



**REVIEW OF THE CIVIL JURISDICTIONAL LIMITS OF
THE DISTRICT COURT AND THE SMALL CLAIMS TRIBUNAL**

SUBMISSIONS

Introduction

1. In August 2015, the Judiciary issued a Consultation Paper on the Review of the Civil Jurisdictional Limits of the District Court and the Small Claims Tribunal (“the Consultation Paper”).
2. In summary, the Judiciary proposes the following increases in jurisdictional limits for the District Court ("DC") and the Small Claims Tribunal ("SCT"):
 - (a) general financial limit of the civil jurisdiction of the DC: from \$1 million to \$3 million;
 - (b) financial limit for DC cases on recovery of and title to land: from \$240,000 to \$320,000;
 - (c) limit for the equity jurisdiction in the DC where land is not involved: from \$1 million to \$3 million;
 - (d) limit for the equity jurisdiction in the DC involving land: from \$3 million to \$7 million; and
 - (e) limit for SCT: from \$50,000 to \$75,000.
3. Our comments on the above proposals are set out below.

General Comments

4. The Law Society notes that the last review of the civil jurisdictional limits of the DC took place in 2003. That is more than 12 years ago. We welcome this consultation which is long overdue.
5. In principle, we agree with the proposed increase in the general financial limit of the civil jurisdiction of the DC. We also consider the magnitude of the increase i.e. from HK\$1 million to HK\$ 3 million, to be reasonable and apposite.
6. In the Consultation Paper, the Judiciary points out that:

“... for the CFI alone, the number of civil cases filed was on the rise from 15,900 in 2011 to 19,300 in 2014, with an aggregate increase of about 21%. At the same time, there was a drop of about 8% in the total number of civil cases filed in the DC from 22,400 to 2011 in 20,600 in 2014” (§ 7 of the Consultation Paper).
7. We consider an appropriate increase in the jurisdictional limits of the DC should divert a number of cases from the HC to the DC. That should among other things alleviate the caseload of the HC. With rights of audience accorded to solicitors in the DC, there should be enhanced access to justice.
8. There are however caveats to the above. We invite the Judiciary to carefully consider the following salient issues:
 - (a) resources implications for the Judiciary with the proposed increases;
 - (b) the “2/3 cap rule” on costs;
 - (c) review of Solicitors' Hourly Rates; and
 - (d) taxation practices.

Resources Implications to the Judiciary

9. With the proposed increase in the jurisdictional limits of the DC, inevitably there will be consequential increases in the (i) caseload and (ii) workload of the DC.
10. The impact on the *caseload* of the DC has been projected in the Consultation Paper – the Judiciary anticipates that, with the proposed increases, the number of civil cases filed may increase by about 6% (§ 16B(i) of the Consultation Paper). The Judiciary suggests this projected 6% embraces the following:

- (a) for personal injuries claims, the increase could be 22%;
- (b) for mortgage claims, the increase could be 46%.
11. While it is difficult to be quantitatively exact about the likely impact of the proposed increases, the Law Society considers the Judiciary's projection of a 6% change is conservative and on the low side. The Law Society understands from members who act for plaintiffs in personal injuries claims that with the proposed increase in civil jurisdictional limits in the DC, about 50% - 60% of personal injuries claims stand to be transferred from the HC to the DC. There is even a suggestion the transfer could be as much as 95%.
12. Layered on the problem of caseload is a likely increase in the complexity of cases given to DC judges. With the proposed increase in jurisdictional limits of the DC, the DC judges will handle more complex cases. This necessarily increases the *workload* of the DC judges. The Consultation Paper is silent on this.
13. Even before the current proposed increase in jurisdictional limits, the DC has already been handling complex cases. This is openly acknowledged in a Legislative Council paper¹:
- “26. For the DC, there was a relatively stable trend for both the average numbers of days fixed and the actual days spent on trials, though both showed a gradual upward trend during the Post-CJR Periods. This suggests a growing complexity in the cases, which may partly be due to the increasing number of LIPs....”*
14. The inadequacy of manpower in the DC to cope with consequential increases in caseload and workload causes concern. We note recruitment in the DC remains difficult. According to various papers filed with the Panel on Administration of Justice and Legal Service of the Legislative Council,
- (a) as of 1 May 2015, none of the vacancies in the District Court Masters' Office is filled²;
- (b) in 2014-2015, out of seven available posts, only one District Judge post was appointed³;
- (c) recruitment efforts in recent years have focused on the Lands Tribunal, the Competition Tribunal and the Court of First Instance⁴, as well as the

