

二零一四年六月三十日會議
討論文件

**《2014年競爭(修訂)條例草案》委員會
就先前會議提出的跟進問題所作回應**

目的

本文件旨在回應委員在二零一四年六月十二日會議席上提出的問題。

香港大律師公會和香港律師會對《競爭條例》的法例修訂建議的意見

2. 應委員要求，香港大律師公會和香港律師會對《競爭條例》(“《條例》”) (第 619 章)的法例修訂建議的意見，已於附件全文轉載。

審裁處的一般權力

3. 正如我們在二零一四年六月十一日發給立法會助理法律顧問的信件(立法會 CB(1)1602/13-14(01)號文件)中所解釋，在《條例》加入建議的條文，賦予競爭事務審裁處(“審裁處”)具體權力的原因，是雖然《條例》採取概括模式，但《條例》有若干範疇並沒有清楚表明審裁處在行使其職能時，是否享有等同於原訟法庭的具體權力。為求清晰明確，當局於《條例》引入《條例草案》的建議條文，以具體地賦予審裁處在某些特定情況下可行使的權力。

4. 基於上述背景，建議的條文應被詮釋為補充《條例》現有條文所訂明審裁處所享的一般權力，而非限制該一般權力的普遍適用性。有鑑於此，我們認為建議條文不會影響審裁處一般權力的適用範圍。因此，無須明文規定建議的條文“不會限制”或“不會影響”審裁處的一般權力。

5. 事實上，《土地審裁處條例》(第 17 章)亦採用了類似的做法，即在賦予土地審裁處一般權力的條文上，再以賦予土地審裁處具體權力的條文作補充。例子是《土地審裁處條例》第 12B 條，該條訂明土地審裁處擁有具體權力，在判令獲得的任何債項或損害賠償中加入利息。雖然《土地審裁處條例》第 8(9) 條賦予土地審裁處一般權力，讓土地審裁處在授予補救及濟助方面所具有的司法管轄權，與原訟法庭所具有者相同，但是在制訂《土地審裁處條例》第 12B 條時，並無明文規定該條文“不會限制”或“不會影響”土地審裁處的一般權力。

禁止離開香港的命令

6. 建議的第 151A、151B 及 151C 條關於禁止離開香港的命令(“禁止令”)的條文，以《高等法院條例》(第 4 章)第 21B 條為藍本。我們的政策意向是，審裁處在根據上述建議的條文行使權力時，應該依循原訟法庭執行《高等法院條例》第 21B 條的現行做法。

7. 應留意的是，禁止令只可以針對自然人作出。至於審裁處會在什麼情況下作出禁止令，根據有關《高等法院條例》第 21B 條的應用的案例，只有在公司的相聯人士(例如董事或股東)同時是涉及針對其公司的訴訟因由的一方的情況下(即該人在法律程序中同為被告人)，法庭才可能針對該人作出禁止令¹。換言之，公司的相聯人士不會純粹因為由於該公司違反競爭守則而出現針對該公司的命令或向該公司提出的民事申索，而成為在建議的第 151A 條下作出的禁止令所針對的對象。

《高等法院條例》第 21B 條的禁止令

8. 《高等法院規則》(第 4A 章)第 44A 號命令，載列了執行《高等法院條例》第 21B 條的程序要求。在考慮根據《高等法院條例》第 21B 條作出禁止令時，必須先符合兩個關鍵條件。第一，必須有頗能成立的因由相信禁止令所針對的人即將離開香港。第二，基於上述理由，判決或命令的履行相當可能會受到妨礙或延遲。

¹ 請參閱 *REM Assets Ltd* 訴 *MIR Investments Ltd*，高院訴訟(HCA) 2008 年第 626 號。

9. 凡根據《高等法院條例》第 21B 條申請作出禁止令，申請人不得有不當的延誤。判定債權人可單方面提出申請禁止令，而該申請須由誓章支持。跟所有單方面提出的申請一樣，申請人有責任在申請書中坦白披露一切資料。

