

香港特別行政區政府
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21 May 2018

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

Dear Ms Wong,

**Subcommittee on Proposed Resolutions
under the District Court Ordinance
and the Small Claims Tribunal Ordinance**

Thank you for your letter of 9 May 2018 referring the Hon James TO's letter of 8 May 2018 to us and copied to the Judiciary Administrator. Having consulted the Judiciary, our response to the issues raised in the letter is set out in the following paragraphs.

As explained at the Subcommittee meeting held on 8 May 2018, the Judiciary is not in a position to consider in the current exercise any revision to the proposed new jurisdictional limit of \$75,000 for the Small Claims Tribunal ("SCT") without going through detailed analysis and proper procedures, including conducting consultation with all stakeholders.

The current proposal for the jurisdictional rise of the District Court and the SCT has been put forward after a review conducted by the Judiciary in 2015-16. The review conducted was a comprehensive exercise based on detailed and objective analysis of a host of factors, such as the need to enhance access to justice, better distribution of cases between different levels of courts, effect on demand for and operation of court services, changes in economic indicators, etc.

In particular, when assessing the impact arising from the jurisdictional rise on the operation and services of the SCT, the Judiciary was mindful that there might be suppressed demand arising from cases which would otherwise not be filed if not for the lower litigation costs to be incurred in the SCT. Furthermore, new cases to be lodged in the SCT in the light of the jurisdictional rise would also likely involve greater claim amounts and may be of higher complexity. The lack of legal representation in the SCT may have an impact on the operations of the court for these more complex cases.

The Judiciary had conducted extensive consultation with stakeholders on the proposed jurisdictional rise based upon the proposal of raising the SCT's jurisdictional limit to \$75,000 which had received general support, including from the Hong Kong Bar Association and the Law Society of Hong Kong, and the Legislative Council ("LegCo") Panel on Administration of Justice and Legal Services.

The Judiciary had also secured additional financial and manpower resources (including obtaining approval from the LegCo Finance Committee on the creation of the necessary judicial posts), extra accommodation (such as additional court rooms), and arranged training for additional staff, etc., based on the revised jurisdictional limit of the SCT of \$75,000.

Given the above, the Judiciary finds it inappropriate to arbitrarily adjust the jurisdictional limit of the SCT at this stage of the exercise. Any changes to be made to the existing proposals should only be implemented after going through a fresh round of detailed and objective analysis on the impact on the operation of the SCT, as well as comprehensive consultation. This would take time and inevitably and undesirably delay implementation of the jurisdictional rise, and would not be in the interest of the community as a whole.

We understand that as agreed by Members at the meeting on 8 May, the Subcommittee would report back to the LegCo House Committee that it supported the proposal to revise the jurisdictional limit of the SCT to \$75,000. While noting the views of individual Members, the Judiciary has pledged to

closely monitor the statistics on the caseload of the SCT and the actual operational impact for two years upon the implementation of the new limit of \$75,000, and conduct a review thereafter to see if there is a case for further raising the jurisdictional limit of the SCT, including the scenario of setting the jurisdictional limit of the SCT at \$100,000 as requested by the Hon James TO. We would, therefore, appeal to Members to support the current proposal to increase the jurisdictional limit of the SCT from \$50,000 to \$75,000. The Government aims at seeking LegCo's endorsement of the relevant Resolutions within the 2017-2018 session so that the increase of the jurisdictional limit of the SCT (as well as that of the District Court) could be implemented as soon as possible.

Consequential amendments required to be made to the Small Claims Tribunal (Fees) Rules (Cap. 338B)

According to the Judiciary, item 1 of the Schedule to the Small Claims Tribunal (Fees) Rules (Cap. 338B) ("SCT(F)R") currently stipulates different levels of fees for filing of claims by parties in the SCT based on four tiers of claim amounts ("the four bands of fees"), with the maximum claim amount of \$50,000 being the present jurisdictional limit of the SCT. In the light of the proposed increase in the SCT's jurisdictional limit, the maximum claim amount stipulated in item 1 of the Schedule to the SCT(F)R will need to be correspondingly increased.

Apart from adjusting the maximum claim amount stipulated in item 1 of the Schedule to the SCT(F)R to align with the new jurisdictional limit of the SCT, the range of claim amount stipulated in the four bands of fees should also be adjusted proportionally so as to maintain the fee structure, in line with the practice adopted in the previous revision of the SCT's limit. The existing fee amount for each fee band would remain unchanged. The proposed amendments to be made to the SCT(F)R are as follows –

Current range of claim amount under the four bands of fees	Revised range of claim amount under the four bands of fees	Fee (\$)
for a claim that does not exceed \$3,000	for a claim that does not exceed \$5,000	20
for a claim that exceeds \$3,000 but does not exceed \$17,000	for a claim that exceeds \$5,000 but does not exceed \$25,000	40
for a claim that exceeds \$17,000 but does not exceed \$33,000	for a claim that exceeds \$25,000 but does not exceed \$50,000	70
for a claim that exceeds \$33,000 but does not exceed \$50,000	for a claim that exceeds \$50,000 but does not exceed \$75,000	120

The above amendments are technical consequential amendments arising from the implementation of the increase in the jurisdictional limit of the SCT, and are to be made by the Chief Justice under section 36 of the Small Claims Tribunal Ordinance (Cap. 338). 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 the District Court Ordinance (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 above consequential amendments, will then be tabled at LegCo for negative vetting.

Projected increase in caseload in the SCT after the jurisdictional rise

On the basis of the average annual civil caseload position of the DC and the SCT from 2013 to June 2017, it is expected that the proposed increase in the jurisdictional limit of the SCT from \$50,000 to \$75,000 will result in the following increases in its workload –

- (a) the number of cases filed in the SCT is likely to increase from about 49 600 a year by about 4% to the level of about 51 600. 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 trials listed is projected to increase from about 1 490 a year by about 15% to the level of about 1 710.

The Judiciary had taken into account the possible impact of suppressed demands and waive excess when making the above projections.

In assessing the number of additional posts required to cope with the projected increase in caseload in the SCT after the jurisdictional rise, the Judiciary had also taken into account the higher complexity of new cases to be lodged in the SCT in the light of the jurisdictional rise and the absence of legal representation in the SCT.

Current number of civil cases filed in the DC

The requested number on the specific types of civil cases filed in the DC in the past three years is as follows –

Claim Amount (HK\$)	2015	2016	2017
>50,000 - ≤ 75,000	500	572	562
>75,000 - ≤ 100,000	513	659	523

For reference, the total number of civil cases filed in the DC in 2015, 2016 and 2017 is around 20 300, 21 900 and 20 600 respectively.

Current number of civil cases filed in the SCT

The requested number of claims filed with the SCT in the past three years is as follows –

Claim Amount (HK\$)	2015	2016	2017
≤10,000	26 400	26 100	26 000
>10,000 - ≤ 20,000	5 600	5 900	7 000
>20,000 - ≤ 30,000	4 200	4 500	5 300
>30,000 - ≤ 40,000	3 100	3 200	4 000
>40,000 - < 50,000	3 500	4 100	3 900
= \$50,000	6 900	5 400	4 900
Total	49 800	49 200	51 000

For cases with claim amount of \$50,000, there is no requirement for the claimants to make known whether they had intended to make a claim above \$50,000, as the jurisdictional limit of the SCT had decided on a maximum claim amount of \$50,000 only. As such, the Judiciary does not have the information requested.

Yours sincerely,



(Ms Christine Wai)
for Director of Administration

c.c. Judiciary Administrator (Attn: Mr David LAU)
Law Draftsman (Attn: Miss Annet LAI)