



JUSTICE IN FOCUS

ISSUE ONE 2022



律政司
Department of Justice



Online Version

Message from the Secretary for Justice

Welcome to Justice in Focus! It has been an eventful few months, with the schedule of the Department of Justice packed with major occasions. One of the highlights was Hong Kong Legal Week 2021, spanning the first week of November 2021, which offered over 20,000 viewers worldwide insightful discussions. In the same month, we also raised the curtain on the 59th Annual Session of the Asian-African Legal Consultative Organisation, where high-ranking diplomats and legal experts from member states were joined by observer delegations from governments and international organisations worldwide. Besides the fruitful results of many important events, this issue also shares the latest updates on Cap. 599 and related legislation – one of the most crucial legal issues facing Hong Kong during the pandemic.

This issue of Justice in Focus covers major events and updates of the Department from late 2021 to early 2022. We hope you enjoy reading it. On the cover of this publication, the Justice Place is adorned with an animated illustration of a squirrel, an animal often seen around the area, as an emblem of diligence and rising to challenges - the attributes shared by legal practitioners serving and striving for a better Hong Kong.

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Features

Hong Kong Legal Week 2021	02
AALCO 59 th Annual Session held in Hong Kong	07
UNCITRAL Working Group III's First-ever Inter-Sessional Meeting on Investment Mediation in Hong Kong	10
Promoting the United Nations Convention on Contracts for the International Sale of Goods in Hong Kong	11

What's New?

An Update on Cap. 599 and Related Legislation	12
eBRAM Virtual Open Day 2021	13
Webinars Commemorate the New Mechanism for Reciprocal Recognition and Enforcement in Matrimonial and Family Cases between the Mainland and HKSAR Courts	14
Transforming the Legal Profession Through Technology – Webinar on Development of LawTech in Hong Kong in the Past 25 Years	15
Introduction of the Arbitration and Legal Practitioners Legislation (Outcome Related Fee Structures for Arbitration) (Amendment) Bill 2022	16

Global and Mainland Connections

Department of Justice's Global and Mainland Connections Map	17
UNCITRAL Colloquium on Possible Future Work on Dispute Settlement ("Colloquium")	18
Second Meeting of the Inclusive Global Legal Innovation Platform on ODR ("IGLIP on ODR")	18
APEC ODR Virtual Workshop	19
APEC Economic Committee 1 st Plenary Meeting	19
DoJ Counsel Speaking in the UNCITRAL ADR Special Session 2021	19
Law Society of Hong Kong Leadership Insight Session	20
Third GBA Legal Departments Joint Conference	
Promulgation of the GBA Mediator Accreditation Standards and the GBA Mediator Code of Conduct Best Practice	20

Community Connections

Rule of Law Education	21
Let's T.A.L.K. Jumping Jacks Challenge organised by the Hong Kong Police Force	21
The 7 th Term Steering Committee on Mediation	22
SJ Speaks at Ceremonial Opening of Legal Year 2022	22
Teacher Symposium 2022	22

Knowledge and Skill Enhancement Programmes (Professional Development)

2021/22 Investment Law and Investor-State Mediator Training	23
Professional Exchange Programme	23
In-house Training Course on WTO Law	24
Seminar on Cross-boundary Family Mediation	24

Useful Information

Notable Judgments in Civil Cases	25
Notable Judgments in Criminal Cases	26

Hong Kong Legal Week 2021



Secretary for Justice Ms Teresa Cheng SC

Hong Kong Legal Week 2021, one of the most anticipated international legal events of the year, was successfully held from 1 to 5 November. Offering over 20,000 viewers insightful and resourceful discussions, the annual flagship event once again showcased Hong Kong's capacity and readiness in offering legal, deal-making and dispute resolution services to the international community through continuous exchanges and cooperation.

4th UNCITRAL Asia Pacific Judicial Summit

The Department of Justice and United Nations Commission on International Trade Law ("UNCITRAL") jointly held the 4th UNCITRAL Asia Pacific Judicial Summit ("Judicial Summit") on 1 to 2 November 2021 with the theme "Sustainably Adapting to a New Normal".

"This edition of the Judicial Summit on Sustainably Adapting to a New Normal is...timely [and] important... today's conference weaves together the critical legal issues for post-pandemic recovery...the span is impressively comprehensive..."



Ms Anna Joubin-Bret,
Secretary of UNCITRAL



"...how essential the discussion... today is for shaping a healthier, greener post-pandemic world."

Mr Alberto Ninio, General Counsel, Asian
Infrastructure Investment Bank

"The theme of the Judicial Summit...is only too relevant at the present time when all of us are still coping with challenges arising from the COVID-19 pandemic...This Summit provides a valuable platform for sharing and discussion on the various topics..."



The Honourable Chief Justice Andrew Cheung Kui-nung
The Chief Justice of the Court of Final Appeal, HKSAR

The Judicial Summit consisted of two parts – the Judicial Conference and the Judicial Roundtable.

Prominent scholars and experts, legal practitioners and judges from all over the world exchanged and shared their views on legal topics from financing to kick-start the global economy, digital economy and dispute resolution, to insolvency and restructuring during the global recovery from the pandemic.

Simultaneous interpretation in Armenian was provided for the first time with the support of the Asian Development Bank, showcasing the importance of this capacity building event for Armenian-speaking judges and participants.

More than 800 persons from over 38 jurisdictions across the world participated in the Judicial Summit either in person or online, including 80 judges. The Judicial Conference was also broadcast and featured on local television channels and news media online.

International Criminal Law Conference

Secretary for Justice Ms Teresa Cheng SC (“the SJ”) gave an opening speech at the International Criminal Law Conference held on 2 November 2021, in which she addressed the importance of keeping Hong Kong’s core values intact and remaining vigilant of the need for changes and reform to ensure that Hong Kong’s criminal justice system remained fair and effective. Four topics were chosen for discussion.

Former Permanent Judge of the Court of Final Appeal Mr Henry Litton participated in the discussion on human rights considerations in the criminal law context at the first discussion panel. Mr Ian Grenville Cross SC exchanged views with the second discussion panel on the role to be taken by the prosecutor in sentencing offenders and maintaining public confidence in criminal justice.

The ICAC Commissioner Mr Simon Peh shared his experience in combating corruption in Hong Kong. Recent judgements were highlighted to facilitate exchanges with the Director General of the Third Procuratorial Department of the Supreme People’s Procuratorate of the People’s Republic of China, Mr Shi Weizhong, at the third discussion panel. The fourth discussion panel explored the need and plausibility in regulating illegal crowdfunding in Hong Kong under the topic of “Crowdfunding or crime-funding?”

▼ Mr Ian Grenville Cross at the second discussion panel (2nd R)



▲ Former Permanent Judge of the Court of Final Appeal Mr Henry Litton in the first discussion panel (2nd L)



▲ The ICAC Commissioner Mr Simon Peh at the discussion panel (2nd R)

▼ The Director General of the Third Procuratorial Department of the Supreme People’s Procuratorate of the People’s Republic of China, Mr Shi Weizhong, at the third discussion panel



ASEAN Workshop on Online Dispute Resolution

With the support of the ASEAN Secretariat, the first phase of the ASEAN Workshop on Online Dispute Resolution (“Workshop”) was held on 3 November 2021 in hybrid mode under the theme “An Efficient and Cost-effective Dispute Resolution Mechanism for Cross-border Disputes for ASEAN Trade”.

