

**THE HONG KONG BAR ASSOCIATION'S VIEWS**  
**ON THE CONSULTATION PAPER ON**  
**THE REVIEW OF THE CIVIL JURISDICTIONAL LIMITS**  
**OF THE DISTRICT COURT AND THE SMALL CLAIMS TRIBUNAL**

1. In August 2015, the Judiciary Administration (“the JA”) published the said Consultation Paper, and invited views on the proposed increases in the jurisdictional limits of the District Court (“DC”) and the Small Claims Tribunal (“STC”) as follows:
  - (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) Limits for SCT : from \$50,000 to \$75,000.
2. The JA states in paragraph 31 of the Consultation Paper that:

“The proposed changes will be beneficial to the community at large, enhancing access to justice and reducing the disproportionality between the amount of a claim and the related costs. The proposals will also facilitate

more rational uses of judicial resources.”

3. The HKBA notes that implementation of the proposed changes may result in a reduction of work for members of the Bar, in particular junior members, because:
  - (a) No legal representation is allowed in the SCT; and
  - (b) Solicitors enjoy the same right of audience as counsel in the DC.
4. Having said that, the overall benefits and objectives of the proposed changes are concerned with public interest, in particular, the public’s access to justice. From this perspective, the HKBA supports the proposed changes in principle.
5. However, the HKBA is concerned with the expected aggregate impact of the proposed changes on the DC and the SCT.
6. Insofar as the DC is concerned, as stated in paragraph 29 of the Consultation Paper:
  - (a) The number of civil cases filed may increase from about 20,700 a year by about 3% to the level of about 21,400. The increase in percentage terms is expected to be more significant for mortgage and PI cases;
  - (b) The number of paper applications processed may increase from about

26,400 a year by about 8% to the level of about 28,500. The proportion of increase is expected to be more significant for mortgage and PI cases;

- (c) The number of interlocutory hearings listed may increase from about 14,300 a year by about 22% to the level of about 17,500. The proportion of increase is expected to be more significant for mortgage and PI cases; and
- (d) The number of trials listed may increase from about 430 a year by about 26% to the level of about 540. The magnitude of increase would also be most significant for PI cases.

7. Insofar as the SCT is concerned, as stated in paragraph 27 of the Consultation Paper:

- (a) The number of cases filed in the SCT is likely to increase from about 48,800 a year by about 6% to the level of about 51,500. All the increases are expected to be attributable to claims filed by one party against another party, as against cases filed by the same claimant against multiple parties for similar causes at the same time; and
- (b) The number of trial listed is projected to increase from about 1,170 a year by about 15% to the level of about 1,350.

8. The HKBA is unable to verify independently whether, and to what extent, the projections of the Judiciary are reliable. Nevertheless, it shall proceed on the assumption that they are reliable. On such assumption, there is no doubt that, if the proposed changes are implemented:
- (a) The workload of both the DC and the SCT will increase significantly. This would imply that, if the available resources remain unchanged, it will most probably, if not certainly, take longer for a case to be resolved.
  - (b) Parties involved in claims involving a sum between \$50,000 and \$70,000 will no longer be entitled to legal representation. As the JA notes in paragraph 28 of the Consultation Paper, the cases to be diverted from the DC to the SCT may be slightly more complicated than SCT's present cases.
9. Making the justice system more accessible at lower costs is crucial but insufficient unless a claim can be resolved in a timely manner by a reasonably competent Judge or Judicial Officer ("JJOs"). Hence, whether the intended objectives can be achieved will depend on:
- (a) Whether sufficient resources (in terms of both court facilities and manpower (including both JJOs and supporting staff)) can be allocated to deal with the increased workload; and
  - (b) Whether the JJOs of the DC and SCT are reasonably competent to

deal with possibly more complicated cases involving a higher amount at stake.

10. The HKBA notes that the JA states in paragraph 17 of the Consultation Paper that the Judiciary is confident that the DC is capable of handling the proposed changes *with resources commensurate with the workload* (emphasis added); and also in paragraph 20 of the Consultation Paper that it believes that the workload impact should be manageable *with resources commensurate with the adjustments* (emphasis added). It is important that there must be additional resources to ensure that, at the very least, the time taken to resolve a case in the DC and the SCT will not increase materially.

Additional resources shall include:

- (a) Recruitment of more JJOs for both the DC and the SCT;
- (b) Recruitment of more supporting staff to serve and assist the additional JJOs to be recruited; and
- (c) Expansion and increase of court facilities (such as more court rooms) without which recruitment of more JJOs would be impracticable, if not meaningless.

11. The HKBA notes that the SCT will have exclusive jurisdiction over claims involving higher sums and which are more complicated than present cases, but the parties will not be entitled to legal representation. It is therefore essential to allocate more resources to educate and assist the general public

to make, and defend, claims in the SCT. This would entail, for example, publication of manuals and guidelines on the practice and procedures of the STC which are intelligible to the general public, and recruitment of additional staff to answer enquiries and to assist members of the public to complete and file documents required for making, and defending, claims.

12. The HKBA has received from time to time anecdotal evidence that, on some occasions, the competence and judicial temperament of JJOs in the DC and SCT appeared to fall below the standard of what the general public may reasonably expect. The concern in this respect is likely to be heightened if the proposed changes are implemented. It is therefore essential that the existing JJOs of the DC and SCT, as well as additional ones to be recruited, shall receive appropriate training to ensure that they will be able to handle the increased workload and possibly more complicated cases involving a higher amount at stake in a competent and judicial manner.

13. The HKBA notes that the JA states in paragraph 33 of the Consultation Paper that:

“The Judiciary is making some preliminary assessment on the resource implications of the proposals on the various levels of courts separately. In putting forward its final proposals to the Government, the Judiciary would seek any necessary funding support and provision of facilities from the Government and approval from the Legislative Council required for the smooth implementation of its proposals.”

14. The HKBA is interested to see the result of such preliminary assessment; and more importantly, the concrete proposals of the Judiciary regarding additional resources to cater for the proposed changes. Until then, the HKBA is not in a position to assess whether, or how likely, the proposals, if implemented, can and will achieve their objectives. It is for this reason that, at this stage, the HKBA is only able to support the proposals in principle.
15. Nevertheless, the HKBA wishes to reassure the Judiciary that it will support fully any application by the Judiciary for funding support or provision of facilities from the Executive and approval from the Legislative Council required for the implementation of the proposed changes.

**Hong Kong Bar Association**

**Dated: 17 November 2015**