

SMALL CLAIMS TRIBUNAL ORDINANCE 1975

ARRANGEMENT OF SECTIONS

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HONG KONG

No. 79 OF 1975



I assent.

DENYS ROBERTS,
Acting Governor.

20th November, 1975.

An Ordinance to establish a tribunal to be known as the Small Claims Tribunal having limited civil jurisdiction, and to make provision for the jurisdiction, procedure and practice thereof, and for matters connected therewith.

Ord. not disallowed - See CN 2809/75

Enacted by the Governor of Hong Kong, with the advice and consent of the Legislative Council thereof.

PART I

PRELIMINARY

1. This Ordinance may be cited as the Small Claims Tribunal Ordinance 1975 and shall come into operation on a day to be appointed by the Governor by notice in the *Gazette*.

Short title and commencement.

2. In this Ordinance, unless the context otherwise requires—

"adjudicator" means an adjudicator appointed under section 4;

Interpretation.

"claim" means a proceeding in the tribunal between a claimant and a defendant;

"claimant" means a person bringing a claim other than—

(a) a defendant entering a counterclaim; and

(b) a person who is being represented in a representative claim;

"defendant" means a person against whom a claim is made by a claimant other than—

(a) a claimant against whom relief is sought by way of counterclaim; and

(b) a person who is being represented in a representative claim;

"party" means a claimant or defendant and any person joined as a third party;

"registrar" means the Registrar of the District Court;

"representative claim" means a claim brought in the name of one claimant on behalf of himself and one or more other claimants;

"tribunal" means the Small Claims Tribunal established by section 3.

PART II

CONSTITUTION OF TRIBUNAL

3. (1) There is hereby established a tribunal to be known as the Small Claims Tribunal and to be known in the Chinese language as "小額錢債審裁處".

Establishment of tribunal.

(2) The tribunal, which shall consist of such adjudicators as may be appointed under section 4, shall be a court of record with such jurisdiction and powers as are conferred on it by this or any other Ordinance.

(3) All proceedings in the tribunal shall be heard and determined by an adjudicator sitting alone.

(4) The tribunal shall have a seal of a design approved by the Chief Justice, and all awards, orders, summonses, and other processes of the tribunal shall be sealed therewith.

Appointment of
adjudicators.

4. (1) The Governor shall appoint such number of adjudicators as he considers necessary.

(2) No person shall be appointed to be an adjudicator unless he is qualified to practise as a barrister, solicitor or advocate in a court in Hong Kong, England, Scotland, Northern Ireland, or some other part of the Commonwealth, or the Republic of Ireland, having unlimited jurisdiction either in civil or criminal matters.

(3) An adjudicator shall be known in the Chinese language as “審裁官”.

(4) Subject to subsection (5), an appointment made under subsection (1) may be given retrospective effect.

(Cap. 11.)

(5) No person appointed as an adjudicator shall discharge any judicial function before the date of the instrument by which he is appointed or before the requirements of section 17 of the Oaths and Declarations Ordinance have been fulfilled.

PART III

JURISDICTION

Jurisdiction of
the tribunal.
First Schedule.

5. (1) The tribunal shall have jurisdiction to hear and determine the claims specified in the First Schedule.

(2) Save as provided in this Ordinance, no claim within the jurisdiction of the tribunal shall be actionable in any other court in Hong Kong.

(3) A claim within the jurisdiction of the tribunal may be brought in another court if there is included in such claim a claim for some other relief, redress or remedy, other than a claim for costs.

(Cap. 347.)

(4) Subject to the Limitation Ordinance, the jurisdiction of the tribunal shall extend to a claim which arose before the commencement of this Ordinance.

Power to amend
First Schedule.

6. The Legislative Council may, by resolution, amend the First Schedule.

Transfer of
claims.

7. The tribunal may at any stage of proceedings in the tribunal, either of its own motion or upon the application of any party, transfer the proceedings to the District Court or the Supreme Court, whereupon the practice and procedure of the District Court or the Supreme Court, as the case may be, shall apply.

