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HONG KONG SAR - COVID-19 - Q&A ON THE HK GOVERNMENT'S COVID-19 ONLINE DISPUTE RESOLUTION SCHEME

Apr 16, 2020

Like many other jurisdictions, Hong Kong SAR is taking a proactive approach to dealing with the economic and business consequences of the COVID-19 pandemic.

In an article posted on her blog on 13 April 2020, the Secretary for Justice Teresa Cheng has given further details to one of the latest Hong Kong Government measures to support individuals and businesses affected by the COVID-19 pandemic - the COVID-19 Online Dispute Resolution (ODR) Scheme. The Government plans to launch this ODR Scheme in June 2020 if funding can be secured by April.

In this Q&A, we aim to outline some of the key features of the ODR Scheme.

1. What are the cases which the ODR Scheme intends to cover?

The ODR Scheme intends to cover COVID-19 related disputes with the claim amount for each case to be capped at HK$500,000, especially for disputes involving micro, small and medium-sized enterprises.

2. What are the prerequisites of having your dispute resolved under the ODR Scheme?

a. Either one of the parties (claimant or respondent) must be a Hong Kong SAR resident or company.
b. Each party must pay a registration fee of HK$200.
c. The parties are required to enter into a dispute resolution agreement to record their consent to using the ODR Scheme.

3. What are the steps under the ODR Scheme?

The Secretary of Justice describes the ODR Scheme as a "multi-tiered dispute resolution mechanism".

The parties would go through three "tiers":

a. The parties will first attempt to negotiate their disputes.

b. If the negotiation fails, there will be mediation.

c. If mediation fails, there will be arbitration for a final and binding award.

4. What are the advantages of the ODR Scheme over traditional dispute resolution mechanisms?

It is stated that the ODR Scheme aims to offer a fast and effective means to resolve disputes, with the hope of preserving parties' long term business relationship.

To avoid disputes and differences from becoming entrenched, each tier of dispute resolution will be conducted within a limited time, giving parties the pressure to "move on".

5. How are mediators and arbitrators chosen?

Parties are at liberty to appoint mediators and arbitrators of their choice. If no agreement is reached, there will be a mechanism for appointment (no details yet of the mechanism).

6. What further details do we expect from the Government?

We would expect the Government to clarify various the details below before launching the ODR Scheme in June 2020, including:

a. What is the maximum period of time allowed for each "tier"?

b. Can the parties appeal or challenge the arbitrator's decision? If so, on what grounds?

c. Are legal representatives allowed?

d. What will be the mechanism for appointment if the parties are unable to reach an agreement on the mediator / arbitrator?

BCLP has assembled a COVID-19 main taskforce to assist clients with related issues across various jurisdictions. You can contact the taskforce at: COVID-19LegalIssuesTaskforce@bclplaw.com.

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MEET THE TEAM

Glenn Haley

Co-Author, Hong Kong SAR

glenn.haley@bclplaw.com
+852 3143 8450

Ian Cheng

Co-Author, Hong Kong SAR

ian.cheng@bclplaw.com
+852 3143 8455