

ITEM FOR FINANCE COMMITTEE

HEAD 92 – DEPARTMENT OF JUSTICE

Subhead 700 General non-recurrent

New item “One-off Funding Support for the Development and Enhancement of an Online Dispute Resolution and Deal Making Platform by a Non-governmental Organisation”

Members are invited to approve a new commitment of \$100 million to support the development, enhancement and initial operation of an online dispute resolution and deal making platform by a non-governmental organisation.

PROBLEM

There is a need to develop, enhance and operate an online dispute resolution (ODR) and deal making platform to facilitate the development of LawTech in Hong Kong, consolidate Hong Kong’s position as an international legal and dispute resolution services centre, and raise Hong Kong’s favourable position and status in the provision of professional legal services.

PROPOSAL

2. The Secretary for Justice proposes to create a new commitment of \$100 million under Head 92 Department of Justice Subhead 700 General non-recurrent to provide one-off funding support for the development, enhancement and initial operation of an ODR and deal making platform by a non-governmental organisation, namely, eBRAM International Online Dispute Resolution Centre Limited (eBRAM Centre). A synopsis of the proposal is set out in Enclosure 1.

Encl. 1

/JUSTIFICATION

JUSTIFICATION

Robust development of dispute resolution services in Hong Kong

3. Over the past decades, Hong Kong has been one of the world's leading international arbitration jurisdictions. By virtue of the high-quality and efficient legal services, arbitration-friendly legislation and government policy supporting dispute resolution, and the ease of enforceability of its arbitral awards worldwide, including in the Mainland, Hong Kong has consistently been ranked as one of the most preferred Asian cities for conducting arbitration.

4. Furthermore, with the presence of reputable dispute resolution bodies, excellent arbitration facilities, extensive pool of highly reputable talents (with English, Chinese and other language proficiency) and the capitalistic free market system, Hong Kong has a solid foundation to develop as an international legal and dispute resolution services centre.

5. Capitalising on the opportunities brought about by the Belt and Road (B&R) Initiative as well as the Greater Bay Area Development Plan and in pursuance of our stated policy objective to promote Hong Kong as an international legal and dispute resolution services centre, we have examined the prospects for the development of ODR services and an online platform, which would enable the provision of efficient, cost-effective and secure online deal making and dispute resolution services for parties in any part of the world, including parties involved in commercial and investment disputes in B&R countries and within the Greater Bay Area. We consider the development of such services and online platform by eBRAM Centre consistent with our stated policy objective.

eBRAM Centre

6. Incorporated in June 2018, eBRAM Centre is a company limited by guarantee formed by enthusiastic professional arbitrators, mediators and legal practitioners (i.e. members from The Law Society of Hong Kong (Law Society), The Hong Kong Bar Association (Bar Association), the Asian Academy of

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International Law Limited (AAIL)¹, and the Logistics and Supply Chain MultiTech R&D Centre (LSCM)². eBRAM Centre aims to elevate Hong Kong's arbitration and mediation services, build capacity to meet the rapidly expanding demand for legal and dispute resolution services across borders. By utilising innovative technology such as Artificial Intelligence (AI), and in collaboration with international organisations and participating economies such as the Asia-Pacific Economic Cooperation (APEC), Association of Southeast Asian Nations (ASEAN), B&R countries and beyond, as well as the Greater Bay Area, eBRAM Centre seeks to enable Hong Kong to become a LawTech centre and an ideal hub of deal making, dispute avoidance and dispute resolution for global business, investment and trade.

7. eBRAM Centre is the only ODR service provider in Hong Kong of wide representation from major legal professional bodies (with representatives from Law Society, Bar Association and AAIL serving on its Board of Directors (Board)) and has the support of the information technology (IT) sector (i.e. LSCM). It is also the only ODR service provider from Hong Kong invited to participate as an expert in the APEC workshops as well as meetings in relation to the development of the APEC Collaborative Framework for ODR of Cross-Border Business to Business (B2B) Disputes (APEC ODR Framework), and joint workshops on LawTech issues organised by the United Nations Commission on International Trade Law (UNCITRAL) and the International Institute for the Unification of Private Law.

8. Since early 2020, eBRAM Centre has been actively providing services to and collaborating with different organisations in the use of technologies for dispute resolution and legal capacity-building activities. In February 2020, eBRAM Centre signed a Memorandum of Understanding (MOU) with the Hong Kong International Arbitration Centre (HKIAC) on cooperation between the two bodies. Also, eBRAM Centre plans to enter into MOUs with other local bodies such as AAIL, Hong Kong Maritime Arbitration Group (HKMAG) and Consumer Council, as well as other dispute resolution bodies in the Mainland such as China Maritime Arbitration Commission, Hainan Arbitration Commission and Hangzhou Arbitration Commission, to facilitate closer collaborations with these bodies. Meanwhile, eBRAM Centre has been engaging in discussions with other dispute resolution bodies exploring the possibility of entering into similar cooperation arrangements with these bodies.

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¹ AAIL is an independent and non-profit making body set up in Hong Kong to further the studies, research & development of international law in Asia.

