

**立法會**  
***Legislative Council***

LC Paper No. CB(4)1176/18-19  
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by the Administration)

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**Panel on Administration of Justice and Legal Services**

**Minutes of meeting**  
**held on Monday, 25 March 2019, at 4:30 pm**  
**in Conference Room 2 of the Legislative Council Complex**

**Members present** : Dr Hon Priscilla LEUNG Mei-fun, SBS, JP (Chairman)  
Hon James TO Kun-sun  
Hon Starry LEE Wai-king, SBS, JP  
Hon CHAN Kin-por, GBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon CHAN Chi-chuen  
Hon Martin LIAO Cheung-kong, SBS, JP  
Ir Dr Hon LO Wai-kwok, SBS, MH, JP  
Hon Alvin YEUNG  
Hon CHU Hoi-dick  
Dr Hon Junius HO Kwan-yiu, JP  
Hon Holden CHOW Ho-ding  
Hon YUNG Hoi-yan  
Hon CHEUNG Kwok-kwan, JP  
Hon HUI Chi-fung

**Members attending** : Hon Claudia MO  
Dr Hon CHENG Chung-tai

**Members absent** : Hon Dennis KWOK Wing-hang (Deputy Chairman)  
Dr Hon Fernando CHEUNG Chiu-hung  
Hon CHUNG Kwok-pan  
Hon Jimmy NG Wing-ka, JP

**Public officers  
attending**

**: Agenda item III**

Department of Justice

Mr Alan SIU, JP  
Director of Administration & Development

Dr James DING  
Principal Government Counsel/Secretary for Justice's  
Office

Ms Selene TSOI  
Deputy Director (Special Duties)

Miss Ada CHEN  
Senior Assistant Law Officer (Mediation)

Mr LEE T Y  
Senior Assistant Solicitor General (Arbitration)

Representatives from other bodies

Mr Nick CHAN, MH  
Chairman, eBRAM Centre

Ms Winnie TAM, SC, JP  
Director, eBRAM Centre

Mr Simon WONG  
Chief Executive Officer, Logistics and Supply Chain  
MultiTech R&D Centre

Professor ZHAO Yun  
Head, Department of Law, Faculty of Law  
The University of Hong Kong

**Agenda item IV**

Department of Justice

Dr James DING  
Principal Government Counsel/Secretary for Justice's  
Office

Miss Ada CHEN  
Senior Assistant Law Officer (Mediation)

Miss Deneb CHEUNG  
Senior Assistant Solicitor General (China Law)

Mr LEE T Y  
Senior Assistant Solicitor General (Arbitration)

**Attendance by  
invitation**

**: Agenda item III**

Hong Kong Bar Association

Ms Kim Margaret ROONEY

The Law Society of Hong Kong

Ms Melissa PANG, MH, JP  
President

Mr CHAN C M  
Vice President

Mrs Cecilia WONG  
Council Member and Chair of the Mediation Committee

Ms Heidi CHU  
Secretary General

Ms Phoebe CHOW  
Director of Communications and External Affairs

Mr Barbarossa WAN  
Dispute Resolution Co-ordinator

Asian Academy of International Law

Mr Adrian LAI  
Deputy Secretary General

**Agenda item IV**

**Hong Kong Bar Association**

Mr Andrew MAK Y S

Mr Robin EGERTON

**The Law Society of Hong Kong**

Ms Melissa PANG, MH, JP  
President

Mr CHAN C M  
Vice President

Mrs Cecilia WONG  
Council Member and Chair of the Mediation Committee

Ms Heidi CHU  
Secretary General

Ms Phoebe CHOW  
Director of Communications and External Affairs

Mr Barbarossa WAN  
Dispute Resolution Co-ordinator

**Clerk in attendance :** Mr Lemuel WOO  
Chief Council Secretary (4)6

**Staff in attendance :** Mr YICK Wing-kin  
Senior Assistant Legal Adviser 2

Ms Macy NG  
Senior Council Secretary (4)6

Ms Emily LIU  
Legislative Assistant (4)6

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Action

**I. Information papers issued since the last meeting**

- (LC Paper No. CB(4)639/18-19(01) - Referral of a case from the Public Complaints Office of the Legislative Council Secretariat relating to the mechanism for handling complaints about the Chief Justice's conduct)

Members noted the above paper issued since the last meeting.

**II. Items for discussion at the next meeting**

- (LC Paper No. CB(4)665/18-19(01) - List of outstanding items for discussion)

2. Members noted that the following items would be discussed at the next regular meeting to be held on 29 April 2019:

- (a) Proposed legislative amendments for the implementation of the Information Technology Strategy Plan of the Judiciary; and
- (b) Cooperation between the Hong Kong Special Administrative Region and the Mainland on arbitration-related matters.

