

# HONG KONG DISTRICT COURT PRACTICE

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# **DISTRICT COURT ORDINANCE**

## **(CAP 336)**

### INTRODUCTION

One of the indicia of the governance of a territory is the state of the administration of justice therein. The establishment of courts of law by governmental authorities to facilitate settlement of disputes and enforcement of laws promotes and ensures the social order. The expansion of the system of courts is an indication of the development of the underlying society in many respects, including that of demography, economy, culture and social conscience. As the system of courts expands, it is common to notice accommodation being given to demands from the society for access to justice that is of quality, inexpensive and efficient. Such accommodation usually comes in the form of the introduction of relatively summary modes of trial to ensure the expedient disposal of judicial business.

The territory of Hong Kong is no exception to these propositions.

Shortly after Hong Kong obtained its Legislative Council, Ordinances were enacted to provide for the establishment of a Supreme Court and the regulation of summary proceedings before police magistrates and justices of the peace. (See Ordinance No 10 of 1844 (on Justices of the Peace); Ordinance No 12 of 1844 (on the Police Force, headed by a Chief Magistrate of Police); and Ordinance No 15 (on the Supreme Court of Judicature).)

In 1845, the Supreme Court of Hong Kong was invested with a summary jurisdiction to hear and determine in a summary way, and without the intervention of a jury, 'all disputes and differences between party and party touching any matter of debt, breach of covenant or promise, injury to the person or property, or other matter, where the debt or damages sought to be recovered shall not exceed the sum of \$100'. (See Ordinance No 9 of 1845 (on the summary jurisdiction of the Supreme Court).) The summary jurisdiction of the Supreme Court was extended and modified from time to time until 1862, when the increase in the business of the Supreme Court was such that the Legislative Council enacted an Ordinance to establish a Court of Summary Jurisdiction to hear and determine cases previously within the summary jurisdiction of the Supreme Court; and also cases of a civil nature formerly within the jurisdiction of the magistrates and the Justices of the Peace. A judge of the Court of Summary Jurisdiction had to be a barrister in England or Ireland or an advocate in Scotland of not less than 5 years' standing. (See Ordinance No 7 of 1862 (on the Court of Summary Jurisdiction).)

The Court of Summary Jurisdiction was abolished in 1873 when the system of courts in Hong Kong was overhauled by the enactment of a new Supreme Court Ordinance 1873 (12 of 1873), which provided for the establishment of a new Supreme Court; the enactment of a Code of Civil Procedure 1873 (13 of 1873), which was to govern the civil procedure before the Supreme Court; and the enactment of the Supreme Court (Summary Jurisdiction) Ordinance 1873 (14 of 1873), which was to abolish the Court of Summary Jurisdiction, and to confer upon the Supreme Court a summary jurisdiction in law and in equity. The Supreme Court thereafter exercised summary jurisdiction for the next 80 years

principally through a presiding puisne judge, though a party before the court could apply for a trial by jury.

The volume of litigation, civil and criminal, had increased to such an extent that by 1952, it was felt that the establishment of judges of the Supreme Court and magistrates could not deal with it adequately and rapidly. A court of intermediate jurisdiction, both civil and criminal, was mooted in preference to a further increase in the number of judges and magistrates. It was estimated that about 50% of the criminal prosecutions before the Supreme Court at that time would have been transferred to and tried in this court of intermediate jurisdiction were it functioning at the time, thus saving much time of both the Supreme Court and the magistrates (who had to take depositions of witnesses in committal proceedings). This court was also designed to take over the civil jurisdiction then under the summary jurisdiction of the Supreme Court. This court was to be called the District Court.

The District Court Ordinance 1953 (1 of 1953) was enacted to establish the District Court as a court of record with civil and criminal jurisdiction conferred under that Ordinance. The District Court was to be constituted of two or more judges, who were to be known as District Judges. A District Judge sitting alone was to hear and determine every proceeding in the court and all business arising therefrom. The civil jurisdiction of the District Court consisted, at first, of all the summary jurisdiction exercisable by the Supreme Court immediately before the commencement of the District Court Ordinance (namely 18 February 1953) under the Supreme Court (Summary Jurisdiction) Ordinance (Cap 5, 1950 Ed) (except jurisdiction in admiralty); all other jurisdiction (except jurisdiction in admiralty) conferred upon the Supreme Court in its summary jurisdiction under the Supreme Court (Summary Jurisdiction) Ordinance by any other enactment in force immediately before the commencement of the District Court Ordinance; and any civil jurisdiction conferred upon the District Court by any other enactment. Basically, civil proceedings tried before the District Court would involve a claim, debt or damages not exceeding \$5,000 or the recovery of the possession of tenements where the annual rent or value thereof did not exceed \$5,000. The practice and procedure of the Supreme Court in the exercise of its summary jurisdiction which was in force immediately before the commencement of the District Court Ordinance was to be the practice and procedure of the District Court, subject to the provisions of that Ordinance and of the rules of court made under that Ordinance. Provisions were made to regulate the transfer of cases between the District Court and the Supreme Court (including a reporting mechanism to the Supreme Court of cases involving a counterclaim beyond the jurisdiction of the District Court). It was envisaged that a review would be conducted of the civil jurisdiction of the District Court in the near future for the purpose of defining such jurisdiction with more precision and probably also of extending such jurisdiction. The District Court was to hear and determine, in the exercise of its criminal jurisdiction by a District Judge sitting alone, all such charges as the Attorney General might lawfully prefer following the transfer of a charge or complaint to the District Court by a magistrate in exercise of the jurisdiction and powers that the Supreme Court would have had if the accused person had been committed to that court for trial on indictment for an offence similar to that alleged in that charge or complaint. The Attorney General was empowered to enter a *nolle prosequi* after transfer. The procedure and practice for the time being in force in the Supreme Court in relation to criminal proceedings therein was, so far as the

