



## **Second Round of Public Consultation on the Review of the Control of Obscene and Indecent Articles Ordinance (COIAO)**

### **Submissions of the Law Society of Hong Kong**

1. Do you agree that we should maintain the current approach in the COIAO and not to stipulate detailed definitions of “obscenity” and “indecent” in law? Under the COIAO, “obscenity” and “indecent” include “violence, depravity and repulsiveness” and the OAT is responsible for classifying whether an article is obscene, indecent or neither. The terms are not exact science capable of objective proof. It would be extremely difficult, if not impossible, for the public to reach a consensus on the items to be included in the definitions. (See paragraphs 2.3.1 to 2.3.10 of Chapter 2)

#### **Law Society’s response:**

**We agreed in the first round of public consultation that it would be difficult to provide a definition on “obscenity” and “indecent” and maintain our view.**

**As Adjudicators are making judicial decisions and in order to ensure consistent application of general principles the Law Society recommends adequate resources be provided to ensure all Adjudicators receive *collective training* to ensure a consistent approach is adopted in the application of the law and prevent any perception that decisions on “obscenity” and “indecent” are expressions of personal views.**

2. What are your views on the two options for reforming the OAT institutional set-up?
  - (a) *Option 1* –

To segregate the administrative classification and judicial determination functions of the OAT. This will be achieved by the establishment of a statutory classification board and appeal panel to take over the OAT’s administrative classification function. The revamped OAT will focus only on the judicial determination function, and the current system of OAT adjudicators may be retained, or replaced by a jury system.

#### **Law Society’s response:**

**We agree to the segregation of the administrative classification and judicial**

**determination functions of the OAT as outlined in Option 1.**

**(b) Option 2 –**

To abolish the administrative classification function such that the OAT would be responsible for determining whether an article is obscene/indecent or not in criminal and civil proceedings.

**Law Society's response: N/A**

3. Do you agree that the Government should keep track of local and overseas developments, and establish a standing liaison group, consisting of information technology professionals, representatives of ISPs, government representatives, etc. to review and enhance the existing co-regulatory framework and update the existing Code of Practice to meet the changing needs of the community?

**Law Society's response: Yes**

4. Do you agree that the Government should conduct periodic surveys on parents and teachers on the awareness and adequacy or otherwise of filtering service to help the industry develop and fine-tune different packages of filtering service in the market? The Government would also disseminate information on filtering technologies to educate the public.

**Law Society's response: Yes**

5. Do you agree that the Government should continue to work closely with teachers, social workers and the ISPs, etc. to develop comprehensive publicity and public education programmes?

**Law Society's response: Yes**

6. Do you agree that the Government should increase the maximum penalty under the COIAO to enhance the deterrent effect on prospective publishers?

**Law Society's response: Yes**

**The Law Society of Hong Kong  
Criminal Law and Procedure Committee  
3 July 2012**