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Panel on Administration of Justice and Legal Services

**Background brief prepared by the Legislative Council Secretariat
for the meeting on 24 April 2017**

**Review of the Civil Jurisdictional Limits of the District Court and
the Small Claims Tribunal**

Purpose

This paper provides background information on the review of the civil financial jurisdictional limits of the District Court and the Small Claims Tribunal. It also summarizes the major views and concerns expressed by members of the Council and Panel on Administration of Justice and Legal Services ("the Panel") during previous discussions on this subject.

Background

Financial jurisdictional limits of the Small Claims Tribunal

2. The Small Claims Tribunal ("SCT") was set up in 1976 to provide an expeditious, informal and inexpensive means of adjudication for civil disputes. Taking into account the types of claims which would be heard in it, the financial jurisdictional limit of the SCT was set at \$3,000 then. Thereafter, the limit had been further increased several times on the basis of inflation and the costs that a plaintiff would have to incur if the cases were heard in the District Court ("DC"). The limit of \$15,000 was then set in 1988.

3. In January 1999, when the Administration originally consulted the Panel on the issue, the then proposal was to increase the financial

jurisdictional limit of SCT to \$35,000.

4. The Law Society of Hong Kong ("the Law Society") proposed in 1996 that the financial jurisdictional limit of SCT be increased to \$50,000 which would be "a realistic assessment of the general public's purchasing power given the economy's expansion since 1988".

5. Eventually, the Small Claims Tribunal (Amendment) Bill 1999 ("the Bill") was introduced into the Legislative Council on 21 April 1999. The Bill included, among others, a provision to raise the financial jurisdictional limit of claims from \$15,000 to \$50,000 to meet the then present day requirement. The Bill was finally passed on 16 June 1999.

6. Subsequently, the financial jurisdictional limits of the SCT was increased to \$50,000 with effect from 19 October 1999. According to the paper provided by the Judiciary Administration in March 2003, the caseload for the SCT increased from 57,442 in 1999 to 90,815 in 2002, an increase of 58%. In view of the significant and continual increase of caseload for the SCT, and in the light of the deflationary trend during 1 April 1999 to 31 March 2002, the Judiciary Administration recommended in the abovesaid paper that the financial jurisdictional limit of the SCT should be maintained at \$50,000.

7. The current financial jurisdictional limit of the SCT as of today is still \$50,000.

Last review of the civil financial jurisdictional limits of the District Council

8. With effect from September 2000, the general financial limit of the civil jurisdiction of the District Court was increased from \$120,000 to \$600,000. The financial limits for cases on recovery of and title to land was adjusted to a rateable value of \$240,000, which then covered domestic properties with a capital value of about \$6 million. In line with the increase for the general financial jurisdiction, the limit for equity jurisdiction, where land is not involved, was raised accordingly to \$600,000. The equity jurisdiction where land is involved was raised to \$3 million. According to the paper provided by the Judiciary Administration in March 2003, the Judiciary had undertaken to review the operation of the DC after the new jurisdictional limits had come into effect in September 2000.

9. The review covered two full-year periods after the new financial

jurisdictional limits of the DC had come into effect, i.e. from 1 September 2000 to 31 August 2002.

10. According to the Judiciary Administration, factors taken into account in the review included the impact on demand for court services from the last increase and any proposed further increase; the pattern in costs of litigation; the resource implications for the Judiciary in the light of the last increase and any proposed further increase; and the development of qualified judges and judicial officers to cope with the last increase and any further increase in civil financial jurisdictional limits.

11. The Recommendations of the review in 2003 were as follows:

- (a) The financial limit of the civil jurisdiction of the DC should be further increased to \$1 million;
- (b) The limit for equity jurisdiction, where land was not involved, should be raised correspondingly to \$1 million; and
- (c) The limits for land matters and equity jurisdiction where land was involved should be kept.

12. The resolution, among others, which sought the Legislative Council's ("LegCo") approval for increasing the financial jurisdictional limits from \$600,000 to \$1 million, with effect from 1 December 2003, was made and passed by LegCo on 29 October 2003.

Present review of the civil financial jurisdictional limits of the District Court and the SCT

13. In August 2015, the Judiciary issued a Consultation Paper on the review of the civil financial jurisdictional limits of the DC and the SCT.

14. The general financial limits for the civil jurisdiction of the DC are set out in Part IV of the District Court Ordinance (Cap. 336). The various limits currently applicable are as follows :

- (a) for general actions including those of contract, quasi-contract and tort, the limit is \$1 million (section 32);
- (b) for actions to claim for money recoverable by enactment, the limit is \$1 million (section 33);
- (c) for actions for recovery of land, the annual rent or the rateable

value or the annual value of the land must not exceed \$240,000 (section 35); and

- (d) for the equity jurisdiction of the DC, the limit is \$1 million where the proceedings do not involve or relate to land, and \$3 million where the proceedings wholly involve or relate to land (section 37).

