

立法會
Legislative Council

LC Paper No. CB(1)1922/13-14
(These minutes have been seen
by the Administration and the Judiciary
Administration)

Ref : CB1/BC/8/13/1

Bills Committee on Competition (Amendment) Bill 2014

**Minutes of second meeting
held on Monday, 30 June 2014, at 3:00 pm
in Conference Room 1 of the Legislative Council Complex**

Members present : Hon Andrew LEUNG Kwan-yuen, GBS, JP (Chairman)
Hon Albert HO Chun-yan
Hon LEE Cheuk-yan
Hon Abraham SHEK Lai-him, GBS, JP
Hon Jeffrey LAM Kin-fung, GBS, JP
Hon Cyd HO Sau-lan
Hon Alan LEONG Kah-kit, SC
Hon Albert CHAN Wai-yip
Hon Steven HO Chun-yin
Hon YIU Si-wing
Hon Charles Peter MOK
Hon Dennis KWOK
Hon Christopher CHEUNG Wah-fung, JP
Hon SIN Chung-kai, SBS, JP
Dr Hon Elizabeth QUAT, JP

Member attending : Hon James TO Kun-sun

Members absent : Hon WONG Ting-kwong, SBS, JP
Hon Ronny TONG Ka-wah, SC
Hon Mrs Regina IP LAU Suk-yee, GBS, JP
Hon Paul TSE Wai-chun, JP
Hon TANG Ka-piu
Hon CHUNG Kwok-pan

**Public Officers
attending** : **For item I**

Ms Carol YUEN, JP
Deputy Secretary for Commerce and Economic Development
(Commerce and Industry) 1

Mr Raymond WU
Principal Assistant Secretary for Commerce and Economic
Development (Commerce and Industry) 2

Ms Wendy CHEUNG
Assistant Judiciary Administrator (Development)

Ms Monica LAW
Senior Assistant Law Draftsman
Department of Justice

Mr Francis KWAN
Senior Assistant Law Officer (Civil Law) (Acting)
Department of Justice

Mr David GROVER
Senior Government Counsel
Department of Justice

Miss Yvonne CHEUNG
Government Counsel
Department of Justice

**Attendance by
invitation** : **For item I**

The Lion Rock Institute

Mr Andrew SHUEN Pak-man
Research Director

Individual

Miss Amanda QUEIROZ

人手比例不符最低工資關注組

Mr WONG Kwai-sang

Hong Kong Bar Association

Mr LO Pui-yin

Clerk in Attendance : Ms Miranda HON
Chief Council Secretary (1)1

Staff in attendance : Mr Timothy TSO
Assistant Legal Adviser 2

Miss Lilian MOK
Senior Council Secretary (1)1

Ms Mandy LI
Council Secretary (1)1

Miss Mandy POON
Legislative Assistant (1)1

Action

I. Meeting with deputations, the Administration and the Judiciary Administration

Clause-by-clause examination of the Bill (starting from clause 4 of Part 2)

(LC Paper No. CB(1)1695/13-14(01) — List of follow-up actions arising from the meeting on 12 June 2014

LC Paper No. CB(1)1695/13-14(02) — Administration's response to the issues raised at the meeting on 12 June 2014

LC Paper No. CB(1)1695/13-14(03) — Administration's reply dated 25 June 2014 to Assistant Legal Adviser's letter dated 30 May 2014

LC Paper No. CB(1)1602/13-14(01) — Administration's reply dated 11 June 2014 to Assistant Legal Adviser's letter dated 30 May 2014

Action

Relevant papers

- LC Paper No. CB(1)1591/13-14(01) — Marked-up copy of the Bill prepared by the Legal Service Division (Restricted to Members)
- LC Paper No. CB(1)1591/13-14(02) — Assistant Legal Adviser's letter dated 30 May 2014 to the Administration
- LC Paper No. CB(3)627/13-14 — The Bill
- File Ref: CITB (CR) 05/62/43/8 — Legislative Council Brief
- LC Paper No. LS54/13-14 — Legal Service Division Report
- LC Paper No. CB(1)1591/13-14(03) — Background brief prepared by the Legislative Council Secretariat)

