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Report of the Subcommittee to Study the Proposed Subsidiary Legislation on the Procedures to be Adopted by the Competition Tribunal

Purpose

This paper reports on the deliberations of the Subcommittee to Study the Proposed Subsidiary Legislation on the Procedures to be Adopted by the Competition Tribunal.

Background

2. The Competition Ordinance (Cap. 619) ("the CO"), which was enacted in June 2012 and amended in November 2014, provides a legal framework for tackling anti-competitive conduct across different sectors. The CO prohibits anti-competitive agreements and abuse of market power the object or effect of which is to prevent, restrict or distort competition in Hong Kong. The CO also has a merger control regime which applies only to the telecommunications sector.

3. Since the enactment of the CO, the Administration and the Judiciary have been working on its phased implementation. One of the key tasks for the Judiciary is to set up the Competition Tribunal ("the Tribunal"), which is a superior court of record established under the CO having primary jurisdiction to hear and adjudicate on cases brought by the Competition Commission ("the Commission"), follow-on private actions, alleged contravention of a conduct rule as a defence raised in proceedings before the Court of First Instance ("the CFI"), as well as reviews of certain determinations of the

Commission/Communications Authority ("CA")¹. Provisions relating to the Tribunal commenced on 1 August 2013. The President and Deputy President of the Tribunal were also appointed with effect from 1 August 2013.

4. The Tribunal may impose a broad-range of sanctions against a contravening party. These include imposing a pecuniary penalty, director disqualification orders, award of damages in follow-on actions and various other orders set out in Schedule 3 to the CO. Under section 93 of the CO, the Tribunal may impose a pecuniary penalty up to 10% of the turnover of the undertaking(s) involved for up to three years in which the contravention occurred.

Draft procedural and fees rules of the Tribunal

5. Section 144(1) of the CO provides that the Tribunal may decide its own procedures and may, insofar as it thinks fit, follow the practice and procedure of the CFI in the exercise of its civil jurisdiction. Pursuant to section 144(3), the Tribunal is to conduct its proceedings with as much informality as is consistent with attaining justice. Further, section 147 provides that other than in certain proceedings, the Tribunal is not bound by the rules of evidence and may receive and take into account any relevant evidence or information.

6. Under section 158 of the CO, the Chief Judge of the High Court ("the HC") is empowered to, after consulting the President of the Tribunal, make rules regulating and prescribing the practice and procedure to be followed in the Tribunal.

7. Accordingly and having regard to the arrangements of the High Court Ordinance (Cap. 4), the Judiciary has prepared the following four sets of draft procedural and fees rules of the Tribunal ("the Draft Rules"):

¹ Determinations of the Commission (including the CA) which are reviewable by the Tribunal include decisions made by the Commission (including the CA) in respect of :

- (i) exemptions or exclusions for agreement(s), conduct(s) or merger(s);
- (ii) rescission of a decision regarding exemptions or exclusions for agreement(s), conduct(s) or merger(s);
- (iii) issue, variation or revocation of block exemption order;
- (iv) variation of a commitment made by undertaking(s) to take or refrain from taking certain action to address the Commission's concerns about a possible contravention of a competition rule;
- (v) release of undertaking(s) from a commitment to take or refrain from taking certain action to address the Commission's concerns about a possible contravention of a competition rule; and
- (vi) termination of a leniency agreement.

- (a) the Competition Tribunal Rules ("CTR") which sets out the procedural rules of the Tribunal. To cater for different types of proceedings that the Tribunal may need to deal with, the CTR have been grouped into the following six parts -
 - (i) Part 1: sets out the application of these rules and the Rules of the High Court (Cap. 4A) ("RHC") to proceedings before the Tribunal;
 - (ii) Part 2: general rules applicable to all proceedings before the Tribunal;
 - (iii) Part 3: specific rules applicable to reviews of the Commission's reviewable determinations under Part 5 of the CO;
 - (iv) Part 4: specific rules applicable to applications in relation to enforcement of commitments, enforcement applications before the Tribunal under Part 6 of the CO and applications for orders under section 169 of the CO;
 - (v) Part 5: specific rules applicable to follow-on actions under Division 2, Part 7 of the CO; and
 - (vi) Part 6: specific rules applicable to proceedings transferred from the CFI under Division 3, Part 7 of the CO;
- (b) the Rules of the High Court (Amendment) (No. 2) Rules 2015 which amends the RHC to provide for (i) the procedures for proceedings transferred between the Tribunal and the CFI; and (ii) the procedures for applications to the Court of Appeal for leave to appeal from the decisions of the Tribunal;
- (c) the Competition Tribunal Fees Rules ("the Fees Rules") which sets out the fees to be paid by users of the Tribunal for various purposes; and
- (d) the Competition Tribunal Suitors' Funds Rules ("the Suitors' Funds Rules") which governs the administration of suitors' funds of the Tribunal in a way similar to that of the HC, including how suitors' funds are lodged in and paid out of the Tribunal, investment of the funds, provision of interest for individual suitors' accounts and preparation of annual financial statements for the funds.

8. In preparing the CTR, the Judiciary has made reference to not only the RHC, but also the rules and procedures of the other relevant courts and tribunals in the Judiciary using informal rules, e.g. the Lands Tribunal Rules (Cap. 17A). It has also taken into account the rules and practice applicable to similar proceedings in other relevant common law jurisdictions, e.g. the United Kingdom ("UK") (namely, the UK Competition Appeal Tribunal Rules 2003) ("CATR 2003"), Australia (namely, the procedures applicable to the Australian Competition Tribunal and the Federal Court) and Canada (namely, the Canada Competition Tribunal Rules).

The Subcommittee

9. At the meeting of the House Committee held on 27 February 2015, Members agreed to a proposal from the Panel on Administration of Justice and Legal Services (upon the Judiciary Administration's request) for the appointment under the House Committee of a subcommittee to study the Draft Rules, so as to allow sufficient time for Members to scrutinize them before they are gazetted and laid on the table of the Legislative Council ("LegCo") under the negative vetting procedure. The membership list of the Subcommittee is in **Appendix I**.

10. Under the chairmanship of Hon Dennis KWOK, the Subcommittee has held three meetings.

Deliberations of the Subcommittee

The CTR

Rule 2 - Interpretation

11. Members note that an intervener, as mentioned in paragraph (a) of the definition of "party" under rule 2(1) of the CTR, refers to any person, including the Commission, being granted leave by the Tribunal to intervene in the proceedings under rule 20 or rule 21 of the CTR. For the sake of clarity and to align with the drafting of paragraph (b) of the definition of "party" under rule 2(1) of the CTR, members have suggested that the meaning of "intervener" should be clarified to clearly spell out that "intervener" referred to any person, including the Commission, who are granted leave by the Tribunal to intervene in the proceedings under rule 20 or rule 21 of the CTR.

12. The Judiciary agrees to clarify the meaning of "intervener" in rule 2(1) of the CTR by providing a new definition for this term. This will include any person allowed to intervene in the proceedings under rules 20 and 21 of the CTR,

including the Commission.

13. For the sake of clarity, the Judiciary also agrees to amend the definition of "originating document" under rule 2(1) of the CTR to indicate more clearly that "originating document" does not include a statement of claim filed separately under the proposed revised rule 93(1B) of the CTR (please see paragraphs 51 and 52 below). For consistency, the Judiciary suggests adopting a more generic expression in the revised definition so that such clarification not only applies to the originating document for rule 93, but also to the originating documents in other parts of the CTR. For example, an affidavit required for an application for leave to apply for a review of a reviewable determination under rule 60 of the CTR will not be regarded as "originating document" either.

Rule 4 - Application of RHC

14. Members note that rule 4(1) of the CTR provides that where the CO and the CTR make no provision for a matter, RHC applies to all proceedings before the Tribunal, so far as the RHC may be applicable to that matter.

