ESTABLISHING SMALL CLAIMS COURTS AND THE IMPACT ON SERVICE DELIVERY IN THE JUSTICE SYSTEM

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INTRODUCTION

Using alternative dispute-resolution (ADR) mechanisms, such as mediation and conciliation justice, is one of the ways that courts have attempted to reduce their caseload while still resolving disputes fairly and providing access to court services. Another alternative that courts have opted to provide is the small claims court. These courts have been in existence in some form in several countries since as early as the 1930s and have historically stemmed from the recognition that simple disputes over a small amount of money may not require the same procedures and rules but can instead be resolved differently. With the understanding that the complexity of court processes can be prohibitive and can also discourage parties (especially those who are unrepresented by counsel or who have limited financial means) from resorting to formal justice institutions, small claims courts provide an effective and efficient mechanism for ensuring access to court services for all while also freeing up the system’s resources to handle more complex commercial disputes. The success of small claims courts has been demonstrated across many countries; indeed, it was recently recognized as a good practice for courts worldwide as part of the new methodology used by the World Bank’s Doing Business report for assessing the contract enforcement indicator.

WHAT IS A SMALL CLAIMS COURT?

A small claims court is a specialized court that is created by law with specific duties and powers to adjudicate and resolve small-value monetary disputes. The jurisdiction of these courts may be limited to certain types of cases, and the benefits

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2 The small claims court in Washington, DC was established in the 1930s.

3 Singapore’s small claims courts were established by the Small Claims Tribunals Act, and the Washington, DC small claims court is governed by the D.C. Code §§ 11-1321 and 16-3901 et seq. (1981), also known as the Superior Court Rules of Procedure for the Small Claims and Conciliation Branch.
generally include reduced court costs for the parties, simplified and faster procedures, and specific support services, including mediation in many cases. The issue of whether the parties are required to represent themselves or have the option of hiring a lawyer is also determined by law and varies by jurisdiction.4

Small claims courts are considered an ADR mechanism that provides litigants with a forum and opportunity to resolve their disputes in court in a simpler, quicker, and cheaper manner. The courts are premised on the use of straightforward procedures that are easier for litigants to follow, e.g., they apply uncomplicated rules for presenting evidence and notifying parties. In addition, they are less formal and often eliminate the need for parties to be represented by lawyers. They have streamlined processes that allow for a quicker resolution of disputes (e.g., limitations are set on the time it takes to serve a defendant, answer a petition, schedule a hearing), and they have reduced associated court costs.5 Many well-performing small claims courts also provide litigants with a mechanism for requesting a waiver of even the limited court fees, as well the choice to mediate their dispute at a reduced or even no cost.

WHAT TYPES OF CASES ARE HANDLED IN A SMALL CLAIMS COURT?

Generally, the jurisdiction of the small claims court involves minor cases where the amount in dispute is low, an amount that varies from one judiciary to another, depending on the threshold as determined by each country. For example, the threshold in the District of Columbia Small Claims Court in the United States is US$5,000; if the disputed amount exceeds that amount, the plaintiff is prohibited from using that court. The small claims court in Ontario, Canada has a threshold of $25,000 Canadian dollars, while the one in Singapore has a cap of $10,000 Singapore dollars. The latter, however, provides that the small claims court may still adjudicate cases in which the amount in dispute is up to $20,000, if both parties consent in writing.

With regard to subject matter jurisdiction, small claims courts are generally limited to resolving simpler disputes involving some type of debt recovery, as opposed to complicated commercial disputes. In some jurisdictions, simple traffic fine cases may be handled in a small claims traffic fine court. In addition, small claims courts do not generally have jurisdiction over divorce and custody cases, bankruptcy lawsuits, or libel or slander cases. These subject matter limitations are specified by the law establishing the court.

WHAT ARE SOME OF THE MAIN FEATURES?

Small claims courts are unique and effective because of their many features including the following:

- **Limited Jurisdiction.** Small claims courts do not have jurisdiction over all minor disputes but will generally be limited to simpler disputes usually involving some type of debt recovery.