Division of
causes of
action.

8. No claim shall be split or divided and pursued in separate proceedings in the tribunal for the sole purpose of bringing the sum claimed in each of such proceedings within the jurisdiction of the tribunal.

9. (1) Where a claimant has a claim for more than \$3,000 which, if it were not for more than \$3,000, would be within the jurisdiction of the tribunal, the claimant may abandon the excess, and thereupon the tribunal shall have jurisdiction to hear and determine the claim, so, however, that the claimant shall not recover in the claim an amount exceeding \$3,000.

Abandonment of part claim to give tribunal jurisdiction. 1959 c. 22, s. 41.

(2) Where the tribunal has jurisdiction to hear and determine a claim by virtue of this section, the award of the tribunal on the claim shall be in full discharge of all demands in respect of the claim, and judgment shall be deemed to be entered accordingly.

10. (1) Where any counterclaim or set-off and counterclaim in proceedings in the tribunal is a monetary claim which is not within the jurisdiction of the tribunal, the tribunal shall order that the proceedings on the counterclaim or set-off and counterclaim be transferred to the District Court or the Supreme Court.

Jurisdiction as to counterclaim.

(2) Where an order is made under subsection (1) and judgment on the claim is given for the claimant, execution thereon shall, unless the tribunal otherwise orders, be stayed until the proceedings transferred to the District Court or the Supreme Court have been determined.

(3) Where a defendant has a counterclaim or set-off and counterclaim for more than \$3,000 which, if it were not for more than \$3,000, would be within the jurisdiction of the tribunal, the defendant may abandon the excess and thereupon the tribunal shall have jurisdiction to hear and determine the counterclaim or set-off and counterclaim, so, however, that the defendant shall not recover in the counterclaim or set-off and counterclaim an amount exceeding \$3,000.

(4) Where a tribunal has jurisdiction to hear and determine a counterclaim or set-off and counterclaim by virtue of this section, the award of the tribunal on the counterclaim or set-off and counterclaim shall be in full discharge of all demands in respect thereof, and judgment shall be deemed to be entered accordingly.

11. Where any proceedings on a claim or counterclaim or set-off and counterclaim are transferred under section 7 or section 10 from the tribunal to the District Court or the Supreme Court, the costs of the proceedings both before and after the transfer shall, subject to any order of the tribunal, be in the discretion of the court to which the proceedings are transferred, and that court may make orders with respect thereto and as to the scales on which the costs of the proceedings are to be taxed; and the costs of the whole proceedings shall be taxed in that court.

Costs in transferred cases.

PART IV

COMMENCEMENT OF PROCEEDINGS

12. (1) A proceeding in the tribunal shall be commenced by filing a claim with the registrar.

Filing claims.

(2) Subject to subsection (3), a claim shall be in writing in the prescribed form, in either the English or Chinese language, and shall be signed by the claimant.

(3) The registrar may permit a claim to be made orally and shall cause it to be reduced to writing and shall supply a copy thereof to the claimant and, if the registrar thinks it appropriate, a translation thereof if it is reduced to writing in the English language.

(4) In any joint or representative claim—

- (a) the registrar may permit the claim to be filed notwithstanding that it has not been signed by all the claimants or persons represented on condition that all the claimants or such persons shall do so before the date of hearing; and
- (b) the name of a claimant or person represented who has not so signed the claim before the hearing may, if the tribunal so directs, be deleted from the claim and the amount of the claim reduced accordingly.

Contents of claim.

13. A claim shall contain—

- (a) the name and address of each claimant, and, in the case of a representative claim, the name and address of each person represented;
- (b) the name and address of each defendant;
- (c) the sum of money claimed by each claimant or person represented;
- (d) such particulars of the claim as are reasonably sufficient to inform the defendant of the ground for the claim and the manner in which the amount claimed by each claimant or person represented has been calculated.

