

LEGISLATIVE COUNCIL BRIEF

Competition Ordinance
(Chapter 619)

COMPETITION (AMENDMENT) BILL 2014

INTRODUCTION

A At the meeting of the Executive Council on 29 April 2014, the Council ADVISED and the Chief Executive ORDERED that the Competition (Amendment) Bill 2014 (“the Bill”), at **Annex A**, should be introduced into the Legislative Council (“LegCo”) to ensure the proper functioning of the Competition Tribunal (“Tribunal”) upon the full commencement of the Competition Ordinance (“CO”) (Cap. 619).

JUSTIFICATIONS

Implementation of the CO

2. The CO, which was enacted in June 2012, provides a legal framework to tackle anti-competitive conduct across different sectors. Since the enactment of the CO, the Administration has been working closely with the Competition Commission (“Commission”) and the Judiciary on the phased implementation of the CO. The first phase involves the commencement of provisions relating to the establishment of the Commission and the Tribunal. The provisions relating to the Commission came into operation on 18 January 2013, while the provisions relating to the Tribunal came into operation on 1 August 2013.

3. We are in the second phase of implementation. One of the major tasks is to prepare for the full operation of the Tribunal, which is a superior

court of record¹ established under the CO having primary jurisdiction to hear and adjudicate competition-related cases. In this connection, the Judiciary is formulating the rules for the operation and proceedings of the Tribunal and making other necessary administrative arrangements.

4. During the preparation for the full operation of the Tribunal, the Administration and the Judiciary have identified certain amendments to the CO and consequential amendments to other pieces of legislation, which are considered essential to the proper functioning of the Tribunal. These amendments mainly seek to confer on the Tribunal as well as its members and judicial officers specific powers similar to those exercised by the judges and judicial officers of the Court of First Instance (“CFI”) in respect of civil proceedings. To ensure the operational readiness of the Tribunal in discharging its functions, it is essential to introduce these amendments before the full implementation of the CO.

Proposed legislative amendments

5. We propose amending the CO to ensure the proper functioning of the Tribunal upon the full commencement of the CO. The proposed amendments can be grouped into the following three categories. Details of the proposed amendments and their justifications are at **Annex B**.

B

(A) Proposed general powers for the functioning of the Tribunal

6. The CO has adopted a general approach such that the Tribunal may generally follow the practice and procedure of the 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.

¹ Section 134(2) of the CO provides that the Tribunal is a superior court of record. By virtue of section 3 of the Hong Kong Court of Final Appeal Ordinance (Cap. 484), sections 12(1) and 13(1) of the High Court Ordinance (Cap. 4), the Court of Final Appeal, Court of Appeal and Court of First Instance are also superior courts of record.

7. Notwithstanding the general approach adopted in the CO, we have 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. We therefore propose amending the CO to confer more specific powers on the Tribunal with a view to providing greater clarity and certainty that is required given the particular circumstances. These powers include the power to enforce the orders of the Tribunal, the power to award interest on debts and damages and judgment debts, the power to award interest in respect of non-payment or late payment of penalties and fines under the CO, the power to prohibit debtors from leaving Hong Kong, and the power to reimburse a witness for expenses incurred. We also propose to empower the Chief Judge to make rules on the administration of suitors' funds.

(B) Proposed amendments relating to Registrars

8. The CO currently provides for a framework on the automatic appointment of the Tribunal's Registrar and other registrar-related positions (collectively referred to as "the Tribunal's registrars" hereinafter). The CO nonetheless does not confer powers on the Tribunal's registrars to perform judicial duties as with their counterparts in the High Court under the HCO.

9. To ease the workload of members of the Tribunal and in line with the arrangements for the High Court, we propose amending the CO to empower the Tribunal's registrars to perform judicial work under the CO similar to that performed by their counterparts in the High Court, and also to afford the Tribunal's registrars the privileges and immunities currently enjoyed by the registrars in the High Court. We also propose amending the CO such that temporary registrars in the High Court would automatically hold the corresponding positions in the Tribunal and be given similar powers and duties etc. of their permanent counterparts in the Tribunal.

(C) Proposed consequential amendments

10. We also propose a number of amendments to other pieces of legislation, including the HCO, the Legal Practitioners Ordinance (Cap. 159), the Higher Rights of Audience Rules (Cap. 159AK), the Evidence Ordinance (Cap. 8), the Electronic Transactions Ordinance (Cap. 553) and the Shenzhen Bay Port Hong Kong Port Area Ordinance (Cap. 591). These amendments

aim to facilitate the future operation of the Tribunal, and to ensure consistency with the arrangements currently applicable to the CFI and/or other courts/tribunals in general under these Ordinances.

OTHER OPTIONS

11. The proposal, which mainly involves conferring on the Tribunal, its members and judicial officers specific powers, must be brought into effect by introducing amendments to the CO. There are no other options.