**III. Development of an online dispute resolution and deal making platform by non-governmental organization**

- (LC Paper No. CB(4)665/18-19(03) - Administration's paper on development of an online dispute resolution and deal making platform by non-governmental organization)

Briefing by the Administration and relevant organizations

3. Director of Administration and Development of the Department of Justice ("DoJ") ("D of AD") briefed members on the proposal to provide one-off funding support of HK\$150 million for the development and initial operation of an Electronic Business Related Arbitration and Mediation platform ("the

eBRAM platform") by the non-governmental eBRAM Centre ("the Proposal") as detailed in LC Paper No. CB(4)665/18-19(03).

4. D of AD said that the Administration was aware of the rapidly increasing demand of online dispute resolution ("ODR") services and that various international and regional organizations, such as The United Nations Commission on International Trade Law and the Asia-Pacific Economic Cooperation ("APEC"), had been taking active steps to promote and use ODR to provide a reliable and efficient platform to facilitate alternative dispute resolution ("ADR"). In that regard, the 2018 Chief Executive's Policy Address and the 2019-2020 Budget indicated support for funding the cost of non-governmental development of an e-arbitration and e-mediation platform so that the Hong Kong Special Administrative Region would be able to provide efficient and cost-effective ODR services.

5. D of AD further said that the eBRAM Centre was developing an ODR platform, with the support of the Innovation and Technology Fund, with a view to raising Hong Kong's position in dispute resolution and facilitating the development of LawTech in local legal profession. The eBRAM platform would also provide business opportunities for professionals and Micro, Small and Medium-sized Enterprises ("MSMEs") both locally as well as under the Belt and Road ("B&R") and the Greater Bay Area Initiatives. He added that some local trade associations had expressed supportive views on the development of an ODR platform, details of which were set out in their submissions [LC Paper Nos. CB(4)681/18-19(01) to (07)] tabled at the meeting.

6. Mr Nick CHAN, Chairman of the eBRAM Centre, then briefed members on the setup and work plan of the eBRAM Centre. He said that, incorporated in June 2018, the eBRAM Centre was a company limited by guarantee formed by enthusiastic professional arbitrators, mediators and legal practitioners (i.e. members from The Law Society of Hong Kong ("the Law Society"), the Hong Kong Bar Association ("the Bar Association"), Asian Academy of International Law Limited ("AAIL") and the Logistics and Supply Chain MultiTech R&D Centre ("LSCM")).

7. Mr Nick CHAN further said that integrating state-of-the-art technologies (Neural Machine Learning on Translation, Artificial Intelligence, Internet of Things, Blockchain and Smart Contract, etc.) for use in ADR, the eBRAM platform facilitating deal making, negotiation, mediation, etc. would build capacity to meet the rapid expanding demand for legal and dispute resolution services across jurisdictions and consolidate Hong Kong's position as a LawTech centre and the hub of deal making and dispute avoidance and resolution. The eBRAM Centre would also collaborate with international organizations such as APEC and Association of Southeast Asian Nations, the

B&R countries and the Greater Bay Area. This would facilitate the provision of cross-border one-stop dispute resolution services to enterprises worldwide and provide more opportunities for local professionals.

8. Professor ZHAO Yun, Head of the Department of Law, the University of Hong Kong, then briefed members on the progress of the project being undertaken by APEC to establish an ODR platform with MSMEs. He said that APEC had already started discussing on issues relating to the development of a new ODR framework, and the APEC Economic Committee endorsed a work plan for a collaborative framework for ODR of business-to-business (B2B) disputes involving MSMEs.

9. Professor ZHAO Yun also pointed out that some service providers in other APEC economies had already expressed interest in providing ODR services under APEC. It was crucial that Hong Kong should secure early-mover advantage in taking early action to grasp the opportunity of developing a platform for providing affordable ODR services to MSMEs so as to jumpstart Hong Kong's development as a leading ODR centre.

#### Views of the Hong Kong Bar Association

10. Ms Kim Margaret ROONEY of the Bar Association informed members that, as a nominee of the Bar Association, she was serving on the Board of the eBRAM Centre as Vice Chair. She said that the Bar Association supported the development of an ODR and deal making platform in Hong Kong by a non-government organization ("NGO") and considered that, with a view to maintaining Hong Kong as a leading international legal and dispute resolution services centre, an ODR platform was needed to assist the access to justice of MSMEs.

11. Ms Kim Margaret ROONEY was of the view that the ODR platform should support the continuous development and innovation of secure and cost-effective dispute resolution techniques, support the development of skills both in developing the ODR platform as well as capacity building after the ODR platform was built, and gain the trust and confidence of MSMEs in using the platform. She considered that, as the eBRAM platform was founded on Hong Kong's legal framework, it was able to provide a neutral, impartial, independent and secure ODR platform, which was low-cost and affordable for local MSMEs. The eBRAM platform would also complement and enhance existing dispute resolution services.