10. 在聆訊要求作出禁止令的申請時，法庭可在作出禁止令時施加其認為適合的條件，包括如判定債務人履行有關判決或提供法庭所命令提供的保證，則禁止令即屬無效的條件。禁止令必須按照《高等法院規則》附錄 A 第 106 號表格所訂明的格式作出。禁止令的文本並須送達入境事務處處長、警務處處長及判定債務人(如能尋獲的話)。

11. 已獲送達禁止令或經其他方式知悉該命令的效力的判定債務人，如企圖在違反該命令的情況下離開香港，則入境事務主任、警務人員或執達主任均可將該人逮捕。如判定債務人被帶到法庭席前而禁止令是在判決涉及其須繳付一筆指明款額的款項的情況下作出，則法庭可為訊問或監禁該債務人而作出適當的命令。如禁止令是在其他情況下作出，則法庭可作出命令將該債務人監禁，直至禁止令失效或解除為止。法庭亦可選擇作出命令將該債務人釋放，或在該債務人遵從法庭認為適當的條件後將該債務人釋放。

建議的第 151A(1)(b)(ii)條中“財產”的涵義

12. 《條例》並沒有界定何謂“財產”。在此情況下，《釋義及通則條例》(第 1 章)中的相關定義適用。《釋義及通則條例》第 3 條對“財產”的定義如下：

“財產(property)包括—

(a) 金錢、貨物、法據動產和土地；及

(b) 由(a)段下定義的財產所產生或附帶的義務、地役權以及各類產業、利益和利潤，不論是現存的或將來的、既得的或待確定的；”

13. 《釋義及通則條例》第 3 條只就“財產”包括的項目提供一個非詳盡無遺的清單。雖然該定義中並無明確提述到“知識產權”，但《釋義及通則條例》第 3 條中“財產”的定義可被詮釋為包括無形財產、非土地財產及動產，例如知識產權。

徵詢意見

14. 請委員留意本文件的內容。

商務及經濟發展局
司法機構政務處
二零一四年六月

香港大律師公會和香港律師會 對《競爭條例》的法例修訂建議的意見

引言

本附件載列香港大律師公會和香港律師會對《競爭條例》(“條例”)(第 619 章)的法例修訂建議的意見，以及司法機構的回應。

背景

2. 二零一三年十月十一日，司法機構向上述兩個法律界專業團體發出諮詢文件(見附錄(只有英文))，徵詢他們對現載於《2014 年競爭(修訂)條例草案》的法例修訂建議的意見。

香港大律師公會

香港大律師公會的意見

3. 二零一三年十一月十一日，香港大律師公會就諮詢文件提出下列意見(只有英文)：

“1. The Judiciary Administration consults on a number of proposed amendments to the Competition Ordinance (Cap 619) (“CO”) relating to the Competition Tribunal (“Tribunal”) that are considered essential to the proper functioning of the Tribunal. The Hong Kong Bar Association (“HKBA”) submits its views on the consultation paper.

2. The consultation paper does not enclose a draft Bill for consideration. Proposed amendments are described together with justifications for them. The HKBA accordingly comments on the proposed amendments on the basis of the terms described in the consultation paper and sees the need to submit further comments

when the draft Bill is gazetted or otherwise made public.

3. The HKBA agrees with the approach described in paragraph 8 of the consultation paper to amend the CO to make clear the jurisdiction and powers of the Tribunal notwithstanding the general provision in the CO for the Tribunal to follow the rules of practice and procedure of the Court of First instance.

4. The HKBA agrees with the proposal in paragraph 9 of the consultation paper to amend the CO to clarify that the Tribunal will have in the exercise of its jurisdiction (including the enforcement of its orders) the same powers, rights and privileges of the Court of First Instance.