Meeting with deputations

1. The Chairman invited views from the following organizations/individuals –
 - (a) The Lion Rock Institute;
 - (b) Miss Amanda QUEIROZ;
 - (c) 人手比例不符最低工資關注組 (LC Paper Nos. CB(1)1734/13-14(01) and CB(1)1791/13-14(01)); and
 - (d) Hong Kong Bar Association (LC Paper No. CB(1)1734/13-14(02)).
2. The Bills Committee deliberated (index of proceedings attached at the **Annex**).
3. The Administration/Judiciary Administration was requested to –
 - (a) provide written response to the views and concerns expressed by deputations/individuals on the Competition (Amendment) Bill 2014 ("the Bill") at the meeting;

Admin/
Judiciary
Admin

Action

Clause 6 – proposed new section 155A

- (b) clarify whether the term "fine" in the proposed new section 155A(1)(c) could be interpreted to include the "penalty" in the proposed new section 155A(1)(a) and (b);
- (c) consider amending the English text of the proposed new section 155A(1)(c) to read as "any other fine imposed by the Tribunal" to tally with the Chinese text;

Clause 8 – proposed new section 156A

- (d) consider amending the Chinese text of the proposed new section 156A(2) to better reflect the meaning of the English text, with reference to the use of "由.....或根據....." as the Chinese rendition of "by or under" in other Ordinances;

Clause 11 – proposed new section 158A

- (e) consider defining "the Registrar of the Tribunal" in the Bill to make clear when the term covered the Registrar, a senior deputy registrar and a deputy registrar and their temporary counterparts;

Clause 15

- (f) consider amending the Chinese text of the definition of *higher court of Hong Kong* in Rule 2 of the Higher Rights of Audience Rules (Cap. 159 sub. leg. AK) to read as "較高級法院 (higher court of Hong Kong) 指以下任何法庭、法院或審裁處 –";

Clause 16

- (g) since the phrase "established under XXX Ordinance" was used under the existing Schedule 2 to the Electronic Transactions Ordinance (Cap. 553), consider amending the paragraph to be added to the Schedule to read as "(ca) the Competition Tribunal established under the Competition Ordinance (Cap. 619)" in Clause 16 of the Bill; and

Use of references to Registrar

- (h) review the use of references to "the Registrar" alone and references to "the Registrar, a senior deputy registrar and/or a deputy registrar" throughout the Bill.

Action

Way forward

4. The Chairman concluded that the Bills Committee had completed the clause-by-clause examination of the Bill. The Administration's response to the issues raised in paragraph 3 above would be circulated to members for their consideration of whether a meeting should be held to discuss the issues. If no such request was made by members, the Bills Committee's next meeting scheduled for 22 July 2014 at 2:30 pm would be cancelled and the Bills Committee would deem to have completed scrutiny of the Bill. The Committee Stage amendments to be proposed by the Administration would be circulated to members for consideration.

II. Any other business

5. There being no other business, the meeting ended at 4:47 pm.

Council Business Division 1
Legislative Council Secretariat
12 August 2014

Bills Committee on Competition (Amendment) Bill 2014

**Proceedings of the second meeting
on Monday, 30 June 2014, at 3:00 pm
in Conference Room 1 of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
<i>Agenda Item I - Meeting with deputations, the Administration and the Judiciary Administration</i>			
000710 - 000950	Chairman	Opening remarks	
000951 - 001501	Mr Andrew SHUEN Pak-man, The Lion Rock Institute	Expression of views – (a) objected to the Competition Ordinance (Cap. 619) ("the CO"); (b) criticized that the introduction of the Competition (Amendment) Bill 2014 ("the Bill") shortly after the enactment of the CO had fully reflected the existence of many loopholes and inadequacies in the CO; and (c) cited a chained store selling imported products as an example to highlight the inadequacies of the CO in dealing with anti-competitive conduct.	
001502 - 001735	Miss Amanda QUEIROZ	Expression of views – (a) objected to the Bill; (b) the Bill was in fact giving more power to the Government to intervene in the free market economy of Hong Kong; and (c) doubted whether the legislative amendments proposed in the Bill were necessary for the operation and proceedings of the Competition Tribunal ("the Tribunal").	
001736 - 002109	Mr WONG Kwai-sang, 人手比例不符最低工資 關注組	Expression of views – (LC Paper Nos. CB(1)1734/13-14(01) and CB(1)1791/13-14(01)) (a) the legalization and regulation of soccer betting had restricted competition in soccer betting activities; and	

