

II. REPORT

The date of First Reading of the Bill is 14 May 2014. Members may refer to the LegCo Brief (File ref.: CITB (CR) 05/62/43/8) issued by the Commerce and Economic Development Bureau and the Judiciary Administration on 7 May 2014 for further details.

Object of the Bill

2. The Bill seeks to amend the Competition Ordinance (Cap. 619) (the Ordinance) to give the Competition Tribunal (the Tribunal) certain specific powers, and provide for certain operational matters, that are considered by the Administration and the Judiciary to be necessary to ensure the proper functioning of the Tribunal; and to make miscellaneous amendments to other Ordinances.

Background

3. The Ordinance was passed by the Legislative Council (LegCo) on 14 June 2012 and published in the Gazette on 22 June 2012. The Ordinance prohibits undertakings¹ from adopting conduct which has the object or effect of preventing, restricting or distorting competition in Hong Kong. It provides for general prohibitions in three major areas of anti-competitive conduct (described as the first conduct rule under section 6, the second conduct rule under section 21, and the merger rule under section 3 of Schedule 7, which are collectively known as the "competition rules" in the Ordinance) as well as the institutional arrangements and penalty provisions for their enforcement. Paragraph 2 of the LegCo Brief says that since the enactment of the Ordinance, the Administration has been working closely with the Competition Commission (the Commission) and the Judiciary on the phased implementation of the Ordinance.

4. The Competition Ordinance (Commencement) Notice 2012 (L.N. 177 of 2012), which was gazetted on 23 November 2012, has specified 18 January 2013 and 1 August 2013 as the respective days to commence the operation of certain provisions of the Ordinance mainly relating to the setting up of the Commission and the Tribunal. Members may wish to note that the competition rules and the relevant penalty provisions have not yet been brought into operation.

5. According to paragraphs 3 and 4 of the LegCo Brief, the Ordinance is now in the second phase of implementation and one of the major tasks is to prepare for the full operation of the Tribunal. In this connection, the Judiciary is

¹ Undertaking is defined under section 2(1) of the Ordinance to mean "any entity, regardless of its legal status or the way in which it is financed, engaged in economic activity, and includes a natural person engaged in economic activity".

formulating the rules for the operation and proceedings of the Tribunal under section 158(1) of the Ordinance and making other necessary administrative arrangements. During the preparation for the full operation of the Tribunal, the Administration and the Judiciary have identified certain amendments to the Ordinance and consequential amendments to other pieces of legislation, which are considered essential to the proper functioning of the Tribunal.

Provisions of the Bill

6. The major proposed amendments in the Bill can be grouped into three categories which are summarized in the ensuing paragraphs. Members may refer to Annex B to the LegCo Brief for further details of the proposed amendments and their justifications. Members may wish to note that the proposed amendments in the Bill do not directly involve the competition rules and the relevant penalty provisions in the Ordinance.

(A) Proposed powers for the functioning of the Tribunal

7. The Ordinance has adopted a general approach in providing for the powers, and the practice and procedure of the Tribunal with reference to those of the Court of First Instance (CFI)². According to paragraph 7 of the LegCo Brief, notwithstanding the general approach adopted in the Ordinance, the Administration has identified several areas in the Ordinance where it is considered 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. The Administration therefore proposes amending the Ordinance to confer more specific powers on the Tribunal with a view to providing greater clarity and certainty that are required. These powers include the power to enforce the orders of the Tribunal (proposed new section 155A), the power to award interest on debts and damages and judgment debts (proposed new sections 153A and 153B), the power to prohibit debtors from leaving Hong Kong (proposed new sections 151A to 151C), and the power to reimburse a witness for expenses reasonably and properly incurred (proposed new section 157A). It is also proposed to empower the Chief Judge to make rules, after consulting the President of the Tribunal, on the administration of suitors' funds (proposed new section 158A).

(B) Proposed amendments relating to Registrars

8. The Ordinance 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)³. The Ordinance does not confer powers on the Tribunal's registrars to perform judicial

² See sections 142 to 144 of the Ordinance.

³ See section 156 of the Ordinance.

duties. According to paragraph 9 of the LegCo Brief, to ease the workload of members of the Tribunal and in line with the arrangements for the High Court, the Administration proposes amending the Ordinance (by adding new sections 156A to 156C) to empower the Tribunal's registrars to perform judicial work under the Ordinance 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 (proposed new section 156D). It is also proposed to amend section 156 of the Ordinance to provide expressly that temporary registrars, temporary senior deputy registrars, and temporary deputy registrars of the High Court would automatically hold the corresponding positions in the Tribunal and be given similar powers and duties of their permanent counterparts in the Tribunal.

(C) Proposed amendments to other Ordinances

9. According to paragraph 10 of the LegCo Brief, amendments are proposed to a number of Ordinances with the aim to facilitate the future operation of the Tribunal (e.g. enabling the making of rules of court for prescribing the procedure in connection with the transfer of proceedings between the CFI and the Tribunal), and to ensure consistency with the arrangements currently applicable to the CFI and/or other courts/tribunals in general under these Ordinances. They include the High Court Ordinance (Cap. 4), the Evidence Ordinance (Cap. 8), the Legal Practitioners Ordinance (Cap. 159), the Higher Rights of Audience Rules (Cap. 159AK), the Electronic Transactions Ordinance (Cap. 553) and the Shenzhen Bay Port Hong Kong Port Area Ordinance (Cap. 591).

Commencement

10. There is no commencement provision in the Bill. By virtue of section 20(2) of the Interpretation and General Clauses Ordinance (Cap. 1), the Bill, if passed, would come into operation on the day it is published in the Gazette as an ordinance.

Public Consultation

11. According to paragraph 15 of the LegCo Brief, the Administration and the Judiciary Administration have briefed the Commission on the proposed legislative amendments to the Ordinance, 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.

Consultation with LegCo Panel

12. The Clerk to the Panel on Economic Development has advised that the Panel was consulted on 16 December 2013. A member expressed concern that the future work of the Tribunal would increase the already heavy workload of the Judiciary. He urged the Judiciary Administration to keep the workload and staffing situation of the Judiciary under review and to enhance staffing support as necessary. Some other members had queried about whether the penalty levels under the Ordinance had sufficient deterrent effect against contraventions. Enquiries were also made regarding the progress made by the Administration in implementing the Ordinance.

Conclusion

13. The Legal Service Division is scrutinizing the legal and drafting aspects of the Bill. Members may wish to consider whether there are any policy or other aspects which should be studied in detail by a Bills Committee.

Prepared by

TSO Chi-yuen, Timothy
Assistant Legal Adviser
Legislative Council Secretariat
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