

**Bills Committee on District Court (Amendment) Rules
Transfer of Proceedings between Courts**

This paper set out to explain the existing legislative arrangement for the transfer of civil proceedings between the District Court and other courts; and the revised arrangement under the District Court (Amendment) Bill. This paper also explores possible further revisions to the revised arrangement.

Part I : Existing Arrangement

A. Transfer of proceedings from Small Claims Tribunal and Labour Tribunal to the District Court

2. Small Claims Tribunal and Labour Tribunal shall transfer to the District Court claims that are wholly or partly outside their jurisdiction, but are within the jurisdiction of the District Court. They may transfer the entire action or only that part of the action that is beyond their jurisdiction. The relevant sections are s.5(3) of Small Claims Tribunal Ordinance, cap. 338 and s.10 of Labour Tribunal Ordinance, cap. 25.

3. The two Tribunals may also transfer to the District Court claims, which are within the Tribunals' jurisdiction and the monetary amounts of which do not exceed the District Court limit : see s.7 of Small Claims Tribunal Ordinance and s.10(2) of Labour Tribunal Ordinance. Generally, when making such an order, the Adjudicator or Presiding Officer will have regard to such matters as the complexity of the claims, the desirability of legal representation and other good cause.

4. There is no provision enabling the District Court to revert proceedings or claims back to the two Tribunals.

B. Transfer of proceedings from the District Court to the Court of First Instance

5. Where the claim is beyond the District Court jurisdiction, and the defendant objects to the matter being tried in the District Court, then the claim must be transferred to the Court of First Instance : s.39(1) District Court Ordinance. A District Judge may also of his own motion transfer the actions, which involves matter beyond the jurisdiction of the court, to the Court of First Instance :s.39(2)District Court Ordinance.

6. Where the counterclaim exceeds the District Court jurisdiction, then there are 2 alternatives :

- (a) Any party can apply to the Court of First Instance for the counterclaim or, where appropriate, the counterclaim and set-off to be transferred from the District Court to the Court of First Instance : s.38(1) of District Court Ordinance.
- (b) A District Court Judge can report to the Registrar, High Court the relevant facts and circumstances. The Registrar, High Court then refers the report to a Judge of the Court of First Instance. The Judge of the Court of First Instance can make one of the following three orders :-
 - (i) Transfer the whole action to the Court of First Instance;
 - (ii) Direct the whole action to remain in the District Court;
 - (iii) Transfer the counterclaim or, where appropriate, the counterclaim and set-off to the Court of First Instance, leaving the rest of the action in the District Court :
s.38(2) & (3) of District Court Ordinance.

7. There is also a saving provision to cater for the circumstances in which there is no application by any party and there is no report from a District Court Judge. In such cases, the whole action will remain in the District Court and the District Court shall have power to deal with it, notwithstanding that the counterclaim exceeds the District Court

jurisdiction : s.38(4) of District Court Ordinance.

8. Actions which are well within the District Court jurisdiction may be ordered by the District Court Judge, on his own motion, to be transferred to the Court of First Instance where it appears to him that the matter can be more conveniently heard and determined in the Court of First Instance, having regard to the nature of the claim or the relief sought : s.39(2) of District Court Ordinance.

C. Transfer of proceedings from the Court of First Instance to the District Court

9. Where a claim is within the District Court jurisdiction, whether at the initial stage or as a result of set-off or payment made, the Court of First Instance may transfer it to the District Court for continuation of the proceedings : s.40 of District Court Ordinance.

10. For interpleader proceedings where the subject matter in dispute is within the District Court monetary limit (i.e. \$120,000), the Court of First Instance may transfer the proceedings to the District Court for adjudication : s.41 of District Court Ordinance.

D. Costs

11. If a matter, which is within the District Court jurisdiction, is brought in the Court of First Instance without first obtaining the leave of the Court of First Instance or an order directing it to be brought in the Court of First Instance, costs can only be recovered on a District Court scale : s.43(2) of District Court Ordinance.

12. In taxation, the practice of taxing master is to allow costs on District Court scale if the judgment sum is within the District Court limit and the action could have been commenced in the District Court, even though the matter had been brought and litigated in the Court of First

Instance.

Part II : Arrangement under the Amendment Bill

A. Transfer of proceedings from Small Claims Tribunal and Labour Tribunal to the District Court

13. The Amendment Bill will not affect the present arrangement.

14. It is noted that in its submission dated 27.10 1999, the Law Society has pointed out that there are no provisions enabling the transfer of cases from the District Court to the Small Claims Tribunal and the Labour Tribunal . The Administration has undertaken to consider the need for such provisions but is of the view that this should be pursued outside the context of the District Court (Amendment) Bill exercise.

