

Committee Stage Amendments to District Court (Amendment) Bill
(Position as at 24 March 2000)

	<u>Clause No.</u>	<u>Content of proposed Committee Stage Amendments</u>	<u>Remarks</u>	<u>Draft CSAs</u>
1.	Clause 9 (section 14)	<p>(a) To add a provision similar to section 37(2) of the High Court Ordinance to provide that the deputy registrar and assistant registrar of the District Court may be called Masters.</p> <p>(b) To amend the Chinese rendition of Deputy Registrar (副司法常務主任) and Assistant Registrar (助理司法常務主任) to 副司法常務官 and 助理司法常務官 in the Ordinance, its subsidiary legislation and other enactments where they appear.</p> <p>(c) To amend Schedule 1 to the Judicial Officers Recommendation Commission Ordinance by adding the judicial posts of Registrar (司法常務官), Deputy Registrar (副司法常務官) and Assistant Registrar (助理司法常務官) of District Court.</p>	To introduce to the District Court a Master system, similar to that of the High Court, to deal with less contentious applications and cases clearly without merit in an expeditious manner.	<p>Page 1 of <u>Annex</u></p> <p>Under preparation</p> <p>Under preparation</p>

	<u>Clause No.</u>	<u>Content of proposed Committee Stage Amendments</u>	<u>Remarks</u>	<u>Draft CSAs</u>
2.	Clause 9 (section 14)	To provide that the Registrar, DC “shall have and may exercise and perform such other jurisdiction, powers and duties as may be conferred or imposed on him by or under rules of court or any other law”.	To follow section 38(1)(b) of the High Court Ordinance for the avoidance of doubt.	Page 1 of <u>Annex</u>
3.	Clause 9 (section 14A, 14B, and 14C)	To add new sections along the line of section 37A, 37B and 40A of the High Court Ordinance, with an additional provision providing that a temporary deputy registrar/a temporary assistant registrar shall, during the period for which he is appointed, have all the jurisdiction, powers and privileges, and perform all the duties of a deputy registrar/assistant registrar and any reference in any law to a deputy registrar/assistant registrar shall be construed accordingly.	To provide for the appointment of “temporary deputy registrar” and “temporary assistant registrar” in line with the arrangement for temporary appointments at other levels of courts. To put beyond doubt that temporary deputy registrar and temporary assistant registrar have the same powers as the deputy registrar and assistant registrar respectively.	Pages 2 – 5 of <u>Annex</u>
4.	Clause 20 (section 32(1) & (2))	To combine sub-sections (1) and (2) into one sub-section.	No need for separate sub-sections given that the proposed limits under the 2 sub-sections are now the same.	Page 5 of <u>Annex</u>

	<u>Clause No.</u>	<u>Content of proposed Committee Stage Amendments</u>	<u>Remarks</u>	<u>Draft CSAs</u>
5.	Clause 20 (section 32(3))	To add the words “the statement of claim” after “the plaintiff admits” in section 32(3).	To put it beyond doubt that only the set-off and contributory negligence admitted by the plaintiff in the statement of claim will be taken into account in determining the amount of the plaintiff’s claim.	Page 6 of <u>Annex</u>
6.	Clause 22 (sections 35, 36 and 37(4))	To add reference to “annual rent” and “annual value”.	To put beyond doubt the District Court’s jurisdiction for land which has no rateable value or exempted from rates under the Rating Ordinance.	Pages 6 – 7 of <u>Annex</u>
7.	Clause 22 (section 39) – Agreements as to jurisdiction	To delete the section and to remove the reference to section 39 in other provisions of the Bill.	To address the concern that it may not be appropriate to confer unlimited jurisdiction on the District Court by agreement of the parties concerned. Moreover, the proposed revised general jurisdictional limit at \$600,000 should achieve the objective of encouraging a greater flow of civil work into the District Court.	Page 8 of <u>Annex</u>

