

## **LEGISLATIVE COUNCIL BRIEF**

### **SMALL CLAIMS TRIBUNAL (AMENDMENT) BILL 1999**

#### **INTRODUCTION**

At the meeting of the Executive Council on 23 March 1999, the Council ADVISED and the Chief Executive ORDERED that the Small Claims Tribunal (Amendment) Bill 1999 should be introduced into the Legislative Council.

#### **BACKGROUND AND ARGUMENT**

2. The Small Claims Tribunal (“the Tribunal”) was established in 1976 to provide an expeditious, informal and inexpensive means of adjudication for civil disputes. The number of claims filed with the Tribunal increased from 2,377 in 1976 to 54,613 in 1998.

3. In October 1994, the Judiciary conducted a review on the operations of the Tribunal. The review covered the practices and procedures of the Tribunal, its staffing structure and the existing legislation. It was recommended that further improvements should be made to the Small Claims Tribunal Ordinance (“the Ordinance”) in the following aspects -

- (a) Financial jurisdiction - the current financial limit of \$15,000 of the Tribunal was set in 1988. The limit is too low and should be adjusted upward in accordance with the accumulated inflation rate;
- (b) Behaviour of litigants - some litigants behave aggressively before the Tribunal. Unlike the Labour Tribunal Ordinance and the Minor Employment Claims Adjudication Board Ordinance, there is no contempt of court provision in the Ordinance to deter the use of abusive behaviour towards the Adjudicator;
- (c) Wasting of Tribunal’s time - the Tribunal’s time is sometimes wasted by litigants through non-attendance at the hearing, or

failure to produce the necessary documents, or failure to comply with certain orders made by the Adjudicator. The Adjudicator does not have sufficient power under the Ordinance to prevent litigants from willfully wasting the Tribunal's time; and

- (d) Transfer of cases between courts - there is no provision to allow transfer of cases from the Tribunal to other courts or tribunals as appropriate, other than to the Court of First Instance and the District Court.

In addition to the above areas, the Judiciary also identified the need for improvements in various other areas to ensure smooth operation of the Tribunal.

## **THE BILL**

4. The main provisions of the Bill are as follows -

- (a) to provide for the transfer of proceedings from the Tribunal to the Minor Employment Claims Adjudication Board, the Lands Tribunal or the Labour Tribunal in addition to the present power of transfer to the District Court or the Court of First Instance (clauses 3 and 4);
- (b) to empower the Tribunal to deal with any failure in complying with its directions (clause 10);
- (c) to empower the Court of First Instance to review transfer decisions. This was previously dealt with by the Court of Appeal (clause 11);
- (d) to introduce penalties, including a term of imprisonment, in respect of any threatening or insulting behaviour of any person at the hearing of proceedings in the Tribunal (clause 14) and to allow legal representation in proceedings concerning insulting behaviour (clause 9); and
- (e) to raise the financial limit of claims from \$15,000 to \$50,000 to meet present day requirements (clause 17).

A copy of the Bill is at the Annex.

## **LEGISLATIVE TIMETABLE**

5. The legislative timetable is as follows -

Publication in the Gazette	9 April 1999
First Reading and commencement of Second Reading debate	21 April 1999
Resumption of Second Reading debate, committee stage and Third Reading	to be notified

## **HUMAN RIGHTS IMPLICATIONS**

6. The Department of Justice advises that the proposed Bill is consistent with the human rights provisions of the Basic Law.

## **BINDING EFFECT**

7. The amendments do not affect the current binding effect of the Small Claims Tribunal Ordinance.

## **FINANCIAL AND STAFFING IMPLICATIONS**

8. The Judiciary expects that about 9,900 cases per year will be transferred from the District Court to the Tribunal as a result of the financial jurisdiction limit increase. Nevertheless, other proposals in paragraph 4 above will rationalise the Tribunal's work and, as a result, enhance its capacity and efficiency. Additional resources required to handle the increased workload arising from the implementation of the Bill will be absorbed from within the global allocation of the Judiciary.

## **PUBLIC CONSULTATION**

9. The LegCo Panel on Administration of Justice and Legal Services was informed of the findings and recommendations of the Judiciary's review of the Tribunal in December 1995 and was consulted on the proposed increase in financial jurisdiction limit in January 1999. The Law Society of Hong Kong and the Hong Kong Bar Association have been consulted on the Bill.