THE BILL

12. The key provisions of the Bill are as follows –

- (a) Clause 3 amends section 143 of the CO to provide that the Tribunal has, in exercising its jurisdiction, all the powers, rights and privileges of the CFI;
- (b) Clause 4 adds new sections 151A, 151B and 151C to the CO to empower the Tribunal to make orders prohibiting persons from leaving Hong Kong;
- (c) Clause 5 adds new sections 153A and 153B to the CO to empower the Tribunal to award interest on debts and damages for which judgment is given and to provide that judgment debts are to carry simple interest;
- (d) Clause 6 adds a new section 155A to the CO to provide that the payment of penalties and fines imposed by the Tribunal may be enforced by the Tribunal in the same manner in which a judgment of the CFI may be enforced;
- (e) Clauses 7, 8 and 10 amend the CO to make provisions regarding the Tribunal's registrars, their jurisdictions and powers, and the privileges and immunities they enjoy;

- (f) Clause 9 adds a new section 157A to the CO to empower the members of the Tribunal to order the reimbursement of expenses incurred by witnesses by reason of their attendance at the proceedings;
- (g) Clause 11 adds a new section 158A to the CO to enable the Chief Judge to make rules relating to suitors' funds; and
- (h) Clauses 12 to 17 make miscellaneous amendments to several other Ordinances.

LEGISLATIVE TIMETABLE

13. The legislative timetable will be as follows –

Publication in the Gazette	9 May 2014
First Reading and commencement of Second Reading debate	14 May 2014
Resumption of Second Reading Debate, Committee Stage and Third Reading	To be notified

IMPLICATIONS OF THE PROPOSAL

14. The Bill is in conformity with the Basic Law, including the provisions concerning human rights. It does not affect the binding effect of the CO. It has no civil service, economic, financial, productivity, environmental, sustainability or family implications.

PUBLIC CONSULTATION

15. The Administration and the Judiciary Administration have briefed the Commission on the proposed legislative amendments to the CO, and the Judiciary Administration has also consulted the Hong Kong Bar Association and the Law Society of Hong Kong. They are generally supportive of the

proposed legislative amendments. The Administration and the Judiciary Administration briefed the LegCo Panel on Economic Development (“LegCo ED Panel”) on the legislative proposal at the meeting on 16 December 2013. The LegCo ED Panel noted and raised no objection to the proposed legislative amendments.

PUBLICITY

16. We will issue a press release. A spokesperson will be available to answer media and public enquiries.

ENQUIRIES

17. Enquiries relating to the brief can be directed to Mr Raymond Wu, Principal Assistant Secretary for Commerce and Economic Development (Commerce and Industry), at 2810 2858, or Ms Wendy Cheung, Assistant Judiciary Administrator (Development), at 2825 4244.

Commerce and Economic Development Bureau

Judiciary Administration

7 May 2014

Competition (Amendment) Bill 2014

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A BILL

To

Amend the Competition Ordinance to give the Competition Tribunal certain specific powers, and provide for certain operational matters, that are necessary to ensure the proper functioning of the Competition Tribunal; and to make miscellaneous amendments to other Ordinances.

Enacted by the Legislative Council.

Part 1

Preliminary

1. **Short title**
This Ordinance may be cited as the Competition (Amendment) Ordinance 2014.
2. **Enactments amended**
The enactments specified in Parts 2 and 3 are amended as set out in those Parts.

Part 2**Amendments to Competition Ordinance (Cap. 619)****3. Section 143 amended (powers of Tribunal)**

Section 143(1)—

Repeal

“a superior court of record”

Substitute

“the Court of First Instance”.

4. Sections 151A, 151B and 151C added

After section 151—

Add**“151A. Order prohibiting departure from Hong Kong**(1) The Tribunal may make an order prohibiting a person from leaving Hong Kong (*prohibition order*)—

- (a) to facilitate the enforcement or to secure the compliance of—
 - (i) a judgment or order against the person for the payment of a specified sum of money;
 - (ii) a judgment or order against the person for the payment of an amount to be assessed; or
 - (iii) a judgment or order against the person requiring the person to deliver any property or perform any other act; or
- (b) to facilitate the pursuance of a civil claim (other than a judgment)—

- (i) for the payment of money or damages; or
- (ii) for the delivery of any property or the performance of any other act.

- (2) The Tribunal must not make a prohibition order against a person under subsection (1)(a)(ii) or (iii) unless it is satisfied that there is probable cause for believing that—
 - (a) the person is about to leave Hong Kong; and
 - (b) because of the circumstance mentioned in paragraph (a), satisfaction of the judgment or order concerned is likely to be obstructed or delayed.
- (3) The Tribunal must not make a prohibition order against a person under subsection (1)(b) unless it is satisfied that there is probable cause for believing that—
 - (a) there is a good cause of action;
 - (b) the person—
 - (i) incurred the alleged liability, being the subject of the claim, in Hong Kong while the person was present in Hong Kong;
 - (ii) carries on business in Hong Kong; or
 - (iii) is ordinarily resident in Hong Kong;
 - (c) the person is about to leave Hong Kong; and
 - (d) because of the circumstance mentioned in paragraph (c), any judgment or order that may be given against the person is likely to be obstructed or delayed.
- (4) The Tribunal may make a prohibition order against a person subject to any conditions that it thinks fit, including the condition that the prohibition order is to have no effect if the person—
 - (a) satisfies the judgment, order or claim concerned; or

- (b) provides the security that the Tribunal orders.
- (5) A person on whose application a prohibition order is made must serve a copy of the prohibition order and a copy of any other order ancillary to the prohibition order on—
- (a) the Director of Immigration;
 - (b) the Commissioner of Police; and
 - (c) the person against whom the prohibition order is made, if the person can be found.