5. The HKBA agrees with the proposal in paragraphs 10 and 11 of the consultation paper to amend the CO to make explicit provision therein for the Tribunal to order the payment of interest on debts/damages and to determine the rate of interest and the manner of payment of such interest.

6. The HKBA agrees with the proposal in paragraphs 12 to 14 of the consultation paper to amend the CO to empower the Tribunal to order the payment of interest in respect of non-payment or late payment of pecuniary and financial penalties under ss 93, 169 of the CO as well as costs under ss 63(2)(b), 96 of the CO. The HKBA considers that further comments may be necessary in respect of the detailed amendments when they are published.

7. The HKBA disagrees with the proposal in paragraphs 15 and 16 of the consultation paper to amend the CO to empower the Tribunal to make prohibition orders like those made under s 21B of the High Court Ordinance (Cap 4). Prohibition orders in aid of enforcement of orders of the Tribunal can be sought and determined in the ordinary manner by the Court of First Instance under s 21B.

8. The HKBA agrees with the proposal in paragraphs 17 and 18 of the consultation paper to amend the CO to empower a member of the Tribunal to make an order for reimbursing a witness in respect of expenses reasonably and properly incurred by him/her.

9. The HKBA agrees in principle with the proposal in paragraphs 19 to 26 of the consultation paper to amend the CO to

enable the Tribunal's registrars to perform judicial work that is similar to that performed by their counterparts in the High Court. However, the HKBA notes that rule 62 of the United Kingdom Competition Appeals Tribunal sets out the acts of that tribunal that are to be exercised to be done by the president of that tribunal acting alone or done by the registrar if so authorized by the president. The HKBA suggests that a similar provision be incorporated in either the CO or the Tribunal's rules to demarcate the judicial work that the registrars may not do, the judicial work that the registrars may do if so authorized by the president or vice-president of the Tribunal and the judicial work that the registrars are generally authorized to do.

10. The HKBA agrees with the proposal in paragraphs 27 and 28 of the consultation paper to amend the High Court Ordinance s 55 to provide for detailed rules governing transfer of proceedings from the Court of First Instance to the Tribunal.

11. The HKBA agrees with the proposal in paragraphs 29 and 30 of the consultation paper to amend the Legal Practitioners Ordinance (Cap 159) to make provision for solicitor advocates granted with the higher rights of audience for the High Court and the Court of Final Appeal in civil proceedings should also be granted similar rights in respect of the Tribunal.

12. The HKBA agrees with the proposal in paragraphs 31 and 32 of the consultation paper to amend the Evidence Ordinance (Cap 8) to empower the Tribunal to make an order to bring up persons in custody to give evidence before it.

13. The HKBA agrees with the proposal in paragraphs 33 and 34 of the consultation paper to amend the Shenzhen Bay Port Hong Kong Port Area Ordinance (Cap 591) to ensure the extension of the jurisdiction of the Tribunal and the territorial limit of its orders to the Hong Kong Port Area.

14. The HKBA agrees with the proposal in paragraphs 35 to 38 of the consultation paper to amend the Electronic Transactions Ordinance (Cap 553) to add the Tribunal to Sch 2 of that Ordinance.”

司法機構的回應

4. 二零一三年十一月二十七日，司法機構就香港大律師公會的意見回應如下：

“我們注意到貴會提交的意見書第7段，對我們建議賦權競爭事務審裁處(‘審裁處’)作出禁止令一事有保留。我們想指出，原訟法庭及區域法院現時皆有權施加禁止令。這些權力讓最掌握案情的主審法官針對債務人或可能成為債務人的人(在判決作出前或在判決作出後)作出禁止令。隨着審裁處的成立，我們認為最理想的做法是跟從上述安排，即由審裁處自行考慮作出禁止令，而無須將申請轉介原訟法庭。