² LSCM was founded in 2006 with funding from the Innovation and Technology Fund. Since its inception, LSCM's mission is to foster the development of core competencies in logistics and supply chain related technologies in Hong Kong, and to facilitate the adoption of these technologies by industries in Hong Kong as well as in Mainland China.

9. In March 2020, eBRAM Centre provided technical support to the 17th Willem C. Vis East International Commercial Arbitration Moot (VEM), which was conducted virtually, for the first time, amidst the COVID-19 pandemic. eBRAM Centre enabled and facilitated the participation of a total of 71 teams from 21 jurisdictions, and about 250 arbitrators from 52 jurisdictions in the VEM.

10. In May 2020, eBRAM Centre was commissioned by the Government to operate the COVID-19 Online Dispute Resolution Scheme (COVID-19 ODR Scheme)³ and was provided funding support of \$50 million⁴ under the Anti-epidemic Fund (AEF) for the development, initial set-up and first-year operation of an ODR platform under the said scheme. The COVID-19 ODR Scheme was launched by eBRAM Centre on 29 June 2020.

eBRAM Centre's Current and Future Platforms

11. In recognition and anticipation of the rapidly increasing demand of ODR services, eBRAM Centre has proposed to develop an internet-based online platform integrating state-of-the-art technologies (Neural Machine Learning on Translation, AI, IoT, Blockchain, Smart Contract⁵, etc.) for use in Alternative Dispute Resolution (ADR) and deal making (i.e. the eBRAM Platform).

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³ eBRAM Centre and the Department of Justice (DoJ) entered into an MOU in May 2020, which governs, among others, various matters relating to the COVID-19 ODR Scheme, including development of an ODR platform, eligibility criteria, dispute resolution process and procedures, requirements on governance and reporting, use of funding, etc..

⁴ Funding support of a total of \$70 million was allocated for the establishment of the COVID-19 ODR Scheme under the AEF, comprising funding support of \$50 million to be used exclusively for the development, initial setup and first-year operation of the ODR platform, and funding support of \$20 million to be used exclusively for the reimbursement of payment made to mediators and arbitrators under the said scheme. As the COVID-19 ODR Scheme would be independently operated by eBRAM Centre, funding support of \$70 million allocated for the establishment of the said scheme was provided to eBRAM Centre.

⁵ Neural Machine Learning applications on machine translation will enable the eBRAM Platform to deliver better performance in text translation over the conventional natural language translation systems.

AI is a term for simulated intelligence in machines. These machines are programmed to "think" like a human and mimic the way a person acts, learns, and solves problems.

The IoT or internet of things is a system of interrelated computing devices, mechanical and digital machines, objects, animals or people that are provided with unique identifiers and the ability to transfer data over a network without requiring human-to-human or human-to-computer interaction.

Blockchain is literally just a chain of blocks – digital pieces of information (the “block”) stored in a public database (the “chain”).

Smart Contract refers to mechanisms to support execution of the computerised transaction protocol for digital enforcement of the terms of a contract.

The eBRAM Platform, comprising the ODR platforms and the online deal making platform, will facilitate the provision of cross-border one-stop dispute resolution services to enterprises worldwide including those in the B&R region and the Greater Bay Area, as well as redefine the ideas of deal making, negotiation, mediation, arbitration and e-commerce trading in the new innovation era.

12. As mentioned in paragraph 10 above, eBRAM Centre developed and launched an ODR platform for the COVID-19 ODR Scheme (COVID-19 ODR Platform) in June 2020, with reference to the Proof of Concept (POC) prototype developed by LSCM. It is worth noting that the video-conferencing technology used for the COVID-19 ODR Platform developed by eBRAM Centre contains user-friendly features that enable e-mediation meetings as well as e-arbitration hearings and support multi-tier ODR process. It also addresses security concerns which parties may have in using third-party video conferencing technologies for private and confidential proceedings, as all data submitted to the COVID-19 ODR Platform is being stored in a secured and private cloud in Hong Kong managed by eBRAM Centre and protected by Hong Kong law.

13. Building on the foundation of the COVID-19 ODR Platform, eBRAM Centre is developing a new ODR platform (APEC ODR Platform) and its accompanying procedural rules which are compatible with the requirements of the APEC ODR Framework. Such platform will incorporate simultaneous translation/interpretation services for major languages commonly used among the APEC economies. eBRAM Centre will seek to become an ODR service provider for APEC economies under the APEC ODR Framework, which if successful will represent a big step towards enhancing Hong Kong's LawTech development and consolidating Hong Kong's position as an international dispute resolution services centre. Aside from APEC, eBRAM Centre also aims to launch ODR platforms to cater for other ODR schemes and rules in the future.

14. Overall, the ODR platforms developed by eBRAM Centre will provide user-oriented ODR services which will be competitive in the regional and global markets. Such platforms will be characterised by its prominent ability in making available online the whole negotiation, mediation and arbitration processes including parties' registration, the secretariat's administration, appointment of neutrals, service of documents, e-bundling, virtual hearings and the handing down of awards, etc.. Apart from providing ODR services, eBRAM Centre will also develop an online deal making platform designed for parties to make and enter into business deals online in a secured and user-friendly manner. The key features of the eBRAM Platform are set out at Enclosure 2.