(6) In this section—

Tribunal (審裁處) includes the Registrar, a senior deputy registrar and a deputy registrar of the Tribunal.

151B. Duration and discharge of prohibition order

- (1) A prohibition order is valid for 1 month beginning on the date of the prohibition order unless extended or renewed under this section.
- (2) The Tribunal may, on application by a person on whose application a prohibition order is made, extend the prohibition order for a period that, in combination with the initial period and any other period of extension, does not exceed 3 months.
- (3) The Tribunal may, on application by a person on whose application a prohibition order is made, renew the prohibition order.
- (4) A renewed prohibition order is valid for 1 month beginning on the date of renewal and may be extended under subsection (2).
- (5) A reference to the initial period in subsection (2) is a reference to the period of 1 month mentioned in subsection (1) or (4).

- (6) A person on whose application a prohibition order is made must, as soon as reasonably possible after the prohibition order is no longer required—
- (a) serve on the Director of Immigration a notice stating that fact; and
 - (b) file with the Registrar of the Tribunal a copy of the notice mentioned in paragraph (a).
- (7) If the notice under subsection (6) is served and the copy of the notice under that subsection is filed on the same date, the prohibition order ceases to have effect on that date, but if the notice is served and the copy of the notice is filed on different dates, the prohibition order ceases to have effect on the later of those dates.
- (8) The Tribunal may, on application, discharge a prohibition order, either absolutely or subject to any conditions that it thinks fit.

(9) In this section—

prohibition order (禁止令) means an order made under section 151A;

Tribunal (審裁處) includes the Registrar, a senior deputy registrar and a deputy registrar of the Tribunal.

151C. Contravention of prohibition order

- (1) If—
- (a) the Tribunal makes a prohibition order against a person; and
 - (b) the person, having been served with a copy of the prohibition order or otherwise informed of its existence and effect, attempts to leave Hong Kong in contravention of the prohibition order,

- the person may be arrested by an immigration officer, a police officer or a bailiff of the Tribunal.
- (2) A person arrested under subsection (1) must be brought before the Tribunal before the expiry of the day after the day of arrest, and the Tribunal may—
- (a) make an order discharging the person from arrest, either absolutely or subject to any conditions that it thinks fit; or
- (b) either—
- (i) if the prohibition order is made under section 151A(1)(a)(i), make an order for the examination or imprisonment of the person, under the rules of the Tribunal made under section 158, that the Tribunal considers appropriate; or
- (ii) if the prohibition order is made under section 151A(1)(a)(ii) or (iii) or (b), make an order for the imprisonment of the person until the prohibition order ceases to have effect or is discharged.
- (3) Section 71 of the Interpretation and General Clauses Ordinance (Cap. 1) does not apply to subsection (2).
- (4) The Director of Immigration is not liable for any failure to prevent a person against whom a prohibition order is made from leaving Hong Kong.
- (5) In this section—
- prohibition order** (禁止令) means an order made under section 151A;
- Tribunal** (審裁處) includes the Registrar, a senior deputy registrar and a deputy registrar of the Tribunal.”.

5. Sections 153A and 153B added

After section 153—

Add

“153A. Interest on debts and damages

- (1) In proceedings (whenever instituted) before the Tribunal for the recovery of a debt or damages, the Tribunal may include in a sum for which judgment is given simple interest on—
- (a) all or a part of the sum for which judgment is given; or
- (b) all or a part of a sum in respect of which payment is made before judgment.
- (2) Interest under subsection (1) may be awarded—
- (a) for the sum for which judgment is given, for all or a part of the period beginning on the date when the cause of action arose and ending on the date of the judgment; and
- (b) for a sum in respect of which payment is made before judgment, for all or a part of the period beginning on the date when the cause of action arose and ending on the date of the payment.
- (3) In proceedings (whenever instituted) before the Tribunal for the recovery of a debt, if the person from whom the debt is sought (*defendant*) pays the whole debt to the person seeking the debt (*plaintiff*) otherwise than in compliance with a judgment in the proceedings, the defendant is liable to pay the plaintiff simple interest on all or a part of the debt for all or a part of the period beginning on the date when the cause of action arose and ending on the date of the payment.

- (4) Interest under this section is to be calculated at a rate that the Tribunal thinks fit.
- (5) Interest in respect of a debt may not be awarded under this section for a period during which, for whatever reason, interest on the debt already runs.
- (6) Interest under this section may be calculated at different rates for different periods.