15. The Judiciary has advised that if both the RHC and the CTR have provisions for a matter, the CTR would in general prevail over the RHC for that matter according to the operation of rule 4 of the CTR. However, there are two kinds of refinements to the CTR, i.e. partial application and partial disapplication of the RHC. In respect of partial application of the RHC, for some matters, whilst there are provisions in the CTR that modified or differed from the RHC, certain parts of an Order in the RHC may still be applicable to that matter. For example, in rule 16 of the CTR, whilst subrule (1) and (2) would apply to Tribunal proceedings, Order 11 of the RHC applied to the service of all documents out of the jurisdiction. As to partial disapplication of the RHC, for some other matters, whilst the RHC provisions are generally applicable to Tribunal proceedings, certain parts or the whole of the relevant RHC Order are not applicable in relation to that matter because of the different requirements of the CTR. For example, in rule 17 of the CTR, subrule (2) indicates that "Order 13 of the RHC does not apply to any proceedings".

16. The Judiciary has further advised that the proposed arrangements in paragraph 15 above would minimize the extent of the RHC provisions which need to be copied into the CTR, whilst allowing for flexibility to introduce informality and other adaptations into Tribunal proceedings.

17. Whilst noting that the CTR, which are procedural rules of the Tribunal, are largely modelled on the practice and procedure of the CFI provided under the RHC, members have requested the Judiciary to provide more information on the key procedural differences between the Tribunal and the CFI which are

summarized as follows:

Commencement of proceedings

- (a) under Order 5, rule 1 of the RHC, subject to the provisions of any written law and of the RHC, civil proceedings may be begun by writ or originating summons in the CFI. Alternatively, under Order 5, rule 5 of the RHC, proceedings may be begun by originating motion or petition in the CFI only if under any written law the proceedings in question are required or authorized to be so begun. As regards the Tribunal, for the sake of informality, a relatively simple and general form is proposed to be used to enable parties to set out their grounds of application and response in a succinct manner. There are generally two modes of commencement of proceedings for the Tribunal. One is an originating notice of application or originating notice of claim, using Form 1 or 8 of the Schedule to the CTR. The other is an application for leave to apply for a review of the reviewable determinations of the Commission and CA;

Case management

- (b) the case management provisions for the Tribunal are similar to those of the CFI in that both largely rely on Order 25 of the RHC. However, for the Tribunal, as indicated in rule 25 of the CTR, certain rules in Order 25 of the RHC do not apply. For example, the procedures for taking out case management summons and conferences under the RHC do not apply. By doing so, the Tribunal will have a more flexible case management procedure;

Intervention

- (c) intervention by interested parties is possible in proceedings in the CFI under Order 15, rule 6(2) of the RHC. Given the potential implications of the Tribunal's decisions on the relevant sector(s) and the related consumers etc, a more specific and elaborated procedure is proposed for the Tribunal to facilitate early intervention by interested parties under rules 19 and 20 of the CTR;
- (d) a more specific and elaborate procedure is proposed to facilitate early intervention by interested parties in the Tribunal. For example, under rule 19 of the CTR, the Registrar must publish a notice after
 - (i) the filing of an application under the relevant provisions of the CO;
 - (ii) the granting of leave to apply for a review of a reviewable determination of the Commission;
 - (iii) the receipt of a follow-on

claim brought under the CO; (iv) the transfer of any proceedings from the CFI to the Tribunal; or (v) in any other proceedings, the Tribunal has given a direction to do so. Further, under rule 20 of the CTR, a person who has a sufficient interest in the matters to which the proceedings of the Tribunal relate may apply for leave to intervene in the proceedings;

Discovery and inspection of documents

- (e) contrary to the CFI where there is automatic discovery in proceedings begun by writ, there is no automatic discovery of documents for proceedings in the Tribunal. Instead, parties need to apply to the Tribunal for discovery and production of documents (rule 24 of the CTR). This is similar to the position of proceedings begun by originating summons or petition in the CFI. This helps save the costs and efforts of the parties concerned, and ensures that discovery takes place only insofar as it is necessary for the fair disposal of the case and is proportionate. Further, this will enable the Tribunal to consider whether confidential and sensitive information, which may be fairly common for competition cases, should be required to be disclosed;

Confidential treatment of information

- (f) the CFI has inherent jurisdiction for confidential treatment of information, though the RHC has no express provision on this matter. For example, with the court's agreement, confidential information may be redacted from documents to be made available to the other parties and/or the public. As commercially sensitive or confidential information may be commonly encountered in competition cases, it is proposed in rule 37 of the CTR that a party may apply to the Tribunal for confidential treatment of the whole or part of any document to be disclosed/being disclosed by itself or any party in connection with any proceedings. In other words, if confidential treatment is accorded to a document, whilst the Tribunal will have full access to the document, some parties may not be given the full version of the documents. Confidential treatment is only to be accorded to information that genuinely requires to be protected (rule 37(6) of the CTR);

Rules of evidence

- (g) for the CFI, subject to the provisions of the RHC, the Evidence Ordinance (Cap. 8) and any other written law relating to evidence,

any fact required to be proved at the trial of any action begun by writ by the evidence of witnesses shall be proved by the examination of the witnesses orally and in open court. For the Tribunal, section 147 of the CO provides that save for certain proceedings, the Tribunal is not bound by the rules of evidence and may receive and take into account any relevant evidence (including hearsay evidence) or information, whether or not it would be otherwise admissible in a court of law. Further, the evidence of witnesses at the hearing of any proceedings of the Tribunal may be taken orally on oath or affirmation, or by affidavit, declaration or otherwise as the Tribunal thinks fit (rule 35 of the CTR);

Review of reviewable determination

- (h) in the CTR, the procedure of the leave application for review of reviewable determinations is very similar to that of the leave application for judicial review, but some simplification is suggested to save efforts and legal costs. For example, in the CFI, after leave for application for judicial review is granted, the applicant needs to submit another document as the application for review. Under rule 62(2) of the CTR, unless the Tribunal otherwise directs, a leave application for review of a reviewable determination would stand as an application for that review;

Validity of originating documents

- (i) for the purpose of service, an originating document by the filing of which proceedings are commenced in the CFI is valid in the first instance for 12 months beginning with the date of its issue (Order 6, rule 8 and Order 46, rule 8 of the RHC). For the Tribunal, the Judiciary has suggested a shorter validity period of six months (rule 18(1)(a) of the draft CTR). It is anticipated that the issue of validity mainly concerns follow-on actions. A shorter validity period is suggested because of the following reasons. First, there will already have been an enforcement stage in which the relevant determinations on any anti-competitive behaviour were sought and made. The intended plaintiff will have had ample time to consider his/her options. Second, given the commercial nature and the importance of competition cases to the relevant industry or the general public, cases before the Tribunal should be dealt with as expeditiously as is reasonably practicable. Third, the need for expedition seems also to be indicated by the fact that under section 111(3) of the CO, there is a time limit of three years for a follow-on action to be initiated after the earliest date on which it can

be brought, which is shorter than the six-year period under the Limitation Ordinance (Cap. 347); and

Direction to file

- (j) in the CFI, for actions begun by writ, unless the court gives leave to the contrary or a statement of claim is indorsed on the writ, the plaintiff must serve a statement of claim on the defendant. Similarly, a defendant who gives notice of intention to defend an action must, unless the court gives leave to the contrary, serve a defence on every other party to the action who may be affected (Order 18 of the RHC). For the Tribunal, it will not adopt strict rules on the filing of pleadings, except for follow-on actions. But, it may direct the parties to file pleadings at any stage of the proceedings if it thinks fit (rule 27 of the CTR). This flexibility is to cater for proceedings which will benefit from the presence of pleadings and certain proceedings transferred from the CFI.

Rule 13 - Method of service of originating documents

18. As the Judiciary has confirmed that it is necessary for a party to first apply for an order for substituted service under rule 13(8) of the CTR before the Tribunal makes such an order and that the application should be supported by affidavit and as rule 4 (substituted service) of Order 65 of the RHC does not apply to the Tribunal proceedings, members consider that it would be procedurally clearer if rule 13(8) of the CTR is amended to specify that the Tribunal will only make an order for substituted service after an application is made and that such an application is supported by affidavit. The Judiciary agrees to amend rule 13(8) of the CTR to that effect.

