

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**

We refer to draft Code of Practice for Third Party Funding of Arbitration and Mediation issued by the Department of Justice in August 2018 and provide our feedback for your consideration.

We are of the view that third party funding will encourage greater use of arbitration and mediation, as well as allowing parties greater access to justice. We appreciate and welcome the proposed regulations in the draft Code to address concerns about the role of funders, the disclosure of the funding agreement and conflict of interest.

Our additional comments are set out below.

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 effective and 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. Since the conversion of a mediated settlement agreement into an arbitral award (consent award) is possible, we consider that paragraph 2.11 should be revised as follows:

Disclosure

“To avoid doubt, the funded party to an arbitration or mediation does not have any obligation to disclose details of the funding agreement except as required by the arbitration body in an arbitration or mediation, or as otherwise required by law.”

We would be pleased to provide you with our further thoughts if required. For enquiry, please contact the undersigned at admin@mhjmc.org.

Yours sincerely,



Amy WONG

Founder

Mainland – Hong Kong Joint Mediation Center