

立法會
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(These minutes have been seen
by the Administration)

Panel on Administration of Justice and Legal Services

Minutes of meeting
held on Tuesday, 10 July 2012, at 10:45 am
in Conference Room 3 of the Legislative Council Complex

- Members present** : Dr Hon Margaret NG (Chairman)
Hon Albert HO Chun-yan
Hon James TO Kun-sun
Hon Emily LAU Wai-hing, JP
Hon Timothy FOK Tsun-ting, GBS, JP
Hon TAM Yiu-chung, GBS, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon Paul TSE Wai-chun, JP
Hon LEUNG Kwok-hung
- Members absent** : Dr Hon Priscilla LEUNG Mei-fun, JP (Deputy Chairman)
Dr Hon Philip WONG Yu-hong, GBS
Hon LAU Kong-wah, JP
Hon Miriam LAU Kin-ye, GBS, JP
- Public Officers attending** : Item II

Ms FUNG Ngar-wai, Aubrey
Principal Assistant Secretary for Home Affairs
(Civic Affairs) 2

Ms CHUNG Yee-ling, Alice
Deputy Director of Legal Aid (Administration)

Mr KWONG Thomas Edward
Deputy Director of Legal Aid (Application and
Processing)

Item III

The Law Reform Commission

Mr Anthony NEOH, SC
Chairman of Class Actions Subcommittee

Mr Stephen WONG Kai-yi
Secretary to Law Reform Commission

Mr Byron LEUNG
Secretary to Class Actions Subcommittee

Item IV

Mrs Priscilla TAM
Project Director
Architectural Services Department

Mr WU Chung-kei
Chief Project Manager
Architectural Services Department

Mr CHUNG Ming-cheong
Senior Architect
Architectural Services Department

Judiciary Administration

Mr NG Sek-hon
Acting Judiciary Administrator

Mr Esmond LEE
Deputy Judiciary Administrator (Development)

**Attendance by : Item II
invitation**

Hong Kong Bar Association

Mr Ruy Barretto, SC

Mr Nicholas Pirie

Mr Raymond LEUNG

Ms Liza Jane Cruden

The Law Society of Hong Kong

Legal Aid Committee

Mr Patrick Burke

Item III

Hong Kong Bar Association

Mr Ruy Barretto, SC

Mr Nicholas Pirie

Mr Raymond LEUNG

Ms Liza Jane Cruden

Item IV

Hong Kong Bar Association

Ms Liza Jane Cruden

- Clerk in attendance** : Miss Flora TAI
Chief Council Secretary (2)3
- Staff in attendance** : Mr KAU Kin-wah
Senior Assistant Legal Adviser 3
- Miss Cindy HO
Senior Council Secretary (2)3
- Dr Lisanne KO
Research Officer (2)1
- Mrs Fonny TSANG
Legislative Assistant (2)3

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- I. Information papers issued since last meeting**
[LC Paper Nos. CB(2)2398/11-12(01) and CB(2)2480/11-12(01)]

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Members noted that the following papers had been issued since the last meeting –

- (a) Judiciary Administration's paper on "Review of the Rates of Allowances for Jurors and Witnesses" [LC Paper No. CB(2)2398/11-12(01)]; and
- (b) Judiciary Administration's paper on "Review on Adjudication of Equal Opportunities Claims by the District Court" [LC Paper No. CB(2)2480/11-12(01)].

II. Further expansion of the Supplementary Legal Aid Scheme

[LC Paper Nos. CB(2)2458/11-12(01), CB(2)2541/11-12(01), CB(2)2549/11-12(01) and (02)]