	<u>Clause No.</u>	<u>Content of proposed Committee Stage Amendments</u>	<u>Remarks</u>	<u>Draft CSAs</u>
8.	Clause 22 (section 42(3)) – Transfer to the Court of First Instance of proceedings within the jurisdiction of the Court	<p>(a) To add a new subsection (3)(c) to provide that the Court may, either of its own motion or on the application of any party, order, where the Court considers that the whole proceeding should be heard and determined in the Court, that the matter be reported to the Court of First Instance or a judge thereof.</p> <p>(b) To add a new subsection (4) to provide that upon the receipt of the report, the Court of First Instance or a judge thereof may make either one of the orders set out in section 38(3) of the District Court Ordinance.</p> <p>(c) To add a new subsection (5) to the effect of the proviso in section 38(3) of the District Court Ordinance regarding the stay of execution to cover the order made under section 42(3)(b) of the amendment bill and under section 38(3)(c) of the District Court Ordinance.</p> <p>(d) To add a new section along the line of s.38(4) of the District Court Ordinance, with appropriate modifications.</p>	It is desirable to retain the current arrangement under the District Court Ordinance that the Court of First Instance has power to order that the whole of the action or proceeding be remained with the District Court, to cater for those 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 the fact that the counterclaim exceeds the jurisdiction of the District Court.	Page 8 – 10 of <u>Annex</u>

	<u>Clause No.</u>	<u>Content of proposed Committee Stage Amendments</u>	<u>Remarks</u>	<u>Draft CSAs</u>
9.	Clause 22 section 44A(3) – Transfer to the Court from the Court of First Instance where the parties consent	To delete section 44A(3).	Given the deletion of section 39, we consider it not appropriate to restrict the discretion of the Court of First Instance to dispose of cases which are within its jurisdiction but fall outside the jurisdiction of the District Court.	Page 11 of <u>Annex</u>
10.	Clause 23 section 49(5) & (7)	To replace the word “cannot” with “shall not” in subsection (5) and (7).	The wording in section 48(4) and (6) in the High Court Ordinance on which proposed section 49 is modelled should be followed.	Page 11 of <u>Annex</u>
11.	Clause 27 section 53 – Review of orders made in the absence of parties	To delete section 53.	Upon reviewing the new section, we consider that the provision is not necessary, given that a similar one, though narrower in scope, will be included in the new District Court Rules which follows Order 32, rule 5 and 6 of the RHC.	Page 12 of <u>Annex</u>

	<u>Clause No.</u>	<u>Content of proposed Committee Stage Amendments</u>	<u>Remarks</u>	<u>Draft CSAs</u>
12.	Clause 30 section 59A – production of documents to other courts, etc.	To incorporate section 59A into section 72 of the Bill.	We agree that the wording in section 54(2)(k) of the High Court Ordinance on which proposed section 59A is modelled should be followed.	Pages 12 and 13 of <u>Annex</u>
13.	Clause 32 section 63 – Appeal to Court of Appeal	(a) To remove “or Registrar” from subsection (1). (b) To expressly provide in subsection (1) that, subject to subsection (3), the appeals from every judgment, order or decision of a judge are to the Court of Appeal with leave.	Appeals from decisions of Masters will lie to Judge of District Court, in line with the appeal mechanism in the High Court. Details of the appeal mechanism, including the time for application for leave to appeal and appeal against the refusal of leave will be set out in the Rules of the District Court.	Page 12 of <u>Annex</u>

DISTRICT COURT (AMENDMENT) BILL

COMMITTEE STAGE

Amendments to be moved by the

Clause

Amendment Proposed

9

By adding -

“(1A) The following is added in section 14 -

“(2A) The Registrar shall have and may exercise and perform such other jurisdiction, powers and duties as may be conferred or imposed on him by or under rules of court or any other law.

(3A) The deputy registrars and assistant registrars may be called Masters.”.”.

