立法會
Legislative Council

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seen by the Administration)

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Legislative Council
Bills Committee on District Court (Amendment) Bill 1999

Minutes of 4th meeting
held on Tuesday, 1 February 2000 at 8:30 am
in Conference Room B of the Legislative Council Building

Members Present	:	Hon Margaret NG (Chairman) Hon Albert HO Chun-yan Hon Jasper TSANG Yok-sing, JP Hon Mrs Miriam LAU Kin-yee, JP
Members Absent	:	Hon Ronald ARCULLI, JP Hon Ambrose LAU Hon-chuen, JP
Public Officers Attending	:	Ms Emma LAU Deputy Judiciary Administrator Ms Miranda CHIU Deputy Director of Administration Mr David LEUNG Assistant Judiciary Administrator Ms Rosanna LAW Assistant Director of Administration Mr J D SCOTT Senior Assistant Law Draftsman Mr Ryan CHIU Assistant Secretary (Administration)

Clerk in Attendance	:	Mrs Percy MA Chief Assistant Secretary (2)3
Staff in Attendance	:	Mr KAU Kin-wah Assistant Legal Adviser 6 Mrs Eleanor CHOW Senior Assistant Secretary (2)7

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I. List of issues raised by the Bills Committee
(LC Paper Nos. CB(2) 994/99-00(01) and (02))

Referring to the list of issues raised by the Bills Committee (LC Paper No. CB(2) 994/99-00(01), the Chairman said that the Administration had yet to respond to items 5, 6, 9 and 15 to 21.

II. Administration's response to comments made on the paper "New Procedural Framework for the District Court"
(LC Paper Nos. CB(2) 672/99-00(01), 930/99-00(02) & (03) and 1003/98-99(01))

2. Deputy Judiciary Administrator (DJA) said that the Administration had prepared a paper (LC Paper No. 1003/98-99(01)) to respond to the comments raised by the Bills Committee, the Hong Kong Bar Association (Bar Association) and the Law Society of Hong Kong (Law Society) on the paper entitled "New Procedural Framework for the District Court (DC)" (LC Paper No. CB(2) 672/99-00(01)).

Need for section 44 and the effect of section 44(3) of the Amendment Bill

3. DJA said that at the last meeting, members expressed concern about the proposal that cases within the DC jurisdictional limit were required to be transferred to the DC, subject to the power of the judge of the High Court (HC) to retain the matter in the HC for good cause. She said that the proposal followed the recommendation of the Kempster Working Party. The effect of section 44(3) in clause 22 of the Bill was to provide for the Court of First Instance (CFI) to make an order under section 44 while retaining the flexibility for certain cases to remain in the CFI by reason of importance or complexity. DJA said that both the Bar Association and the Law Society had indicated their support to the proposal in their replies (LC Paper Nos. CB(2) 930/99-00(02) and (03)).

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4. DJA further said that the CFI would have the power to retain certain cases which fell within the new limits but had already been filed with the CFI upon the implementation of the new jurisdictional limits. However, if the CFI decided to transfer certain cases to the DC, the portion of work already conducted in the CFI in respect of these cases would not be rendered void.

5. Mrs Miriam LAU said that according to section 44(2) and (3) proposed in clause 22, one of the grounds for the CFI not to order the transfer a case was that it was of the opinion that the proceeding ought to remain in the CFI "for any other reason". However, the Bill did not specify the reasons that might lead to such a decision. Referring to DJA's comment that the portion of work already conducted in the CFI in respect of cases to be transferred to the DC would not be rendered void, Mrs LAU questioned whether a judge of the DC could be in a position to take over a case in any stage of the proceeding. She pointed out that for cases transferred from one judge to another, it was the usual practice for the proceeding to start all over again.

6. DJA said that it was only under special circumstances would a CFI judge decide to transfer a case that had already been conducted in the CFI to the DC. For instance, a case which fell within the new limit of the DC and had already been dealt with by the Registry of CFI, but had yet to be taken up by the master of the CFI. In the circumstances, the work already conducted by the Registry would not be rendered void. She said that a judge of the CFI would have regard to the circumstances surrounding the case in considering whether a case should be transferred from the CFI to the DC. If a substantial portion of a case had been dealt with in the CFI, it was unlikely for the judge to order its transfer to the DC.

