

**立法會**  
***Legislative Council***

LC Paper No. CB(4)501/20-21  
(These minutes have been seen  
by the Administration)

Ref : CB4/PL/AJLS

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

**Minutes of meeting**  
**held on Monday, 23 November 2020, at 4:30 pm**  
**in Conference Room 2 of the Legislative Council Complex**

- Members present** : Hon CHEUNG Kwok-kwan, JP (Chairman)  
Hon Martin LIAO Cheung-kong, GBS, JP (Deputy Chairman)  
Hon Jeffrey LAM Kin-fung, GBS, JP  
Hon WONG Ting-kwong, GBS, JP  
Hon Starry LEE Wai-king, SBS, JP  
Hon CHAN Kin-por, GBS, JP  
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP  
Hon Mrs Regina IP LAU Suk-ye, GBS, JP  
Hon Paul TSE Wai-chun, JP  
Hon Steven HO Chun-yin, BBS  
Hon Elizabeth QUAT, BBS, JP  
Hon CHUNG Kwok-pan  
Hon Jimmy NG Wing-ka, BBS, JP  
Hon Holden CHOW Ho-ding  
Hon Wilson OR Chong-shing, MH  
Hon YUNG Hoi-yan, JP  
Hon LAU Kwok-fan, MH  
Hon Vincent CHENG Wing-shun, MH, JP  
Hon Tony TSE Wai-chuen, BBS, JP
- Members absent** : Hon Abraham SHEK Lai-him, GBS, JP  
Hon Michael TIEN Puk-sun, BBS, JP  
Hon CHAN Han-pan, BBS, JP  
Hon LEUNG Che-cheung, SBS, MH, JP  
Dr Hon Junius HO Kwan-yiu, JP

**Public officers  
attending** : **Agenda item III**

Department of Justice

Dr James DING  
Commissioner of Inclusive Dispute Avoidance and  
Resolution Office

Miss Queenie HO  
Senior Government Counsel (Acting)  
Inclusive Dispute Avoidance and Resolution Office

Miss Phoebe SUEN  
Government Counsel  
Inclusive Dispute Avoidance and Resolution Office

**Agenda item IV**

The Law Reform Commission of Hong Kong

Ms Adeline WAN  
Acting Secretary

*Review of Sexual Offences Sub-committee*

Mr Peter DUNCAN, SC  
Chairman

Mr Eric CHEUNG  
Member

Mr Andrew POWNER  
Member

Miss Sally NG  
Secretary

**Attendance by invitation : Agenda item III**

eBRAM International Online Dispute Resolution Centre Limited

Mr Thomas SO  
Chairman, Board of Directors

Mr Daniel LAM  
Chief Executive Officer

Mr Adrian LAI  
Director

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

**Staff in attendance :** Ms Clara TAM  
Senior Assistant Legal Adviser 2

Mr Ambrose LEUNG  
Senior Council Secretary (4)6

Miss Janice HO  
Council Secretary (4)6

Ms Emily LIU  
Legislative Assistant (4)6

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**I. Information paper(s) issued since the last meeting**

- (LC Paper No. CB(4)106/20-21(01) - Referral of a case from the Public Complaints Office of the Legislative Council Secretariat dated 30 October 2020 on a proposal for amending The Ombudsman Ordinance (Cap. 397) (Restricted to members only)

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- LC Paper No. CB(4)203/20-21(01) - Letter dated 16 November 2020 from Hon Mrs Regina IP LAU Suk-ye to the Panel Chairman and its enclosure on "separation of powers and judicial independence"
- LC Paper No. CB(4)207/20-21(01) - Supplementary information on Proposed making permanent of a supernumerary directorate post in the Judiciary Administration)

The Chairman referred members to LC Paper No. CB(4)207/20-21(01) from the Judiciary Administration ("Jud Adm"), which was in response to some members' request made during discussion of "Proposed making permanent of a supernumerary directorate post in the Judiciary Administration" at the meeting on 2 November 2020, that supplementary information should be provided for further consideration of the Panel on Administration of Justice and Legal Services ("the Panel"). Members raised no issue for discussion on the above subject matter.