¹ Para 26 of Annex A to LC Paper No. CB(4)964/14-15(05)

² Enclosure 1 to LC Paper No. CB(4)964/14-15(03)

³ Para 28, LC Paper No. CB(4)26/15-1(03)

⁴ Para 21 and 23, *ibid*

- Magistracy⁵, but not the DC;
- (d) assistance under the Scheme on Judicial Assistants is not available to the DC⁶.
15. In addition, there is the “cross-posting” policy with the DC Masters, whereby personnel are deployed between HC Masters’ Office and the DC. Under this policy, the Judiciary has since 2000 stopped recruiting Deputy Registrars. Instead, District Judges are subject to cross-posting as Deputy Registrars to perform the duties of the HC Masters’ Office⁷. While such cross-posting enables District Judges to acquire civil court experience in the Masters’ Office, it effectively puts on hold timely and appropriate recruitments for the DC. A review of this policy, in light of the proposal in the Consultation Paper, is called for.
16. In summary, the DC must have the necessary manpower and support to cope with the proposed increases in jurisdictional limits.

Abolition of the “2/3 Cap Rule” on Costs

17. Order 62 Rule 32(1A) of the Rules of the District Court, Cap. 336H, provides that
- “(1A) The Court shall not, on taxation, allow as costs under items 5 and 6 of Schedule 1 to this Order an amount which exceeds two thirds of the amount which it would have allowed in respect of such items had the taxation been carried out by it in accordance with the scale applicable to a taxation of costs in the High Court.”*
18. Under the above rule, rates allowed in a party and party taxation in the DC are capped at 2/3 the rates allowed in the HC. This “2/3 cap rule” was retained at the time of consideration of the implementation of CJR in 2006⁸.
19. The Judiciary Administration in May 2003 said the following on this 2/3 cap rule⁹:
- “6. The Law Society has raised for discussion the possibility of introducing a sliding scale for legal costs in the District Court given the increase in the jurisdictional limits to dovetail with the fees awarded in the High Court. It has suggested that in cases involving*

⁵ Para 26 and 27, *ibid*

⁶ Para 30, *ibid*

⁷ See footnote 1 on page 4, *ibid*

⁸ See para 3.5 of the “Consultation Paper on Proposed Legislative Amendments for the Implementation of the Civil Justice Reform”

⁹ LC Paper No. CB(2)2140/02-03(01)

claims of a monetary value, a higher charge-out rate could be claimed / permitted. In claims for damages, where the amount awarded may ultimately be low (but still involve a significant amount of work) or where the amount of the claim is more difficult to calculate, the judge could certify at trial which band the costs should fall in.

7. The Judiciary has considered the Law Society's suggestion regarding solicitor's cost and taken the view that there is no need for the introduction of a sliding scale of costs at this point in time. The reasons are as follows:-

(a) An important consideration for costs at the District Court level is proportionality. This consideration is reflected in Order 62, Rule 32(1A) of the Rules of the District Court (Cap. 336H) (which has been taken from its predecessor Rule 11 of the District Court Civil Procedure (Costs) Rules). Under this rule, the costs allowed on taxation for a case tried in the District Court should not exceed two thirds of the amount which would have been allowed on taxation had such a case been tried in the High Court. The established scales of costs reflect the principle that the costs in cases falling within the District Court jurisdiction should be kept proportional to the amount at stake. This consideration should continue to apply with the increase in the civil jurisdictional limits of the District Court to HK\$1 million.