same might be applicable, to be followed as nearly as possible in criminal proceedings in the District Court. However, with regard to penalties, the District Court was restricted to passing sentences of imprisonment not exceeding five years in respect of one offence or of consecutive terms of imprisonment with the aggregate period not exceeding five years in respect of more than one offence. District Judges were in addition vested *ex officio* with the jurisdiction and powers of permanent magistrates.

When the District Court Ordinance 1953 was before the Legislative Council, there was expressed some disquiet as to absence in the Bill of a right of the accused person to elect for trial by jury. The Attorney General addressed this issue by first suggesting that trial by jury was a means to an end; and then suggesting that juries were not infallible. The requirement in the Bill for District Judges to give a short statement of their reasons for their finding, which could subsequently be subject to scrutiny on appeal, was suggested as an adequate safeguard against miscarriages of justice. As for trial by jury in civil proceedings, which was hitherto permissible under the summary jurisdiction of the Supreme Court, the Attorney General considered that to be of little contribution to the administration of justice; and also unnecessary bearing in mind the little utilisation of that provision before the Supreme Court exercising its summary jurisdiction since 1946.

The District Court Ordinance 1953 was amended in 1956 by the District Court (Amendment) Ordinance 1956 (59 of 1956), commencing on 21 December 1956, to clarify the civil jurisdiction of the District Court in respect of actions for the recovery of possession of a tenement. It was amended in 1958 by the District Court (Amendment) Ordinance 1958 (18 of 1958), commencing on 30 May 1958, in respect of the provisions regarding the appointment of District Judges and of the registrar and other officers of the court. It was amended in 1959 by the District Court (Amendment) Ordinance 1959 (21 of 1959), commencing on 10 July 1959, to clarify the remedies the District Court could grant in civil proceedings before it; and to declare for the avoidance of doubt that the court was to administer both the rules of equity and the rules of the common law, with the rules of equity prevailing over the rules of the common law in case of any conflict or variance between the two.

In 1958, the Chief Justice appointed a District Court Committee to consider and advise on the revision of the District Court Ordinance 1953. Three interim reports were produced. The first interim report, which related to the civil jurisdiction of the District Court in the New Territories, was implemented in the New Territories (Amendment) Ordinance 1961 (13 of 1961), commencing on 8 September 1961.

The second interim report, which related to the civil jurisdiction of the court generally, was implemented in 1962 by the enactment of two Ordinances, namely the District Court (Amendment) Ordinance 1962 (21 of 1962), commencing on 1 July 1963; and the District Court (Civil Jurisdiction and Procedure) Ordinance 1962 (22 of 1962), commencing on 1 July 1963. The District Court (Amendment) Ordinance 1962 deleted from the District Court Ordinance 1953 those provisions relating the court's civil jurisdiction and made other amendments relating to the eligibility of solicitors to be District Judges, the appointment of temporary District Judges, the right of audience before the District Court, and the powers and procedure of the District Court in the



exercise of both its civil jurisdiction and its criminal jurisdiction. Some of the those amendments were derived from the County Courts Act 1959 [Eng]. The District Court (Civil Jurisdiction and Procedure) Ordinance 1962 had its provisions derived mainly from the County Courts Act 1959 [Eng], the District Court Ordinance 1953, and the Supreme Court (Summary Jurisdiction) Ordinance (Cap 5, 1950 Ed). Together, these provisions made detailed provision for the civil jurisdiction and procedure of the District Court, without any change in substance of the civil jurisdiction. Rules of court were prepared to accompany the District Court (Civil Jurisdiction and Procedure) Ordinance 1962 and they included the District Court Civil Procedure (General) Rules, the District Court Civil Procedure (Costs) Rules, and the District Court Civil Procedure (Fees) Rules.

The third interim report, which related to the criminal jurisdiction of the District Court, was not implemented, presumably because of the failure to agree on the requisite amendments.