19. Members note that rule 13(8) of the CTR provides flexibility for either the Registrar or a member of the Tribunal to consider applications for substituted service. Members further note that the Judiciary intends to follow the arrangements in the CFI in that it will normally be the Registrar who considers such applications and Members of the Tribunal may however do so as necessary, e.g. when dealing with an ex parte injunction and it is anticipated that there will be difficulty in service through the normal way.

20. Hon Dennis KWOK has suggested spelling out the arrangements in paragraph 19 above in the relevant Practice Direction ("PD"). As this is a well-established practice in the CFI and flexibility is needed, the Judiciary will consider whether it is desirable and necessary to spell out such arrangements in the relevant PD.

Rule 20 - Intervention by third party (other than Commission)

21. Rule 20(1) of the CTR provides that a person (other than the Commission) who has a sufficient interest in the matters to which any proceedings relate may apply for leave to intervene in the proceedings. Question was raised as to why no definition is provided for the term "sufficient interest" in the CTR.

22. The Judiciary considers that the precise scope of the term "sufficient interest" has to be developed by the Tribunal in its jurisprudence and thus does not consider it desirable to provide for a definition of "sufficient interest" in the CTR. The expression "sufficient interest" has to be left for consideration and elucidation by reference to the facts of actual cases. Who has sufficient interest to intervene is sensitive to the precise issues raised in the particular case. The Tribunal will need to take into account the relationship between the parties and the matter to which the claim relates and all other relevant circumstances. Without compromising the further development of jurisprudence in this regard, the Judiciary takes an initial view that in general "sufficient interest" ought to be an interest which is directly related or connected with the subject matter of an action or application.

23. The Judiciary has advised that the term "sufficient interest" is also used in other local legislation with no definition, e.g. section 21K(3) of the High Court Ordinance (Cap. 4), Order 53, rule 3(7) of the RHC in relation to applications for judicial review and section 85 of the CO about who may apply for review of reviewable determinations.

24. The Judiciary has further advised that similar to rule 20 of the draft CTR, the procedural rules of the competition-related court/tribunal in the UK do not have a definition of "sufficient interest" either. Rule 16(1) of the UK CATR 2003 simply provides that "Any person who considers he has sufficient interest in the outcome may make a request to the Tribunal for permission to intervene in the proceedings". Although the Department of Justice ("DoJ") could not find any direct case authority on the definition and scope of the expression of "sufficient interest" in the context of intervention in competition proceedings in the UK, DoJ notes from the discussions at the Committee Stage in the House of Lords for the enactment of CATR 2003 that Lord Simon of Highbury used representative bodies such as Consumers Associations or trades institutions as examples of persons who have "sufficient interest" to appeal a decision.

25. The Judiciary will consider whether it is appropriate to give more guidance in the relevant PD in this respect. The Judiciary will give due regard to members' advice that care is needed when preparing any further guidance to avoid any possible abuse of excessive intervention.

Rule 22 - Addition of parties

26. Rule 22(1) of the CTR provides, amongst others, that the Tribunal may, on the application of a person, permit the person or another person to substitute any party to the proceedings. Concern was raised as to whether this would allow a defendant to apply to the Tribunal for a person to substitute the plaintiff.

27. DoJ has advised that the substitution under rule 22(1) of the CTR should generally be granted by the Tribunal in case of death or other reasons such as a party to the proceedings has become mentally incapacitated or the party has subrogated his/her rights to another person, after considering the facts of and reasons for the application.

28. Members have requested the Judiciary/DoJ to provide more information, caselaw or otherwise, about the possible scenarios where a party might be substituted under Order 15, rule 7 of the RHC.

29. According to the DoJ, in the CFI, an application for substitution of a party to the proceedings is made when, after proceedings have commenced, certain changes affecting a party's capacity or his liability/interest has occurred. Order 15, rule 7 of the RHC governs the applicable procedures for the court to substitute a party as plaintiff or defendant in the following circumstances:

(a) death or bankruptcy of a party

- (i) on the death of a party, the general rule is that the cause of action survives against or for the benefit of the estate. Where a party to an action dies or becomes bankrupt during proceedings but the cause of action survives, the action does not abate by reason of the death or bankruptcy (Order 15, rule 7(1) of the RHC), and continues after an order is duly obtained from the court under Order 15, rule 7(2) of the RHC to carry on the proceedings;
- (ii) in proceedings before the Tribunal, if an individual claimant/respondent in a follow-on action dies, assuming the cause of action survives against or for the benefit of the estate, the executors or administrators may likewise apply for an order under Order 15, rule 7(1) of the RHC to carry on the proceedings. They will be considered as the "substituted party" under rule 22 of the draft CTR; and
- (iii) in the case of bankruptcy, if an individual claimant/respondent is adjudicated bankrupt during the

course of the proceedings, his right of action/defence may pass to the trustee in bankruptcy. If so, the trustee alone (i.e. the substituted party under rule 22 of the CTR) can continue with the follow-on action but he must have obtained an order under Order 15, rule 7 of the RHC in order to do so;

or

- (b) assignment, transmission or devolution of an interest or liability of a party

where at any stage of the proceedings the interest or liability of any party is assigned or transmitted to or devolves upon some other person, in order to ensure that all matters in the dispute may be effectually determined, the court may order that:

- (i) the other party be made a party to the action; and
- (ii) the proceedings be carried on as if that other party had been substituted for the original party (Order 15, rule 7(2) of the RHC).

The court may, upon an application for substitution of a party, make an order that the proceedings be continued.

Rule 28 - Hearing in public

30. The Judiciary has advised that it will rectify the Chinese reference to the Tribunal in rule 28(2) of the CTR from "裁審處" to "審裁處".

Rule 29 - Composition of Tribunal and Appointment of Assessor

31. On the question as to whether the President and the Deputy President of the Tribunal must sit together to hear and determine an application made to the Tribunal, the Judiciary has replied in the negative. According to section 145(1) of the CO, an application to the Tribunal might be heard and determined by a Tribunal constituted by the President, the President with one or more other members appointed by the President who are all CFI judges, or one or more other members appointed by the President.

Rule 30 - Right of audience

32. Members note that apart from the fact that a party to the proceedings may appear in person and represent himself/herself in the proceedings, the party may be represented by a counsel or solicitor having a right audience before the CFI in

its civil jurisdiction, a company director with the Tribunal's leave if the party is a body corporate, as well as any other person allowed with the leave of the Tribunal. For a counsel or an advocate from an overseas jurisdiction not having the general right of audience before CFI in its civil jurisdiction, he or she will require ad hoc admission under the Legal Practitioners Ordinance (Cap. 159) ("LPO") before he or she can represent a party in the proceedings.

33. Members have suggested amending rule 30 of the CTR to specify that overseas lawyers must be properly admitted on an ad hoc basis before they can represent a party to the proceedings of the Tribunal, having regard to the fact that under section 27 of the LPO, a counsel or an advocate from an overseas jurisdiction will require ad hoc admission before he or she can represent a party in the civil proceedings.

34. The Judiciary considers that there is no need to amend rule 30 of the CTR to repeat the requirement under section 27 of the LPO, as such requirement generally applies to proceedings in various levels of courts and tribunals and is not spelt out in similar right of audience provisions for other courts and tribunals either, e.g. section 15 of the District Court Ordinance (Cap. 336) and rule 26 of the Lands Tribunal Rules (Cap. 17A).

35. Some members have requested the Judiciary to examine whether there is a need to revise rule 30(1)(b)(ii) of the CTR to make it clearer that the intent of the rule is to permit persons other than counsel or solicitor having a right of audience to represent a party to the proceedings before the Tribunal.

