

立法會
Legislative Council

LC Paper No. CB(4)1775/20-21

(These minutes have been seen
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Ref: CB4/PL/AJLS

Panel on Administration of Justice and Legal Services

**Minutes of policy briefing
held on Monday, 11 October 2021, at 9:00 am
in Conference Room 1 of the Legislative Council Complex**

- Members present** : Hon CHEUNG Kwok-kwan, JP (Chairman)
Hon Martin LIAO Cheung-kong, GBS, JP (Deputy Chairman)
Hon Starry LEE Wai-king, SBS, JP
Hon Paul TSE Wai-chun, JP
Hon Elizabeth QUAT, BBS, JP
Hon CHUNG Kwok-pan
Hon Jimmy NG Wing-ka, BBS, JP
Dr Hon Junius HO Kwan-yiu, JP
Hon Holden CHOW Ho-ding
- Members absent** : Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Mrs Regina IP LAU Suk-ye, GBM, GBS, JP
Hon YUNG Hoi-yan, JP
- Members attending** : Hon SHIU Ka-fai, JP
Hon Tony TSE Wai-chuen, BBS, JP
- Public Officers attending** : **Agenda item I**
Department of Justice

Ms Teresa CHENG, SC
Secretary for Justice

Ms Christina CHEUNG
Law Officer (Civil Law)

Ms Maggie YANG
Director of Public Prosecutions

Mr Michael LAM
Law Draftsman

Ms Gracie FOO
Director of Administration & Development

Ms Linda LAM
Law Officer (International Law)

Mr Llewellyn MUI
Solicitor General (Acting)

Dr James DING
Commissioner of Inclusive Dispute Avoidance and
Resolution Office

Administration Wing, Chief Secretary for
Administration's Office

Mr Daniel CHENG, JP
Director of Administration

Ms Eva YAM
Deputy Director of Administration (2)

Judiciary Administration

Ms. Esther LEUNG, JP
Judiciary Administrator

Miss Patricia SO, JP
Deputy Judiciary Administrator (Development)

Ms. Wendy CHEUNG, JP
Deputy Judiciary Administrator (Operations)

Legal Aid Department

Mr Thomas Edward KWONG, JP
Director of Legal Aid

Attendance by invitation : **Agenda item I**
Hong Kong Bar Association
Mr Paul HARRIS, SC
Ms Anita YIP, SC

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

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

Mr Raymond SZETO
Senior Council Secretary (4)6

Miss Janice HO
Council Secretary (4)6

Ms Emily LIU
Legislative Assistant (4)6

Action

I. Briefing by the Secretary for Justice and the Director of Administration on the Chief Executive's 2021 Policy Address

(LC Paper No. CB(4)1621/20-21(01) - Paper provided by the Department of Justice

LC Paper No. CB(4)1621/20-21(02) - Paper provided by the Administration Wing, Chief Secretary for Administration's Office)

Briefing by the Administration

Secretary for Justice ("SJ") briefed members on the 2021 policy initiatives of the Department of Justice ("DoJ") as set out in the Chief Executive's 2021 Policy Address ("the Policy Address"). Director of Administration ("DoA")

then briefed members on the relevant policy initiatives of the Chief Secretary for Administration's Office ("CSO") in relation to the Judiciary and legal aid set out in the Policy Address and the Policy Address Supplement.

Views of the Hong Kong Bar Association

2. Mr Paul HARRIS, SC from the Hong Kong Bar Association ("the Bar Association") expressed support for the policy initiatives of DoJ and CSO, in particular those on the proposed extension of remote hearings to more complicated court processes using video-conferencing and other facilities, the provision of additional courtrooms to shorten waiting time for court cases and the proposed implementation of procedural reforms on the family justice system ("the family justice reform").

3. Ms Anita YIP, SC from the Bar Association pointed out that since the procedural provisions governing family cases were scattered over the various Ordinances, it was well known that locating such provisions was a daunting task for legal practitioners (even judges), not to mention the self-represented litigants who were not uncommon in family cases. She hoped that the family justice reform could greatly promote efficiency in the family law practice and reduce the cost and time expended thereon. Notwithstanding, Ms YIP, SC pointed out that family law practice remained unsatisfactory in relation to the insufficient resources expended on family courts, which had wide scope of jurisprudence, unlimited jurisdiction and heavy workload.