Encl. 2

/Need

Need for the eBRAM Platform

15. With the extensive use of technology in business transactions and cross-border trade, the need for a reliable and efficient ODR platform to provide one-stop ADR services has evolved over the years. This need, in particular, has been driven by the expansion of e-commerce: with parties likely to be at a distance from each other, speaking different languages, and incapable of meeting face to face, disagreements and disputes emerging from online activities can be better resolved online. Domestic courts do not work well for cross-border disputes as they are too tied to geography, jurisdiction and in-person enforcement. The legal and travel costs plus cultural and language barriers all pose difficulties for access to justice through local courts. For instance, as far as arbitration is concerned, while one may have seen some improvement for traditional in-person arbitration, there are still concerns about the high cost and lack of speed. In a recent international arbitration survey⁶, 97% of the respondents indicated that international arbitration was the preferred method in resolving cross-border disputes. However, respondents cited cost as the biggest drawback to international arbitration, followed by other drawbacks such as lack of speed. It is worth noting that an overwhelming majority of respondents favoured the greater use of technologies in arbitration and recognised that arbitral proceedings could become more efficient through an increased use of technology.

16. ODR emerges as a viable alternative to the traditional processes of dispute resolution and its value in resolving cross-border disputes has also been increasingly recognised by businesses. In a questionnaire conducted by the APEC Economic Committee⁷, respondents expressed that the top three main challenges businesses encounter when seeking to resolve cross-border commercial disputes were that: (i) dispute resolution is too slow and/or expensive; (ii) uncertainty in outcome and enforcement; and (iii) insufficient knowledge of options available. 74% of the respondents expressed that they would like to have the option of using ODR to resolve disputes⁸ and support for the use of ODR was mainly in certain low value disputes, along with those which need to be resolved expeditiously or where

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⁶ Queen Mary University of London and White & Case, 2018 International Arbitration Survey <https://www.whitecase.com/sites/whitecase/files/files/download/publications/qmul-international-arbitration-survey-2018-19.pdf>.

⁷ A questionnaire conducted by the APEC Economic Committee for the APEC Business Advisory Council and member economies in 2017.

⁸ For those remaining respondents who answered that they would not use ODR, the majority expressed that they did not oppose to ODR, but simply did not know about or how to use ODR.

travel costs may be prohibitive. ODR also appears to be especially of value to Micro, Small, and Medium Enterprises (MSMEs). In a survey conducted by the Pacific Economic Cooperative Council⁹, the majority of the respondents considered that ODR mechanisms are of importance for the growth of the digital economy and MSMEs, in particular, placed more emphasis on the importance of the ODR than large businesses.

17. Against this background, various international and regional organisations are taking active steps to promote the use of ODR as a reliable and efficient means to facilitate ADR. In 2016, UNCITRAL published the Technical Notes on Online Dispute Resolution (UNCITRAL ODR Technical Notes) to foster the development of ODR in the world and to assist ODR administrators, platforms, neutrals, and parties to ODR proceedings. The UN General Assembly (GA) has recognised that ODR (as provided in the UNCITRAL ODR Technical Notes) “can assist the parties in resolving disputes in a simple, fast, flexible, and secure manner, without the need for physical presence at a meeting or hearing¹⁰”. By applying modern technology to traditional dispute resolution, the whole process can become much faster, affordable and user-friendly. The GA requests all States to “support the promotion and use of the UNCITRAL ODR Technical Notes¹¹”.

18. Meanwhile, APEC is currently undertaking a project to establish ODR platforms with MSMEs as the major beneficiary and has made significant progress to this end. In August 2019, the APEC ODR Framework was endorsed by the APEC Economic Committee and in April 2020, Hong Kong, China opted into the APEC ODR Framework¹². In the APEC region, MSMEs account for over 97% of businesses but they only account for 35% of direct exports. Expansion into international markets is crucial for MSMEs’ continued growth and APEC

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⁹ The 2017 Asia-Pacific Community Survey by the Pacific Economic Cooperative Council.

¹⁰ GA Resolution 71/138, UNCITRAL Technical Notes on Online Dispute Resolution, December 13, 2016.

¹¹ GA Resolution 71/138, *supra*.

¹² Following the endorsement of the Work Plan for Developing a Cooperative ODR Framework for MSMEs in B2B transactions by the APEC Economic Committee in August 2017, in August 2019, the APEC ODR Framework was endorsed by the APEC Economic Committee, which provides a framework for businesses, in particular MSMEs in participating economies, to engage in technology-assisted dispute resolution through negotiation, mediation and arbitration for B2B claims. As of 16 November 2020, China, Singapore, the US, Japan, as well as Hong Kong, China have opted into the APEC ODR Framework, while a number of other member economies are undergoing internal procedures with a view to opting into the said framework in the near future. Since September 2019, a counsel from DoJ has assumed the Chair of the APEC Economic Committee, who will play a significant role in driving APEC’s work on ODR.

economies' wellbeing. An APEC study found that dispute resolution was one of the greatest challenges for MSMEs that trade across borders, with 83% reporting that effective and consistent dispute resolution was a problem¹³. Another study reported that as many as 35% of cross-border disputes involving MSMEs remain unresolved with the average value of the dispute being some US\$50,000¹⁴.