## **PUBLICITY**

10. A press release will be issued on 8 April 1999. A spokesman will be available to handle media enquiries.

## **ENQUIRIES**

11 For enquiries on the brief, please contact Ms Amy Wong, Assistant Secretary (Administration) at 2810 2783.

Administration Wing  
Chief Secretary for Administration's Office  
April 1999  
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# SMALL CLAIMS TRIBUNAL (AMENDMENT) BILL 1999

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A BILL

To

Amend the Small Claims Tribunal Ordinance.

Enacted by the Legislative Council.

**1. Short title and commencement**

(1) This Ordinance may be cited as the Small Claims Tribunal (Amendment) Ordinance 1999.

(2) This Ordinance shall come into operation on a day to be appointed by the Director of Administration by notice in the Gazette.

**2. Interpretation**

Section 2 of the Small Claims Tribunal Ordinance (Cap. 338) is amended-

(a) in the definition of “claim”, by repealing “means” and substituting “includes”;

(b) by adding-

““Board” (仲裁處) means the Minor Employment Claims

Adjudication Board established by section 3 of the

Minor Employment Claims Adjudication Board

Ordinance (Cap. 453);

“Labour Tribunal” (勞資審裁處) means the Labour Tribunal

established by section 3

of the Labour Tribunal Ordinance (Cap. 25);

“Lands Tribunal” (土地審裁處) means the Lands Tribunal established by section 3 of the Lands Tribunal Ordinance (Cap. 17);”.

### **3. Transfer of claims**

Section 7 is amended by adding “the Board, the Labour Tribunal, the Lands Tribunal,” before “the District Court” where it twice appears.

### **4. Jurisdiction as to counterclaim**

Section 10(1) and (2) is amended by adding “the Board, the Labour Tribunal, the Lands Tribunal,” before “the District Court”.

### **5. Costs in transferred cases**

Section 11 is amended-

- (a) by adding “the Board, the Labour Tribunal, the Lands Tribunal,” before “the District Court”;
- (b) by adding “the Board, the Labour Tribunal, the Lands Tribunal or” before “the court”;
- (c) by repealing everything after “are transferred” where it secondly appears and substituting”; and the Board, the Labour Tribunal, the Lands Tribunal or the court may make orders with respect thereto, and where the proceedings are transferred from the tribunal to the Lands Tribunal, the District Court or the Court of First Instance, the Lands Tribunal

or the court may also make orders as to the scales on which the costs of the proceedings are to be taxed, and the costs of the whole proceedings shall be taxed in the Lands Tribunal or the court.”.

#### **6. Service of claim and notice of hearing**

Section 14(2)(b)(iia) is amended by repealing “posting them by registered” and substituting “sending them by”.

#### **7. Keeping of summary of evidence, etc.**

Section 15 is amended by repealing “a summary” and substituting “or cause to be kept a summary, whether by means of shorthand notes or mechanical, electronic or optical means or otherwise,”.

#### **8. Determination of claims**

Section 18(5) is amended-

(a) in paragraph (b), by repealing “or” at the end;

(b) by adding-

“(ba) by sending it by post addressed to him at his last known place of residence or at his place of business; or”.

#### **9. Right of audience**

Section 19(2) is amended by repealing “No” and substituting “Except for the purposes of proceedings under section 35A for insulting behaviour, no”.

## **10. Section added**

The following is added-

### **“26A. Failure to comply with order of the tribunal**

Where the tribunal directs a party to comply with an order within a specified time and the party fails to do so, the tribunal may dismiss the claim or counterclaim filed by the party, stay the proceedings or enter judgment against the party, as the case may be, on such terms as it thinks just.”.

## **11. Review of decision concerning transfer**

Section 27(1) is amended-

- (a) by adding “the Board, the Labour Tribunal, the Lands Tribunal,” before “the District Court”;
- (b) by repealing “Court of Appeal” and substituting “Court of First Instance”;
- (c) by repealing “審裁處將申索移交的日期起計” and substituting “自審裁處將申索移交的日期起計的”.

## **12. Review of awards and orders**

Section 27A(1) is amended by repealing “其作出裁斷或命令的日期起計” and substituting “自其作出裁斷或命令的日期起計的”.

## **13. Penalty for neglect of witness summons**

Section 35(1) is amended by repealing “\$1,000” and substituting “level 2”.

#### **14. Sections added**

The following are added-

##### **“35A. Insulting behaviour**

(1) If any person, in a hearing of proceedings in the tribunal-

- (a) uses a threatening or insulting expression to or concerning or in the presence of the adjudicator; or
- (b) behaves in an insulting manner or wilfully interrupts the hearing of proceedings,

the adjudicator may summarily sentence the person to a fine at level 3 and to imprisonment for 6 months.