4. Ms Anita YIP, SC pointed out that the number of new divorce cases handled by the Family Court in Hong Kong in 2019 was three times that of Singapore, while the number of family court judges and the number of venues for hearing family cases in Hong Kong were only one quarter and less than half of those in Singapore respectively. On the other hand, Ms YIP, SC said that the Bar Association welcomed the appointment of a Children's Commissioner and encouraged compliance with the general comments of the United Nations Committee on the Rights of the Child and international standards by establishing an independent statutory body in this regard. She also said that the legal community had called for a reform on child protection laws, and it was a welcomed move that LRC had published a report on "Causing or allowing the death or serious harm of a child or vulnerable adult" in September 2021.

Discussion

The Guangdong-Hong Kong-Macao Greater Bay Area

5. The Deputy Chairman, Ms Elizabeth QUAT and Mr Holden CHOW expressed support for all the measures which could help Hong Kong legal

professionals to explore the Mainland market, in particular to grasp the opportunities available in the Guangdong-Hong Kong-Macao Greater Bay Area ("GBA").

6. The Deputy Chairman said that it was necessary to explore possible study on the interface of laws in GBA given its unique characteristics of "one country, two systems and three jurisdictions" in order to set up mutually recognized standards and mechanisms to protect business interests and open up vast business opportunities. Noting that DoJ would first study the interface of laws in the areas of intellectual property and e-commerce matters, the Deputy Chairman enquired about the selection criteria and whether the legal departments of Guangdong, Hong Kong and Macao ("the three jurisdictions") had discussed on how to join forces in pursuing the study. He also enquired whether there was a timetable for the study.

7. In reply, SJ advised that DoJ would explore possible study on the interface of laws and mechanism in the three jurisdictions. She further said that, as the interfaces of the laws and mechanisms in the three jurisdictions would entail tripartite collaboration, it should be followed up through the GBA Legal Departments Joint Conference ("Joint Conference") which had been working on devising the most appropriate legal interfaces in different areas of expertise (one of the outcomes was the GBA Mediation Platform). However, as this was a tripartite endeavour, it was not possible for the Government to work out a timetable for the study on its own. A special committee had also been formed under the Chinese People's Political Consultative Committee to study the relevant matters in a coordinated manner, on which DoJ had also contributed some views.

8. In response to the Deputy Chairman's enquiry regarding how to prioritize the areas for study, SJ explained that it would depend on the actual demand in civil and commercial legal matters in GBA. As intellectual property and e-commerce matters were considered the more demanded areas, they had been proposed as the first two areas for in-depth study.

9. The Deputy Chairman noted that the mechanism for wholly-owned Hong Kong enterprises ("WOKEs") to adopt Hong Kong law and choose for arbitration to be seated in Hong Kong ("the mechanism") was only applicable to WOKEs in the Qianhai Cooperation Zone ("Qianhai") at the moment. He suggested that the Administration should, through communication with the other two jurisdictions, explore promoting the mechanism to WOKEs in other GBA municipalities or agreeing on some model laws based on mutually accepted international standards and practices.

10. In reply, SJ said that Chinese enterprises (including WOKEs), in the absence of any "foreign-related" elements, could only adopt the Mainland laws and could not choose to have arbitration seated outside of the Mainland, under the Mainland law. Therefore, the mechanism was a real breakthrough which benefited the over 11 000 WOKEs in Qianhai. While it was the Administration's aspiration to expand the mechanism to other municipalities in GBA, the short-term goal was to, after the mechanism has covered the expanded Qianhai (from 14.92 km² to 120.56 km²), strive to extend it to Shenzhen, and the Administration had been in touch with the relevant authorities of Qianhai, Shenzhen, Guangdong and the Central Authorities.

11. SJ also welcomed the Deputy Chairman's suggestion regarding the model laws and said that, subject to the mutual agreement of the three jurisdictions, the idea could be one of the possible issues to be explored by the Joint Conference when studying interfaces of law.

12. Mr Holden CHOW noted that notwithstanding the liberalization measure implemented for partnership associations formed between Hong Kong law firms and Mainland law firms ("the partnership associations"), the number of partnership associations formed had remained stagnant at 12 for quite some time. Mr CHOW enquired about the reasons for the disproportionately small number of partnership associations formed between Hong Kong and Mainland law firms *vis-à-vis* the number of WOKEs.