7. On the last point made by DJA, Mrs Miriam LAU pointed out that there was no express provision in the Bill stating that the progress of a case was one of the factors to be considered by a judge of the CFI in deciding whether or not to transfer a case to the DC.

8. On DJA's earlier comment about not rendering the portion of work already conducted in the CFI as void if the case would be transferred to the DC, Mrs Miriam LAU asked the Administration to consider whether express provisions should be included in the Bill to provide for the arrangement and the desirability of the arrangement. DJA undertook to revert to members on these points.

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Counterclaims: transfer of proceedings and jurisdiction

9. Mr Albert HO asked the Administration how counterclaims exceeding the new financial jurisdiction of DC would be dealt with in future. He said that under section 38(3) and (4) of the DC Ordinance, a DC judge might order a counterclaim which exceeded the jurisdiction of the DC to be heard and determined in the DC. The existing legislation had no express provision to limit the financial jurisdiction of

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counterclaims. He further pointed out that the Bill made no provision for a counterclaim exceeding the jurisdiction of the DC to be dealt with by the DC.

10. Assistant Judiciary Administrator (AJA) said that proposed section 42(3) in clause 22 of the Bill provided that where a counterclaim was not within the jurisdiction of the DC but within the jurisdiction of the CFI, the DC might, either of its own motion or on the application of any party, order that the whole proceedings be transferred to the CFI; or that the proceedings on the counterclaim be transferred to the CFI.

11. The Chairman asked whether a counterclaim could remain in the DC if its transfer was not effected under proposed section 42(3) and if so, whether the counterclaim, if successful, would be subject to the financial jurisdictional limits of the DC.

12. DJA responded that in the event that a counterclaim had exceeded the jurisdiction of the DC and neither party to the proceedings had applied for the case to be transferred to the CFI, the judge would take appropriate action. In addition, section 39(1) in clause 22 of the Bill proposed that the DC had jurisdiction to hear and determine an action or proceeding mentioned in section 32, 33, 35, 36 or 37(1)(c), (d) or (f) without regarding the monetary limits specified if all the parties agreed for the DC to have jurisdiction in the action or proceeding by a memorandum signed by them or by their respective legal representatives.

13. The Chairman said that the effect of proposed section 39 was that there was virtually no financial jurisdictional limit in the DC. Subject to the agreement of the litigating parties and the DC, cases exceeding the financial limits of DC could be heard and determined in the DC. She pointed out that the purpose of the Bill was to raise the various financial limits of the civil jurisdiction of the DC and not to give the DC unlimited jurisdiction. Having regard to the fact that cases within the DC jurisdiction were required to be transferred from the HC to the DC, she considered it unreasonable that reciprocal arrangement was not made for cases exceeding the financial limits of the DC. She queried the basis for making such a proposal and why such a fundamental change to the existing arrangements was not mentioned in the LegCo Brief. She suggested and members agreed that the legal profession should be consulted on this new reform.

Clerk

14. AJA said that the proposal was based on the recommendation of the Kempster Working Party. Mrs Miriam LAU asked and the Administration undertook to provide an extract of the Kempster Report relating to proposed section 39 for members' reference.

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Transfer of cases

15. Mr Albert HO said that under the existing arrangement in the Small Claims

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Tribunal (SCT), some cases were transferred to the CFI because of their complexity or the legal principles involved. He asked whether the Bill had provided a mechanism for such cases to be transferred to the DC instead.

16. AJA said that the SCT Ordinance had recently been amended to the effect that cases of the SCT could be transferred to the DC or the CFI as appropriate. He said that such cases represented less than 1% of the total SCT caseload. He would revert to members to confirm the above understanding.

Adm

17. The Chairman said that the principles for transfer of cases between courts should be consistent. She requested and the Administration undertook to explain in detail the existing and proposed procedures for transfer of cases between the SCT, the DC and the CFI.

