

**THE LAW SOCIETY OF HONG KONG'S SUBMISSIONS ON
THE DISTRICT COURT (AMENDMENT) BILL 1996**

1. Generally

The Society generally endorses the provisions in the Bill. The Legislative Council's brief states that the amended District Court Rules will be ready shortly and practitioners would like to have sight of these as soon as possible. The Society would like, wherever possible, for these to track those of the Supreme Court, e.g. there should be provision for automatic strike-out and summary judgments.

2. The general jurisdiction of the District Court

The Administration propose to increase the general jurisdiction of the District Court from the current \$120,000 to \$300,000, and a new sub-section (b) has been introduced to enable the court to determine actions for personal injuries provided the amount of the plaintiff's claim does not exceed \$600,000.

The Law Society reviewed and presented submissions on the Report prepared by Mr. Justice Kempster's Working Party (published in June 1993) and was consulted on the draft District Court (Amendment) Bill 1996 in February and also on the 5th draft in June 1996.

The Law Society has consistently stated that the proposed jurisdictional level is too low, indeed, the Society is of the view that the District Court's general jurisdiction should be increased to \$1,000,000 for all civil claims other than personal injury where the jurisdiction should be \$2,000,000.

3. Review of the historical development of the District Court, its jurisdiction and its financial limits

In 1953 the District Court was established as a court of record with limited civil and criminal jurisdiction as a solution to the increased volume of civil and criminal litigation which could not be adequately and rapidly dealt with by the then establishment of judges and magistrates.

The jurisdiction of the District Court in its civil jurisdiction (under Part III S. 14 and its reference to the First Schedule) was "....all the summary jurisdiction exercised by the Supreme Court".

In 1962 the Civil and Criminal provisions under the District Court Ordinance were combined and the first financial limit of HK\$5,000 was set. The subsequent increases in the court's financial limits are tabulated below:

Ordinances or legal notice	Financial Limit HKS		
22 of 1962 Section 3	5,000		
35 of 1966 Section 2	10,000		
68 of 1973 Section 2	20,000		
79 of 1981 Section 2 Administration of justice (Miscellaneous Amendments) (1) Increased Financial limits (2) Conferred additional jurisdiction relation to causes in Merchant Shipping. matrimonial. Property, legitimacy and adoption.	40,000		
L.N 387 of 1983	60,000		
49 of 1988 Section 4 Administration of justice (Miscellaneous Amendments)	Section	Amount deleted	Amount Substituted
	32(1) & (2)	60,000	120,000
	33(1)	"	"
	34(1)	"	"
	37(1)	"	"
	41	"	"
	52(1)(a) & (d)	"	"
	35	45,000	100,000
	36	"	"
	37(3)	"	"
	52(1)(c)	"	"
	69(3)	"	"

4. Review of increases in the Employees' Compensation Ordinance ("ECO")

The level of compensation in the ECO has been reviewed and increased 7 times since 1983 the last one taking place on 1 January 1996. The percentage of increase from 1983 to date ranges from 800% to 368% while the level of increase for the period 1988 to date ranges from 338% to 125%.

The proposed increase will be equivalent to an increase of 150% from the 1988 jurisdiction of \$120,000 therefore, based on the increases in the ECO jurisdiction it is submitted that the level of increase of the District Court's general jurisdiction should be increased to at least \$561,600 (\$120,000 @ 368%). First to keep pace with increases in the ECO, the District Court's jurisdiction should therefore be at least \$600,000 rather than reduced as there is at present no mechanism for a bi-annual review.

Appendices 1 and 2 show the increases in the ECO for the period pre 1983 to date, and the percentage increases respectively.

5. Personal Injuries

There is an argument that the level for personal injury cases could be higher, say \$2,000,000 given the recent judgment in Chan Pui Ki v Leung On & Kowloon Motor Bus Company.

The argument for increasing the personal injuries jurisdiction in the District Court to say \$2,000,000 is that, currently the jurisdiction under the ECO is \$1.728m, and for fatal accidents is \$1.512m. These cases are already being heard by District Court judges and it is illogical to put forward proposals which will enable District Court judges to hear cases involving \$1.728m under ECO, but bar them from adjudicating on the common law claims if the claim exceeds the current proposal of \$600,000.

6. Small Claims Tribunal

The Administration sought the Society's views on the draft Small Claims (amendment) Bill 1997. The Administration did not put forward any proposal to increase the jurisdiction of the Tribunal which is currently set at \$15,000. The Society recommended the Tribunal's jurisdiction be increased to \$50,000. This figure is a realistic assessment of the general public's purchasing power given the economy's expansion since 1988. Indeed, if the percentage increase of the ECO is used, the jurisdiction should be increased to at least \$70,000 (\$15,000 X 368%). The proposed increase in the Tribunal's jurisdiction will assist consumers in their search for a cost effective search for justice on relatively small sums as neither branch of the profession has any rights of audience before the Tribunal.