### Views of The Law Society of Hong Kong

12. Ms Melissa PANG, President of the Law Society said that, the Law Society, being one of the founding members of the eBRAM Centre, was in full support of the development of an ODR and deal making platform so as to consolidate Hong Kong's position as an international legal and dispute resolution services centre. Ms PANG added that given the rapid advances and extensiveness in the use of technology in business transactions and the keen competition from other international legal and dispute resolution services centres in the region, the Law Society hoped that the eBRAM platform could be implemented as early as practicable.

### Views of the Asian Academy of International Law Limited

13. Mr Adrian LAI, Deputy Secretary General of AAIL pointed out that the eBRAM platform would provide an ODR platform offering services to MSMEs currently not covered by the traditional physical platform for face-to-face arbitration and mediation to be conducted. In addition to business disputes, the platform could provide services to investment disputes between countries. Mr LAI added that through the eBRAM platform, which would incorporate the arbitration and mediation procedures being adopted in Hong Kong, Hong Kong's position as an international legal and dispute resolution services centre would be further consolidated and enhanced.

### Discussion

#### *Declaration of interests*

14. The Chairman reminded members that in accordance with Rules 83A and 84 of the Rules of Procedure of the Legislative Council, they should disclose the nature of any direct or indirect pecuniary interests relating to the subject under discussion at the meeting before they spoke on the subject.

15. The Chairman declared that she was an arbitrator of the Hong Kong International Arbitration Centre ("HKIAC") and the China International Economic and Trade Arbitration Commission ("CIETAC"). She was also the Vice President of the International Academy of the Belt and Road, which was committed to building an international platform for academic and professional exchanges. Mr Martin LIAO declared that he was an arbitrator of the Bar Association, and his name was on the Bar List (Arbitrators). He also served as a member of the Task Force on Belt and Road Dispute Resolution.



*Benefits to users of arbitration and mediation services*

16. Mr Paul TSE noted from the Administration's paper that nearly three-fourths of the respondents to a recent international arbitration survey conducted by the Queen Mary University of London favoured simplified procedures for claims under the value of US\$500,000. Furthermore, the respondents cited cost and lack of speed as the biggest drawback to international arbitration. Mr TSE enquired how the eBRAM platform could address the needs as reflected in that survey.

17. D of AD said that the two major obstacles faced by MSMEs preventing them from using the traditional dispute resolution services were, firstly, the high costs involved relative to the low values of their business transactions and, secondly, the difficulties involved in cross-border disputes. Since the eBRAM platform would provide a low-cost platform and allow cross-border dispute resolution to be conducted, he considered that MSMEs should welcome the platform.

18. Mr Nick CHAN added that a major strength of the eBRAM platform was in providing an efficient and cost-effective platform for online deal making and resolving disputes among parties in any part of the world. It would make use of the application of Artificial Intelligence translation to facilitate cross-border dispute resolution, deal making and transaction for global business, investment and trade. Since MSMEs accounted for about 98% of businesses in Hong Kong, the eBRAM platform would bring significant benefits to them and, therefore, the eBRAM platform would target lower value transactions as a start.

19. D of AD further said that the Administration had received positive responses from the business sector, relevant stakeholders and members of the public regarding the development of an ODR platform since the Proposal was announced in the 2018 Policy Address and the 2019-2020 Budget including the submissions from local trade associations [LC Paper Nos. CB(4)681/18-19(01) to (07)] tabled at the meeting.

20. Mr Martin LIAO indicated in-principle support for the Proposal. He enquired whether the arbitral awards made through the eBRAM platform would be enforceable in other jurisdictions. In reply, Mr Nick CHAN said that there was no difference between an arbitral award made in Hong Kong through the eBRAM platform and that through traditional arbitration. Arbitral awards made through the eBRAM platform would be enforceable in other jurisdictions which were contracting parties to the New York Convention.

*Promoting the use of the Electronic Business Related Arbitration and Mediation platform by local legal professionals and enterprises*

21. The Chairman welcomed the development of the eBRAM platform and indicated support for the Proposal as it would facilitate the provision of cross-border one-stop dispute resolution services to enterprises worldwide including the B&R region and the Greater Bay Area, and Mainland-focused enterprises. She considered it important to take active steps to promote the eBRAM platform so as to ensure the smooth running of the system once the platform was launched.

22. In reply, D of AD said that more promotion would be conducted to encourage local MSMEs to use the eBRAM platform so as to facilitate deal making, transaction and dispute resolution. Moreover, the eBRAM Centre would provide training to local legal professionals in familiarizing with and encourage the business operators in using the eBRAM platform. Therefore, the development of the eBRAM platform should generate a lot of business opportunities for local legal professionals as well as small and medium-sized law firms.

23. Ms YUNG Hoi-yan said that she supported the development of the eBRAM platform which would contribute to elevating Hong Kong's arbitration and mediation services. However, she was concerned whether arbitrators, mediators and legal practitioners had got prepared to make use of the eBRAM platform to provide ODR services and enquired whether the eBRAM Centre would pay efforts to promote the eBRAM platform to them.

