

Letterhead of HONG KONG BAR ASSOCIATION

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(fax no:2509-9055)

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18th January, 2000

Clerk to Bills Committee
Legislative Council
HKSAR
Legislative Council Building
6 Jackson Road
Central
Hong Kong

Attn: Mrs. Percy Ma

Dear Mrs. Ma,

Bills Committee on District Court (Amendment) Bill 1999

I refer to your letter of 6th January 2000 enclosing the paper "New Procedural Framework for the District Court". Unfortunately, there has not been sufficient time for the paper to be considered in detail but we will try to deal with the points that you raise.

Para 6

We note the concern of certain members but take the view that there must be equality and consistency of approach. It would be wrong to allow cases to be tried in the HC simply because the parties preferred this. However whilst the new jurisdiction of the DC should be exclusive it should not be retrospective. The HC Judge should have the power to retain certain cases already in the HC in his discretion on grounds of complexity or special or unusual circumstances but that if existing cases fall within the new limits then they may be transferred to the District Court depending on how far along the line the case has gone or whether trial dates have been fixed etc. We agree with the "good cause" rationale.

Para 8 (b)

We do not agree with the new para 8(b) as we consider that it is premature to introduce such a rule modelled as it is on the new UK rules before these new rules have been introduced into the HC. Our position is that the rules on discovery should be the same for the DC as they are in the HC.

Para 8 (c)

We recognise that in some circumstances a plaintiff would benefit from this new procedure. However, we have reservations with the new procedure as this could put unnecessary pressure on the parties and cause severe hardship - and particularly those without Legal Aid or financial resources - even before they reach trial. In our view the new rule may also lead to unnecessary problems particularly if a non legally aided plaintiff has to pay any difference back after a taxation.

Para 12

We note that legally qualified Masters will deal with taxation but that the Chief Judicial Clerk will deal with draft bills not exceeding \$100,000 under the provisional taxation procedure. We have strong reservations about someone who is not legally qualified carrying out any form of taxation notwithstanding that it might be a provisional taxation. If notwithstanding our views the provisional taxation is implemented, then we would urge that all taxations be conducted by the DC Masters.

We trust that these views are helpful. We have no objection to these views being made public.

Yours sincerely,

Ronny Tong, S.C.
Chairman

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