Major views raised at the Council and Panel meetings

15. Major views and concerns expressed by members, the Hong Kong Bar Association ("the Bar Association") and the Law Society at the meetings of the Panel on 19 January 1999, 27 May 1999 and 31 March 2003 regarding the review of the financial jurisdictional limits of the SCT and the last review of the civil financial jurisdictional limits of the DC are summarized in the ensuing paragraphs.

Reviews of financial jurisdictional limits before 2003

16. At the Panel meeting held on 19 January 1999, a member pointed out that there had been a lot of cases involving claims ranging between \$35,000 and \$100,000. With the financial jurisdictional limits of the SCT being revised to \$35,000, such cases would still have to be tried in the DC. Because of the much higher legal costs involved in the DC proceedings, the parties might eventually give up their case. The member then enquired whether the limit could be revised to a higher level, say, up to \$70,000.

17. The Administration replied that the proposed new limit for the SCT was already more than two times the existing level. It was expected that as a result of the revision, about 7 000 cases would be diverted from the DC to the SCT per year. The Administration preferred to adopt a more cautious approach to allow the system to adjust to the new level to ensure smooth operation. The Administration was also prepared to update the financial jurisdictional limits of various levels of courts more regularly in the future, say at two to three-yearly intervals, in the light of actual experience. Such an adjustment mechanism was allowed for under the relevant Ordinances, which provided that adjustment to the financial jurisdictional limits might be introduced by way of a resolution of the Legislative Council.

Manpower requirement

18. At the meeting on 27 May 1999, members had expressed concern about manpower arrangement to handle the additional workload in the SCT resulting from the increase in financial jurisdictional limit from \$15,000 to \$50,000. In response, the Administration advised that an estimate of about 10 000 cases per year would flow from the DC to the SCT as a result of this newly proposed financial jurisdictional limit of the latter. This was about 3 000 cases more than the previous estimate for the proposed financial jurisdictional limit of \$35,000.

19. According to the Administration, resources had also been reserved for the Judiciary to create additional posts of Adjudicator and necessary support staff in anticipation of the increase in financial jurisdictional limit. Furthermore, with the enactment of the Bill, the Adjudicator would be empowered to direct a party to comply with his order within a specified period of time, failing which the claim may be dismissed, struck out, stayed, or judgment entered. This should deter parties from willfully wasting the SCT's time and therefore enhance the efficiency of the SCT in adjudicating cases.

Waiting time in the SCT

20. In response to members' concern about measures to resolve the issue of potential longer waiting time for litigants, the Administration advised that the Judiciary had been regularly reviewed the operation of the SCT and introduced measures to minimize court-waiting time. Such measures included temporary deployment of manpower resources to deal with any sudden surge in the number of cases filed, dedicating a court to deal with group claims and familiarising litigants with the procedure of the SCT by distributing user-friendly information leaflets. The caseload and average waiting time in the SCT for the past few years had indicated that cases could be processed within its target waiting time of 60 days.

21. The Administration advised that there might be extraneous factors that could increase the workload or there might be hidden demand arising from cases which would otherwise not be commenced if not for the lower litigation costs in the SCT. It will hence continue to monitor the situation after the higher financial jurisdictional limit comes into operation, and introduce administrative measures where possible, or seek additional resources, to ensure that the SCT maintains its efficiency.

Proposed automatic review of financial jurisdictional limit of the SCT

22. Noting the Law Society's suggestion of including a provision to provide for an automatic review of the limit on a biennial basis in the Bill, the Administration advised that it was prepared to review the financial jurisdictional limits of various levels of courts more regularly in the future. Section 6 of the Small Claims Tribunal Ordinance provided that the financial jurisdictional limits of the SCT may be adjusted by way of resolution of the LegCo.

23. However, the Administration did not support the Law Society's suggestion, because what the Law Society proposed was a purely administrative mechanism for automatic reviews without going through the relevant procedures for amending legislation and without being subject to the scrutiny of the public and LegCo. Furthermore, the Administration, in proposing changes, needed to look at a number of factors to ensure that the smooth operation of the SCT would be maintained. A member also opined that automatic adjustments of the financial jurisdictional limits of the courts was not workable as it might involve a drastic and undesirable change in legal policy.

Last review of the civil financial jurisdictional limits of the District Council in 2003

Quality of Judges

24. A major concern expressed by the Bar Association was that with the increase in the general financial jurisdictional limit from \$600,000 to \$1 million and the resultant increase in the number of cases transferred to the DC from High Court, the quality of judges had to be carefully monitored. However, a member opined that the increase in the financial jurisdictional limits of the DC did not necessarily result in the DC having to deal with more complicated cases that went beyond the ability of its judges to handle and that if the quality of the DC judges was a problem, the Judiciary would take steps to address it.