2. At the invitation of the Chairman, Principal Assistant Secretary for Home Affairs ("PAS/HA") briefed members on the Administration's paper [LC Paper No. CB(2)2458/11-12(01)] which set out the proposed legislative amendments to the Legal Aid Ordinance ("LAO") (Cap. 91) to expand the scope of the Ordinary Legal Aid Scheme ("OLAS") and the Supplementary Legal Aid Scheme ("SLAS") to cover more types of civil proceedings; and the Administration's views on the way forward on other proposals not supported for inclusion in SLAS at this stage. Members noted that subject to the passage of the proposed Resolution, the Legal Aid Regulations (Cap. 91A) ("LAR") and the Legal Aid (Assessment of Resources and Contributions) Regulations (Cap. 91B) ("LA(ARC)R") would be amended to provide for the increased application fees and enhanced rates of contribution for most types of new cases under the expanded SLAS; and the amendment regulations would be subject to negative vetting procedure. PAS/HA advised that the legislative proposals would be implemented in December 2012 after the Administration had sought approval from Finance Committee ("FC") on the proposed injection of \$100 million to the SLAS Fund.

3. Members also noted the updated background brief prepared by the Legislative Council ("LegCo") Secretariat on the subject matter [LC Paper No. CB(2)2541/11-12(01)].

Views of the deputations

Hong Kong Bar Association

4. Mr Ruy Barretto, SC referred members to the submission of the Hong

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Kong Bar Association ("Bar Association") for details of its views on a number of issues [LC Paper No. CB(2)2549/11-12(01)]. He hoped that the momentum for change and the progress achieved thus far by the Panel would continue in the next LegCo.

5. Mr Ruy Barretto, SC and Mr Nicholas Pirie then highlighted the following points on the expansion of legal aid scheme –

Expanding the scope of SLAS to cover other types of cases

- (a) the Home Affairs Bureau ("HAB") had adopted a piecemeal approach in dealing with the legal aid reforms and improvements propounded by the Bar Association in its submission dated 20 July 2010 [LC Paper No. CB(2)2105/09-10(01)] which was endorsed by this Panel at its meeting on 21 July 2010. The proper principles for expansion of SLAS was set out in paragraph 2 of its submission and the progress made regarding its package of proposals was summarized in paragraphs 3 to 6 of its submission [LC Paper No. CB(2)2549/11-12(01)]. While the proposals regarding sale of insurance products, claims against developers in sale of first hand residential properties, and employees' claims on appeal from the Labour Tribunal had been accepted, the Bar Association considered that there was much room for further reform to cover the followings: a wider scope for professional negligence to cover estate agents, money claims in derivatives, claims against incorporated owners, property damage claims from small marine accidents, claims against property developers by minority owners in compulsory sales, claims in respect of trusts; claims involving disputes between limited companies and their minority shareholders, claims arising from sale of goods and provision of services, as well as class actions. The Bar Association considered that had SLAS been extended to include money claims in derivatives, the SLAS Fund would be in substantial profit for the compensation recovered from the money claims associated with the Lehman Brothers mini-bond crisis. The Bar Association also considered that since Hong Kong was an international financial centre with active stock market activities, shareholders' interests should be better protected through the provision of legal aid, citing the PCCW case as an example.

Adjustment of the financial eligibility limits for OLAS and SLAS

- (b) Despite the upward adjustment of the financial eligibility limits ("FELs") for OLAS and SLAS in May 2011, there was only a

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marginal increase of 3% in the number of applications and grant for OLAS, while there was an increase of 14% in the number of applications and grant for SLAS. As to SLAS, the Bar Association suggested that \$3 million was the total legal cost incurred on both sides of a litigation on average (and hence the risk to unaided litigant), and its proposals for widening the scope of SLAS were included in the draft Bill prepared by the Bar Association [LC Paper No. CB(2)2105/09-10(01)]. According to the available statistics from the Judiciary, 51% of District Court trials in civil cases involved litigants in persons ("LIPs"); while the figure in High Court trials was 40% in 2012 and 36% in 2011. The Bar Association urged that there should be a bigger increase in FELs to address the unmet needs.

