



Hong Kong General Chamber of Commerce
香港總商會1861

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Our Ref: SN/2

Ms Michelle Ainsworth
Secretary
The Law Reform Commission of Hong Kong
4/F., East Wing
Justice Place
18 Lower Albert Road
Central, Hong Kong

Dear Ms Ainsworth

Consultation Paper: Third Party Funding for Arbitration

Thank you very much for your letter of ref: LRC/TOP/55 on 5 January 2016 to the Chamber Chairman as a follow-up invitation to the Chamber to comment on the captioned consultation paper (CP).

The issue of Third Party Funding for Arbitration (TPFA) was considered by the Chamber's Legal Committee, and in the course of its deliberations, was fortunate to meet with Ms Kim Rooney, Chairman of the LRC's TPFA Sub-committee, who very kindly briefed members on the Sub-committee's proposals.

Members are essentially divided in their views regarding the adoption of TPFA in Hong Kong. Opinions in favour of TPFA are premised on the reasons that (1) this is a worldwide trend and, as such, Hong Kong should align itself with this direction; and (2) TPFA already exists in Hong Kong albeit in different forms.

Conversely, there are concerns about the absence of a clear cut case for legislative intervention. While the CP alludes to the current uncertainty surrounding the permissibility of TPFA in Hong Kong, Common Law necessarily advances in an incremental fashion and this is one of its strengths when dealing with complicated issues such as TPFA. Some feel that a legislative response is inherently problematic in that it cannot anticipate and accommodate the myriad of public policy and other issues that may arise due to TPFA adoption.

Allowing third party funding of arbitrations could also potentially open the door to third party funding of litigation, sweeping away the long-standing prohibition by our courts of champerty and maintenance. This would allow professional funders to run cases on a speculative basis, increasing the litigiousness of Hong Kong to the detriment of the business community.

We apologise for not being able to offer a conclusive position as a Chamber vis-à-vis the CP at this time given members' divergent views. Nevertheless, we hope that our members' comments are useful to further deliberations by the Sub-committee. We understand that the LRC will submit a report to the Government based on the responses collected and look forward to the opportunity of commenting again if and when the Government consults the public on the issue.

Yours sincerely



Shirley Yuen
CEO