B. Transfer of proceedings from the District Court to the Court of First Instance

15. Where an action or proceeding (other than a counterclaim) exceeds the District Court jurisdiction but is within the Court of First Instance jurisdiction, the District Court shall, either on its own motion or on any party's application, transfer it to the Court of First Instance : new s.42(1) of the District Court Ordinance.

16. Alternatively, the District Court may, on the defendant's application, order the action or proceeding to be struck out if it appears that the plaintiff knows or ought to have known that the matter is outside the District Court jurisdiction : new s.42(2) of District Court Ordinance.

17. Where a counterclaim is outside the District Court jurisdiction, the District Court may, on its own motion or on any party's application, make one of the two following orders :

- (a) Transfer the whole action to the Court of First Instance;

- (b) Transfer only the counterclaim to the Court of First Instance, leaving the rest of the action in the District Court :
new s.42(3) of the District Court Ordinance.

18. Where a matter is within the District Court jurisdiction, the District Court may, on its own motion or on any party's application, transfer the whole or part of the action or proceeding to the Court of First Instance :
new s.43 of the District Court Ordinance.

C. Transfer of proceedings from the Court of First Instance to the District Court

19. An action or proceedings (other than a counterclaim) which is within the District Court jurisdiction may be ordered by the Court of First Instance, whether on its own motion or on any party's application, to be transferred from the Court of First Instance to the District Court : new s.44(1) of District Court Ordinance.

20. Where the parties consent, the Court of First Instance may order the transfer from the Court of First Instance to the District Court of the whole or part of an action or proceeding (including a counterclaim) even though it exceeds the monetary limits of the District Court as set out in the revised or new sections 32, 33, 35 to 37 of the District Court Ordinance :
new s.44A(1) of the District Court.

21. In situations under paragraphs 19 and 20 above, the Court of First Instance is required to make the order of transfer unless by reason of the importance or complexity of the issues or for other reason, the matter ought to remain in the Court of First Instance : new s.44(3) and s.44A(3) of the District Court Ordinance.

D. Costs

22. The Amendment Bill does not affect the existing arrangement in respect of the scale of costs to be awarded or recovered for matter which is within the District Court jurisdiction, but is litigated in the Court of First Instance : see the new s.44B(6) which is identical to the existing s.43(2) of the District Court Ordinance and paragraphs 11 & 12 above.

Part III : Arrangement under the New Section 44

23. It is intended that the new jurisdictional limits of the District Court would not take retrospective effect. For actions and proceedings which are originally outside the jurisdiction of the District Court but fall within the jurisdiction of the District Court as a result of the revision of the District Court jurisdiction, it is not intended that steps already undertaken therein in the Court of First Instance will be rendered null or ineffective.

24. However, it should be pointed out that the Court of First Instance, either on its own motion or on the application of any party, has power to transfer to the District Court existing CFI actions which fall within the revised jurisdiction of the District Court, subject to the considerations in the new s.44(3). This is because under the new s.44(2), the order of transfer can be made at any stage of the action or proceeding. This possibility should not be excluded and has indeed been envisaged and supported by the Bar Association in its letter to the Bills Committee dated 18 January 2000 : see the 2nd paragraph thereof. When such a transfer is ordered, all the proceedings undertaken before the transfer remain valid and the costs thereof will be determined in accordance with the new s.44B.

25. Similarly, parties pursuant to the new s.44A can agree for existing CFI cases coming within the revised District Court jurisdiction to be transferred from the Court of First Instance to the District Court, subject also to the considerations in the new s.44A(3).

Part IV : Possible Further Revisions to the Transfer Arrangement

26. Under the Amendment Bill, there is no provision enabling the whole action to remain with the District Court where only the counterclaim is outside the District Court jurisdiction. Under the existing s.38(3)(b), a Court of First Instance Judge can order that the whole action remains in the District Court, notwithstanding that the counterclaim is beyond the jurisdiction of the District Court.

27. There is also under the Amendment Bill no provision similar to the existing s.38(4), which is in the nature of a saving provision.

28. It is noted that under the new s.39, parties can by agreement confer jurisdiction on the District Court. This may allow the whole action to remain with the District Court where the counterclaim is outside the District Court jurisdiction subject to parties' agreement. Members of the Bills Committee had however previously expressed concerns on the new s.39, and are inviting comments from the Bar Association and the Law Society on this section. The Administration is now re-considering the desirability of new s.39 and would revert to Members shortly.

29. It is however noted that there may be cases which by reason of the nature of the claim or issues involved or the relief sought ought to remain with the District Court, despite that the counterclaim exceeds the jurisdiction of the District Court. We believe that it will be desirable that the Court of First Instance Judge has power to order that the whole of the action or proceeding be remained with the District Court. As such, we propose to introduce CSAs similar to the existing s.38(3) (b) and s.38(4) of the District Court Ordinance .