(b) One of the objectives of the proposed increase in the civil jurisdictional limits of the District Court to HK\$1 million is to further enhance access to justice for the benefit of the litigants by bringing litigation costs within the means of a greater section of the public. As borne out by statistics available, litigation costs in the District Court under the established scale of costs are about one-third lower than those in the High Court. To be consistent with the objective of enhancing access to justice, the established scales of costs pursuant to Order 62, Rule 32(1A) of the Rules of the District Court should continue to be applied across the board upon the increase of the civil jurisdictional limits of the District Court to \$1million.

(c) Based on the experience of our Judges and Masters, it is anticipated that the civil cases which are now tried in the High Court but will in future be heard in the District Court upon the

implementation of the new jurisdictional limits should generally not be very complicated as to warrant a review of the well-established scales of costs under the existing Rules of the District Court.”

The above views were given on the last occasion when the civil jurisdictional limit of the DC was raised from HK\$600,000 to HK\$1 million.

20. We have the following observations:

(a) Complexity of the Cases

Traditionally, the DC handled simpler and easier cases. On this basis, rates allowed in the DC could legitimately be capped at a percentage of rates allowed in the HC, which handled comparatively more complex cases. This was understood, justified and accepted in the past.

However, as acknowledged by the Judiciary Administration, the DC is now given more complex cases (see extracts in para 13 above). The present position is very different from that 12 years ago.

Furthermore, the Rules of the District Court are now essentially the same as the Rules of the High Court. With a few exceptions in specialist practice areas (e.g. Employees Compensation cases under the Employees Compensation Ordinance, Cap. 282, or matrimonial practices in the Family Court), the practices and procedures in the DC are the same as those in the HC. When the work procedures in the DC are the same as those in the HC, it is hard to see why there are two sets of costs scales.

(b) Proportionality

With the proposed increase in the jurisdictional limits of the DC, naturally there is a proportional increase in the value of claims.

(c) Litigation Costs

In terms of dollars and cents, litigation costs in the DC are lower, but that is precisely because of the 2/3 cap rule in that the discrepancy between recoverable costs on taxation and actual costs means practitioners are obliged to reduce actual costs to below what they would charge for HC cases. As explained in the preceding paragraphs, the cases the DC nowadays handles may be just as complex as HC cases. The cap does not therefore reflect in some cases the value of the effort required.

(d) Access to justice

In any event, litigation costs should not be the only yardstick for measuring access to justice. The quality of and the availability of legal services are also relevant.

21. We submit there should be serious consideration as to whether it is fair and justified to retain the 2/3 cap rule. We note the Judiciary is setting up a Working Party to study the matter. The Law Society is pleased to nominate representatives to join such Working Party.

Review of Solicitors' Hourly Rates

22. In 2013, the Law Society submitted a comprehensive report on Solicitors' Hourly Rates to the Judiciary, which sought to address the gap in recoverability on a party and party taxation and actual costs incurred.
23. The Judiciary then instigated a review of the subject of Solicitors' Hourly Rates. A consultant has been appointed by the Judiciary and the views of stakeholders sought. As at the date of this submission, the review has not been concluded.
24. We envisage that with the implementation of the proposal, more cases will be heard in the DC. However, the recovery of profit costs in the DC remains unsatisfactory. According to the statistics on taxation provided by the Judiciary Administration¹⁰,
 - (a) in the five years after the implementation of Civil Justice Reform, only about 30% of cases in the DC recovered 80% or more of the costs claimed;
 - (b) in the same period, about 40% - 50% of the cases in the DC recovered > 60% - 80% of the costs claimed.

