part 10A not applicable to lawyers acting for parties in arbitration

- (1) This Part does not apply in relation to the provision of arbitration funding to a party by a lawyer who, in the course of the lawyer's legal practice, acts for any party in relation to the arbitration.
- (2) If a lawyer works for, or is a member of, a legal practice (however described or structured), the references in subsection (1) to "lawyer" include the legal practice and any other lawyer who works for, or is a member of, the legal practice.
- (3) In this section—

lawyer (律師) means—

 - (a) a person who is enrolled on the roll of barristers kept under section 29 of the Legal Practitioners Ordinance (Cap. 159);
 - (b) a person who is enrolled on the roll of solicitors kept under section 5 of that Ordinance; or
 - (c) a person who is qualified to practise the law of a jurisdiction other than Hong Kong, including a foreign lawyer as defined by section 2(1) of that Ordinance;

party (一方) means a party to an arbitration within the meaning of section 98I.