36. The Judiciary has pointed out that the Tribunal's power under rule 30(1)(b)(ii) of the CTR to allow any other person to appear on a party's behalf is a residual power which will be used sparingly. In particular, it is not intended to obviate the need for overseas lawyers to obtain ad hoc admission for the purpose of representing a party in proceedings of the Tribunal.

37. Given members' views mentioned in paragraphs 33 and 35 above, the Judiciary will review if the relevant paragraphs of the PD need to be refined. Depending on the extent of changes, the Judiciary may consult the relevant stakeholders, including the Bar Association, again as necessary.

38. Hon Dennis KWOK has asked whether consideration could be given to allowing applications for ad hoc admission of foreign lawyers under section 27 of the LPO to be handled by members of the Tribunal, instead of Judges of the CFI, so as to expedite the applications.

39. The Judiciary has advised that at the moment, applications for ad hoc admission of foreign lawyers for all courts and tribunals are mainly handled by

the Chief Judge of the HC (with some by the Judges of the Court of Appeal), but not by the trial Judge. This practice is adopted mainly to avoid any perception of the trial Judge receiving communication from one party to the proceedings only. It is because whilst the Judge handling such applications will hear the applicant for admission (who is usually represented by the lawyers acting for the party in the underlying proceedings seeking the Applicant's admission), DoJ and/or the Bar Association etc. on the proposed admission, the Judge concerned will not hear the other party or parties in the underlying proceedings. So, if the trial Judge is invited to process such applications, this may lead to unilateral communication between the Judge and one of the parties. This may affect the perceived impartiality of the court. Besides, admission applications are considered more from the public policy and public interest perspectives. The Judge's familiarity with the law and the case concerned etc. may not be critical. Because of the aforesaid considerations, the Chief Judge of the HC takes the view that it is not appropriate to make any exceptional arrangements in relation to admission for proceedings before the Tribunal.

Rule 40 - Frivolous or vexatious proceedings

40. To deter frivolous or vexatious proceedings, question was raised as to whether Order 32A (Vexatious Litigants) of the RHC would be applicable to the Tribunal so that the Tribunal might make an order against a person who has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings.

41. The Judiciary has explained that Order 32A of the RHC will not apply to the Tribunal because only the CFI has power to make an order under section 27 of Cap. 4 against a vexatious litigant. There is no similar empowering provision in the CO.

Rule 44 - Interlocutory order for purposes of section 155(2) of the CO (where appeal lies as of right)

42. Members have suggested providing a definition of an "unless" order referred to in rule 44(2)(g) of the CTR to make the term more easily understood by the general public.

43. The Judiciary has explained that "unless" orders are commonly made by the Judges and Judicial Officers. Relevant details of such orders are provided in PD 16.5 entitled "peremptory orders" issued by the Judiciary. Given members' suggestion and in the interest of enhancing the readability of the CTR, the Judiciary agrees to provide a definition of the term in rule 44.

Rule 49 - Proceedings transferred from Tribunal to CFI: effects of transfer

44. Members have pointed out that rule 49(1) of the CTR provides that the Tribunal "may make further directions", whereas the phrase "may give any directions" is used in other provisions, e.g. rule 99(3) of the CTR. The Judiciary agrees to rectify the inconsistencies by replacing "make directions" with "give directions" in rule 49(1).

Rule 56 - Right of persons (other than parties) to inspect, etc. certain documents filed in Tribunal

45. The Judiciary has advised that judgment given by the Tribunal will be placed on its website, albeit confidential and sensitive information contained in the judgment may be redacted. At the request of members to provide more details in the relevant PD on the procedures for the application for leave to search documents under rule 56(2) of the CTR, the Judiciary agrees to consider this suggestion when refining the relevant draft PD.

Rule 66 - Failure to file response

Rule 76 - Failure to file response

Rule 86 - Failure to file affidavit in opposition

46. Rule 34 of the CTR provides that if a party does not appear at the hearing of any proceedings in which a judgment is given, the Tribunal may set aside the judgment on the application of the default party. For completeness' sake, the Judiciary considers that similar provisions should also be provided in rules 66, 76 and 86 when a party fails to file a response or an affidavit in opposition. This means that the default party will not need to make an appeal. Members agree to the proposed amendments.

Rule 70 - Stay of execution of reviewable determination

Rule 71 - Application to state case for Court of Appeal

47. Members note that although it is mentioned in rule 8(1) of the CTR that all interlocutory applications to the Tribunal must be made by filing a summons in Form 2 in the Schedule, it would be more user-friendly if the use of Form 2 in the Schedule could be explicitly spelt out in rules 70 and 71 and in other rules of the CTR which make reference to filing a summons if it is the policy intent that the relevant proceedings should be commenced by filing Form 2.

48. The Judiciary has explained that rule 8 of the CTR already indicates that all interlocutory applications to the Tribunal must generally be made by filing a summons in Form 2 in the Schedule. As a form is specified for all interlocutory applications, it is strictly speaking not necessary to repeat it in every subsequent

rule about interlocutory applications. A similar approach is adopted in rule 4 of the Lands Tribunal Rules (Cap. 17A). The Judiciary stands ready to further clarify this in the relevant PD and/or publicity materials. Despite this, given members' preference for greater clarity and user-friendliness, the Judiciary agrees to spell out in rule 70, rule 71 and any other rules of the CTR which make reference to filing of a summons that Form 2 in the Schedule is the requisite form.

Rule 87 - Affidavit in reply by applicant

Rule 88 - Further documents filed or served by parties

49. Under rule 87 of the CTR, the applicant may, within 21 days after the day on which the affidavit in opposition is served under rule 85 file an affidavit in reply to the affidavit in opposition, and serve a copy of the affidavit in reply on the respondent. However, it is noted that the usual period within which a reply has to be filed under other rules, e.g. rules 67, 77 and 96, is 28 days. Members have asked why a period of 21 days is adopted in rules 87 and 88.

50. The Judiciary has explained that the procedures for handling applications for disqualification orders and applications for leave to participate in company's affairs in the CTR have been proposed with reference to the existing arrangement under the Companies (Disqualification of Directors) Proceedings Rules (Cap. 32K). For consistency with rule 7 of Cap. 32K in which a period of 21 days is allowed for the applicant to provide any further evidence after receiving the respondent's evidence in opposition to the application, the Judiciary has suggested in rules 87 and 88 of the CTR a period of 21 days for an applicant to file and serve an affidavit in reply.

Rule 93 - Mode of commencing follow-on actions

51. As a follow-on action can only be brought by a person for the loss or damage he/she has suffered as a result of any act that has been determined to be a contravention of a conduct rule under section 110 of the CO, question was raised about the rationale for requiring the person to also file a statement of claim (rule 93(1)(b) of the CTR) (in addition to filing an originating notice of claim in Form 8 in the Schedule) as in the case of requiring plaintiffs to do the same for making other civil claims in the CFI, which might be at variance with the spirit and policy intent of section 144(3) of the CO which provided that the Tribunal was to conduct its proceedings with as much informality as was consistent with attaining justice. Members have suggested that the Judiciary should consider further simplifying the procedures and/or the information sought for follow-on actions, especially in respect of rules 93 and 94 of the CTR.

52. On review, the Judiciary has advised that the room for further streamlining is rather limited. The reason for requiring the claimant to also file a statement of claim under the CTR is to ensure that any confidential and commercially sensitive information therein may be protected from disclosure to non-parties as appropriate. The best that the Judiciary may think of is to allow for possible integration of the information sought under rule 93(1) to facilitate submission. Specifically, the Judiciary has suggested that the originating notice of claim (i.e. Form 8 in the Schedule) required under rule 93(1)(a) may be combined with the statement of claim required under rule 93(1)(b) under appropriate circumstances, e.g. if the plaintiff has no commercially sensitive information for disclosure. More guidance is also proposed to be provided in Form 8 so that the litigants would have a better idea of what a statement of claim should normally cover. Members agree to the proposal.

53. In view of the fact that the legal costs for seeking claims in the CFI are generally higher than that in the Small Claims Tribunal ("SCT"), some members have asked whether consideration would be given to allowing private follow-on actions under the CO to be filed in the SCT if the amount of claims was small, say, \$50,000 or less.