24. Mr Nick CHAN said that since its incorporation in June 2018, the eBRAM Centre had been actively promoting the eBRAM platform to local and overseas lawyers (in more than 40 countries) as well as arbitral institutions. All of them expressed positive comments and great support for it. He also said that the eBRAM Centre had proposed the establishment of an ADR training academy and a pupillage system to nurture young aspiring professionals and enhance the skills of existing professionals, and to provide them with access to the e-arbitration and e-mediation community.

25. Mr Holden CHOW welcomed the development of the eBRAM platform and agreed that it would provide more business opportunities for local law firms, in particular the small and medium-sized firms. With a view to further promoting the eBRAM platform, he asked whether the eBRAM Centre would encourage MSMEs to, when entering into agreement with their business partners, specify using the eBRAM platform for cross-border dispute resolution.

26. In reply, Ms Winnie TAM, SC, Director of the eBRAM Centre, said that besides being a platform for dispute resolution, the eBRAM platform was also developed to facilitate deal making. In this connection, when promoting the use of eBRAM platform for deal making, the eBRAM Centre would encourage MSMEs to include a clause in agreements of their business deals specifying that any disputes arising therein were to be resolved through using the proposed platform.

27. Ms YUNG Hoi-yan enquired whether MSMEs could use the eBRAM platform if it was not the specified dispute resolution method in their agreements. Mr Nick CHAN replied in the affirmative that MSMEs could use the e-arbitration or e-mediation services provided through the eBRAM platform as long as they agreed to use that platform.

28. Ms Winnie TAM, SC, highlighted that, even if the civil proceedings for settling a dispute in court was ongoing, the litigant parties might choose to settle the dispute through the e-mediation or e-arbitration services under the eBRAM platform during the course. She said that the eBRAM platform was particularly useful for cross-border dispute resolution as it could provide a low-cost alternative to legal proceedings.

29. Mr Nick CHAN also informed members that the eBRAM Centre was exploring with some world renowned online business operators the possibility of including a clause in respective Terms of Use to specify the eBRAM platform for resolving disputes arising from online sales and transactions.

*Benefits and drawbacks to local professionals*

30. Dr Junius HO indicated in-principle support for the development of an ODR and deal making platform as it could provide services anywhere around the world with only an internet connection. However, based on the estimated total income generated by the eBRAM platform from 2019 to 2029 of HK\$460,438,000 and the average cost per case of HK\$38,000, he reckoned that the eBRAM Centre would only handle around 1 200 arbitration cases per year. Dr HO enquired about the actual economic benefits that the eBRAM platform could bring to Hong Kong, in particular to the local professionals.

31. In response, Mr Nick CHAN said that currently, without a well-recognized ODR platform that provided the possibility of cost-effective ODR services, some local professionals were missing out on opportunities to handle arbitration and mediation cases for MSMEs where the disputed sum was relatively low. With the launch of the eBRAM platform and all the benefits it would bring to MSMEs, the eBRAM platform would create more job opportunities for local professionals. The eBRAM Centre would also recruit

suitable arbitrators, mediators and other talents (in particular those with less experience) to provide arbitration and mediation services.

32. Mr Paul TSE noted that both local and overseas MSMEs could make use of the eBRAM platform, local and overseas legal practitioners, arbitrators or mediators might be involved in the whole process. He pointed out that if the services provided by the eBRAM platform were mainly used by overseas parties in the future, the benefits brought by the eBRAM platform to the local professionals would be quite limited. Mr TSE also expressed his concern that the eBRAM platform might adversely affect the job opportunities of local professionals.

33. In response to Mr Paul TSE, Ms Winnie TAM, SC, said that international participation was necessary to enhance Hong Kong's position as an international dispute resolution centre. As the eBRAM platform was targeted at disputes involving the lower valued transactions of MSMEs, it would provide suitable opportunity for young and less experienced professionals to handle these kinds of arbitration and mediation cases. Ms TAM, SC, also stressed that the development of the eBRAM platform would not only facilitate deal making and dispute resolution for global business, investment and trade, but also provide a valuable opportunity for Hong Kong to showcase its excellent legal foundation in the Asia-Pacific region.

34. Ms Melissa PANG also pointed out that Hong Kong was one of the world's leading international arbitration jurisdictions in the past decade. In order to consolidate Hong Kong's position, it was important to develop the eBRAM platform to provide ODR and deal making services among parties in any part of the world, including commercial and investment disputes involving the B&R countries and within the Greater Bay Area. From a local perspective, the eBRAM platform would also provide more opportunities for local professionals to handle the arbitration and mediation cases.

35. Mr Holden CHOW noted that the Board of the eBRAM Centre would have wide representation of the relevant sectors. As such, he enquired whether representatives from the the small and medium-sized local law firms would be invited to join the Board to give opinions so as to encourage their active participation in and support of the eBRAM platform.

