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on 5 May 2000

Report of the Bills Committee on
District Court (Amendment) Bill 1999

Background

In October 1991, the Chief Justice appointed a Working Party under the chairmanship of the Honourable Mr Justice Kempster to consider, and recommend amendments to, the terms of the District Court Ordinance, the District Court Civil Procedure (General) Rules and the District Court Civil Procedure (Forms) Rules. The Working Party submitted its report to the Chief Justice in June 1993. The report was accepted by the Chief Justice. To give effect to the recommendations of the report, the District Court (Amendment) Bill 1996 was introduced into the Legislative Council (LegCo) in November 1996. However, the Bill lapsed at the end of the 1996-97 legislative session as LegCo did not have enough time to scrutinize the Bill.

The Bill

2. The Judiciary has since then reconsidered the recommendations of the Kempster Report concerning general jurisdiction, the financial limits of jurisdiction concerning title to and recovery of land and the equity jurisdiction where land is involved. According to the LegCo Brief, the District Court (Amendment) Bill 1999 introduced into LegCo on 30 September 1999 seeks to -

(a) raise various financial limits of the civil jurisdiction of the District Court (DC) to enable more civil cases to be heard in the DC -

(i) the civil jurisdiction of the DC from $120,000 to $600,000;

(ii) the jurisdiction of recovery of land from a rateable value of $100,000 to $240,000;

(iii) the jurisdiction where title of land is in question from a rateable value of $100,000 to $240,000; and

(iv) equity jurisdiction from $120,000 to $600,000 or $3,000,000 where land is involved;

(b) provide new definitions of "action for personal injuries" and "personal injuries" and to set a financial limit of $600,000;

(c) define the role, functions and power of the Registrar of the DC and to add a section on the protection of the Registrar;

(d) provide for the transfer to the DC of cases inappropriately commenced in the Court of First Instance (CFI) and vice versa; and

(e) revise the section on evidence upon the commencement of the Evidence (Amendment) Ordinance in June 1999.

The Bills Committee

3. On 15 October 1999, the House Committee agreed to form a Bills Committee to scrutinize the Bill in detail. The membership list of the Bills Committee is at **Appendix I.**

4. Under the chairmanship of Hon Margaret NG, the Bills Committee has held 11 meetings with the Administration. The Bills Committee has considered the views of the Hong Kong Bar Association, the Law Society of Hong Kong and a law firm on the Bill. In the course of scrutinizing the Bill, the Bills Committee has also invited and taken note of the views of the two legal professional bodies on specific provisions of the Bill and the proposed DC Rules.

Deliberations of the Bills Committee

5. The Bills Committee is in support of the main objective of the Bill, i.e. to lower the costs of civil litigation to enhance access to the judicial system by increasing the financial jurisdictional limits of the DC. It has noted the intention of the Administration to further increase the general jurisdictional limit to $1 million in two years' time. It also supports the broad objective of strengthening the DC by providing it with more comprehensive rules of procedure and a registry under the charge of judicial officers. These reforms better equip the DC for taking over a significant portion of the present caseload of the Court of First Instance.

6. However, in view of the far-reaching implications of the Bill and the tight schedule, the Bills Committee has adopted a cautious attitude towards some proposals in the Bill which members consider problematic. For example, the proposed section 39 appears to allow the DC to confer unlimited jurisdiction on itself upon the agreement of parties before it. Likewise, the proposed section 44A appears to require the CFI to transfer a case to the DC at the request of the parties even where it exceeds the financial limit of its jurisdiction. On the other hand, the proposed section 42 appears to remove the existing flexibility which allows a counterclaim exceeding the jurisdiction of the DC to be dealt with in the DC by order of the Court of First Instance. The Bill also seeks to adopt procedures as yet untested in any court

in Hong Kong. On the whole, members have counselled a more gradual approach in order to ensure the smooth implementation of the proposed reform. The main deliberations of the Bills Committee are summarized below.

Caseload and manpower resources

7. The Bills Committee considers it important to have an overall picture of the projected caseload in the High Court (HC), the DC and the Small Claims Tribunal (SCT) as a result of the implementation of the new jurisdictional limits proposed in the Bill, so as to assess whether manpower and other resources are adequate to cope with the proposed changes.

8. According to the Administration, in considering the caseload situation, it is relevant to consider the number of cases filed, interlocutory hearings held, trials listed and taxation bills handled. In assessing the impact of the new jurisdictional limits on the manpower requirements of the courts, the complexity of the cases/hearings/trials should also be taken into consideration. The Administration has made projections on the basis of historical data available, built in assumptions where appropriate and made reference to hidden demand.

Caseload situation

9. The Administration has advised that in 1999, there were 35,302 civil cases filed in the CFI. It is projected that about 17,300 cases (14,000 HC actions, 700 personal injuries cases and 2,600 land cases) may be diverted from the HC to the DC under the new jurisdictional limits. In addition, about 40% of the interlocutory applications, 30% of the trials listed and 50% of taxation cases may be diverted to the DC.

10. For the DC, it is estimated that there would be a moderate increase of about 20% in the number of cases filed and taxation bills handled. There may, however, be a large increase in the number of interlocutory applications which would impact on the workload of judges, masters and registry staff. Further, cases diverted from the HC are likely to be more complicated, resulting in longer trials on the average.