The District Court (Amendment) (No 2) Ordinance 1962 (31 of 1962), commencing on 14 September 1962, added one section to the District Court Ordinance 1953 to provide for appeals by way of case stated at the suit of the Attorney General on matters of law and for procedural matters associated therewith. The District Court (Amendment) Ordinance 1963 (20 of 1963), commencing on 21 June 1963, was enacted to remove certain doubts raised by the case of *Wong Hau Yuen & Ors v Tai Fong Tea House Ltd* [1963] HKDCLR 60 (reversed on appeal [1963] HKLR 197 (Full Ct)) as to the jurisdiction of the District Court conferred by enactments other than the District Court Ordinance 1953. The Variation of Trusts Ordinance 1964 (34 of 1964), commencing on 4 December 1964, amended the District Court (Civil Jurisdiction and Procedure) Ordinance 1962 to confer jurisdiction on the District Court to vary trusts. The Limitation Ordinance 1965 (31 of 1965), commencing on 11 June 1965, repealed the provision in the District Court (Civil Jurisdiction and Procedure) Ordinance 1962 relating to limitation of actions. The District Court (Amendment) Ordinance 1965 (38 of 1965), commencing on 27 August 1965, amended the District Court Ordinance 1953 in respect of its provisions regarding the appointment of District Judges and the officers of the District Court. The District Court (Civil Jurisdiction and Procedure) (Amendment) Ordinance 1966 (35 of 1966), commencing 12 January 1967, increased the monetary limits of the civil jurisdiction of the District Court to \$10,000 in general or \$5,000 in terms of rateable value where land was involved. The Evidence (Amendment) Ordinance 1967 (46 of 1967), commencing on 4 August 1967, repealed the provision in the District Court Ordinance 1953 empowering a District Judge to order the bringing up of prisoners to be examined as a witness in proceedings before the court.

The Law Reform (Interest on Claims and Judgments) Ordinance 1970 (6 of 1970), commencing on 9 January 1970, added one section to the District Court (Civil Jurisdiction and Procedure) Ordinance 1962 to empower the District Court to award interest and to provide for judgment debts to carry interest. The District Court (Amendment) Ordinance 1970 (11 of 1970), commencing on 30 January 1970, added new provisions to the District Court Ordinance 1953 to provide for the jurisdiction in part heard cases of magistrates appointed to be District Judges and of District Judges appointed to be judges of the Supreme Court; and for District Judges to be *ex officio* justices of the peace. The

Magistrates (Amendment) Ordinance 1970 (16 of 1970), commencing on 30 January 1970, amended the District Court Ordinance 1953 in respect of the mechanism therein for the transfer of criminal cases from a magistrate to the court. The Law Reform (Miscellaneous Amendments) Ordinance 1970 (100 of 1970), commencing on 18 December 1970, added new provisions to the District Court (Civil Jurisdiction and Procedure) Ordinance 1962 to empower the District Court to order pre-action discovery and inspection and to order interim payments. The District Court (Civil Jurisdiction and Procedure) (Amendment) Ordinance 1970 (103 of 1970), commencing on 1 February 1970, amended the District Court (Civil Jurisdiction and Procedure) Ordinance 1962 to take into account the enactment of the Rules of the Supreme Court, to make changes to the provision for forfeiture for non-payment of rent, and to empower the Chief Justice to make rules for the Suitors Fund.

The Criminal Procedure (Amendment) Ordinance 1971 (5 of 1971), commencing on 26 February 1971, amended the District Court Ordinance 1953 to apply the provisions of the Criminal Procedure Ordinance (Cap 221) concerning aiders and abettors to proceedings before the District Court and to effect some minor amendments. The Criminal Procedure (Amendment) (No 4) Ordinance 1971 (63 of 1971), commencing on 1 February 1971, amended the District Court Ordinance 1953 to delete the provision therein for the modification and alteration of references to sessions of the Supreme Court in the Criminal Procedure Ordinance for the purpose of application to criminal proceedings before the District Court. The Law Reform (Unclaimed Moneys) Ordinance 1971 (71 of 1971), commencing on 17 December 1971, amended the District Court Ordinance 1953 to add a section to enable the transfer of unclaimed moneys in the District Court to the general revenue of the Government. The Labour Tribunal Ordinance 1972 (16 of 1972), commencing on 1 March 1973, amended the District Court Ordinance 1953 to extend the criminal jurisdiction of the District Court to include the offences of interference of a witness and perjury before the Labour Tribunal. The Oaths and Declarations Ordinance 1972 (20 of 1972), commencing on 28 April 1972, amended the District Court Ordinance 1953 to substitute the reference to the tendering of oaths by judicial officers. The District Court (Amendment) Ordinance 1972 (25 of 1972), commencing on 1 July 1972, amended the District Court Ordinance 1953 in different aspects of its criminal jurisdiction and procedure, including the adding of a provision for the District Court to take into consideration outstanding offences. The Criminal Procedure (Amendment) (No 2) Ordinance 1972 (34 of 1972), commencing on 1 September 1973, amended the District Court Ordinance 1953 in respect of its provision for appeals from the District Court in exercise of its criminal jurisdiction.

Pursuant to the Revised Edition of the Laws Ordinance 1965 (53 of 1965), both the District Court Ordinance 1953 and the District Court (Civil Jurisdiction and Procedure) Ordinance 1962 (as at 31 December 1972) were consolidated into one District Court Ordinance (Cap 336, 1972 Ed). This consolidated District Court Ordinance formed the basis of the present District Court Ordinance (Cap 336).

