



30 October 2018

Mr. Wesley W.C. Wong, SC, JP  
Solicitor General  
Office of the Solicitor-General  
Legal Policy Division of the Department of Justice  
5/F, Main Wing, Justice Place  
18 Lower Albert Road,  
Central, Hong Kong

Dear Mr. Wong,

**Re: Consultation on Draft Code of Practice for  
Third Party Funding of Arbitration and Mediation**

Thank you for the opportunity to respond to the abovementioned draft Code of Practice. Hong Kong Mediation Centre (HKMC) is generally supportive of the proposed code of practice and standards to ensure proper performance of third party funders. We believe that the launch of the Code will strengthen the promotion of mediation and arbitration services in Hong Kong.

We take this opportunity to provide further comments on areas we believe to be critical to the effective implementation of the Code.

1. The responsibility for Subsidiaries and Associated Entities and regulation relating to the promotional materials of third party funders stated in the Code are considered to be appropriate.
2. Regarding the funding agreement, we note that paragraph 2.3 (1) requires the funded party to seek independent legal advice prior to receiving funds. However, for the purpose of maintaining substantial feasibility of the third party arrangement, it may be worthwhile to consider protecting the rights of the funded party to legal aid instead of making legal aid mandatory for the funded party. Therefore, we suggest replacing the paragraph with “take reasonable steps to ensure that the

funded party is fully aware of its right to seek independent legal advice on the funding agreement before entering into it”.

3. Accordingly, we suggest refining paragraph 2.4 to “... in writing to the third party funder that the funded party is fully aware of its right to take independent legal advice on the funding agreement before entering into it”.
4. Given that third party funding could raise concerns about the impartiality and independence of the arbitrator or mediator, we suggest adding as follows:

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2.9 “The funding agreement shall set out clearly:

- (2) that the third party funder will not take any steps that cause or are likely to cause the funded party’s legal representative, arbitrator and mediator to act in breach of professional duties.”

We would greatly appreciate it if the points above are taken into consideration as you finalize the draft Code. If you would like to discuss any of the comments further, please contact the undersigned at [admin@mediationcentre.org.hk](mailto:admin@mediationcentre.org.hk).

Yours sincerely,



Dr. Francis LAW  
President  
Hong Kong Mediation Centre