13. SJ highlighted that deepening the reform of the partnership association mechanism was one of the areas covered by the Qianhai Plan, and noted that the number of partnership associations formed under the relevant arrangement had been fewer than expected. She said that the Administration had been in close touch with the legal sector to listen to their views for better understanding of the reasons behind. The Administration preliminarily noted that the amount of capital injection required (which was considered to be too high) and insurance-related matters were some of the major hurdles to the formation of partnership associations. The Administration would continue to engage with the legal sector and convey their feedback to the Mainland authorities with a view to finding the workable solutions.

14. The Deputy Chairman noted that two important policy initiatives of DoJ would bring opportunities for the development of Hong Kong legal profession, i.e. establishing Hong Kong as an international legal and dispute resolution services centre in the Asia-Pacific region and strengthening the provision of legal and dispute resolution services to foster the development of GBA. As such, he invited the Bar Association to give its view on its role amidst these initiatives and how it would help promote the relevant opportunities to its members.

15. In reply, Mr Paul HARRIS, SC advised that the Bar Association expressed full support to these policy initiatives and considered that the GBA development would offer great career opportunities to Hong Kong barristers having the necessary Putonghua skill. He informed members that the Bar Association would circulate any relevant information regarding these initiatives, such as seminars on GBA, to its members through its circulars issued to members regularly. Mr HARRIS, SC was confident that Hong Kong barristers had much to offer in fostering the two policy initiatives with their expertise and professional skills.

GBA Legal Professional Examination

16. Mr Holden CHOW expressed that with the inaugural GBA Legal Professional Examination ("GBA Examination") successfully held on 31 July 2021, more Hong Kong lawyers would be qualified for practising in GBA and the supply of Hong Kong lawyers working in partnership associations would increase. SJ concurred with Mr CHOW's view. She was confident that, with GBA Examination, there would be more Hong Kong lawyers familiar with the laws of the two places available for Qianhai development. SJ added that the Government would explore ways to synergize the GBA Examination and the partnership association mechanism such to facilitate Hong Kong's legal industry to capitalize on the opportunities of developing one-stop shop of cross-border legal services in the Mainland.

17. Mr SHIU Ka-fai enquired about the passing rate of the GBA Examination. He also wished to know how Hong Kong lawyers could develop their career in the Mainland, as they were trained under the Hong Kong legal system which was quite different from the Mainland system and had little knowledge about Mainland law practices. In response, SJ advised that while the Administration did not have information about the passing rate of the GBA Examination, she expected that it should be higher than that of the National Unified Legal Professional Qualification Examination ("National Examination") as the scope of GBA Examination was confined to civil and commercial laws which was narrower in scope than the National Examination.

18. SJ supplemented that it was a global trend for legal professionals to obtain qualifications in multiple jurisdictions. It would be a unique advantage for Hong Kong lawyers to be qualified to practise in GBA. They could be employed by Mainland law firms or partnership associations and provide legal services in the nine Mainland municipalities in GBA on specified civil and commercial matters (including litigation and non-litigation matters) to which the Mainland laws apply, and on arbitration relating to civil and commercial matters. SJ encouraged Hong Kong legal professionals to take the GBA Examination to harness the opportunities in the Mainland market.

19. SJ also emphasized that, to enhance Hong Kong legal professionals' understanding of the judicial procedure and practising environment in the Mainland, arrangements of such practical training for Hong Kong legal professionals who had passed the GBA Examination had been made in accordance with the Record of Meeting on Further Enhancement of Exchanges and Cooperation signed with the Supreme People's Court.

Legal education and training and the retention of legal talents

20. Mr Tony TSE said that some local and overseas law graduates had expressed grievances about the difficulties in gaining admission to the post-graduate certificate in laws ("PCLL") programmes. He was concerned whether there would be sufficient supply of Hong Kong legal professionals to harness opportunities arising from national policies for leveraging the strengths of Hong Kong for the development of legal and dispute resolution services in GBA.