The SJ delivered the opening remarks where she highlighted that with the exponential growth of cross-border commercial transactions, particularly e-commerce transactions, and the extensive use of the internet to conduct businesses, there was a pressing need to provide litigants in cross-border disputes, especially micro, small and medium enterprises (“MSMEs”), with an avenue to obtain access to justice in a time-efficient and cost-effective manner.

International experts and renowned speakers discussed the importance of online dispute resolution (“ODR”) in cross-border trade, the challenges that traders face in cross-border dispute resolution and their shared experience of the opportunities and challenges presented by ODR.

The Workshop attracted around 600 participants from 35 jurisdictions from ASEAN countries and beyond. The Department of Justice is planning to organise the second phase of the Workshop in Hong Kong Legal Week 2022.

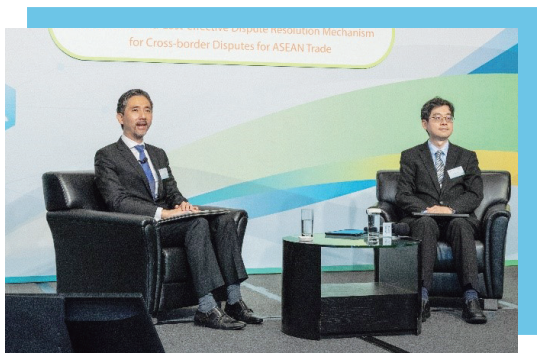
“...ODR e-justice is an essential component of economic growth. ODR can help create markets for [MSMEs] when none currently exists. It will be a substantial benefit to...small businesses and consumers in the ASEAN region who do not have access to effective dispute resolution remedies. ODR can be a cornerstone for the next justice system in the ASEAN region.”

Mr Michael Dennis, Senior Advisor, Kozolchyk National Law Center



“This includes having access to a dispute resolution mechanism in the hands of the consumers and businesses with one click... ODR enables bulk consumer claims to be processed to some degree of automation and standardisation, addresses low value and high volume complaints in business forms.”

Mr Looi Teck Kheong, Head of Competition, Consumer Protection and Intellectual Property Rights Division, the ASEAN Secretariat



▲ (L to R) Mr John Choong and Dr James Ding at the Workshop



▲ (L to R) Mr David Dodwell and Mr Francis Ho at the Workshop



▲ Ms Sala Sihombing speaking at the Lecture

Hong Kong Mediation Lecture 2021

Co-hosted by Herbert Smith Freehills and the Hong Kong Department of Justice, the Hong Kong Mediation Lecture 2021 took place on 3 November 2021. Ms Sala Sihombing, a specialist family mediator and conflict management consultant, discussed the topic of Modern Mediation: Equity's Heir? and shared her insights on how mediation can provide parties with the opportunity to apply their own conscience to find durable "equitable" solutions that meet their substantive interests. These solutions would not otherwise be available to them in traditional rights-based litigation or arbitration processes.



▲ (L to R) Ms Sala Sihombing with SJ

The 4th Belt and Road Conference

Organised by the Law Society of Hong Kong on 4 November 2021, the 4th Belt and Road Conference ("Conference") with the theme "Global Recovery and Harmony through the Belt and Road Initiative" explored how the Belt and Road Initiative ("BRI") can speed up worldwide collaboration and revival in light of the unprecedented changes happening around the world. The Government and business and financial leaders across the world shared their insights on practical and forward-looking topics, ranging from the opportunities and challenges of ongoing initiatives and plans under the BRI, practical guidance for lawyers on how to help businesses to navigate geo-political risks, to the ways to enhance the effectiveness of dispute resolution mechanisms amongst the BRI jurisdictions. The Conference attracted over 670 registrations from 24 jurisdictions.

HONG KONG LEGAL WEEK

1-5 NOVEMBER 2021

Rule of Law Signature Engagement Event

SEE – A Journey of Transformation for a Sustainable Future

It is a fact that there is no consensus as to how the rule of law should be defined and administered among jurisdictions, and due regard must be given to the unique circumstances and context of the particular jurisdiction concerned...It cannot be over-emphasised that the continued success of Hong Kong is very much tied to the upholding of the rule of law. Let's work together and make sure that the rule of law will continue to flourish in Hong Kong.



*The Honourable Chief Justice Andrew Cheung Kui-nung
The Chief Justice of the Court of Final Appeal, HKSAR*

Rule of Law Signature Engagement Event

The Rule of Law Signature Engagement Event ("SEE") with the theme "A Journey of Transformation for a Sustainable Future" was held on 5 November 2021, the last day of Hong Kong Legal Week. The event provided opportunities for young legal talents to engage in constructive exchanges with experienced practitioners, and to widely spread the message of building and maintaining a more equitable and inclusive society for sustainable development within the region and beyond. The SEE also featured the launch of the "Rule of Law Database" and the Ceremonial Opening of the Hot-desking of LAWASIA at the Hong Kong Legal Hub.

The first session was a follow up to the International Youth Legal Exchange Conference 2021 for which the Chairman of Asian Peace and Reconciliation Council, Professor Dr Surakiart Sathirathai, gave insightful closing remarks on the relationship between law and culture. In the second session speakers from diverse backgrounds discussed and explored issues relating to the development of legal technology. The SEE finished with an interactive and insightful roundtable dialogue on building a sustainable future for the rule of law, conducted by the SJ, prominent arbitrators and young lawyers.



▲ (L to R) SJ and the President-elect of LAWASIA, Ms Melissa Pang, officiating at the Ceremonial Opening of the Hot-desking of LAWASIA



Scan for more



Scan to watch online highlights of Hong Kong Legal Week 2021

AALCO 59th Annual Session held in Hong Kong

With the support of the Central People's Government, the Asian-African Legal Consultative Organisation ("AALCO") hosted its 59th Annual Session in Hong Kong for the first time on 29 and 30 November and 1 December 2021. AALCO is dedicated to international law spanning Asia and Africa. Held in a hybrid format, the Annual Session brought together high-ranking diplomats and legal experts representing the member states, as well as observer delegations representing governments and international organisations from across the globe. Premier Li Keqiang delivered the Inaugural Statement at the Inaugural Session of the 59th Annual Session of AALCO. The SJ was elected president of the Annual Session and chaired the three-day meeting.

As an important outcome of the Bandung Conference, AALCO is the only platform covering both Asia and Africa for cooperation on international law... I am convinced that AALCO will further pool the strength of developing countries and make new, important contributions to building a better world.

Premier Li Keqiang



◀ Premier Li Keqiang delivering the Inaugural Statement at the Inaugural Session of the 59th Annual Session of AALCO

▼ SJ (2nd L) and delegates of AALCO member states attending the Inaugural Session of the 59th Annual Session of AALCO

The Annual Session serves as AALCO's plenary organ where the AALCO Secretary General reports on the work of AALCO and its Financial Matters, and participants deliberate on important international law topics such as International Law in Cyberspace. During the 59th Annual Session, member states elected and appointed Dr Kamalinne Pinitpuvadol of Thailand as the next Secretary-General of AALCO, made general statements on the theme "Upholding International Law for a Community of Shared Future: the Role of Asian and African Countries", and also heard reports on AALCO's Regional Arbitration Centres.