19. Given that some service providers in other APEC economies have already expressed interest in providing ODR services under APEC, it is crucial for Hong Kong to secure an early-mover advantage in developing a platform which provides such services, while leveraging on our excellent legal foundation, reputable dispute resolution talents and experience, and technological competency to remain at the forefront as a leading ODR centre in the global arena. In fact, eBRAM Centre is one of the several ODR service providers which have indicated interest in providing ODR services under APEC¹⁵. It is eBRAM Centre's plan to develop the APEC ODR Platform and seek to become an ODR service provider for APEC economies under the APEC ODR Framework.

20. Witnessing the fast development of and the gradual shift to becoming a digital economy for many economies and the rapid digitalisation of economic activities in the region and beyond, apart from improving access to justice by the developing ODR platforms, it is equally important for Hong Kong to seize the golden opportunity to enhance its position as an international legal hub for deal making by developing a platform which will bolster and facilitate the making of both local and cross-border business deals and transactions. The eBRAM Platform which enables quick, secured and easy-to-use deal making will benefit not only the legal sector but also the business/commercial sector in this digital era. Benefits of the eBRAM Platform are elaborated in paragraphs 21 to 23 below.

/Benefits

¹³ ABAC, USC Marshall, Driving Economic Growth through Cross-Border E-Commerce in APEC: Empowering MSMEs and Eliminating Barriers at 35, 69, 81 (APEC interviews with 506 business executives plus 244 survey responses).

¹⁴ Ecorys, Study on the Use of Alternative Dispute Resolution for Business to Business Disputes in the European Union, at 6, 123, 125 (2012) (commissioned by the European Commission) <http://www.adrcenterinternational.com/wp-content/uploads/2015/01/ADRFinal-Report-151012.pdf> (based on part interviews with 10 840 businesses including MSMEs); European Commission, DG Enterprise and Industry, Business Disputes Keep Businesses from Doing Business, at 4.

¹⁵ Representatives from eBRAM Centre (the only ODR service provider from Hong Kong invited by the APEC workshop organisers) have participated actively in APEC workshops and meetings on ODR since 2018 and eBRAM Centre's expertise on the subject was well recognised by other APEC economies.

Benefits of the eBRAM Platform

Provide support for and facilitate development of local MSMEs, legal professionals and ADR in Hong Kong

21. From a local perspective, the development of the eBRAM Platform will bring clear benefits to Hong Kong, including the provision of a secured, innovative and comprehensive ODR platform, which is low-cost and affordable for local MSMEs, thereby facilitating their business operation and access to justice; provision of business opportunities and enhancement of training opportunities¹⁶ for local professionals; facilitating deal making and resolution of commercial and investment disputes, thereby enhancing Hong Kong's role as an international city of business and commerce in Asia while highlighting Hong Kong's innovation and technological abilities; leveraging Hong Kong's unique status and capability under the "one country, two systems" constitutional arrangement to promote Hong Kong as an ideal hub for dispute resolution and deal making; and more generally, promoting the use of various forms of ADR and technologies in providing legal services in Hong Kong.

Enhance business opportunities under the B&R and Greater Bay Area Initiatives

22. Hong Kong is uniquely placed to meet the demand for ODR services from B&R jurisdictions and the Greater Bay Area. In this regard, many of the features of the eBRAM Platform (e.g. application of AI translation for Chinese, English, Russian, Arabic and Spanish and the adoption of Blockchain and Cloud platform providing security and flexibility for users) would be particularly attractive and useful not only to the businesses from B&R jurisdictions and the Greater Bay Area but also to all of their trading partners across the globe.

Complement and enhance existing dispute resolution services

23. The operation of eBRAM Centre will complement and create synergy with existing dispute resolution service providers, widening and diversifying Hong Kong's arbitration and mediation sector, and making it more up-to-date with the latest digital technology. The eBRAM Platform can also be utilised by existing arbitration bodies including the HKIAC, HKMAG, etc. in delivering their services. In fact, in February 2020, eBRAM Centre entered into an MOU with the HKIAC,

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¹⁶ eBRAM Centre has proposed the establishment of an ADR training academy and a pupillage system to nurture and enhance the skills of young aspiring professionals, and to provide them with access to the e-arbitration and e-mediation community.

and recently with the HKMAG in November 2020, to take forward possible collaborations towards this end. Such arrangement further enhances the synergy between existing dispute resolution bodies and elevates the dispute resolution services in Hong Kong to scale new height.

