

Third party funding of Arbitration: Amendments proposed for Arbitration Ordinance and Mediation Ordinance

The Government will introduce legislative amendments to clarify that third party funding of arbitration and mediation is not prohibited by the common law doctrines of maintenance and champerty. The proposed amendments to the Arbitration Ordinance (Cap 609) and the Mediation Ordinance (Cap 620) will also provide for related measures and safeguards by setting out the standards and practices (including financial and ethical standards) with which third party funders would generally be expected to comply when carrying on activities in connection with third party funding of arbitration and mediation.

A spokesman for the Department of Justice today (December 28) said that the proposed amendments were formulated on the basis of the recommendations made in the Report on Third Party Funding for Arbitration published by the Law Reform Commission of Hong Kong in October 2016 and the views of the Steering Committee on Mediation.

Third party funding of arbitration and other dispute resolution proceedings has become increasingly common over the last decade in numerous jurisdictions, including Australia, England and Wales, various European jurisdictions and the United States. To date, third party funding arrangements have usually been motivated by a funded party's lack of financial resources to pursue its own claims in contentious proceedings. However, increasingly, parties who do have the financial resources to fund contentious proceedings may also seek third party funding as a financial or risk management tool.

The courts in Hong Kong do not object, in principle, to third party funding of arbitration and related proceedings (including mediation). However, it is unclear whether the common law doctrines of maintenance and champerty also

apply to third party funding of arbitration taking place in Hong Kong. Indeed, a Court of Final Appeal judgment handed down in 2007 expressly left open this question.

"It is likely that a party to an arbitration or mediation taking place in Hong Kong may wish to consider whether or not it should seek third party funding of its participation in such an arbitration or mediation if it is clearly permitted by Hong Kong law to do so. We therefore believe the amendments will attract more arbitrations to be conducted in Hong Kong, and thus will further enhance Hong Kong's competitiveness as a leading international dispute resolution services centre in the Asia-Pacific region," the spokesman said.

The Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Bill 2016, which contains the above amendments, will be gazetted this Friday (December 30) and introduced into the Legislative Council on January 11, 2017.

Ends/Wednesday, December 28, 2016