

For information

Legislative Council Panel on Administration of Justice and Legal Services

General Adjourned Period

PURPOSE

This paper provides a detailed account of the various measures that the Judiciary has taken to address and alleviate the impact on court proceedings due to the General Adjourned Period (“GAP”). It also covers actions taken by the Judiciary in exploring different options to address the pressure on court business given the uncertain duration of GAP caused by the public health situation.

BACKGROUND

2. In view of public health considerations, the Judiciary has generally adjourned court proceedings from 29 January 2020. Correspondingly, the business of court/tribunal registries and offices were also affected.

3. The Judiciary has originally planned for GAP to end on 22 March 2020. In fact, prior to 22 March 2020, the Judiciary had been taking active steps to prepare for the resumption of court business on 23 March 2020 in a staggered and progressive manner, including the re-opening of court/tribunal registries and offices in stages from 9 March 2020. Unfortunately, the resumption plans had to be halted in the light of the sudden worsening public health situation and the Government’s announcement on 21 March 2020 on enhanced measures to reduce the risk of a large-scale outbreak in the community.

4. Taking into account the fast changing public health situation and all relevant considerations, the Judiciary has announced on 22 March 2020 that save for urgent and essential business, GAP would be extended for two more weeks from 23 March 2020 until 5 April 2020, and be subject to review having regard to the prevailing public health situation. Court/tribunal registries and offices would also be generally closed during this period, except for urgent and essential business. It is to be stressed that in making all the decisions, it is the public interest that is paramount.

5. The general adjournment and its duration are unprecedented amid an unprecedented public health challenge for the whole community, and the decision to impose and extend the GAP, as well as the determination of the scope of urgent and essential business that is to be dealt with during GAP, was made by the Chief Justice, as the head of the Judiciary, after striking a careful balance between public health considerations and the public interest involved in the due administration of justice, while at the same time taking into account any logistical and legal constraints. In striking the careful balance, an important consideration for the Judiciary has been to minimize the flow of people in court premises and avoid the gathering of crowds in confined areas such as courtrooms, court lobbies and registry areas as far as practicable for public health reasons. Court hearings during GAP have been limited to those which are urgent and essential, and that in conducting such urgent and essential hearings and other related court business, a whole range of preventive measures have been put in place to protect the well-being of all court users who are required to or need to attend court premises during the general adjournment, as well as Judges and Judicial Officers (“JJOs”) and staff of the Judiciary.

6. Under such exceptional and fast changing public health situation, which is beyond the control of the Judiciary, it is inevitable that all stakeholders involved in the judicial system, including court users, have been affected, disrupted and inconvenienced to varying extent as a result. The Judiciary is fully aware of this, and has been taking proactive measures throughout GAP if the public health situation permits to address and alleviate the impact of GAP on the operation of the judicial system and its users. It is to be stressed again that at all times, it is the public interest that is paramount.

GAP from 29 January 2020 to 22 March 2020 and the Judiciary’s Efforts in Mitigating the Impact of GAP

7. According to the Judiciary’s original plan, GAP would have ceased on 22 March 2020 and court business would have resumed on 23 March 2020. In this regard, arrangements had been made since early March 2020 to progressively resume various services, such as expanding the scope of urgent and essential business and services of the court/tribunal registries. However, in the light of the fast changing public health situation, the Judiciary had to delay the resumption plans previously contemplated and announced on 22 March 2020 the extension of GAP for two more weeks from 23 March 2020 to 5 April 2020.

8. The following paragraphs summarize the Judiciary's efforts from 29 January 2020 to 22 March 2020 in mitigating the impact of GAP. Where appropriate, relevant measures would continue to apply during the extended GAP period from 23 March 2020 onwards. All the measures were done having obtained the approval of the Chief Justice after striking a careful balance between public health considerations and the public interest involved in the administration of justice.