◀(R to L) SJ signing memorabilia of the Annual Session. Looking on is the immediate past Secretary-General of AALCO and present Permanent Representative of the United Republic of Tanzania to the United Nations, Ambassador Professor Kennedy Gastorn

AALCO Hong Kong Regional Arbitration Centre

With the support of the Central People's Government, the establishment of the AALCO Hong Kong Regional Arbitration Centre was officially announced at the 59th Annual Session of AALCO, followed by an unveiling ceremony which marked a major milestone in the development and promotion of Hong Kong as an international legal and dispute resolution services hub.

Adding to the five existing regional arbitration centres of AALCO, the regional centre in Hong Kong will seek to integrate itself in the AALCO dispute settlement system and perform a variety of tasks. These include providing facilities for alternative dispute resolution services and assisting in the enforcement of arbitral awards. The regional centre will also promote the growth and effective functioning of arbitration and other dispute resolution services, including online dispute resolution services. The AALCO Hong Kong Regional Arbitration Centre comes into operation this year.

“With the prevalence of the COVID-19 pandemic, one of the major objectives of the Hong Kong regional arbitration centre is to promote online dispute resolution (“ODR”). The HKSAR has been fostering the development of ODR on various fronts, and opted into the APEC Collaborative Framework on ODR which promotes the use of ODR to resolve cross border disputes.”

Mrs Carrie Lam, the Chief Executive



◀(L to R) SJ, Professor Kennedy Gastorn and the Commissioner of the Ministry of Foreign Affairs in the HKSAR, Mr Liu Guangyuan attending the unveiling ceremony of the AALCO Hong Kong Regional Arbitration Centre

AALCO Side Event – Online Dispute Resolution

During the 59th Annual Session of AALCO, a side event entitled “Dispute Settlement – Online Dispute Resolution” was co-organised by the Department of Justice, the Asian Academy of International Law, and eBRAM International Online Dispute Resolution Centre (“eBRAM”) on 30 November 2021. The SJ opened the side event, and stressed that the HKSAR Government was fostering the development of ODR on various fronts, including opting into the Asia-Pacific Economic Cooperation (“APEC”) Collaborative Framework on ODR, the launch of the Inclusive Global Legal Innovation Platform on ODR, and the Workshop on ODR of the Association of Southeast Asian Nations during Hong Kong Legal Week 2021.

After the SJ's remarks, a presentation was given by the Chief Executive Officer of eBRAM, Ms Emmanuelle Ta. Ms Ta introduced and highlighted the ODR platform and LawTech services provided by eBRAM, which aim to meet the expanding demand for dispute resolution services across borders. This was followed by a video interview with Professor Mohamed Abdel Wahab, Vice-Chairman of the Advisory Committee of the Cairo Regional Centre for International Commercial Arbitration, who shared his insights and experiences on ODR. The event closed with a roundtable discussion.



◀ SJ delivering opening remarks at the side event of the AALCO 59th Annual Session

▼ Ms Emmanuelle Ta, the Chief Executive Officer of eBRAM giving a presentation on the ODR platform and LawTech services provided by eBRAM



▲ Professor Mohamed Abdel Wahab, the Vice-Chairman of the Advisory Committee of the Cairo Regional Centre for International Commercial Arbitration, sharing his invaluable insights and experiences on online dispute resolution



▲ Guest speakers from the legal and dispute resolution sectors discussing issues related to the recourse and opportunities arising from ODR



▲ The immediate past Secretary-General of AALCO and present Permanent Representative of the United Republic of Tanzania to the United Nations, Ambassador Professor Kennedy Gastorn delivering the closing remarks at the Side Event

UNCITRAL Working Group III's First-ever Inter-Sessional Meeting on Investment Mediation in Hong Kong

Preceded by the Pre-Inter-Sessional Meeting in 2020, with the support from the Central People's Government, the Department of Justice co-organised with the United Nations Commission on International Trade Law ("UNCITRAL") and the Asian Academy of International Law ("AAIL") an Inter-Sessional Meeting for UNCITRAL Working Group III on investor-State dispute settlement ("ISDS") reform in Hong Kong on 28 and 29 October 2021. This marked the first time for a Working Group of UNCITRAL to have a formal meeting in Hong Kong, which adopted a hybrid mode of virtual and in-person participation, and brought together over 600 government officials, representatives from international organisations such as UNCTAD, ICSID and the International Energy Charter as well as academics and practitioners from 94 jurisdictions to discuss the growing use of mediation as an ISDS reform option.

A highlight of the Inter-Sessional Meeting was on the deliberation for the first time by the delegations of Working Group III on the draft mediation model clauses and guidelines prepared by the UNCITRAL Secretariat to strengthen the use of investment mediation for resolving ISDS disputes. Among others, the mediation rules under the Investment Agreement of the Mainland-HKSAR Closer Economic Partnership Arrangement (CEPA) were mentioned during the discussion as a reference for the Working Group to shape the model mediation clauses. Moreover, the potential use of online dispute resolution technology in investment mediation has also been suggested by eBRAM International Online Dispute Resolution Centre ("eBRAM") in the practical workshop of the Inter-Sessional Meeting. In her remarks for the Inter-Sessional Meeting, the SJ stressed the importance of "getting the framework right", "overcoming psychological barriers through education" and "unlocking mediation's synergy with other ISDS reform options" in promoting the use of investment mediation.

► SJ delivering the opening remarks for the roundtable discussion of the Inter-Sessional Meeting and suggesting that a holistic mind-set be adopted in considering the reform option of investment mediation in the eco-system of ISDS



▲ Dr James Ding, Commissioner of the Inclusive Dispute Avoidance and Resolution Office (1st L), moderating the practical workshop held in conjunction with the Inter-Sessional Meeting, with experienced speakers discussing various topical issues on investment mediation



▲ Ms Anna Joubin-Bret, Secretary of UNCITRAL, reiterating that the use of mediation is significant in resolving pressing issues in the present ISDS regime

Promoting the United Nations Convention on Contracts for the International Sale of Goods in Hong Kong

To assist stakeholders, particularly those in the legal and business sectors, prepare for the implementation of the United Nations Convention on Contracts for the International Sale of Goods (“CISG”) in Hong Kong, a series of events were rolled out in the first quarter of 2022.

These included the bilingual seminars titled “CISG in Hong Kong – What it Means for Businesses” co-organised with the Hong Kong General Chamber of Commerce (“HKGCC”) on 19 and 26 January 2022, as well as the legal webinar “New Ordinance on CISG – Updates on Hong Kong’s Law on International Sale of Goods” and the “CISG Legal Training Workshop – Essential Know-How for Lawyers” co-organised with the Asian Academy of International Law on 24 January and 21 February 2022 respectively. The staunch support of the Law Society of Hong Kong and the Hong Kong Bar Association, which were supporting organisations for all the events, contributed to the remarkable success of these events.

