

立法會
Legislative Council

LC Paper No. CB(4)154/20-21(04)

Ref : CB4/PL/AJLS

Panel on Administration of Justice and Legal Services

Meeting on 23 November 2020

Background brief on the online dispute resolution and deal-making platform supported by the Government

Purpose

This paper provides background information regarding the online dispute resolution ("ODR") and deal-making platform supported by the Government. It also summarizes the major views and concerns expressed by Legislative Council Members on the above and related subjects in recent years.

Background

Development of an online dispute resolution and deal-making platform by a non-governmental organization

2. The Administration briefed the Panel on Administration of Justice and Legal Services ("the Panel") at its meeting on 25 March 2019 on the proposal to provide one-off funding support of HK\$150 million for the development of an Electronic Business Related Arbitration and Mediation platform ("the eBRAM platform") by the non-governmental eBRAM International Online Dispute Resolution Centre Limited ("the eBRAM Centre"). Members expressed support for the above proposal.

3. According to the information provided by the Administration to the Panel, the eBRAM Centre had proposed to develop the eBRAM platform, which was an internet-based online platform integrating state-of-the-art technologies for use in Alternative Dispute Resolution. The eBRAM platform would facilitate the provision of cross-border one-stop dispute resolution services to enterprises worldwide including the Belt and Road region as well as the Greater Bay Area,

and Mainland-focused enterprises; as well as redefine the ideas of deal making, negotiation, mediation, arbitration and e-commerce trading in the new innovation era. The platform would provide a full spectrum of ODR services including negotiation, conciliation, mediation, adjudication, arbitration, and others and, with this platform, the eBRAM Centre would also be able to provide deal-making services to assist parties to enter into business deals on a secure and user-friendly online platform.

4. 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 would be able to provide efficient and cost-effective ODR services. On 27 February 2019, the Financial Secretary announced in the 2019-2020 Budget that HK\$150 million would be provided 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 and 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.

5. According to the information provided by the Administration in April 2019, the eBRAM Centre, a locally-incorporated non-governmental organization ("NGO"), was preparing for the development of the eBRAM platform. The eBRAM Centre was a company limited by guarantee formed by seasoned professional arbitrators, mediators and legal practitioners from The Law Society of Hong Kong, the Hong Kong Bar Association and the Asian Academy of International Law, as well as experienced technology talent from the Logistics and Supply Chain MultiTech R&D Centre ("LSCM"). The Administration is in the process of seeking funding approval from the Finance Committee ("FC").

COVID-19 Online Dispute Resolution Scheme

6. On 18 April 2020, FC approved a funding application of HK\$137.5 billion, including an injection of HK\$120.5 billion to the Anti-epidemic Fund to roll out the second round of measures to provide further assistance or relief to members of the public and enterprises hard hit by the current epidemic or affected by anti-epidemic measures. One of the measures was to establish the COVID-19 Online Dispute Resolution Scheme ("the Scheme") with a funding of \$70 million.

7. During the briefing on the Chief Executive's 2019 Policy Address at the Panel meeting on 27 April 2020, members were briefed on the Scheme which was launched on 29 June 2020. The Scheme would provide speedy and cost-effective ODR services to the general public and businesses, in particular micro-,

small- and medium-sized enterprises ("MSMEs"), and might help relieve the court's caseload in civil claims. It also had the benefit of job creation and job advancement for the legal and dispute resolution sector. The eBRAM Centre was engaged to provide ODR and related services under the Scheme and would operate the Scheme independently.

Major views and concerns of Legislative Council Members

8. Major views and concerns expressed by members at the Panel meeting on 25 March 2019, as well as the special FC meetings on 8 April 2019 and 7 April 2020, regarding the matters in relation to the ODR and deal-making platforms supported by the Government are summarized in the ensuing paragraphs.

Benefits to users of arbitration and mediation services

9. Noting that nearly three-fourths of the respondents to an international arbitration survey favoured simplified procedures for claims under the value of US\$500,000, and that cost and lack of speed being cited as the biggest drawback to international arbitration in that survey, the Panel enquired how the eBRAM platform could address the respondents' needs.

10. In response, the Administration said that since the eBRAM platform would provide a low-cost platform and allow cross-border dispute resolution to be conducted, MSMEs should welcome the platform. The Panel also noted 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, which 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.

11. The Panel was also advised that there was no difference between arbitral awards made in Hong Kong through the eBRAM platform and through traditional arbitration, which would also be enforceable in other jurisdictions which were contracting parties to the New York Convention.

Promoting the use of the online dispute resolution platform by local legal professionals and enterprises

12. During the Panel meeting, a member expressed that it was 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. The Administration

replied 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. 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.

13. Some members were concerned whether arbitrators, mediators and legal practitioners had got prepared to make use of the eBRAM platform to provide ODR services and 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. They enquired whether the eBRAM Centre would pay efforts to promote the eBRAM platform to them.

14. The Panel was advised 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. Furthermore, when promoting the use of the eBRAM platform for deal making, the 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.