11. For the SCT, a new caseload estimate was made in mid 1999 when planning for additional resources to cope with the increase in its jurisdictional limits from $15,000 to $50,000. The increase took effect on 19 October 1999. The Administration is now closely monitoring the situation to see if adjustments should be made to the original projections after the new limit of DC has been in force for some time.

Manpower and other resources

12. Members note that under the Master system to be introduced in the DC, the registry would be headed by a registrar and assisted by deputy registrars who are legally qualified judicial officers and who could take up less contentious applications expeditiously. The Judiciary will also put in place other measures to cope with the new workload, such as by increasing the number of DC judges in the civil division with new resources and through internal redeployment, appointing experienced judges

to take charge of the personal injuries list and land cases, providing training for DC judges, adopting a new set of DC Rules modelled on the HC Rules and constructing additional courtrooms in Wanchai.

Officers of the court

13. Following review and with the benefit of comments of the Bills Committee, the Administration has agreed to introduce Committee Stage amendments (CSAs) to clause 9 and Schedules 1 and 2 of the Bill -

(a) to provide that the deputy registrar and assistant registrar of the DC may be called Masters, following the introduction of a Master system to the DC to deal with less contentious applications;

(b) to provide for the avoidance of doubt 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";

(c) to add new sections to amend the Chinese rendition of deputy registrar and assistant registrar in the Ordinance, its subsidiary legislation and other enactments where they appear; and

(d) to provide for the appointment of "temporary deputy registrar" and "temporary assistant registrar" so that the arrangement for temporary appointment in the DC will be in line with that at other levels of courts, and to put beyond doubt that they have the same powers as the deputy registrar and assistant registrar respectively.

General jurisdiction in actions of contract, quasi-contract and tort

14. Members have queried about the need for splitting proposed section 32 providing for the DC's jurisdiction into three parts, namely subsection (1) for contract, quasi-contract or tort, not being an action for personal injuries; subsection (2) for personal injuries; and subsection (4) for interpleader proceedings since the proposed limits for cases under the section are the same, i.e. $600,000.

15. The Administration has explained that the reason for having subsections (1) and (2) is that the original intention is to introduce different financial limits for personal injuries cases and other general monetary claims. Given that the proposed limits are now the same, it has envisaged no difficulty in combining the two subsections for the present exercise. With the combination of the two subsections, it is also considered no longer necessary to have a definition on "action for personal injuries" under clause 3. The Administration will move CSAs accordingly.

16. On subsection (4), the Bills Committee has noted the Administration's advice that a standalone subsection for proceedings by way of interpleader has the benefit of greater clarity. Interpleader proceedings may or may not arise from actions founded

on contract, quasi-contract or tort in subsection (1). The combination of subsection (1) and (4) may narrow the scope of the proceedings by way of a interpleader.

17. Having regard to a proposal made in a submission by a law firm which is supported by the Bills Committee, the Administration has agreed to amend proposed section 32(3) to the effect that any compensation paid to the plaintiff under the Employees' Compensation Ordinance should be taken into account in calculating the amount of plaintiff's claim. In response to members' comments, the Administration will also introduce a CSA to put 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.

Reference to "annual rent" and "annual value"

18. Members note that under the DC Ordinance, the jurisdictional limits in respect of land, title to land and equity jurisdiction are calculated with reference to annual rent or annual value of land or rateable value. They have queried why the Bill proposes calculation with reference to rateable value only and how the jurisdictional limit of a piece of land which has no rateable value could be determined.

19. The Administration has advised that the proposal to remove the reference to "annual rent" or "annual value" from the Bill stemmed from a recommendation in the Kempster Report, on the understanding that the annual rent and annual value of a piece of land should roughly be the same as its rateable value. The fact that a piece of land is exempted from assessment to rates under the Rating Ordinance does not necessarily mean that the land has no rateable value. If the rateable value of a piece of exempted land as determined in accordance with the Rating Ordinance does not exceed $240,000, the DC should have jurisdiction over cases concerning its title or recovery.

20. The Administration's explanation does not alleviate members' concern about possible disputes by litigants over the DC's jurisdiction for land which has no rateable value or exempted from rates under the Rating Ordinance. After further consideration, the Administration has agreed that the references should be retained in proposed sections 35, 36 and 37(4) of the DC Ordinance. It will introduce CSAs to such effect.

Agreements as to jurisdiction

21. Under proposed section 39, the DC has jurisdiction to hear and determine an action or proceeding in section 32, 33, 35, 36, or 37(1)(c), (d) or (f) without regard to the monetary limits specified if all parties to the action or proceeding agree for the DC to have jurisdiction in the action or proceeding by a memorandum signed by them or their legal representatives. A memorandum may be entered into at any time. The action or proceeding is taken to have been within the jurisdiction of the DC from its commencement if the agreement is entered into after the action or proceeding commenced.

22. As referred to in paragraph 6 above, members have expressed concern about the proposal since it appears to allow the DC to confer upon itself unlimited jurisdiction with the agreement of parties. They have questioned the basis for making such a proposal which is a radical policy departure from the existing operation of the DC. Further, this could raise technical difficulties in implementation. The Administration has explained that the proposal is a recommendation of the Kempster Report, the overall objective of which is to encourage a greater flow of civil work directly into the DC, thereby relieving pressures on and delays in the HC. While the proposal would allow the DC to accept unlimited jurisdiction by agreement, the DC has the final say on where an action or proceeding should be heard.