54. The Commerce and Economic Bureau, being the policy bureau of the CO, has advised that there is no provision under the CO that allows private follow-on actions under the CO to be made to the SCT, regardless of the amount claimed. Section 144(3) of the CO however provides that the Tribunal is to conduct its proceedings with as much informality as is consistent with attaining justice. The consideration given to the aforesaid arrangement is that, since competition law is a new and difficult area of law, having a specialized court in adjudicating competition matters would help accumulate judicial expertise in this specific area of law.

55. The Judiciary has also advised that it has put forward various proposals in the CTR to help ease the legal costs of litigants. For example, rule 30 of the CTR provides, amongst others, that (a) parties may choose to act in person; (b) with leave granted by the Tribunal, a company may be represented by its director; (c) the Tribunal be given a reserve power to allow any other person to appear on a party's behalf. One of the objectives of rule 30 is to help reduce the legal costs of the parties under suitable circumstances, particularly those who brought follow-on actions under Part 5 of the CTR. Moreover, forms, instead of pleadings etc., are proposed to be used in the CTR in general. A direction hearing would be held for follow-on actions at an early stage so that judges would be able to decide on the most suitable procedures for a particular case (rule 97 of the CTR). Judges are also proposed under the CTR to be given powers to dispense with the application of the RHC to expedite the handling of cases as necessary and appropriate (rule 4 of the CTR). Further, similar to the

CFI, it is also proposed in the CTR that the Tribunal would be empowered to allow consolidation of proceedings if, for instance, the cases arose from a common set of facts/laws, the reliefs sought are similar, or the reliefs are sought against the same defendant/respondent (rule 9 of the CTR).

56. As a mechanism for class actions is yet to be introduced in Hong Kong, members are of the view that the Commission should provide legal assistance to claimants under the CO, whose reliefs sought are against the same defendant/respondent, to file a collective claim in the Tribunal so as to reduce their legal costs.

57. The Commission has advised that under the CO, there is no need for a claimant in a competition case to obtain or submit evidence to prove the contravention, as the Commission would have previously devoted its resources to establish a contravention or obtain a commitment from a party. From this perspective, it might be argued that the CO has an inbuilt mechanism that reduces significantly the burden on claimants. Claimants are only required to evidence those matters which they are best placed to evidence, namely, causation (proving the contravention of the conduct rules caused them loss) and the assessment of damages (proving the amount of loss suffered).

58. The Commission has further advised that as a statutory body funded by the Government, the Commission cannot act as a legal representative of or provide litigation funding to private parties. However, the Commission may provide assistance to claimants in the following ways:

- (a) promoting awareness of anti-competition conduct;
- (b) seeking damages/compensation for claimants under section 94 of the CO;
- (c) providing evidence to assist claimants; and
- (d) intervening in follow-on actions with leave of the Tribunal/court (sections 120 and 121 of the CO).

Rule 97 - Further conduct after reply or expiry of time for reply

59. Members have suggested that rule 97 of the CTR, which is about follow-on actions, should be specified that Order 25 of the RHC applies to the case management summons referred to in the rule.

60. The Judiciary has explained that rule 25 of the CTR has already indicated that Order 25 of the RHC applies to the Tribunal proceedings in general,

including follow-on actions. Strictly speaking, it is not necessary for this to be repeated in rule 97 again. But in the interest of greater clarity and in the light of Members' views, the Judiciary has no objection to members' suggestion.

Drafting issues

61. The legal adviser to the Subcommittee has also raised a few drafting issues. The Judiciary has agreed to his views and appropriate amendments will be made to the draft CTR accordingly.

Proposed amendments to the CTR

62. The proposed amendments to the CTR and agreed to by the Subcommittee are in **Appendix II**.

Proposed amendments to the RHC

Order 59, rule 1 - Application of Order to appeals

63. Members have suggested the following amendments:

- (a) adding "the" before "Competition Tribunal" in the proposed amendment to rule 1(2) of Order 59 of the RHC for uniformity in the drafting of the subrule; and
- (b) reproducing rule 2B(5) of Order 59 of the RHC, which provides that "An application under this rule must be made inter partes if the proceedings to which the judgment or order relates are inter partes", in the proposed new rule 2BA of Order 59 of the RHC for completeness sake.

The Judiciary and DoJ agree to the suggestions.

Order 78B, rule 3 - Proceedings transferred from Competition Tribunal to Court: effects of transfer

64. Members have suggested replacing "in" in the phrase "in the Tribunal" in rule 3(3) of the proposed new Order 78B of the RHC with "by" so as to be consistent with the expression "made by the Competition Tribunal" which appears in the subrule and other provision(s) of the RHC. The Judiciary and DoJ agree to the suggestion.

65. The proposed amendments to the amendments to the RHC and agreed to by the Subcommittee are in **Appendix III**.

The Fees Rules

Rule 2 - Interpretation

66. Members note that given the similarity in the nature of the proceedings in the Tribunal and those in the HC, the Fees Rules are modelled on the High Court Fees Rules (Cap. 4D) as far as possible. Members further note that a referential legislative approach for those fees items akin to those in Cap. 4D is proposed in Schedule 1 to the draft Fees Rules. Instead of prescribing the fee amounts for the respective items in the Tribunal's draft Fees Rules, a reference to the corresponding fee items in Cap. 4D is provided. By doing so, the Judiciary would always charge the same levels of fees for similar services/actions in both the HC and the Tribunal. This would also reduce the legislative complexities in future amendment exercises.

67. On the reason(s) for specifying the exact fee amounts in Schedule 2 to the draft Fees Rules instead of adopting a referential approach, DoJ has explained that the fees items in Schedule 2 are unique to the CO and the proceedings before the Tribunal.

The Suitors' Funds Rules

68. Members note that given the similarity in operation between the Tribunal and the CFI, the Judiciary has prepared the Tribunal's draft suitors' funds rules by modelling on the High Court Suitors' Funds Rules (Cap. 4B). The Tribunal's draft suitors' funds rules seek to govern the administration of suitors' funds for the Tribunal in a way similar to that of the HC, including how suitors' funds are lodged in and paid out of the Tribunal, investment of the funds, provision of interest for individual suitors' accounts and preparation of annual statements for the funds.

69. With the enactment of the Administration of Justice (Miscellaneous Provisions) Ordinance 2014 in December 2014 to, amongst others, improve the administration of suitors' funds at various courts/tribunals, question was raised as to when the Judiciary would make the proposed amendments to Cap. 4B.

70. The Judiciary has advised that it plans to submit the proposed new and amended suitors' funds rules for various courts and tribunals, including the proposed amendments to Cap. 4B, to the relevant Panel as soon as possible and

table them in LegCo for negative vetting before the end of the current legislative session.

Rule 2 - Interpretation

71. Members have suggested replacing "registrar", where it appears in the Suitors' Funds Rules, with "Registrar" for consistency with the other sets of Rules of the Tribunal. The Judiciary and DoJ agree with the suggestion.

Rule 9 - Payment out of money lodged in Tribunal

72. For consistency with other changes being proposed to the suitors' funds rules for other courts and tribunals in another legislative exercise, the Judiciary has advised that it will revise rule 9(3) to align the out-payment hours with the opening hours of the Tribunal's accounts office. This will provide greater flexibility for account management.

Rule 17 - Power of registrar to invest money

73. Members note that although according to Cap. 4B no interest shall be credited to suitors during the first 14 days of the lodgment of funds in the HC if they are paid for certain specified purposes, unless an order directs otherwise, the Judiciary has suggested shortening the duration for accruing interest for individual suitors from 14 days to the third business day after the money is paid in under rule 17(4) of the Tribunal's draft suitors' funds rules for the sake of fairness. A similar rule in Cap. 4B would be amended in another legislative exercise referred to in paragraph 70 above.

