

(By Fax: 2869 0189)

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2 February 2000

Mr Ronny TONG, SC
Chairman
Hong Kong Bar Association
LG 2/F, The Supreme Court
38 Queensway
Hong Kong

Dear Mr TONG,

Bills Committee on District Court (Amendment) Bill 1999

On the instruction of the Bills Committee, I write to draw your attention to the following proposals under the Bill -

(a) Agreements as to jurisdiction

Under section 34 of the existing law, while the District Court shall have jurisdiction to hear and determine an action for more than \$120,000, the plaintiff shall not recover in the action an amount exceeding \$120,000.

Under proposed section 39(1) of the Bill, the District Court has jurisdiction to hear and determine an action or proceeding mentioned in section 32, 33, 35, 36 or 37(1)(c), (d) or (f) without regarding the monetary limits specified if all parties agree for the District Court to have jurisdiction in the action or proceeding by a memorandum signed by them or by their respective legal representatives.

Members note that the effect of the proposal is that some cases within the jurisdiction of the Court of First Instance may be dealt with by the District Court.

(b) Counterclaims : transfer of proceedings and jurisdiction

Under section 38(3) of the District Court Ordinance, on any application or report made under subsection (1) or (2), the Court of First Instance or a judge may order a counterclaim which exceeds the jurisdiction of the District Court to be heard and determined in the District Court. Under section 38(4), the District Court shall have jurisdiction to hear and determine the counterclaim if no application or report is made under this section within the time prescribed.

Under proposed section 42(3) of the Bill, if a defendant makes a counterclaim which is not within the jurisdiction of the District Court, the District Court may, either of its own motion or on the application of any party, order that the whole proceedings on the counterclaim be transferred to the Court of First Instance.

Under proposed section 40, references to an action or proceeding in sections 32 to 37 and 39 are to be construed as including references to a counterclaim.

Members note that -

- (i) unlike the existing legislation, the Bill makes no provision for a counterclaim exceeding the jurisdiction of the District Court to be dealt with by the District Court; and
- (ii) the existing legislation has no express provision to limit the financial jurisdiction of counterclaims to \$120,000. However, under the Bill, the jurisdictional limit of the District Court will apply to counterclaims by virtue of proposed section 40.

The Bills Committee would like to have your comments on the above proposals which seek to introduce major changes to the existing arrangements. I should be grateful for your reply preferably before the next meeting of the Bills Committee on 15 February 2000. Otherwise, the Bills Committee can consider your views at a subsequent meeting which is expected to be held about one week after the next meeting.

I also attach for your reference a copy of the Administration's responses to comments raised by the Bills Committee, the Bar Association and the Law Society on its paper "New Procedural Framework for the District Court". You may wish to note that the Bills Committee has requested the Administration to consider introducing the new proposals on "discovery of documents" and "interim payment of costs forthwith without taxation" after introduction of the relevant rules into the High Court.

Please note that unless you raise objection, your reply will be distributed to the media and public, and made available on the Web Site of the Council on the Internet.

With best regards,

Yours sincerely,

(Mrs Percy MA)
Clerk to Bills Committee

Encl
c.c. Hon Margarat NG (Chairman)