Institutional framework of eBRAM Centre

24. eBRAM Centre was incorporated in June 2018 with founding members from major stakeholders of the legal and related sectors. The composition of its Board demonstrates wide representation from the legal and related sectors, comprising representatives from the Law Society, the Bar Association, AAIL, as well as other persons who are well-respected in the legal, arbitration, mediation or IT sectors¹⁷. eBRAM Centre exercises a high degree of independence and flexibility in planning and operating its businesses, as well as in managing its human and financial resources.

25. eBRAM Centre has established standing executive committees and functional committees of the Board, headed by Directors of the Board (Directors), including the Staff & Finance Committee, Audit Committee, Appointments Committee, Challenges Committee, Rules Committee, Panel Listing Committee and Technology Advisory Committee, so that important affairs of the organisation are closely supervised by and under direct steer from the Board. eBRAM Centre also has a team of professionals with rich experience in a wide range of fields including legal, mediation, arbitration, IT, public relations to manage its day-to-day operations. Detailed functions of the committees of the Board of eBRAM Centre are set out in Enclosure 3. In addition, to ensure effective governance and smooth operation, eBRAM Centre has also developed and adopted a set of administration manual, employee guidelines, business plan and implementation plan.

Encl. 3

26. An MOU was entered into by the Government and eBRAM Centre in May 2020, which provides the basis for the Government's oversight on specific areas in relation to eBRAM Centre's structure, governance and operations, as well as the utilisation of funds, as in the case of other government subvented organisations. The objectives of eBRAM Centre are clearly set out in its Articles of Association. As a nonprofit-making entity, eBRAM Centre will not be allowed to distribute its dividends.

/Delivery

¹⁷ Pursuant to the MOU entered into by DoJ and eBRAM Centre in May 2020, the Board had undergone restructuring. The current Board is composed of nine Directors, including three Directors representing the Law Society, the Bar Association and AAIL, respectively, and other Directors who are from the legal, arbitration, mediation or IT sectors.

Delivery timetable

27. eBRAM Centre launched the COVID-19 ODR Scheme on 29 June 2020 and has commenced operation of the ODR platform for the said scheme. Training for over 150 arbitrators and mediators was also completed in July 2020. eBRAM Centre will continue to develop, enhance and promote the COVID-19 ODR Platform. eBRAM Centre will also develop a new ODR platform which is compatible with the requirements of the APEC ODR Framework to be made available in 2021, with a view to launching ODR platforms which could cater for other ODR schemes and rules in the long run, subject to available funding.

28. As the eBRAM Platform strives to be as inclusive as possible and would undergo regular reviews and ongoing adjustments, it is eBRAM Centre's plan to develop, expand (if applicable), deliver and make available different facets, elements and/or supplementary services for the eBRAM Platform in a progressive manner in the next five to seven years. eBRAM Centre plans to roll out its online deal making platform in around 2022. In parallel, eBRAM Centre will focus on ensuring the smooth and secured running of the available platforms and the recruitment of suitable arbitrators, mediators and other talents.

29. In respect of further technological developments, services including e-negotiation, e-arbitration, e-mediation, virtual conferencing facilities, e-translation service, e-signature and online training platform will be progressively made available on the eBRAM Platform in around early 2021 to 2022. Other more advanced accompanying and supplementary services, such as e-conciliation and e-adjudication, Smart Contract, Machine Translation, Audio/Video transcription, speech interpretation, as well as other services relying on AI and Blockchain technologies will be further developed in a progressive manner from 2022 onwards. eBRAM Centre also aims to expand its services on broader business fronts, including the provision of e-arbitration or e-mediation services for e-commerce platforms and conducting training courses on e-arbitration and e-mediation in Hong Kong, the Mainland, as well as overseas such as for APEC economies and ASEAN countries.

30. An advanced, secure, efficient and user-friendly eBRAM Platform enabling ODR, deal making and other related electronic legal services in Hong Kong will 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, renowned legal and dispute resolution professionals, as well as its LawTech development potential and capacity.

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Having regard to its wide representation, expertise, competency, practical experience and strong commitment in developing ODR and other important services as detailed above, eBRAM Centre is considered the most suitable local service provider to take forward the development of the eBRAM Platform in line with our stated policy objective.

Financial Projection

Encl. 4 31. Taking into account the funding of \$50 million already provided to eBRAM Centre under the AEF for the ODR platform under the COVID-19 ODR Scheme, we propose to provide one-off funding support of \$100 million for the development and enhancement of the eBRAM Platform and its initial operation. Based on eBRAM Centre's ten-year cashflow projection at Enclosure 4, eBRAM Centre would have a total deficit of around \$100 million in the first seven years of operation. It is expected that it would start to break even from the eighth year of operation and would be able to achieve self-sustainability thereafter.

32. eBRAM Centre envisages income from arbitration and mediation, LawTech services, e-commerce ODR services, training, provision of e-negotiation conference facilities, as well as interest income. The estimated annual income will rise from about \$1.3 million (mainly from e-commerce ODR services) in the first year to \$81.2 million (from all of the above services) in the tenth year of operation.