153B. Interest on judgment debts

- (1) A judgment debt is to carry simple interest—
 - (a) at the rate that the Tribunal specifies by order; or
 - (b) in the absence of such an order, at the rate that the Chief Justice from time to time determines by order,
 on the total amount of the judgment debt, or on the part of the judgment debt that for the time being remains unpaid, from the date of the judgment until payment.
- (2) Interest under this section may be calculated at different rates for different periods.”.

6. Section 155A added

Part 10, Division 3, after section 155—

Add**“155A. Enforcement by Tribunal of payment of penalties and fines**

- (1) The Tribunal may enforce payment of—
 - (a) a pecuniary penalty imposed under section 93;
 - (b) a financial penalty imposed under section 169; or
 - (c) a fine imposed by the Tribunal,

in the same manner in which a judgment of the Court of First Instance for the payment of money may be enforced.

- (2) If a penalty or fine described in subsection (1) is not paid in full when it is due—
 - (a) the Tribunal may certify in writing to the Registrar of the Tribunal the sum payable; and
 - (b) the Registrar is to enforce payment of the sum certified as a judgment debt due to the Registrar.”.

7. Section 156 amended (Registrar and other staff of Tribunal)

Section 156—

Repeal

“senior deputy registrar, deputy registrar”

Substitute

“temporary registrar, senior deputy registrar, temporary senior deputy registrar, deputy registrar, temporary deputy registrar”.

8. Sections 156A to 156E added

After section 156—

Add**“156A. Jurisdiction and powers of Registrar of Tribunal**

- (1) The Registrar of the Tribunal—
 - (a) has the same jurisdiction and privileges, in so far as they are applicable to the business and proceedings of the Tribunal, as the Registrar of the High Court; and
 - (b) may exercise the same powers and perform the same duties, in so far as they are applicable to the

business and proceedings of the Tribunal, as the Registrar of the High Court.

- (2) The Registrar of the Tribunal has any other jurisdiction, privileges, powers and duties that may be conferred or imposed on him or her by or under the rules of the Tribunal made under section 158 or any other law.

156B. Jurisdiction and powers of deputy registrars of Tribunal

- (1) A senior deputy registrar of the Tribunal—
- (a) has the same jurisdiction and privileges, in so far as they are applicable to the business and proceedings of the Tribunal, as a senior deputy registrar of the High Court; and
 - (b) may exercise the same powers and perform the same duties, in so far as they are applicable to the business and proceedings of the Tribunal, as a senior deputy registrar of the High Court.
- (2) Subject to the rules of the Tribunal made under section 158, a senior deputy registrar of the Tribunal—
- (a) has all the jurisdiction and privileges conferred on the Registrar of the Tribunal; and
 - (b) may exercise all the powers conferred, and perform all the duties imposed, on the Registrar of the Tribunal.
- (3) A deputy registrar of the Tribunal—
- (a) has the same jurisdiction and privileges, in so far as they are applicable to the business and proceedings of the Tribunal, as a deputy registrar of the High Court; and
 - (b) may exercise the same powers and perform the same duties, in so far as they are applicable to the

business and proceedings of the Tribunal, as a deputy registrar of the High Court.

- (4) Subject to the rules of the Tribunal made under section 158, a deputy registrar of the Tribunal—
- (a) has all the jurisdiction and privileges conferred on the Registrar of the Tribunal; and
 - (b) may exercise all the powers conferred, and perform all the duties imposed, on the Registrar of the Tribunal.

156C. Jurisdiction and powers of temporary registrars of Tribunal

- (1) A temporary registrar of the Tribunal has, during the period for which he or she is appointed, all the jurisdiction, privileges, powers and duties of the Registrar of the Tribunal.
- (2) A temporary senior deputy registrar of the Tribunal has, during the period for which he or she is appointed, all the jurisdiction, privileges, powers and duties of a senior deputy registrar of the Tribunal.
- (3) A temporary deputy registrar of the Tribunal has, during the period for which he or she is appointed, all the jurisdiction, privileges, powers and duties of a deputy registrar of the Tribunal.
- (4) If a temporary registrar of the Tribunal adjourns the hearing of any proceedings or reserves judgment in any proceedings, the temporary registrar has power to resume the hearing and determine the proceedings or deliver judgment, even though before the hearing is resumed or judgment is delivered, his or her appointment as a temporary registrar has expired or has been terminated.

- (5) Subsection (4) applies to a temporary senior deputy registrar and a temporary deputy registrar of the Tribunal as it applies to a temporary registrar of the Tribunal.

156D. Protection of Registrar etc. of Tribunal

- (1) A person may not bring an action against the Registrar, a senior deputy registrar or a deputy registrar of the Tribunal for an act done or omitted to be done by a bailiff of the Tribunal without directions from the Registrar, the senior deputy registrar or the deputy registrar.
- (2) A person may not bring an action against the Registrar, a senior deputy registrar or a deputy registrar of the Tribunal for a direction given to a bailiff of the Tribunal with regard to the execution or non-execution of process if—
- (a) the direction is given in accordance with an order made by the Tribunal under section 156E; and
- (b) the Registrar, the senior deputy registrar or deputy registrar has not wilfully misrepresented or suppressed any material fact.

