

IN-DEPTH

Class Actions

HONG KONG



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In-Depth: Class Actions (formerly The Class Actions Law Review) provides practitioners and clients with a guide to class and collective actions regimes worldwide, with a particular focus on key procedures and recent developments. It offers crucial insights into the law and practice in each jurisdiction, from preliminary filing considerations to settlement, costs and funding, cross-border issues and much more.

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Introduction

In the Hong Kong Special Administrative Region of the People's Republic of China (PRC), the sole machinery for multiparty proceedings comes in the form of representative proceedings, which are commenced by or against a representative plaintiff or defendant on behalf of persons who share the same interest. The judgment in a representative action is binding on all persons represented by the representative plaintiff or defendant, though it is not enforced against any person who is not a party to the proceedings except with the court's permission. This representative proceedings mechanism is available in the High Court of Hong Kong^[1] and the District Court.^[2] The Small Claims Tribunal also allows representative claims for two or more persons having claims against the same defendant.^[3]

Hong Kong inherited its multiparty litigation model from England but has not followed the latter's reforms on group litigation orders with the enactment of the Civil Procedure (Amendment) Rules 2000^[4] or the collective proceedings regime under the Consumer Rights Act 2015 and the Competition Act 1998.^[5] The representative proceedings model has its limitations. As a result, representative proceedings remain rare in Hong Kong, and the jurisprudence in this area is limited. Reform has long been called for.

Hong Kong has been exploring the option of introducing a dedicated scheme for multiparty litigation since 2000. In March 2004, the Chief Justice's Working Party on Civil Justice Reform released its final report, which included a recommendation to adopt a scheme for multiparty litigation.^[6] A subcommittee of the Law Reform Commission of Hong Kong (LRC) was then tasked to make suitable recommendations on multiparty litigation, which subsequently launched a public consultation in 2009 to gather opinions.^[7]

In May 2012, the LRC published its report on class actions (the LRC Report), proposing, in particular, that Hong Kong introduce a multiparty litigation model with an opt-out approach.^[8] The opt-out model envisages that once the court has certified a class of persons as suitable for a class action, all the members of that class (except foreign parties) would be automatically bound by the outcome, unless any of them indicated a wish to be excluded from the action. The LRC Report recognised that class actions commenced in Hong Kong may straddle numerous jurisdictions and involve foreign plaintiffs. Where they involve claimants from mainland China, for example, legal ambiguity exists as to whether the mainland courts would recognise and enforce class action judgments with an opt-out approach. Consequently, under the LRC's recommended model, a foreign plaintiff must expressly opt into the class action to benefit from the judgment.

The LRC also proposed that the class action regime be implemented in phases, starting with consumer cases. At that time, there was a general consensus that consumer cases were suitable to be dealt with by class actions because of the number of potential claimants that may be involved whose individual claims might be relatively insignificant. It was recommended that funding for class action litigations in consumer claims be made available by expanding the financial scope of the existing Consumer Legal Action Fund managed by the Hong Kong Consumer Council. The LRC also concluded that if a suitable funding model for plaintiffs of limited means could not be found, little could be achieved by a class action regime. It recognised a need to establish a general class action fund to

cater for the needs of class action litigants should the class action regime extend beyond consumer cases.

In November 2024, the Legislative Council Panel on Administration of Justice and Legal Services had scheduled to discuss the LRC Report in the first quarter of 2025 with regard to introducing a class action regime in Hong Kong;^[9] however, when the discussion is to be take place is still to be confirmed as at the time of writing.

Also relevant to the development of a class action regime in Hong Kong is the introduction of the competition law regime in Hong Kong. Similar to consumer claims, competition claims may potentially involve a large pool of claimants with small individual claims. This could be another area where a class action regime would be beneficial.

Despite the Competition Ordinance taking effect from December 2015, collective actions do not yet feature in a competition law context. This contrasts with the developments in England where an opt-out collective proceedings regime was established in 2015 for competition law claims in the Competition Appeal Tribunal (CAT). In particular, the CAT granted the first collective proceedings order in relation to the claims against Mastercard under Section 47B of the Competition Act 1998 on 18 August 2021.^[10]

In December 2023, the CAT approved the first collective settlement in an opt-out claim between the class representative and one of the defendants in relation to follow-on claims in respect of inflated vehicle delivery charges as a result of the defendants' anticompetitive conduct.^[11] In December 2024, the CAT delivered its judgement on the merits in the first opt-out competition collective action that proceeded to trial, dismissing a claim against the defendants (BT Group Plc and British Telecommunications Plc) concerning the abuse of dominant position in the telecommunications market.^[12]

The need to introduce a class action regime in Hong Kong was also considered in the context of stock market reform in Hong Kong. In 2014, Hong Kong Exchanges and Clearing Limited (HKEX), the operator of the stock exchange in Hong Kong, published a consultation paper seeking views on whether companies with weighted voting rights (WVR) structures (governance structures that give certain persons voting powers or related rights disproportionate to their shareholdings) should be permitted to list on the exchange.^[13] The consultation paper flagged concerns, among other things, over the practical challenges for minority shareholders to bring private actions regarding the listed companies in the absence of a proper class action regime.