事實上，根據《條例》第135條，審裁處的所有成員都是原訟法庭法官。他們應該非常熟悉發出禁止令所涉及的人權問題和其他考慮因素。此外，由於我們現在將《高等法院條例》(第4章)關於禁止令的條文(即第21B條)經適應化後增訂入《條例》，受禁止令影響的人在程序上將會獲得相同的保障。舉例來說，必須有足夠證據證明該人即將離開香港，以及審裁處的判決或命令的履行，相當可能會受到妨礙或延遲。再者，根據《條例》第154條所設的機制，針對審裁處作出的決定、裁定或命令而向上訴法庭提出上訴，屬當然權利，而有關命令將包括禁止令。

感謝貴會提議在《條例》或審裁處的規則增訂一條與《英國競爭上訴審裁處規則》第62條規則相若的條文，從而更清楚劃分司法常務官可以與不可以執行的司法工作(意見書第9段)。我們原則上認為可考慮這個提議，稍後為審裁處制訂程序規則時會再詳細考慮。

希望上文各段已經回應貴會關注的問題。請注意，當局擬於二零一三年十二月十六日諮詢立法會相關事務委員會的意見。”

香港大律師公會的回覆

5. 對於司法機構在二零一三年十一月二十七日作出的上述回應，香港大律師公會在二零一三年十二月二日回覆如下(只有英文)：

“The Bar Association is pleased to note that the Judiciary has taken account of the Bar’s concerns over the proposals to empower the Competition Tribunal to issue prohibition orders and to empower the Registrar of the Competition Tribunal undertake certain judicial work. The Bar Association is assured that the proposed amendment regarding prohibition orders will ensure that the same procedural safeguards as those applicable in the High Court (including as of right appeal to the Court of Appeal) will be in place in the legislation.”

香港律師會

香港律師會的意見

6. 二零一三年十一月十九日，香港律師會就諮詢文件提出下列意見(只有英文)：

“In principle, and subject to considering the proposed wording of the amendment bill, we agree with:-

- (i) the proposed amendments to the Competition Ordinance, which serve to clarify the powers of the Tribunal, ensure it has the ability to enforce compliance with its orders, and allow the Tribunal to run smoothly with the appropriate use of Registrar, so that the Tribunal (a superior court of record) is treated in the same way as other existing courts of law currently under the Judiciary; and*
- (ii) the proposed consequential revisions to various other Ordinances, for the sake of consistency.*

However, although section 156 provides that every Registrar, senior deputy registrar, deputy registrar and any other officer such as a Bailiff of the High Court, by virtue of that appointment, holds the corresponding office or position in the Tribunal, the term ‘Registrar’ is not itself defined in the Competition Ordinance. It is not wholly clear to us that only those persons identified in section 156 are to be entitled to take up equivalent roles with the Tribunal (this is, we anticipate, the intention), although we accept that this could be said to be implicit in the current wording of section 156.

Given the extensive powers that the proposed amendments will confer on the Tribunal's Registrar (and other officers) to perform judicial duties (similar to their counterparts in the High Court), we suggest that amendments be introduced to make it very clear that no person other than the Registrar of the High Court will be entitled to be, or to exercise powers as, the Tribunal's Registrar (and similar provision be made in relation to other officers of the Tribunal, by reference to their counterparts in the High Court). To deal with this, we suggest that consideration be given to introducing amendments to section 2 of the Competition Ordinance to define the terms "Registrar of the Tribunal", "senior deputy registrar of the Tribunal", etc. by reference to their counterparts at the High Court. Alternatively, or additionally, an amendment might be introduced to section 156 to provide that no person other than the Registrar (and other equivalent officers) of the High Court is entitled to hold the position of Registrar (or other equivalent officer) of the Tribunal.

If, on the other hand, it is intended that persons other than the Registrar (and other officers) of the High Court should be entitled to take up the role of Registrar (or other equivalent officer) of the Tribunal then, in light of the nature of the powers to be conferred on the Registrar (and other officers) of the Tribunal, we would suggest that the requisite qualifications of those officers ought to be clearly specified in the Competition Ordinance.