23. The Bar Association also sees problems with implementation of the proposal. In its view, it is questionable whether the DC, lacking even the most basic infrastructure for hearing cases on personal injuries cases, is equipped to determine many of these cases which fall within the proposed new jurisdictional limit of $600,000, let alone those which are outside the limit. It strongly suggests that implementation of the proposal be postponed. The Bills Committee has requested the Administration to reconsider the desirability of introducing the proposal.

24. After reconsideration, the Administration has agreed to delete the proposed section 39 and related provisions from the Bill. The Administration's decision has taken into account two factors. First, it may not be appropriate for the DC, a court with limited jurisdiction governed by statute, to confer upon itself jurisdiction beyond the limits set out in the Ordinance. Secondly, the objective of encouraging a greater flow of civil work into the DC would already be achieved by the proposed increase of jurisdictional limits.

25. The Administration has also taken the opportunity to re-visit proposed section 44A concerning transfer of cases from the CFI to the DC where the parties consent. As the CFI is a court of unlimited jurisdiction, the Administration considers it inappropriate to fetter the discretion of the CFI to dispose of cases which are within its jurisdiction but fall outside the jurisdiction of the DC. The Administration will move a CSA to repeal proposed section 44A(3). In addition, the Administration will introduce a new provision to put beyond doubt the DC's power to hear those cases transferred to it under an order made by the CFI pursuant to proposed section 44A(1), albeit outside its monetary jurisdiction.

<u>Procedure where proceedings beyond the jurisdiction of the DC are commenced in the Court</u>

26. Under existing section 38(1)-(3), there are two alternatives to deal with a counterclaim which exceeds DC jurisdiction. First, any party can apply to the CFI for the counterclaim to be transferred from the DC to the CFI. Secondly, the judge of the CFI can, on a report made by a DC judge, transfer the whole action to the CFI or direct the whole action to remain in the DC; or transfer the counterclaim to the CFI, leaving the rest of the action in the DC. Section 38(4) caters for the circumstances in which there is no application by any party and no report from a DC judge. In such cases, the whole action will remain in the DC.

27. The Bills Committee has expressed concern that there is no provision under the Bill to enable the whole action to remain with the DC where only the counterclaim is outside the DC jurisdiction. There is also no provision similar to the existing section 38(4) which is in the nature of a saving provision. It has requested the Administration to consider retaining the existing arrangement under the DC Ordinance.

28. Having considered members' views, the Administration agrees 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 DC, despite that the counterclaim exceeds the jurisdiction of the DC. It will be desirable that the CFI judge has power to order that the whole of the action or proceeding be remained with the DC. The Administration will introduce CSAs to retain the existing arrangement.

Appeals from the DC

29. Under existing section 63 of the DC Ordinance, appeals against decisions of DC judges can be made to the Court of Appeal and require leave from either the DC judge or the Court of Appeal. As a general rule, the application for leave should be made to the DC judge. Where the DC refuses leave to appeal, the appellant can appeal for leave to the Court of Appeal. There is currently no master's appeal.

30. Under proposed section 63 of the Bill, appeals against decisions of the DC Registrar and judges can be made to the Court of Appeal. An appeal is subject to rules of the court.

31. Members have reservations about the existing arrangement for an application for leave to appeal against decisions of DC judges to be made to the trial judge first, instead of to the Court of Appeal directly. They have pointed out that given that the trial judge has already decided against the appellant, it is unlikely for the same judge, except for cases which involve controversial legal issues, to grant leave to the appellant. The appellant going through the procedure would have to incur additional litigation costs as a result. Some members hold the view that such a procedure would deter litigants from lodging appeals.

32. The Administration has explained in detail the factors taken into consideration in arriving at the view that the existing system should be retained. First, the existing arrangement has the merits of discouraging the lodging of unmeritorious applications for appeals. Secondly, a refusal by the DC judge to grant leave is not final, as the application can still be brought before a higher court. Thirdly, without the screening and vetting by the DC judges, the Court of Appeal may be overburdened with applications for leave to appeal against DC decisions. In this respect, the Administration has provided statistics in 1999 to show that if the requirement of applying for leave to appeal from the DC judge were dispensed with, the workload of the Court of Appeal would be increased substantially. With the implementation of the new limits of the DC, it is anticipated that the number of applications for leave to appeal may increase correspondingly following diversion of a considerable number of cases to the DC.

33. Pointing out that appeals against decisions of HC masters should be made to a judge of the CFI, members have questioned the arrangement for appeals against decisions of DC masters to be made to the Court of Appeal which is a higher court.

34. Having reconsidered the matter, the Administration will move a CSA to expressly provide in section 63(1) that 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. The effect of the CSA is that appeals from decisions of masters of DC should be made to a DC judge. This is in line with the appeal mechanism in the HC. Details of the appeal mechanism, including the time limits for application for leave to appeal and appeal against the refusal of leave will be set out in the DC Rules.