25. The Judiciary advised that the officers of the Judiciary, including judges, were provided with ongoing training to ensure efficient discharge of their duties and that quality of judges would not be compromised.

Caseload of the DC and High Court

26. Noting that there was a sharp increase in the average number of interlocutory hearings listed since the increase in civil financial jurisdictional limits of the DC from \$120,000 to \$600,000, a member asked whether a bottle-neck had occurred in interlocutory hearings and how the situation had affected the DC's capacity in handling its caseload.

27. On the increase in the number of interlocutory hearings, the Judiciary Administration said that with the introduction of a Master System under which three new Master posts had been created to handle the less contentious interlocutory matters, interlocutory hearings in the DC had been disposed of expeditiously. The Judiciary Administration also advised that the expected overall impact (caused by the increase in civil financial jurisdictional limits of the DC to \$1 million) on the Judiciary's resources and the waiting time for cases handled in the DC would not be significant.

28. In response to a member's enquiry as to whether the number of the DC judges and High Court judges would be adjusted if the increase in the civil financial jurisdictional limits of the DC resulted in significant changes in the caseloads of the two levels of courts, the Judiciary Administration advised that the staffing and resource position of the DC and High Court would be kept under review, and appropriate adjustments would be made where necessary taking into account the actual workload situation.

Costs of litigation

29. Noting that the costs of litigation in the DC were about one-third lower than that in High Court, a member opined that this was a relevant factor in considering whether the civil financial jurisdictional limits of the DC should be increased.

30. The Hong Kong Bar Association advised that despite the difference in litigation costs between the High Court and the DC, some cases where land was involved were heard in High Court, even though the DC had jurisdiction over such cases. This indicated that some litigants preferred to have the more complex cases decided by a court of higher level.

31. A member said that she had received comments from legal practitioners that the procedures in the DC were as complicated as that in High Court. Yet, the fees that practitioners could charge for cases

handled in the DC were considerably lower than that for High Court cases. Some practitioners had expressed concern that if the financial jurisdictional limits of the DC were to be further increased, resulting in a transfer of cases from the High Court to the DC, this would have an adverse impact on their income. This would also affect law firms which were specialised in High Court cases.

Present review of the civil financial jurisdictional limits of the District Court and the Small Claims Tribunal

32. At the Panel meeting on 18 October 2016, Mr Holden CHOW proposed to discuss the issue of "Raising the amount of claims that could be handled by the SCT" to enable more cases to be settled in a quick and inexpensive manner at the SCT. Members agreed to include this item in the list of outstanding items for discussion by the Panel.

33. At the LegCo meeting on 15 February 2017, Mr Holden CHOW raised a question on the financial jurisdictional limit of claims of the SCT. Owing to the public's concern that the existing limit of \$50,000 was set in 1999 and that the amount involved in civil dispute had increased substantially since then, Mr CHOW asked whether the Administration would consider setting a higher financial limit of claims, say \$100,000; if it would, whether the Administration would allocate more resources, when necessary, to ensure that the efficiency of the SCT in handling claims would not be reduced owing to an increase in the number of cases being handled.

34. In response, the Administration advised that according to information provided by the Judiciary, the conduct of a review of the civil financial jurisdictional limits of the District Council and that of the SCT had been started in 2015-2016 and that the Judiciary had also conducted a public consultation exercise in this connection. Regarding the financial jurisdictional limit of the SCT, the Administration understood that the Judiciary was proposing to increase the financial jurisdictional limit amount from \$50,000 to \$75,000. Such a proposed increase would have an impact on the caseload and workload of SCT. This proposal has received general support from all stakeholder in the public consultation exercise. Based on the comments received from the stakeholders during the consultation conducted earlier, the Administration understood that the Judiciary was finalising the proposals with regard to the proposed increase of the civil financial jurisdictional limit of SCT (and also that of the DC). The Judiciary also conducted a detailed assessment on the resource implications arising from the

proposed increases, in particular the impact on the requirements of additional judicial and non-judicial manpower and court facilities. The Judiciary considered that it was essential to have the necessary additional manpower and court facilities available and ready at SCT (and also at the DC) before the implementation of the proposed increases in the financial jurisdictional limits.

Recent developments

35. The Judiciary Administration will brief members on the results of the review of the civil jurisdictional limits of the DC and the SCT at the panel meeting to be held on 24 April 2017.