Only a small number of respondents to the consultation paper considered the introduction of a class action regime to be a necessary prerequisite to allowing WVR companies to list.^[14] The majority of respondents noted that, in other jurisdictions such as the United States, class action cases are most often brought to seek remedies for misconduct relating to disclosure of information^[15] but not for governance issues typically arising from WVR structures. Some respondents also doubted the necessity of a class action regime given the existing safeguards provided under the connected transaction rules under the Listing Rules, The Codes on Takeovers and Mergers and Share Buy-backs, and laws on directors' fiduciary duties, as well as the powers of the Securities and Futures Commission (SFC), the statutory securities market regulator in Hong Kong, to seek class remedies on behalf of shareholders under the Securities and Futures Ordinance (SFO).^[16] Some other respondents expressed concerns about the risk of frivolous cases being brought under a class action regime and the ensuing disincentive for companies to list in Hong Kong owing

to the potential cost of defending and settling class actions. Eventually, in April 2018, the HKEX amended the Listing Rules to permit listing of companies with WVR structures that fulfil certain criteria, without introducing a class action regime.

Year in review

In 2023, the SFC concluded its consultation on its proposal to amend enforcement-related provisions in the SFO regarding the power to seek remedies for affected investors in cases where a regulated person has been disciplined for non-compliance with the Code of Conduct or guidelines issued by the SFC.^[17] Having considered feedback from the public and market practitioners, the SFC decided to put this proposal on hold; however, at the same time, it expressed the view that the current legal framework is unsatisfactory because retail investors often do not have the resources to litigate directly in courts, and there is also no class action mechanism in Hong Kong to facilitate mass claims. The SFC will further study the legal and practical concerns raised during the consultation with a view to coming up with a broader range of possible options to enhance the prospects of investors getting fair compensation in intermediary misconduct cases.^[18]

Numerous incidents in Hong Kong in recent years have highlighted the need to have a more systematic multiparty litigation mechanism and to expedite class action reform. For example, in September 2023, it was reported that retail investors had been unable to withdraw virtual assets from their accounts maintained with an unlicensed virtual asset trading platform or had found their account balances had been reduced and altered.^[19] At least 72 suspects were arrested by the Hong Kong police in relation to this incident, and more than HK\$228-million worth of assets have been frozen since April 2024.^[20] In October 2024, the Hong Kong District Court granted a default judgement in favour of two plaintiffs against the operators of the unlicensed platform for the recovery of virtual assets (worth about HK\$1.85 million) and equitable compensation.^[21]

In February 2024, the Consumer Council received complaints from numerous consumers who bought tickets to an exhibition match between Inter Miami and a Hong Kong football team on the grounds that certain players were not on the field.^[22] Further, in September 2024, the Consumer Council received over 4,000 complaints (concerning the disputed amount of over HK\$160 million) about the proposed closure of a major gym chain.^[23] There were concerns that customers who had made lump sum payments for membership fees or personal training sessions might not be able to recover their losses.

In the above incidents, the availability of a class action regime may have better facilitated access to justice for the victims concerned. Such incidents may serve as a catalyst to expedite the introduction of a class action regime in Hong Kong at least for consumer claims.

Procedure

Types of action available

Representative plaintiff

In contrast with opt-out US-style class actions, the only type of collective action available in Hong Kong is representative proceedings. In cases where the parties are so numerous that the proceedings could be rendered unmanageable if all were named, case management objectives may be achieved if the issues common to all plaintiffs could be decided in a single set of proceedings rather than in manifold proceedings all seeking substantially the same reliefs.

Representative proceedings are commonly available in common law jurisdictions. The UK Supreme Court recently expressed a supportive view to the use of representative action in appropriate cases. In particular, Lord Leggatt observed that in cases where it is impractical to make every prospective claimant or defendant a party to a single claim, 'the only practical way to "come at justice" is to combine the claims in a single proceeding and allow one or more persons to represent all others who share the same interest in the outcome'.^[24] A representative action under Order 15, Rule 12 of the Rules of the High Court (RHC) may be brought only where all members of the represented group have the same interest. As a prerequisite, the representative plaintiff must have the *locus standi* to sue; otherwise, the same-interest condition cannot be satisfied.^[25]