The Administration of Justice (Miscellaneous Amendments) Ordinance 1973 (14 of 1973), commencing on 16 February 1973, amended the District Court (Civil Jurisdiction and Procedure) Ordinance 1962 by empowering the District Court to make charging orders, to appoint receivers and to subject credit balances in bank accounts to attachment. The District Court (Amendment)



Ordinance 1973 (43 of 1973), commencing on 22 June 1973, amended the District Court Ordinance 1953 by increasing the maximum sentence of imprisonment that could be imposed by the District Court to seven years. The District Court (Amendment) (No 2) Ordinance 1973 (68 of 1973), commencing on 1 February 1974, amended the District Court Ordinance (Cap 336) to increase the monetary limits of the civil jurisdiction of the District Court to \$20,000 in general or \$15,000 in terms of rateable value where land was involved. The District Court (Amendment) Ordinance 1974 (2 of 1974), commencing on 1 February 1974, amended the District Court Ordinance (Cap 336) to vest the power of appointment of temporary judges of the District Court in the Chief Justice instead of the Governor. The Small Claims Tribunal Ordinance 1975 (79 of 1975), commencing on 1 October 1976, amended the District Court Ordinance (Cap 336) to exclude from the District Court's jurisdiction actions or matters coming within the jurisdiction of the Small Claims Tribunal, unless the court had jurisdiction under the Small Claims Tribunal Ordinance 1975. The Supreme Court Ordinance 1975 (92 of 1975), commencing on 20 February 1976, made consequential amendments to the District Court Ordinance (Cap 336). The District Court (Amendment) Ordinance 1976 (24 of 1976), commencing on 14 May 1976, amended the District Court Ordinance (Cap 336) to substitute fresh provision relating to the signing of charge sheets and to add a new provision concerning pleas by corporations. The District Court (Amendment) (No 2) Ordinance 1976 (66 of 1976), commencing on 29 October 1976, amended the District Court Ordinance (Cap 336) to specify that periods of service as a Director, Deputy Director or Assistant Director of Legal Aid could be counted as part of the qualifying period of eligibility for appointment as a District Judge.

The Criminal Procedure (Miscellaneous Provisions) Ordinance 1981 (59 of 1981), commencing on 1 January 1982, amended the District Court Ordinance (Cap 336) in respect of its provisions for punishing contempts of court and to add one new provision for the imposition of penalties for neglect of a witness summons. The Administration of Justice (Miscellaneous Amendment) Ordinance 1981 (79 of 1981), commencing on 1 February 1982, amended the District Court Ordinance (Cap 336) to increase the monetary limits of the civil jurisdiction of the District Court to \$40,000 in general or \$30,000 in terms of rateable value where land was involved; to enable the Legislative Council to amend those monetary limits by resolution; and to change references to temporary judges of the District Court to references to deputy District Judges. The Legal Aid (Amendment) Ordinance 1983 (24 of 1983), commencing on 13 May 1983, amended the District Court Ordinance (Cap 336) to add Legal Aid Officers to be amongst those officers of the Legal Aid Department whose period of service as such could be counted as part of the qualifying period of eligibility for appointment as a District Judge. The Supreme Court (Amendment) Ordinance 1983 (49 of 1983), commencing on 12 August 1983, made a consequential amendment to the District Court Ordinance (Cap 336). The Legislative Council resolved on 7 December 1983 (LN 387 of 1983) that with effect from 1 January 1984, the monetary limits of the civil jurisdiction of the District Court were to be increased to \$60,000 in general or \$45,000 in terms of rateable value where land was involved. The Debtors (Arrest and Imprisonment) Ordinance 1984 (1 of 1984), commencing on 13 January 1984, amended the District Court Ordinance (Cap 336) to empower the District Court to make orders for arrest or imprisonment to enforce a judgment debt and to make orders to prohibit a person from leaving Hong Kong to facilitate the

enforcement of judgment debts or the pursuance of a civil claim. The saving and transitional provisions of the Debtors (Arrest and Imprisonment) Ordinance 1984 were incorporated into the District Court Ordinance (Cap 336) in the 1984 revised edition of that Ordinance.

The Administration of Justice (Miscellaneous Amendments) Ordinance 1988 (49 of 1988), commencing on 1 July 1988, amended the District Court Ordinance (Cap 336) to increase the monetary limits of the civil jurisdiction of the District Court to \$120,000 in general or \$100,000 in terms of rateable value where land was involved. The Administration of Justice (Miscellaneous Amendments) Ordinance 1990 (6 of 1990), commencing on 9 February 1990, amended the District Court Ordinance (Cap 336) to add provisions on notices of alibi. The Age of Majority (Related Provisions) Ordinance 1990 (32 of 1990), commencing on 1 October 1990, amended the District Court Ordinance (Cap 336) in relation to agreements made by infants before the date of commencement of the amending Ordinance. The Revised Edition of the Laws (Correction of Errors) (No 2) Order 1992 (LN 145 of 1992), which was dated 30 April 1992, rectified an error in the District Court Ordinance (Cap 336). The Bankruptcy (Amendment) Ordinance 1992 (39 of 1992), commencing on 1 June 1992, amended the District Court Ordinance (Cap 336) to specify that periods of service as the Official Receiver or other named offices in the Official Receiver's Office could be counted towards the qualifying period for eligibility for appointment as a District Judge. The Administration of Justice (Miscellaneous Amendments) Ordinance 1992 (59 of 1992), commencing on 1 September 1992, amended the District Court Ordinance (Cap 336) to make further provisions regarding the transfer of criminal proceedings to and from the District Court. The Intellectual Property Department (Consequential Amendments) Ordinance 1992 (60 of 1992), commencing on 10 July 1992, amended the District Court Ordinance (Cap 336) to specify that periods of service as the Director of Intellectual Property and other named offices in the Intellectual Property Department could be counted towards the qualifying period for eligibility for appointment as a District Judge. The District Court (Amendment) Ordinance 1993 (1 of 1993), commencing on 15 January 1993, amended the District Court Ordinance (Cap 336) to remove the power of a District Judge to review his judgments and orders, to extend the time limit for applications for leave to appeal in civil causes or matters, and to make better provisions for the delivery of judgments and recording of reasons in both civil and criminal proceedings. The Registrar General (Establishment) (Transfer of Functions and Repeal) Ordinance (8 of 1993), commencing on 1 March 1993, amended the District Court Ordinance (Cap 336) to preserve periods of service in specified offices under the Registrar General for the purposes of calculating the qualifying period for eligibility for appointment as a District Judge. The Revised Edition of the Laws (Correction of Errors) (No 2) Order 1994 (LN 446 of 1994), which was dated 14 July 1994, rectified an error in the District Court Ordinance (Cap 336).

