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By Email : shau@legco.gov.hk

2 May 2018

Ms Angel WONG
Clerk to Subcommittee
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong

Dear Ms Wong,

**Proposed Resolutions under
section 73A of the District Court Ordinance (Cap. 336) and
section 6 of the Small Claims Tribunal Ordinance (Cap. 338)**

Thank you for your letter of 11 April 2018.

***The magnitude of the proposed increase of the jurisdictional limit of the
Small Claims Tribunal***

2. During the review of the civil jurisdictional limits of the District Court (“DC”) and the Small Claims Tribunal (“SCT”) conducted in 2015-16, the Judiciary had consulted stakeholders, including the Hong Kong Bar Association, the Law Society of Hong Kong and the Legislative Council (“LegCo”) Panel on Administration of Justice and Legal Services, on the proposals, and obtained their general support on the proposed adjustment, amongst others, of the jurisdictional limit of the SCT from \$50,000 to \$75,000.

3. In assessing the impact of increasing the limit of the SCT on the operation and services of the tribunal, such as assessing and bidding for

additional financial and manpower resources (including obtaining approval by the LegCo Finance Committee on the creation of the judicial posts and the corresponding financial resources) and provision of extra accommodation, arranging training for staff, etc, the basis adopted by the Judiciary was on the SCT's new limit being \$75,000.

4. The Judiciary finds it difficult at this stage of the legislative amendment exercise to raise the new jurisdictional limit of the SCT to \$100,000, as otherwise the Judiciary would inevitably need to start all the preparatory work for implementing the jurisdictional rise of the SCT afresh, including the necessary consultations. This would delay the implementation of the jurisdictional rise of the SCT, and would not be in the interests of the community as a whole in terms of enhancing access to justice.

5. We appeal to the Subcommittee to support adopting the current proposal to increase the jurisdictional limit of the SCT to \$75,000 as soon as possible. Nevertheless, noting the Subcommittee's views concerning the magnitude of increase of the SCT's limit, the Judiciary intends to closely monitor the statistics on the caseload of the SCT and the actual operational impact on the tribunal for two years upon implementation of the proposed \$75,000 limit, and conduct a review thereafter on the need to further adjust the SCT's limit.

Proposed mechanism for transfer of civil cases from the DC to the SCT

6. The proposed Resolutions being considered by the Subcommittee are to be made by LegCo under section 73A of the District Court Ordinance (Cap. 336) and section 6 of the Small Claims Tribunal Ordinance (Cap. 338).

7. Section 73A of Cap. 336 stipulates that "*[t]he amounts mentioned in sections 32, 33, 35, 36, 37, 49, 52, 53A(5)¹, 68B and 69B may be amended by resolution of the Legislative Council*". Accordingly, the said provision provides for the amendment only to the amounts set out in the relevant provisions of Cap. 336 by resolution of LegCo.

8. Section 6 of Cap. 338 stipulates that "*[t]he Legislative Council may, by resolution, amend the Schedule*". LegCo's power to amend the Schedule to Cap. 338 has to be construed with reference to section 5(1) of Cap. 338, which provides that "*[t]he tribunal shall have jurisdiction to hear and*

¹ According to Part 8 of the Statute Law (Miscellaneous Provisions) Ordinance 2018 (Ord No. 17 of 2018), which came into operation upon gazettal of the Ordinance on 20 April 2018, section 73A of Cap. 336 was amended to include section 53A(5).

determine the claims specified in the Schedule". The Schedule to Cap. 338 sets out the jurisdiction of the SCT in terms of the claims that it can hear and determine. Any amendment to the Schedule to Cap. 338 made under section 6 of Cap. 338 should thus be confined to the jurisdiction of the SCT to hear and determine claims only.

9. Any proposed transfer mechanism for transfer of civil cases of claim amount between \$50,001 and \$75,000 from the DC to the SCT would involve providing power to the DC to transfer cases commenced therein to the SCT, as well as related matters such as, for example, how the costs incurred in the DC before the transfer and the costs of the transfer should be dealt with. Such mechanism would cover issues beyond the scope of power provided under section 73A of Cap. 336 and section 6 of Cap. 338, and therefore falls outside the scope of the proposed Resolutions.

10. For civil cases with claim amount between \$50,001 and \$75,000 which have been filed into the DC before the commencement of the proposed jurisdictional rise of the SCT, they will continue to be dealt with by the DC after the implementation of the adjustment to the limits. Notwithstanding the absence of a direct transfer mechanism for cases from the DC to the SCT, should the plaintiff wish to have such case heard in the SCT after the jurisdictional rise, he / she may discontinue the claim in the DC, and lodge a new claim in the SCT, subject to considerations such as limitation of actions² and costs. This is in line with the arrangements adopted in previous adjustments of the limit of the SCT.

11. As set out in the LegCo Brief issued by the Administration Wing of the Chief Secretary for Administration's Office and the Judiciary Administration on 28 February 2018, if the two proposed Resolutions under Cap. 336 and Cap. 338 are passed by LegCo, the Chief Justice will appoint a date for commencement of the revised civil jurisdictional limits of the DC and the SCT. The commencement notice, together with the consequential amendments to the Small Claims Tribunal (Fees) Rules (Cap. 338B), will then be tabled at LegCo for negative vetting.

12. The Judiciary will publicise the intended commencement date of the jurisdictional rise through various means, such as press releases, notices at court buildings and on the Judiciary's website. This will facilitate court users to make informed decisions (and to seek legal advice as appropriate) on how

² For example, actions founded on simple contract or on tort shall not be brought after the expiration of 6 years from the date on which the cause of action accrued under section 4(1) of the Limitation Ordinance (Cap. 347).

their cases, whether pending disposal or involving new claims to be lodged, should proceed at the court and tribunal concerned.

Current and projected establishment of the Tribunal Officer posts at the SCT

13. As regards financial and manpower resources implications arising from the revision of the jurisdictional limit of the SCT, on top of the previous establishment of 70 posts, the creation of a total of 10 additional posts, including two posts of Adjudicators, SCT, and eight non-directorate civil service posts (including Tribunal Officers and clerical support), is required for coping with the projected increase in caseload at the SCT. Specifically, two additional Senior Judicial Clerk II posts (designated as Tribunal Officers) are required on top of the previous establishment of 14 Tribunal Officer posts. The LegCo Finance Committee had on 1 December 2017 approved the creation of the two judicial posts. The Judiciary has been provided with the financial resources for meeting in full the manpower needs for the above-mentioned ten posts from 2017-18.

Yours sincerely,



(Desmond Wu)

for Judiciary Administrator

c.c. Administration Wing (Attn: Ms Christine WAI)
Law Draftsman (Attn: Miss Annet LAI)