Caseload projection

18. Referring to the Hong Kong Judiciary Annual Report 1999, the Chairman said that of the civil cases handled by the CFI, the number of HC actions in 1998 and for the first nine months of 1999 were 22 483 and 15 647 respectively (a relevant extract of the Report was tabled and issued to members vide LC Paper No. CB(2) 1005/99-00(01) on 2 February 2000). However, according to the Annex to the Administration's paper presented to the Bills Committee on 21 January 2000 (LC Paper No.CB(2) 930/99-00(04)), the existing caseload of the CFI was quoted as 35 000 in 1999. She questioned the accuracy of the figure of 35 000.

19. AJA explained that the projected caseload of 35 000 in the CFI in 1999 was made having regard to the actual number of cases filed in the first nine months in 1999 as reflected in the Annual Report referred to by the Chairman. The projected figure covered three main types of civil cases handled by the CFI in 1998 and 1999, namely HC actions, miscellaneous proceedings and personal injuries cases. These cases totalled 30 909 in 1998 and 22 802 in the first nine months of 1999. DJA supplemented that the projected figure of 35 000 referred to cases that could be considered for transfer to the DC and cases which the CFI had exclusive jurisdiction such as those relating to admiralty, construction and judicial review, etc. It however excluded interlocutory hearings which were projected to be 38 000 in 1999. She said that the manpower plan for the HC and the DC was based on the total projected caseload.

20. The Chairman said that since 50% of the HC cases might be diverted to the DC as a result of the new DC jurisdictional limits, the manpower resources in the CFI should be reduced correspondingly.

21. DJA responded that as explained at the last meeting, the existing manpower in the CFI was insufficient and as a result, the waiting time of civil cases to be heard by the CFI was 224 days in 1999, as compared with 154 days in 1996 and 194 days in

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1997. In addition, other types of cases that might be diverted from the CFI to the DC such as taxation cases and trials listed would be less than 50%. Under the circumstances, even if the caseload of the CFI would be reduced by 50%, the manpower in the CFI could not be reduced by 50%.

22. The Chairman asked how the projection of cases to be diverted from the CFI to the DC was arrived at. DJA explained that the projection was based on reasonable assumptions and historical data. For instance, the percentage of cases with claims under $600,000 was used to project the number of CFI cases that might be diverted to the DC. She said that the Administration would review the situation from time to time to see if adjustments should be made to the projection. At the request of the Chairman, DJA undertook to provide a breakdown of the 35 000 cases of the CFI in 1999 and the 17 000 cases that might be diverted to the DC.

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Contentious probate proceedings

23. Mr Albert HO asked whether the Administration would consider adding a provision in the Bill to allow straight-forward probate applications or cases involving an amount of less than $600,000 to be transferred from the HC to the DC.

24. DJA and AJA responded that the Probate Registry of the HC was responsible for processing all applications for grants of representation to the estates of deceased persons and for issuing probate grants. The majority of the probate applications was straight-forward and was handled by the Probate Registry. It would therefore not make any meaningful difference in terms of costs to the applicants whether the probate applications were dealt with in the CFI or in the DC. From the court experience, the number of probate actions, i.e. litigation arising out of applications for grant of probate, was less than 10 a year. Given that they were usually complex by nature, they warranted the attention of a judge of the CFI with expertise in probate matters. In addition, it was not uncommon for probate actions to involve inspection of or reference to original wills and probate documents already filed with the Probate Registry for probate applications. It was therefore desirable from both the perspectives of the efficient utilization of resources and convenience to litigants that probate applications should be centralized and dealt with in the HC.

25. Mr Albert HO said that probate applications were not centralized under the existing practice in that non-contentious and contentious cases were dealt with by the Probate Registry and the CFI respectively. He said that probate actions in the CFI did pose a financial burden on the plaintiff, in particular when the probate action merely involved a small amount of money or a judgement on the legitimate status of the deceased person's relative.

26. The Chairman expressed concern on the principle for transferring cases between courts. She pointed out that it had been the usual practice for complex cases and cases involving a large amount of money to be dealt with in the HC and not the DC.

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For probate proceedings, all cases were dealt with in the HC irrespective of the complexity and the monetary limits.