74. Members have suggested amending the Chinese rendition of "business day" referred to in rule 17(9) of the draft Suitors' Funds Rules from "工作日" to "辦公日" as used in section 261(7) of the Companies Ordinance (Cap. 622).

75. According to DoJ, the Chinese expression "工作日" is appropriate to convey the meaning as defined, namely a day other than a general holiday, a Saturday, a gale warning day or a black rainstorm warning day. The use of that expression will not give rise to ambiguity or inconsistency and, hence, DoJ considers its use in the Rules appropriate.

76. The proposed amendments to the Suitors' Funds Rules and agreed to by the Subcommittee are in **Appendix IV**.

Way forward

77. As the Judiciary/DoJ have incorporated all the suggestions put forward by the Subcommittee, and the Subcommittee has no further comments on the legal and drafting aspects as well as the proposed amendments to the Draft Rules, a great majority of members of the Subcommittee considers that there is no need for the House Committee to form a subcommittee to scrutinize the four sets of subsidiary legislation on the procedures to be adopted by the Tribunal again after they are laid on the table of LegCo for negative vetting. The Judiciary intends to table the subsidiary legislation before the end of the current legislative session.

Advice sought

78. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 4
Legislative Council Secretariat
20 May 2015

**Subcommittee to Study the Proposed Subsidiary Legislation on the Procedures
to be Adopted by the Competition Tribunal**

Membership list

Chairman Hon Dennis KWOK

Members Hon Abraham SHEK Lai-him, GBS, JP
 Hon Andrew LEUNG Kwan-yuen, GBS, JP
 Hon WONG Ting-kwong, SBS, JP
 Hon Ronny TONG Ka-wah, SC
 Dr Hon Priscilla LEUNG Mei-fun, SBS, JP (up to 31 March 2015)
 Hon Paul TSE Wai-chun, JP
 Hon LEUNG Kwok-hung
 Hon SIN Chung-kai, SBS, JP
 Hon TANG Ka-piu, JP
 Dr Hon CHIANG Lai-wan, JP
 Hon CHUNG Kwok-pan

 (Total : 11 Members)

Clerk Mary SO

Legal adviser Timothy TSO

**Proposed Changes to the Draft Competition Tribunal Rules
after the Sub-committee's Scrutiny**

2. Interpretation

(1) In these Rules—

CFI means the Court of First Instance;

file (送交存檔) means to file in the Registry of the Tribunal;

intervener () means —

(a) a person who is granted leave to intervene in any proceedings under rule 20; or

(b) the Commission that is granted leave to intervene in any proceedings under rule 21;

originating document (原訴文件) means—

(a) an originating notice of application in Form 1 in the Schedule, a notice of application for leave in Form 7 in the Schedule, an originating notice of claim in Form 8 in the Schedule, or any other form that is prescribed in these Rules, by filing of which proceedings are commenced in the Tribunal; or

(b) for proceedings transferred from the CFI to the Tribunal under section 113 of the Ordinance, a document writ of summons, an originating summons, an originating motion or a petition, by filing of which the proceedings were commenced in the CFI;

party (一方、方), in relation to any proceedings, means a party to the proceedings and includes—

(a) an intervener; and

(b) an interested party on whom documents are directed by the Tribunal to be served under rule 64;

presiding member (主持聆訊成員), in relation to an application heard by the Tribunal, means—

(a) the President who is to preside over the hearing under section 145(2) of the Ordinance; or

- (b) a member of the Tribunal appointed by the President to preside over the hearing under section 145(2) of the Ordinance;

proceedings (法律程序) means any proceedings before the Tribunal;

Registrar (司法常務官) means the Registrar of the Tribunal;

RHC (《高院規則》) means the Rules of the High Court (Cap. 4 sub. leg. A);

Tribunal (審裁處) includes—

- (a) any one or more of the members of the Tribunal; and
- (b) the Registrar when exercising the power of the Tribunal under the Ordinance or these Rules. (2) In these Rules, a reference to a member of the Tribunal includes the President and Deputy President of the Tribunal, unless otherwise provided.

7. Mode of commencement of proceedings

Unless otherwise provided in Parts 3, 4 and 5, all proceedings before the Tribunal must be commenced by filing an originating notice of application in Form 1 in the Schedule.

12. Parties to be served

- (1) Subject to any direction that the Tribunal may ~~make~~ give, a party who files a document must serve the document on the other parties.
- (2) The Tribunal may direct that a party who files a document must serve the document on any person (other than the other parties).

13. Method of service of originating documents

- (1) This rule applies to the service of an originating document on or by any person including the Commission.
- (2) An originating document required to be served on a person under these Rules is duly served if—
 - (a) a copy of the document is served personally on the person;
 - (b) where the person is within the jurisdiction—
 - (i) a copy of the document is sent by registered post addressed to the person at the person's usual or last known address; or

- (ii) if there is a letter box for that address, a copy of the document enclosed in a sealed envelope addressed to the person is inserted through the letter box; or
 - (c) where the Tribunal makes an order under subrule (8)(a), a copy of the document is served in the form specified under subrule (8)(b).
- (3) An originating document served under subrule (2)(b) is, unless the contrary is shown, regarded as being served—
 - (a) for subrule (2)(b)(i), on the seventh day after the date on which a copy of the document was sent under that subrule; or
 - (b) for subrule (2)(b)(ii), on the seventh day after the date on which the envelope enclosing a copy of the document was inserted through the letter box under that subrule.
- (4) Where an originating document is served under subrule (2)(b), an affidavit proving due service of the originating document must contain a statement to the effect that—
 - (a) in the opinion of the deponent or, if the deponent is the applicant's or plaintiff's solicitor or an employee of that solicitor, in the opinion of the applicant or plaintiff—
 - (i) for subrule (2)(b)(i), the copy of the originating document, if sent under that subrule, will have come to the knowledge of the respondent or defendant within 7 days after the date on which it is sent; or
 - (ii) for subrule (2)(b)(ii), the copy of the originating document, if inserted through a letter box under that subrule, will have come to the knowledge of the respondent or defendant within 7 days after the date on which it is inserted; and
 - (b) for subrule (2)(b)(i), the copy of the originating document has not been returned to the applicant or plaintiff through the post undelivered to the addressee.
- (5) Where a respondent's or defendant's solicitor indorses on the originating document a statement that he or she accepts service of the originating document on behalf of the respondent or defendant, the originating document is regarded to have been duly served on the respondent or defendant on the date on which the indorsement was made.
- (6) Every copy of an originating document for service on a respondent or defendant must be sealed with the seal of the Tribunal.
- (7) This rule has effect subject to the provisions of any Ordinance and these Rules and in particular to any enactment that

provides for the manner in which documents may be served on bodies corporate.

- (8) If it appears to the Tribunal that, after reasonable efforts, it has not been possible for a party to effect service on a person in accordance with subrule (2)(a) or (b), the Tribunal, on application of the party, may—
 - (a) make an order for substituted service on the person; and
 - (b) specify in the order the form of service (whether by advertisement in a newspaper or otherwise) that the Tribunal thinks fit.
- (9) An application for the purposes of subrule (8) may be made by an affidavit stating the facts on which the application is founded.

23. Third party and similar proceedings

- (1) A party to any proceedings may not issue a notice under Order 16, rule 1(1) or 8(1) of the RHC without the leave of the Tribunal.
- (2) The party who has been granted the leave under subrule (1) (*applying party*) must serve the notice on the person against whom it is issued within the time specified by the Tribunal.
- (3) The person on whom a notice is served under subrule (2) is not required to give a notice of intention to defend.
- (4) The applying party must within 14 days after the day on which the notice is served under subrule (2)—
 - (a) by filing a summons in Form 2 in the Schedule apply to the Tribunal for directions; and
 - (b) serve the summons on the person on whom the notice is served and every other party.
- (5) If the applying party does not apply for directions in accordance with subrule (4), the person on whom a notice is served under subrule (2) may—
 - (a) by filing a summons in Form 2 in the Schedule apply to the Tribunal for directions; and
 - (b) serve the summons on the applying party and every other party.
- (6) Subject to this rule, Order 16 (except rules 3(2), (3) and (4), 4(1) and (2) and 5(1)) of the RHC applies to any proceedings.