The Administration of Justice (Miscellaneous Provisions) Ordinance 1995 (13 of 1995), commencing on 13 April 1995, made miscellaneous amendments to the District Court Ordinance (Cap 336). The Sex Discrimination Ordinance (67 of 1995), commencing on 20 September 1996, added provisions to the District Court Ordinance (Cap 336) for the making of rules in respect of proceedings under the Sex Discrimination Ordinance (Cap 480) in the District Court. The Administration of Justice (Miscellaneous Provisions) (No 2) Ordinance 1995 (68 of 1995), commencing on 1 September 1995, made a miscellaneous amendment

to the District Court Ordinance (Cap 336). The Disability Discrimination Ordinance (86 of 1995), commencing on 20 September 1996, added provisions to the District Court Ordinance (Cap 336) for the making of rules in respect of proceedings under the Disability Discrimination Ordinance (Cap 487) in the District Court. The Administration of Justice (Miscellaneous Provisions) (No 2) Ordinance 1997 (14 of 1997), commencing on 1 May 1997, amended the District Court Ordinance (Cap 336) with respect to the judicial qualifications for appointment as a District Judge. The Administration of Justice (Miscellaneous Provisions) (No 3) Ordinance 1997 (26 of 1997), commencing on 25 April 1997, amended the District Court Ordinance (Cap 336) to add a provision in respect of the retirement of District Judges. The Justices of the Peace Ordinance (47 of 1997), commencing on 30 May 1997, repealed the provision in the District Court Ordinance (Cap 336) providing that District Judges were to be *ex officio* justices of the peace. The Official Languages (Alteration of Text under Section 4D) (No 18) Order 1997 (LN 255 of 1997), which came into operation on 26 June 1997, made some alterations to the Chinese text of the District Court Ordinance (Cap 336). The Declaration of Change of Titles (General Adaptation) Notice 1997 (LN 362 of 1997), which came into operation on 1 July 1997, changed all references in the District Court Ordinance (Cap 336) to the Attorney General to references to the Secretary for Justice.

The Family Status Discrimination Ordinance (91 of 1997), commencing on 21 November 1997, added provisions to the District Court Ordinance (Cap 336) for the making of rules in respect of proceedings under the Family Status Discrimination Ordinance (Cap 527) in the District Court. The Revised Edition of the Laws (Rectification of Errors) Order 1998 (LN 307 of 1998), which was dated 26 August 1998, rectified an error in the District Court Ordinance (Cap 336). The Adaptation of Laws (Courts and Tribunals) Ordinance (25 of 1998), which was deemed to have commenced on 1 July 1997, amended the District Court Ordinance (Cap 336) to adapt the expressions therein in conformity with the Basic Law of the HKSAR and with the status of Hong Kong as a Special Administrative Region of the People's Republic of China. The Adaptation of Laws (Crown Land) Ordinance (29 of 1998), which was deemed to have commenced on 1 July 1997, amended the District Court Ordinance (Cap 336) to adapt the expressions therein relating to Crown land in conformity with the Basic Law of the HKSAR and with the status of Hong Kong as a Special Administrative Region of the People's Republic of China. The Holidays (Amendment) Ordinance 1998 (35 of 1998), commencing on 18 September 1998, made one consequential amendment to the District Court Ordinance (Cap 336).

Reports were submitted to the Chief Justice in 1988 and in 1989 concerning the operation of the civil jurisdiction of the District Court. The Chief Justice appointed a working party in 1991 with terms of reference to consider the District Court Ordinance (Cap 336), the District Court Civil Jurisdiction (General) Rules (Cap 336 sub leg), and the District Court Civil Jurisdiction (Costs) Rules (Cap 336 sub leg), the reports submitted to the Chief Justice and draft rules prepared by the Registry of the District Court; and to make recommendations in the form of draft amendments to the Ordinance and the Rules.

The Working Party, which was chaired by Kempster V-P, reported in 1993 with proposed amendments to both the District Court Ordinance (Cap 336) and the rules of court made thereunder. The proposed amendments had the aims of encouraging a greater flow of civil proceedings directly into the District Court

and thus relieving the High Court from pressure of work and delays; of requiring transfer to the District Court of proceedings within its jurisdiction which had been commenced in the High Court; of fixing monetary limits for civil jurisdiction that would reflect the current value of money; and of providing an appropriate jurisdictional and procedural framework, approximating to that of the Supreme Court, in which litigation involving both substantial and modest sums might be conducted and allowing, when appropriate, compliance with the rules to be dispensed with. The Working Party called for the augmentation in terms of manpower of the Registry of the District Court to cope with the additional interlocutory workload that the proposed amendments would bring. It recommended that the Registrar of the District Court and the Deputy and Assistant Registrars under him should also be legally qualified.