27. DJA responded that the HC had exclusive jurisdiction on certain laws, among which were probate actions, commercial, admiralty laws, etc. She said that this Bill did not seek to change that principle. AJA supplemented that the Kempster Working Party had not conducted a review on the exclusive jurisdiction of the HC.

28. Mr Albert HO said that unlike commercial and admiralty cases, probate actions did not usually involve a large amount of money. Given that probate applications were of a domestic nature, the procedure should be user friendly. He pointed out that the probate proceedings of the Probate Registry were in fact much more complicated than those of the UK.

29. The Chairman did not accept the Administration's reply in paragraph 27 above. She pointed out that some of the changes proposed in the Bill were not recommended by the Kempster Working Party. Mrs Miriam LAU suggested that the Administration should consider members' view that probate actions which were not complex by nature and within the jurisdiction of the DC should be dealt with in the DC.

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Standard discovery of document

30. Members noted that discovery of relevant documents included three main categories –

(a) documents on which a party relied;

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

(c) all relevant documents which might lead to a train of enquiries in respect of documents in (a) and (b) above.

31. DJA said that under the new DC rules, discovery was proposed to be restricted to standard discovery of documents, i.e. the first two categories in paragraph 30 (a) and (b). However, it did not prevent discovery from being extended to the third category of discovery (paragraph 30(c) refers) if good justifications were shown. She said that the purpose of the proposal was to reduce litigation costs.

32. The Chairman expressed concern that the proposed rule on discovery was different from that of the HC where parties had the obligation to make available all relevant documents. Since the new rule was wholly untested, she expressed concern over the experience of DC judges in handling these cases. She pointed out that paragraph 7 of the Administration's paper mentioned that the court might order a

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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. Pointing out that the scope of documents "relating to any matter in question" could be very wide, the Chairman read out the following from the Supreme Court Practice (an extract of which was tabled at the meeting and issued vide LC Paper No. CB(2) 1005/99-00(02) on 2 February 2000):

> "They are not limited to documents which would be admissible in evidence nor to those which would prove or disprove any matter in question: any document which, it is reasonable to suppose, contains information which may enable the party (applying for discovery) either to advance his own case or to damage that of his adversary, if it is a document which may fairly lead him to a train of enquiry which may have either of these two consequences".

The Chairman said that she had reservations about the proposal to limit discovery in the DC to standard discovery. She further questioned at what stage should a party inform the other party that it possessed a document relating to any matter in question in the action.

33. DJA explained that according to paragraph 7 of the paper, the power of the DC in respect of ordering of disclosure of documents was the same as that in the HC. Its power was not in any way reduced as it might order a party to serve a list of documents "relating to any matter in question" in the action. The only difference was that save for the parties concerned to show good cause, discovery should be limited to standard discovery.

34. Mr Albert HO said that while the new rule presented by the Administration was clear conceptually, problems might arise during actual operation. For instance, given that each party would only disclose documents which were advantageous to him, it would not be easy for a court to judge whether or not a party had disclosed all documents that fell within the scope of standard discovery.

35. DJA assured members that the Judiciary believed that this was a good reform and that the new rule would operate smoothly. She reiterated that the purpose for limiting the power of DC to standard discovery was to reduce litigation costs.

36. Mrs Miriam LAU pointed out that discovery was to facilitate the parties and the court to have all the relevant documents before them in trying the case. Discovery itself which involved merely the production of documents was not costly. The Chairman said that the main argument over discovery was whether a document should be disclosed. The costly part was on litigation which arose from disputes over whether a document was "relating to any matter in question" and within the scope of discovery. She said that the new rule appeared to create more uncertainties and doubted whether it could achieve the purpose of reducing litigation costs. She said

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that the Bar Association considered it premature to introduce the new rule before its introduction into the HC. The Bar Association was of the position that the rules on discovery should be the same for the DC as they were in the HC. The Chairman further said that any new rules must be clear in order not to impede the proceeding of a case. She suggested that the Administration should consider adopting the existing rules of the HC in respect of discovery of documents in the DC for the time being, and introducing the proposal on standard discovery in the DC only after introduction of the relevant rules in the HC. DJA undertook to consider members' views.