In view of the pandemic situation, the events were held online and were accessible worldwide. They were well received by not only local communities but also overseas participants from over 30 different jurisdictions. Renowned CISG experts shared with the business and legal sectors practical tips on handling cross-border sales of goods transactions as well as essential legal skills in the context of the CISG.

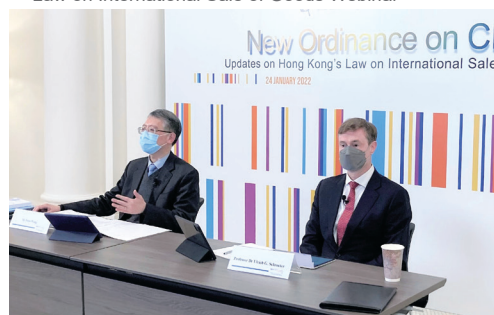
To enhance stakeholders’ understanding of the CISG, articles were published in the Hong Kong Lawyer and the HKGCC’s Bulletin. These publications, as well as the video recordings and presentation slides of the online events, are now available on the Department’s featured webpage on the CISG. Anyone interested in learning more about the CISG and its anticipated implementation in Hong Kong can visit the following link for further information.



▲ CISG in Hong Kong – What it Means for Businesses Seminar



▲ ▼ New Ordinance on CISG – Updates on Hong Kong’s Law on International Sale of Goods Webinar



Scan for more



An Update on Cap. 599 and Related Legislation

April 2021

- Cap. 599F: extended to require patrons (not just operators) of catering and scheduled premises to comply with directions



October 2021



- Cap. 599K: extended civil immunity to include all five expert committees and panels in advising the Government on vaccines

February 2022

Amendments:

- Cap. 599F: to add hair salons, religious premises, shopping malls, department stores, markets and supermarkets as scheduled premises
- Cap. 599G: to restrict multi-household gatherings
- Cap. 599J: to increase fixed penalty to \$10,000 for non-compliance with compulsory testing requirements

New legislation:

- Cap. 599L: to require vaccine pass for entering specified premises
- Cap. 241N (an emergency regulation): for the Chief Secretary for Administration to exempt persons or projects from complying with existing statutory requirements

Prevention and Control of Disease (Vaccine Pass) Regulation (Cap. 599L)

In combating the fifth wave of the COVID-19 epidemic caused by the highly transmissible Omicron variant, vaccination remains highly efficacious in preventing and reducing hospitalisation and the chance of developing severe complications after infection and thus can protect the community against the Omicron variant. The Prevention and Control of Disease (Vaccine Pass) Regulation (Cap. 599L) ("Regulation") was made to put in place the "vaccine pass" mechanism.

To boost Hong Kong's vaccination rate, the Regulation came into operation on 10 February 2022. The Regulation empowers the Secretary for Food and Health to issue a vaccine pass direction, which may require a person not to enter, board or remain on certain premises or public transport carriers unless the person has been properly vaccinated or is exempted because he or she holds a valid medical exemption certificate.

To ensure compliance, a vaccine pass direction may require the person in charge of the relevant premises or carrier to adopt certain measures, such as inspecting the vaccination records or medical exemption certificates of any person entering, boarding or remaining on the premises or carrier.



eBRAM Virtual Open Day 2021

eBRAM International Online Dispute Resolution Centre ("eBRAM") successfully concluded its first-ever Virtual Open Day entitled "Building Agility in the Digital New Normal" on 13 December 2021. Almost 100 online participants celebrated eBRAM's initiative, which featured the demonstration of eBRAM's e-Signing Platform and trial portal with a virtual tour. The participants witnessed eBRAM's commitment to provide, by the end of 2022, a cloud service, AI translation service and e-transcription service with its deal-making platform and standalone mediation and arbitration platform. These innovations will no doubt enhance Hong Kong's position as a LawTech centre.

The SJ highlighted in her keynote speech eBRAM's remarkable growth in providing a unique and cutting edge service playing a leading role in the provision of LawTech services in Hong Kong, following the policy of the HKSAR Government.

In his presentation, Dr James Ding, the Commissioner of Inclusive Dispute Avoidance and Resolution Office, said that the Department of Justice has been working closely with eBRAM, including in its development of an efficient, cost-effective and secure platform for online deal-making and dispute resolution. For instance, eBRAM's COVID-19 ODR Scheme provides a speedy and cost-effective means for the general public and businesses in the HKSAR to resolve global and local COVID-19 related disputes of low value.

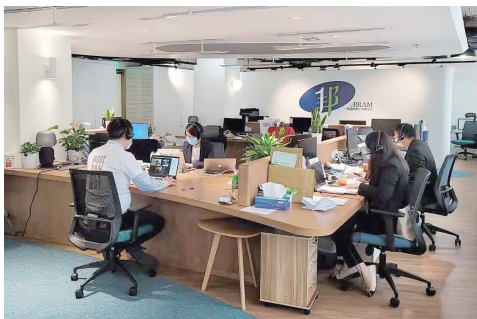
In June 2021, eBRAM launched the APEC ODR procedural rules which had been tailor-made for the APEC Collaborative Framework on ODR. The Collaborative Framework aims to provide a fast and affordable resort for commercial disputes among APEC economies and micro, small and medium enterprises through the use of electronic communications and other information technology. After indicating to APEC its commitment to become an ODR service provider for APEC economies, eBRAM was successfully enlisted as one of the very first batch of service providers in May 2022.



▲ Dr James Ding giving a presentation at the Virtual Open Day



▲ SJ delivering a keynote speech at the Virtual Open Day



▲ eBRAM's office at the Legal Hub

Webinars Commemorate the New Mechanism for Reciprocal Recognition and Enforcement in Matrimonial and Family Cases between the Mainland and HKSAR Courts

The Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (Cap. 639) and the “Arrangement on Reciprocal Recognition and Enforcement of Civil Judgments in Matrimonial and Family Cases by the Courts of the Mainland and of the Hong Kong Special Administrative Region” came into operation on 15 February 2022.

Under the new mechanism introduced by Cap. 639, which serves to implement the Arrangement in Hong Kong, the following types of applications may be made to Hong Kong courts:

- registration of specified court orders in Mainland judgments given in matrimonial or family cases
- recognition of Mainland divorce certificates
- certified copy of and certificate for Hong Kong judgments given in matrimonial or family cases, so as to facilitate applications for recognition and enforcement in the Mainland.

The new mechanism reduces parties’ need to re-litigate the same dispute in both Mainland and Hong Kong courts and allows them timely access to effective judicial relief.

A new milestone in mutual legal assistance in civil and commercial matters

To commemorate the coming into operation of the Arrangement, the Supreme People’s Court and the Department of Justice (“DoJ”) co-organised a webinar on 15 February 2022. Judges, scholars, officials and legal practitioners from both places introduced the key features of the new mechanism and discussed its institutional innovations. The SJ said that the Arrangement represented “another innovative initiative that adheres to the upholding of the principle of ‘one country’ while leveraging the advantages of ‘two systems’”. Over 700 participants attended online.

DoJ organised another webinar on the next day to discuss the important implications that Cap.639 carries for family and matrimonial cases, and the related mediation process, involving cross-boundary marriages between Hong Kong and the Mainland. For details, see p. 24.