Applicability of the DC Ordinance

35. Members have requested the Administration to explain the implications of adopting "the Government", instead of "the State" in proposed sections 72(4), 72(5) and 72D(6) of the Bill. These proposed sections are necessary for the DC Rules Committee to be empowered properly to make rules to give effect to the proposed new financial jurisdictional limits of the DC, and to introduce a new civil procedural framework.

36. According to the Administration, the DC Ordinance deals to some extent with the question of proceedings against "the Crown" or "the Government", which should ideally be rationalized and modernized as soon as possible after the reunification. While the question needs to be resolved within the context of the adaptation of the Crown Proceedings Ordinance (Cap. 300), there is no specific timetable for adaptation of Cap. 300 at this stage, as priority is currently given to more straightforward adaptations. In drafting the Bill, the Administration decided that new sections 72(4), 72(5) and 72D(6) should be applicable to proceedings relating to "the Government". This is consistent with the approach adopted for the adaptation of section 72 of the DC Ordinance which took place in April 1998.

37. To allay members' concern, the Administration has further explained that under section 11 of the Crown Proceedings Ordinance (Cap. 300), civil proceedings by or against "the Crown" may generally be instituted in the DC, provided that they are within the jurisdictional limits. To the extent that Cap. 300 now enables proceedings to be brought against Central People's Government (CPG) Offices, section 11 would provide the DC with jurisdiction over them. The Administration does not consider that adopting "the Government" will have the effect of excluding from DC's jurisdiction claims by or against CPG Offices that can be brought under Cap. 300.

38. The Administration has assured members that it will revisit all court-related ordinances and proceed with their full adaptation, following the adaptation of Cap. 300. However, pending adaptation, the application of Cap. 300 to CPG Offices (whether in respect of the DC or other courts) would be a matter for the courts to decide in the circumstances of a particular case, having regard to the manner in which "the Crown" was affected by Cap. 300 before reunification, the position of CPG Offices under the Basic Law, the Garrison Law and the Reunification Ordinance.

Jurisdiction in probate matters

39. The CFI exercises exclusive jurisdiction over a number of areas, including probate matters, commercial and admiralty laws. Some members have suggested that probate actions that are not complex by nature and within the financial jurisdictional limit of the DC should be dealt with in the DC. This would reduce litigation costs.

40 The Administration has explained that the Probate Registry of the HC is responsible for processing all applications for grants of representation to the estates of deceased persons and for issuing probate grants. In practice, the Probate Registry will conduct a chamber hearing if there is a dispute over the grant of probate. If the dispute cannot be resolved at the hearing, the matter will be determined by way of a probate action before a judge of the CFI. After the action is completed, the case will be transferred to the Probate Registry of the HC for processing the application for the grant of representation. In 1999, the Probate Registry processed over 9,000 applications for the grant of representations, and 99% of these applications are non-contentious. It is noted that there were very few probate actions (an average of about 10 in the past few years). If an application develops into a probate action, it is very likely that it is highly contentious in nature.

41. Having regard to members' view, the Administration has compared the pros and cons of the two options, i.e. for the HC to retain exclusive jurisdiction over probate actions vis-à-vis for the jurisdiction to be split between the HC and the DC. The Administration is of the view that it is premature to consider conferring on the DC the jurisdiction on probate actions at this stage. In arriving at the view, it has taken into consideration a number of factors. First, probate actions are usually complex by nature and thereby warrant specialized handling. Maintaining the status quo would reinforce the expertise already built up in this area of law in the HC. Secondly, with about only 10 probate actions each year, and most of these cases involve fairly complicated and fine questions of law and evidence, it is expected that probate actions would only be dealt with by the DC on very rare occasions. Thirdly, probate actions usually involve inspection of or reference to original wills and probate documents are filed with the Probate Registry of the HC. If some probate actions are dealt with by the DC, this may result in the case being transferred to and from HC and DC more than once, thus causing inconvenience to litigants.

42. Noting that the Administration has agreed to closely monitor the number and nature of probate actions filed with the HC and review the position in the future, members have agreed that the status quo should be maintained.

Draft Rules of the DC

43. The Bills Committee notes that the District Court Civil Procedure (General) Rules enacted in 1963 were drafted to provide a simple procedure allowing trial without pleadings and interlocutory applications. With the increase in jurisdiction over the years and extension of legal representation, civil procedures practised in the DC have approximated those of the HC. A number of major changes will be

introduced under the new DC Rules, which follow the relevant provisions in the HC Rules. In addition, a number of reforms, which go further than the existing provisions in the HC Rules, aiming at cost saving will be introduced under the new DC procedural framework as a testing ground. Some members have cautioned about the considerable changes to be introduced in the DC in one go and are concerned about the experience of DC judges to cope with these changes.

44. The Bills Committee has mainly focused its discussion on the following two proposals.

Standard discovery of documents

45. Under the existing procedure, discovery of documents may be informal in the DC, although the relevant rules do not prevent the adoption by any party of the formal procedure prescribed by the Rules of the HC. Under the proposed DC Rules, the court may order a party to serve a list of documents within its possession, custody and power relating to any matter in question in the action and to make and file an affidavit verifying such a list. This provision is the same as Order 24, Rule 3(1) of the Rules of the HC. The new proposal is that discovery of documents will be restricted to standard discovery of -

(a) documents on which a party relies; and

(b) documents which are either supportive of or adversely affect his own and another party's case,

subject to the right of the parties to show good cause to extend discovery to all relevant documents.