Independence of legal aid

6. Mr Raymond LEUNG briefed members on how reform had been hindered by the lack of an independent legal aid authority which had resulted in the delay in the exercise to expand the coverage of SLAS. He explained that for the Panel's reference, the Bar Association's submission before the Panel contained a paper on the need to establish an independent legal aid authority, which had been prepared in response to the request of a consultancy firm which was recently commissioned by the Legal Aid Services Council ("LASC") to conduct a study on the subject. He then took members through a chronology of events as set out in Appendix 1 of that paper. He recapitulated that the Bar Association had made long standing calls for establishing an independent legal aid authority but to no avail. The Bar Association was deeply concerned that in October 2009, LASC had concluded, after its own review but without any consultation, that there was no pressing need to de-establish Legal Aid Department ("LAD") and substitute it by an independent legal aid authority. It queried the basis for LASC in reaching such a conclusion, which was a significant departure from the findings of the LASC's study in 1998. During the discussion at the Panel meeting on 29 March 2010, the Bar Association was very concerned about the HAB's decision of not extending the scope of SLAS. The Bar Association considered that such bureaucratic mode of operation could only be rectified by institutional reform for the provision of legal aid services.

The Law Society of Hong Kong

7. Mr Patrick Burke said that the Law Society of Hong Kong ("Law Society") supported the views of the Bar Association in general. He summarized the Law Society's position as set out in its submission dated 9 July 2012 [LC Paper No. CB(2)2549/11-12(02)] as follows –

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- (a) the Law Society took a strong view that the current FELs for SLAS which were too low had excluded a significant portion of the sandwich class. The underlying principle in determining financial eligibility for legal aid as laid down in the Scott Report of 1986 was that a person should have access to legal representation without suffering undue financial hardship, having regard to the costs of litigation and his total financial resources. It was therefore wrong to use median costs in determining the appropriate figures for FELs for legal aid because the true potential costs to a person involved in litigation should be the costs incurred when his case was taken all the way to trial; and if he lost the case, he had to pay not only the costs of his own lawyers, but also that incurred by his opponent which would generally be similar to the amount incurred by his own lawyers. The Law Society therefore requested the appropriate parties to provide the legal cost information and statistics that were required to make such an assessment, including the Judiciary (from taxation hearings) and LAD (from legally aided cases). The Law Society would also gather its own statistics in this regard;
- (b) as regards scope of SLAS, the Law Society supported the extended scope as proposed by the Bar Association, which would cover civil claims in which the potential defendants were insured or would have sufficient assets to pay damages and costs, and legal claims in which the court would normally order the losing party to pay legal costs. It would promote access to justice by assisting those who otherwise could not afford the legal costs; and
- (c) as regards independence of legal aid authority, an outline of issues was provided at Appendix to its submission. Law Society considered that an independent legal aid authority was important to ensure rights of access to justice. It had been long due since the Scott Report in 1986 and was also closely related to the expansion of legal aid. An independent legal aid authority was needed for making impartial decisions when claims against the Government were involved. Only an independent legal aid authority with an expanded scope of service would promote access to justice and higher quality of justice.

Administration's response

8. PAS/HA briefed members on the Administration's response to the major concerns raised by the deputations in their written submissions as set out below –

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- (a) consequent upon the five-yearly review of the criteria for assessing the financial eligibility of legal aid applicants, the FELs for OLAS had been increased from \$175 800 to \$260 000 and that for SLAS from \$488 400 to \$1.3 million in May 2011. The Administration would commence the next review of FELs by end of the year to take into account a host of relevant factors including the costs of litigation, and would keep FELs under regular reviews;
- (b) the current exercise to expand the scope of SLAS was mostly based on the proposal put forward by the LASC, which included members from the two legal professional bodies. Upon commencement of the expanded SLAS, the Administration would monitor the applications for the newly added proceedings and their impact on the SLAS Fund, and invite LASC to conduct a further review on the scope of SLAS in the light of the experience gained. As announced by the Chief Executive in his 2010-2011 Policy Address, \$100 million had been earmarked for injection into the SLAS Fund to support the expansion of the scheme to cover more types of cases;
- (c) LASC was now conducting a study on the feasibility and desirability of establishing an independent legal aid authority in Hong Kong. Upon completion of the study, the Administration would examine the LASC's recommendations as soon as it was available.