Please also advise on the legislation timetable and when the relevant amendment bill will be introduced into the Legislative Council."

司法機構的回應

7. 二零一三年十一月二十七日，司法機構就香港律師會的意見回應如下：

“我們的政策意向的確是只有高等法院司法常務官(及擔任高等法院其他與司法常務官相關職位的司法人員)，才可在競爭事務審裁處擔任相應的司法崗位。我們注意到貴會建議在法例中更清楚說明這一點。我們原則上認為可考慮貴會的建議，在草擬具體修訂條文時，會考慮貴會建議的修訂內容。

至於立法程序時間表，我們知悉當局擬於二零一三年十二月諮詢立法會相關的事務委員會，並於本屆立法會會期內，向立法會提交條例草案。”

Consultation Paper on the Proposed Legislative Amendments to the Competition Ordinance relating to the Competition Tribunal

PURPOSE

The paper invites views on the proposed legislative amendments to the Competition Ordinance (“CO”) (Cap. 619) relating to the Competition Tribunal (“the Tribunal”) being set up in the Judiciary.

BACKGROUND

2. The CO, which was enacted by the Administration in June 2012, provides a legal framework to tackle anti-competitive conduct across different sectors. The CO prohibits anti-competitive agreements and abuse of market power that have the object or effect to prevent, restrict or distort competition in Hong Kong. The CO also has a merger control regime which applies only to carrier licenses granted under the Telecommunications Ordinance (Cap. 106).

3. Since the enactment of the CO, the Administration and the Judiciary have been working closely to prepare for the phased implementation of the CO. The first phase involves commencement of provisions relating to the establishment of the Competition Commission (“Commission”) and the Tribunal. The provisions relating to the Commission came into operation on 18 January 2013, while the provisions relating to the Tribunal came into operation on 1 August 2013.

4. One of the major tasks leading to the full implementation of the CO is to prepare for the full operation of the Tribunal, which is a superior court of record established under the CO having primary jurisdiction to hear and adjudicate competition-related cases. In this connection, the Judiciary is formulating Tribunal Rules relating to the operations and proceedings of the Tribunal and making other necessary administrative arrangements to prepare for the full operation of the Tribunal.

5. During the preparations, the Administration and the Judiciary have identified certain amendments to the CO and consequential amendments to other pieces of legislation, which are considered essential to the proper functioning of the Tribunal. These amendments mainly seek to confer on the Tribunal as well as its judges and judicial officers powers similar to those for the judges and judicial officers of the Court of First Instance (“CFI”) in respect of civil proceedings. To ensure the operational readiness of the Tribunal in discharging its functions, we consider it essential to introduce these amendments before the full implementation of the CO.

PROPOSALS AND JUSTIFICATIONS

6. The Administration has proposed that the Competition Ordinance be amended by way of a Competition (Amendment) Bill (“Amendment Bill”). The major legislative proposals relating to the Judiciary and their justifications are set out in the following paragraphs.

(A) Proposed General Powers for the Functioning of the Tribunal

7. The CO has adopted a general approach (c.f. section 142, 143, 144 and 158 of the CO) such that the Tribunal may follow generally the rules of practice and procedure of the CFI; has the power to enforce its orders in the same way as a superior court of record (including the CFI), and has the power to grant orders that the CFI is empowered to make, unless specifically provided otherwise by the Tribunal Rules or the CO itself. Generally speaking, the Tribunal would have the jurisdiction of the CFI as provided under the High Court Ordinance (“HCO”) (Cap. 4) and the Rules of the High Court (Cap. 4A) (“RHC”) as well as the CFI’s inherent jurisdiction (legal or equitable).

8. This notwithstanding, we have identified the following proposed amendments to the CO which are necessary to confer specific powers on the Tribunal that either differ from or supplement the jurisdiction of the CFI. Some of the proposed amendments aim to provide greater clarity and certainty given the particular circumstances.