36. D of AD replied that with more local professionals and MSMEs using the eBRAM platform, he envisaged that representation of the Board of eBRAM Centre might be widened to include representatives from the small and medium-sized law firms as well as MSMEs. Ms Winnie TAM, SC, also said that, apart from the Board, the eBRAM Centre would make reference to HKIAC's experience of creating a Users Council, and consider creating a

similar structure to provide a platform for the exchange of information and experience among users of the eBRAM platform.

*Funding support for the eBRAM Centre*

37. Mr Paul TSE enquired about the reasons for providing funding support to the eBRAM Centre to develop an ODR and deal making platform rather than other NGOs.

38. In response, D of AD said that with its founding members from major legal professional bodies and the innovation and technology sector, the eBRAM Centre was the only local NGO taking active steps to develop and promote a full spectrum of ODR services at the present moment. It was also the only local ODR services provider invited by the APEC workshop organizers to participate in their meetings and workshops. Having regard to its wide representation, expertise, competency, practical experience and strong commitment in developing ODR services, the eBRAM Centre was considered the most suitable local NGO to take forward the development and implementation of the eBRAM platform in line with the government policy.

39. The Chairman also enquired whether the Administration would allow other ODR platforms to operate in Hong Kong to encourage competition in the market.

40. In reply, D of AD said that the Administration considered it appropriate to concentrate public resources to support the development of the best possible ODR platform as it would be most effective in consolidating Hong Kong's status as an international legal and dispute resolution services centre. For the above-mentioned reasons, the Administration supported providing funding support to the eBRAM Centre for the development and initial operation of the eBRAM platform at the present moment. However, D of AD stressed that the eBRAM Centre did not have any exclusive right for providing ODR services and other interested parties could also enter the market.

*Monitoring the development of the Electronic Business Related Arbitration and Mediation platform*

41. The Chairman asked how the Administration would monitor the development of the eBRAM platform and its initial operation given that the eBRAM Centre would be provided with public funding.

42. In reply, D of AD said that based on the eBRAM Centre's own ten-year cashflow projection as set out in the Administration's paper, the eBRAM Centre would have a total deficit of around HK\$150 million in its first six years of

operation, while it would start to break even from the seventh year of operation onward and would be able to achieve self-sustainability thereafter. As the Financial Secretary had announced in the 2019-2020 Budget, HK\$150 million would be provided for the development and initial operation of the ODR and deal making platform. He said that subject to the Panel on Administration of Justice and Legal Services ("the Panel")'s support, the Administration planned to submit the Proposal to the Finance Committee for funding approval.

43. D of AD further said that subject to the approval of the Finance Committee, a memorandum of understanding ("MOU") would be signed between the Administration and the eBRAM Centre on specific areas in relation to the latter's operation and the utilization of any funding provided, as in the case of other Government-subsidized organizations like HKIAC. The Administration would closely monitor the operation of the eBRAM Centre and its development of the eBRAM platform, and evaluate its effectiveness after it was launched.

44. Mr Martin LIAO enquired what measures would be imposed by the Administration to monitor the operation of the eBRAM platform. D of AD responded that under the proposed MOU, government representatives could be appointed to the Board of Directors of the eBRAM Centre by the Government so as to enhance its governance. D of AD also said that the eBRAM Centre was required to report its implementation progress and relevant issues to the Government from time to time. Being a non-profit-making entity, the eBRAM Centre was prohibited from distributing its dividends.

*Fees and charges for Electronic Business Related Arbitration and Mediation platform and users' affordability*

45. Mr Holden CHOW noted that as many as 35% of cross-border disputes involving MSMEs remained unresolved with the average value of the dispute being some US\$50,000. He reckoned that the lower the values of these transactions, the smaller the amounts MSMEs would be willing to pay for the dispute resolution services. In light of this, Mr CHOW enquired whether the eBRAM Centre would consider charging different level of fees for using the eBRAM platform according to the monetary values involved in different disputes.

46. Ms YUNG Hoi-yan also considered that the average value of the transactions involved in MSMEs' disputes was generally low. If the cost for using the eBRAM platform was set too high, it might not be affordable to local MSMEs.

47. D of AD replied that the average fee for the arbitration service to be provided through the eBRAM platform was estimated at HK\$38,000 and MSMEs might consider it reasonable when compared to the average value of dispute at US\$50,000. Mr Nick CHAN added that the APEC Economic Committee had also given valuable advice to the eBRAM Centre on how to make the ODR platform more cost-effective. The eBRAM Centre would spare no effort to make the eBRAM platform affordable for MSMEs.

48. The Chairman said that from the experience of CIETAC as well as other major arbitral institutions both locally and in the Mainland, substantial administrative costs were involved in their operations. She worried that the eBRAM platform might also incur substantial administrative costs which would drive the fees too high to be affordable for MSMEs.

