

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**

On behalf of the International Dispute Resolution & Risk Management Institute (IDRRMI), we wish to express our support for the draft Code of Practice for Third Party Funding of Arbitration and Mediation issued by the Department of Justice (DoJ) in August 2018.

IDRRMI is a professional dispute resolution body dedicated to provide the Belt and Road enterprises and other global organizations with one-stop solutions for dispute resolution, risk management, internal control, and corporate governance.

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.

Our additional comments are set out below.

1. We support 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.
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. In addition, to attract more third party funders of arbitration and mediation, it is suggested that the minimum requirement of capital adequacy should be reduced from HK\$20 million to HK\$10 million.
4. Given that third party funding could raise concerns about the impartiality and independence of the arbitrator or mediator, we suggest adding as follows:

*Control*

2.9 “The funding agreement shall set out clearly:  
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.”

5. 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 hope the above comments are useful for DoJ in finalizing the Code. Please feel free to contact the undersigned at [admin@idrrmi.org](mailto:admin@idrrmi.org) if we can be of further assistance.

Yours sincerely,



Alfred CHAN

Vice-Chairman

International Dispute Resolution & Risk Management Institute