



立法會秘書處 法律事務部
LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

來函檔號 YOUR REF : CITB (CR) 05/62/43/8
本函檔號 OUR REF : LS/B/22/13-14
電話 TELEPHONE : 3919 3505

傳真 FAX : 2877 5029
電郵 E-MAIL : ttso@legco.gov.hk

By Fax (2918 1273)

30 May 2014

Mr Raymond WU
Principal Assistant Secretary for Commerce and
Economic Development (Commerce and Industry)
Commerce and Economic Development Bureau
22-23/F, West Wing,
Central Government Offices,
2 Tim Mei Avenue, Tamar,
Hong Kong

Dear Mr WU,

Competition (Amendment) Bill 2014 (the Bill)

We are scrutinizing the legal and drafting aspects of the above Bill.
We would be grateful if you could clarify the following matters.

Clauses 4 to 6, 9 and 11

In paragraphs 6 and 7 of the Legislative Council Brief, it is stated that the Competition Ordinance (Cap. 619) (CO) has adopted a general approach such that the Competition Tribunal (the Tribunal) may generally follow the practice and procedure of the Court of First Instance (CFI), has the power to enforce its orders in the same way as a superior court of record, and has the power to grant orders that the CFI is empowered to grant, unless specifically provided otherwise by the rules of the Tribunal or the CO. Notwithstanding the general approach adopted in the CO, the Administration has identified several areas in the CO where it is not entirely clear as to whether the Tribunal would have the specific powers of the CFI to grant remedies and relief in discharging its functions. It is therefore proposed to amend the CO to confer more specific powers on the Tribunal.

Please clarify whether there are any other powers of the CFI which are not specifically conferred on the Tribunal under the Bill.

Please also clarify whether by conferring some specific powers on the Tribunal under the Bill would have any effect on the interpretation of the general powers of the Tribunal which are already provided under the CO (e.g. sections 142 to 144).

Please consider whether it would be appropriate to expressly state in the provisions for the avoidance of doubt that the proposed new sections are "without limiting" or "without affecting" the general powers of the Tribunal which already exist under the CO (provided that this is the policy intent).

Clause 4 - proposed new sections 151A(6), 151B(9) and 151C(5)

It is noted that *Tribunal* is defined to include the Registrar, a senior deputy registrar and a deputy register of the Tribunal. However, temporary registrar, temporary senior deputy registrar and temporary deputy registrar (collectively referred to as "temporary registrars") are not expressly included in the definition. Please clarify whether the powers under the proposed new sections 151A, 151B and 151C are intended to be exercisable by the temporary registrars (by virtue of the proposed new section 156C(1) to (3) to be added by clause 8).

Clause 4 - proposed new section 151B

Please clarify whether there is any limit on the number of times for renewal of a prohibition order under the proposed new section 151B(3).

It is noted that under the proposed new section 151A(5), a copy of the prohibition order and a copy of any other ancillary order must be served on the Director of Immigration, the Commissioner of Police and the person against whom the prohibition order is made (if the person can be found). Please clarify why a notice that the prohibition order is no longer required must be served on the Director of Immigration, but not also on the Commissioner of Police, as soon as reasonably possible under the proposed new section 151B(6).

Clause 5 - proposed new sections 153A and 153B

Please clarify whether the Tribunal has the jurisdiction to deal with proceedings for the recovery of a debt.

It is noted that the provisions relating to interest on claims for debt and damages in section 48 of the High Court Ordinance (Cap. 4) (HCO) are subject to rules of court. Please clarify whether the rules of the Tribunal to be made under section 158 of the CO would have any provisions relating to interest on debts and damages.

Please clarify why interest under the proposed new section 153A is to be calculated at a rate that the Tribunal thinks fit (section 153A(4)), whereas it is to be calculated under the proposed new section 153B(1) at the rate that the Tribunal specifies by order, or in the absence of such an order, at the rate that the Chief Justice from time to time determines by order.

Please also clarify whether the orders mentioned in the proposed new section 153B(1) are subsidiary legislation.

Clause 6 - proposed new section 155A

Please clarify the provision(s) of the CO under which a fine may be imposed by the Tribunal (as mentioned in the proposed new section 155A(1)(c)).

It is noted that "Registrar" is specifically mentioned in the proposed new section 155A(2). Please clarify whether the payment of penalty or fine may also be enforced by a senior deputy registrar, a deputy registrar or temporary registrars.

Clause 8 - proposed new section 156B

Under the proposed new section 156B(1) and (3), a senior deputy registrar and a deputy registrar of the Tribunal have the same jurisdiction, privileges, powers and duties of a senior deputy registrar and a deputy registrar of the High Court respectively. Please let Members know the jurisdiction, privileges, powers and duties of a senior deputy registrar and a deputy registrar of the High Court.

It is noted that under the proposed new section 156B(2) and (4), subject to the rules of the Tribunal made under section 158, a senior deputy registrar and a deputy registrar of the Tribunal have all the jurisdiction, privileges, powers and duties of the Registrar of the Tribunal. Please clarify whether it is intended to have any restrictions in the rules of the Tribunal on the scope of the jurisdiction, privileges, powers and duties of a senior deputy registrar and a deputy registrar of the Tribunal.

Clause 8 - proposed new section 156C(1) to (3)

Please clarify whether there are any equivalent provisions under the HCO providing for the jurisdiction, privileges, powers and duties of temporary registrars of the High Court.

Clause 8 - proposed new sections 156D and 156E

It is noted that only "the Registrar, a senior deputy registrar or a deputy registrar of the Tribunal" are mentioned in the proposed new sections 156D and 156E. Please clarify whether temporary registrars are intended to be covered by these sections.

Clause 10(1)

Please consider whether it would be more appropriate to use "Section 158(2), before paragraph (a)" instead of "Before section 158(2)(a)" in clause 10(1).

Clause 11 - proposed new section 158A

It is noted that the "Registrar" is specifically mentioned in the proposed new section 158A(1)(d). Please clarify whether a senior deputy registrar, a deputy registrar and temporary registrars are intended to be covered.

Please let Members know the rationale for defining *securities* to include shares under the proposed new section 158A(3).

Clause 13

Section 81 of the Evidence Ordinance (Cap. 8) is proposed to be amended under clause 13 of the Bill. It is noted that the same section is also proposed to be amended under clause 43 of the Statute Law (Miscellaneous Provisions) Bill 2014. If the Statute Law (Miscellaneous Provisions) Bill 2014 is passed and gazetted as an Ordinance before the Bill, clause 13 may need to be amended.

Clause 16

It is noted that in the existing Schedule 2 to the Electronic Transactions Ordinance (Cap. 553), the phrase "established under XXX Ordinance" is used. Please clarify why "established by" is used in clause 16.

We would appreciate it if you could let us have your reply (in both Chinese and English and with soft copy to Miss Joey LEE at jmylee@legco.gov.hk) before the first meeting of the Bills Committee (tentatively fixed to be held on 12 June 2014).

Yours sincerely,



(Timothy TSO)
Assistant Legal Adviser

c.c. Judiciary (Attn.: Ms Wendy CHEUNG, Assistant Judiciary Administrator
(Development) (By Fax: 2501 4636))
DoJ (Attn.: Ms Monica LAW, Sr Asst Law Draftsman
(By Fax: 2869 1302))
Clerk to the Bills Committee