49. Mr Simon WONG, Chief Executive Officer of LSCM said that while legal practitioner's fees and arbitrator's fees accounted for the major part of the costs incurred in arbitration cases, the costs incurred in other steps of the traditional arbitration process could be reduced by applying modern technology through the eBRAM platform. For simpler arbitration cases with less resources required, the costs would be further reduced.

50. Mr Nick CHAN also said that unlike the traditional arbitration and mediation centres, the administration costs of the eBRAM platform, in particular the expenses on accommodation would be lower. With the application of modern technology and strong leadership of the eBRAM Centre, it was believed that the eBRAM platform would be able to provide efficient and cost-effective ODR services to local MSMEs.

*Relationship between the eBRAM Centre and the existing arbitration and mediation service providers in Hong Kong*

51. Dr Junius HO expressed concern that the eBRAM platform might create vicious competition with HKIAC, one of the leaders in international arbitration and mediation in Hong Kong. In reply, Mr Nick CHAN said that when the eBRAM platform was promoted to the arbitral institutions in Hong Kong, HKIAC welcomed its development. Instead of creating competition, the operation of the eBRAM Centre would complement and enhance HKIAC's services by making the Hong Kong arbitration and mediation industry broader, more diverse and inclusive of the latest digital technology.

52. Mr Martin LIAO asked how the eBRAM platform would complement and enhance existing dispute resolution services. In response, Mr Nick CHAN explained that the eBRAM Centre maintained close liaison and collaboration with existing arbitral institutions, including HKIAC and Hong Kong Maritime

Arbitration Group, and would allow them utilize the eBRAM platform. This arrangement would enhance the synergy between the existing arbitral institutions and the eBRAM Centre, and elevate the dispute resolution services in Hong Kong to scale new height.

*Security and privacy concerns*

53. Mr Martin LIAO enquired about the standard and criteria for procuring the technology products, and the measures adopted for enhancing cyber security of the eBRAM platform. In reply, Mr Nick CHAN explained that the technologies adopted by the eBRAM platform should be able to assist parties to enter into business deals on a secure and user-friendly platform. In order to enhance cyber security and better protect privacy, the whole process of the eBRAM platform was carefully designed, including application of "security-by-design" and "privacy-by-design" concepts. He further said that, with LSCM's support for developing the initial structure and technology to launch the services, as well as Hong Kong's sound legal system and robust enforcement for data protection and privacy, the eBRAM Centre would be able to provide a secure platform for online deal making and resolving disputes.

*Other issues*

54. The Chairman pointed out that HKIAC had set out certain rules for regulating arbitration and mediation activities since its setup in 1985. Nevertheless, as time went by, some of the rules became obstacles to HKIAC's development. In this regard, she was of the view that at the inception of the eBRAM platform, the eBRAM Centre should carefully set out the rules and practice notes to facilitate its future development.

55. The Chairman also expressed concern whether amendments to the current legislation, such as the Arbitration Ordinance (Cap. 609), were required after the eBRAM platform was rolled out. D of AD replied that the development of the the eBRAM platform would not involve any legislative amendments.

Conclusion

56. After discussion, the Chairman concluded that the Panel supported the Administration's submission of the Proposal to the Finance Committee for consideration.



**IV. Opportunities for Hong Kong's legal and dispute resolution services in the Greater Bay Area**

(LC Paper No. CB(4)665/18-19(04) - Administration's paper on opportunities for Hong Kong's legal and dispute resolution services in the Greater Bay Area)

57. Principal Government Counsel/Secretary for Justice's Office ("PGC/SJO") briefed members on the current liberalization measures on legal services under the framework of the "Mainland and Hong Kong Closer Economic Partnership Arrangement" ("CEPA"), how Hong Kong's legal and dispute resolution professionals might leverage opportunities in the development of the Guangdong-Hong Kong-Macao Greater Bay Area and the capacity building work carried out by DoJ and the sector, as detailed in the Administration's paper.

Views of the Hong Kong Bar Association

58. Mr Andrew MAK of the Bar Association thanked DoJ for its assistance and support in promoting Hong Kong's legal and dispute resolution services over the years. He pointed out that, whilst the number of Hong Kong legal practitioners who had acquired Mainland legal professional qualification ("qualified Hong Kong practitioners") was increasing, the scope of practice for them was not on par with that of Mainland lawyers, e.g. appearing in Mainland courts. The Bar Association considered that such restriction on their scope of practice should be removed as far as possible, and a negative list should be provided to qualified Hong Kong practitioners setting out those areas which they could not practise.