2. Mrs Regina IP referred to her letter dated 16 November 2020 (LC Paper No. CB(4)203/20-21(01)) and said that, when she met the Chief Justice of the Court of Final Appeal ("CJ") during the Basic Law 30th Anniversary Legal Summit, CJ told her that he had read her paper on "separation of powers and judicial independence" and considered it reasonable.

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

- (LC Paper No. CB(4)154/20-21(01) - List of outstanding items for discussion
- LC Paper No. CB(4)154/20-21(02) - List of follow-up actions)

3. Members noted that the following items would be discussed at the next regular meeting of the Panel on Administration of Justice and Legal Services ("AJLS Panel") to be held on 21 December 2020 –

- (a) Briefing by the Secretary for Justice and the Director of Administration on the Chief Executive's 2020 Policy Address; and
- (b) The Department of Justice's manpower and structural rationalization proposals.

*(Post-meeting note: As directed by the Chairman, an informal meeting was conducted by videoconferencing for the Panel to receive the "Briefing by the Secretary for Justice and the Director of Administration on the Chief Executive's 2020 Policy Address" on 4 January 2021. As proposed by the Administration and with the concurrence of the Chairman, item (b) was replaced by other items to be discussed at the regular meeting on 25 January 2021, which was further rescheduled to 27 January 2021.)*

#### Items for discussion at future meetings

4. The Chairman recapitulated that a number of issues had been raised by members at the AJLS Panel meeting on 2 November 2020 for discussion at future meeting(s). He referred members to the letter from the Department of Justice ("DoJ") letter dated 20 November 2020 tabled at the meeting (LC Paper No. CB(4)224/20-21(01)) setting out its preliminary views on such issues to facilitate members' consideration of whether the issues should be included in AJLS Panel's list of outstanding items for discussion ("the List").

5. The Chairman said that, having regard to DoJ's views, it seemed more appropriate for the issue relating to instituting prosecution of animal cruelty cases to be taken up by the Panel on Food Safety and Environmental Hygiene ("FSEH Panel"). Dr Priscilla LEUNG disagreed and said that as the crux of the issue was about not taking prosecution against animal cruelty cases, it was appropriate for AJLS Panel to consider the issue from the perspective of prosecution policy. However, she would support holding a joint meeting with other panel(s) having interests in the subject matter.

6. Ms Elizabeth QUAT shared the views of Dr Priscilla LEUNG. She also said that DoJ's letter dated 20 November 2021 had failed to address public's concerns over the mechanism to prevent conflicts of interests arising from the outside work undertaken by DoJ's staff and the issue of setting up of a sentencing committee in full. Ms QUAT reiterated her request that AJLS Panel should discuss matters relating to the above issues.

7. Mr Holden CHOW agreed that there were diverse views in the society about the proposal of setting up a sentencing committee. However, by making reference to the origin and development of sentencing committees in other jurisdictions, having a healthy discussion on this issue by AJLS Panel would be beneficial to the society as a whole.

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8. Ms YUNG Hoi-yan also considered it necessary for AJLS Panel to discuss the setting up of a sentencing committee. She said that the sentencing committee would help enhance the transparency in the judicial system, uphold the public's right to know and, thereby, enable a deeper understanding of the concept of judicial independence. Mr Steven HO said that the setting up of a sentencing committee was not just about court's judgments relating to the social events. He pointed out that in certain cases relating to illegal fishing activities, the penalties handed down by the court were too low to achieve sufficient deterrent effect, which should also be considered when AJLS Panel discuss the setting up of a sentencing committee.

9. Having regard to members' views, the Chairman decided that issues relating to the setting up of a sentencing committee and prosecutors' conflict of interest would be included in the List. He also asked the Clerk to explore with FSEH Panel on the possibility of holding a joint Panel meeting to discuss issues relating to the policy of instituting prosecution against animal cruelty cases.

