

Proposed research outline

Class action in selected places

1. Background

1.1 The Panel on Administration of Justice and Legal Services, at its meeting on 14 October 2008, agreed that in view of the Lehman Brother's minibond incident in which a large number of investors would need to take legal action individually for their losses, it would be opportune for the Panel to take up the issue of multi-party litigation (i.e. class action) with the Administration. To facilitate the Panel's discussion on the issue, the Research and Library Services Division (RLSD) was requested to conduct a research on the relevant schemes implemented in selected overseas jurisdictions.

2. Proposed places to be studied

2.1 RLSD proposes to study the following places:

- (a) The United States (US);
- (b) Australia; and
- (c) The United Kingdom (UK).

2.2 The US is chosen because class action originated in the US and some European countries have either adopted or actively considered embracing the American class action procedures in their recent legal reforms. In the US class action system, litigation abuse has been the major concern of legal experts and related parties. For example, the US Chamber Institute for Legal Reform regards the abusive securities class action litigation as a serious threat to the health of the US economy, and therefore calls for reforms of the litigation procedures.

2.3 In addition to the US, Australia and the UK are selected because they all adopt the common law system. Australia is the major class actions regime outside North America, with features distinctively different from the US experience. For instance, there is no threshold requirement that the proceedings be certified by the court as appropriate to be brought as a class action in Australia. The rise of securities class actions, limited groups to exclude "free-riders" (group members who do not contribute to prosecution costs) and proposed changes to the current costs rules unfavourable to class actions defendants are some of the hotly contested issues.

2.4 The UK is chosen as the legal system in Hong Kong primarily follows the UK system. Although there is no class action procedure in the UK, there are several mechanisms in place that permit group litigation proceedings or representative actions. Unlike the opt-out rule (when a group member continues to be part of the action and is bound by the judgement by default unless he or she opts out so as to seek individual litigation) of the US and Australia, the opt-in mechanism (when individual claimant can choose whether to participate, and if so, they are required to apply to the court in order to be added to the group register) in the UK has been criticized as limiting collective redress. In recent years, there have been reforms in the UK to expand access to collective redress. However, the UK legal profession remains largely unwilling to adopt the US-style class actions.

3. Proposed outline

3.1 RLSD proposes the following outline for the research:

Chapter 1 – Introduction

- (a) Class action versus representative action; and
- (b) Discussion on the issue of class action.

Chapter 2 – Class action in the US

Chapter 3 – Class action in Australia

Chapter 4 – Group litigation in the UK

Chapter 5 – Analysis

3.2 Chapters 2 to 4 discuss the development of the relevant group litigation regimes adopted in the US, Australia and the UK in terms of the following aspects:

- (a) Underlying legislation;
- (b) Procedures;
- (c) Recent reforms; and
- (d) Issues and concerns.

4. Proposed completion date

4.1 RLSD proposes to complete the research by April 2009.