The question of whether a group of claimants share the same interest involves the threefold test of (1) common interest, (2) common grievance and (3) a remedy that is beneficial to all.^[26] The courts have historically adopted a restrictive interpretation of the term 'same interest' and required all members of a class to show identical issues of fact and law. As a result, class members had to establish that (1) the same contract applies between all plaintiff class members and the defendant, (2) the same defence is pleaded by the defendant against all plaintiff class members and (3) the same relief is claimed by the plaintiff class members.^[27]

By way of illustration, under this restrictive interpretation, where consumers have contracted separately with a supplier under the latter's standard form contract, they could not pursue a claim by way of representative actions under RHC Order 15, Rule 12. Further, the same relief requirement meant that damages, which have to be proved separately in the case of each plaintiff, could not be obtained in a representative action. As such, equitable reliefs such as injunctions used to be the main remedy in representative proceedings.^[28]

Over the years, the courts have relaxed the same-interest test and adopted a 'common ingredient' requirement. It is now sufficient if there is a common ingredient in the causes of action of the represented class members.^[29] Once a common ingredient is established, class members can rely on the judgment on the common ingredient as *res judicata* and can proceed to prove the remaining elements of the cause of action in separate proceedings.^[30] This relaxation of the same-interest requirement aims to make representative actions 'not a rigid matter of principle but a flexible tool of convenience to facilitate the administration of justice'.^[31]

Apart from the emergence of the common ingredient formulation, other judicial developments have contributed to the relaxation of the same-interest test. These developments included:

- 1.

the removal of the requirement that there be a single contract between the class of plaintiffs and the defendant,^[32]

2. allowing separate defences to be pleaded by the defendant against different members of the plaintiff,^[33] and
3. greater judicial willingness to award damages in representative actions.

It is now no impediment that the members of the class all technically have separate causes of action, as long as they have a common interest in one or more issues.^[34] Similarly, the fact that each of the class members may have a claim for damages that requires consideration of facts particular to that class member per se is not a bar to the bringing of a representative action.^[35]

If a representative plaintiff withdraws from the representative proceedings, the court may add or substitute the plaintiff with any person in the represented class. The substitute plaintiff is treated as having been the representative plaintiff from the date of the original writ. This avoids the claim from being time-barred if the addition or substitution occurs after the limitation period for the relevant claim.^[36]

In certain restricted circumstances, the court has the power to appoint one or more plaintiffs or defendants to represent a class of persons whose identities may not all be known at the time when action is commenced, or persons who are not yet born. These restricted circumstances include proceedings concerning (1) the estate of a deceased person, (2) property subject to a trust and (3) the construction of a written instrument, including legislation.^[37]

Notwithstanding the more liberal interpretation of the same-interest test adopted in recent years, the current representative proceedings regime is inadequate in various respects. This was highlighted in the LRC Report. For example:

1. compared with US-style class actions, the requirements for representation orders remain technical and narrowly defined;
2. even where a representation order has been made and the case has proceeded to judgment, finality is not necessarily achieved as individuals are still free to challenge enforcement on the basis that there are facts and matters peculiar to their case; and
3. the existing rules make no specific provision for handling the special problems of multiparty litigation that require forceful case management by the judge. For example, class members with strong cases might wish to eliminate those with weak cases from the proceedings.^[38]

Without rules designed to deal specifically with group litigation, each case would have to be managed by the court on an ad hoc basis. The resulting uncertainty discourages the employment of the representative proceedings process.

Representative defendant

Similar to representative plaintiffs, RHC Order 15, Rule 12 allows a plaintiff to sue two or more defendants, including defendants representing a class of individuals who may be

unknown to the plaintiffs but who are bound together by being members of a club, society, association or other identifiable group of individuals. The same- interest requirement is also applicable in the appointment of a representative defendant.

Working Group on Class Actions

As recommended in the LRC Report, in May 2012, the Hong Kong Department of Justice formed a cross-sector Working Group on Class Actions (the Working Group) to consider the details of the class action regime proposed in the Report. The Working Group comprised representatives from the private sector, the legal profession and the Consumer Council.

In 2019, the Working Group focused its study on implementing a class action regime through an incremental approach, starting with consumer cases, and considered issues such as the proposed definition of consumer cases, certification criteria to be adopted by the court and relevant procedural rules and ancillary measures.^[39]

On 31 December 2020, the Working Group announced its intention to commission a consultancy study on the economic and other related impacts on Hong Kong if a class action regime is to be introduced, initially restricted to consumer disputes (the consultancy study).^[40] While the Working Group engaged PricewaterhouseCoopers Advisory Services Limited to conduct the consultancy study in August 2021,^[41] the status of the progress of the consultancy study is unclear.^[42]

Commencing proceedings

Representative plaintiff

A representative plaintiff does not require leave to commence representative proceedings. The representative plaintiff may elect themselves to be the representative without needing to seek the consent of those they represent,^[43] however, the court has the power to order that the proceedings cease to continue in the form of representative proceedings where it is of the view that it is inappropriate to continue them in that form. Circumstances where the court may disallow continuation of representative proceedings include cases where the parties seeking, or selected, to represent others are not suitable representatives or do not fairly represent others with the same interest.^[44]

Representative defendant

A claimant does not require leave to bring an action against representative defendants, nor is a claimant required to select the person they will sue as a representative defendant; however, should the plaintiff wish to appoint one or more of the existing defendants as representative defendants at any stage after commencement of proceedings, they would need to obtain an order to do so.^[45] An application for the order shall be made by summons before a master and should be made as soon as practicable.