10. Ms YUNG Hoi-yan proposed that the issues to be covered under the proposed item of "Legal education and training in Hong Kong" should include education and training relating to the "One Country, Two Systems" principle, The Law of the People's Republic of China on Safeguarding National Security in Hong Kong Special Administrative Region, as well as a clarification on "separation of powers" as covered in Mrs Regina IP's letter (LC Paper No. CB(4)203/20-21(01)). Ms YUNG also expressed that DoJ should join forces with the Education Bureau to step up public education on the above.

11. Dr Priscilla LEUNG emphasized that the political structure implemented in the Hong Kong Special Administrative Region was an executive-led system under the Basic Law. She said that while there was no "separation of powers", which was only a political concept, there had been effective checks and balances between legislature, executive and the judiciary under the Basic Law. Dr LEUNG considered it imperative for the Administration to ensure that the legal profession should have an accurate understanding of the above concepts and for AJLS Panel to follow up the issue with the Administration.

12. Ms Elizabeth QUAT expressed support for discussing "legal education and training in Hong Kong" and "qualifications for Hong Kong legal practitioners to practice law in the Greater Bay Area" in future meetings. Noting that the DoJ's letter dated 20 November 2020 was sent to the LegCo Secretariat after office hours so that it was only received in the morning before the present meeting, Ms QUAT urged that the Administration should provide the relevant papers for the Panel earlier to allow sufficient time for members' consideration.

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*(Post-meeting note: Judiciary Administration's written response was issued to members vide LC Paper No. CB(4)235/20-21(01) on 27 November 2020.)*

**III. Recent developments on the online dispute resolution and deal-making platform supported by the Government**

(LC Paper No. CB(4)154/20-21(03) - Administration's paper on "Development and Enhancement of an Online Dispute Resolution and Deal Making Platform by Non-governmental Organisation"

LC Paper No. CB(4)154/20-21(04) - Paper on the online dispute resolution and deal-making platform supported by the Government prepared by the Legislative Council Secretariat (background brief)

LC Paper No. CB(4)154/20-21(05) - Letter from The Law Society of Hong Kong dated 12 November 2020)

Briefing by the Administration and relevant organizations

13. Dr James DING, Commissioner of Inclusive Dispute Avoidance and Resolution Office ("C/IDAR") briefed members on the proposal to provide one-off funding support of \$100 million ("the Proposal") for the development, enhancement and initial operation of an online dispute resolution and deal making platform ("the eBRAM Platform") by eBRAM International Online Dispute Resolution Centre Limited ("eBRAM Centre"), as detailed in the Administration's paper.

14. C/IDAR said that 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 online dispute resolution ("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 eBRAM Platform. C/IDAR explained that \$100 million was now

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sought after taking into account the funding of \$50 million already provided to eBRAM Centre under the Anti-epidemic Fund for the COVID-19 ODR Platform under the COVID-19 ODR Scheme ("the Scheme").

15. C/IDAR said that, having regard to its wide representation, expertise, competency, practical experience and strong commitment in developing ODR and other important services as detailed in the paper, eBRAM Centre was considered the most suitable local service provider to take forward the development of the eBRAM Platform. The Administration also considered the development of such services and online platform by eBRAM Centre consistent with the stated policy objective of capitalizing on the opportunities brought about by the Belt and Road Initiative as well as the Greater Bay Area Development Plan and promoting Hong Kong as an international legal and dispute resolution services centre.

16. With the aid of PowerPoint and video presentations, Mr Thomas SO, Chairman of eBRAM Centre and Mr Daniel LAM, CEO of eBRAM Centre briefed members on the progress of its work, the strengths of the eBRAM Platform as well as the COVID-19 ODR Platform developed by eBRAM Centre under the Scheme.