46. The Administration considers the proposal to be a good reform. On the one hand, it prescribes simpler and stricter procedures on discovery which will lead to reduction in litigation costs. On the other hand, it does not prevent discovery from being extended to other documents if good justifications are shown.

47. On the Administration's argument that the proposal would reduce litigation costs, members have pointed out that discovery which merely involves the production of documents is not costly. The costly part is on litigation as a result of disputes over whether a document is related to "any matter in question in the action". Given the scope of documents relating to "any matter in question in the action" could be very wide, they cast doubt as to whether the proposed rule could achieve the purpose of reducing litigation costs. Some members have pointed out the fact that the proposed rule is different from that of the HC will create confusion leading to more disputes. The Bills Committee has asked the Administration to reconsider whether the proposal should be introduced into the DC at this stage.

48. After reconsideration, the Administration has decided not to pursue the proposal but to simply follow HC rules for the time being. This will allow more time for the Administration to consult all concerned parties on the proposal.

Interim assessment and payment of costs

49. Under the proposed DC Rules, it has been proposed that the DC will have the power to order interim payment of costs forthwith without taxation in interlocutory proceedings. The receiving party has to give credit for the sum so paid upon taxation.

50. The Administration has explained that under the existing rules of the HC as applicable to the DC, both the HC and DC may order costs to be paid forthwith notwithstanding that the proceedings have not been concluded (Order 62 rule 4(1)). The DC may also direct that, instead of taxed costs, the receiving party shall be entitled to a gross sum so specified in lieu of taxation (Order 62 rule 9(4)(b)). However, in practice, the power under Order 62 rule 9(4)(b) is rarely invoked because a judge or master seeking to make a gross sum order is in the position of having to carry out a mini-taxation at the time. As regards Order 62 rule 4(1), the court occasionally exercises the power to make a "costs to be taxed and paid forthwith" order, but separate taxation in the interim could be a waste of judicial time and resources. In addition, the amount of costs involved might be so small to justify the process of a normal taxation. In order to address the concerns about the existing procedure, it is proposed that the court should have the power to order interim assessment and payment of costs forthwith without taxation. The proposal will help to eliminate unwarranted interlocutory applications, reduce unnecessary costs and expedite the litigation process.

51. Members are concerned that the proposal could put unnecessary pressure on the parties and cause severe hardship, particularly to those without legal aid or financial resources, even before reaching the trial. Noting that it is the Administration's intention to introduce the same arrangements to both the HC and the DC by mid 2000, members have asked the Administration to consider trying out the proposal in the HC first, before introducing it in the DC.

52. The Administration has explained that one of the main reasons for increasing the civil jurisdiction of the DC is to enable a greater number of litigants to benefit from the reduced costs incurred in that jurisdiction. Interlocutory applications should be confined to those which are really necessary. The proposal is intended to deter unmeritorious interlocutory applications. A less resourceful party faced with unwarranted interlocutory applications will be able to immediately recover at least part of his costs incurred for those applications. In fact, he will be protected from the "wearing down" abuse. In addition to eliminating frivolous and vexatious interlocutory applications, immediate assessment and payment of costs will help to reduce unnecessary costs and expedite the litigation process. Moreover, in exercising its discretion to order costs, the court will have regard to all the circumstances of each particular case, including the conduct of the parties.

53. In response to members' enquiries on overseas experience, the Administration has advised that references had been made to the power to make an immediate assessment of costs in the UK. While the existing proposal is slightly different from the relevant UK rule in the sense that it allows the receiving party to give credit for the

sum so paid up on final taxation, this minor difference should be regarded as an improvement over the relevant UK rule.

54. While appreciating the objective of the proposal, some members are doubtful as to whether the intended purpose could be achieved and whether it would be achieved at the expense of justice. They point out that a resourceful party could make a number of interlocutory applications which, though unnecessary, could well be meritorious, for the purpose of exhausting the resources of a less resourceful party who might not have sufficient knowledge of law and procedures. They further point out that notwithstanding that it is the existing power of the HC and the DC to order interim payment of costs, the proposal will simplify the procedure in the advantage of a resourceful party.

55. Notwithstanding members' reservations, the Administration has maintained its position that the proposed procedure will achieve its intended result without acting as a deterrent to a less resourceful party. The Administration intends to introduce the same arrangements to both the HC and the DC by mid 2000.

56. The Bills Committee agrees that the matter could be further pursued, if necessary, after the relevant Rules have been tabled in LegCo in May 2000 for negative vetting.

Committee Stage amendments (CSAs)

57. Apart from the CSAs mentioned above, the Administration will also move some other minor and technical CSAs. A full set of the CSAs to be moved by the Administration is at **Appendix II**. An explanatory note on the purpose of the CSAs is at **Appendix III**.

Recommendation

58. Subject to the CSAs to be moved by the Administration, the Bills Committee supports the resumption of Second Reading debate on the Bill on 17 May 2000.