Regarding the appointment of the appropriate representative defendants, the court makes a representation order after satisfying itself that the representatives are proper persons to defend on behalf of others.^[46] It is possible, therefore, that individuals could be appointed

as representative defendants to defend on behalf of others against their will;^[47] however, in exercising its discretion, the court may take into account individuals' unwillingness to act in a representative capacity and may consider other factors, such as whether the duties imposed on the representative defendants would be unduly burdensome, including the obligation to inform persons potentially falling into the class of defendants, and the costs and time involved in acting as the representative defendant.

Defining the class

In a representative action, the writ should clearly and precisely define the class of persons sought to be represented^[48] and should be endorsed with the representative capacity of the plaintiffs or defendants.^[49] The representative capacity of the plaintiffs or the defendants should also be included in the title of the writ and the statement of claim.^[50] The definition of the class should not be subject to the determination of an issue at trial.^[51]

The class must be clearly defined, as the ambit of the class affects practical matters such as who will be bound by the judgment and who might be liable for costs. A vague definition of class would also hamper the ability of the representatives to inform potential class members. It is not sufficient to state that the representative represents some of the members of a class without defining who are to be excluded.^[52] If certain persons are excluded from the definition of class, they should be made parties in their personal capacity.

In terms of restrictions, the court may consider it inappropriate to allow a representative action where there is a potential conflict of interest between the members within the represented group.^[53] There, however, does not appear to be a bar to overseas persons being included in a class, provided that the common ingredient test is satisfied.^[54]

A represented class must contain 'numerous persons',^[55] because the objective of representative proceedings is to facilitate disposition of cases where parties are so numerous that the proceedings would be unmanageable if all were named. While there is no set number required, a group of a few people (e.g., five persons) is unlikely to be sufficiently numerous unless the claim amount is very small or the court is satisfied that it is the wish of all the persons interested that a representation order should be made.^[56]

Where the class is too small to constitute a class of numerous persons or not capable of being clearly defined, or where other considerations apply that make it inappropriate for representative proceedings to continue, the court may consider other viable relief, such as granting an action to sue additional defendants as persons unknown and describing the role and nature of that person, with amendment to be made later if their identity becomes known.^[57]

Binding effect on the class

The fundamental principle is that if a representative action is conducted properly, any member of the class represented is bound by any judgment or order given in the action, as they are treated as being present in the proceedings by representation, notwithstanding that they are not named parties to the proceedings.^[58]

In addition to judgments given after trial, judgments entered in default of notice of intention to defend are also binding on those represented persons. In this case, however, a person represented can apply to be added as a named defendant and seek to set aside the default judgment and bring the matter to trial.^[59] Further, if that person can demonstrate fraud or collusion (or other issues of a similar nature), they may apply to have the judgment set aside; otherwise, judgments given after trial cannot be challenged except on appeal.^[60]

Procedural rules

Enforcement

Leave is not required to enforce a judgment against the representative plaintiff or defendant, who is a named party to the proceedings.

However, leave is required to enforce a judgment against a member of the represented class who is not a named party to the proceedings. Application shall be made by summons before the master, and personal service of the summons on the person against whom the judgment is sought to be enforced is required.^[61]

A represented member has only limited tools at their disposal to resist the enforcement of a judgment, namely the existence of facts and matters particular to their case that entitle them to be exempted from liability arising from the judgment^[62] (e.g., they were not a member of the class represented at the time the cause of action arose). In a recent case, however, the court found that a cross-undertaking in damages given by a representative plaintiff in an interlocutory injunction application made on behalf of a represented class did not afford the defendants meaningful protection because the represented class may dispute liability arising out of such a cross-undertaking. The court stated that the lack of a meaningful cross-undertaking in damages alone is a ground for varying (or even discharging) the injunction in a representative proceeding.^[63]

The individual member cannot challenge the validity or binding nature of the judgment or put forward any defence that could have been (but was not) raised in the proceedings.