7. The Consumer

The Society is concerned that its recommendation substantially to increase the District Court's jurisdiction is viewed by some as a "back door attempt to extend solicitors' rights of audience". The Society's proposals will enable consumers, particularly those in the "sandwich class", who might not qualify for Legal Aid, to conduct their claims in a cheaper and more cost effective manner in the District Court. It is the consumer who will have the benefit of potential savings in costs and a wider choice. The litigant still has the right to instruct counsel but with the increased limits has the choice not to do so.

8. Family Law Court

There are at present 4-5 judges who have been assigned to sit as Family Court judges. In addition, other District Court judges often sit in the Family Court to cover for their colleagues who are on leave, or deputy District Court judges who sit in the Family Court, and these judges, more often than not, deal with applications in excess of \$1m. Indeed, if a divorcing couple own a modest matrimonial home the chances are the judge will adjudicate on property valued at between \$3m to \$5m.

9. The Society considers the Administration's proposals with wide discrepancies in the District Court's jurisdiction to be illogical and unjustified. Already, the District Court judges have the ability to adjudicate on general civil cases of at least \$1m. A substantial number of the District Court Judges sit as deputy High Court judges on a regular basis and hear running list cases involving millions of dollars. Indeed, it would be sensible to give the District Court judges consistent experience in dealing with larger sums in order to equip them to deal with the increased jurisdiction of the High Court.

10. Common Law Jurisdiction

The Society conducted research of other common law jurisdictions within the region (including England & Wales) to ascertain the general jurisdiction of their lower courts.

The findings showed that Hong Kong's proposed increase is in fact out of line with the general jurisdictional levels of lower courts within the region. A table outlining the jurisdictional levels is attached at Appendix 3.

There is no logical argument for the Administration's proposal that the current jurisdiction be increased to only \$300,000. It is noted that the Administration has estimated that some 2,700 additional cases will come before the District Court annually as a result of the implementation of the proposals but it is not expected that all of these cases will result in trials. Indeed, the reason why many cases have been commenced in the High Court can be traced to the fact that the District Court does not, at present, have any procedure for summary judgment. In this respect many of the High Court writs issued by credit card companies should be disposed of by summary procedure in the District Court and the argument on resource implications should be viewed in that light.

11. Given the massive increase in the economic activity and standard of living in Hong Kong since 1953 the financial limits should be far higher than those proposed if the District Court is truly to assume its intended role as envisaged in 1953 and the subsequent additional roles envisaged since its establishment.

12. Costs

Solicitors acting for a plaintiff would no doubt prefer a lower financial limit because they would be able to recover full party and party costs from the defendant in the High Court. A lower financial limit would prejudice the plaintiff because the cost of litigation compared to the claim would be much higher in view of the current rule that litigants in the District Court can only recover 2/3 of the taxed costs of the High Court.

Defendants and the Legal Aid Department on the other hand, would prefer a higher financial limit because they would enjoy the benefit of the 2/3 rule on costs in the District Court (particularly in personal injury cases).

A further argument for a higher limit is the proposed provision under Section 39 which, in effect, allows unlimited jurisdiction where the parties agree to the Court's jurisdiction.

13. Equity Jurisdiction S.37

The Society would welcome a uniform financial limit because it would avoid multiplicity of actions where various causes of action fall into different categories within the Ordinance. In such a case the Court is likely to transfer the matter to the High Court particularly in light of its duty to avoid multiplicity of legal proceedings, under Section 48(4). There should be uniformity of jurisdiction (save for sections 35, 36 and 37(3) which deal with property). The Society re-iterates its submissions that the Equity jurisdiction (Section 37) should be uniform and set at \$1,000,000.00.

14. Bi-Annual Review

The last amendment to the jurisdictional level of the District Court took place in 1988 some 8 years ago. The Society re-iterates its submission that some mechanism should be introduced whereby a bi-annual review can be held so that the jurisdiction of the District Court can be raised without the necessity of passing new legislation. It is noted that the financial limits under the ECO are reviewed bi- annually.

15. Section 69: Relief against forfeiture by action for non-payment of rent

15.1 S.69(2): under the present rules of the District Court there is no form of Acknowledgement of the Writ. Rule 20(a) requires the plaintiff to file the original Writ within 3 days of service with an endorsement as to service. The form of Writ for immovable property (Form 6) warns the defendant that judgment may be entered unless he either admits the claim or files a defence within 14 days.

- 15.2 S.69(9): if there is to be an amendment to the rules of the District Court allowing for a form of acknowledgment of service this would enable the court to grant summary judgment. This would be welcomed.
- 15.3 S69(9)(): there is no provision to file a notice of intention to defend under the existing District Court rules.
16. Rules for Commencing Proceedings for Estates of Deceased Persons
- 16.1 S72A(a) it is suggested that inserting the words "by or" after "proceedings to be commenced..." (first line) would make this subsection consistent with 72A(b) and 72A(c).
- 16.2 Order 15 rule 6A in the White Book is different from the Hong Kong rules of the Supreme Court in that it excludes the word "by or". This makes the Hong Kong rules far more useful to plaintiffs.

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