Discussion

9. Mr Albert HO said that while there had been no complaints regarding the operation of the LAD under the HAB, and that there had been progress in expanding the scope of legal aid, he shared the views of the Bar Association regarding the setting up of an independent legal aid authority and he recognised that there were unmet needs for legal aid. In his view, there was insufficient justification for the Administration to refuse an expansion of both OLAS and SLAS, and he urged that there should be a clear time table for early assessment of further increase of FEL. Mr HO pointed out that there was urgency for the Administration to take appropriate action as many disputes in derivatives products in the financial market involved mis-selling, misrepresentation or even fraud and it would be unfair if consumer investors who had been misled into purchasing such products did not have access to legal aid to seek redress through the Court. To deal with the growing number of LIPs more effectively, Mr HO suggested that the Administration should research into the area in collaboration with the law schools in order to identify the problems which had impeded the

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public's right to access to justice, in particular for those who could not afford the high legal costs and had no recourse to legal aid, then provision of legal aid would be the solution to ensure access to justice.

10. PAS/HA said that the Panel was briefed on the two-year pilot scheme to provide legal advice to LIPs at its meeting on 27 February 2012 and the pilot scheme was tentatively scheduled to commence operation in September 2012. The pilot scheme would provide procedural advice as a first step and had the support of Judiciary. HAB would set up a Steering Committee to supervise the implementation of the pilot scheme and the Administration would provide information to the Panel on its implementation details in due course. Responding to Mr Albert HO, PAS/HA said that the Administration would continue to review the provision of legal aid while conducting the pilot scheme.

11. Mr LEUNG Kwok-hung stressed the importance of provision of legal aid to ensure equality in access to justice; and it was essential to the administration of justice that legal aid services must not only be delivered independently but also seen to be so, and he reiterated his support for the establishment of an independent legal aid authority. He considered that this would avoid a conflict of roles when the LAD had to deal with claims against the Government. Separately, while the pilot scheme might provide some form of assistance to LIPs or help relieve the undue pressure on judges, it did not help provide equality before the law in the access to justice.

12. The Chairman enquired whether the Administration would research into legal costs of litigants to reflect on the appropriate level of FELs as suggested by the Law Society. She also suggested the Administration to look into the problems of LIPs as to why they should stand unrepresented or fail to obtain legal aid through the newly established LIPs Office. PAS/HA said that a new round of review on FELs of legal aid applicants would commence by end of this year, and FELs would be reviewed thereafter on a regular basis. LAD would collate the requisite data with regard to legal costs. The Administration would consider the proposals of the two legal professional bodies and research into the relevant topics and seek views of the legal professional bodies where appropriate. She welcomed the suggestion of the Chairman to collate related information to gauge the needs of LIPs via the LIPs Office set up under the pilot scheme, based on which the provision of legal aid would be reviewed. Deputy Director of Legal Aid (Administration) added that in conducting the review of FELs for legal aid services, views of the two professional bodies would be duly considered and having regard to practices of some overseas legal aid regimes. Following the result of the last five-yearly review on the criteria for assessing the financial eligibility of legal aid applicants which was implemented in May 2011, there was a relaxation of the criteria for assessing the financial eligibility

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and the median monthly household expenditure replaced the 35-percentile household expenditure as a deductible component in calculating disposable income of legal aid applicants, which resulted in a fairly substantial increase in FELs. She assured the meeting that LAD would consult relevant stakeholders including the two legal professional bodies in conducting its on-going reviews. Referring to the suggestion of the Law Society on the need to obtain the relevant data on legal costs, the Chairman requested that LAD should come up with viable means to obtain the relevant data to facilitate conducting a meaningful analysis on the trend of legal costs.