Enforcement powers

9. Section 143(1)(c) of the CO confers all the powers, rights and privileges of a superior court of record to the Tribunal with respect to, among others, its enforcement of orders. It does not very clearly provide that the Tribunal has the same powers as any specific court such as the CFI. For clarity and avoidance of any doubt, we propose amending the CO to make it clear that the Tribunal will have in the exercise of its jurisdiction (including the enforcement of its orders) the same powers, rights and privileges as the CFI.

Levying interest on debts/damages

10. Section 1(k) of Schedule 3 to the CO stipulates that the Tribunal may order the payment of damages for any loss or damage suffered as a result of any contravention of the competition rules. Unlike the HCO which empowers the CFI to make orders to impose simple interest on any debt or damages for which judgment is given generally from the date of the cause of action to the date of payment/judgment, there is no explicit provision in the CO providing such power to the Tribunal. Although section 142(2) of the CO currently provides that the Tribunal, in exercising its jurisdiction, has the jurisdiction to grant remedies and reliefs as the CFI, it is not entirely clear whether section 142(2) of the CO would cover the imposition of interest and if so, how such interest might be determined and ordered.

11. For the sake of consistency and clarity, we propose adding to the CO a specific empowering provision on the order of payment of interest on debts/damages similar to that applicable to the CFI in the HCO.

Enforcement of pecuniary penalties and financial penalties

12. There are certain provisions in the CO governing the payment of penalties/costs by means of orders of the Tribunal. These include sections 93 and 169 of the CO, which prescribe that the Tribunal may impose a pecuniary penalty for any contravention of the competition rules,

and a financial penalty for contravention of section 168 of the CO concerning the indemnification for any person who is liable for payment of a pecuniary penalty or costs respectively¹. Moreover, section 63(2)(b) of the CO provides that the Tribunal may order payment of costs as a result of failure to comply with a commitment, and section 96 of the CO provides that the Tribunal may order payment of costs relating to investigation incurred by the Commission in connection with proceedings for the contravention of a competition rule.

13. Unlike some other legislation, the CO does not currently provide for any legal consequences in the event that a party fails to pay or delays the payment of the penalties or costs as decided by the Tribunal. For example, under the HCO, if the payment of penalties/ costs fails to be enforced, the CFI or the Court of Appeal may certify to the Registrar of the High Court the sum payable, and the non-payment or late-payment of that sum could then be enforced by the Registrar as a “judgment debt” and simple interest might be imposed.

14. With a view to incentivising prompt payment of penalties/costs and making reference to the existing arrangements under the HCO, we propose adding provisions to the CO empowering the Tribunal to order the payment of interest in respect of non-payment or late payment of pecuniary and financial penalties under sections 93 and 169 of the CO as well as costs under section 63(2)(b) and section 96 of the CO.

Prohibition of debtors from leaving Hong Kong

15. Currently, under the HCO, the High Court has power to make an order prohibiting a person from leaving Hong Kong (“prohibition order”) to facilitate the enforcement, securing or pursuance of a judgment against that person for the payment of a specified sum of money, or a judgment or order against that person for the payment of an amount to be

¹ According to section 168 of the CO, subject to section 170, no person may indemnify another person who is or was an officer, employee or agent of an undertaking against liability for paying (a) a pecuniary penalty under Part 6 of the CO; or (b) costs incurred in defending an action in which that other person is (i) convicted of contempt of the Tribunal; (ii) convicted of an offence under Part 12 or Part 3 of the CO; or (iii) ordered to pay a pecuniary penalty under Part 6 of the CO.

assessed or requiring him to deliver any property or perform any other act. Such prohibition order could also be made to facilitate the pursuance of a civil claim (other than a judgment) for the payment of money or damages, or for the delivery of any property or the performance of any other act.