*(Post-meeting note: the PowerPoint presentation materials were issued to members vide LC Paper No. CB(4)229/20-21(01) on 26 November 2020.)*

Discussion

17. Mr CHAN Kin-por expressed support for the Proposal. He considered that, as ODR had become a global trend, the Proposal would facilitate and strengthen the position of Hong Kong as an international legal and dispute resolution services centre. Noting that eBRAM Centre would be provided with \$100 million subject to the Finance Committee's approval and a number of e-services would be introduced in around early 2022, Mr CHAN asked how eBRAM Centre would closely monitor the use of public money and whether eBRAM Centre would have a dedicated team to ensure that value for money could be achieved in its operation and procurement activities.

18. In reply, Mr Thomas SO said that a Memorandum of Understanding ("MOU") was entered into by the Administration and eBRAM Centre in May 2020, which provided the basis for the Administration's oversight on specific areas in relation to eBRAM Centre's structure, governance and operations, as well as the utilisation of funds. He stressed that eBRAM Centre would exercise great prudence in using public funds and report to the Administration on a regular basis.



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19. Mr Thomas SO further said that a Technology Advisory Committee ("TAC") had been set up under eBRAM Centre which comprised two of its directors and some external experts. TAC dealt with technical matters in relation to the eBRAM Platform and oversaw its IT infrastructure and, in respect of product developments by eBRAM Centre, TAC would give advice on the cost-effectiveness of such products for the Board's consideration. In response to Mr CHAN Kin-por's follow-up enquiry on the number of staff involved in research & development, Mr Thomas SO said that there were four staff members at its inception and it was hoped that it would be increased to eight.

20. Ms YUNG Hoi-yan declared that she was one of the 150 arbitrators or mediators enlisted under the Scheme. Ms YUNG said that after attending one training session provided by eBRAM Centre, she had received limited further information to follow up. She also expressed concern that the arbitrators and mediators trained by eBRAM Centre had no idea about when they would be assigned the first case, and there was insufficient guidance on the rules and procedures for handling the cases assigned to them by eBRAM Centre. Noting also that only 150 mediators, arbitrators or lawyers had been enlisted under the Scheme, she questioned the sufficiency of eBRAM Centre's promotional efforts on the Scheme.

21. In response, Mr Daniel LAM explained that as eBRAM Centre had only entered into an MOU with the Administration in May 2020, eBRAM Centre was focusing on the training of arbitrators and mediators and on strengthening the COVID-19 ODR Platform's security between June and October 2020. Mr LAM also explained that as the fees to be paid to arbitrators and mediators per case handled under the Scheme were capped, the number of members from qualified professional bodies willing to join the Scheme was limited.

22. Ms YUNG Hoi-yan said that there had been general disputes at district level which the Scheme could have been befittingly utilized, such as the contractual disputes arising from cancelled contracts amidst the COVID-19 pandemic, with contract sums under \$500,000. However, owing to the lack of promotion, few members of the general public were aware of the existence of the Scheme as a potential and convenient channel for dispute resolution.

23. While expressing support for the Proposal, Ms YUNG Hoi-yan urged eBRAM Centre to speed up implementing the Scheme and strengthen its promotional and marketing work. Ms Elizabeth QUAT concurred with Ms YUNG and they both urged the eBRAM Centre to step up the promotion of the Scheme and other services to the general public. In response, Mr Daniel LAM mentioned that eBRAM Centre had been actively promoting the Scheme and

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assured members that it would spare no effort in promoting the benefits of its services to the general public.

24. Ms Elizabeth QUAT expressed support for the Proposal as it would enhance the development of LawTech in Hong Kong and would raise Hong Kong's favourable position as an international legal and dispute resolution services centre in the provision of professional legal services. Ms QUAT also said that the Regional Comprehensive Economic Partnership ("RCEP") recently signed by 15 Asia-Pacific nations would provide great opportunities for Hong Kong, and she had urged the Administration to join RCEP as soon as possible. She suggested that eBRAM Centre should also grasp the opportunities and promote the eBRAM Platform in RCEP's member nations for using its services. In response, C/IDAR said that the Administration would discuss with eBRAM Centre how to step up its promotional efforts in the local communities and neighbouring regions.