13. Mr Barretto said that it was encouraging to note that HAB would be keeping FELs under constant reviews, and that there would be on-going reviews on the expansion of SLAS with the aim of widening the scope of SLAS. Referring to paragraph 27 of its submission, the Bar Association pointed out that equality before the law provided equal access to justice via legal aid was a key component of the justice system while access to dispute resolution systems, negotiations, mediation were helpful, they were not a substitute for genuine access to justice unless the victim or complainant of limited means had legal representation so that there was equality in the access to justice. Pro bono schemes were not a substitute for legal aid as it did not provide equality before the law in the access to justice. Negotiation and mediation systems were inadequate remedy unless legally aided litigation was available. Mr Pirie added that the pilot scheme for LIPs was structurally flawed from the outset because it only gave advice on procedural matters and eventually the litigants would find the pro bono service of limited help, and their needs would only be fully addressed by the provision of legal aid.

Way forward

14. Concluding the discussion, the Chairman said that the Panel supported establishing an independent legal aid authority and that LAD should be independent of the Government to ensure its impartiality. While the increase of FELs in May 2011 did not lead to a remarkable increase in the overall number of applications for OLAS and SLAS, the Administration should consider further raising the FELs of legal aid applicants. She considered that the needs of LIPs should be addressed in a proper perspective by examining the reasons why they failed to obtain legal aid so as to explore the future arrangements for the provision of legal aid service to address the unmet needs. In this regard, the Administration might wish to work in collaboration with the academics. At the suggestion of the Chairman, members agreed that the Panel should follow up the relevant issues discussed and with regard to the submissions of the Bar Association and the Law Society at a future meeting with a view to further expanding and improving the provision of legal aid services.

III. Law Reform Commission ("LRC") Report on Class Actions

[LRC Report on Class Actions, Executive Summary of the LRC Report on Class Actions, LC Paper Nos. CB(2)2458/11-12(02) and CB(2)2541/11-12(02)]

Briefing on the Consultation Report on Class Actions

15. Mr Anthony Neoh, SC Chairman of the Law Reform Commission ("LRC")'s Class Actions Subcommittee ("the Subcommittee"), briefed members on the Report on Class Actions ("the Report") published on 28 May 2012. In November 2009, the Subcommittee issued a Consultation Paper proposing to introduce a class action regime in Hong Kong. In its survey of the common law jurisdictions, the Subcommittee found that they commonly acknowledged the need to deal with multi-party litigation in a manner which was efficient and just. He said that the Consultation Paper originally proposed extending the scope of OLAS and SLAS to cover class actions. While the majority of the respondents supported the extension of the legal aid schemes to class actions, some respondents, however, believed that class actions should not be funded out of the public purse. Having regard to these responses, especially the concerns that it would not be easy to fit the class action regime into the legal aid schemes, the Subcommittee concluded in the Report that the legal aid schemes should not be extended to cover class actions. After carefully considering these responses received during the consultation exercise, the Subcommittee decided to maintain its recommendation on introducing a class action regime in Hong Kong, albeit incrementally and starting with consumer cases.

16. On the funding mechanism, Mr Anthony Neoh, SC said that the Subcommittee recommended in the Report expanding the Consumer Legal Action Fund for the short term and establishing a class actions fund for the long term to be administered by the Director of Legal Aid whose experience in administering the self-financing Supplementary Legal Aid Fund was particularly relevant. The Subcommittee considered that there was also adequate protection for defendants from unmeritorious claims because a representative plaintiff had to satisfy the court of the following certification criteria for class actions to be allowed to continue : (a) sufficient number of class members; (b) sufficient adequacy of class representative; (c) sufficient commonality of interest among class members; (d) sufficient merit; and (e) superior procedure. In response to the Chairman, Mr Neoh said that the Subcommittee had completed its work and the next step was for the Administration to decide whether and how to implement the recommendations in the Report.

17. Members also noted the background brief prepared by the LegCo

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Secretariat on the subject under discussion [LC Paper No. CB(2)2541/11-12(02)].

Views of the deputations

Bar Association

18. Ms Liza Jane Cruden said that the Bar Association had pointed out in its submission dated 9 July 2012 [LC Paper No. CB(2)2458/11-12(02)] that funding of multi-party litigation was an immediate and critical concern for the implementation of any scheme for multi-party litigation and Chapter 8 of the Report indicated that the costs of litigation were a crucial issue in class action proceedings and set out the experiences of other countries in this respect. The Bar Association was concerned that legal aid as an option had been too quickly passed over; as regards its implementation through legislative means, it was expected that there would be further discussion.