Time marker	Speaker	Subject(s)	Action required
		(b) the Legislative Council should review whether or not the soccer betting licence of the Hong Kong Jockey Club should be renewed when it was due for renewal.	
002110 - 002623	Mr LO Pui-yin, Hong Kong Bar Association ("HKBA")	<p>Expression of views – (LC Paper No. CB(1)1734/13-14(02))</p> <p>(a) HKBA's views on the Bill were set out in full in the Annex to CB(1)1695/13-14(02);</p> <p>(b) noted that section 154 of the CO provided for appeals as of right to the Court of Appeal against any decision, determination or order (including an order prohibiting departure from Hong Kong as described in the proposed new section 151A) of the Tribunal;</p> <p>(c) sought clarification as to whether the Department of Justice would enforce payment of penalties and fines described in the proposed new section 155A; and</p> <p>(d) noted that the rules of the Tribunal which were under preparation would set out the scope of judicial work that the Tribunal's registrars were empowered to do in more concrete terms.</p>	
002624 - 003130	Chairman Administration Judiciary Administration	<p>In response to deputations' views, the Administration/Judiciary Administration responded that –</p> <p>(a) the Bill aimed to give the Tribunal certain specific powers and provide for certain operational matters that were necessary to ensure the proper functioning of the Tribunal;</p> <p>(b) the Bill sought to confer on the Tribunal as well as its members and judicial officers certain specific powers similar to those exercised by the judges and judicial officers of the Court of First Instance ("the CFI") in respect of civil proceedings;</p> <p>(c) the proposed legislative amendments in the Bill were considered essential for the proper functioning of the Tribunal;</p>	Admin (paragraph 3(a) of the minutes refers)

Time marker	Speaker	Subject(s)	Action required
		<p>(d) the Judiciary was formulating the Tribunal rules relating to the operation and proceedings of the Tribunal to prepare for the full operation of the Tribunal;</p> <p>(e) the Tribunal would carefully exercise its power to enforce its orders in the same way as the CFI;</p> <p>(f) clause 6 of the Bill was to empower the Registrar of the Tribunal to enforce payment of penalties and fines described in the proposed new section 155A. The proposed provision was modelled on the existing section 21E of the High Court Ordinance (Cap. 4) ("the HCO"); and</p> <p>(g) the judicial work that the Tribunal's registrars were empowered to do would be similar to that performed by their counterparts in the High Court and the Tribunal rules would set out in more concrete terms the scope of the judicial work of the Tribunal's registrars.</p>	
003131 - 003823	<p>Chairman Mr Albert HO Administration Mr LO Pui-yin/HKBA</p>	<p>Mr Albert HO enquired –</p> <p>(a) whether the Market Misconduct Tribunal established under the Securities and Futures Ordinance (Cap. 571) was a superior court of record as the Tribunal; and</p> <p>(b) whether solicitors were granted rights of audience before the Market Misconduct Tribunal.</p> <p>The Administration responded that the Market Misconduct Tribunal was an independent body established outside the Judiciary while the Tribunal was established within the Judiciary as a superior court of record and pitched at the level of the CFI of the High Court.</p> <p>Mr LO Pui-yin/HKBA indicated that –</p> <p>(a) the CO provided that the Tribunal was a superior court of record and would operate in a similar way as the CFI in many aspects; and</p>	