Advice sought

59. Members are invited to note the recommendation of the Bills Committee.

Council Business Division 2
Legislative Council Secretariat
4 May 2000

Appendix I

Bills Committee on District Courts (Amendment) Bill 1999

Membership List

Hon Margaret NG (Chairman)
Hon Albert HO Chun-yan
Hon Ronald ARCULLI, JP
Hon Jasper TSANG Yok-sing, JP
Hon Mrs Miriam LAU Kin-yee, JP
Hon Ambrose LAU Hon-chuen, JP

Total : 6 Members

Legislative Council Secretariat

20 January 2000

Appendix II

DISTRICT COURT (AMENDMENT) BILL 1999

COMMITTEE STAGE

Amendments to be moved by the Chief Secretary for Administration

Clause	Amendment Proposed
1	By deleting subclause (2) and substituting - "(2) This Ordinance, except for this section and section 40, shall come into operation on a day to be appointed by the Chief Secretary for Administration by notice in the Gazette. (3) This section and section 40 shall come into operation at the beginning of the day on which this Ordinance is published in the Gazette.".
3	(a) In paragraph (a), in the proposed definition "司法常務官", by deleting "主任" where it twice appears and substituting "官". (b) In paragraph (b), by deleting the proposed definition "action for personal injuries".
9	(a) In subclause (1), in the proposed section 14(1), by deleting "主任" where it first and secondly appears and substituting "官". (b) By adding -

Clause | Amendment Proposed

"(1A) Section 14 is amended by adding -

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

(2B) The deputy registrars and assistant registrars may be called Masters.".

New By adding -

"9A. Sections added

The following are added -

"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

Clause | Amendment Proposed

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 discharge all the duties of a deputy registrar and any reference in any law to a deputy registrar shall be construed accordingly.

(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

Clause | Amendment Proposed

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

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

(b) he considers that the interest of the administration of justice requires that a temporary assistant 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 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 discharge all the duties of an assistant registrar and any reference in any law to an assistant registrar shall be construed accordingly.

Clause | Amendment Proposed

(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

(1) If the hearing of any proceedings before a temporary deputy registrar is adjourned or if 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.".

Clause | Amendment Proposed

14 By deleting the clause and substituting -

"14. Officer illegally demanding fees

Section 26 is repealed.".

20 In the proposed section 32 -

(a) by deleting subsections (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) by deleting subsection (3) and substituting-

"(3) In this section and in section 34, the amount of the plaintiff's claim means the amount the plaintiff claims after taking into account –

(a) any set-off or any debt or demand the defendant claims or may recover from the plaintiff;

(b) any compensation, as defined in section 3 of

Clause | Amendment Proposed

the Employees' Compensation Ordinance (Cap. 282), paid to the plaintiff under that Ordinance; and

(c) any contributory negligence,

that the plaintiff admits in his statement of claim.".

22 (a) By deleting the proposed 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 in accordance with the Rating Ordinance (Cap. 116), or the annual value of the land, whichever is the least, does not exceed $240,000.".

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

"36. Jurisdiction where title in question

The Court has jurisdiction to hear and determine any action which would otherwise

Clause | Amendment Proposed

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 value, determined in accordance with 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 in accordance with the Rating Ordinance (Cap. 116) or the annual value, whichever is the less, of the land, does not exceed $240,000.".

(c) By deleting the proposed 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

Clause Amendment Proposed

to land, where the annual rent or the rateable value of the land, determined in accordance with the Rating Ordinance (Cap. 116), or the annual value of the land, whichever is the least, exceeds $240,000.".

(d) By deleting the proposed section 39.

(e) In the proposed section 40, by deleting "and 39".

(f) By deleting the proposed 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

Clause | Amendment Proposed

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; 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

Clause	Amendment Proposed
	to the Court 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 the proposed section 43, by deleting "(whether or not the party has entered into a jurisdiction agreement under section 39)".
	(h) By deleting the proposed section 44A(3) and substituting -
	"(3) Upon a transfer under subsection (1), the Court shall have jurisdiction to hear and determine all or part of an action or proceeding, including a counterclaim, so transferred notwithstanding any enactment to the contrary.".
23	(a) By deleting the proposed 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 the proposed section 49(7), by deleting "cannot" and substituting "shall not".
27	(a) In the heading, by deleting "**Sections**" and substituting "**Section**".
	(b) By deleting "are added" and substituting "is added".

Clause | Amendment Proposed

(c) By deleting the proposed section 53.

30 (a) In the heading, by deleting "**Sections**" and substituting "**Section**".

(b) By deleting the proposed section 59A.

32 By deleting the proposed 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.".

39 By deleting the clause and substituting -

"**39. Sections added**

The following are added -

"**71A. Registrar may apply for order**

The Registrar may, in case of doubt or difficulty, apply summarily to the Court for an order for the direction and guidance of a bailiff, and the Court may make such order in the matter as may seem just and reasonable.

71B. Protection of Registrar

(1) No action shall be brought against the Registrar for -

Clause | Amendment Proposed

(a) any act done or omitted to be done by any bailiff without directions from the Registrar; or

(b) any direction given to any bailiff with regard to the execution or non-execution of process if -

(i) such directions are in accordance with an order from the Court under section 71A; and

(ii) no material fact is wilfully misrepresented or suppressed by the Registrar.

(2) In this section, "Registrar" (司法常務官) includes a Master.".