21. In reply, SJ said that the Standing Committee on Legal Education and Training established under the Legal Practitioners Ordinance (Cap. 159) would, among its other duties, keep under review legal education and training in Hong Kong including the provision of PCLL places for law graduates. On the other hand, the Administration would continue to join hands with the legal industry in nurturing talents including hosting international legal forums to broaden the profession's understanding of the prevailing legal practices and legal services globally as well as in the Mainland.

22. Noting that the Administration would introduce a range of measures to attract and retain top legal talents in handling international commercial dispute, Mr Tony TSE enquired whether there would be similar initiatives to attract and retain legal talents with other expertise. In reply, SJ stressed that when the Talent List was promulgated in 2018, the Administration had already emphasized the importance of attracting legal talents with expertise in dispute resolution as well as deal-making. Therefore, the Policy Address announced that the scope of the existing industry segment and occupations of "Dispute Resolution Professionals" and "Transactional Lawyers" in the Talent List would be refined to cover professionals with expertise in resolving international commercial disputes, and relax the qualification requirements on past experience in handling international commercial and financial disputes or investor-state disputes, and clarify the types of supporting documents required as proof of experience for transactional lawyers so as to attract more talents in these respects to Hong Kong.

23. SJ highlighted the secondment programmes for local legal professionals with the Hague Conference on Private International Law ("HCCH"), the International Institute for the Unification of Private Law ("UNIDROIT") and the

United Nations Commission on International Trade Law put in place since December 2020. Dr Junius HO expressed support for the secondment programmes to various international organisations but considered that the positions for secondment were too few. He called on the Administration, in collaboration with The Law Society of Hong Kong and the Bar Association, to encourage more private law firms to arrange programmes for their lawyers to attach to overseas law firms to broaden their international horizon. Dr HO said that, if necessary, the Administration should provide financial support to subsidize such programmes.

24. SJ advised that the number of positions for secondment to renowned international organizations were usually very limited. Each organization would normally offer only one place for the secondment of government counsel. SJ highlighted that with the staunch support of the Central People's Government, the secondment programmes had achieved substantive progress including that those with HCCH and UNIDROIT were open to local legal professionals in both the public and private sectors.

25. As for lawyers' overseas attachment programmes suggested by Dr Junius HO, SJ said that as these were more the matters for law firms and lawyers in private practice, the Government was not in a position to steer efforts in this regard. However, the Government would certainly welcome any such move which would help broaden the international horizon of local legal talents. SJ said that DoJ had a scheme to subsidize solicitors and barristers in private practice on their travelling and subsistence expenses for attending international legal forums, who would be required to share their knowledge and experience upon return to Hong Kong. However, the plan had been put to halt owing to the COVID-19 epidemic and was expected to commence once the situation improved.

Progress of prosecutions

26. Ms Elizabeth QUAT noted that, of the approximately 10 000 arrests made in relation to the social events in 2019, only about 2 600 prosecutions had been instituted. She expressed concerns and enquired about the reasons for the apparently slow progress of DoJ in making prosecutions. Dr Junius HO also expressed grave concerns about the 700 cases arising from the Occupy Central Movement and 7 000 cases arising from the social events in 2019, which were still undisposed. He considered DoJ the bottleneck causing the slow progress in prosecuting the above cases and should be more proactive in figuring out ways to deal with them, which might include offering no evidence or plea bargaining if necessary. Dr HO also considered it imperative for DoJ to set key performance indicators for evaluating its work progress in clearing the case backlog.

27. SJ took strong exception to the allegation that DoJ was the bottleneck in the handling of cases relating to the social events in 2019, and reiterated that DoJ had always been carrying out its prosecution work expeditiously without delay. SJ stated she had repeatedly explained the difference between the test adopted by the Police in arrest and the threshold adopted by DoJ to decide whether or not to prosecute. While Police would effect an arrest if they had a reasonable suspicion that the person in question had committed a relevant offence, DoJ, when handling prosecution work, would commence prosecution if there was a reasonable prospect of conviction based on the applicable law and evidence available. In addition, SJ clarified that criminal matters could not be resolved by alternative dispute resolution in Hong Kong.