9. First, for hearings originally scheduled which were generally adjourned, the Judiciary had made special arrangements for all urgent and essential court hearings and business to be handled promptly during the period. Such urgent and essential court proceedings and business included the hearing of fresh remand cases, urgent bail reviews and urgent civil matters. In addition, the Judiciary recognized that the longer the general adjournment had become, the more matters might become urgent and essential. As such, the Judiciary had taken further steps as follows:

- (a) It had been constantly reviewing the scope of urgent and essential business which should be handled during GAP and expanding its scope on a regular basis between 29 January 2020 to 22 March 2020; and
- (b) Despite the general closure of court registries and offices, enhanced measures had constantly been introduced to handle the filing of additional types of documents and other matters in support of the expanded scope of urgent and essential business between 29 January 2020 and 22 March 2020. In fact, the scope of urgent and essential court business and the list of enhanced measures had been expanded eight times between 29 January 2020 and 22 March 2020.

10. Secondly, prior to 22 March 2020, the Judiciary had been making parallel preparation for an orderly and progressive resumption of court proceedings and business. There were two major challenges in this regard: to clear the backlog of cases adjourned during the period and take preparatory actions for cases scheduled for hearings upon the original intended expiry of GAP on 22 March 2020 or shortly thereafter. Court Leaders, assisted by listing JJOs, had been doing a lot of work with a view to facilitating an orderly resumption of proceedings as far as practicable at all levels of courts. The Judiciary had also done this in close liaison with external stakeholders as appropriate, as the operation of the judicial system

necessitated the collaboration of all stakeholders concerned. The work done in this regard included:

- (a) Proactive case management by all JJOs of cases assigned to them both between 29 January 2020 and 22 March 2020 and the period immediately after that, so that clear and prompt directions would be given to the parties as necessary. This would also enable those cases which would be ready for hearing upon the expiry of GAP (originally planned for 22 March 2020) to be re-fixed as early as practicable;
- (b) Where appropriate, JJOs would consider or invite the parties to consider disposing the cases on paper as far as possible, in particular for civil cases, e.g. interlocutory matters. It should be stressed that paper disposal is an existing and well-accepted means of processing cases without the need for oral hearing;
- (c) As regards the hearing of cases after GAP (i.e. originally from 23 March 2020 onwards), the Judiciary had re-assured all stakeholders and parties that there would be sufficient lead time for notification and preparation, regardless of whether the cases would proceed as scheduled after GAP or be re-fixed; and
- (d) Additional temporary JJOs would continue to be engaged as appropriate and more effective listing arrangements would be introduced where practicable to enhance the judicial capacity in dealing with the increased volume of judicial work culminated during GAP.

11. Thirdly, the Judiciary had adopted a staggered and progressive approach in re-opening its registries and offices ahead of the cessation of GAP (originally planned for 22 March) and the resumption of court proceedings (originally planned for 23 March). This was an integral part of the orderly resumption plan for all aspects of court operation for all levels of court. The key features of re-opening of court registries and offices are as follows:

- (a) The re-openings were launched in 4 phases –
 - (i) 9 March – Registries of the Court of Final Appeal, the High Court and the Competition Tribunal;

- (ii) 12 and 13 March – Registries of the Family Court and the District Court;
 - (iii) 17 March – Registries of the Lands Tribunal, the Magistrates' Courts, the Obscene Articles Tribunal and the Coroner's Court;
 - (iv) 19 March – Registries of the Labour Tribunal and the Small Claims Tribunal; and
- (b) Special arrangements had been made to regulate people flow and handle an upsurge of caseload during the initial period of the re-opening of registries and offices, including the introduction of ticketing and triage system, the provisions of expanded registry areas and counters, the enhancement of enquiry services by experienced staff, the provisions of drop boxes for documents which did not require immediate handling, the temporary suspension of some less urgent services and the lifting of suspended services when appropriate, etc.

Extension of GAP from 23 March 2020 to 5 April 2020

12. In the light of the worsening situation of the COVID-19 worldwide and the Government's announcement on 21 March 2020 on enhanced measures to reduce the risk of a large-scale outbreak in the community, the Judiciary delayed the earlier contemplated resumption plans and announced on 22 March 2020 that save for urgent and essential business, GAP would be extended for two more weeks from 23 March 2020 until 5 April 2020, and be subject to review having regard to the prevailing public health situation. Court/tribunal registries and offices would generally be closed during this period, except for urgent and essential business.