19. Mr Ruy Barretto, SC highlighted the views of the Bar Association as detailed in its submission dated 9 July 2012 [LC Paper No. CB(2)2459/11-12(01), pages 5-8 referred]. In gist, the Bar Association considered that the negative response of LAD and HAB towards the expansion of the existing SLAS had frustrated the class action proposals. It was of the strong view that there was a reversal of policy which stood for about 20 years since at least 1993; and class actions were only excluded from the expansion of SLAS because the Hong Kong legal system had not yet provided for class actions. The Bar Association was deeply concerned that LASC did not express any views on this point; and the concerns of the Bar Association over the connection between legal aid and class action expressed repeatedly at the Panel had not been communicated to LRC whilst it was conducting such an important reform. The Bar Association was also concerned that the LAD/HAB stance had lost sight of the public interest element in class actions. LAD/HAB had failed to protect the public interest or consider the wider picture, namely, that class actions would bring benefit to each and all in that class of society; and the reluctance of LAD indicated an abdication of its responsibility.

20. Mr Barretto further said that the Bar Association read with great interest regarding paragraph 8.129 of the Report about public funding should be available where there was a public interest in litigating issues with significant legal implications, even though the chances of success were no better than even. The Bar Association considered that it was an appropriate starting point for testing the principle for legal aid in class actions. The Bar Association would welcome further discussion with LRC on the matter.

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21. Mr Barretto requested the new Administration to revisit the issue with a more enlightened public interest perspective, and champion the original policy of nearly 20 years ago whereby SLAS would be extended to class actions when the law was reformed. The Bar Association strongly recommended that HAB should adopt the continuous review approach on this development. Referring to paragraph 28 of its submission, Mr Barretto concluded that for future development, legal aid must be reformed by a process including reforms to provide for unmet needs, access to justice and equality before the law, SLAS expansion, and independence of legal aid authority with the objective of providing access to justice and equality before the law to those of limited means. These four limbs would provide a reasonable policy approach for the fourth-term Government.

Discussion

Proposed approach for implementation

22. Mr Neoh shared the concerns of Mr Barretto and advised that the Subcommittee would leave it to the Administration to start with consumer claims by expanding the Consumer Legal Action Fund or cover those cases suitable for class action proceedings upon implementation by establishing a class actions fund. Nevertheless, the mechanism for a full class action regime would need to be put in place from the outset. In his view, class actions fund could be a form of legal aid in the broader context. He supplemented that the Subcommittee, having considered the concerns of respondents during the consultation exercise that it would not be easy to fit the class actions regime into the legal aid schemes; and that the class actions regime might well be constrained if the regime was to operate within the strait-jacket of the legal aid schemes, concluded that the legal aid schemes should not be extended to cover class actions.

23. Mr TAM Yiu-chung said that the Democratic Alliance for the Betterment and Progress of Hong Kong provided its comments to the Consultation Paper on 4 February 2010 and included in its proposal the setting up of a sectorial class actions fund. He supported the recommendations of the Report and considered that the proposed class action regime would enable consumers and small investors of similar background to take collective action against a large multinational corporation or a governmental body. Mr TAM also considered it appropriate to start with consumer claims. Subject to refinement of the regime in the light of operational experience, class actions could well be expanded to cover other claims such as labour disputes cases etc. The Chairman shared the view adding that labour disputes might also be included under the proposed class action regime. Mr Neoh said that the Subcommittee had listed the type of cases which might be suitable for class action proceedings at Annex 1 of the Report and labour dispute was one of them.

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24. Ms Audrey EU was of the views that it was essential to define the meaning of "consumer" for class action proceedings, pointing to the fact that an individual was not defined as "a consumer" for all purposes and at all times and it would depend on whether the goods and services involved were provided for private use or business use. In her view, the intention of the use of goods, services or immovable property, say for personal use or investment purposes, should not be an element in the definition. She enquired whether the proposed class action regime could also start with a certain areas of private and public law cases (such as the Basic Law and constitutional rights) and labour disputes (where collective interests of staff of an organisation were involved, for instance, leave entitlements of employees).

