

Summary of Information Paper

Proposed Amendment to the Small Claims Tribunal Ordinance (Cap. 338)

The attached Information Paper proposes amendments to the Small Claims Tribunal Ordinance (Cap. 338), the Labour Tribunal Ordinance (Cap. 25) and the Minor Employment Claims Adjudication Board Ordinance (Cap. 453).

2. The purpose of the Small Claims Tribunal established under the Small Claims Tribunal Ordinance (the Ordinance) is to provide a cheap, simple and informal forum for the determination of limited monetary claims founded on contract or in tort. Proceedings in the Tribunal are on an inquisitorial rather than an adversarial basis. No legal representation is permitted in the Tribunal's proceedings. Accordingly, litigants (especially those on lower incomes) will not be at risk of having to pay costs that are disproportionate to the amount at stake.

3. However, such protection may be lost when an appeal is made to the Court of First Instance or the Court of Appeal where the general principle that costs follow the event applies. In So Sai Ming v. The Kowloon Motor Bus Co. (1993) Ltd., the respondent (who won \$15,000 on the merits in the Tribunal) had to pay legal costs amounting to \$122,610.00 after KMB appealed on a procedural point. The respondent, who had little money, has had to pay KMB's costs by small instalments.

4. It is considered that it is unfair, unjust and contrary to the purpose of establishing the Small Claims Tribunal to protect poor litigants in particular from having to pay disproportionate costs if such protection is lost in proceedings upon appeal or transfer. The appellate and transferee courts are also components of the small claims system. The Administration recommends that the Ordinance be amended so that, upon appeal or transfer, costs should be capped and a litigant should bear his own costs.

5. The information paper also proposes amendment of the Ordinance to make it clear that the power of the Tribunal to award "reasonable expenses necessarily incurred" does not include a lawyer's advisory or drafting fees. If legal representation is not allowed in the Tribunal's proceedings, it is logical to exclude a lawyer's advisory or drafting fees from being recovered in costs.

6. The Administration also proposes to amend the Labour Tribunal Ordinance and the Minor Employment Claims Adjudication Board Ordinance in an equivalent way.

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