40 In the proposed section 72 -

(a) by deleting subsection (2)(f) and substituting -

Clause | Amendment Proposed

"(f) 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 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

Clause | Amendment Proposed

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.";

(b) by deleting subsection (3).

41 By deleting the clause and substituting -

"**41. Section substituted**

Section 73A is repealed and the following substituted -

"**73A. Amendments of limits of jurisdiction and other amounts**

The amounts mentioned in sections 32, 33, 35, 36, 37, 49, 52, 68B and 69B may be amended by resolution of the Legislative Council.".

44 By adding before subclause (1) -

"(1A) The Judicial Officers Recommendation Commission Ordinance (Cap. 92) is amended in Schedule 1 by adding at the end -

"Registrar of the District Court

Deputy Registrar, District Court

Clause	Amendment Proposed
	Assistant Registrar, District Court".".
Schedule 1	In item 1, in column 3, in paragraph (a), by deleting "where it first" and substituting "wherever it".
Schedule 2	(a) By adding before item 1 -
	"1A. Jury Ordinance (Cap. 3) (a) Renumber section 5 as section 5(1).
	(b) In section 5(1)(b)(i), repeal "或副司法常務主任" and "或助理司法常務主任".
	(c) Add -
	"(2) In this section -
	(a) reference to Registrar includes reference to the Registrar of the District Court;

Clause | Amendment Proposed

(b) "Deputy Registrar" (副司法常務官) means Deputy Registrar of the High Court or of the District Court;

(c) "Assistant Registrar" (助理司法常務官) means Assistant Registrar of the High Court or of the District Court.".

(b) In item 1, in column 3 -

(i) by renumbering the paragraph as paragraph (a);

(ii) in paragraph (a), by deleting "Order 61, rules 2(2) and 3(1)(b) and (6),";

(iii) by adding -

"(b) In Order 61, rules 2(2) and

Clause	Amendment Proposed
	3(1)(b) and (6), add "或審裁處的司法常務官" after "書記主任".".
	(c) In item 4, by deleting column 3 and substituting - "(a) In section 2, in the definition "registrar", repeal "(司法常務主任)" and substitute "(司法常務官)". (b) In sections 7A, 7B, 7C, 9(8) and 13(b), repeal "司法常務主任" wherever it appears and substitute "司法常務官".".
	(d) By adding -
	"6A. Labour Tribunal (General) Rules (Cap. 25 sub. leg.) (a) In rule 7, repeal "或司法常務主任" where it twice appears. (b) In rule 12(2) and (3), repeal "司法常務主任" and substitute "司法常務官".
	6B. Labour Tribunal In the Schedule - (a) in Forms 5

Clause	Amendment Proposed	
	(Forms) Rules (Cap. 25 sub. leg.)	and 17, repeal "*區域法院司法常務主任*" and substitute "*區域法院司法常務官*";
		(b) in Form 17, repeal "區域法院司法常務主任" and substitute "區域法院司法常務官".".
(e) By adding -		
"8A. Tele-communication Ordinance (Cap. 106)	In section 15(2), repeal "副司法常務主任" and substitute "副司法常務官".".	
(f) In item 12, in column 3, by deleting "where it first" and substituting "wherever it".		

Clause	Amendment Proposed		
	(g) In item 24, in column 3, in paragraph (b), by deleting "或" and substituting "、".		
	(h) By adding -		
	"39A. Estate Agents (Registration of Determination and Appeal) Regulation (L.N. 17 of 2000)	(a) (i)	In section 2, in the definition "Registrar", repeal "(司法常務主任)" and substitute "(司法常務官)".
		(ii)	In sections 3(2) and (3), 4(2) and 5(2) and Schedule 1 (Form 2), repeal "司法常務主任" wherever it appears and substitute "司法常務官".
		(b)	In Schedule 1 (Forms 1 and 2), repeal "司

Clause	Amendment Proposed
	法 常 務 主 任 " and substitute "*司法常務官*".".

Appendix III

District Court (Amendment) Bill

Committee Stage Amendments

	Clause No.	Content of proposed Committee Stage Amendments	Remarks	CSAs
1.	Clause 1(2) – Commencement	To add a provision to the effect that section 72, section 72A, section 72B, section 72C, section 72D, section 72E and section 73 shall come into operation at the beginning of the day on which the amendment ordinance is published in the Gazette.	**To put beyond doubt the power of the District Court Rules Committee to make the Rules of the District Court by virtue of proposed sections immediately after the Gazette date of the amendment Ordinance.**	Page 1
2.	Clause 3 (section 2) – Interpretation	To delete the definition "action for personal injuries".	The definition is no longer necessary given the combination of proposed section 32(1) and (2) of the Bill.	Page 1

	Clause No.	Content of proposed Committee Stage Amendments	Remarks	CSAs
3.	Clause 9 (section 14) – Officers of the Court			
(a)	section 14(2B)	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.	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.	Page 2
(b)	Schedule 1 and 2			Page 17-22
(c)	section 14(2A)	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. To add a provision to the effect that the Registrar, District Court shall have and may exercise and discharge 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 2