44. Interlocutory order for purposes of section 155(2) of Ordinance (where appeal lies as of right)

- (1) For the purposes of section 155(2) of the Ordinance, the following are interlocutory decisions, determinations or orders against which an appeal lies to the Court of Appeal as of right—
 - (a) a decision, a determination or an order that determines in a summary way the substantive rights of a party;
 - (b) an order disallowing, or requiring a legal representative to meet, the whole or any part of the wasted costs;
 - (c) an order for the imprisonment of a judgment debtor made under Order 49B of the RHC as applied under rule 4;
 - (d) an order prohibiting a judgement debtor from leaving Hong Kong;
 - (e) an order of committal for contempt of the Tribunal;
 - (f) a decision refusing to grant leave to apply for a review of a reviewable determination under section 84 of the Ordinance;
 - (g) an order refusing an extension of time under sections 94(3) and 99(3) of the Ordinance.
- (2) Without limiting subrule (1)(a), the following are decisions, determinations or orders that determine in a summary way the substantive rights of a party—
 - (a) an order that strikes out—
 - (i) the whole or part of an application or other proceedings;
 - (ii) the whole or part of a notice of application, notice of claim, statement of claim, response, defence or reply;
 - (b) a summary judgment given under Order 14 of the RHC as applied under rule 4;
 - (c) a decision, a determination or an order that determines a question of law or construction of a document without a full trial of the action;
 - (d) a decision, a determination or an order that dismisses a cause or matter on the determination of a question of law or construction of a document without a full trial of the action;
 - (e) a decision, a determination or an order on a preliminary issue;
 - (f) an order that dismisses or strikes out an application or other proceedings for want of prosecution;

- (g) a decision or determination obtained pursuant to an “unless” order;
 - (h) a decision refusing to set aside a judgment in default;
 - (i) a decision refusing to allow—
 - (i) an amendment to a notice of application or claim to add new issues or claims; or
 - (ii) an amendment to a response or defence to add new issues or defence;
 - (j) a decision, a determination or an order on admissions of fact or of part of a case.
- (3) A direction as to whether a decision, a determination or an order is one that falls within subrule (1)(a) may be sought from the member of the Tribunal who made, or will make, the decision, determination or order.
- (4) A reference to an order specified in subrule (1)(b), (c), (d) and (e) includes an order that refuses to make, varies or discharges the order.
- (5) In subrule (2)(g)—
- “unless” order () means an order made by the Tribunal that—
- (a) requires a person to take an action within the period specified in the order; and
 - (b) specifies the consequence for failure to comply with the requirement under paragraph (a).

47. Transfer of proceedings from Tribunal to CFI

- (1) A transfer order may be made by the Tribunal either of its own motion or on application of a party.
- (2) The application must be made by filing a summons in Form 2 in the Schedule setting out the scope of the proceedings, or the part of the proceedings, to be transferred to the CFI.

49. Proceedings transferred from Tribunal to CFI: effects of transfer

- (1) On making a transfer order, the Tribunal may ~~make—give~~ further directions as to the transfer of suitors’ funds to the CFI.
- (2) The making of a transfer order does not affect—
 - (a) any right of appeal to the Tribunal or the Court of Appeal against—
 - (i) the transfer order itself; or

- (ii) any judgment, decision, determination or order made by the Tribunal in the proceedings before the transfer order was made; or
- (b) the right to enforce in the Tribunal any judgment, decision, determination or order made by the Tribunal before the transfer.

66. Failure to file response

- (1) If the respondent fails to file a response within the time specified in rule 65, the applicant may apply to the Tribunal for an order granting the relief sought in the application against the respondent.
- (2) The Tribunal may make the order granting the relief sought, proceed to hear and determine the application, or give any directions that it thinks fit.
- (3) If the Tribunal makes the order under subrule (2), the order must be served on the respondent.
- (4) The Tribunal may, on the application of the respondent, set aside the order on the terms that the Tribunal thinks just.
- (5) The application must be made within 14 days after the day on which the order is served.

70. Stay of execution of reviewable determination

An application for a stay of execution of a determination under section 89(2) of the Ordinance must be made by filing—

- (a) a summons in Form 2 in the Schedule; and
- (b) an affidavit in support of the application.

71. Application to state case for Court of Appeal

- (1) An application to refer a question of law to the Court of Appeal under section 86 of the Ordinance must be made by filing a summons in Form 2 in the Schedule.
- (2) If the application is made after the determination of an application for a review made under section 84 of the Ordinance, it must be made within 28 days after the day on which the determination is made.
- (3) The applicant must—
 - (a) file the application and support it by a draft of the case stated; and

- (b) serve the application and the draft of the case stated on every other party to the review within 7 days after the day on which they are filed.
- (4) The Tribunal may determine the application with or without a hearing.
- (5) The Registrar must notify every other party to the review about the decision of the Tribunal if it determines the application without a hearing.
- (6) Order 61, rules 2 and 3 of the RHC apply to an application referred to in subrule (1).

76. Failure to file response

- (1) If the respondent fails to file a response within the time specified in rule 75, the applicant may apply to the Tribunal for an order granting the relief sought in the application against the respondent.
- (2) The Tribunal may make the order granting the relief sought, proceed to hear and determine the application, or give any directions that it thinks fit.
- (3) If the Tribunal makes the order under subrule (2), the order must be served on the respondent.
- (4) The Tribunal may, on the application of the respondent, set aside the order on the terms that the Tribunal thinks just.
- (5) The application must be made within 14 days after the day on which the order is served.

80. Application for extension of time under section 94(3) or 99(3) of Ordinance

- (1) An application for extension of time under section 94(3) or 99(3) of the Ordinance must be made ex parte and supported by an affidavit.
- (2) An application to set aside an order for extension of time must be made—
 - (a) by filing a summons in Form 2 in the Schedule; and
 - (b) within 14 days after the day on which the order is served.

81. Interim orders

- (1) An application for an interim order or its extension under section 95 of the Ordinance must be made by filing—
 - (a) a summons in Form 2 in the Schedule; and

- (b) an affidavit in support of the application.
- (2) An application for an interim order under section 98 of the Ordinance must be made by filing—
 - (a) a summons in Form 2 in the Schedule; and
 - (b) an affidavit in support of the application.
- (3) If the case is urgent and there are special circumstances, the application may be made ex parte and supported by an affidavit setting out the grounds for the application.
- (4) An interim order made by the Tribunal may include—
 - (a) such terms as to costs or otherwise; and
 - (b) such conditions as the Tribunal thinks just.
- (5) A party affected by the interim order may apply to the Tribunal to vary the order or set it aside.

84. Application for leave to participate in company's affairs

- (1) An application for leave of the Tribunal to participate in the affairs of a company under section 104(2) of the Ordinance must be made by filing—
 - (a) a summons in Form 2 in the Schedule; and
 - (b) an affidavit in support of the application.
- (2) The applicant must serve on the Commission a copy of the summons and the supporting affidavit filed under subrule (1).

86. Failure to file affidavit in opposition

- (1) If the respondent fails to file an affidavit in opposition within the time specified in rule 85, the applicant may apply to the Tribunal for an order granting the relief sought in the application against the respondent.
- (2) The Tribunal may make the order granting the relief sought, proceed to hear and determine the application, or give any directions that it thinks fit.
- (3) If the Tribunal makes the order under subrule (2), the order must be served on the respondent.
- (4) The Tribunal may, on the application of the respondent, set aside the order on the terms that the Tribunal thinks just.
- (5) The application must be made within 14 days after the day on which the order is served.