Encl. 5 33. As for expenditure, eBRAM Centre estimates that a sum of about \$38 million is required for the first year of operation, which also covers various capital costs (including POC prototype enrichment, one-off purchase of hardware and software, etc.) amounting to around \$10.1 million. The estimated recurrent expenditure is projected to increase from around \$28 million in the first year of operation to around \$53 million in the tenth year of operation, covering staff salaries, marketing cost, IT cost as well as office operation cost. A breakdown of major expenditure items for the first year of operation is at Enclosure 5. The staff salaries will cover a team of 15 staff in the first year of operation which will gradually increase to a full team of 29 in the fifth year of operation. Regarding IT cost, as the implementation cost for such a sophisticated platform may vary after detailed examination of the technical solutions and the requirement components to meet the functional, security and performance specifications, the cost estimates would be revisited after completion of the POC.

34. Having regard to the above assessment, we consider the revenue and expenditure estimates made by eBRAM Centre reasonable and acceptable.

/FINANCIAL

FINANCIAL IMPLICATIONS

35. We propose to provide one-off funding support of \$100 million to the eBRAM Centre for the development, enhancement and initial operation of the eBRAM Platform. This will meet the ten-year cashflow requirements of eBRAM Centre and its operation cost in the first seven years. The implementation of the eBRAM Platform will result in additional work for DoJ in monitoring the development and effectiveness of the eBRAM Platform as well as the operation of eBRAM Centre. DoJ will absorb the necessary financial and manpower requirements from within its existing resources.

PUBLIC CONSULTATION

36. We consulted the Legislative Council Panel on Administration of Justice and Legal Services on the proposal on 23 November 2020. Members supported the proposal.

BACKGROUND

37. In the 2018 Policy Address, the Chief Executive indicated support for funding the cost of non-governmental development of an e-arbitration and e-mediation platform so that Hong Kong will be able to provide efficient and cost-effective ODR services. On 27 February 2019, the Financial Secretary announced in the 2019-20 Budget that \$150 million would be earmarked for the development and initial operation of the ODR and deal making platform. The development of such a platform would enhance the development of LawTech in Hong Kong, consolidate Hong Kong's status as an international legal and dispute resolution services centre and raise Hong Kong's favourable position in the provision of professional legal services.

38. Following the onset of the COVID-19 pandemic, in anticipation of an upsurge of disputes arising from the pandemic, the Government announced the COVID-19 ODR Scheme in April 2020 with a view to providing a speedy and cost-effective means, by deploying ODR, to resolve global and local COVID-19 related disputes. Funding support of \$50 million under the AEF was allocated for the development, initial set-up and first-year operation of an ODR platform under the COVID-19 ODR Scheme.

Synopsis of the Proposal

PROPOSAL

1. We propose to provide a one-off funding support of \$100 million for the development, enhancement and initial operation of an online dispute resolution (ODR) and deal making platform (i.e. the eBRAM Platform) by eBRAM International Online Dispute Resolution Centre Limited (eBRAM Centre).

BACKGROUND

2. In light of the global trend to develop and use ODR as a reliable and efficient means to facilitate Alternative Dispute Resolution and considering the benefits that a locally developed online dispute resolution and deal making platform may bring to Hong Kong, there is a need to further develop, enhance and operate such platform.
3. In the 2018 Policy Address, the Chief Executive indicated support for funding the cost of non-governmental development of an e-arbitration and e-mediation platform so that Hong Kong will be able to provide efficient and cost-effective ODR services. On 27 February 2019, the Financial Secretary announced in the 2019-20 Budget that \$150 million will be earmarked for the development and initial operation of the online dispute resolution and deal making platform. On 25 March 2019, the Legislative Council Panel on Administration of Justice and Legal Services (AJLS Panel) (see: CB(4)665/18-19(03)) provided support for the Government's proposal to provide one-off funding support of \$150 million for the development of an Electronic Business Related Arbitration and Mediation Platform by eBRAM Centre and its initial operation¹(Previous Proposal).
4. Following the onset of the COVID-19 pandemic, in anticipation of an upsurge of disputes arising from the COVID-19 pandemic, the Government announced the COVID-19 ODR Scheme in April 2020, with a view to

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¹ Reference is made to the Administration's paper for AJLS Panel on "Development of an Online Dispute Resolution and Deal Making Platform by Non-governmental Organisation", for discussion on 25 March 2019 (CB(4)665/18-19(03)).

providing a speedy and cost-effective means to resolve global and local COVID-19 related disputes by deploying ODR. eBRAM Centre was commissioned by the Government to operate the COVID-19 ODR Scheme, and pursuant to an Memorandum of Understanding entered into by the Government and eBRAM Centre in May 2020, funding support of \$50 million² under the Anti-epidemic Fund (AEF) was provided to eBRAM Centre for the development, initial set-up and first-year operation of an ODR platform under the COVID-19 ODR Scheme.