The Report of the Working Party (subsequently known as the Kempster Report) was left unimplemented until 1996, when a Bill was introduced into the Legislative Council for that purpose. It was then proposed to raise the monetary limits of the civil jurisdiction of the District Court to \$300,000 in general and \$500,000 in terms of rateable value where land was involved; and to add a new category of personal injuries cases with the monetary limit to be set at \$600,000. This Bill lapsed owing to lack of legislative time.

The proposals in the 1996 Bill were reconsidered by the Judiciary afterwards, particularly with reference to the monetary limits of the civil jurisdiction of the District Court. In 1999, a Bill was introduced into the Legislative Council for the purposes of raising the monetary limits of the civil jurisdiction of the District Court to enable more civil cases to be heard in the District Court and thus at lower cost to the litigants; introducing a new category of personal injuries action; defining the role, functions and powers of the Registrar of the District Court and adding a provision on the protection of the Registrar; providing for the transfer to the District Court of cases inappropriately commenced in the Court of First Instance and vice versa; and revising the part of the District Court Ordinance (Cap 336) on evidence upon the commencement of the Evidence (Amendment) Ordinance 1999 (2 of 1999). This Bill was to be part of the strengthening of the civil jurisdiction of the District Court, together with more comprehensive rules of procedure (ie a set of Rules of the District Court) mirroring the Rules of the High Court (Cap 4 sub leg) and a registry under the charge of judicial officers, implementing a Master system to consider less contentious applications expeditiously. The Bill was enacted by the Legislative Council as the District Court (Amendment) Ordinance 2000 (28 of 2000), commencing on 1 September 2000.

The HKSAR Government intends to review the operation of the District Court in its civil jurisdiction following the 2000 amendments in two years' time with a view to increase the monetary limits of the court's civil jurisdiction to \$1,000,000.

The essential provisions of the District Court Ordinance (Cap 336) are—

- A court known as the District Court is established. The District Court is a court of record. It has such civil and criminal jurisdiction and powers as are conferred upon it by the District Court Ordinance (Cap 336) and by any other enactment for the time being in force (s 3).
- The District Court consists of two or more judges, to be known as District Judges. The District Judges are appointed by the Chief Executive. A person

is eligible to be appointed a District Judge if he is qualified to practise as an advocate or as a solicitor in a court in Hong Kong or any other common law jurisdiction having unlimited jurisdiction either in civil or criminal matters; and since becoming so qualified has for a period or periods totalling not less than five years practised as an advocate or solicitor in such a court; been a permanent magistrate in Hong Kong; been a legal officer in Hong Kong; or been holding a specified office in the Legal Aid Department, the Official Receiver's Office, or the Intellectual Property Department. A District Judge is to vacate his office when he attains retiring age (ss 4, 5, 11A).

- The Chief Justice is empowered to appoint deputy District Judges, who are to have and may exercise all the jurisdiction, powers and privileges and perform all the duties of a District Judge. A deputy District Judge may resume the hearing and determine any adjourned proceedings and deliver judgment even if the period of his appointment as a deputy District Judge has expired or his appointment has been terminated by the Chief Justice (ss 7, 8).
- A judge of the District Court sitting alone is to hear and dispose of proceedings in the District Court and business arising out of the proceedings. However, the District Court may in civil proceedings call to its aid not more than two assessors specially qualified, and may dispose of those proceedings, in whole or in part, with the aid of those assessors. Furthermore, the rules of court may provide for the jurisdiction of the court exercised by the Registrar of the District Court and the Masters (ss 6, 58, 72).
- The Chief Justice is empowered, subject to rules of court, to give directions touching the distribution and disposal of the business of the District Court. A judge of the District Court is, subject to such directions and rules, to sit for the disposal of the business pending in the court at such places and times as he may think fit but any proceedings may at any time and at any stage thereof be transferred from one judge to another. The business of the District Court is to be heard and disposed of in court unless the Ordinance, the rules of court or another enactment authorise the matter to be heard and disposed of in chambers (ss 6, 12).
- The District Court is to use such seal as directed by the Chief Justice. All writs, judgments, orders, documents and copies issued by the court must be sealed with the seal (s 13).
- The Chief Executive is empowered to appoint a Registrar of the District Court, and also deputy registrars, assistant registrars, chief judicial clerks and bailiffs. The Chief Justice is empowered to appoint temporary deputy registrars and temporary assistant registrars. Provisions are made for the attachment of other officers to the District Court. The Registrar is to have and may exercise and discharge such other jurisdiction, powers and duties as may be conferred or imposed on him by or under rules of court or any other law. An act required or authorised to be done by the Registrar may be performed by a deputy registrar or assistant registrar. The deputy registrars and assistant registrars may be called Masters. Additionally, the Registrar, deputy registrars, assistant registrars and other officers of the court may exercise and discharge the like functions, powers and duties respectively insofar as the same are applicable to the business and proceedings of the

court, as those exercised and discharged by a registrar, deputy registrar, assistant registrar or other officers of the High Court. The Registrar of the High Court and every deputy registrar, temporary deputy registrar, assistant registrar, temporary assistant registrar and bailiff attached to the High Court may in the District Court exercise any power or discharge any duty conferred or imposed upon the corresponding officer of the District Court. Officers of the District Court are subject to the same liabilities and penalties and have the benefit of the same protection as their counterparts in the High Court by virtue of the High Court Ordinance (Cap 4) (ss 14, 14A, 14B).

