

**Arbitration and Mediation Legislation
(Third Party Funding) (Amendment) Ordinance 2017**

Code of Practice for Third Party Funding of Arbitration

Background

The *Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017* (“Amendment Ordinance”) (a copy is available at <https://www.gld.gov.hk/egazette/pdf/20172125/es1201721256.pdf>) amends the Arbitration Ordinance (Cap. 609) (“AO”) and the Mediation Ordinance (Cap. 620) (“MO”) to clarify that third party funding of arbitration and mediation is not prohibited by the common law doctrines of maintenance and champerty, and to provide for related measures and safeguards.

2. The Amendment Ordinance was largely based on the recommendations made by the Law Reform Commission in the Report of Third Party Funding of Arbitration published in October 2016 and the recommendations of the Steering Committee on Mediation. As third party funding of arbitration and other dispute resolution proceedings has become increasingly common in numerous jurisdictions, it is necessary for the legal position in Hong Kong on third party funding of arbitration to be clear in order to support our competitiveness as one of the major centres of international arbitration in the Asia Pacific region. The Government, having consulted the Steering Committee on Mediation, decided that consequential amendments should be made to the Mediation Ordinance (Cap. 620) (“MO”), so as to similarly achieve legal clarity and certainty for third party funding of mediation. The amendments would also help to promote the use of mediation services in Hong Kong and further enhance Hong Kong’s position as an international alternative dispute resolution centre.

3. The reform is also expected to benefit the general public by diverting more commercial, construction, finance, trade and similar disputes from the Hong Kong courts to arbitration, thereby relieving the pressure on the Hong Kong courts’ resources and making more resources available for litigation of issues and disputes involving the public.

4. The Amendment Ordinance was passed by the Legislative Council on 14 June 2017. Its provisions come into operation in stages:

- (a) Divisions 1, 2, 4 and 6 of the new Part 10A of the AO came into operation when it was published in the Gazette on 23 June 2017;
- (b) Section 3 of the Amendment Ordinance (in so far as it relates to Divisions 3 and 5 of the new Part 10A of the AO) and section 4 of the Amendment Ordinance (in so far as it relates to the new section 7A(c) and (d) of the MO) would commence later on dates to be appointed.

5. The deferred commencement of the provisions referred to in paragraph 4(b) above was intended to facilitate:

- (a) the preparation and issuance of a code of practice by the authorized body, after public consultation, setting out the practices and standards with which third party funders are ordinarily expected to comply in carrying on activities in connection with third party funding of **arbitration**;
- (b) similarly, the preparation and issuance of a code of practice for third party funding of **mediation** by the authorized body after public consultation; and
- (c) the appointment of an advisory body by the Secretary for Justice (“SJ”) under section 98X(1) of the AO to monitor and review the operation of the relevant provisions and the implementation of the codes of practice.

Authorized Body

6. On 18 May 2018, SJ was appointed as the authorized body under section 98X(2) of the AO. The Amendment Ordinance empowers the authorized body to issue code of practice pursuant to Part 10A of the AO and section 7A of the MO.

Advisory Body

7. On 24 August 2018, Mr Anthony Chow, SBS, JP, Mr Robert Pang, SC and Mr Victor Dawes, SC were appointed as members of an advisory body under section 98X(1) of the AO for a term of three years. The advisory body will be responsible for monitoring and reviewing the operation of the provisions

on third party funding of arbitration and mediation, including the implementation of code of practice.

Issuance of Code of Practice for Third Party Funding of Arbitration (“Code”) and Commencement of Relevant Statutory Provisions

8. The Department of Justice (“DoJ”) launched a public consultation on a draft Code of Practice for Third Party Funding of Arbitration and Mediation in August – October 2018. A total of 15 responses were received from legal professional bodies, dispute resolution institutions, academics, practitioners and dispute resolution funders. After due consideration of the comments received, the Code was issued on 7 December 2018 by the SJ, in her capacity as the authorized body, pursuant to section 98P of the AO. A copy of the Code is available at <https://www.gld.gov.hk/egazette/pdf/20182249/egn201822499048.pdf>.

9. On the same day, a notice was published in the Gazette appointing 1 February 2019 as the date for bringing the relevant provisions of the Amendment Ordinance on third party funding of arbitration¹ into operation.

Way forward

10. The DoJ will continue to engage the mediation community and relevant shareholders on certain issues concerning third party funding of mediation with a view to addressing them, with a view to bringing the remaining provisions of the Amendment Ordinance (relating to third party funding of mediation under the MO) into operation as soon as practicable with the necessary code of practice to complement it.

11. As mentioned above, the implementation of the Code will be monitored and reviewed by the advisory body. It is expected that the advisory body will issue a report reviewing the implementation of the Code after three years and make recommendations on the way forward.

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¹ i.e. section 3 of the Amendment Ordinance (in so far as it relates to the application of Divisions 3 and 5 of the new Part 10A in relation to an arbitration within the meaning of that Part only of the AO).