28. SJ further said that the time required for making the decision also depended on a number of factors, including the time taken for investigation by the enforcement agency, the volume of evidence gathered and the nature and complexity of the case concerned. Notwithstanding, DoJ had all along been handling cases without delay and she raised the following examples to illustrate this:

- (a) 213 arrests were made by the Police amidst the serious confrontations at the campus of Hong Kong Polytechnic University in November 2019 and DoJ gave its preliminary legal advice shortly afterwards. The cases were first mentioned in court on 19 and 20 November 2019, and had been scheduled to be heard at District Court, with the first one scheduled to commence in March 2022 and the last one in October 2023;
- (b) 99 arrests were made in relation to the riots in the vicinity of the Central Government Offices and Queensway on 29 September 2019. The cases were first mentioned in court on 2 October 2019 and court hearings had been scheduled to commence in September 2023; and
- (c) 28 arrests were made in relation the riots in Central on 12 November 2019 and all cases were first mentioned in court on 13 and 14 November 2019, and three court hearings had been scheduled for 2023.

Manpower for the Law Drafting Division of the Department of Justice

29. Mr Tony TSE noted that a large number of bills had been passed by the Sixth Term of the Legislative Council ("LegCo") and as foreshadowed in the Policy Address, the legislative programme for the Seventh LegCo would also be

quite heavy. He enquired whether the manpower of the Law Drafting Division of DoJ ("LDD") was adequate to cope with the existing and expected workload.

30. In response, SJ said that with its existing manpower, LDD would strive to handle all the legislative drafting work. The Administration would seek to increase the strength of the division as and when necessary. SJ also informed members on a special initiative of LDD in organizing a seminar on 24 November to introduce its work to the legal sector, and to provide some basic training on the principles and techniques of law drafting to legal professionals. LDD was working with the Law Society so that the attendants would earn Continuing Professional Development points.

Services provided by the eBRAM International Online Dispute Resolution Centre Limited

31. Mr Holden CHOW remembered that at a recent meeting of the Panel on Administration of Justice and Legal Services ("Panel"), members noted that the number of cases handled by eBRAM International Online Dispute Resolution Centre Limited ("eBRAM Centre") was under 100. While he supported the development of the eBRAM Centre, Mr CHOW hoped that its services could be promoted amongst Hong Kong citizens more effectively since it had received public funding of \$100 million.

32. SJ advised that the use of the service provided by eBRAM Centre was subject to the consent of parties to disputes to be resolved and therefore the Centre's service was demand led. eBRAM Centre had been active in engaging potential clients under the COVID-19 Online Dispute Resolution Scheme launched by the Centre and had received hundreds of enquiries in that respect. She said that eBRAM Centre had also conducted online training and briefing for local arbitrators and mediators, and DoJ would continue to promote the use of online dispute resolution services to members of the public.

33. SJ highlighted that in June 2021, eBRAM Centre had promulgated model procedural rules for use by parties seeking to resolve business to business cross-border disputes by online dispute resolution (in particular micro, small and medium sized enterprises focusing on disputes involving less than US\$64,432) in accordance with the Asia-Pacific Economic Cooperation Collaborative Framework for Online Dispute Resolution of Cross-Border Business to Business Disputes.

Vision 2030 Rule of Law

34. Mr SHIU Ka-fai remarked that it was important that students in kindergartens, primary schools, secondary schools and tertiary institutions were

properly educated on the importance of the rule of law and abiding by the laws, and called on the Administration to strengthen its initiatives on this front. SJ noted Mr SHIU's suggestion.

Case backlog relating to non-refoulement claims and social events in 2019

35. Ms Elizabeth QUAT expressed support for providing additional court facilities to expedite processing of case backlog accumulated from the sudden upsurge of cases arising from the social events in 2019, but was concerned whether the judicial manpower was sufficient for handling the backlog. In reply, the Judiciary Administrator ("JA") agreed that the large spike in the number of judicial review ("JR") cases relating to non-refoulement ("NR") claims, as well as cases relating to the social events in 2019 had posed significant challenge to the Judiciary.

36. JA then elaborated on the measures which had been taken by the Judiciary such as making the best possible use of existing courtroom facilities, expanding the capacity of these facilities, as well as making amendments to the High Court Ordinance (Cap. 4) to streamline court procedures and extend the use of a 2-Judge bench to facilitate the Court of Appeal ("CA") in processing of cases including JR cases relating to NR claims. She also said that subject to availability of sufficient judicial manpower, the annual targets for the Court of First Instance ("CFI") and CA were to process 2 000 cases and 1 000 cases respectively with a view to clearing the backlog in a few years' time as far as possible. The Judiciary had been actively recruiting more substantive judges to fill the existing vacancies, as well as appointing more deputy judges for this purpose.