Service of claim and notice of hearing.

14. (1) The registrar shall, when a claim has been filed—

- (a) fix a place and date for hearing the claim which shall, unless the parties otherwise agree, be not earlier than 10 days nor later than 60 days after the filing of the claim; and
- (b) cause a copy of the written claim and a notice in the prescribed form of the date and place of hearing to be served on every defendant in the manner specified in subsection (2).

(2) Service of a copy of the written claim and the notice of hearing—

- (a) shall be carried out by such person as may be appointed by the registrar for the purpose; and
- (b) shall be effected—
 - (i) by delivering them personally to the defendant;
 - (ii) by leaving them with some person for him at his last known place of residence or at his place of business; or
 - (iii) in such other manner as may be directed by the registrar.

PART V

PROCEDURE

Keeping of summary of evidence, etc.

15. The adjudicator shall keep a summary of the evidence, submissions or statements made or given in proceedings in the tribunal and of any point of law and of his decision thereon.

Hearing to be informal.

16. (1) The hearing of proceedings in the tribunal shall be conducted in an informal manner.

(2) The tribunal may summon any witness and require the production of any document, record, book of account or other thing, which is relevant in any proceedings.

(3) The tribunal shall inquire into any matter which it may consider relevant to a claim, whether or not it has been raised by a party.

17. If a defendant who has been duly served with a copy of the written claim and a notice of hearing fails to appear at the hearing, by himself or a person authorized by the tribunal to appear on his behalf, the tribunal may hear the claim notwithstanding the absence of the defendant.

Hearing of claim in absence of defendant.

18. (1) The tribunal shall determine a claim and make such award or order thereon as it thinks fit as soon as possible after the conclusion of the hearing of the claim.

Determination of claims.

(2) The reasons for an award or order may be given orally or in writing as the tribunal thinks fit.

(3) An adjudicator shall, when he has made an award or order orally, reduce it to writing as soon as possible, and in any case not later than 14 days after the date of the award or order.

(4) Every written award or order shall be served by the registrar on the parties, and it shall not be necessary for the party in whose favour an award or order has been made to prove that it reached the party to be served.

(5) Service of an award or order under subsection (4) shall be effected—

- (a) by delivering it personally to the party to be served;
- (b) by leaving it with some person for him at his last known place of residence or at his place of business; or
- (c) in such other manner as the registrar thinks fit.

19. (1) The following persons shall have a right of audience before the tribunal—

Right of audience.

- (a) any party;
- (b) an officer or servant of a corporation, if the corporation is a party;
- (c) a member of a partnership, if the persons comprising the partnership are parties;
- (d) with the leave of the tribunal, any person, other than counsel or a solicitor, who is authorized in writing by a party to appear as his representative.

(2) No barrister or solicitor, including a barrister or solicitor who is a public officer whether or not qualified to practise in a court in Hong Kong, shall have a right of audience before the tribunal unless he is acting on his own behalf as a claimant or defendant.

20. (1) If two or more claims are filed and it appears to the tribunal that—

Claims may be heard together.

- (a) a common question of law or fact arises in both or all of them;
- (b) the claims arise out of the same cause of action; or
- (c) it would be in the interests of justice,

the tribunal may order that such claims be heard at the same time.

(2) The power conferred by this section may be exercised notwithstanding that the hearing of one or more of the claims has begun.

21. (1) Subject to subsection (2), if two or more persons have claims against the same defendant, such claims may be brought in the name of one of such persons as the representative of some or all of them.

Representative claims.

(2) The tribunal may, if at any stage of the proceedings it considers that a representative claim may prejudice the defendant, order that the claims of all or any of the persons represented shall be heard separately.