25. Mr Neoh said that what categories of consumer claims should be covered by the proposed class action regime and the definition of "consumer" for this purpose had been elaborated in details at paragraphs 9.4 to 9.14 of the Report. The Subcommittee recommended that the proposed class action regime should cover tortious and contractual claims made by consumers in relation to goods, services and immovable property and a definition of "consumer" in line with section 3 in Unconscionable Contracts Ordinance (Cap 458) should be adopted. In view of the complexity and the difficulties of introducing a comprehensive funding mechanism in Hong Kong, the Subcommittee recommended that the proposed class action regime should be implemented incrementally, starting with consumer cases. That said, the final scope of the class action regime and the definition of "consumer" to be adopted for its future implementation should ultimately be determined by the Administration and the legislature.

26. The Chairman enquired about the legislative arrangement if the proposed class action regime was to be implemented incrementally. Mr Neoh said that if the recommendations in the Report were to be implemented, there would be a need to pass enabling legislation and make changes to the rules pursuant to that enabling legislation. The Report recommended that provision for introducing a class action procedure in Hong Kong should be made by primary legislation. The detailed design of the legislative provisions to be adopted for class action litigation should be further studied and he would expect that the legislation should be framed to cater for a class action regime covering a broad spectrum from the outset.

Treatment of public law cases

27. As regards its application to public law cases, according to paragraphs 29 and 30 of the Executive Summary of the Report, the Chairman said that the concept of use of a test case could not be applied as noted from the judicial

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review case, *Ng Siu Tung & Ors v Director of Immigration* (2002) 5 HKCFAR 1, which the Court of Final Appeal ("CFA") held that "judgments" in the phrase "judgments previously rendered" only covered the formal orders pronounced by the courts in determining litigation and did not extend to the ratio and reasoning of a judgment. If a judgment were overruled by a subsequent interpretation of the Standing Committee of the National People's Congress ("NPCSC"), the judgment would no longer be part of the law to be applied. Individuals with a public law claim concerning the proper interpretation of the Basic Law might consider it in their interests to commence litigation to ensure that they would claim the benefit of a court judgment and therefore not affected by any subsequent interpretation by the NPCSC which might be adverse to their interests. Therefore, a class action regime that enabled all potential claimants to automatically become parties to the proceedings would be necessary.

28. Mr LEUNG Kwok-hung was of the view that labour disputes cases and public law cases were very suitable to be pursued under the proposed class action regime in addition to consumer cases, although legal aid was made available separately to individual litigants. He suggested that the Subcommittee should strive to include as many types of cases stated in Annex 1 of the Report, and should so indicate in its recommendation because HAB/LAD would have to consider expanding it to finance class actions if the Subcommittee so recommended to the Administration.

29. Mr Neoh shared Mr LEUNG Kwok-hung's views that more types of cases could be covered upon the launch of the class action regime. As the work of the Subcommittee had been completed, he had great expectations for the Administration to develop the regime under the framework of the recommendations in the Report.

Conclusion

30. The Chairman suggested that the Panel should relate its views to the Secretary for Justice and request him to accord priority of the proposed class action regime in the policy agenda of the fourth-term Government. She also noted that the additional procedural requirements of class actions would increase substantially the costs incurred by the representative plaintiff and rendered a class action a considerably more expensive form of litigation than individual proceedings. However, it would achieve a better use of resources as a whole. Noting that HAB did not favour an expansion of SLAS because the amount of individual claims in dispute was considered too small, the Chairman considered that the proposed class action regime would address this concern and the inadequacy of the existing legal aid system.

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(The Chairman proposed that the meeting should be extended for 15 minutes to allow sufficient time for the discussion of the items on the agenda.)