► SJ delivering the opening remarks at the webinar on 15 February 2022

Transforming the Legal Profession Through Technology – Webinar on Development of LawTech in Hong Kong in the Past 25 Years

This year marks the 25th anniversary of the establishment of the Hong Kong SAR. To celebrate this historic milestone, on 7 March 2022, the Law Society of Hong Kong and eBRAM International Online Dispute Resolution Centre (“eBRAM”) co-organised the event “Transforming the Legal Profession Through Technology – Webinar on the Development of LawTech in Hong Kong in the Past 25 Years”. This was the first accredited event organised for the legal and dispute resolution sector in celebration of the 25th anniversary.

At the webinar, speakers spoke of the various LawTech initiatives that have facilitated the day-to-day practice of the profession over the years. The more recent initiatives include the Online Dispute Resolution platforms and the Hong Kong Legal Cloud Portal of eBRAM launched on 1 March 2022. Eligible legal and dispute resolution practitioners in Hong Kong could be entitled to free subscription to the Cloud Portal (thanks to Government sponsorship).

For the Hong Kong Legal Cloud Portal, please see: <https://hklegalcloud.ebram.org/>



▲ SJ delivering the opening remarks at the webinar



► Mr CM Chan (Upper L) and Mr Armirali Nasir (Lower L), from the Law Society of Hong Kong and Ms Emmanuelle Pui-Ki Ta of eBRAM (Lower R)



Introduction of the Arbitration and Legal Practitioners Legislation (Outcome Related Fee Structures for Arbitration) (Amendment) Bill 2022

The Government is introducing legislative amendments to allow lawyers in Hong Kong to enter into outcome related fee structures ("ORFS") for arbitration. At present, these arrangements are prohibited in Hong Kong by the common law doctrines of champerty, maintenance and barratry. Under the Amendment Bill, three types of ORFS will be permitted, namely conditional fee agreements ("CFA"), damages-based agreements ("DBA") and hybrid damages-based agreements ("Hybrid DBA").

ORFS will provide clients and their legal representatives with an additional option to adopt and devise a more flexible fee arrangement that best suits their needs and circumstances. The fee arrangement can be (a) conditional upon the outcome, (b) related to damages awarded or (c) a hybrid form of payment of some legal fees plus a damages-based payment.

Other major arbitral seats permit some form of ORFS. The reform will allow Hong Kong to keep up with the latest practice in international arbitration, maintain Hong Kong's competitiveness as a leading arbitration centre, enhance access to justice (especially for clients seeking funding to pursue meritorious claims), and respond to client demand for pricing flexibility. The reform also aligns with the National 14th Five-Year Plan which supports Hong Kong to develop into a centre for international legal and dispute resolution services in the Asia-Pacific Region.

The legislative amendments were formulated on the basis of the Law Reform Commission's recommendations in its Report published in December 2021.

The Department of Justice introduced the Amendment Bill into the Legislative Council in March 2022. The more detailed regulatory framework and particular safeguards will be set out in subsidiary legislation.



Scan for more



Department of Justice's Global and Mainland Connections Map

Red lines: How our events reach out to the world

The Hague, the Netherlands 4-8 October 2021

Deputy Principal Government Counsel Ms Lorraine Chan and Government Counsel Miss Phoebe Suen of the International Law Division joined (online), as part of the Chinese delegation, the Hague Conference on Private International Law (HCCH)'s 12th International Forum on the electronic Apostille Programme and the 5th Meeting of the Special Commission on the Practical Operation of the Apostille Convention

11-15 October 2021 & 14-18 February 2022

Deputy Law Officer (Treaties & Law) Mr Peter Wong joined (online), as part of the Chinese delegation, the First and Second Meetings of the HCCH Working Group on Jurisdiction

Vienna, Austria & New York, USA 18-22 October 2021 & 7-11 February 2022

Deputy Law Officer (Treaties & Law) Mr Peter Wong joined (online), as part of the Chinese delegation, the 39th and 40th sessions of UNCITRAL Working Group VI on the Judicial Sale of Ships

USA 24 November 2021

Second Meeting of the Inclusive Global Legal Innovation Platform on ODR ("iGLIP on ODR") (See p. 18)

New York, USA 28 March to 1 April 2022

UNCITRAL Colloquium on Possible Future Work on Dispute Settlement (See p. 18)

Tokyo, Japan 16-17 February 2022

APEC ODR Virtual Workshop (See p. 19)

Bangkok, Thailand 21-22 February 2022

APEC Economic Committee 1st Plenary Meeting (See p. 19)

Guangdong-Hong Kong-Macao Greater Bay Area 10 December 2021

Third GBA Legal Departments Joint Conference (See p. 20)

26 January 2022

Law Society of Hong Kong Leadership Insight Session (See p. 20)

Hong Kong

2-3 November 2021

DoJ Counsel speaking in the UNCITRAL ADR Special Session 2021 (See p. 19)

11 November 2021

The Department of Justice, The Hague Academy of International Law and the Asian Academy of International Law co-organised the "Trends in Commercial Arbitration and Private International Law" webinar

UNCITRAL Colloquium on Possible Future Work on Dispute Settlement (“Colloquium”)

The Colloquium was held from 28 March to 1 April 2022 at the United Nations Headquarters, New York and online.

The Colloquium was dedicated to developments in dispute resolution in the digital economy, online dispute resolution platforms, technology-related dispute resolution and adjudication. A round table discussion also took place, where a summary of the deliberations during the first four days of the Colloquium was provided.

Dr James Ding, Commissioner of the Inclusive Dispute Avoidance and Resolution Office, together with Miss Melissa Kiang, Mr David Ng, Mr Ian Li and Miss Clara Chan of the Department of Justice participated in the Colloquium as part of the delegation of China.

Session 4 of the Colloquium focused on the topic of online platforms for dispute resolution. Dr James Ding acted as the moderator of this session and also gave a presentation on the work of the Inclusive Global Legal Innovation Platform on ODR (“iGLIP on ODR”), as well as its discussions on a possible international legal instrument on “Access to Justice and the Role of ODR”.

Second Meeting of the Inclusive Global Legal Innovation Platform on ODR (“iGLIP on ODR”)

The second meeting of iGLIP on ODR was hosted by the DoJ Project Office for Collaboration with United Nations Commission on International Trade Law (“UNCITRAL”) on 24 November 2021.

During the meeting, experts reviewed the latest developments on ODR and discussed a possible international legal instrument on “Access to Justice and the Role of ODR” which aims to facilitate international access to justice through the use of ODR, including the provision of appropriate and adequate access to technology and other basic infrastructure or support for ODR. The SJ and the Secretary of UNCITRAL, Ms Anna Joubin-Bret were co-moderators for the discussion on the possible instrument.



▲ Ms Anna Joubin-Bret, Secretary of UNCITRAL

▶ SJ

The work of iGLIP on ODR and discussions on the possible instrument will be presented at the UNCITRAL Colloquium on Possible Future Work on Dispute Settlement held from 28 March to 1 April 2022.



APEC ODR Virtual Workshop

Colleagues from the Inclusive Dispute Avoidance and Resolution Office attended virtually the APEC Workshop on Implementing the APEC ODR Collaborative Framework hosted in Tokyo, Japan.