13. A consequence of the rapidly changing public health situation will very likely be uncertainty in the duration of GAP. The Judiciary fully recognizes the scope of urgent and essential business would need to be reviewed continually, and be expanded accordingly should GAP be extended because of public health concerns. In this regard, the Judiciary will take appropriate public health and crowd control measures to ensure the safety of court users under any expanded court business during GAP.

Caseload Affected

14. The Judiciary has not kept precise statistics on cases and proceedings affected since the general adjournment on 29 January 2020. As the duration of GAP has to be constantly reviewed in the light of the latest public health situation, we can only provide a rough estimate. With the further extension of GAP, it is reasonable to estimate that for both court hearings and registry business for all levels of court, about 18% of the annual caseload would have been affected since the general adjournment on 29 January 2020. While it is unrealistic to expect that the accumulative workload could be absorbed and cleared immediately, the Judiciary will continue to adopt all necessary measures, including those mentioned under paragraph 8 to 11 above and redeploy or engage temporary registry staff, to clear the backlog of cases as expeditiously as possible.

Preventive and Measures and Crowd Management

15. Throughout GAP, having regard to the prevailing public health situation, it has been necessary for the Judiciary to put into place a whole range of preventive measures and crowd management arrangements to regulate the people flow within the 12 Judiciary premises, and avoid any gathering of crowds in confined areas including courtrooms and registry areas. The preventive measures include:

- (a) Court users are required to undergo body temperature check and wear a surgical mask before they are allowed to enter and remain in the court premises. A court user who has a fever / refuses to undergo body temperature check / does not wear a surgical mask will be refused entry into or directed to leave the court premises;
- (b) Court users who are subject to any quarantine requirement or medical surveillance of the Government should apply to the court for permission of absence/inform the court with reasons for absence as appropriate;
- (c) Court users entering the court premises are required to walk on the disinfectant floor mat at the entrances;
- (d) Cleaning and disinfection of public areas, frequently-touched surfaces (such as door handles, lift buttons and

escalator handrails) and public toilets are performed at a higher frequency;

- (e) The Canteen in the High Court Building and the Tuck Shop in the West Kowloon Law Courts Building will remain closed having regard to public health considerations;
- (f) To maintain social distancing, the seating capacity of courtrooms and lobbies are reduced by about 50%. In addition, capacity limits are set for confined areas such as registries and account offices to avoid crowding of users; and
- (g) Court users are strongly advised to maintain good personal hygiene at all times and disinfect their hands frequently during their stay in the court premises. Alcohol-based handrub is provided at entrances, registries and courtrooms of all Judiciary premises.

16. To support the above arrangements, queuing and other crowd control management measures as well as security controls to limit the number of court users entering and remaining in the Judiciary premises have been put in place as appropriate. The manpower requirements are suitably deployed among all the Judiciary premises to meet operational needs on a daily basis.

Communication with Court Users and the Community

17. The Judiciary recognizes the importance of timely and effective communications with all relevant stakeholders, including the legal profession, and the public relating to the GAP arrangements. Such communications and liaisons so far include the following:

- (a) Two meetings and briefings convened by the Chief Judge of the High Court were held with institutional stakeholders, including the Department of Justice, the Bar Association and the Law Society, in mid-February and early March;
- (b) From 28 January to 22 March 2020, the Judiciary issued 12 press releases informing the public about the general arrangements for GAP;
- (c) During the same period, the Judiciary issued 14 sets of detailed stakeholders notifications to about 15 stakeholders,

providing information on the specific details arrangements for GAP;

- (d) A dedicated webpage has been set up under the Judiciary website for posting updated GAP arrangements and notifications; and
- (e) Hotlines are provided for general public and more dedicated enquiry contacts for different areas are provided for stakeholders.

18. The Judiciary has all along been reviewing all these measures constantly and updating them as and when necessary. It will continue to actively engage stakeholders, including arranging meetings and briefings, to keep them informed of latest developments as necessary and appropriate. The Judiciary will also make timely announcements and upload important information relating to court operations during GAP to its website.