Conclusion

25. The Chairman concluded that members supported the Administration's submission of the Proposal to the Finance Committee for consideration.

**IV. Consultation paper on Sentencing and Related Matters in the Review of Sexual Offences**

(LC Paper No. CB(4)154/20-21(06) - Consultation paper on Sentencing and Related Matters in the Review of Sexual Offences published by the Review of Sexual Offences Sub-committee of the Law Reform Commission of Hong Kong

LC Paper No. CB(4)154/20-21(07) - Executive Summary of Consultation paper on Sentencing and Related Matters in the Review of Sexual Offences published by the Review of Sexual Offences Sub-committee of the Law Reform Commission of Hong Kong)

26. At the invitation of the Chairman, Mr Peter DUNCAN, SC, Chairman of the Review of Sexual Offences Sub-committee of the Law Reform Commission of Hong Kong, highlighted the main recommendations contained in the consultation paper on Sentencing and Related Matters in the Review of Sexual Offences ("the Consultation Paper") published by the Review of Sexual Offences Sub-committee ("the Review Sub-committee") of the Law Reform Commission of Hong Kong ("LRC").

### Discussion

27. Members generally welcomed the Consultation Paper. Ms Elizabeth QUAT stressed that many of the current legislation in Hong Kong relating to sexual offences were outdated and there was a pressing need for a reform. She was pleased to note that AJLS Panel's views expressed at previous meetings on the several consultation papers issued by the Review Sub-committee and reports relating to its recommendations issued by LRC had been taken into account. She would continue to consult the views of different parties and provide a detailed response at a later stage. Ms YUNG Hoi-yan also appreciated the efforts made by Review Sub-committee.

### *Proposed penalties for voyeurism and non-consensual upskirt-photography offences*

28. Ms Elizabeth QUAT pointed out that the maximum penalty of two years' imprisonment recommended in the Consultation Paper for voyeurism and non-consensual upskirt-photography offences was insufficient to achieve sufficient deterrent effect, especially when it was compared with the new sexual exposure offence proposed by the Review Sub-committee which recommended a maximum penalty of five years' imprisonment. Considering that the number of clandestine photo-taking cases remained on the high side over the years and the severity of the harm inflicted, Ms QUAT opined that the two offences should carry the same maximum penalty of five years' imprisonment.

29. In response, Mr Eric CHEUNG, Member of the Review Sub-committee explained that the new voyeurism and non-consensual upskirt-photography offences were modelled, to a large extent, on similar offences in the English Act which also provided for a maximum penalty of two years' imprisonment. He added that a two years' imprisonment was the same as the maximum penalty for the existing offence of loitering under section 160(3) of the Crimes Ordinance (Cap. 200) in Hong Kong, which was considered as a comparable offence of similar seriousness.

30. Mr Peter DUNCAN, SC supplemented that the act of non-consensual upskirt-photography had hitherto been prosecuted as committing the offence of "access to computer with criminal or dishonest intent" under section 161 of Cap. 200. Whilst the maximum penalty for which was five years' imprisonment, the sentence given by the Magistrates' Courts was often around six months only. Mr DUNCAN, SC therefore cast doubt on whether the court would be willing to give a sentence of longer imprisonment even if the maximum penalties for the new offences were extended to five years' imprisonment.

31. Mr Eric CHEUNG also explained why the new sexual exposure offence would carry a higher maximum penalty than the existing public order offence of exposure. He said that the existing offence was primarily concerned about the indecent bodily exposure in public which did not target any victim and did not constitute any violation of another person's sexual autonomy. On the other hand, the new sexual exposure offence was proposed to cover acts of exposure targeting a specific victim for sexual gratification or to threaten the victim, which were more aggressive and might induce a great degree of fear, shock, and disgust to the victim. Mr CHEUNG said that, by making reference to the Scottish Act, the Review Sub-committee agreed that the new sexual exposure offence should carry a heavier maximum sentence of five years' imprisonment in order to provide greater deterrence and protection to victims.

