

Kluwer Arbitration Blog

Hong Kong Law Reform Commission releases Consultation Paper on Third Party Funding in Arbitration

Justin D'Agostino (Herbert Smith Freehills) · Friday, October 23rd, 2015 · Herbert Smith Freehills

On 19 October 2015, the Hong Kong Law Reform Commission published a Consultation Paper recommending that third party funding should be permitted for arbitrations in Hong Kong. The Paper invites public comment on the recommendation, and how third party funding should be adopted in Hong Kong. A link to the paper can be found [here](#).

The Consultation Paper is a comprehensive study of the third party funding industry, examining current third party funding methods in other jurisdictions, as well as the potential benefits and drawbacks of permitting third party funding for arbitration in Hong Kong. The Consultation Paper also reviews the current law relating to third party funding in Hong Kong, as well as the law and regulation for third party funding in several other jurisdiction (including England & Wales, Australia, USA, Mainland China, and Singapore).

Justin D'Agostino, the Global Head of Herbert Smith Freehills' Dispute Resolution practice and the firm's Regional Managing Partner for Asia and Australia, is a member of the Law Reform Commission Sub-Committee which drafted the Consultation Paper. The Sub-Committee includes key members of Hong Kong's arbitration community, including Kim Rooney, a barrister at Gilt Chambers (Chair of the Sub-Committee), Teresa Cheng SC, Chairwoman of HKIAC, Robert Pang SC, Jason Karas and Victor Dawes SC.

Justin notes that "third party funding, and the financing options for disputes generally, are hot topics in the arbitration community, and of key interest to our clients. We hope this Paper improves the public understanding of a widely debated issue, and we welcome clients to provide their views to us on this subject."

"In the wake of the recent results for Hong Kong in the Queen Mary University International Arbitration Survey, this paper re-enforces Hong Kong's status as a dynamic and leading global arbitration centre, providing thought leadership in this developing industry."

Justin also commented that "beyond Hong Kong, third party funding helps to provide access to justice. Increasingly though we are also seeing third party funding as an alternative financing option for clients to mitigate the costs and risks of pursuing

disputes. Third party funding can therefore be a useful tool for clients to help alleviate the various pressures they face on their legal spend. ”

Justin was assisted in his work on the Law Reform Commission Sub-Committee by Briana Young, Senior Professional Support Lawyer, and James MacKinnon, Associate, of HSF's International Arbitration practice in Hong Kong. Herbert Smith Freehills was the only international law firm to be represented on the Law Reform Commission Sub-Committee.

What are the recommendations of the Law Reform Commission?

The recommendations of the Consultation Paper are as follows:

1. The Arbitration Ordinance (the law that provides the legal framework for arbitration in Hong Kong) should be amended to provide that Third Party Funding for arbitration taking place in Hong Kong is permitted under Hong Kong law.
2. Clear ethical and financial standards for Third Party Funders providing Third Party Funding to parties to arbitrations taking place in Hong Kong should be developed.
3. The Sub-Committee has invited submissions from the community on the following:
 - a. Whether the development and supervision of the applicable ethical and financial standards should be conducted by (a) a statutory or governmental body, whether existing or to be established, and if so, what type of body, or (b) a self-regulatory body, whether for a trial period or permanently and how such ethical or financial standards should be enforced; and
 - b. How the applicable ethical or financial standards should address any of the following matters or any additional matters:
 - i. capital adequacy;
 - ii. conflicts of interest;
 - iii. confidentiality and privilege;
 - iv. extent of extra-territorial application;
 - v. control of the arbitration by the Third Party Funder;
 - vi. disclosure of Third Party Funding to the Tribunal and other party/parties to the arbitration;
 - vii. grounds for termination of Third Party Funding; and
 - viii. a complaint procedure and enforcement
4. Further, the Sub-Committee has also invited submissions from the community on the following:
 - a. Whether or not a Third Party Funder should be directly liable for Adverse Costs Orders in a matter it has funded;
 - b. If the answer to (a) is “yes”, how such liability could be imposed as a matter of Hong Kong law, and for the purposes of recognition and enforcement under the Convention for Recognition and Enforcement of Foreign Arbitral Awards 1958;
 - c. Whether there is a need to amend the Arbitration Ordinance to provide for the Tribunal's power to order Third Party Funders to provide Security for Costs; and
 - d. If the answer to (c) is “yes”, the basis for such power as a matter of Hong Kong law, and for the purposes of recognition and enforcement under the Convention for Recognition and Enforcement of Foreign Arbitral Awards 1958.

How can I comment on the recommendations?

The consultation period for submissions from the business community and the wider Hong Kong public began on 19 October 2015, and will last for three months until 16 January 2016. We hope readers take an opportunity to review the Consultation Paper. If you wish to make a submission, please contact the Law Reform Commission (hklrc@hkreform.gov.hk).


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The graphic features a black background with white text and a circular icon. The icon depicts a group of stylized human figures, with one figure in the center being magnified by a magnifying glass. The background is accented with horizontal lines in blue and green.

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