156E. Registrar etc. of Tribunal may apply to Tribunal for order

- (1) In relation to a matter regarding the execution or non-execution of process, the Registrar, a senior deputy registrar or a deputy registrar of the Tribunal may, in case of doubt or difficulty, apply summarily to the Tribunal for an order for the direction and guidance of a bailiff of the Tribunal.
- (2) The Tribunal may make any order in the matter that it considers just and reasonable.”.

9. Section 157A added

After section 157—

Add

“157A. Reimbursement of witness expenses

In any proceedings before the Tribunal, a member of the Tribunal may order the reimbursement of a witness for any expenses reasonably and properly incurred by the witness by reason of his or her attendance at the proceedings.”.

10. Section 158 amended (Tribunal rules)

- (1) Before section 158(2)(a)—

Add

“(aa) prescribing the jurisdiction of the Tribunal that the Registrar, a senior deputy registrar or a deputy registrar of the Tribunal may exercise (including provision for appeal against decisions made in the exercise of the jurisdiction);”.

- (2) Section 158(2)(d)—

Repeal

“; and”

Substitute a semicolon.

- (3) Section 158(2)(e)—

Repeal the full stop

Substitute

“; and”.

- (4) After section 158(2)(e)—

Add

“(f) prescribing the form of any order that the Tribunal may make under this Ordinance.”.

11. Section 158A added

Part 10, Division 4, after section 158—

Add

“158A. Suitors’ Funds Rules

- (1) The Chief Judge may, after consulting the President, make rules for regulating the following matters—
- (a) the deposit, payment, delivery, and transfer in, into, and out of the Tribunal of money, securities and movable property of suitors;
 - (b) the evidence of such deposit, payment, delivery, or transfer, and the investment of and other dealings with money, securities and movable property in the Tribunal;
 - (c) the execution of the orders of the Tribunal; and
 - (d) the powers and duties of the Registrar of the Tribunal with reference to such money, securities and movable property.
- (2) Without limiting subsection (1), rules made under that subsection may provide for—
- (a) regulating the placing on and withdrawal from deposit of money in the Tribunal, and the payment or crediting of interest on money placed on deposit;
 - (b) determining the smallest amount of money on deposit on which interest is to be credited to an account to which money placed on deposit belongs;

- (c) determining the time at which money placed on deposit is to begin and to cease to bear interest and the mode of computing such interest;
 - (d) determining the cases in which money placed on deposit is to begin and to cease to bear interest and the mode of computing such interest;
 - (e) determining the cases in which interest on money placed on deposit is, and the dividends on any securities standing in the name of the Registrar of the Tribunal are, to be placed on deposit; and
 - (f) disposing of money remaining unclaimed in the Tribunal.
- (3) In this section—
securities (證券) includes shares.”.

Part 3**Amendments to Other Ordinances****Division 1—Amendment to High Court Ordinance (Cap. 4)****12. Section 54 amended (rules of court)**

Section 54(2)(a)—

Repeal

“and between the Court of First Instance and the Lands Tribunal”

Substitute

“between the Court of First Instance and the Lands Tribunal, and between the Court of First Instance and the Competition Tribunal”.

Division 2—Amendments to Evidence Ordinance (Cap. 8)**13. Section 81 amended (warrant or order to bring up prisoner to give evidence)**

(1) Section 81(2)—

Repeal

“or presiding officer appointed under the Labour Tribunal Ordinance (Cap. 25)”

Substitute

“, presiding officer appointed under the Labour Tribunal Ordinance (Cap. 25) or judge of the Court of First Instance who is a member of the Competition Tribunal by the operation of section 135(1) of the Competition Ordinance (Cap. 619)”.

(2) Section 81(2)—

Repeal

“or Labour Tribunal” (wherever appearing)

Substitute

“, Labour Tribunal or Competition Tribunal”.

Division 3—Amendment to Legal Practitioners Ordinance (Cap. 159)**14. Section 39H amended (application to Assessment Board for higher rights of audience)**

Section 39H(3), after “rights of audience before”—

Add

“the Competition Tribunal.”.

Division 4—Amendment to Higher Rights of Audience Rules (Cap. 159 sub. leg. AK)**15. Rule 2 amended (interpretation)**Rule 2, definition of *higher court of Hong Kong*, before paragraph (a)—**Add**

“(aa) the Competition Tribunal;”.

Division 5—Amendment to Electronic Transactions Ordinance (Cap. 553)

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)**

Schedule 2, after paragraph (c)—

Add

“(ca) the Competition Tribunal established by the Competition Ordinance (Cap. 619);”.

Division 6—Amendment to Shenzhen Bay Port Hong Kong Port Area Ordinance (Cap. 591)

17. **Schedule 4 amended (courts and court orders)**

Schedule 4, Part 1, after item “Court of First Instance”—

Add

“Competition Tribunal”.