Judge or jury

All civil actions in Hong Kong are heard by a single judge in the first instance with the exception of defamation cases, which may be heard by a jury depending on the level of court in which the defamation action is brought.^[64]

Speed of the litigation

It is difficult to generalise the time required for the disposition of representative proceedings in Hong Kong, particularly in light of the underuse of the regime and the resulting lack of empirical data to support such analysis. Various factors may affect the time it takes for representative proceedings to reach trial and judgment, including the nature of the claims made and the complexity of the claims, as well as court diary considerations.

While representative proceedings are commonly perceived to promote judicial efficiency, such efficiency may not necessarily be achieved on an individual case basis. Various issues peculiar to representative proceedings tend to lengthen the time required to obtain substantive judgment, such as disputes on whether representative proceedings are suitable for a particular case, the choice of representatives, the definition of a class and the time needed for representatives and their legal counsel to communicate and liaise with class members.

Liability and quantum

It was not historically possible to claim damages in a representative action, as this ran contrary to the rule that the same relief must be claimed by the represented class members. As a result, declaratory and injunctive relief used to be the default relief in a representative action.

The recent trend has been for the courts to relax this rigid approach, such as by facilitating a claim for damages through making a declaration on the class members' entitlement to damages, which then enables class members to claim damages individually.^[65] This has been referred to as a 'bifurcated' approach, whereby common issues of law or fact are decided through a representative claim, leaving any issues (whether they relate to liability or quantum of damages) to be dealt with and determined at a subsequent stage of the proceedings.^[66]

There are also other examples in which the courts have declared that a defendant owed a plaintiff class a lump sum, without making any individual assessments,^[67] and have allowed damages in different measures where the claim was an adjunct to the primary equitable relief claimed, such as an injunction.^[68]

Damages and costs

In Hong Kong, the measure of damages for contractual and tort actions is generally compensatory, in that damages are awarded to put the innocent party in the position it would have been in had the contract been properly performed or had the tort not been committed. Punitive or exemplary damages are awarded only in limited circumstances, such as where the defendants' conduct was calculated to make a profit for themselves. As most civil cases in Hong Kong are heard by a judge, damages are usually awarded by the presiding judge.

As for costs, only representative plaintiffs or defendants who are named parties in the proceedings are liable for costs; other represented members of the class who are not named parties are not liable. Similarly, represented parties who are not named parties cannot recover costs.^[69] It remains to be seen whether this seemingly unfair position will change when a comprehensive class action system is finally introduced in Hong Kong. For example, under the equivalent group litigation provisions in England and Wales under Civil Procedure Rule 48.6A, common costs may be ordered, meaning that group litigants would be severally liable for an equal proportion of the common costs.^[70]

In respect of funding, Hong Kong maintains the common law offences of champerty and maintenance. While the offences no longer apply to arbitration,^[71] their continued applicability in relation to general litigation has been reaffirmed by the Court of Final

Appeal.^[72] Under the principle of maintenance, a person with no interest in a legal action of another is prohibited from meddling in the action by providing assistance, and, under the principle of champerty, a person is prohibited from obtaining a share of proceeds of another's legal action as a reward. The established categories of exceptions to the principle of champerty and maintenance are where the third party has common interests with another in the litigation and where there are access to justice considerations, and in insolvency proceedings.^[73]

Despite the relaxation of third-party funding rules in respect of arbitration in 2019, it appears that the use of third-party funding remains uncommon in Hong Kong. Statistics from the Hong Kong International Arbitration Centre indicate there was only one case in 2024, one case in 2023, 73 cases in 2022 and six cases in 2021 in which the parties have disclosed the use of third-party funding.^[74] This seems to indicate that there is still significant room for development in Hong Kong's third-party funding landscape.

The LRC Report recognised the importance of a suitable funding model for any class action system to have any practical meaning. It proposed to expand the Consumer Legal Action Fund to make funding available for class action proceedings in respect of consumer claims. It further recommended that a general class action fund should be set up to make discretionary grants to eligible impecunious class action plaintiffs.

In June 2022, the SFC issued a consultation paper seeking market views on its proposal to amend enforcement-related provisions in the SFO.^[75] In particular, the SFC proposed that it be empowered to commence legal actions to seek remedies for affected investors in cases where a regulated person has been disciplined for non-compliance with the SFC Code of Conduct or guidelines issued by the SFC, such as an order to restore investors suffering loss from such non-compliance to the position they were in before entering into the transaction concerned.^[76]

Settlement

A representative may discontinue or settle the proceedings before judgment, in which case the represented members may commence their own proceedings or the court may add or substitute any person represented as the representative. After the court has issued a judgment, a representative plaintiff has no power to discontinue or settle and cannot deprive class members of the benefit of the judgment because, after a judgment is issued, no class members may bring further action in respect of matters adjudicated in the original action.^[77]

Cross-border issues

As long as overseas plaintiffs or defendants share the same interest as the representative plaintiff or defendant, they may be included in the class, subject to the normal rules of service out of jurisdiction.^[78]

Outlook and conclusions

Hong Kong's existing representative proceedings regime remains an underused mechanism for plaintiffs pursuing collective claims. Some proponents believe the existing representative proceedings regime could be significantly improved by way of stronger court control and case management; however, piecemeal judicial developments without the introduction of a comprehensive class action regime are unlikely to resolve the issues.