New

By adding -

“9A. Sections added -

The following are added -

Clause

Amendment Proposed

**“14A. Appointment of temporary
deputy registrars**

(1) The Chief Justice may appoint a person to be a temporary
deputy registrar if -

(a) the office of any deputy registrar becomes vacant for
any reason; or

(b) he considers that the interest of the administration of
justice requires that a temporary deputy registrar
should be appointed.

(2) Without prejudice to the generality of the power
conferred on him by subsection (1), the Chief Justice may appoint
a temporary deputy registrar for a specified period only.

(3) A temporary deputy registrar shall, during the period for
which he is appointed, have all the jurisdiction, powers and
privileges, and perform all the duties of a deputy registrar and any
reference in any law to a deputy registrar shall be construed
accordingly -

Clause

Amendment Proposed

(4) The Chief Justice may terminate the appointment of a temporary deputy registrar at any time.

(5) A temporary deputy registrar may be called Master.

(6) In this section and section 14C, “temporary deputy registrar”(暫委副司法常務官) means a person appointed under subsection (1) to be a temporary deputy registrar.

**14B.Appointment of temporary
assistant registrars**

(1) The Chief Justice may appoint a person to be a temporary assistant registrar if -

(c) the office of any assistant registrar becomes vacant
for any reason; or

(d) he considers that the interest of the administration of
justice requires that a temporary assistant registrar
should be appointed.

Clause

Amendment Proposed

(2) Without prejudice to the generality of the power conferred on him by subsection (1), the Chief Justice may appoint a temporary assistant registrar for a specified period only.

(3) A temporary assistant registrar shall, during the period for which he is appointed, have all the jurisdiction, powers and privileges, and perform all the duties of an assistant registrar and any reference in any law to an assistant registrar shall be construed accordingly.

(4) The Chief Justice may terminate the appointment of a temporary assistant registrar at any time.

(5) A temporary assistant registrar may be called Master.

(6) In this section and section 14C, “temporary assistant registrar” (暫委助理司法常務官) means a person appointed under subsection (1) to be a temporary assistant registrar.

14C. Powers of temporary deputy registrars, etc. in case which is part-heard on termination of appointment

ClauseAmendment Proposed

(1) In the hearing of any proceedings before a temporary deputy registrar is adjourned or he reserves judgment in any proceedings, the temporary deputy registrar shall have power to resume the hearing and determine the proceedings or deliver judgment, notwithstanding that his appointment as a temporary deputy registrar has expired or has been terminated.

(2) Subsection (1) shall apply to a temporary assistant registrar as it applies to a temporary deputy registrar.”.”.

20

In proposed new section 32 -

(a) by deleting subclauses (1) and (2) and substituting -

“(1) The Court has jurisdiction to hear and determine any action founded on contract, quasi-contract or tort where the amount of the plaintiff’s claim does not exceed \$600,000.”;

(b) in subclause (3) -

(i) by renumbering the subclause as “subclause (2)”;

Clause

Amendment Proposed

(ii) by adding “in his statement of claim” after “admits”;

and

(c) in subclause (4), by renumbering the subclause as “subclause (3)”.

22

(a) By deleting proposed new section 35 and substituting -

**“35. Jurisdiction for recovery of
land**

The Court has jurisdiction to hear and determine any action for the recovery of land where the annual rent or the rateable value of the land determined under the Rating Ordinance (Cap. 116), or the annual value of the land, whichever is the least, does not exceed \$240,000.”.

(b) By deleting proposed new section 36 and substituting -

**“36. Jurisdiction where title in
question**

The Court has jurisdiction to hear and determine any action which would otherwise be within the jurisdiction of the Court and in which the title to an interest in land comes into question if -

(a) for an easement or licence, the rateable

Clause

Amendment Proposed

value, determined under the Rating Ordinance (Cap. 116) or the annual value, whichever is the less, of the land, over which the easement or licence is claimed, does not exceed \$240,000; or

(b) for any other case, the rateable value determined under the Rating Ordinance (Cap. 116) or the annual value, whichever is the less, of the land does not exceed \$240,000.”.