59. Mr Andrew MAK said that the Bar Association welcomed the Administration's initiative to pursue the scheme which allowed Hong Kong barristers who had not acquired Mainland legal professional qualification to be retained as legal consultants by Mainland law firms. It hoped that under the "Outline Development Plan of the Guangdong-Hong Kong-Macao Greater Bay Area" promulgated on 18 February 2019, which explicitly supported Hong Kong to establish itself as the centre for international legal and dispute resolution services in the Asia-Pacific region, the number of barristers retained as legal consultants in the Greater Bay Area would continue to increase.

60. Mr Andrew MAK added that the Bar Association had been committed to participating in capacity building such that the legal sectors in the Mainland and Hong Kong could acquire a better understanding of their counterparts in order to complement each other and there was great demand in Guangdong and

Shenzhen. The Bar Association was willing to provide necessary support to the development of a capacity building and exchange platform in the Greater Bay Area.

#### Views of The Law Society of Hong Kong

61. Ms Melissa PANG, President of the Law Society, thanked DoJ for partnering with the Law Society in developing Hong Kong's legal services in the Greater Bay Area. She suggested that additional measures should be taken to encourage the setting up of more partnership associations between Hong Kong and Mainland law firms. Her suggestions included lowering the current threshold of total capital injection required for the formation of partnership association, i.e. RMB 5 million; relaxing the capital injection ratio of Hong Kong partner firm from not more than 49 % to more than 49 % and allowing the ratio to be determined by mutual agreement between Hong Kong and Mainland partner firms; and allowing individual lawyers of the two places to set up associations in the form of partnership.

62. Mr CHAN C M, Vice President of the Law Society considered that DoJ should strive to expand the scope of practice of qualified Hong Kong practitioners so that they could act as civil litigation representative on the Mainland. Besides, Mr CHAN considered that more tax concessions/incentives should be provided so as to attract more Hong Kong solicitors to practise on the Mainland and encourage the setting up of more partnership associations between Hong Kong law firms and Mainland law firms.

63. Mr CHAN C M further suggested establishing a special examination designated for Hong Kong solicitors so that they would be able to acquire the Mainland legal professional qualification for limited practice in the Greater Bay Area in specified field (e.g. the cross-boundary investment legal services which Hong Kong solicitors had expertise) by passing the special examination. Mr CHAN also suggested taking measures to attract the legal departments of state-owned as well as private enterprises on the Mainland to set up their branch offices in Hong Kong so that they would consider choosing Hong Kong law as the governing law of the contracts and use Hong Kong as the place of arbitration and mediation.

64. Mrs Cecilia WONG, Council Member and Chair of the Mediation Committee of the Law Society articulated the Law Society's support in using arbitration or mediation for dispute resolution. She said that the Law Society appreciated DoJ's efforts to strive for further opening up of the Mainland market for the Hong Kong's legal and dispute resolution sector in the Greater Bay Area. However, reference could be made by the Administration to the support rendered by governments in the neighbouring region, such as South Korea and

Singapore, to the arbitration and mediation services in respective countries. The Administration could consider providing financial support for the training of arbitration and mediation talents and accommodation of arbitration and mediation institutes. Ms WONG added that the Administration might actively introduce Hong Kong arbitrators and mediators to other parties in the course of promoting Hong Kong's dispute resolution services in the Greater Bay Area.

#### Application of Hong Kong law in the Greater Bay Area

65. Mr Holden CHOW indicated support for developing Hong Kong's legal services in the Greater Bay Area. However, he noted that the Mainland laws did not expressly allow wholly owned Hong Kong enterprises or joint ventures set up by Hong Kong investors on the Mainland to apply Hong Kong law for dispute resolution. In this connection, Mr CHOW asked the Administration how it would explore with the Mainland to allow parties in the Greater Bay Area to freely choose the law familiar to them, e.g. Hong Kong law, as the governing law of contract.

66. Senior Assistant Solicitor General (China Law) of DoJ advised that the Administration would discuss the above suggestion, among others, with the Ministry of Commerce and the Ministry of Justice of the Central People's Government under the CEPA framework.

67. Dr CHENG Chung-tai asked how Hong Kong law could be applied in the Mainland courts in the Greater Bay Area given the different jurisdictions and legal proceedings between Hong Kong and the Mainland courts. PGC/SJO explained that "jurisdiction of the court" and "choice of law" were two different concepts. As in the case where Hong Kong courts could handle cases which applied foreign laws, under the current Mainland laws, the relevant parties to a foreign-related contract might expressly choose the law applicable to the case.

#### Scope of practice of Hong Kong legal practitioners in the Greater Bay Area

68. Mr CHEUNG Kwok-kwan noted that only 11 out of the more than 900 local law firms had set up associations with Mainland law firms in the form of partnership. He reckoned that it was due to the fact that the majority of solicitor firms in Hong Kong were medium and small-sized and many Hong Kong legal practitioners faced difficulty in finding Mainland law firms of similar size to be the partner in setting up partnership associations.

69. PGC/SJO advised that DoJ had received similar views from the legal sector. He undertook to reflect the concerns of medium and small-sized law firms to the Mainland authority as appropriate.