Relevant papers

36. A list of relevant papers is in the **Appendix**.

Council Business Division 4
Legislative Council Secretariat
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Appendix

Review of the Civil Jurisdictional Limits of the District Court and the Small Claims Tribunal

List of relevant papers

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
19.1.1999	Panel on Administration of Justice and Legal Services	The Law Society of Hong Kong's submissions on the District Court (Amendment) Bill 1996	CB(2)1067/98-99(02) http://www.legco.gov.hk/yr98-99/english/panels/ajls/papers/p1067e02.pdf
		Submissions from the legal profession [the Hong Kong Bar Association] on District Court (Amendment) Bill 1996 (English version only)	CB(2)1097/98-99(01) http://www.legco.gov.hk/yr98-99/english/panels/ajls/papers/1097_1067.pdf
		Paper on Financial Jurisdiction Limits of the Small Claims Tribunal and District Court	CB(2)1097/98-99(02) http://www.legco.gov.hk/yr98-99/english/panels/ajls/papers/p1097e02.pdf
		Minutes of meeting	CB(2)1510/98-99 http://www.legco.gov.hk/yr98-99/english/panels/ajls/minutes/aj190199.htm
23.4.1999	House Committee	Minutes of meeting	CB(2)1795/98-99 http://www.legco.gov.hk/yr98-99/english/hc/minutes/hc230499.htm

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
27.5.1999	Panel on Administration of Justice and Legal Services	Legislative Council Brief on Small Claims Tribunal (Amendment) Bill 1999 issued by the Director of Administration in April 1999	LSO/ADM CR 3/3231/91(99) http://www.legco.gov.hk/yr98-99/english/panels/ajls/papers/ajls-cso adm cr 3 3231 91 99-e.pdf
		Letter dated 26 April 1999 from the Law Society of Hong Kong	CB(2)1969/98-99(06) http://www.legco.gov.hk/yr98-99/english/panels/ajls/papers/p1969e6.pdf
		Paper on Small Claims Tribunal (Amendment) Bill 1999 prepared by the Administration	CB(2)1969/98-99(07) http://www.legco.gov.hk/yr98-99/english/panels/ajls/papers/p1969e7.pdf
		Minutes of meeting	CB(2)61/99-00 http://www.legco.gov.hk/yr98-99/english/panels/ajls/minutes/aj270599.htm
4.6.1999	House Committee	Report of the Administration of Justice and Legal Services Panel on Small Claims Tribunal (Amendment) Bill 1999	CB(2)2180/98-99 http://www.legco.gov.hk/yr98-99/english/hc/papers/hc462180.htm
		Minutes of meeting	CB(2)2230/98-99 http://www.legco.gov.hk/yr98-99/english/hc/minutes/hc040699.htm
31.3.2003	Panel on Administration of Justice and Legal Services	Paper provided by the Judiciary Administration on "Review of the Civil Jurisdictional Limits of the District Court"	CB(2)1607/02-03(01) http://www.legco.gov.hk/yr02-03/english/panels/ajls/papers/aj0331cb2-1607-1e.pdf

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
		Minutes of meeting	CB(2)2064/02-03 http://www.legco.gov.hk/yr02-03/english/panels/ajls/minutes/aj030331.pdf
26.5.2003	Panel on Administration of Justice and Legal Services	Response of the Hong Kong Bar Association to the Administration's paper on "Review of the financial limits of the civil jurisdiction of the District Court" (English version only)	CB(2)1955/02-03(01) http://www.legco.gov.hk/yr02-03/english/panels/ajls/papers/aj0331cb2-1955-1e.pdf
		Judiciary Administrator's reply letter dated 16 May 2003 to the Bar Association on "Review of the financial limits of the civil jurisdiction of the District Court" (English version only)	CB(2)2124/02-03(01) http://www.legco.gov.hk/yr02-03/english/panels/ajls/papers/aj0331cb2-2124-1e.pdf
		Minutes of meeting	CB(2)2889/02-03 http://www.legco.gov.hk/yr02-03/english/panels/ajls/minutes/aj030526.pdf
17.10.2003	House Committee	Legal Service Division Report on Proposed Resolution under section 73A of the District Court Ordinance (Cap. 336)	LS5/03-04 http://www.legco.gov.hk/yr03-04/english/hc/papers/hc1017ls-5e.pdf

Date of meeting	Meeting	Minutes/Paper	LC Paper No.
		Minutes of meeting	CB(2)131/03-04 http://www.legco.gov.hk/yr03-04/english/hc/minutes/hc031017.pdf
29.10.2003	Council Meeting	Minutes of meeting	CB(3)137/03-04 http://www.legco.gov.hk/yr03-04/english/counmtg/minutes/cm031029.pdf
18.10.2016	Panel on Administration of Justice and Legal Services	Minutes of meeting	CB(4)55/16-17 http://www.legco.gov.hk/yr16-17/english/panels/ajls/minutes/ajls20161018.pdf
15.2.2017	Council Meeting	Mr Holden CHOW raised a question on financial limit of claims of Small Claims Tribunal	http://www.info.gov.hk/gia/general/201702/15/P2017021500550.htm

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