(3) Each person represented in a representative claim shall be deemed to have authorized the representative on his behalf to—

- (a) call and give evidence and make submissions to the tribunal on any matter arising during the hearing of the claim;
- (b) file affidavits, statements or other documents;
- (c) agree to an adjournment or change of venue;
- (d) agree to a settlement of the claim on such terms as he thinks fit;
- (e) amend or abandon the claim; and
- (f) act generally in as full and free a manner as such claimant may act on his own behalf.

(4) The authority deemed to be given to a representative by subsection (3) shall not be withdrawn save by leave of the tribunal.

(5) The tribunal may, at any time before determining any claim, grant leave to any person to join in the claim as a person represented on such terms as it may think fit.

(6) The tribunal may cause public notice to be given, in such manner as it may think fit, of the particulars of a representative claim which has been filed and of the date and place fixed for the hearing of the claim.

**Joint
defendants.**

22. (1) If two or more persons are defendants in proceedings in the tribunal, as partners or otherwise, the claim may be heard and determined in relation to any of such defendants who have been duly served with a written claim notwithstanding that other defendants have not been so served or are not within the jurisdiction of the tribunal.

(2) If an award is made against a defendant under subsection (1) and is satisfied by him, he shall be entitled to claim in proceedings in the tribunal contribution from any other person jointly liable with him.

(3) An award against a defendant in respect of a liability jointly with another person shall not discharge such other person from his liability.

(4) A person against whom a claim is made in respect of a liability jointly with any other person may set up any defence or counterclaim which he would have been entitled to set up if all the persons jointly liable with him were defendants.

(5) If two or more persons are joined as defendants, the claimant may obtain an award against any one or more of the defendants and may enforce the award without prejudice to his right to proceed with the claim against any other defendant.

Evidence.

23. (1) The rules of the common law relating to the admissibility of evidence shall not apply in proceedings in the tribunal, which may receive any material which it considers relevant.

(Cap. 8.)

(2) The Evidence Ordinance shall apply to proceedings in the tribunal.

Costs.

24. (1) Subject to subsection (2), the tribunal may award to a party costs and expenses, which may include—

- (a) any reasonable expenses necessarily incurred and any loss of salary or wages suffered by that party; and

(b) any reasonable sum paid to a witness for expenses necessarily incurred and any loss of salary or wages suffered by him, in attending the hearing.

(2) In making an award of costs under this section, the tribunal shall include a direction as to the amount to be paid by each party who is liable to pay costs.

(3) An award of costs shall be enforceable in the same manner as any other award of the tribunal.

25. The tribunal may at any time dismiss a claim which it considers to be frivolous or vexatious on such terms as to payment of costs as it may think fit.

Frivolous or vexatious claims.

26. The tribunal may at any time, either of its own motion or on the application of any party, adjourn the hearing of proceedings on a claim on such terms as it thinks fit.

Adjournments.

PART VI

APPEALS

27. (1) Where the tribunal has under section 7 transferred a claim to the District Court or the Supreme Court, the Full Court may, within 14 days from the date on which the tribunal transferred the claim, review the tribunal's decision and on such review it may—

Review of decision concerning transfer.

(a) confirm the decision of the tribunal or remit the claim to the tribunal; and

(b) make such order as to costs and expenses as it thinks fit.

(2) The power conferred by subsection (1) may be exercised, on the application of a party, within 7 days of the date on which the tribunal transferred the claim, on notice in the prescribed form to all other parties.

28. (1) Any party who is aggrieved by a decision of the tribunal—

Leave to appeal on point of law.

(a) on any ground involving a question of law alone; or

(b) on the ground that the claim was outside the jurisdiction of the tribunal,

may, within 7 days after the date on which the award or order of the tribunal was reduced to writing apply to the Full Court for leave to appeal and the Full Court may grant such leave if it thinks fit.

(2) An application for leave to appeal under this section shall be—

(a) in the prescribed form, specifying the ground of the appeal and the reasons in support of such ground; and

(b) lodged with the Registrar of the Supreme Court.

(3) A refusal by the Full Court to grant leave to appeal shall be final.

