

# Code of Practice for Third Party Funding of Arbitration issued

A Code of Practice for Third Party Funding of Arbitration was issued today (December 7) 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.

A notice was also gazetted today appointing February 1, 2019, as the date on which relevant provisions of Section 3 of the Arbitration and Mediation Legislation (Third Party Funding) (Amendment) Ordinance 2017 (Amendment Ordinance) relating to Divisions 3 and 5 of new Part 10A of the Arbitration Ordinance (New Arbitration Ordinance Provisions) shall come into operation.

A spokesman for the Department of Justice (DoJ) said, "Upon commencement of the New Arbitration Ordinance Provisions, there will be greater certainty that third party funding of arbitration in Hong Kong is not prohibited by the common law doctrines of maintenance and champerty. This will add to the attractiveness of Hong Kong as an international arbitration centre. At the same time, the Code can play a useful role in setting minimum standards of good practice by third party funders of arbitration and laying down safeguards for funded parties."

The Amendment Ordinance was passed by the Legislative Council on June 14, 2017, to implement 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.

The Amendment Ordinance came into operation upon gazettal on June 23, 2017, except for section 3 in so far as it relates to the New Arbitration Ordinance Provisions, and section 4 in so far as it relates to the new section 7A(c) and (d) of the Mediation Ordinance (New Mediation Ordinance Provisions).

In accordance with section 98R of the Arbitration Ordinance, the DoJ launched a two-month public consultation on a draft code of practice on third party funding of arbitration and mediation on August 30, 2018. After due consideration of the comments received in the consultation, the Secretary for Justice, as the authorised body appointed under section 98X(2) of the Arbitration Ordinance, has decided to issue the Code and to bring the New Arbitration Ordinance Provisions into commencement.

The commencement of the New Mediation Ordinance Provisions will be deferred to a future date following further deliberation on the way forward at the Steering Committee on Mediation. 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, so that the New Mediation Ordinance Provisions may be brought into operation as soon as

practicable with the necessary code of practice to complement it.