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商務及經濟發展局
工商及旅遊科



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11 June 2014

Assistant Legal Adviser
Legal Service Division
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong
(Attn: Mr Timothy Tso)
(Fax No.: 2877 5029)

Dear Mr Tso,

Competition (Amendment) Bill 2014

I refer to your letter of 30 May 2014, seeking our clarification on various matters relating to the captioned Bill (“the Bill”). Our responses to the issues raised in your letter (shown in italics below) are set out in the following paragraphs. We will reply separately on the issues raised in relation to clause 5 on the proposed sections 153A and 153B as well as the first issue raised on clause 6 on the proposed section 155A(1)(c).

Clauses 4 to 6, 9 and 11

Please clarify whether there are any other powers of the Court of First Instance which are not specifically conferred on the Competition Tribunal under the Bill.

2. Based on the general approach adopted in the Competition Ordinance (“CO”) (Cap. 619), the Competition Tribunal (“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. Generally speaking, the Tribunal would have the jurisdiction of the CFI to grant remedies and relief as provided under the High Court Ordinance (“HCO”) (Cap. 4) and the Rules of the High Court (“RHC”) (Cap. 4A), and could exercise the CFI’s inherent jurisdiction, insofar as they relate to the practice and procedure of the CFI in exercising its civil jurisdiction.

3. However, we have identified several areas in the CO where it is not entirely clear as to whether the Tribunal would have the specific power of the CFI to grant remedies and relief in discharging its functions under the CO. For example, in respect of the power to award interest on judgment debts now conferred on the CFI by virtue of section 49 of the HCO, although it is considered that the Tribunal has the jurisdiction to grant remedies and reliefs as the CFI, there is uncertainty as to whether such jurisdiction would cover the power to award interest on judgment debts, and if so, how such interest might be determined and ordered.

4. As such, although it is considered that there is no need to import each and every provision in HCO conferring power on the CFI into the CO, certain provisions of the HCO would have to be introduced into the CO to confer on the Tribunal more specific powers which are considered necessary for discharging its functions under the CO, with a view to providing greater clarity and certainty that is required given the particular circumstances.

5. It should be noted that a similar approach was adopted in the Lands Tribunal Ordinance (“LTO”) (Cap. 17). While the LTO provides that the Lands Tribunal shall have the same jurisdiction to grant remedies and reliefs, equitable or legal, as the CFI, there are provisions in the LTO setting out the specific powers of the Lands Tribunal to operate and perform its adjudication function.

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).

6. The specific powers arising from the proposed provisions mirror those that are currently exercised by the CFI under the HCO. The purpose of

the proposed provisions is to clarify and supplement the existing provisions which provide for the general powers of the Tribunal under the CO, rather than to limit their generality. For this reason, it is considered that the proposed provisions would not affect the scope of the general powers of the Tribunal. We therefore do not see it necessary to expressly state that the proposed provisions are made “without limiting” or “without affecting” the general powers of the Tribunal.

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

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).

7. By virtue of the proposed section 156C(1) to (3), a temporary registrar, a temporary senior deputy registrar and a temporary deputy registrar (collectively referred to as “temporary registrars”) shall have all the jurisdiction, privileges, powers and duties of their non-temporary counterparts, during the period for which he or she is appointed. Hence the powers under the proposed sections 151A, 151B and 151C conferred on the Tribunal will also be exercisable by the temporary registrars.

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).

8. Under the proposed section 151B(3), the Tribunal may, on application by a person on whose application a prohibition order is made, renew the prohibition order. There is no limit on the number of times for which a prohibition order can be renewed, so long as the relevant conditions in the proposed section 151A for the making of the prohibition order are met.

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).

9. Under the proposed section 151A(5), the applicant of a prohibition order, after having obtained such order, is 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 is made attempts to and insists 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 may seek assistance from the Police in arresting the person concerned. The Police might need to check if the prohibition order has been served on them before taking actions.

10. In the case where a prohibition order is no longer required, the person on whose application the prohibition order is made is required to serve a notice only on the Director of Immigration under the proposed section 151B(6). Since assistance from the Police would not be required under such circumstances by front-line staff of the Immigration Department, it is therefore considered not necessary to require a notice to be served on the Commissioner of Police.

Clause 6 – proposed new section 155A

Please clarify whether the payment of penalty or fine may also be enforced by a senior deputy registrar, a deputy registrar, or temporary registrars.

11. By virtue of the proposed sections 156B(2) and (4) as well as 156C(1) to (3), a senior deputy registrar, a deputy registrar and temporary registrars would have the power of the Registrar to enforce the payment of a penalty or fine not paid in full as a judgment debt under the proposed section 155A(2).

Clause 8 – proposed new section 156B

Please let Members know the jurisdiction, privileges, powers and duties of a senior deputy registrar and a deputy registrar of the High Court.

