

30 April 2003

The Judiciary Administrator,
Judiciary,
High Court,
Hong Kong.

Attention : Ms Emma Lau

Dear Madam,

Re : Review of Civil Jurisdiction Limit of District Court

Thank you for your letters of 17 March 2003 and 17 April 2003.

On the part of the Bar, we have some doubt on whether the table set out in § 5.3 of the Review of the Civil Jurisdiction Limits of the District Court accurately reflects the discrepancy in the legal costs in litigating in the High Court and in the District Court for the same case. It has to be remembered that in cases where the High Court awarded a judgment in the sum falling within \$120,000 and \$600,000, it is possible that the amount claimed initially is much higher than \$600,000 and that for one reason or another, the High Court holds that the full amount claimed is not sustainable. Furthermore, although the table works on cases where the judgment sums are between \$120,000 and \$600,000, it is also possible (and in our view probable) that the average of claims in High Court cases are higher than those of the District Court. Also even

for cases where initially the amounts claimed are within the District Court jurisdiction limit of \$600,000, it is likely that the solicitors opted for commencing action in the High Court because of the relative complexity of the case. For all these reasons, we have our reservations on whether the figures set out in paragraph 5.3 would accurately reflect the saving of costs for litigating in the District Court.

Another factor which needs to take into account is that on taxation on District Court scale, the taxing master would adopt a much lower rate than corresponding taxation on High Court scale. While this should not affect the actual amount which the client would have to pay to his own solicitors, we have anecdotal evidence that because solicitors would not like to see a great discrepancy between the solicitors and own client costs and the party and party costs, generally speaking, they tend to ask less experienced solicitors in their firm to handle the District Court litigation in order to lower the overall charges. Thus the difference in the costs to the clients in litigating in the District Court and in the High Court would also mean that there is a difference in the quality of the service to the client.

That having been said, we do not have any evidence, anecdotal or otherwise, contradicting the suggestion that it would be cheaper to litigate in the District Court.

Another area of our concern is the quality of the Judges hearing civil cases in the District Court. In this regard we note with appreciation the effort of the judiciary set out in paragraph 7 of the Review paper. However, we also note that although some Judges are “assigned” to take care of particular types of cases, there is no hard and fast rule or practice that other Judges will not be asked to try those cases. Whether the civil jurisdiction of the District Court is to be increased or not, we would hope that there should be stricter division of work between civil and criminal Judges, and that the listing clerk or Judge would make sure that cases involving higher amount or greater complexity would be presided over by Judges with appropriate expertise and experience.

One other effect of raising the civil jurisdiction of the District

Court is in relation to appeal. At the moment, appeal from the High Court to the Court of Appeal is as of right, whilst appeal from the District Court would require leave. It is paradoxical that whilst now the parties litigating in the High Court presided over by more experienced Judges would have an unrestricted right to appeal, with the increase of the jurisdiction resulting in their being heard by the less experienced District Judges, the parties would require leave to appeal against the District Judges' decisions. The solution to this anomaly may be either (a) to abolish the requirement of leave to appeal from District Court; or (b) to make it mandatory to require leave to appeal from the High Court. On our part, we would find alternative (b) to be very unattractive. The Bar has clearly stated its position on this point in its response to the consultation on Civil Justice Reform.

On the whole, we would not oppose to the increase of the jurisdiction of the District Court, but we hope that our concerns raised in the letter would receive the proper attention of the Judiciary.

As the Chairman of Panel on Administration of Justice and Legal Services of the Legislative Council has expressed interest in receiving the Bar's response to the proposal on the increase in the jurisdiction of the District Court, I have taken the liberty of sending a copy of this letter to the Clerk of that Panel.

Yours truly,

Edward Chan
Chairman

cc : Clerk of Panel on Administration of Justice and Legal Services