Explanatory Memorandum

The main object of this Bill is to amend the Competition Ordinance (Cap. 619) to give the Competition Tribunal certain specific powers, and provide for certain operational matters, that are necessary to ensure the proper functioning of the Competition Tribunal.

Part 1—Preliminary

2. Clause 1 sets out the short title.

Part 2—Amendments to Competition Ordinance

3. Clause 3 amends section 143 of the Competition Ordinance to provide that the Competition Tribunal has, in exercising its jurisdiction, all the powers, rights and privileges of the Court of First Instance.
4. Clause 4 adds new sections 151A, 151B and 151C to the Competition Ordinance to empower the Competition Tribunal to make orders prohibiting persons from leaving Hong Kong.
5. Clause 5 adds new sections 153A and 153B to the Competition Ordinance to empower the Competition Tribunal to award interest on debts and damages for which judgment is given and to provide that judgment debts are to carry simple interest.
6. Clause 6 adds a new section 155A to the Competition Ordinance to provide that the payment of penalties and fines imposed by the Competition Tribunal may be enforced by the Competition Tribunal in the same manner in which a judgment of the Court of First Instance may be enforced. If a penalty or fine is not paid when due, the Registrar of the Competition Tribunal is to enforce payment of the sum as a judgment debt and because of the new section 153B, the sum will carry simple interest.

7. Clause 7 amends section 156 of the Competition Ordinance to enable every temporary registrar, temporary senior deputy registrar and temporary deputy registrar of the High Court to hold the corresponding office in the Competition Tribunal.
8. Clause 8 adds new sections 156A to 156E to the Competition Ordinance to provide for the jurisdiction and powers of the registrars and temporary registrars of the Competition Tribunal and to confer immunities on the registrars of the Competition Tribunal from certain actions.
9. Clause 9 adds a new section 157A to the Competition Ordinance to empower the members of the Competition Tribunal to order the reimbursement of expenses incurred by witnesses by reason of their attendance at the proceedings.
10. Clause 10 amends section 158 of the Competition Ordinance to empower the Chief Judge to prescribe the jurisdiction of the Competition Tribunal that the registrars of the Competition Tribunal may exercise and to prescribe the forms of orders that the Competition Tribunal may make.
11. Clause 11 adds a new section 158A to the Competition Ordinance to enable the Chief Judge to make rules relating to suitors' funds.

Part 3—Amendments to Other Ordinances

12. Clause 12 amends section 54(2)(a) of the High Court Ordinance (Cap. 4) to enable the Rules Committee constituted under section 55 of that Ordinance to make rules of court for prescribing the procedure in connection with the transfer of proceedings between the Court of First Instance and the Competition Tribunal.
13. Clause 13 amends section 81(2) of the Evidence Ordinance (Cap. 8) to empower a member of the Competition Tribunal to issue a warrant or order for bringing up any person in lawful custody before the Competition Tribunal to enable the person to, among

- other things, give evidence in any proceedings before the Competition Tribunal.
14. Clause 14 amends the definition of *higher rights of audience* in section 39H(3) of the Legal Practitioners Ordinance (Cap. 159) by extending it to cover rights of audience before the Competition Tribunal.
15. Clause 15 amends the definition of *higher court of Hong Kong* in rule 2 of the Higher Rights of Audience Rules (Cap. 159 sub. leg. AK) by extending it to cover the Competition Tribunal.
16. Clause 16 adds a reference to the Competition Tribunal to Schedule 2 to the Electronic Transactions Ordinance (Cap. 553). The effect is that sections 5, 5A, 6, 7 and 8 of that Ordinance do not apply in relation to information given, presented or retained, documents served or signatures required for the purposes of any proceedings before the Competition Tribunal unless any rule of law relating to those proceedings provides for their application.
17. Clause 17 widens the definition of *court* in section 2(1) of the Shenzhen Bay Port Hong Kong Port Area Ordinance (Cap. 591) by including a reference to the Competition Tribunal in the list of courts in Part 1 of Schedule 4 to that Ordinance.

**PROPOSED LEGISLATIVE AMENDMENTS
TO THE COMPETITION ORDINANCE (Cap. 619)**

(A) Proposed general powers for the functioning of the Competition Tribunal (“Tribunal”)

Enforcement powers

Section 143(1)(c) of the Competition Ordinance (“CO”) (Cap. 619) confers all the powers, rights and privileges of a superior court of record on the Tribunal with respect to, among others, its enforcement of orders. However, there is no clear and comprehensive statement of the powers of enforcement of a superior court of record in common law. For clarity and avoidance of any doubt, we propose amending the CO to make it clear and specific that the Tribunal will have in respect of the enforcement of its orders the same powers, rights and privileges of the Court of First Instance (“CFI”).

Awarding interest on debts and damages and judgment debts

2. The CO provides that the Tribunal may make various orders relating to damages or otherwise¹. Unlike the High Court Ordinance (“HCO”) (Cap. 4), which empowers the CFI to make orders to award simple interest on any debts and damages and judgment debts, there is no explicit provision in the CO providing the Tribunal with such power. For the sake of consistency and clarity, we propose amending the CO to provide the Tribunal with the power to order payment of interest on debts and damages and judgment debts similar to that conferred on the CFI under the HCO.