- The District Court may be addressed, in any proceedings before it, by the following persons: any party to the proceedings, a barrister retained by or on behalf of a party, a solicitor acting generally in the proceedings for a party, and any other person allowed by the leave of the court to appear instead of a party to the proceedings. Public prosecutors appointed by the Secretary for Justice may conduct criminal prosecutions on behalf of the Secretary for Justice before the court (s 15).
- Provisions are made for the transfer of moneys that have remained unclaimed in the District Court for a period of five years to the general revenue of the Government (s 18).
- Provisions are made for the summary committal of persons for contempt with the maximum penalty being two years' imprisonment or a fine (s 20).
- Provisions are made for the enforcement of liability for fees and of fines and recognizances forfeited (ss 23, 24).
- Provisions are made to prescribe offences in respect of fraudulent misrepresentations in connection with the authority of the District Court; of rescuing goods seized in execution; and of assaulting officers of the court (ss 27, 28).
- The District Court is vested with the following civil jurisdiction: any action founded on contract, quasi-contract or tort where the amount of the plaintiff's claim does not exceed \$600,000; any action for the recovery of any penalty, expenses, contribution or other like demand which is recoverable by virtue of any enactment for the time being in force and for the recovery of any sum which is declared by any enactment to be recoverable as a civil debt if the demand was not restricted by any enactment to be recoverable only in some other court and the amount claimed in the action does not exceed \$600,000; any action for the recovery of land, where the annual rent, rateable value or annual value of the land, whichever is the least, does not exceed \$240,000; and any action in which the title to an interest in land comes into question where the annual rent, rateable value or annual value of the land, whichever is the least, does not exceed \$240,000. The court has jurisdiction to hear and determine an action that is in excess of the court's monetary jurisdiction limit on the plaintiff abandoning the amount of the plaintiff's claim in excess. The plaintiff's claim means, in this context, the amount the plaintiff claims after taking into account any set-off or debt or demand the defendant claims or may recover from the plaintiff; any employees' compensation paid to the plaintiff; and any contributory negligence, that the plaintiff admits in his statement of claim. The court also has the equity jurisdiction



of the Court of First Instance to hear and determine specified classes of proceedings, subject to maximum limits in the amount and value of the estate, fund, property or partnership assets involved, or the amount owing or damage sustained. The court also has the jurisdiction and powers of the Court of First Instance to determine questions of title and disputes over possession of property between husband and wife under the Married Persons Status Ordinance (Cap 182). Counterclaims are also subject to the same jurisdictional limits. The monetary limits of jurisdiction may be amended by resolution of the Legislative Council (ss 32, 33, 34, 35, 36, 37, 38, 39, 73A).

- Provisions are made for the transfer of proceedings in the following situations: transfer to the Court of First Instance where an action or proceeding (not being a counterclaim) commenced in the District Court is outside the jurisdiction of the court but is within the jurisdiction of the Court of First Instance; transfer to the Court of First Instance of all or part of an action or proceeding within the jurisdiction of the District Court; transfer to the District Court from the Court of First Instance of all or part of an action or proceeding (not being a counterclaim) that appears to the Court of First Instance likely to be within the jurisdiction of the District Court; and transfer to the District Court from the Court of First Instance, upon the consent of the parties, of all or part of an action or proceeding, including a counterclaim, which is outside the jurisdiction of the District Court, but would have been within its jurisdiction except for the monetary limits specified in the jurisdictional sections (ss 41, 42, 43, 44).
- No cause of action is to be split or divided so as to be made the ground of two or more different actions for the purpose of bringing two or more actions in the District Court (s 45).
- Provisions are made to empower the District Court to order pre-action discovery by a likely party to subsequent proceedings for personal injuries or arising out of the death of a person; to order discovery or inspection of property against a non-party to an action in which a claim for personal injuries or arising out of the death of a person is made; and to order inspection of property in respect of an action in which a claim for personal injuries or arising out of the death of a person is made (ss 47A, 47B, 47C, 47D).
- The District Court has the same power as the Court of First Instance in any proceedings before it to grant the relief, redress, or remedy or combination of remedies, either absolute or condition and to give effect to every ground of defence or counterclaim, equitable or legal, which ought to be granted or given; and to punish for disobedience of a judgment or order of the court, for breach of an undertaking or for breach of a duty imposed upon a solicitor by rules of court. The court has jurisdiction to grant and enforce injunctions and to make binding declarations of right. The court may award damages in addition to or in substitution for an injunction or specific performance. The court may stay any proceedings before it (ss 48(1), (5), 48A, 48B, 52).
- The District Court has to administer law and equity so that, if there is a conflict or variance between the rules of equity and the rules of the common law referring to the same matter, the rules of equity prevail (s 48(2)).