37A (4) Nothing in this section shall affect any right of appeal under section of the Supreme Court Ordinance.

(Cap. 4.)

29. (1) On an appeal under section 28, the Full Court may—

Powers of Full Court on appeal.

(a) allow the appeal;

(b) dismiss the appeal; or

(c) remit the matter to the tribunal with such directions as it thinks fit, which may include a direction to the tribunal for a new hearing.

(2) On an appeal under section 28 the Full Court may—

(a) draw any inference of fact; and

(b) make such order as to costs and expenses as it thinks fit,

but may not—

(i) reverse or vary any determination made by the tribunal on questions of fact; or

(ii) receive further evidence.

Procedure on appeal.

30. Subject to this Part, an appeal from the tribunal shall be brought in such manner and shall be subject to such conditions as may be prescribed.

Stay of execution on appeal.

31. The filing of an application for leave to appeal under section 28 shall not operate as a stay of execution of an award or order unless the tribunal or Full Court, as the case may be, otherwise orders and any stay of execution may be subject to such conditions as to costs, payment into the tribunal, the giving of security or otherwise as the tribunal or Full Court thinks fit.

PART VII

MISCELLANEOUS

Enforcement of award of tribunal.

32. An award of the tribunal may be enforced in the same manner as a judgment of the District Court.

Interest on awards.

33. (1) The tribunal may include in the amount of an award interest at such rate as may be prescribed on the whole or any part of the sum claimed for the whole or any part of the period between the date when the cause of action arose and the date of the award.

(2) The powers conferred by subsection (1) may be exercised—

(a) whether or not interest is expressly claimed;

(b) at any time after the date of the award if it appears to the tribunal that the failure to claim or to award interest was through inadvertence; and

(c) where an award is made against the defendant in his absence.

Payment of award.

34. (1) In a joint or representative claim the amount of an award shall be paid into the tribunal and there shall be allocated to the parties to the claim the sum of money claimed by each claimant or person represented.

(2) When money is paid into the tribunal by a defendant, in full or part discharge of an award made against him in a joint or representative claim, the defendant shall be deemed to have satisfied his liability under the award to the extent of the amount so paid and shall not be liable to any claimant as to the manner in which such money is allocated by the tribunal.

Penalty for neglect of witness summons.
1959
c. 22, s. 84.

35. (1) Any person on whom a summons under section 16 has been served who—

(a) refuses or neglects, without sufficient cause, to appear or produce any documents required by the summons to be produced; or

(b) refuses to be sworn or give evidence,

shall forfeit such fine not exceeding \$1,000 as the adjudicator may direct.

(2) A person to whom subsection (1) applies shall not forfeit a fine under that subsection unless there has been paid or tendered to him at the time of service of the summons a reasonable sum in respect of his expenses including any loss of salary or wages.

(3) Any person present before the tribunal who is required to give evidence but refuses to be sworn or to give evidence shall forfeit a fine in accordance with subsection (1).

(4) An adjudicator may, in his discretion, direct that the whole or any part of any such fine shall, after deducting the costs, be applied towards indemnifying the party injured by the refusal or neglect but without pre-judice to the right of the party so injured to institute civil proceedings in respect of the injury.

36. The Chief Justice may make rules—

Chief Justice
may make rules.

(a) regulating the procedure for—

(i) applying for leave to appeal, and the hearing of such applications, under section 28;

(ii) the hearing of appeals under section 29;

(b) regulating the transfer of proceedings to the District Court or the Supreme Court;

(c) providing for matters of procedure which are not provided for in this Ordinance;

(d) prescribing anything which is to be or may be prescribed;

(e) prescribing the fees and costs applicable to proceedings in the tribunal;

(f) generally for the better carrying out of the provisions of this Ordinance.

37. Where no provision is made by this Ordinance or rules made under section 36, the practice and procedure in the tribunal shall be such as the tribunal may determine, either generally or in any particular proceeding.