¹ For example, section 1(k) of Schedule 3 to the CO stipulates that the Tribunal may order a person to pay damages to any person who has suffered loss or damage as a result of any contravention of the competition rules. Section 1(p) of the same Schedule states that the Tribunal may order any person to pay to the Government or any other person an amount not exceeding the amount of any profit gained or loss avoided by that person as a result of the contravention.

Enforcement of pecuniary penalties, financial penalties and fines

3. Certain provisions in the CO govern the payment of penalties and fines by means of orders of the Tribunal². Unlike the HCO and some other legislation, the CO does not currently provide for any legal consequences in the event that a party fails to pay or delays the payment of the penalties or fines as ordered by the Tribunal. With a view to incentivising prompt payment of penalties and fines ordered by the Tribunal and making reference to the existing arrangements under the HCO, we propose amending the CO to provide the Tribunal with the power to award interest under the CO in respect of non-payment or late payment of pecuniary and financial penalties as well as fines.

Prohibition of debtors from leaving Hong Kong

4. Under section 21B the HCO, the CFI has power to make an order prohibiting a person from leaving Hong Kong (“prohibition order”) to facilitate the enforcement, securing or pursuance of a judgment against that person for the payment of a specified sum of money, or a judgment or order against that person for the payment of an amount to be assessed or requiring him to deliver any property or perform any other act. Such a prohibition order could also be made to facilitate the pursuance of a civil claim (other than a judgment) for the payment of money or damages, or for the delivery of any property or the performance of any other act. To ensure that the Tribunal can effectively enforce its judgment or order against payment of pecuniary or financial penalties, damages, costs or other amounts of money, and to enable the Tribunal to make pre-judgment prohibition orders in a like manner as the CFI, we propose amending the CO to provide the Tribunal with similar order-making power.

² Such provisions include sections 93 and 169 of the CO which prescribe that the Tribunal may impose a pecuniary penalty for any contravention of the competition rules and a financial penalty for contravention of section 168 of the CO concerning the indemnification for any person who is liable for payment of a pecuniary penalty or costs respectively, as well as section 144(2) of the CO which provides that the Tribunal has the same jurisdiction, powers and duties of the CFI (including the making of orders for payment of fines) in respect of the punishment of a person guilty of contempt.

5. We also propose that the same procedural protections currently available under the HCO be afforded to a person affected by a prohibition order under the CO. For instance, in order for the Tribunal to make a prohibition order, there must be sufficient proof that the person is about to leave Hong Kong and satisfaction of the Tribunal's judgment or order is likely to be obstructed or delayed.

Expenses of witnesses

6. A witness in proceedings might incur expenses in order to perform his/her duty (e.g. expenses on travelling to the court), and such expenses should generally be reimbursed. Section 52 of the HCO, for example, provides that a High Court judge may order the reimbursement of a witness in respect of any expenses reasonably and properly incurred by that witness by reason of his/her attendance at the proceedings. For the sake of clarity and consistency, we propose amending the CO to provide the Tribunal with similar power.

Rule-making powers for suitors' funds rules

7. Suitors are parties to suits in a court of law. They may need to pay or transfer funds into court (including tribunals) or deposit funds in court for various purposes³. Suitors' funds rules are now provided in various pieces of legislation (e.g. the High Court Suitors' Funds Rules (Cap. 4B)) to govern the administration of such funds, including how suitors' funds are lodged in and paid out of court, investment of the funds, provision of interest for individual suitors' accounts and preparation of annual audited financial statements for the funds.

8. Following the establishment of the Tribunal, we propose that its suitors' funds be administered in a manner similar to that in the High Court and on the basis of a similar set of suitors' funds rules. To provide the legal basis for the administration of suitors' funds in the Tribunal, we propose amending the CO to provide for the rule-making powers for the suitors' funds rules.

³ For example, such funds may be needed as security against possible default on legal costs, or in satisfaction of claims or judgment debts.

(B) Proposed amendments relating to Registrars

Power of registrars

9. Section 38 of the HCO currently provides for the jurisdiction, powers and duties of the Registrar of the High Court. Making reference to the practice under the HCO, we propose amending the CO to empower the Tribunal's registrars to perform judicial work to ease the workload of members of the Tribunal.

Tribunal rules in relation to registrars

10. To provide technical details on the exercise of the powers and jurisdiction of the Tribunal's registrars, the Judiciary needs to make Tribunal rules under section 158 of the CO. While section 158 of the CO currently provides that rules of the Tribunal could be made to regulate and prescribe the practice and procedure to be followed in the Tribunal in all matters with respect to which the Tribunal has jurisdiction, it is not entirely clear whether rules prescribing the jurisdiction of the Tribunal which may be exercised by the Tribunal's registrars are covered under that section. For the sake of clarity and certainty and following the practice adopted under the HCO, we propose amending section 158 of the CO to make it clear that rules in relation to the jurisdiction of the Tribunal which may be exercised by the Tribunal's registrars could be made under the section.