These statistics derive only from those cases which proceeded to taxation in the periods quoted. A large number of claims for costs in the DC are settled by consent in lieu of taxation, because of the waiting time, the risk of litigation, psychological and other non-legal factors. Anecdotally the recoverability of costs in such settlements leave the winning party substantially out of pocket.

¹⁰ See Table 15.2 of Annex A of LC Paper No. CB(4)964/14-15(05) (p.29)

25. There exists therefore a non-recoverability gap for costs, which the winning parties in the DC have to pay out of their own pockets.
26. It would be of great assistance if the Judiciary's review of Solicitors' Hourly Rates could reach an early conclusion so that such conclusions can be taken into account in the context of an increase in jurisdictional limits.

Taxation Practices

27. Related to the on-going review of Solicitors' Hourly Rates is concern about the taxation practices of the DC. We have heard of cases where taxing masters in the DC have taxed down and taxed off items, notwithstanding agreement reached between the parties prior to the taxation hearings. We have also heard of cases where the practice of one taxing master differs significantly from that of another, in terms of procedures adopted and quantum of claims allowed, even though they were presented with almost the same issues for adjudication and taxation.
28. We consider the above practices to be undesirable, not to only the parties involved, but also to the profession and the public in general. The above creates confusion and instills a sense of arbitrariness in taxation proceedings in the DC.
29. When there are more cases to be heard by the DC consequential upon an increase in jurisdictional limits, perhaps the DC could try and adopt more uniform and predictable taxation practices.
30. The Law Society has set up a Working Party to review taxation generally in civil proceedings. This Working Party will be in contact with the Judiciary shortly to discuss this whole area in the hope of making significant improvements.

Proposals

31. With the above caveats, we now address the specific proposals set out in the Consultation Paper.
32. General financial limit of the civil jurisdiction of the DC: from \$1 million to \$3 million

We agree in principle to the proposed increase of the general financial limit of civil jurisdiction of the DC from \$1 million to \$3 million (§ 16 of the Consultation Paper), but subject to the caveats set out above.

33. Financial limit for DC cases on recovery of and title to land: from \$240,000 to \$320,000

We note the proposed new limit of \$320,000 would cover domestic properties with a capital value of \$11 million and represents 95 percent of the related valuation lists (§ 21(a), *ibid*). We agree to the proposal with the same caveats above.

34. Limit for the equity jurisdiction in the DC where land is not involved: from \$1 million to \$ 3 million

We note the proposed increase is based on changes in the domestic property price index (§ 21(b), *ibid*). We agree to the proposal with the same caveats above.

35. Limit for the equity jurisdiction in the DC involving land: from \$3 million to \$7 million

We note the proposed increase is in line with the proposed increase in the general jurisdictional limit (§ 21(c), *ibid*). We agree to the proposal with the same caveats above.

36. Limit for the SCT: from \$50,000 to \$75,000

We note the impact on the volume of SCT cases filed is likely to increase by 6% (§ 27(a) *ibid*). We agree to the proposal.

Implementation

37. We note the Judiciary in the Consultation Paper has not addressed the following issues:
- (a) when the proposals, if agreed upon, will be implemented;
 - (b) whether there are any transitional arrangements; and
 - (c) whether future reviews of jurisdictional limits can be carried out on a routine or periodical basis.

Conclusion

38. We welcome this consultation on the review of jurisdictional limits of the DC and the SCT. In principle we agree to the proposed increases, subject to the caveats

that the Judiciary should at the same time look into:

- (a) resources implications for the Judiciary given the proposed increases;
 - (b) the “2/3 cap rules” on costs;
 - (c) review of Solicitors’ Hourly Rates; and
 - (d) taxation practices.
39. The jurisdictional limits of the DC and the SCT have not been adjusted for more than a decade. The legislative process associated with any updating and revisions of the jurisdictional limits should proceed expeditiously, when the proposals are agreed.
40. The Judiciary should also consider the idea of future reviews on a regular basis.

**The Law Society of Hong Kong
9 December 2015**