Participants from 21 APEC member economies at the virtual APEC Workshop on Implementing the APEC ODR Collaborative Framework, including Dr James Ding, Commissioner of the Inclusive Dispute Avoidance and Resolution Office and Ms Michelle Fung.



▲ Ms Michelle Fung, Senior Government Counsel as a delegate of Hong Kong, China made a presentation on how the implementation of the APEC ODR Collaborative Framework could assist the micro, small and medium sized companies of the APEC economies to resolve cross-border disputes

APEC Economic Committee 1st Plenary Meeting



▲ Participants from 21 APEC member economies at the virtual 1st plenary meeting of APEC's Economic Committee, including Dr James Ding, and Ms Michelle Fung and Ms Queenie Wu as delegates from Hong Kong, China

The Commissioner of the Inclusive Dispute Avoidance and Resolution Office, Dr James Ding, chaired the APEC Economic Committee 1st Plenary Meeting hosted in Thailand.

In February 2022, Dr Ding, as chair of APEC's Economic Committee, attended APEC meetings, including the First Senior Officials' Meeting. On 21 and 22 February 2022, he chaired the 1st plenary meeting of the APEC Economic Committee.



DoJ Counsel Speaking in the UNCITRAL ADR Special Session 2021

On 2-3 November 2021, Ms Michelle Fung and Mr David Ng of the Department of Justice were invited to speak in the UNCITRAL Alternative Dispute Resolution ("ADR") Special Session, which is an annual flagship event co-organised by the United Nations Commission on International Trade Law ("UNCITRAL"), the UNCITRAL Regional Centre for Asia and the Pacific ("RCAP") and the Ministry of Justice of the Republic of Korea. Ms Fung shared the experience of various DoJ's initiatives on online dispute resolution ("ODR"), including the Inclusive Global Legal Innovation Platform for ODR ("iGLIP on ODR"), while Mr Ng reported on the discussion outcome of the UNCITRAL Working Group III's Inter-Sessional Meeting on investment mediation held in Hong Kong on 28-29 October 2021.

Law Society of Hong Kong Leadership Insight Session

On 26 January 2022, the SJ gave a speech during the Law Society of Hong Kong Leadership Insight Session, introducing the opportunities for international lawyers to participate in the development of the Guangdong-Hong Kong-Macao Greater Bay Area ("GBA").

The SJ highlighted that Hong Kong's position as the leading centre for international legal and dispute resolution services is firmly supported by national policy, as evidenced by both the National 14th Five-Year Plan and the GBA Outline Development Plan. As the only common law jurisdiction within China and a major hub for international and local legal and dispute resolution talents, she opined that Hong Kong is ideally placed to utilise the unique advantages under the "one country, two systems and three jurisdictions" within the GBA.

The SJ encouraged and welcomed all international lawyers to make good use of Hong Kong as an entry point for the GBA market in order to seize the immense opportunities. The Commissioner of the Inclusive Dispute Avoidance and Resolution Office also joined the first panel discussion with other prominent panelists to discuss the opportunities and challenges for practitioners in the GBA.

Third GBA Legal Departments Joint Conference Promulgation of the GBA Mediator Accreditation Standards and the GBA Mediator Code of Conduct Best Practice

The third Guangdong-Hong Kong-Macao Bay Area ("GBA") Legal Departments Joint Conference ("Joint Conference") was held on 10 December 2021 and was joined by the SJ, the Director-General of the Department of Justice of Guangdong Province, Mr Chen Xudong and the Secretary for Administration and Justice of the Macao Special Administrative Region Government, Mr Cheong Weng Chon.

During the meeting, different legal and dispute resolution related areas were actively discussed. The meeting endorsed both the GBA Mediator Accreditation Standards and the GBA Mediator Code of Conduct Best Practice, while the parties agreed to follow up the drafting and promulgation of the GBA Mediation Rules at the working level.

The said Standards and Best Practice were officially released and came into effect on 30 December 2021 for voluntary adoption and use by mediation institutions in the GBA. The promulgation of the mediation standards is a major milestone in the building of the rule of law in the GBA and Hong Kong's integration into the GBA development, which will facilitate the establishment of the panel of GBA Mediators, and enhance the confidence of mediation users within the GBA.

The SJ looked forward to the further harmonisation of the systems and laws in the GBA. She also encouraged legal practitioners passing the GBA Legal Professional Examination to dedicate their professionalism to serving the nation's needs.

The fourth Joint Conference will be hosted by HKSAR this year in 2022.



The new milestones reached in mediation illustrated the legal regulatory interface in the GBA.

Ms Teresa Cheng, Secretary for Justice



◀ SJ speaking at the Joint Conference

Rule of Law Education

In order to enhance students' law-abiding awareness and cultivate their law-abiding spirit, the Department of Justice has organised a number of activities for teachers, primary and secondary school students under the "Vision 2030 for Rule of Law" initiative.

Teacher Training by Endeavour Education Centre

The Department of Justice supports the Endeavour Education Centre's collaboration with the Education Bureau to organise the "Reinforcing the Rule of Law" training course for teachers. In the training course held on 1 December 2021, the SJ highlighted the fundamental importance of the rule of law to more than 180 principals and teachers. She said that judicial independence is a cornerstone of the rule of law and it is safeguarded by the Basic Law, notably Article 85. The Basic Law safeguards our rights and freedoms. However, she stressed that such rights and freedoms are not absolute but may be subject to restrictions which, for instance, preserve public order and protect others' rights and freedoms. Concluding her talk, the SJ noted the HKSAR's significant progress in international rankings on the rule of law since its return to the Motherland.



The Director of Public Prosecutions, Ms Maggie Yang, also gave a presentation during the training course on various criminal offences. Both presentations were highly received, with a remarkable overall audience satisfaction rate of 98%.

◀ SJ delivering a talk at the training course

SJ's chat with young people

In December 2021, the SJ met with a group of secondary school students who participated in the Hong Kong Army Cadets Association and the Hong Kong Basic Law Ambassador Training Scheme, where they discussed the Constitution of the People's Republic of China, the Basic Law and the significance of the National Security Law.



Law Quiz Competition Series (for primary schools)

Part I of the Series (Online Law Quiz Game) was successfully concluded in November 2021, with a total participation of nearly 2,000 primary school students. For Part II of the Series (the Inter-School Law Quiz Competition), over 40 schools have enrolled, with the matches taking place in the first half of 2022.

"Rule of Law Enlightenment" Programme (for secondary schools)

Since the launch of the Programme, the Department of Justice has reached over 4,000 secondary school students through law talks, and over 100 students have participated in the Rule of Law Journey. The "Key to the Future" Short Video Competition ended in January 2022, with 70 video entries received. The award presentation ceremony is scheduled for the first half of 2022.

Let's T.A.L.K. Jumping Jacks Challenge organised by the Hong Kong Police Force

The SJ and the Director of Public Prosecutions, Ms Maggie Yang, participated in the "Jumping Jacks Challenge Video Clip Contest", under the "Let's T.A.L.K." Child Protection Campaign launched by the Hong Kong Police Force on 18 December 2021 to raise public awareness for protection of children from harm and abuse.