Protection of registrars

11. At present, section 39 of the HCO offers certain protection to the Registrar of the High Court so that he/she would be immune from legal actions brought against him/her for any act done or omitted to be done by any bailiff without directions from the Registrar, or for any direction given to any bailiff with regard to the execution/non-execution process in accordance with an order for direction and guidance of the CFI where no material fact is wilfully misrepresented or suppressed by the Registrar. For the sake of consistency, we propose amending the CO to extend similar protection to the Tribunal's registrars.

Temporary registrars

12. Section 156 of the CO currently states that every Registrar, senior deputy registrar, deputy registrar and any other officer such as a Bailiff of the High Court, by virtue of that appointment, holds the corresponding office or position in the Tribunal. As the HCO provides for the possible appointment of temporary registrars in the High Court, we propose amending the CO to the effect that temporary registrars of the High Court will also automatically hold the corresponding positions in the Tribunal, and will be given similar powers and duties etc. of their permanent counterparts in the Tribunal. In particular, they will be given the specific power as under the HCO to resume hearing and determine the proceedings etc. of case part-heard in the Tribunal despite the fact that their appointments as temporary registrars have expired or terminated.

(C) Proposed consequential amendments

Transfer of proceedings

13. Section 113 of the CO states that the CFI should generally transfer to the Tribunal so much of the proceedings that are within the jurisdiction of the Tribunal. It is necessary to provide detailed rules in the Rules of the High Court (“RHC”) (Cap. 4A) for the exercise of such power by the CFI. The relevant rules will govern the transfer of the whole or part of the proceedings when the proceedings are still with the CFI. To enable the making of such rules, we propose introducing consequential amendments to the HCO to empower the Rules Committee constituted under section 55 of the HCO to make rules of court for prescribing the procedures in respect of the transfer of proceedings between the CFI and the Tribunal.

Higher rights of audience

14. At present, solicitors who satisfy the eligibility criteria under the Legal Practitioners Ordinance (“LPO”) (Cap. 159) may apply to the Higher Rights Assessment Board established under the LPO for higher rights of audience⁴. Given the status of the Tribunal as a superior court of record and

⁴ Higher rights of audience are the rights of audience before the High Court and the Court of Final Appeal in civil proceedings, criminal proceedings or both.

the possible transfer of cases (in part or in whole) between the CFI and the Tribunal, and to enable a case be handled by the same team of solicitors/barristers even after the transfer, we propose introducing consequential amendments to the LPO and the Higher Rights of Audience Rules (Cap. 159AK), so that solicitor advocates granted with the higher rights of audience before the High Court and the Court of Final Appeal in civil proceedings should also be granted similar rights before the Tribunal.

Power to bring up persons in custody to give evidence

15. Judges and judicial officers at various courts/tribunals are empowered under the Evidence Ordinance (“EO”) (Cap. 8) to bring up any person in lawful custody to prosecute, pursue, defend, or to be examined as a witness before those courts/tribunals. To cater for the possibility that the Tribunal may require persons in lawful custody to give evidence, we propose introducing consequential amendments to the EO so that such powers are also given to the relevant members and judicial officers of the Tribunal.

Extension of Tribunal’s jurisdiction to Hong Kong Port Area

16. The Shenzhen Bay Port Hong Kong Port Area Ordinance (Cap. 591) seeks, among others, to apply the laws of Hong Kong in the Hong Kong Port Area in Shenzhen Bay (a Mainland territory) and to provide for the jurisdiction of courts/tribunals in this connection. The term “court” is defined in section 2 of this Ordinance as “a court or tribunal specified in Part 1 of Schedule 4”, which sets out a full list of the courts/tribunals currently under the Judiciary, except the Tribunal.

17. For the sake of completeness, we propose introducing consequential amendments to the Shenzhen Bay Port Hong Kong Port Area Ordinance to the effect that the Tribunal’s jurisdiction will be extended to the Hong Kong Port Area and the territorial limit of the Tribunal’s orders would be construed as including the Hong Kong Port Area.

Electronic Transactions Ordinance

18. The Electronic Transactions Ordinance (“ETO”) (Cap. 553) establishes a legal framework for the conduct of electronic transactions by giving electronic records and electronic/digital signatures the same legal status

as that of their paper-based counterparts as well as a framework for the operation of certification authorities.

19. Recognising that the Judiciary is not able to accept electronic information because of operational and technological constraints, all existing courts/tribunals under the Judiciary are currently exempted from the ETO so that they will not be required to accept electronic submissions. But the Tribunal has not yet been included.

20. The Judiciary is undergoing a major computer upgrading exercise called the Information Technology Strategy Plan which will take time to be implemented. As the Judiciary will not be able to offer electronic services for the Tribunal in the near future, for the sake of consistency with the other existing courts/tribunals, we propose introducing consequential amendments to the ETO to extend the exemption to the Tribunal.