

香港特別行政區政府
商務及經濟發展局
工商及旅遊科



香港添馬添美道二號
政府總部西翼二十三樓

COMMERCE, INDUSTRY AND TOURISM BRANCH
COMMERCE AND ECONOMIC
DEVELOPMENT BUREAU
GOVERNMENT OF THE HONG KONG
SPECIAL ADMINISTRATIVE REGION

23/F, WEST WING
CENTRAL GOVERNMENT OFFICES
2 TIM MEI AVENUE
TAMAR, HONG KONG

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Assistant Legal Adviser
(Attn: Mr Timothy Tso)
Legal Service Division
Legislative Council Secretariat
Legislative Council Complex
1 Legislative Council Road
Central, Hong Kong
(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”). Further to our reply dated 11 June 2014 to your letter, we set out in the following paragraphs our response to your questions 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).

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.

2. “Recovery of a debt” in the proposed section 153A should bear the meaning of a claim for certain monetary amount paid. An example will be where a claim is brought as a follow-on action against a person under section 110 of the Competition Ordinance (“CO”)(Cap. 619) for the refund of an amount paid as a result of that person’s act being determined to be a contravention of a

conduct rule. Such refund may be claimed before the Competition Tribunal (“Tribunal”) in the form of “recovery of a debt”. The Tribunal in such follow-on action may make one or more of the orders as specified in Schedule 3 of the CO.

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.

3. At present, no specific rules on the interest rates are stipulated in the Rules of the High Court (“RHC”)(Cap. 4A). There are however rules in the RHC providing for some special treatment of interest rates in the context of sanctioned offers or payment (e.g. Order 22, rules 23(2), 24(2) and 26 of RHC). There are also rules in the RHC requiring any claims for interest to be pleaded (Order 18, rule 8(4) of RHC).

4. The Judiciary is preparing the draft rules of the Tribunal (“Tribunal rules”) under section 158 of the CO. While the Judiciary currently does not have intention to include specific provisions on interest rates in the Tribunal rules, it is considering making reference to the rules of the RHC in the Tribunal rules where appropriate, so that the same arrangements in respect of interest rates will be applicable to both the Court of First Instance (“CFI”) and the Tribunal. In view of such possibility, for the purpose of greater clarity and certainty, we will consider adding a phrase “subject to the rules made under section 158” in the proposed section 153A(4).

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.

5. For interest on debts and damages under the proposed section 153A (modelling on section 48 of the HCO), the Tribunal’s power to award interest is to compensate a party who has been deprived of the sum of money which ought to have been paid to him earlier. In an attempt to restore the aggrieved party to the original or pre-contractual position, the rate of interest should be determined by the Tribunal depending on the particular circumstances of each case.

6. For interest on judgment debts under the proposed section 153B (modelling on section 49 of the HCO), the award of interest in such circumstances is mainly to incentivise early payment of the judgment debt. For

this reason, judgment debt is only to carry simple interest at a fixed 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.

7. The term “order” means a court order made by the Tribunal for the purpose of the proposed section 153B(1)(a), or one made by the Chief Justice for determining from time to time the rate of interest for the purpose of the proposed section 153B(1)(b). The rate of interest ordered by the Chief Justice is currently published in the Judiciary’s website.

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)).

8. Under the proposed section 155A(1)(c), the Tribunal may enforce payment of a fine imposed by the Tribunal in the same manner in which a judgment of the CFI for the payment of money may be enforced. An example of such fine is where the Tribunal imposes a fine on a person guilty of contempt in a proceeding brought before the Tribunal. The jurisdiction, powers and duties of the Tribunal in respect of contempt of court are confirmed by sections 144(2) and 171(2) of the CO.

Yours sincerely,



(Raymond Wu)

for Secretary for Commerce and Economic Development