The 7th Term Steering Committee on Mediation

The Steering Committee on Mediation ("SC") led by the SJ was set up in 2012. The SC advises on and assists in the promotion and development of mediation in Hong Kong. The 7th Term SC comprises members from different sectors of the community including dispute resolution professionals, lawyers, medical practitioners, academics, administrators and social workers. It completed its 2-year term of service on 31 December 2021. Under the guidance of the 7th Term SC, the Department of Justice has successfully implemented various initiatives to promote mediation in and outside Hong Kong, including holding the Mediate First Pledge Event in May 2021 and drawing up the mediator accreditation standards and code of conduct best practice for the Guangdong-Hong Kong-Macao Bay Area Mediation Platform.



SJ Speaks at Ceremonial Opening of Legal Year 2022

The SJ spoke at the Ceremonial Opening of the Legal Year on 24 January. Held annually at the City Hall, this year's event had to be moved to the Court of Final Appeal building due to the pandemic.

The SJ noted that judicial independence continues to be evidenced in Hong Kong, and also highlighted the certainty and clarity with which the courts have been able to apply the National Security Law. She also emphasised the Department's efforts in rule of law education, outlined the Department of Justice's initiatives for the coming year, and concluded by expressing her full confidence for the common law to continue to apply in Hong Kong beyond 2047 due to the present consolidation of "one country" as the fundamental premise in place and national security protected.



▲ The Ceremonial Opening of the Legal Year 2022 was held at the Court of Final Appeal on 24 January

To read the speeches of the SJ and other speakers in full, please visit :

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Teacher Symposium 2022

The SJ spoke to over 1,300 Government secondary school principals and teachers at the Teacher Symposium 2022 held on 28 January.

She stressed that the Constitution is the fundamental law of our nation with the highest legal effect, while the Constitution and the Basic Law together form the constitutional basis of the HKSAR.



The SJ also took the opportunity to introduce to the audience the recent improvements made to our electoral system. Supported by a solid legal basis, these improvements provide a robust systemic safeguard for "patriots administering Hong Kong" while at the same time foster the democratic development and good governance of the HKSAR.

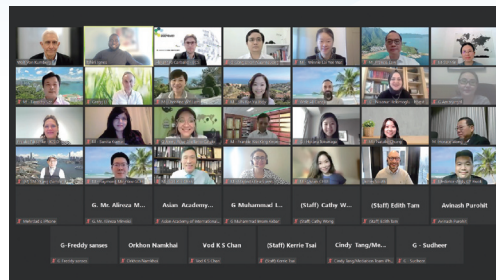
◀ SJ speaking at the Symposium

2021/22 Investment Law and Investor-State Mediator Training

Despite the pandemic, DoJ together with the International Centre for Settlement of Investment Disputes (“ICSID”), the International Energy Charter, the Centre for Effective Dispute Resolution (“CEDR”), and the Asian Academy of International Law (“AAIL”) continued to organise the 2021/22 Investment Law and Investor-State Mediator Training, through online mode.

The Investment Law Module was first held on 4 October 2021, followed by the Investor-State Mediator Training Module (the Mediator Training) from 11 to 14 March 2022. A total of 43 dispute resolution practitioners and Government officials from 15 jurisdictions¹ participated. The Mediator Training focused on the mediation skills specific to, and topical issues in, the investor-State disputes arena. The knowledge was disseminated through discussion sessions and interactive role-play exercises.

¹ Mainland, Hong Kong, Pakistan, Malaysia, USA, Indonesia, UAE, Mongolia, England & Wales, Japan, India, Iran, Turkey, Laos, the Philippines.



▲ Participants during the Training

Professional Exchange Programme

The Department of Justice launched the Professional Exchange Programme in September 2019. The Programme enables Government Counsel to attend attachments at law firms or barristers' chambers and, correspondingly, it enables solicitors and barristers in private practice to experience working in the Department. By the end of 2021, four practitioners in private practice and four Government Counsel participated in the Programme and gave positive feedback on their experience.

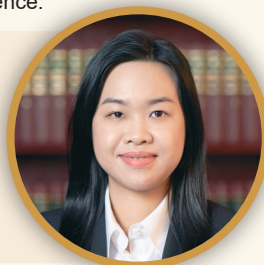
The attachment enabled me to communicate with many people in the Department regarding arbitration in Hong Kong and to bring in some practical perspectives.

Mr Wing So, Sir Oswald Cheung's Chambers, attached to Arbitration Team, Civil Division



I gained exposure to various mediation-related legal issues that I would not ordinarily come across and shared my insight and suggestions with the Mediation Team.

Ms Catherine Hau, Sir Oswald Cheung's Chambers, attached to Mediation Team, Civil Division



The discussion with counsel on case analysis and strategy enabled me to advance my way of thinking.

Ms Jess Chan, Acting Assistant Principal Government Counsel, attached to Des Voeux Chambers



During the attachment, I had a better understanding of how the arbitration market operates, which is useful to my work in developing arbitration policy and relevant legislation.

Ms Jacqueline Cheung, Government Counsel, attached to Fangda Partners



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In-house Training Course on WTO Law

Following the completion of a five-month training course on World Trade Organisation (“WTO”) dispute settlement in May 2021, the International Law Division has collaborated again with the Geneva-based Advisory Centre on WTO Law (“ACWL”) to launch the ACWL Course on WTO Law and Jurisprudence in January 2022. This one-year online course will cover all major topics under the WTO law. It is conducted by experienced lawyers from ACWL led by Executive Director Mr Niall Meagher. There are over 30 course participants, comprising DoJ lawyers and colleagues from the Trade and Industry Department.



▲ Law Officer (International Law) Ms Linda Lam delivering the opening remarks for the course



▲ Lawyers from the ACWL: (L to R) Executive Director Mr Niall Meagher, Senior Counsel Mr Jan Bohanes, Senior Counsel Mr Fernando Piérola, and Deputy Director Ms Cherise Valles

Seminar on Cross-boundary Family Mediation

The Mainland Judgments in Matrimonial and Family Cases (Reciprocal Recognition and Enforcement) Ordinance (commenced on 15 February 2022) carries important implications for family and matrimonial cases, and the related mediation process, involving cross-boundary marriages between Hong Kong and the Mainland.

On 16 February 2022, the Department of Justice organised the Seminar on Cross-boundary Family Mediation, which was joined by over 500 participants online. In the Seminar, prominent legal practitioners and mediators from Hong Kong and the

Mainland shared their views from respective perspectives on how family mediation could help resolve cross-boundary matrimonial disputes in a more cost-effective and amicable way, whilst the new reciprocal recognition and enforcement mechanism is now in place.



▲ (L to R) Mr Eugene Yim, Ms Cecilia Lau, and Mr Vod KS Chan at the Seminar on Cross-boundary Family Mediation



▲ (L to R) Ms Liu Yang, Mr Eugene Yim, Ms Cecilia Lau, and Mr Vod KS Chan with Deputy Law Officer (Civil Law) (PEL&H), Mr Clifford Tavares

Notable Judgments in Civil Cases

Director of Immigration v Sumon Miah & 7 others [2022] HKCFI 194-201
Siti Khotimah & Anor v Director of Immigration [2022] HKCA 327

Vexatious non-refoulement claims draining public resources

In recent years, there has been an upsurge of claims made by illegal immigrants at different levels of courts seeking protection from returning to their allegedly unsafe home country i.e. non-refoulement claims. Most of these claims were made to prolong their illegal stay in Hong Kong as the Director of Immigration would suspend their removal if there are pending claims. These claims caused a constant drain of public resources as they constituted the bulk of judicial reviews and ensuing appeals; while most of them were rejected by the Court as being unmeritorious and were held to amount to abuse of court process.