(2) For the avoidance of doubt, it is hereby declared that section 50 of the High Court Ordinance (Cap. 4) applies in the case of any exercise by the adjudicator of his power under subsection (1).

##### **35B. Power of adjudicator to enforce payment of fine, etc.**

For the purposes of enforcing the payment of any fine imposed or giving effect to any sentence of imprisonment, an adjudicator shall have the powers of a judge.”.

#### **15. Chief Justice may make rules**

Section 36(b) is amended by adding “the Board, the Labour Tribunal, the Lands Tribunal,” before “the District Court”.

**16. Section added**

The following is added-

**“39. Immunity**

(1) An adjudicator has, in the exercise of his powers or duties under this Ordinance, the same privileges and immunities as a judge of the Court of First Instance in civil proceedings in that court.

(2) A witness before the tribunal shall be entitled to the same privileges and immunities as if he were a witness in civil proceedings in the Court of First Instance.”.

**17. Jurisdiction of Tribunal**

The Schedule is amended, in paragraphs 1 and 2(b), by repealing “\$15,000” and substituting “\$50,000”.

**18. Consequential amendments**

The enactments specified in the Schedule are amended as set out in the Schedule.

SCHEDULE

[s. 18]

CONSEQUENTIAL AMENDMENTS

**Lands Tribunal Ordinance**

**1. Jurisdiction of the Tribunal**

Section 8 of the Lands Tribunal Ordinance (Cap. 17) is amended by adding-

“(8A) The Tribunal shall have jurisdiction to determine any claim or counterclaim or set-off and counterclaim

transferred to it under section 7 or 10 of the Small Claims Tribunal Ordinance (Cap. 338).”.

### **Labour Tribunal Ordinance**

#### **2. Claims, etc. transferred from the Minor Employment Claims Adjudication Board, etc.**

Section 15A of the Labour Tribunal Ordinance (Cap. 25) is amended-

- (a) by renumbering it as section 15A(1);
- (b) in subsection (1), by adding “or under section 7 of the Small Claims Tribunal Ordinance (Cap. 338)” after “(Cap. 453)”;
- (c) by adding-

“(2) Where a counterclaim or set-off and counterclaim is transferred to the tribunal under section 10 of the Small Claims Tribunal Ordinance (Cap. 338)-

- (a) the counterclaim or set-off and counterclaim shall upon such transfer be regarded for all purposes as-
  - (i) a claim or counterclaim; or
  - (ii) a claim or set-off and counterclaim,

as the case requires, brought under this Ordinance;

(b) all requirements under this Ordinance that would have to be fulfilled in relation to the counterclaim or set-off and counterclaim before it could be inquired into, heard and determined by the tribunal if it were-

(i) a claim or counterclaim; or

(ii) a claim or set-off and counterclaim,

as the case requires, brought under this Ordinance shall, upon such transfer, be deemed to have been fulfilled in relation to the counterclaim or set-off and counterclaim.”.

### 3. **Schedule amended**

The Schedule is amended, in paragraph 6, by adding “or section 7 or 10 of the Small Claims Tribunal Ordinance (Cap. 338)” after “(Cap. 453)”.

## **Minor Employment Claims Adjudication Board Ordinance**

### **4. Jurisdiction of the Board**

Section 5 of the Minor Employment Claims Adjudication Board Ordinance (Cap. 453) is amended by adding-

“(1A) Without derogation from the generality of subsection (1), the Board shall have jurisdiction to inquire into, hear and determine a claim or counterclaim or set-off and counterclaim transferred to it under section 7 or 10 of the Small Claims Tribunal Ordinance (Cap. 338).”.

### **5. Section added**

The following is added-

#### **“14A. Claims transferred from the Small Claims Tribunal**

(1) Where a claim is transferred to the Board under section 7 of the Small Claims Tribunal Ordinance (Cap. 338)-

- (a) the claim shall upon such transfer be regarded for all purposes as a claim brought under this Ordinance;
- (b) the requirements under this Ordinance that would have to be fulfilled in relation to the claim before it could be inquired into, heard and determined by the Board if it were a claim brought under this Ordinance shall, upon such transfer, be deemed to have been fulfilled in relation to the claim.