Time marker	Speaker	Subject(s)	Action required
		(b) the granting of solicitors' rights of audience before the superior courts in civil proceedings, criminal proceedings or both was governed by existing legislation. At present, no legal representation was allowed before the Small Claims Tribunal and the Labour Tribunal.	
003824 - 004631	Chairman Administration	The Administration's response to the issues raised at the meeting of the Bills Committee on 12 June 2014 (LC Paper Nos. CB(1)1695/13-14(02) and CB(1)1724/13-14(01)).	
<p>Continuation of clause-by-clause examination of the Bill (The Bill [LC Paper No. CB(3)627/13-14] and the marked-up copy of the Bill [LC Paper No. CB(1)1591/13-14(01)])</p>			
004632 - 010036	Chairman Administration Judiciary Administration Assistant Legal Adviser 2 (ALA2)	<p><u>Clause 4 – Sections 151A, 151B and 151C added</u></p> <p><i>151A – Order prohibiting departure from Hong Kong</i></p> <p>Members raised no query.</p> <p><i>151B – Duration and discharge of prohibition order</i></p> <p>ALA2 sought clarification as to whether there was any limit under the proposed new section 151B(3) on the number of times for renewal of an order prohibiting a person from leaving Hong Kong ("prohibition order") made under the proposed new section 151A.</p> <p>The Administration explained that under the proposed new section 151B(3), the Tribunal might, on application by a person on whose application a prohibition order was made, renew the prohibition order. There was no limit on the number of times for which a prohibition order could be renewed, so long as the relevant conditions in the proposed new section 151A for the making of the prohibition order were met.</p> <p>ALA2 further enquired about the serving of a notice that a prohibition order was no longer required in the proposed new section 151B(6).</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>The Administration/Judiciary Administration advised that –</p> <p>(a) under the proposed new section 151A(5), the applicant of a prohibition order was required to serve a copy on the Director of Immigration and the Commissioner of Police. In the event where the person against whom the prohibition order was made attempted to and insisted on leaving Hong Kong in contravention of the prohibition order, front-line staff of the Immigration Department responsible for controlling the movement of people at the control points might seek assistance from the Police in arresting the person concerned. The Police might need to check if the prohibition order had been served on them before taking actions; and</p> <p>(b) in the case where a prohibition order was no longer required, the person on whose application the prohibition order was made was required to serve a notice only on the Director of Immigration under the proposed new section 151B(6). Since assistance from the Police would not be required by front-line staff of the Immigration Department under such circumstances, it was considered not necessary to require a notice to be served on the Commissioner of Police.</p> <p><i>151C – Contravention of prohibition order</i></p> <p>Members raised no query.</p>	
010037 - 010805	Chairman Administration ALA2	<p><u>Clause 5 – Sections 153A and 153B added</u></p> <p><i>153A – Interest on debts and damages</i></p> <p>In response to the Chairman's enquiry, the Administration advised that the proposed new sections 153A and 153B (which empowered the Tribunal to award interest on debts and damages for which judgment was given and to provide that judgment debts were to carry simple interest) were modelled on the existing sections 48 and 49 of the HCO.</p>	

Time marker	Speaker	Subject(s)	Action required
		155A(1)(c) to read as "any other fine imposed by the Tribunal" to tally with the Chinese text.	
011545 - 011720	Chairman Administration ALA2	<u>Clause 7 – Section 156 amended (Registrar and other staff of Tribunal)</u> Members raised no query.	
011721 - 012720	Chairman Administration ALA2	<u>Clause 8 – Sections 156A to 156E added</u> <i>156A – Jurisdiction and powers of Registrar of Tribunal</i> As suggested by ALA2, the Chairman requested the Administration to consider amending the Chinese text of the proposed new section 156A(2) to better reflect the meaning of the English text, with reference to the use of "由.....或根據....." as the Chinese rendition of "by or under" in other Ordinances. <i>156B – Jurisdiction and powers of deputy registrars of Tribunal</i> <i>156C – Jurisdiction and powers of temporary registrars of Tribunal</i> Members raised no query. <i>156D – Protection of Registrar etc. of Tribunal</i> In response to ALA2's enquiry, the Administration explained that for better readability, for those provisions that were not too long, the three ranks of registrar, i.e. "the Registrar, a senior deputy registrar and a deputy registrar" would be listed out instead of using the phrase "the Registrar of the Tribunal", although the latter also included the three ranks of registrar afore-mentioned. <i>156E – Registrar etc. of Tribunal may apply to Tribunal for order</i> Members raised no query.	Admin (paragraph 3(d) of the minutes refers)
012721 - 012822	Chairman Administration	<u>Clause 9 – Section 157A added</u> Members raised no query.	

