

LCQ14: Introduction of a mechanism for class actions

Following is a question by the Hon Dennis Kwok and a written reply by the Secretary for Justice, Ms Teresa Cheng, SC, in the Legislative Council today (April 17):

Question:

Since April 30 last year, the Listing Rules permit emerging and innovative companies with weighted voting right structures to apply for listing on the Main Board of Hong Kong. Some members of the securities industry have pointed out that given the absence of a class action regime in Hong Kong at present, the interests of the minority shareholders of such type of companies may not be adequately protected. On the other hand, the Law Reform Commission of Hong Kong (LRC) published in May 2012 a Report on Class Actions (Report), recommending the introduction, under an incremental approach, of a class action regime in Hong Kong. The Department of Justice has established a cross-sector working group (working group) to study and consider the recommendations made in the Report. In this connection, will the Government inform this Council:

(1) of the work progress of the working group in studying

and considering the recommendations made in the Report;

(2) as the LRC has put forward in the Report that (i) a comprehensive regime for class actions should be established, and (ii) the scope of a class action regime may start with consumer cases and may be extended to other cases in the light of the experience gained, whether the Government will introduce a class action regime along these two directions; if so, of the details and timetable; if not, the reasons for that; and

(3) whether it will, by following the practices of certain countries (such as the United States), introduce a class action regime for cases involving listed companies, so as to protect the interests of the minority shareholders; if so, of the details and timetable; if not, the reasons for that?

Reply:

President,

In respect of the three parts of the question, in consultation with the Financial Services and the Treasury Bureau, our consolidated reply is set out as follows:

As regards the Law Reform Commission's (LRC) Report

on Class Actions (Report), the cross-sector Working Group established by the Department of Justice carries on studying and considering the Report. As at April 17, 2019, the Working Group has held 25 meetings since its inception while a sub-committee set up under the Working Group has met 30 times.

The subject of class actions involves wide-ranging, complex and interrelated issues covering not only technical issues in law but also policy considerations. In relation to these two aspects, there is still room for deliberation regarding the details from the implementation angle, and time is required for more in-depth analysis.

At this stage, the Working Group's study mainly focuses on considering the LRC's recommendation on an incremental approach to implementing a class action regime in Hong Kong starting with consumer cases. The Working Group's study includes, among others, the proposed definition of "consumer cases", certification criteria for a class action to be adopted by the Court, the design of the procedural rules and other ancillary measures. Upon completion of the study, the Working Group will put forward its recommendations for the Government to consider and map out the way forward.

Although there is not yet a specific timetable for consulting the public, the secretariat of the Working Group has started compiling a draft consultation document in parallel based on the research papers and deliberations of the Working Group, and the Working Group has started reviewing the draft. At this stage, the draft consultation document proposes to cover the following specific issues:

- *a close scrutiny of the LRC's proposed definitions of "consumer" and "consumer cases";
- *how potential litigants may be included (or excluded) from an intended class action;
- *the procedural features of a workable proposed class action regime that would also achieve the stated policy objectives of the regime;
- *the interface of litigation by way of class action with other forms of dispute resolution;
- *appropriate mechanisms for determining class action awards and distributing them fairly amongst the class members;
- *costs implications; and
- *the resulting draft bill.

In facilitating companies from the emerging and innovative sectors to be listed in Hong Kong, the Government and financial regulators always take the

premise that appropriate safeguards to the investors should be ensured. In this connection, the Stock Exchange of Hong Kong (SEHK) has put in place some additional safeguards for companies with weighted voting rights (WVR) structures in the new listing regime implemented in end-April 2018, including requirements for WVR beneficiaries, limits on WVR powers and enhanced corporate governance and disclosure requirements, etc.

According to the LRC's recommendation regarding the introduction of a class action regime in the Report, disputes among company shareholders or issues of shareholders' rights would not be covered at the initial stage. In fact, in other financial markets (including the United States), class action cases were most often brought in relation to matters relating to the disclosure of information. The SEHK has already put in place additional disclosure requirements for companies with WVR structures. Under the existing rules, the Court may exercise discretion to handle proceedings involving the same interest of numerous persons through "representative proceedings" should the plaintiffs satisfy the threefold test of establishing "a common interest, a common grievance and a remedy which is beneficial to all the plaintiffs".

Ends/Wednesday, April 17, 2019