37. Law Officer (Civil Law) supplemented that recent legislative amendments to the Immigration Ordinance (Cap. 115) had also helped improve the procedures in the processing of NR claims and handling appeals/petitions therefrom. The Administration also observed that the courts had on occasions imposed restrictive proceedings orders against NR claimants in JR proceedings to prohibit initiating or continuing any legal proceedings relating to their NR claims without leave of the court in dealing with unmeritorious cases.

38. Ms Elizabeth QUAT pointed out that the number of JR cases relating to NR claims had risen to over 8 000 while, according to JA's reply, the backlog could only be cleared in four or five years' time even with the increased manpower in the Judiciary, which was unacceptable. Ms QUAT urged that the Judiciary should consider more effective measures to deal with the backlog since the large number of NR claimants stranded in Hong Kong had been costing billion dollars to be paid out of public coffer annually, and some of them had also been involved in criminal activities threatening the society.

39. Dr Junius HO criticized that the judicial process for handling these cases had sometimes been impeded by a number of factors including the frequent adjournment of hearings due to unavailability of the defendants' counsel, which was partly due to the judges being too complacent towards the counsel's request. He also highlighted the unduly long time for the handing down of judgements in certain cases. JA advised that the Judiciary would continue to monitor the situation closely, but there was a need to strike a balance between expediting the processing of cases relating to non-refoulement claims and the need to cope with the other types of cases in CA and CFI.

Review on the legal aid system

40. Mr SHIU Ka-fai expressed concern about the concentration of some criminal legal aid cases in a handful of lawyers or law firms. He said that while he fully supported the legal aid system to ensure that no person would be denied access to justice because of lack of means, it was not a right for the legally aided persons to select their own lawyers. He considered that every lawyer on the Legal Aid Panel should be capable so that it should be fair for the Legal Aid Department to assign lawyers to the legally aided persons.

41. DoA said that the Administration was close to completing a review on the operational details of the existing legal aid system such as administration, distribution of cases and selection of lawyers, and would report to the Panel as soon as possible. Ms Elizabeth QUAT expressed concern that the scope of the review of the legal aid system would not address the reform needed for appeals against legal aid decisions, including whether such appeals should continue to be handled by the Judiciary, as well as the factors considered in handling these appeals. In response, DoA confirmed that while some of the suggestions might be related to appeal against legal aid decisions, it was not the core subject for the current review as legislative changes would be involved and would be more complicated.

Enhanced mechanism for handling complaints against judicial conduct and sentencing committee

42. Ms Elizabeth QUAT enquired about whether the Judiciary would consider setting up a sentencing committee or lay down strict sentencing guidelines so as to ensure consistency in the sentencing handed out by judges across different levels of courts. JA advised that CA had considered about 20 applications for review of sentence for cases relating to the social events in 2019 and had handed down judgments on 18 of such applications. In those judgements, CA had clearly laid down some authoritative sentencing principles which would be binding on the future decisions on similar cases handled by the lower courts.

As such, it was considered that the promulgation of sentencing principles by CA in the relevant judgements should be the most effective and efficient mechanism under the existing common law system to help ensure consistency in the sentences handed down by judges in different courts.

(At 10:26 am, the Chairman directed that the meeting be extended for 15 minutes.)

43. In response to Ms Elizabeth QUAT's enquiry on the operation of the enhanced mechanism for handling complaints against judicial conduct ("the Enhanced Mechanism"), JA advised that the Enhanced Mechanism had come into effect on 16 August 2021. The first meeting of the Advisory Committee on Complaints against Judicial Conduct took place in late September 2021 which deliberated on the handling of complex complaint cases with wide public attention, and had rendered useful advice for consideration of the Chief Justice of the Court of Final Appeal. JA said that the Judiciary would disclose relevant decisions arising from the meeting shortly.

II. Any other business

44. There being no other business, the meeting ended at 10:41 a.m.

Council Business Division 4
Legislative Council Secretariat
30 November 2021