16. To ensure that the Tribunal can effectively enforce its judgment or order against payment of pecuniary or financial penalties or other costs and to enable the Tribunal to make pre-judgment orders in a like manner as the High Court, we propose amending the CO to incorporate a provision similar to section 21B of the HCO to provide the Tribunal with such order-making power.

Expenses of witnesses

17. A witness in proceedings might incur expenses in order to perform his/her duty (e.g. expenses in travelling to the court), and such expenses should generally be reimbursed. Section 158(2)(e) of the CO empowers the Chief Judge to make rules prescribing the allowances to be paid to witness appearing before the Tribunal.

18. While there might be overlap between “allowance” and “expenses”, for the sake of clarity and certainty and similar to section 52 of the HCO, we propose adding a dedicated provision to the CO to empower a member of the Tribunal to make any order for reimbursing a witness in respect of any expenses reasonably and properly incurred by him/her.

(B) Proposed Amendments relating to Registrars

19. Sections 144, 156 and 158 of the CO currently provide for a framework on the automatic appointment of the Tribunal’s Registrar and other registrar-related positions (collectively called “registrars” here), and the practice and procedure of the Tribunal that should be followed by these registrars. The CO nonetheless does not confer powers on the Tribunal’s registrars to perform judicial duties as with their counterparts in the High Court under the HCO.

20. To ease the workload of members of the Tribunal and in line with the arrangements for the High Court, the Judiciary considers it essential to provide powers under the CO to enable the Tribunal's registrars to perform judicial work that is similar to that performed by their counterparts in the High Court. Details are set out below.

Power of Registrars

21. Provisions modelled on sections 38 and 40A of the HCO (regarding jurisdiction, powers and duties of the Registrar of the High Court) are proposed to be added to the CO to empower the Tribunal's registrars to perform judicial work.

Tribunal Rules in relation to Registrars

22. To provide technical details on the exercise of the powers and jurisdiction of the Tribunal's registrars, the Judiciary intends to make Tribunal rules under section 158 of the CO. While section 158 of the CO currently provides that rules of the Tribunal could be made to regulate and prescribe the practice and procedure to be followed in the Tribunal in all matters with respect to which the Tribunal has jurisdiction, it is not entirely clear whether rules prescribing the jurisdiction of the Tribunal which may be exercised by the Tribunal's registrars are covered under section 158 of the CO.

23. For the sake of clarity and certainty, we propose amending section 158 of the CO to make it clear that rules in relation to the jurisdiction of the Tribunal which may be exercised by the Tribunal's registrars could be made under the section. This proposed amendment follows the formulation adopted in section 54(2)(b) of the HCO which provides that rules prescribing the jurisdiction of the High Court which may be exercised by the Registrar or a Master of the High Court could be made thereunder.

Protection of Registrars

24. Section 39 of the HCO currently offers certain protection to the Registrar of the High Court so that he/she would be immune from legal actions brought against him/her for any act done by any bailiff without directions from the Registrar, or for any direction given to any bailiff with regard to the execution/non-execution process in accordance with an order for direction and guidance of the High Court where no material fact is wilfully misrepresented by the Registrar.

25. For the sake of consistency, we propose adding to the CO new provisions to extend similar protection to the Tribunal's registrars.

Temporary Registrars

26. Section 156 of the CO currently provides that "Every Registrar, senior deputy registrar, deputy registrar and any other officer such as a Bailiff of the High Court, by virtue of that appointment, holds the corresponding office or position in the Tribunal". As the HCO provides for the possible appointment of temporary registrars, we propose amending section 156 of the CO to include such positions so that the "temporary registrar", "temporary senior deputy registrar" and "temporary deputy registrar" of the High Court will also automatically hold the corresponding positions in the Tribunal.