JUSTIFICATION

5. Taking into account the potential overlap between the one-off funding support of \$50 million for the development, initial set-up and first-year operation of an ODR platform under the COVID-19 ODR Scheme under the AEF vis-a-vis the one-off funding support of \$150 million sought under the Previous Proposal, in this proposal, we propose deducting the funding support of \$50 million already provided to eBRAM Centre under the COVID-19 ODR Scheme from the Previous Proposal, and seek one-off funding support of \$100 million for the further development, enhancement and initial operation of the eBRAM Platform by eBRAM Centre beyond the scope of the COVID-19 ODR Scheme to include development of a new Asia-Pacific Economic Cooperation (APEC) ODR Platform, development of a new online deal making platform and other related electronic legal services, in addition to the upkeep and enhancement of the existing COVID-19 ODR Platform.

6. eBRAM Centre is the only ODR service provider in Hong Kong of wide representation from major legal professional bodies (with representatives from the Law Society of Hong Kong, the Hong Kong Bar Association and the Asian Academy of International Law Limited serving on its Board) and has the support of the information technology sector (i.e. the Logistics and Supply Chain MultiTech R&D Centre). It is also the only ODR service provider from Hong Kong invited to participate as experts in various APEC workshops and meetings in relation to the development of the APEC ODR Framework and joint workshops on LawTech issues organised by

/UNCITRAL

² As the COVID-19 ODR Scheme would be operated independently by eBRAM Centre, in addition to the funding support of \$50 million for the development, initial set-up and first-year operation of an ODR platform under the COVID-19 ODR Scheme, a funding of \$20 million was also provided to eBRAM Centre to be used exclusively for the reimbursement of payment made to mediators and arbitrators under the said scheme, hence a total of \$70 million was provided to eBRAM Centre for the COVID-19 ODR Scheme.

UNCITRAL and the International Institute for the Unification of Private Law. eBRAM Centre also has practical experience in developing and operating ODR services as demonstrated by its provision of services to the Vis East International Commercial Arbitration Moot in March 2020, as well as the development and operation of the COVID-19 ODR Platform. Having regard to its wide representation, expertise, competency, practical experience and strong commitment in developing ODR services, eBRAM Centre is considered the most suitable local service provider to take forward the further development, enhancement and operation of an online dispute resolution and deal making platform, in line with the Government's policy objectives.

7. eBRAM Centre has a number of ongoing and new projects in the pipeline, including enhancement of the existing COVID-19 ODR Platform, development of a new APEC ODR Platform, as well as the development of a new online deal making platform, which upon completion would enable the provision of cross-border one-stop dispute resolution services to enterprises worldwide including those in the Belt and Road region and the Greater Bay Area, as well as redefine the ideas of deal making, negotiation, mediation, arbitration and e-commerce trading in the new innovation era. eBRAM Centre will also make use of various technologies to develop other electronic legal services in the long run.

8. eBRAM Centre's work would facilitate the development of LawTech in Hong Kong, consolidate Hong Kong's status as an international legal and dispute resolution services centre, and elevate Hong Kong's favourable position in the provision of professional legal services. To support and take forward eBRAM Centre's work in the development, enhancement and initial operation of the eBRAM Platform, an additional funding support of \$100 million would be necessary.

Key Features of the eBRAM Platform

Main functions and features of the eBRAM Platform include –

- (a) Enabling users to select and appoint neutrals (including those who are not on existing panels maintained by eBRAM International Online Dispute Resolution Centre Limited (eBRAM Centre)) online under the principle of party autonomy;
- (b) Assisting eBRAM Centre's secretariat to maintain online panels of neutrals according to their areas of expertise, level of experience, etc.;
- (c) Enabling parties to upload case materials and supporting case-based and role-based access control to the case materials, such that documents will be accessible only to the relevant parties for the required tasks;
- (d) Supporting multiple, secured, convenient and up-to-date payment methods, such as credit cards, TT transfer, PayPal, eCheque and Fast Payment System, making the payment process efficient and user-friendly;
- (e) Supporting e-signature of documents with secured encryption; and
- (f) Facilitating secured, confidential and efficient communication and document sharing with all data stored in Hong Kong and encrypted before storage.

2. The eBRAM Platform will also utilise the latest technologies to provide the following functions –

- (a) Artificial Intelligence (AI) on translation – AI applications on machine translation will enable the eBRAM Platform to deliver better performance in text translation over the conventional natural language translation systems. Recent technological breakthrough in computing deep learning will be deployed to train the eBRAM Platform's deep neural engine with adequate domain-specific translation cases. eBRAM Centre will focus on applying AI translation in Chinese, English, Russian, Arabic and Spanish.