- **Simplified Procedures.** Small claims courts will generally have different sets of rules that outline all legal requirements and procedures that the court and parties must use. These rules are different from those used in other courts, namely codes of civil procedures, in that lay individuals with no legal education or background can more easily understand and follow them. Although the rules are simple and do not involve many requirements, they still ensure due process and provide the necessary procedural safeguards to the litigants.

- **Speedy Resolution.** In addition to having simplified procedures, small claims courts generally have specific and short time limitations for each case process that is undertaken by the court and required by the parties. Some courts, such as the Singapore small claims court, have developed even shorter time limitations for certain actions. Thus, for example, if a claim is filed by or involves a tourist, the court will set the case for mediation within 24 hours of filing, providing for even quicker resolution.

- **Informality.** Court proceedings in small claims courts are more informal than those in other first instance courts. This feature alleviates the level of apprehension on the part of self-represented parties and allows them to be more comfortable with representing themselves without fear of undermining their case.

- **Reduced Court Costs.** The cost of filing and processing a case in small claims court is significantly lower than in other courts. As

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4 The U.S. states of Michigan and California, for example, prohibit lawyers from representing parties in small claims courts.
5 Washington, DC’s small claims court fee structure is as follows: filing a new claim costs US$5.00 for claims of $500 or less, US$10.00 for claims over US$500 and up to US$2,500, and US$45.00 for claims over US$2,500 and up to US$5,000. The plaintiff must also pay the cost for service on the defendant(s). See also [http://www.dccourts.gov/internet/documents/SmallClaimsHandbook.pdf](http://www.dccourts.gov/internet/documents/SmallClaimsHandbook.pdf).
stated, many courts will also provide litigants with the option of requesting and obtaining a waiver of the fees provided that they meet certain criteria required by the courts.

- **Access to ADR Services (Mediation, Conciliation and Arbitration).** The majority of small claims courts provide litigants with the right and opportunity to mediate their disputes, at times even before filing the lawsuit. Flexibility in the way in which disputes are resolved is an important feature of a successful and well-performing court. For example, the rules of the Washington, DC small claims court provide the parties with the option of voluntarily appearing together and submitting their dispute to the judge for conciliation without having to issue any notification. The rules also allow one of the parties to request a conciliation, in which case however, notice must be provided to the opposing party before the conciliation session can be held. Regardless of how conciliation is requested, the dispute is heard in an informal setting, and the judge will endeavor to reach an amicable settlement between the parties, who nevertheless have the right to have their lawyers present. Once an agreement is reached, the clerk of the court will record it in the court record, making it enforceable. If however an agreement is not reached, the DC court goes even further by providing the parties with the additional option to arbitrate the dispute. The rules provide that all parties must agree to participate in arbitration; cannot withdraw from the arbitration once it has begun; and cannot appeal the arbitral award once it is issued. In other countries such as Singapore, once a party files a claim in small claims court, he or she will be required to attend a mediation session within a short period of time after filing.

- **Right to Appeal.** As in other courts of first instance, judgments issued by small claims courts can generally be appealed to higher courts in many jurisdictions. This issue is one that is determined by each country or other sub-national government and should be outlined in the law establishing the court.

- **Access to Information.** An important feature of a successful small claims court is the availability of detailed information in paper and electronic formats to court users. Recognizing that the target user group may not have an understanding of the legal framework governing the processing of cases and/or may not have the option or means to retain a lawyer, successful courts ensure that users have access to detailed information about navigating the court system (e.g., how to file a case, what documents are required, what filing and other court fees are involved, how to serve a party and request a hearing, how the case will be handled in court, etc.). Providing simple checklists and forms, as well as electronic services such as e-filing and e-payments, also enhances access by making it even easier to interact with the court. In jurisdictions where the population may be linguistically diverse, the court should provide this information in multiple languages (e.g., the Washington, DC court provides informational brochures in ten languages).