	Clause No.	Content of proposed Committee Stage Amendments	Remarks	**CSAs**
4.	Clause 9 (section 14A, 14B, and 14C)- Appointment of temporary deputy registrars and temporary assistant registrars; Powers of temporary deputy registrars, etc., in case which is part-heard on termination of appointment	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 discharge 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 of judges and judicial officers at other levels of courts. To address a Member's concern by putting beyond doubt that temporary deputy registrar and temporary assistant registrar have the same powers as the deputy registrar and assistant registrar respectively.	Pages 2 – 6
5.	Clause 14 (section 26) – Officers illegally demanding fees	To delete section 26 of the District Court Ordinance.	The section is deleted in the light of a Member's observation that section 26 is not necessary as the Prevention and Bribery Ordinance is applicable to officers of the court.	Page 6

	Clause No.	Content of proposed Committee Stage Amendments	Remarks	CSAs
6.	Clause 20 (section 32) – General jurisdiction in actions of contract, quasi-contract and tort			
(a)	sub-section (1) & (2)	To combine sub-sections (1) and (2) into one sub-section.	In the light of a Member's observation, no need for separate sub-sections given that the proposed limits under the 2 sub-sections are now the same.	Page 6
(b)	sub-section (3)(b)	To add a new provision to provide that any compensation, as defined in the Employees' Compensation Ordinance, paid to the plaintiff shall be taken into account in calculating the amount of the plaintiff's claim.	To remove any uncertainty over the District Court's financial limit if employees' compensation is paid to the plaintiff, in the light of the comment of legal practitioners.	Page 6-7
(c)	sub-section (3)	To add the words "in his statement of claim" after "the plaintiff admits" in sub-section (3).	To take into account Members' view by putting it beyond doubt that only the set-off and contributory negligence, etc. admitted by the plaintiff in the statement of claim will be taken into account in determining the amount of the plaintiff's claim.	Page 6-7

	Clause No.	Content of proposed Committee Stage Amendments	Remarks	CSAs
7.	Clause 22 (sections 35, 36 and 37(4)) – Jurisdiction for recovery of land; where title in question and equity jurisdiction	To add reference to "annual rent" and "annual value", along the line of the relevant provisions in the current District Court Ordinance.	To take into account Members' view by putting beyond doubt the District Court's jurisdiction for land which has no rateable value or exempted from rates under the Rating Ordinance.	Pages 7–9
8.	Clause 22 (section 39) – Agreements as to jurisdiction	To delete the section and to remove the references to section 39 in proposed section 40 and 43 of the Bill.	To address Members' 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 9 & 12

	Clause No.	Content of proposed Committee Stage Amendments	Remarks	CSAs
9.	Clause 22 (section 42(3)) – Procedure where proceedings beyond the jurisdiction of the Court are commenced in the Court	(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. (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. (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. (d) To add a new section along the line of s.38(4) of the District Court Ordinance, with appropriate modifications.	To take into account a Member's proposal 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. This is 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 9 – 12

	Clause No.	Content of proposed Committee Stage Amendments	Remarks	CSAs
10.	Clause 22 (section 44A(3)) – Transfer to the Court from the Court of First Instance where the parties consent	To delete proposed section 44A(3) and substitute a provision to the effect that upon a transfer under proposed section 44A(1), the District Court shall have jurisdiction to hear and determine all or part of an action or proceeding, including a counterclaim, so transferred notwithstanding any enactment to the contrary.	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. The proposed provision is to put beyond doubt the District Court's power to hear those cases which are outside the monetary jurisdiction of the Court, but are transferred to the Court under an order made by the Court of First Instance pursuant to proposed section 44A(1).	Page 12
11.	Clause 23 (section 49(5) & (7)) – Interest on claims for debt and damages	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 Ordiannce on which proposed section 49 is modelled should be followed.	Page 12-13
12.	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 13 _

	Clause No.	Content of proposed Committee Stage Amendments	Remarks	CSAs
13.	Clause 30 (section 59A) – production of documents to other courts, etc.	To incorporate section 59A into section 72 of the Bill.	To take into account a Member's view that the wording in section 54(2)(k) of the High Court Ordinance on which proposed section 59A is modelled should be followed.	Page 13 and 15-16
14.	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 13
15.	Clause 39 (section 71A) – Registrar may apply for an order	To revise proposed section 71A along the line of section 40 of the High Court Ordinance (HCO).	To take into account Members' view that proposed section 71A should be redrafted to ensure that it has the same effect as section 40 of HCO.	Pages 13-14
16.	Clause 39 (section 71B) – Protection of Registrar	To revise proposed section 71B along the line of section 39 of HCO.	To take into account Members' view that proposed section 71B should be redrafted to ensure that it has the same effect as section 39 of HCO.	Pages 14-15

	Clause No.	Content of proposed Committee Stage Amendments	Remarks	CSAs
17.	Clause 41 (section 73A) – Amendments of limits of jurisdiction and other amounts	To add to section 73A the reference to section 49 (interest on claims for debt and damages) and section 68B (sale of property in execution of judgment)	To provide that the amounts referred to in section 49 and 68B may be amended by resolution of the Legislative Council	Pages 16-17
18.	Clause 44 - Consequential amendment to other enactments	To amend Schedule 1 to the Judicial Officers Recommendation Commission Ordinance by adding 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.	The posts concerned will be filled by judicial officers.	Page 17