32. While expressing support for the proposed voyeurism and non-consensual upskirt-photography offences, Ms YUNG Hoi-yan concurred with Ms Elizabeth QUAT's view that the recommended maximum penalty for the offences was too low. She considered that upskirt-photography was an intrusion of privacy and could cause great psychological harm to the victims. Ms YUNG supplemented that the definition of what constituted the offence of voyeurism should be unambiguous, especially on whether acts committed in public or private places would be caught by the definition.

#### *Reoffending rates of sex offenders*

33. Ms YUNG Hoi-yan expressed concerns on the reoffending rates and the provision of treatment for sex offenders. She noted that while the reoffending figures and rates in the Consultation Paper were not up-to-date, the figures from 2013 to 2016 did show an upward trend. Ms YUNG was also worried about the lack of statistics on the reoffending rates of sex offenders who were not imprisoned but were given probation orders or liable on conviction to a fine, as the reoffending risks might also be severe. She stressed that monitoring such figures was essential for the protection of the community.

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34. In response, Mr Andrew POWNER, Member of the Review Sub-committee said that while it was not easy to obtain the updated statistics, the Review Sub-committee might follow up with the relevant parties. Mr POWNER also remarked that the Review Sub-committee took the view that a mandatory treatment order might not be the most effective means to assist sex offenders as its effectiveness would hinge on the offenders' self-motivation for treatment. Rather, the Administration could introduce an incentive scheme in the prison institutions to encourage sex offenders to receive treatment and to demonstrate positive change.

*Sexual Conviction Record Check Scheme*

35. While expressing support to the recommendation that the Sexual Conviction Record Check Scheme ("the SCRC Scheme") should widen its coverage to all employees, self-employed persons and volunteers, Ms Elizabeth QUAT considered that the checking of prospective and existing employees should be made mandatory. Ms QUAT also considered it necessary that access to the sexual conviction records under the SCRC Scheme should be open to parents employing private tutors, but not just to institutions such as tutoring centres. She pointed out that the inherent risk of sexual abuse of students was high as private tutors often conduct lessons in a one-to-one manner.

36. In response, Mr Eric CHEUNG said that LRC had already recommended the applicability of the SCRC Scheme to self-employed persons, such as private tutors, in the Report on Sexual Offences Records Checks for Child-Related Work: Interim Proposals ("the Report on Interim Proposals") published in 2010. As regards access to the sexual conviction records, the process envisaged by LRC was that when employing private tutors, for instance, the parent concerned might require the applicant to provide a code number which allow multiple access to his/her sexual conviction records during the specified period. There would be no need for the parents to initiate checking of the records themselves.

37. Mr Eric CHEUNG further said that, as LRC's recommendations made in the Report on Interim Proposals, including the recommendation on access to records by parents, was not fully implemented in the SCRC Scheme being operated by the Administration, the Review Sub-committee was not in a position to form a view on whether the SCRC Scheme should continue to be an administrative scheme (under which checks are voluntary) or be changed to a comprehensive legislative scheme (under which checks are mandatory). Mr CHEUNG explained that the Review Sub-committee suggested the Administration to first implement all the recommendations in the Report on Interim Proposals in the SCRC Scheme. An evaluation of the SCRC Scheme could then be made at an appropriate time to decide whether it should be made a mandatory scheme after taking various factors into account.

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38. Noting Mr Eric CHEUNG's view that whether and when the LRC's recommendations would be implemented was a matter for the Administration to decide which was beyond LRC's jurisdiction, Ms Elizabeth QUAT considered that the relevant panels should discuss with the Administration on its progress of implementing the SCRC Scheme.

39. The Chairman invited the Review Sub-committee to take note of the views expressed at the meeting. Mr Peter DUNCAN, SC and Mr Eric CHEUNG pointed out that the Consultation Paper only represented the preliminary views of the Review Sub-committee, which would welcome any other views, comments and suggestions from Members and the general public.

**V. Any other business**

40. There being no other business, the meeting ended at 6:01 pm.

Council Business Division 4  
Legislative Council Secretariat  
10 February 2021