(c) By deleting proposed new section 37(4) and substituting -

“(4) Nothing in this section gives jurisdiction to the Court in proceedings for the recovery of land or relating to the title to land, where the annual rent or the rateable value, determined in accordance with the Rating Ordinance (Cap. 116), or the annual value of the land, whichever is the least, exceeds \$240,000.”.

Clause

Amendment Proposed

(d) By deleting proposed new section 39.

(e) In proposed new section 40, by deleting “and 39”.

(f) By deleting proposed new section 42(3) and substituting -

“(3) If a defendant in an action or proceeding within the jurisdiction of the Court makes a counterclaim which is not within the jurisdiction of the Court but within the jurisdiction of the Court of First Instance, the Court may, either of its own motion or on the application of any party, order -

(a) that the whole proceedings be transferred to the Court of First Instance; or

(b) that the proceedings on the counterclaim be transferred to the Court of First Instance; and the proceedings on the plaintiff’s claim, except for a defence of set-off

Clause

Amendment Proposed

as to the whole or a part of the subject matter of the counterclaim, be heard and determined by the Court; or

- (c) where the Court considers the whole proceedings should be heard and determined in the Court, that the matter be reported to the Court of First Instance or a judge thereof.

(4) On the receipt of a report mentioned in subsection (3) (c), the Court of First Instance or a judge thereof may, as it or he thinks fit, order either -

- (a) that the whole proceedings be transferred to the Court of First Instance; or
- (b) that the whole proceedings be heard and determined in the Court; or
- (c) that the proceedings on the counterclaim be transferred to the Court

Clause

Amendment Proposed

of First Instance; and the proceedings on the plaintiff's claim, except for a defence of set-off as to the whole or a part of the subject matter of the counterclaim, be heard and determined by the Court.

(5) Where an order is made under subsection (3) (b) or subsection (4) (c) and judgment on the claim is given for the plaintiff, execution thereon shall, unless the Court of First Instance or a judge thereof at any time otherwise orders, be stayed until the proceedings transferred to the Court of First Instance have been concluded.

(6) If no report is made under subsection (3) (c), or if on any such report it is ordered that the whole proceedings be heard and determined in the Court, the Court shall have jurisdiction to hear and determine the whole proceedings notwithstanding any enactment to the contrary.”.

Clause

Amendment Proposed

(g) In proposed new section 43, by deleting “(whether or not the party has entered into a jurisdiction agreement under section 39)”.

(h) By deleting proposed new section 44A(3).

23

(a) By deleting proposed new section 49(5) and substituting -

“(5) Interest in respect of a debt shall not be awarded under this section for a period during which, for whatever reason, interest on the debt already runs.”.

(b) In proposed new section 49(7), by deleting “cannot” and substituting “shall not”.

<u>Clause</u>	<u>Amendment Proposed</u>
27	By deleting the clause.
30	By deleting proposed new section 59A.
32	By deleting proposed new section 63(1) and substituting – “(1) Subject to subsection (3), an appeal can, with leave, be made to the Court of Appeal, from every judgment, order or decision of a judge in any civil cause or matter.”.
40	In proposed new section 72(2) - (a) in paragraph (f), by deleting the full stop and substituting a semi-colon; (b) by adding - “(k) providing that, in any case where a document filed in, or in the custody of, the Registry of the Court is required to be produced to any court or tribunal (including an umpire or arbitrator) sitting elsewhere than at the Court - (i) it shall not be necessary for any officer, whether served with a

Clause

Amendment Proposed

subpoena in that behalf or not, to attend for the purpose of producing the document; but

- (ii) the document may be produced to the court or tribunal by sending it to the court or tribunal, in the manner prescribed in the rule, together with a certificate, in the form so prescribed, to the effect that the document has been filed in, or is in the custody of, the Registry,

and any such certificate shall be prima facie evidence of the facts stated in it.”.