- The District Court has to exercise its jurisdiction to secure that, as far as possible, all matters in dispute between the parties are completely and finally determined, and multiplicity of legal proceedings on any of those matters is avoided (s 48(4)).
- The District Court is empowered to include simple interest on a debt or damages or on a payment made before judgment for the period between the date when the cause of action arose and the date of judgment or payment, whichever is appropriate. The court has to do so in a judgment given for damages for personal injuries or arising out of the death of a person that exceeds \$30,000. Judgment debts are to carry simple interest (ss 49, 50).
- Provisions are made to impose charging orders on a judgment debtor's property (ss 52A, 52AA, 52AB).
- Provisions are made to empower the District Court to grant an interlocutory injunction restraining a party to proceedings from removing from the jurisdiction of the court, or otherwise dealing with, assets located within the jurisdiction; to grant an injunction to prevent any threatened or apprehended waste or trespass; or to appoint a receiver by way of equitable execution in relation to all legal estates and interests in land (s 52B).
- Provisions are made to the effect that the credit balance in the account of a person with a bank is deemed to be a sum due to him capable of being attached by the District Court for the purpose of satisfying judgments or orders for the payment of money (s 52C).
- Provisions are made to empower the District Court to make orders for the arrest or imprisonment of a person to enforce a judgment debt and to make orders to prohibit a person from leaving Hong Kong to facilitate the enforcement of judgment debts or the pursuance of a civil claim (ss 52D, 52E).
- The costs of and incidental to all proceedings in the District Court are in the discretion of the court (s 53).
- The Court of First Instance is empowered to issue a commission, request or order to examine witnesses outside the jurisdiction of the District Court for the purpose of proceedings in the District Court and to order the proceedings to be transferred to the Court of First Instance where such an application is made (s 59).
- The reasons for any judgment or order of the District Court may be delivered orally or in writing. If the reasons are delivered orally, they must be reduced to writing within 21 days after the hearing or trial and the reasons so reduced to writing must be signed by the judge (s 60).
- Where a judge of the District Court is prevented by death, absence or otherwise howsoever from concluding the trial of any cause, any other judge, with the consent of the parties, may proceed therewith and may give judgment therein (s 62).
- An appeal can, with leave, be made to the Court of Appeal from any judgment, order or decision of a judge in any civil cause or matter. On appeal, the Court of Appeal may draw any inference of fact; and may order a new trial; order judgment to be entered for any part; or make a final or other order to ensure the determination on the merits of the real question

in controversy between the parties. On appeal, the Court of Appeal may reverse or vary, in favour of a party seeking to support the judgment or order of the District Court in whole or in part, any determinations made in the District Court on questions of fact, or any such determinations on points of law. On appeal, the Court of Appeal may receive further evidence. Provisions are made for applications for stay of execution (ss 63, 64, 66).

- Provisions are made for the penalties for neglect of a witness summons and refusal to give evidence; the reimbursement of witnesses of their expenses; the priority of executions by the Court of First Instance and the District Court; the effect of writs of execution against goods; the attachment and sale of property of judgment debtors in execution of judgment; relief against forfeiture by action for non-payment of rent; relief against forfeiture by re-entry for non-payment of rent; the designation of solicitors as officers of the District Court; the protection of judges of the District Court in respect of acts done by them in the execution of their duty; summary applications by the Registrar of the District Court to the court for the direction and guidance of bailiffs; and the protection of the Registrar in respect of acts or omissions of bailiffs (ss 66A, 66B, 68, 68A, 68B, 69, 69B, 70, 71, 71A, 71B).
- Provisions are made for the making of rules of court regulating and prescribing the procedure, including the method of pleading in the District Court; the practice to be followed in the District Court; the procedure and practice to be followed in the Registry of the District Court; and any matters incidental to the procedure or practice. Further, provisions are made for the making of rules of court in respect of proceedings against the estate of a deceased person, and proceedings purporting to have been commenced by or against a dead person. Furthermore, provisions are made for the making of rules of court in respect of proof of facts, the disclosure and giving of expert evidence, stop orders and notices, orders for interim payment, and orders for provisional damages for personal injuries (ss 72, 72A, 72B, 72C, 72D, 72E).
- Provisions are made for the making or rules regulating the practice of the District Court in the exercise of its jurisdiction under the Sex Discrimination Ordinance (Cap 480), the Disability Discrimination Ordinance (Cap 487) and the Family Status Discrimination Ordinance (Cap 527). Each party to any proceedings in the District Court in the exercise of its jurisdiction under these Ordinances is to bear its own costs. The court, in exercising its jurisdiction under these Ordinances, is not to be bound by the rules of evidence (ss 73B, 73C, 73D).
- The District Court has jurisdiction to hear and determine in accordance with the District Court Ordinance (Cap 336) all such charges as the Secretary for Justice may lawfully prefer. A charge or complaint before a magistrate may be transferred to the District Court. The proceedings against an indicted person may be transferred to the District Court. Upon transfer, the District Court has jurisdiction and powers over all proceedings in relation to the offence alleged in that charge or complaint similar to the jurisdiction and powers which the Court of First Instance would have had if the accused person had been committed to that court for trial on indictment. The Secretary for Justice must, upon transfer, deliver