The Application of IT and Use of Alternative Modes in the Conduct of Court Business

19. During GAP where physical attendance at the court premises and contacts in person should be minimized and gathering of crowds should be avoided, the Judiciary has considered the feasibility and desirability of the greater use of IT to support and facilitate the conduct of court business during GAP and in the longer run. At the same time, suggestions have been put forward by some court users in the same direction. The major developments are summarized as follows.

20. First, the Judiciary takes a positive and proactive approach in the use of IT in support of the court operations but it is important to stress that any measure must be in accordance with the law. The Judiciary recognized the need and urgency for providing the legislative backing for the intended introduction of e-filing and transaction, including e-payment, for court proceedings. Since a few years ago, under the Information Technology Strategy Plan ("ITSP"), the Judiciary has been proactively developing by phases an integrated court case management system ("iCMS") across all levels of courts to enable an electronic mode for handling court-related documents and payments. The Court Proceedings (Electronic Technology) Bill, which seeks to provide the necessary legal basis, was introduced to the Legislative Council on 8 January 2020. Subject to the enactment of the Bill and some further subsidiary legislation, the iCMS will first be implemented at the District Court and part of the

Magistrates' Courts. The Judiciary looks forward to the passage of the Bill and bringing all these work to fruition as soon as practicable.

21. Since the general adjournment on 29 January 2020, there have been discussions as to whether court hearings can be conducted via alternative means/mode such as video conferencing ("VC") or telephone conferencing without requiring parties and other people to attend court physically. The Judiciary notes that under the existing law, VC is permissible for taking evidence from witnesses from the overseas in both civil and criminal proceedings. It is also noted that there is currently no legislation specifically enabling hearing, other than the calling/giving of evidence, to be conducted through VC. According to an earlier legal advice, using VC for conducting the entire court hearing may not be permissible under the existing law. The Judiciary notes that there have been developments in this area recently, and is therefore taking an active step to look further into the matters as to whether the greater use of VC may be permissible under the existing law given the exceptional circumstances of GAP and/or the prevailing public health situation, and if so, what specific conditions and safeguards would need to be imposed. Given the worsening public health situation and the extended duration of GAP, the Judiciary will continue to take active steps in exploring the feasibility of different options. As such, the Judiciary is examining the experience in other jurisdictions in using such alternative means/mode.

22. In addition, the Judiciary is looking into possible application of IT through administrative means. During GAP, the Judiciary has taken expedient steps to explore and introduce certain administrative measures within the confines of its IT security policy and practices. These include:

- (a) Special email accounts have been created to enable parties to lodge certain documents to the court electronically to facilitate paper disposal;
- (b) Consideration has been given to enlarging the scope of an existing electronic submission platform in the District Court for other courts. This platform will be extended to the High Court and the Family Court from 1 April 2020 to enable the electronic submission of documents including but not limited to those relating to hearings, e.g. list of authorities and hearing bundles; and
- (c) Given the public health concerns, the Judiciary appreciates that the demand for VC facilities may increase. The

Judiciary has been procuring additional VC facilities as appropriate to meet the potential increase in demands.

23. We would like to make a final point while on the subject of the greater use of IT. Apart from the consideration of compliance with the law, the Judiciary considers it important that any application of IT must be secure and the integrity of the specific aspects of the court operation involving the use of IT cannot be jeopardized or compromised. The Judiciary will continue to look into the matter and adopt a pragmatic approach.

Conclusion and Way Forward

24. To minimize the risk of outbreak of COVID-19 in the community, every sector in Hong Kong, including the Judiciary, has its responsibility. At the same time, the Judiciary recognizes the impact the general adjournment has on the daily operation and business of the courts, and the concerns it may have caused for court users and the wider community as a whole. The Judiciary is grateful to all concerned stakeholders for their informed feedback and constructive suggestions, and kind understanding and collaboration.

25. The public health situation is fast changing. The Judiciary will remain vigilant and continue to consider all possible and practical means to meet the challenges caused by this unprecedented public health situation. The Judiciary will continue to engage stakeholders and keep the court users informed of the latest information in relation to GAP as soon as possible.

The Judiciary
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