IV. Relocation of the Court of Final Appeal to the site of the former Legislative Council Building

[LC Paper Nos. CB(2)2488/11-12(01), IN36/11-12 and CB(2)2581/11-12(02)]

Briefing by the Judiciary Administration

31. With the aid of a PowerPoint presentation, Deputy Judiciary Administrator (Development) ("DJA") briefed members on the provision of facilities upon the relocation of the Court of Final Appeal ("CFA") to No. 8 Jackson Road [LC Paper Nos. CB(2)2488/11-12(01) and CB(2)2581/11-12(02)]. Members noted that the project would be submitted to the Public Works Subcommittee and FC in the first quarter of 2013. Subject to the FC's funding approval, conversion works would start in the second quarter of 2013 for completion by the end of 2014.

32. Members also noted the information note prepared by the Research Division of LegCo Secretariat on the subject under discussion [LC Paper No. IN36/11-12].

Views of the Bar Association

33. Ms Liza Jane Cruden said that views of the Bar Association were incorporated in the deliberation of the relevant courts users committees.

Discussion

34. In response to the Chairman's enquiry about the time frame of the relocation of CFA and the financial implication arising from the proposal, DJA said that the conversion works would start in the second quarter of 2013 for completion by the end of 2014. Having considered the preparatory work required in connection with the removal exercise, it was expected that the relocation of CFA would take place in the first quarter of 2015. Meanwhile, the estimated expenditure of the project was not yet available.

35. Mr LEUNG Kwok-hung said that public accessibility should be enhanced as the building was of great historical value and interests. He hoped that the renovated building would offer a more welcoming environment. The Chairman shared the view and was pleased to note that the Chief Justice had earlier

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indicated in his speech during the 2012 Legal Year Opening Ceremony that parts of the building would be open for the public to enjoy as it belonged very much to the community.

Provision of facilities

36. The Chairman pointed out about the acoustic problem of the existing courtroom in CFA. DJA said that the big courtroom in the future CFA building would be equipped with curve-shaped benches for judges and counsel for better communication and eye contact. Ms Cruden noted with concern about the acoustic problem, adding that the litigants and public sitting in the rear should also be able to hear the judges. She also said that in case wearing of headsets was unavoidable, they would prefer clip earphones because headsets would not be compatible with the wigs worn by barristers. DJA said that the intention was to achieve the required acoustic effect without the use of earphones. The Judiciary might consider installing speakers in the rear to ensure that the public could hear the proceedings.

37. Responding to the Chairman, DJA said that computer and audio-visual equipment and projector screens would be available at the courtroom; and space would be available for bundles which were used by judges and counsel.

38. The Chairman enquired if the number of consultation and common rooms was considered sufficient and the number of seats to be provided in the consultation rooms because some cases of public interests might involve a larger party to proceeding. DJA said that the number of consultation rooms had been increased from two to four after consulting the relevant stakeholders and having regard to the experience in the High Court. In this regard, Ms Cruden said that she appreciated that four consultation rooms would be the maximum number that could be accommodated. She said that movable seats inside the consultation rooms would be preferred to enhance flexibility to cater for more seats if necessary.

39. SALA3 enquired whether the library at the future CFA would be open to members of the public. DJA replied that the library would be open to judges and judicial officers, but consideration would be given to allowing the legal representatives of litigants to use it.

Heritage considerations

40. Regarding restoration of the historical features of the original building, the Chairman enquired whether a professional would be engaged to provide for expert advice. Project Director, Architectural Services Department ("PD/ASD")

Action

said that an expert was commissioned to study the revitalisation of CFA and Heritage Impact Assessment ("HIA") for the Former LegCo Building which was submitted for consideration of the Antiquities and Monuments Office. Architectural Services Department would follow up on the recommendations of the HIA and ensure that the conversion works would comply with the requirements set out in the HIA report. At the request of the Chairman, PD/ASD undertook to provide a copy of the HIA report to the Panel for reference. Responding to the Chairman on whether there were any major structural damages to the building according to its assessment, PD/ASD advised that there was reasonable wear and tear but no major structural damage was found.

V. Any other business

41. There being no other business, the meeting ended at 12:55 pm.

Council Business Division 2
Legislative Council Secretariat
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