Time marker	Speaker	Subject(s)	Action required
012823 - 013100	Chairman Administration	<p><u>Clause 10 – Section 158 amended (Tribunal rules)</u></p> <p>Members raised no query.</p>	
013101 - 013516	Chairman Administration ALA2	<p><u>Clause 11 – Section 158A added</u></p> <p>ALA2 sought clarification on whether there was discrepancy between the English and Chinese text of the following phrase in the proposed new section 158A(1)(b) –</p> <p><i>English text:</i> "and the investment of and other dealings with money, securities and movable property in the Tribunal"</p> <p><i>Chinese text:</i> "以及將存於審裁處的款項、證券及動產作投資或作其他方式處理"</p> <p>The Administration explained that although the word "and" was used in the English text while the word "或" was used in the Chinese text in the above paragraph, there would not be confusion over the meaning of the proposed new section 158A(1)(b). Neither the Chinese nor the English text would need to be revised.</p> <p>The Chairman requested the Administration to consider defining "the Registrar of the Tribunal" in the Bill to make clear whether it included the Registrar, a senior deputy registrar and a deputy registrar and their temporary counterparts.</p> <p>ALA2 further requested the Administration to review the use of references to "the Registrar" alone and references to "the Registrar, a senior deputy registrar and/or a deputy registrar" throughout the Bill.</p>	<p>Admin (paragraph 3(e) of the minutes refers)</p> <p>Admin (paragraph 3(h) of the minutes refers)</p>
013517 - 013659	Chairman Administration	<p>Part 3</p> <p>Division 1 – Amendment to High Court Ordinance (Cap. 4)</p> <p><u>Clause 12 – Section 54 amended (rules of court)</u></p> <p>Members raised no query.</p>	

Time marker	Speaker	Subject(s)	Action required
013600 - 013846	Chairman Administration ALA2	<p>Part 3</p> <p>Division 2 – Amendments to Evidence Ordinance (Cap. 8)</p> <p><u>Clause 13 – Section 81 amended (warrant or order to bring up prisoner to give evidence)</u></p> <p>Since section 81 of the Evidence Ordinance (Cap. 8) was proposed to be amended under clause 13 of the Bill and the same section was also proposed to be amended under clause 43 of the Statute Law (Miscellaneous Provisions) Bill 2014, the Administration would amend clause 13 of the Bill if the Statute Law (Miscellaneous Provisions) Bill 2014 was passed and gazetted as an ordinance before the Bill.</p>	
013847 - 013926	Chairman Administration	<p>Part 3</p> <p>Division 3 – Amendment to Legal Practitioners Ordinance (Cap. 159)</p> <p><u>Clause 14 – Section 39H amended (application to Assessment Board for higher rights of audience)</u></p> <p>Members raised no query.</p>	
013927 - 014111	Chairman Administration ALA2	<p>Part 3</p> <p>Division 4 – Amendments to Higher Rights of Audience Rules (Cap. 159 sub. leg. AK)</p> <p><u>Clause 15 – Rule 2 amended (interpretation)</u></p> <p>As requested by ALA2, the Administration agreed to consider amending the Chinese text of the definition of <i>higher court of Hong Kong</i> in Rule 2 of the Higher Rights of Audience Rules (Cap. 159 sub. leg. AK) to read as "較高級法院 (higher court of Hong Kong) 指以下任何法庭、法院或審裁處 –".</p>	Admin (paragraph 3(f) of the minutes refers)

Time marker	Speaker	Subject(s)	Action required
014112 - 014455	Chairman Administration ALA2	<p>Part 3</p> <p>Division 5 – Amendment to Electronic Transactions Ordinance (Cap. 553)</p> <p><u>Clause 16 – Schedule 2 amended (proceedings in relation to which sections 5, 5A, 6, 7 and 8 of this Ordinance do not apply under section 13(1) of this Ordinance)</u></p> <p>Since the phrase "established under XXX Ordinance" was used under the existing Schedule 2 to the Electronic Transactions Ordinance (Cap. 553), ALA2 requested the Administration to consider amending the paragraph to be added to the Schedule to read as "(ca) the Competition Tribunal established under the Competition Ordinance (Cap. 619)" in clause 16 of the Bill.</p>	Admin (paragraph 3(g) of the minutes refers)
014456 - 014555	Chairman Administration	<p>Part 3</p> <p>Division 6 – Amendment to Shenzhen Bay Port Hong Kong Port Area Ordinance (Cap. 591)</p> <p><u>Clause 17 – Schedule 4 amended (courts and court orders)</u></p> <p>Members raised no query.</p>	
014556 - 014650	Chairman	Closing remarks	