

Competition (Amendment) Bill 2014

Note of the Hong Kong Bar Association

1. The Hong Kong Bar Association (“**HKBA**”) submits this Note to the Legislative Council Bills Committee on the Competition (Amendment) Bill 2014 (“**the Bill**”).
2. The Judiciary Administration consulted the HKBA in 2013 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.
3. The HKBA submitted its views and had a useful dialogue with the Judiciary Administration.
4. The HKBA agrees with the approach taken in amending 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.
5. The HKBA agrees with the proposal in Clause 3 of the Bill 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.
6. The HKBA agrees with the proposal in Clause 4 of the Bill to amend the CO to empower the Tribunal to make prohibition orders. The HKBA notes that section 154 of the CO provides for appeals as of right to the Court of Appeal against any decision, determination or order of the Tribunal, which

the HKBA understands to include a prohibition order under the proposed section 151A.

7. The HKBA agrees with the proposal in Clause 5 of the Bill 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.
8. The HKBA agrees with the proposal in Clause 6 of the Bill to amend the CO to empower the Tribunal to take action to enforce the payment of penalties and fines. The HKBA understands that the proposed provision follows the existing section 21E of the High Court Ordinance (Cap 4).
9. The HKBA agrees with the proposals in Clauses 7 and 8 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. The HKBA had earlier commented that a rule similar to rule 62 of the United Kingdom Competition Appeals Tribunal Rules (which 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) may be helpful in demarcating 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. The HKBA notes that Clause 10 of the Bill proposes to insert section 158(2)(aa), which appears to be in accordance with the HKBA's comment, even though it could be said that the provision is drafted in relatively general terms. The HKBA understands that the rules of the Tribunal that are under preparation will set out the judicial work that registrars are empowered to do in more concrete terms.

10. The HKBA agrees with the proposal in Clause 9 of the Bill 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.

11. The HKBA considers that the proposed amendments in Clause 11 (suitsors' fund) and in Part 3 (Clauses 12 to 17) of the Bill are necessary and beneficial to the proper working of the Tribunal.

Dated 30 June 2014.

Hong Kong Bar Association