Benefits and drawbacks to local professionals

15. During the Panel meeting, a member asked about the actual economic benefits that the eBRAM platform could bring to the local professionals. The Panel was advised that currently, without a well-recognized ODR platform that provided the possibility of cost-effective ODR services, some local professionals had been missing out on opportunities to handle arbitration and mediation cases for MSMEs where the disputed sum was relatively low. The launch of the eBRAM platform would create more job opportunities for local professionals, including the recruitment of suitable arbitrators, mediators and other talents (in particular those with less experience) by the eBRAM Centre to provide arbitration and mediation services.

16. Nevertheless, there was a concern that if the services provided by the eBRAM platform were mainly used by overseas parties in the future, the benefits brought to the local professionals would be quite limited, which might also adversely affect their job opportunities. The Panel was advised that international participation was necessary to enhance Hong Kong's position as an international dispute resolution centre and, 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.

Funding support for the eBRAM International Online Dispute Resolution Centre Limited

17. At the Panel meeting and the special FC meeting 8 April 2019, some members enquired about the reasons for providing funding support to the eBRAM Centre to develop an ODR and deal-making platform rather than other NGOs. The Administration explained that the eBRAM Centre, with its founding members from major legal professional bodies and the innovation and technology sector, was the only local NGO taking active steps to develop and promote a full spectrum of ODR services at that 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.

18. In response to a member's enquiry on whether other ODR platforms would be allowed to operate in Hong Kong to encourage competition in the market, the Administration advised that it would be 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. However, the Administration 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

19. At the Panel meeting and the special FC meeting on 7 April 2020, some members 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. The Administration explained that subject to the approval of FC, a memorandum of understanding 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 the Hong Kong International Arbitration Centre ("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.

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

20. During the Panel meeting, some members reckoned that the lower the values of transactions involved in the disputes, the smaller the amounts MSMEs would be willing to pay for the dispute resolution services. If the cost for using the eBRAM platform was set too high, it might not be affordable to local MSMEs. In light of this, they 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.

21. The Administration 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. The Panel was also advised that the APEC Economic Committee had given valuable advice to the eBRAM Centre on how to make the ODR platform more cost-effective, and the eBRAM Centre would spare no effort to make the eBRAM platform affordable for MSMEs.

Relationship between the eBRAM International Online Dispute Resolution Centre Limited and the existing arbitration and mediation service providers in Hong Kong

22. At the Panel meeting, a member expressed concern that the eBRAM platform might create vicious competition with HKIAC, one of the leaders in international arbitration and mediation in Hong Kong. The Panel was advised that when the eBRAM platform was promoted to the arbitral institutions in Hong Kong, HKIAC welcomed its development and, 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.

Security and privacy concerns

23. A Panel member enquired about the standard and criteria for procuring the technology products, and the measures adopted for enhancing cyber security of the eBRAM platform. The Panel was informed 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. The Panel was also advised 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.

Latest position

24. At the Panel meeting to be held on 23 November 2020, Department of Justice plans to brief members on the latest position on the development of an ODR and deal-making platform by NGO as supported by the Government.

Relevant papers

25. A list of relevant papers is in the **Appendix**.

Council Business Division 4
Legislative Council Secretariat
17 November 2020

Background brief on the online dispute resolution and deal-making platform supported by the Government

List of relevant papers

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
25.3.2019	Panel on Administration of Justice and Legal Services	Administration's paper on development of an online dispute resolution and deal making platform by non-governmental organization	CB(4)665/18-19(03) https://www.legco.gov.hk/yr18-19/english/panels/ajls/papers/ajls20190325cb4-665-3-e.pdf
		Minutes of meeting	CB(4)1176/18-19 https://www.legco.gov.hk/yr18-19/english/panels/ajls/minutes/ajls20190325.pdf
8.4.2019	Finance Committee (Special meeting)	Replies to initial written questions raised by Finance Committee members in examining the Estimates of Expenditure 2019-2020 (Session No.: 2) (Reply Serial Nos. SJ055, SJ063, SJ064 and SJ075)	https://www.legco.gov.hk/yr18-19/english/fc/fc/wq/sj-e.pdf
7.4.2020	Finance Committee (Special meeting)	Replies to initial written questions raised by Finance Committee members in examining the Estimates of Expenditure 2020-2021 (Session No.: 2) (Reply Serial Nos. SJ049, SJ071 and SJ146)	https://www.legco.gov.hk/yr19-20/english/fc/fc/wq/sj-e.pdf

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
27.4.2020	Panel on Administration of Justice and Legal Services	Administration's paper on the 2019 policy initiatives of the Department of Justice	CB(4)318/19-20(02) https://www.legco.gov.hk/yr19-20/english/panels/ajls/papers/ajls20200427cb4-318-2-e.pdf
		Speaking note of the Secretary for Justice on her briefing on the Chief Executive's 2019 Policy Address	CB(4)513/19-20(03) https://www.legco.gov.hk/yr19-20/english/panels/ajls/papers/ajls20200427cb4-513-3-e.pdf
		Minutes of meeting	CB(4)876/19-20 https://www.legco.gov.hk/yr19-20/english/panels/ajls/minutes/ajls20200427.pdf
11.11.2020	Council meeting	Hon YUNG Hoi-yan raised a question on COVID-19 Online Dispute Resolution Scheme	https://www.info.gov.hk/gia/general/202011/11/P2020111000623.htm