There has long been a debate that a proper class action regime would adversely affect the economy by deterring investments and harming small to medium-sized businesses, and class action regimes are not common in Asian jurisdictions.

Some believe that alternative dispute resolution (ADR) mechanisms, such as arbitration and mediation, can provide sufficient, efficient and fair redress for collective claims.^[79] For instance, collective arbitration is possible under the rules of major arbitration institutions. In reality, however, ADR mechanisms cannot be used as a complete substitute for a comprehensive class action regime. For instance, collective arbitration would be possible only for claimants who have agreed to submit their claims to arbitration in the first place.

In summary, consumer-related cases in recent years serve as a timely reminder that Hong Kong has yet to catch up with other jurisdictions on the development of a class action regime. For example, the PRC introduced a securities class action system in 2019, and, through its revised Securities Law, securities class actions have become possible in respect of misrepresentation on securities, insider trading and market manipulation.^[80] The first securities class action was heard and decided by the Guangzhou Intermediate People's Court on 12 November 2021, in which Kangmei Pharmaceutical was ordered to pay a total of more than 2.4 billion yuan to compensate over 50,000 investors for their losses as a result of false statements and material omissions in its financial reports.^[81]

It is notable that the LRC's proposal to implement a class action regime was made more than 10 years ago. It may be time for the Hong Kong Special Administrative Region to make further progress on this front.

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Endnotes

- 1 [Rules of the High Court](#) (RHC), Order 15, Rule 12. ^ [Back to section](#)
- 2 [Rules of the District Court](#), Order 15, Rule 12. ^ [Back to section](#)
- 3 [Small Claims Tribunal Ordinance](#), Section 21. The Small Claims Tribunal does not permit legal representation in hearings before it. ^ [Back to section](#)

- 4 [Civil Procedure Rules](#), Part 19, Section III. ^ [Back to section](#)
- 5 [Consumer Rights Act 2015](#), Schedule 8, Part 1. ^ [Back to section](#)
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- 7 Paper, '[Consultation Paper: Class Actions](#)', Law Reform Commission of Hong Kong (LRC) Class Actions Sub-Committee (Nov 2009). ^ [Back to section](#)
- 8 Report, '[Report: Class Actions](#)', LRC (May 2012) (LRC Report). ^ [Back to section](#)
- 9 [LC Paper No. CB\(2\)1467/2024\(01\)](#), 'List of outstanding items for discussion (position as at 21 November 2024)', Panel on Administration of Justice and Legal Services. ^ [Back to section](#)
- 10 *Walter Hugh Merricks CBE v. Mastercard Incorporated & Ors* [\[2021\] CAT 28](#). The class representative and Mastercard filed a collective settlement approval order (CSAO) application, and the CSAO hearing took place between 19 and 21 February 2025. ^ [Back to section](#)
- 11 *McLaren v. MOL and Ors* [\[2023\] CAT 75](#). At the time of writing, two other settlements between the class representatives and seven defendants were approved in December 2024. The trial between the class representative and the remaining defendants started on 13 January 2025 and was provisionally estimated to last 10 weeks. ^ [Back to section](#)
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- 13 Paper, '[Concept Paper: Weighted Voting Rights](#)', Hong Kong Stock Exchange (Aug 2014). ^ [Back to section](#)
- 14 Report, '[Consultation Conclusions to Concept Paper on Weighted Voting Rights](#)', Hong Kong Stock Exchange (June 2015). ^ [Back to section](#)
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- 28 *Prudential Assurance Co Ltd v. Newman Industries Ltd* [1981] Ch 229 at 244, 255. [^ Back to section](#)
- 29 *Id.* at 252, 255. [^ Back to section](#)
- 30 *Id.* at 255. [^ Back to section](#)
- 31 *John v. Rees and Others* [1970] Ch 345. [^ Back to section](#)
- 32 *Irish Shipping Ltd v. Commercial Union Assurance Co plc (The Irish Rowan)* [1991] 2 QB 206 (CA). [^ Back to section](#)
- 33 *Independiente Ltd v. Music Trading On-Line (HK) Ltd* [\[2003\] EWHC 470 \(Ch\)](#). [^ Back to section](#)