(C) Proposed Consequential Amendments

Transfer of proceedings

27. Section 113 of the CO states that the CFI should generally transfer to the Tribunal so much of the proceedings that are within the jurisdiction of the Tribunal. It is necessary to provide detailed rules in the RHC for the exercise of such power by the CFI (e.g. to specify the manner in which and/or the circumstances under which the CFI should invoke the power). The relevant rules will govern the transfer of the whole or part of the proceedings when the proceedings are still with the CFI.

28. To enable the making of such rules, we propose introducing consequential amendments to the HCO to more specifically empower the Rules Committee constituted under section 55 of the HCO to make rules of court for prescribing the procedures in connection with the transfer of proceedings between the CFI and the Tribunal.

Higher Rights of Audience

29. At present, solicitors who satisfy the eligibility criteria under the Legal Practitioners Ordinance (“LPO”) (Cap. 159) may apply to the Higher Rights Assessment Board established under the LPO for higher rights of audience, i.e. rights of audience before the High Court and the Court of Final Appeal in civil proceedings, criminal proceedings or both.

30. Given the status of the Tribunal as a superior court of record and the possible transfer of cases (in part or in whole) between the CFI and the Tribunal, it is possible that a case may be handled by the same team of solicitors/barristers even after the transfer. We therefore propose amending the relevant section in the LPO so that solicitor advocates granted with the higher rights of audience for the High Court and the Court of Final Appeal in civil proceedings should also be granted similar rights in respect of the Tribunal.

Power to bring up persons in custody to give evidence

31. Judges and judicial officers at various courts and tribunals are empowered under the Evidence Ordinance (“EO”) (Cap. 8) to bring up any person in lawful custody to prosecute, pursue, defend, or to be examined as a witness before those courts/tribunals.

32. To prepare for the possibility that the Tribunal may require persons in lawful custody to give evidence, we propose introducing consequential amendments to the EO so that such powers are also given to the relevant judges and judicial officers of the Tribunal.

Extension of Tribunal's jurisdiction to the Hong Kong Port Area

33. According to the Administration, the Shenzhen Bay Port Hong Kong Port Area Ordinance (Cap. 591) seeks to, among others, apply the laws of Hong Kong in the Hong Kong Port Area in Shenzhen Bay (a Mainland territory) and to provide for the jurisdiction of courts/tribunals in this connection. The term "court" is defined in section 2 of this Ordinance as "a court or tribunal specified in Part 1 of Schedule 4", which sets out a full list of the courts/tribunals currently under the Judiciary, except for the Tribunal.

34. For the sake of completeness, we propose introducing consequential amendments to the above Ordinance to the effect that the Tribunal's jurisdiction will be extended to the Hong Kong Port Area and the territorial limit of the Tribunal's orders would be construed as including the Hong Kong Port Area.

Electronic Transactions Ordinance

35. According to the Administration, the Electronic Transactions Ordinance ("ETO") (Cap. 553) provides a legal framework for the conduct of electronic transactions by giving electronic records and electronic/digital signatures the same legal status as that of their paper-based counterparts and establishes a framework for the operation of certification authorities.

36. Section 13(1) of the ETO stipulates that sections 5, 5A, 6, 7 and 8 therein do not apply in relation to information given, presented or retained, documents served or signatures required for the purposes of any proceedings set out in Schedule 2, which lists out, among others, the court and other proceedings of all existing courts of law under the Judiciary (except the Tribunal). This means that the listed courts will not be required to accept electronic submissions.

37. The Judiciary is undergoing a major computer upgrading exercise called the Information Technology Strategy Plan. This will take time to plan and implement.

38. As the proceedings before the Tribunal will be judicial proceedings and the Judiciary will not be able to provide for electronic services for the Tribunal in the near future, for the sake of consistency, it

is necessary to add the Tribunal to Schedule 2 to the ETO to extend the exemption to the Tribunal.

VIEWS SOUGHT

39. The Judiciary would be grateful for your views on the proposed legislative amendments by close, **11 November 2013**. Unless otherwise specified, your comments will be treated as public information and may be published in the future.

Judiciary Administration
October 2013