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Interim payment of costs forthwith without taxation

37. DJA said that under the existing rules of the HC, the court was vested with the power to order the payment of costs forthwith. This power would not normally be invoked except to discourage frivolous interlocutory applications. Under the new procedure, interim payment of costs forthwith without going through taxation would be introduced in the DC, if the judge or master considered that it was justified. At the conclusion of the proceedings a final taxation would be carried out. The party had to pay the difference if the amount after taxation exceeded the interim payment. In fact the HC Rules Committee had consulted the Civil Court Users Committee on the new procedure in 1999 and had come to the view that the existing HC rules should be amended to that effect in the near future. In response to members, DJA said that the HC was at the stage of drafting new rules on interim payment of costs forthwith without taxation. She clarified that the Civil Court Users Committee not only supported the principle of the proposal and would also study the proposed amendments.

38. The Chairman held the view that the new procedure could put unnecessary pressure on and cause severe hardship to the parties, particularly those without financial resources, even before they reached trial. Mr Albert HO said that he had reservations about the proposal. He said that high litigation costs had already deterred the poor from challenging the rich in certain court cases. The proposal would aggravate the unfairness of the system.

39. DJA explained that the power of the court to order interim payment was not new. The only difference was that in future interim payment of costs would be made without taxation. Mrs Miriam LAU responded that a simplified system would only make it easier for the rich to oppress those who were less financially well off.

40. The Chairman questioned why the new procedure should be implemented in the DC in advance of the HC. She expressed concern over the introduction of a series of reforms in the DC within a short time and the experience of DC judges to cope with these changes. She suggested that the new procedure should first be tried out in the HC prior to its introduction in the DC. DJA undertook to reconsider the proposal having regard to members' views.

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Return date for personal injuries cases

41. DJA said that the Administration supported the Law Society's proposal that once a writ had been issued in the DC for personal injuries cases, procedures should be in place to provide a return date from the date of the issue of the writ with automatic directions for discovery.

Automatic directions for discovery

42. DJA said that the Administration supported the Law Society's proposal that automatic directions for discovery should be included in the note that was sent out with the writ. The Administration was now reviewing all the forms used in the DC with a view to implementing the Law Society's suggestion.

Provisional taxation by Chief Judicial Clerk

43. The Chairman said that the Bar Association held the view that provisional taxation to be implemented in the DC should be conducted by the DC masters rather than the Chief Judicial Clerk (CJC) who were not legally qualified in carry out any form of taxation.

44. AJA explained that CJC were experienced judicial clerk and, in dealing with draft bills not exceeding $100,000 under the provisional taxation procedure, they were guided by the relevant court rules and were under the supervision of the Registrar of the court.

45. Mrs Miriam LAU said that the arrangement was acceptable, given that parties objected to the decision of the CJC could request for an appointment before a master for formal taxation of the bill.

III. Clause by clause examination of the Bill

Clauses 20 - 22 (sections 32 - 41)

46. Mr Albert HO opined that the jurisdiction of the DC in respect of counterclaims should be included in proposed section 32 (clause 20 of the Bill). The Chairman said that proposed sections 32 to 41 were related to the jurisdiction of the DC. The point made by Mr HO about the layout of the Bill should be dealt with at a later stage.

47. Mr Albert HO asked whether the jurisdictional limits of claims and counterclaims were the same under the Bill. ALA replied in the affirmative and advised that according to proposed section 40, references to an action or proceeding in sections 32, 37 and 39 were to be construed as including references to a counterclaim.

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48. Mr Albert HO said that under the existing practice, a judge of the DC had the power to decide whether or not to retain a counterclaim exceeding the jurisdiction of the DC in the DC. Under the new proposal, the counterclaim could be retained in the DC subject to the agreement of the parties. The Chairman asked and the Administration undertook to clarify the existing and proposed arrangements for handling counterclaims which were outside the jurisdiction of the DC.

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IV. Date of next meeting

49. The next meeting would be held on 15 February 2000 at 2:30 pm.

50. The meeting ended at 10:30 pm.

Legislative Council Secretariat
17 April 2000