/(b)

- (b) AI on chats – AI on online chat and transcription tasks will be adopted for the application, bringing in the capability of real-time translation on chat-style sentences. Another application of the AI engine will be on verbal utterance such as to transcribe the recording of online hearing.
- (c) AI on authentication – AI on continuous user authentication for access security and proper handling of procedures will be adopted. This will guard against hacker stealing/hijacking user login sessions which is not uncommon in internet-access systems. Methods such as multi-factor authentication practices, continuous tracking of users' presence by facial recognition, silhouette tracking method or Radio Frequency proximity sensing would be deployed to protect the system against hijacking during momentarily unattended logged-in terminal. With these methods, the eBRAM Platform will be able to support multi-tier authentication strategies to guard against security attacks of different levels, while maintaining a user-friendly environment.
- (d) Blockchain – Blockchain technology will be adopted to give the eBRAM Platform ultimate security, and provide the eBRAM Platform with a well-protected infrastructure for the upload, download and exchange of case materials by parties.
- (e) Smart Contract – The eBRAM Platform will develop mechanisms which generate computerized protocols enabling the digital enforcement of the terms of a contract in an automated, trackable and credible manner without involvement of third parties.
- (f) Secure and scalable cloud platform – The eBRAM Platform will be operated and maintained in cloud-based and secured information technology infrastructure. Users are able to flexibly select services to meet their needs and customise applications as well as access the eBRAM Platform anywhere around the world as long as there is internet connection.

Detailed Functions of the Committees of the Board of Director (Board) of eBRAM International Online Dispute Resolution Centre Limited (eBRAM Centre)

1. eBRAM Centre has established the following standing executive committees and functional committees of the Board –
 - (a) Staff & Finance Committee;
 - (b) Audit Committee;
 - (c) Appointments Committee;
 - (d) Challenges Committee;
 - (e) Rules Committee;
 - (f) Panel Listing Committee; and
 - (g) Technology Advisory Committee.
2. Staff & Finance Committee formulates policies regarding staff and finance.
3. Audit Committee formulates policies relating to regulatory performance, corporate governance and risk management.
4. Appointments Committee handles matters relating to the appointment of neutrals, arbitrators and mediators as needed.
5. Challenges Committee addresses challenges arising out of the arbitration and mediation appointments, processes and results.
6. Rules Committee focuses on reviewing and updating the relevant arbitration rules and mediation rules of eBRAM Centre.
7. Panel Listing Committee deals with the vetting and listing of arbitrators and mediators onto the respective panels of eBRAM Centre.
8. Technology Advisory Committee deals with technical matters in relation to the eBRAM Platform and oversees the information technology infrastructure of the eBRAM Platform, monitors the application and use of technologies in the development of the eBRAM Platform and formulate relevant policies to ensure the smooth-running, operation and security of the eBRAM Platform.

Enclosure 4 to FCR(2020-21)76

**Ten-year projection of income and expenditure for the
eBRAM International Online Dispute Resolution Centre Limited**

| Item | Period | Support from the Government – COVID 19 Online Dispute Resolution Scheme (\$,000) | Income (\$,000) | Expenditure (\$,000) | Net Deficit (\$,000) | Sum of deficit (\$,000) |
|--------------|---------------|---|----------------------------|---------------------------------|-------------------------------------|------------------------------------|
| Capital cost | Year 2020 | | - | (10,080) | (10,080) | Year 1-Year 7: (99,925) |
| Year 1 | 2020 - 2021 | 50,000 | 1,320 | (27,968) | 23,352 | |
| Year 2 | 2021 - 2022 | | 6,015 | (36,631) | (30,616) | |
| Year 3 | 2022 - 2023 | | 14,260 | (41,812) | (27,552) | |
| Year 4 | 2023 - 2024 | | 20,714 | (42,640) | (21,926) | |
| Year 5 | 2024 - 2025 | | 28,150 | (44,930) | (16,780) | |
| Year 6 | 2025 - 2026 | | 34,744 | (46,338) | (11,594) | |
| Year 7 | 2026 - 2027 | | 45,044 | (49,773) | (4,729) | |
| Year 8 | 2027 - 2028 | | 54,450 | (50,736) | 3,714 | |
| Year 9 | 2028 - 2029 | | 66,476 | (51,728) | 14,748 | |
| Year 10 | 2029 - 2030 | | 81,190 | (52,750) | 28,440 | |
| Total | | 50,000 | 352,363 | (455,386) | (53,023) | |

Major expenditure items for the first year of operation

| Items | Explanatory notes | Expenditure (\$,000) |
|---|------------------------------|---------------------------------|
| <u>Capital cost</u> | | |
| System development and contingency cost | A | 6,800 |
| Office set-up cost | B | 3,280 |
| <u>Recurrent cost</u> | | |
| Staff salaries | C | 13,386 |
| Marketing cost | D | 6,800 |
| Information Technology (IT) cost | E | 5,700 |
| Office operation cost | F | 2,082 |
| | Total | 38,048 |

Explanatory notes –

- A System development and contingency cost includes IT equipment cost, Proof-of-Concept prototype enrichment, service launch preparation, research & development of Artificial Intelligence based real-time interpretation, etc..
- B Office set-up cost is to cater for the initial set-up of the office including one-off purchase of hardware and software, office equipment and furniture and decoration.
- C Staff salaries cover the salaries of a team of 15 staff (increasing gradually to a full team of 29 in the fifth year of operation) including administration staff, marketing personnel and IT officers.
- D Marketing cost is to cater for the organisation of marketing activities to promote the novice services to be provided.
- E IT cost covers recurrent licensing fee, annual running cost as well as innovation and technology expenses.
- F Office operation cost includes premises rental, insurance and other general office expenditures.