12. Section 38(1) of the HCO provides for the jurisdiction, powers and duties of the Registrar of the High Court. There are also provisions in the HCO and other relevant ordinances (e.g. Companies Ordinance (Cap 622)) and related court rules which may also confer specific powers on the Registrar. Section 38(2) of the HCO further provides that all the jurisdiction, powers and duties conferred or imposed on the Registrar may be had, exercised or performed by a Master, which is defined in the HCO to include senior deputy registrars and deputy registrars. Under Order 32, rule 11 of the RHC and subject to the exceptions provided therein, the Registrar and any master of the High Court shall have power to transact all such business and exercise all such authority and jurisdiction as may be transacted and exercised by a High Court judge in chambers under any Ordinance or the RHC.

13. For privileges, article 85 of the Basic Law of the Hong Kong Special Administrative Region provides that members of the Judiciary shall be immune from legal action in the performance of their judicial functions. Section 39 of

the HCO further provides for more specific protection on the Registrar, which is defined to include a Master.

Please clarify whether it is intended to have any restrictions in the rules of the Tribunal on the scope of jurisdiction, privileges, powers and duties of a senior deputy registrar and a deputy registrar of the Tribunal.

14. The Judiciary is considering, in the course of preparation of the draft Tribunal rules, whether certain powers should only be exercisable by the Registrar, but not a senior deputy registrar or a deputy registrar of the Tribunal. The Judiciary will brief the Legislative Council on the arrangement when the draft Tribunal rules are ready.

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.

15. Sections 37AB, 37AC, 37A and 37B of the HCO provide for the appointment of temporary registrars of the High Court. The main purpose of the appointment of such temporary registrars is to alleviate the workload of the non-temporary registrars of the High Court. To this end, it is intended that a temporary registrar should have the jurisdiction, privileges, powers and duties of his/her non-temporary counterpart. It should also be noted that sections 37AC(4), 37A(4) and 37B(4) of the HCO provide that temporary registrars are masters, whose jurisdiction, powers and duties are further set out in section 38 of the HCO.

16. For the CO, it is considered legally more desirable for the CO to include provisions, i.e. the proposed sections 156C(1) to (3), which expressly provide for the jurisdiction, privileges, powers and duties of the temporary registrars.

Clause 8 – proposed new sections 156D and 156E

Please clarify whether temporary registrars are intended to be covered by these sections.

17. By virtue of the proposed section 156C(1) to (3), temporary registrars are intended to be covered by the protection offered to their non-temporary counterparts under the proposed sections 156D and 156E.

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).

18. We have reviewed the wording and considered that the description “Before section 158(2)(a)” in clause 10(1) is in order as it accords with the current drafting convention. The above-mentioned description has the effect of inserting the new paragraph (aa) as set out in clause 10(1) right before paragraph (a) of section 158(2) in the Ordinance and after “the following purposes– ” in the same subsection.

Clause 11 – proposed new section 158A

Please clarify whether a senior deputy registrar, a deputy registrar and temporary registrars are intended to be covered.

19. By virtue of the proposed sections 156B and 156C, a senior deputy registrar, a deputy registrar and temporary registrars are intended to be covered in the proposed section 158A(1)(d). Such arrangements will be similar to the ones now adopted in the High Court.

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

20. The proposed section 158A on suitors’ funds rules has been prepared modelling on section 57 of the High Court Ordinance (“HCO”) (Cap. 4), which provides, among others, that the Chief Judge of the High Court may make rules for regulating “the deposit, payment, delivery, and transfer in, into, and out of the High Court of money, securities, and movable property of suitors”. In a separate exercise conducted by the Judiciary in reviewing the existing provisions relevant to suitors’ funds for its various levels of court, the Judiciary has identified some discrepancies in the use of terms in the HCO and the High Court Suitors’ Funds Rules (“HCSFR”)(Cap 4B). In particular, while only the term “securities” is used in the HCO, the HCSFR uses the term “shares and securities” and “shares”.

21. Having considered the legal advice that the term “securities” covers “shares” and for the sake of consistency, we propose to define “securities” to include “shares” for the purpose of the proposed section 158A. Members may also wish to note that the Judiciary has suggested in a separate bill, namely the Administration of Justice (Miscellaneous Provisions) Bill 2014, adding to section 57 of the HCO a definition of “securities” to include “shares”, similar to the one in the proposed section 158A(3). The Judiciary also intends to replace

all references to "shares" or "shares and securities" in HCSFR with "securities" to achieve consistency.

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.


22. We will monitor the progress of the scrutiny of our Bill and the Statute Law (Miscellaneous Provisions) Bill 2014. Committee Stage Amendments will be proposed either to our Bill or to the Statute Law (Miscellaneous Provisions) Bill 2014 to ensure that the proposed amendments to section 81 of the Evidence Ordinance (Cap. 8) by both Bills will be properly effected.

Clause 16

Please clarify why "established by" is used in clause 16.

23. In drafting the relevant provision, references have been made to the definition of "Tribunal" in section 2(1) of the Ordinance, and to section 1(1)(c) in Part 1 and section 2 in Part 2 of Schedule 8 to the Ordinance. We consider that the description "the Competition Tribunal established by the Competition Ordinance (Cap. 619)" in clause 16 is effective in achieving the policy intent.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'Raymond Wu', written in a cursive style.

(Raymond Wu)

for Secretary for Commerce and Economic Development