Procedure
generally.

38. This Ordinance binds the Crown.

Application
to Crown.

39. This Ordinance shall expire at the end of 3 years from the commencement of the Ordinance, unless continued in force by a resolution of the Legislative Council.

Duration of
Ordinance.

40. The enactments specified in the first column of the Second Schedule are amended to the extent and in the manner set out in the second column of that Schedule.

Consequential
amendments.
Second
Schedule.

FIRST SCHEDULE

[s. 5.]

JURISDICTION OF TRIBUNAL

1. Any monetary claim founded in contract, quasi-contract or tort where the amount claimed is not more than \$3,000, whether on balance of account or otherwise:

Provided that the tribunal shall not have jurisdiction to hear and determine—

(a) any action in respect of—

(i) defamation;

- (ii) the loss of services of a woman or girl in consequence of her rape or seduction;
- (iii) the inducement of one spouse to leave or remain apart from the other;
- (b) any action or proceeding in respect of a maintenance agreement within the meaning of section 14 of the Matrimonial Proceedings and Property Ordinance;
- (c) any action by a money-lender licensed under the Money-lenders Ordinance for the recovery of any money lent, or the enforcement of any agreement or security made or taken in respect of money lent;
- (d) any action that lies within the jurisdiction of the Labour Tribunal established under the Labour Tribunal Ordinance.

(Cap. 192.)

(Cap. 163.)

(Cap. 25.)

2. Any claim for the recovery of any penalty, expenses, contribution or other amount which is recoverable by virtue of any enactment and for the recovery of any amount which is declared by any enactment to be recoverable as a civil debt if—

- (a) it is not expressly provided by that or any other enactment that the demand shall be recoverable only in some other court; and
- (b) the amount claimed does not exceed \$3,000.

For the purposes of this paragraph, “penalty” shall not include a fine imposed on the conviction of any person for an offence.

SECOND SCHEDULE

[s. 40.]

CONSEQUENTIAL AMENDMENTS

(Cap. 5.)

Official
Languages
Ordinance.

The Schedule is amended by inserting, after item 5, the following—

“6. Any Small Claims Tribunal.”.

(Cap. 11.)

Oaths and
Declarations
Ordinance.

The Third Schedule is amended by deleting—

“District Judge	} The Oaths to be tendered by a Judge.”
Presiding Officer Labour	
Tribunal	
Magistrate	

and substituting the following—

“District Judge	} The Oaths to be tendered by a Judge.”
Presiding Officer, Labour	
Tribunal	
Magistrate	
Adjudicator, Small Claims Tribunal	

Legal Aid
Ordinance.

The Schedule is amended in Part II by inserting, after (Cap. 91.) item 8, the following new item—

(79 of 1975.) “9. In the Small Claims Tribunal, proceedings under the Small Claims Tribunal Ordinance 1975.”.

District Court
Ordinance.

The Ordinance is amended by adding, after section 37, (Cap. 336.) the following new section—

“Exclusion of
actions within
jurisdiction of
Small Claims
Tribunal.
(79 of 1975.)

37A. Notwithstanding this Part but subject to section 5(3) of the Small Claims Tribunal Ordinance 1975, the Court shall not have jurisdiction to hear and determine any action or matter that lies within the jurisdiction of the Small Claims Tribunal, unless the Court has jurisdiction under the Small Claims Tribunal Ordinance 1975.”.

Judicial Service
Commission
Ordinance 1975.

The First Schedule is amended by inserting after (65 of 1975.) “Presiding Officer, Labour Tribunal” the following—

“Adjudicator, Small Claims Tribunal”.

Passed by the Hong Kong Legislative Council this 19th day of November, 1975.

K. H. WHEELER,
Clerk to the Legislative Council.

This printed impression has been carefully compared by me with the bill, and is found by me to be a true and correctly printed copy of the said bill.

K. H. WHEELER,
Clerk to the Legislative Council.