Court has wide power to curb vexatious litigation

The Court of Appeal held that the Court has wide power to curb vexatious litigation under the statute and in common law, which is justified by the immense public interest in protecting the court system from being abused. The power includes restricting the vexatious litigant from commencing or continuing legal proceedings without the leave of the Court for a specified period of time, and restricting him or her from appealing against refusal of leave except when permission is given to appeal (collectively, "Restrictive Orders"). The Court of Appeal held that the Restrictive Orders did not impair the essence of the constitutional right of appeal as the claimants may still be granted leave to pursue a meritorious claim or appeal.

The Court held that it was appropriate to impose Restrictive Orders on the non-refoulement claimants concerned in the above judgments as their claims were wholly groundless and were re-litigation of issues that had been conclusively determined in previous proceedings.

With the Restrictive Orders, the non-refoulement claimants could be removed in the absence of pending claims; while more resources could be used in the genuine claims.

梁志洪 訴 香港政府 [2020] HKCFI 789

Haider Ali v Social Welfare Department [2020] HKCFI 2611
Law Yee Mei v Chief Executive of HKSAR & Ors [2022] HKCFI 688

Lawfulness of Regulations and Measures made to combat COVID-19

The Court of First Instance confirmed the lawfulness of the regulations concerning the mask-wearing requirement, prohibition on gatherings and vaccine pass requirement which have been enacted to combat COVID-19. The Court further found that the regulations do not amount to infringement of any constitutional rights, and are in any event proportionate.

Notable Judgments in Criminal Cases

HKSAR v Lo Kin Man ("the 1st Appellant") [2021] HKCFA 37, FACC 6/2021
SJ v Tong Wai Hung ("the 2nd Appellant") [2021] HKCFA 37, FACC 7/2021

These two appeals involve questions concerning the requirements of the offences of unlawful assembly and riot under sections 18 and 19 respectively of the Public Order Ordinance.

The Court of Final Appeal held that the conduct element of the offences includes taking part physically in the unlawful assembly or riot and also facilitating, assisting or encouraging by words, signs or gestures to those who actually took part or by wearing the badge or ensign of the rioters. While mere presence does not make a person guilty, there is a fine line between "mere presence" and "encouragement".

As to the mental element, the defendant must have a participatory intent which may be inferred from the conduct and there is no requirement for the prosecution to prove any common purpose amongst the participants.

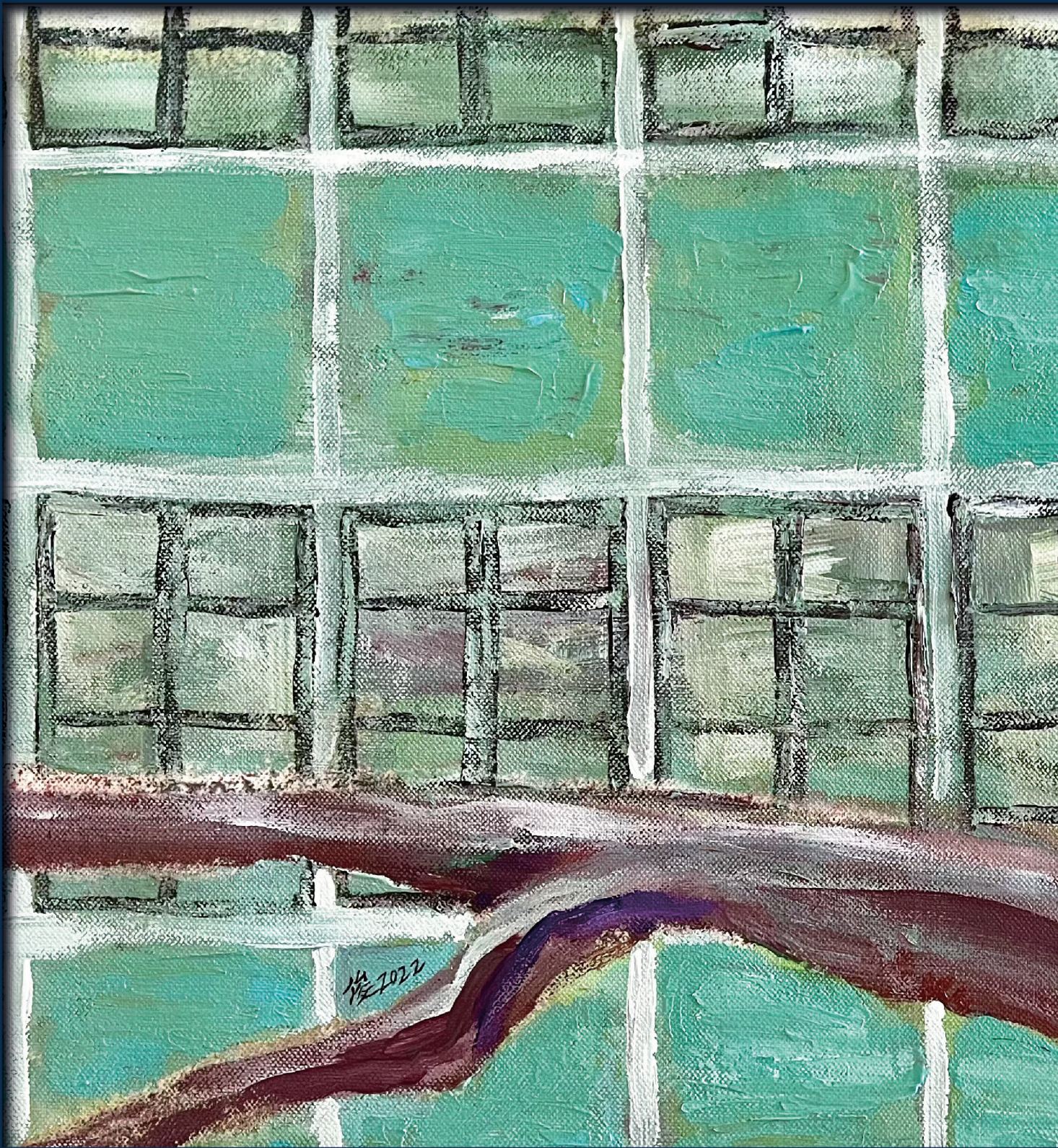
Kwok Tak Ying v HKSAR [2021] HKCA 1491, HCMA 216/2020 (CA)

The Court of Appeal held that the right to private prosecution is compatible with Article 63 of the Basic Law. It is a qualified right subject to the control by the SJ and does not fall foul of the SJ's exclusive power to control criminal prosecutions under Article 63 of the Basic Law.

In determining whether to issue a private summons, the magistrate only needs to be satisfied that the essential ingredients of the offence are prima facie present. Judicial review is the only proper way for a private prosecutor to challenge a magistrate's decision in refusing to issue a private summons.

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