- 34** *David Jones v. Cory Bros & Co Ltd* [1921] 56 LJ 302 and *Prudential Assurance Co Ltd v. Newman Industries Ltd* [1981] Ch 229, referred to in *Lloyd v. Google LLC* [2021] UKSC 50 and in *Commission Recovery Ltd v. Marks & Clerk LLP & Anor* [2024] EWCA Civ 9, Paragraph 30, applied in *Chiu Luen Public Light Bus Co Ltd v. Persons Unlawfully Occupying Or Remaining On The Public Highway* [2014] 6 HKC 298. [^ Back to section](#)
- 35** Common issues of fact or law can be decided on a representative basis with issues requiring individual determination being dealt with at a subsequent stage of the proceedings: *Lloyd v. Google LLC* [2021] UKSC 50 and *Radcliffe and others v. Coltsfoot Investments Ltd* [1987] LRC (Comm) 127, both cited in *Tsai Lee Ting & Anor v. Best Leader Precious Metals Limited & Ors* [2023] HKCFI 2124, Paragraph 47. [^ Back to section](#)
- 36** *Moon v. Atherton* [1972] 2 QB 435, CA. [^ Back to section](#)
- 37** RHC, Order 15, Rule 13. Appointment under Order 15, Rule 13 is more frequently made when a limited class of persons are to be affected by a judgment or court order, such as beneficiaries of a trust, some of whom may not be known or even born. [^ Back to section](#)
- 38** LRC Report (see footnote 8), Paragraph 1.7; report, '[Civil Justice Reform Interim Report and Consultative Paper](#)', Chief Justice's Working Party on Civil Justice Reform (2001), Paragraphs 385 to 387. [^ Back to section](#)
- 39** Press release, '[LCQ14: Introduction of a mechanism for class actions](#)', Government of the Hong Kong Special Administrative Region (Apr 2019). [^ Back to section](#)
- 40** Press release, '[Announcement by Working Group on Class Actions](#)', Department of Justice (Dec 2020). [^ Back to section](#)
- 41** Press release, '[Award of Consultancy Contract](#)', Department of Justice (Aug 2021). [^ Back to section](#)
- 42** Press release, '[LCQ1: Protecting the rights and interests of consumers](#)', Government of the Hong Kong Special Administrative Region (Dec 2023). In this press release, the Working Group's consultancy study was mentioned but no update was provided. [^ Back to section](#)
- 43** *Sung Sheung-hong v. Leung Wong Soo-ching* [1965] HKLR 602. [^ Back to section](#)
- 44** Joseph Fok (ed), *Hong Kong Civil Procedure 2025*, Vol 1 [15/12/41] (Sweet & Maxwell, 2024); *Ng Hing Yau v. City Noble Developments Ltd* [2017] HKEC 2470. [^ Back to section](#)
- 45** RHC, Order 15, Rule 12(2). [^ Back to section](#)
- 46** *Walker v. Sur* [1914] 2 KB 930; RHC, Order 15, Rule 12(2). [^ Back to section](#)

- 47 *Baynard Ltd v. Secretary for Justice* [2011] 1 HKLRD C3 English Judgment. ^ [Back to section](#)
- 48 Fok (see footnote 39) [15/12/5]. ^ [Back to section](#)
- 49 RHC, Order 6, Rule 3 ^ [Back to section](#)
- 50 *Re Tottenham* [1896] 1 Ch 628. ^ [Back to section](#)
- 51 *Lloyd v. Google LLC* [2021] UKSC 50, cited in *Sir Elly Kadoorie & Sons Ltd v. Bradley* [2023] 3 HKLRD 587, Paragraph 11(4). ^ [Back to section](#)
- 52 *Re Pentecostal Mission, Hong Kong and Kowloon* [1962] HKLR 171. ^ [Back to section](#)
- 53 *Calm Ocean Shipping SA v. Win Goal Trading Ltd* [2020] HKCU 1125 at Paragraph 34; however, in the context of an application by representative plaintiffs for continuation of interim proprietary and *Mareva* injunctions, it would be sufficient for the representative plaintiffs to show that there is at least a good arguable case that the action has been properly constituted. In this regard, a defendant's argument that there may potentially be a conflict of interest among the class of represented plaintiffs without pointing to any evidence of actual conflict would be unlikely to affect the court's determination that there is a sufficient identity of interest amongst the class members: *Tsai Lee Ting & Anor v. Best Leader Precious Metals Limited & Ors* [2023] HKCFI 2124, Paragraphs 35, 41–45, 85. See also the UK decisions *Jalla & Ors v. Shell International Trading and Shipping Company Limited* [2020] EWHC 2211 (TCC), *Lloyd v. Google LLC* [2021] UKSC 50, cited in *Sir Elly Kadoorie & Sons Ltd v. Bradley* [2023] 3 HKLRD 587, Paragraph 11(2) and in *Commission Recovery Ltd v. Marks & Clerk LLP & Anor* [2024] EWCA Civ 9, Paragraph 29. ^ [Back to section](#)
- 54 *Calm Ocean Shipping SA v. Win Goal Trading Ltd* [2020] HKCU 1125. ^ [Back to section](#)
- 55 RHC, Order 15, Rule 12. ^ [Back to section](#)
- 56 *Re Braybrook* [1916] W.N. 74; Fok (see footnote 39) [15/12/4]. ^ [Back to section](#)
- 57 *University of Hong Kong v. Hong Kong Commercial Broadcasting Co Ltd* [2016] 4 HKLRD 113 at 52–25; *Calm Ocean Shipping SA v. Win Goal Trading Ltd* [2020] HKCU 1125 at 39, 40, 46. ^ [Back to section](#)
- 58 RHC, Order 15, Rule 12(3). ^ [Back to section](#)
- 59 *Id.*, Order 15, Rule 6. ^ [Back to section](#)
- 60 Per Jessel MR in *Commissioner of Sewers v. Gellatly* [1876] 3 ChD 610. ^ [Back to section](#)
- 61 RHC, Order 15, Rule 12(4). ^ [Back to section](#)