(2) Where a counterclaim or set-off and counterclaim is transferred to the Board under section 10 of the Small Claims Tribunal Ordinance (Cap. 338)-

(a) the counterclaim or set-off and counterclaim shall upon such transfer be regarded for all purposes as-

(i) a claim or counterclaim; or

(ii) a claim or set-off and counterclaim, as the case requires, brought under this Ordinance;

(b) the requirements under this Ordinance that would have to be fulfilled in relation to the counterclaim or set-off and counterclaim before it could be inquired into, heard and determined by the Board if it were-

(i) a claim or counterclaim; or

(ii) a claim or set-off and counterclaim, as the case requires, brought under this Ordinance shall, upon such transfer, be deemed to have been fulfilled in relation to the counterclaim or set-off and counterclaim.”.

### **Small Claims Tribunal (General) Rules**

#### **6. Rule added**

The Small Claims Tribunal (General) Rules (Cap. 338 sub. leg.) is amended by adding -

**“4A. Keeping of the Register of Claims, etc.**

The Register of Claims kept under rule 4 and the summary kept under section 15 of the Ordinance may be kept-

- (a) in the form of a book;
- (b) in the form of a disc, card, tape, microchip, sound track or other device on or in which information or data is recorded or stored by mechanical, electronic, optical or other means; or
- (c) partly in the form referred to in paragraph (a) and partly in the form referred to in paragraph (b).”.

**7. Transfer of claim, counterclaim, etc. to District Court or Court of First Instance, etc.**

Rule 7 is amended-

- (a) by repealing “the Court of First Instance or the District Court” and substituting “the Board, the Labour Tribunal, the Lands Tribunal, the District Court or the Court of First Instance”;
- (b) by adding “the Board, the Labour Tribunal, the Lands Tribunal or” before “the court”.

### **Small Claims Tribunal (Fees) Rules**

#### **8. Fees**

Item 1 of the Schedule to the Small Claims Tribunal (Fees) Rules (Cap. 338 sub. leg.) is repealed and the following substituted-

“1. Filing of claim-	
where the claim does not exceed \$3,000.....	20
where the claim exceeds \$3,000 but does not exceed \$17,000.....	40
where the claim exceeds \$17,000 but does not exceed \$33,000.....	70
where the claim exceeds \$33,000 but does not exceed \$50,000.....	120”.

### **Small Claims Tribunal (Forms) Rules**

#### **9. Schedule amended**

The Schedule to the Small Claims Tribunal (Forms) Rules (Cap. 338 sub. leg.) is amended-

- (a) in Form 5, by repealing “\$1,000” and substituting “level 2”;
- (b) in Form 7-
  - (i) in the heading, by repealing “COURT OF APPEAL” and substituting “COURT OF FIRST INSTANCE”;
  - (ii) by repealing “Court of Appeal” and substituting “Court of First Instance”;

- (iii) by adding “Minor Employment Claims Adjudication Board/Labour Tribunal/Lands Tribunal/” before “District Court/Court of First Instance”;
- (c) in Form 8-
  - (i) in the heading, by repealing “COURT OF APPEAL” and substituting “COURT OF FIRST INSTANCE”;
  - (ii) by adding “Minor Employment Claims Adjudication Board/Labour Tribunal/Lands Tribunal/” before “District Court/Court of First Instance”;
  - (iii) by repealing “Court of Appeal” and substituting “Court of First Instance”.

#### Explanatory Memorandum

The principal object of this Bill is to amend the Small Claims Tribunal Ordinance (Cap. 338) to-

- (a) provide for the transfer of a claim or counterclaim or set-off and counterclaim from the Small Claims Tribunal (“the tribunal”) to the Minor Employment Claims Adjudication Board, the Labour Tribunal or the Lands Tribunal in addition to the present power to transfer such proceedings from the tribunal to the District Court or the Court of First Instance (clauses 3 and 4);

- (b) enable the service of the tribunal's document to be effected by post, registered or otherwise (clauses 6 and 8);
- (c) provide for the keeping of a summary of proceedings by mechanical or other means (clause 7);
- (d) allow legal representation only in proceedings relating to insulting behaviour (clause 9);
- (e) empower the tribunal to deal with any party's failure to comply with directions (clause 10);
- (f) empower the Court of First Instance to review the decision of the tribunal concerning transfer which was previously dealt with by the Court of Appeal (clause 11);
- (g) introduce the offence for insulting behaviour and its penalty (clause 14);
- (h) give immunity to the adjudicator and the witness before the tribunal (clause 16);
- (i) raise the financial limit of the claims from \$15,000 to \$50,000 (clause 17).

2. The Bill also makes consequential amendments to rules made under the Small Claims Tribunal Ordinance (Cap. 338) and to other enactments.