70. The Chairman appreciated DoJ's efforts in promoting Hong Kong's dispute resolution services over the years. She hoped that the Administration would actively explore with the Mainland ways to allow more Hong Kong solicitors and barristers with training in common law to participate in appropriate cases concerning Hong Kong as advocates in the courts of the Greater Bay Area.

Exploring a simplified accreditation standard for Hong Kong lawyers to practise in the Greater Bay Area

71. The Chairman agreed to the Law Society's suggestion that a simplified accreditation system could be established for Hong Kong solicitors and barristers who would like to practise in the Greater Bay Area through, for example, assessment through oral examination or interview, or exempting those who had proven track record in specialized legal field from taking Mainland examinations. She considered that the Administration and all barristers and solicitors should join hands to promote using Hong Kong's legal services in the Greater Bay Area.

72. In response to the Chairman's views, Mr CHAN C M said that the Law Society had set up a dedicated Working Group on the Greater Bay Area under its Greater China Legal Affairs Committee. Having made reference to the application requirements for practising as a full-time lawyer under the Law of the People's Republic of China on Lawyers, the task force suggested that Hong Kong solicitors who had more than 15 years' experience in a specialized field, e.g. cross-boundary investment cases, could be exempted from taking any Mainland examination or allowed to take a special examination so as to be qualified for limited practice in the Greater Bay Area.

73. Mr CHAN C M further suggested that the Administration could also explore with the Mainland on allowing Hong Kong's legal practitioners to practise on arbitration cases in the Greater Bay Area and court cases in Qianhai Court, involving the use of Hong Kong law.

*(At 6:21 pm, the Chairman extended the meeting for 15 minutes to 6:45 pm.)*

Study on the setting up of the Greater Bay Area Mediation Platform

74. Ir Dr LO Wai-kwok indicated support for studying the feasibility of establishing the Greater Bay Area Mediation Platform as it would establish a unified mediators' accreditation system and mediation rules for member organizations and provide a platform for learning and exchanges for the mediation sector with the Greater Bay Area. Ir Dr LO said that he had proposed promoting Hong Kong as an international arbitration centre at the meeting of the Chinese People's Political Consultative Committee held in March 2018, and considered that the establishment of the Mediation Platform would have a positive impact on professions other than the legal sector, such as the engineering sector.

75. In response, PGC/SJO advised that DoJ supported the establishment of the Mediation Platform and would actively pursue the relevant work and discuss the proposal with the Mainland and Macao authorities. Ir Dr LO Wai-kwok hoped that DoJ would report the above progress to the Panel in due course.

76. Dr CHENG Chung-tai asked whether there was a clear difference between "mediation" and "arbitration" in the Mainland and Macao, and whether "mediation" and "arbitration" in the Mainland and Macao carried the same meaning with that of Hong Kong; if not, the definition of "mediation" from which place would be adopted if the Greater Bay Area Mediation Platform was to be set up.

77. Senior Assistant Law Officer (Mediation) advised that mediation had been adopted in the Mainland and Macao for quite some time. In the Mainland, mediation for resolving disputes was undertaken by the courts and People's mediation commissions in early years. In recent years, there were some mediation institutes established in the Mainland providing such service. As for Macao, there was a center which promoted resolution of disputes through mediation and there was a pool of mediators registered under the center. She added that although Hong Kong had a long history of providing mediation services, the provision of such services was developed systematically since 2009.

78. PGC/SJO supplemented his view that there was a clear difference between arbitration and mediation in the Mainland and Hong Kong. The Administration would discuss details of setting up the Greater Bay Area Mediation Platform with the relevant authorities. The Chairman added that although arbitration and mediation were different services, they would be promoted together under the framework of dispute resolution services by the Administration.

Capacity building work

79. Mr CHEUNG Kwok-kwan pointed out that the subject of Greater Bay Area was quite new to Hong Kong people. To equip law graduates with knowledge in this regard, he suggested including in the law school curriculum knowledge about the Greater Bay Area and the scope of legal practice allowed there for qualified Hong Kong practitioners. In addition, more exchange activities between the law schools in Hong Kong and those in the Mainland should be arranged, such as summer internship programmes.

80. The Chairman shared the views of Mr CHEUNG Kwok-kwan. Declaring that she was teaching at the law school of the City University of Hong Kong ("City U"), the Chairman said that she would reflect Mr CHEUNG's view to the law school of City U. She added that City U had been devoting its efforts to the provision of training on globalization and dispute resolution and she considered that more focus could be given to training relating to the Greater Bay Area.

81. PGC/SJO undertook that DoJ would actively pursue the exchanges between the legal sector which could include law students in Hong Kong and that in the Greater Bay Area, as well as the development of Hong Kong as the capacity building centre of the Greater Bay Area.

**V. Any other business**

82. There being no other business, the meeting ended at 6:43 pm.