- 62 Id., Order 15, Rule 12(5). [^ Back to section](#)
- 63 *Peng Yingzhen v. Absolute Skill Holdings Limited* [\[2022\] HKCFI 3328](#) at [136]. [^ Back to section](#)
- 64 If the defamation case is tried at the High Court, either the plaintiff or the defendant may apply to the court that the action should be tried with a jury. See [High Court Ordinance, Section 33A](#).
[^ Back to section](#)
- 65 *Prudential Assurance Co Ltd v. Newman Industries* [1981] Ch 229. [^ Back to section](#)
- 66 *Lloyd v. Google LLC* [2021] UKSC 50, cited in *Sir Elly Kadoorie & Sons Ltd v. Bradley* [2023] 3 HKLRD 587, Paragraph 11(7) at 603 and followed in *Commission Recovery Ltd v. Marks & Clerk LLP & Anor* [2024] EWCA Civ 9, Paragraphs 34 and 54–57. [^ Back to section](#)
- 67 *Walker v. Murphy* [1915] 1 Ch 71 (CA); *EMI Records Ltd v. Rilery* [1981] 1 WLR 923 (Ch). [^ Back to section](#)
- 68 *CBS Song Ltd v. Amstrad Consumer Electronics plc* [1988] Ch 61 (CA). [^ Back to section](#)
- 69 *Markt & Co Ltd v. Knight Steamship Co Ltd* [1910] 2 KB 1021. [^ Back to section](#)
- 70 Fok (see footnote 39) [15/12/44]; [Civil Procedure Rules 1998](#), Rule 48.6A(3). [^ Back to section](#)
- 71 Section 98K, Part 10A, Arbitration Ordinance. [^ Back to section](#)
- 72 *Unruh v. Seeberger* [\[2007\] 2 HKLRD 414](#). [^ Back to section](#)
- 73 Id. See also *Re Cyberworks Audio Video Technology Limited* [\[2010\] 2 HKLRD 1137](#). In recent years, courts have observed that extending third-party funding to general litigation involves a delicate balance between different public policies, and that it is more appropriate to deal with this by way of legislative enactments rather than have the courts decide on an individual case basis. See *Re A* [2020] HKCU 705. [^ Back to section](#)
- 74 Webpage, '[Statistics](#)', Hong Kong International Arbitration Centre. [^ Back to section](#)
- 75 Paper, '[Consultation Paper on Proposed Amendments to Enforcement-related Provisions of the Securities and Futures Ordinance](#)', SFC (June 2022). [^ Back to section](#)
- 76 The SFC's proposed amendment was in relation to Section 213(1) of the SFO. [^ Back to section](#)
- 77 *Handford v. Storie; Re Alpha Co* [1903] 1 Ch 203. [^ Back to section](#)

- 78** See, e.g., *Calm Ocean Shipping SA v. Win Goal Trading Ltd* [2020] HKCU 1125. The case involved a plaintiff seeking an order for the first defendant to be appointed as representative defendant on behalf of other defendants, some of whom were foreign. In principle, the class could have included these foreign members but for the court refusing to grant the representative order on other grounds. [^ Back to section](#)
- 79** LRC Report (see footnote 8). [^ Back to section](#)
- 80** Securities Law of the People's Republic of China (2019 Revision), Order No. 37 of the President of the People's Republic of China, issued on 28 December 2019, effective on 1 March 2020. [^ Back to section](#)
- 81** '[Chinese court rules against Kangmei in "milestone" case](#)', Reuters (13 Nov 2021). [^ Back to section](#)

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