**WHAT ARE THE BENEFITS OF A SMALL CLAIMS COURT?**

- Providing an effective and efficient alternative mechanism for resolving small, less complex disputes
- Eliminating or significantly reducing the financial burden of litigating a case for the parties
- Freeing up court resources (financial and human) so that they may be dedicated to resolving larger and more complex disputes
- Increasing access to court services and ensuring that the needs of all court users, especially those with little financial means or legal knowledge, can avail themselves of the services provided by justice institutions
- Providing access to ADR services at low or no cost
- Reducing the judiciary’s backlog

**HOW TO DETERMINE IF THERE IS A NEED FOR SMALL CLAIMS COURTS?**

Even though establishing and operating small claims courts can save judicial resources, creating and running them requires financial and human resources to be made available. Therefore, the decision to establish these courts should be based on a careful study of the type of cases that could be assigned to a small claims court to benefit court users and to increase their access to court services, as well as free up the court resources required to handle more complex commercial disputes. Also needed are a series of detailed reviews of: (i) the legal structure governing the processing of commercial cases to identify whether the establishment of a small claims court...
is permissible under the current framework; (ii) commercial caseload data for at least three to five years (including, e.g., filing trends, causes of delays); (iii) existing ADR mechanisms and their effectiveness in resolving smaller cases and cases where the parties are not represented by counsel; and (iv) user needs. A determination of the required human and financial resources will also have to be made to identify the initial cost of establishing a small claims court as well as the projected future resources needed to maintain operations.

WHAT OTHERS ISSUE SHOULD BE ADDRESSED WHEN ESTABLISHING SMALL CLAIMS COURTS?

Provided the decision to establish a small claims court has been made, the focus of the judiciary should shift to drafting a comprehensive law and/or an administrative decree or order (provided that is legally permissible) outlining, among other things, the jurisdiction of the court, its procedures and fee structure, and the provision of ADR services along with time standards etc. To ensure that the law and administrative procedures address the needs of both the justice sector and court users, the judiciary should engage in a discussion of the draft with its stakeholders including members of the bar, especially lawyers who handle commercial cases as well as legal aid providers, if any, and the public. Such an inclusive and participatory approach would provide the judiciary with reliable feedback, not only on the basics of a new small claims court, but also on what, if any, additional services should be provided. In addition, this approach has the benefit of allowing the judiciary to address other issues that may have been overlooked as well as generating buy-in for the new court and its benefits.

As the law and/or administrative provisions are finalized, the judiciary should begin developing and disseminating public informational materials, including brochures and publications on the scope and jurisdiction of the new small claims court, how to access and use it, checklists that court users may use when filing their cases, and forms that they will need to submit to file and process their cases. Depending on the jurisdiction and the IT capacity of the court, these materials should be provided and made available to users online and in paper format. To provide greater access to court users, these materials should also be provided in more than one language depending on the makeup and diversity of the population. The court should also explore providing electronic services such as simple e-filings, electronic notification and e-payments to reduce the financial burden as well as the time and effort spent by court users in filing and processing their cases.

In addition, resources should also be dedicated to developing and implementing a public awareness campaign to apprise the public and the targeted court users of the services that will be provided by this new court as well as the associated benefits of using it. Once operational, a mechanism for obtaining regular feedback from court users should be established, the results of which should be reviewed and analyzed regularly, and they should guide any needed or desired changes in the way in which the court is operating and providing services.

CONCLUSION

Resorting to litigation as the conventional way of resolving disputes is more often than not a time consuming, complicated and costly process to all litigants, particularly those involved in minor disputes and those with little financial means to have legal representation. Establishing small claims courts not only reduces the burden of litigation on these parties by providing greater access to judicial services, but it also frees up the court’s resources so that they may instead be more efficiently and effectively allocated to resolving larger and more complex cases. Despite the fact that small claims court vary from one jurisdiction to another, as they should be based on the varying needs of the public, the reason for their establishment and their benefits remain the same. Like other courts, the key to their success rests on having a clear and detailed legal framework that leaves no room for varying interpretation and room for delays. Providing opportunities to even mediate the dispute throughout the various stages of the case process, removing unnecessary formalities generally associated with the justice system, and providing a greater level of assistance to users are instrumental to the success of a small claims court.