93. Mode of commencing follow-on actions

- (1) A follow-on action must be brought by filing ~~at the same time~~—an originating notice of claim in Form 8 in the Schedule and a statement of claim.
- (1A) The statement of claim may be indorsed on the originating notice of claim.
- (1B) However, if the statement of claim is not indorsed under subrule (1A), the statement of claim and the originating notice of claim may be filed separately, but in this case, the statement and the notice must be filed on the same date, unless the Tribunal otherwise directs.
- (2) The originating notice of claim must specify the decision of the specified court or admission in a commitment on which the plaintiff relies to establish a contravention of a conduct rule.
- (3) The statement of claim must specify the particular part of the decision or commitment referred to in subrule (2) which determines or admits that a relevant act is a contravention of a conduct rule.
- (4) The plaintiff must serve on the defendant a copy of the originating notice of claim and, if applicable, the statement of claim filed under subrule (1B).
- (5) In this rule—
specified court (指明法院) means—
 - (a) the Tribunal;
 - (b) the CFI;
 - (c) the Court of Appeal; or
 - (d) the Court of Final Appeal.

97. Further conduct after reply or expiry of time for reply

- (1) After the reply is filed under rule 96 or after the expiry of the 28-day period mentioned in that rule, the plaintiff must take out a case management summons.
- (2) If the plaintiff does not take out a case management summons in accordance with subrule (1), the defendant may—
 - (a) take out a case management summons; or
 - (b) apply for an order to dismiss the follow-on action.
- (3) On application by the defendant for an order to dismiss the follow-on action under subrule (2), the Tribunal may either—
 - (a) order to dismiss the action on such terms as the Tribunal thinks just; or

(b) deal with the application as if it were a case management summons.

(4) Order 25 (except rules 1, 1A, 1C, 8, 10 and 11) of the RHC applies to the proceedings to which the case management summons relates.

<u>Form 1</u> ^{note 1}
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ORIGINATING NOTICE OF APPLICATION

[rules 7, 74, 83 & 94]

CT^{note 2} _____ of _____

IN THE COMPETITION TRIBUNAL OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

Competition Tribunal No. _____ of _____

Between

A.B.

Applicant

And

C.D.

Respondent

Originating Notice of Application

1. This application is made under section(s) of the Competition Ordinance^{note 3}.
2. (Name, description and address of the Applicant)
3. (Name, description and address of the Respondent)
4. (State the substance of the application as appropriate)^{note 4}
5. (State the relief(s) sought)^{note 5}
6. (State the grounds on which the relief(s) is/are sought)^{note 6}

Dated this day of 20.....

.....
 Applicant/Solicitors for the Applicant

Name and address of the solicitors for the Applicant in Hong Kong for service:

To: The Registrar, Competition Tribunal and [name and address of the Respondent]

Issued from the Registry of the Competition Tribunal this day of 20.....

Note: This Notice may not be served later than 6 months beginning with the above date unless its validity is extended by the Competition Tribunal.

Registrar

^{note 1} This form may be used where no form is prescribed for the proceedings, but it must be used for the proceedings under Part 4 of the Competition Tribunal Rules.

^{note 2} Insert the appropriate prefix.

^{note 3} Insert the section(s) under which this application is made (for example, section 63, 92, 94, 97, 99, 104(1), 111(2) or 169 of the Competition Ordinance).

^{note 4} For example—

1. State the complaints and identify the breach with reference to the relevant merger rule or conduct rule where the application is made under section 92, 94, 97 or 99 of the Competition Ordinance.
2. Insert the commitment with reference to the register of the commitment and identify the breach if the application is made under section 63 of that Ordinance.
3. State the circumstances under which sections 102 and 103 of that Ordinance are satisfied if the application is made under section 104(1) of that Ordinance.
4. State why follow-on action may be brought within the period specified in section 111(1) of that Ordinance.

5. State the circumstances under which sections 168 and 169 of that Ordinance are satisfied whereif the application is made under section 169 of that Ordinance.

^{note 5} State the relief sought including any order under Schedule 3 or 4 to the Competition Ordinance, costs of the proceedings and order under section 96 of that Ordinance.

^{note 6} Grounds must be supported by an affidavit which verifies the facts relied on if so required by the relevant rules of the Competition Tribunal Rules.

Form 2

(Form for general inter partes application)
INTER PARTES SUMMONS

[rule 8, 23, 47, 70,
71, 80, 81 and 84]

CT^{note 1} _____ of _____

IN THE COMPETITION TRIBUNAL OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION

Competition Tribunal No. _____ of _____

Between

A.B. Applicant/Plaintiff^{note 2}

And

C.D. Respondent/Defendant^{note 3}

Inter Partes Summons

Let all parties concerned attend before sitting in chambers (open to public/ not open to public^{note 4}) at the Competition Tribunal at (address of the Competition

Tribunal) onday, the day of
 20..... at a.m./p.m.^{note 4} on the hearing of an application on the
 part of the for an order that [set out the order sought
 and the section number of the Competition Ordinance and/or the rule
 number of the Competition Tribunal Rules/the Rules of the High Court
 under which that order is to be made] and that the costs of the
 application be [set out the costs order sought].

Dated this day of 20.....

This summons is taken out by the whose address in
 Hong Kong for service is

The following are the names and addresses of all persons/solicitors on
 whom this summons is to be served:

To: The Registrar, Competition Tribunal and [names and addresses of
 the persons/solicitors]

.....
 Solicitors for the
 (Applicant/Plaintiff/Respondent/Defendant, etc.)

.....
Solicitors for the Applicant/
Plaintiff/Respondent/Defendant
(or the name of the Applicant/
Plaintiff/Respondent/
Defendant who acts in person)^{note 4}

Time estimate: (mins/hrs/days)

^{note 1} Insert the appropriate prefix.

^{note 2} Insert the appropriate name.

^{note 3} Insert the appropriate name.

^{note 4} Delete whichever is inapplicable.

<u>Form 4</u>

APPLICATION FOR SUMMONS TO A WITNESS

[rule 36]

CT^{note 1} _____ of _____IN THE COMPETITION TRIBUNAL OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION

Competition Tribunal No. _____ of _____

Between

A.B.

Applicant/Plaintiff

And

C.D.

Respondent/Defendant

Application for Summons to a Witness

To: The Registrar, Competition Tribunal

Whereas
 of is likely to give material
 evidence on behalf of the
 (Applicant/Plaintiff/Respondent/Defendant, etc.), I apply
 for a summons to be issued to requiring
 him/her to appear at a sitting of the Competition Tribunal
 at (address of the Competition Tribunal)
 on day, the day of 20.....
 at a.m./p.m.^{note 2} to give evidence on behalf of
 the (Applicant/Plaintiff/Respondent/Defendant, etc.)
 (and also to bring with him/her and produce [state particulars of the
 documents required]).

Dated this day of 20.....

.....
 Solicitors for the
 (Applicant/Plaintiff/Respondent/Defendant, etc.)

.....
Solicitors for the Applicant/
 Plaintiff/Respondent/Defendant
 (or the name of the Applicant/
 Plaintiff/Respondent/
 Defendant who acts in person) ^{note 2}

Note: The applicant for a summons to a witness is required to pay \$500 as deposit under rule 36 of the Competition Tribunal Rules.

^{note 1} Insert the appropriate prefix.

^{note 2} Delete whichever is inapplicable.

<u>Form 6</u>

NOTICE OF APPEAL AGAINST DECISIONS OF REGISTRAR OF
 COMPETITION TRIBUNAL

[rule 42]

CT^{note 1} _____ of _____

IN THE COMPETITION TRIBUNAL OF THE
 HONG KONG SPECIAL ADMINISTRATIVE REGION

Competition Tribunal No. _____ of _____

Between

A.B.

Applicant/Plaintiff

And

C.D.

Respondent/Defendant

Notice of Appeal against Decisions of Registrar of Competition
Tribunal

Take notice that the above named intends to appeal against the decision of the Registrar of the Competition Tribunal given on, ordering that

And further take notice that you are required to attend before the Honourable Mr. Justice/Madam Justice, Presiding Member, sitting in chambers (open to public/ not open to public^{note 2}) at the Competition Tribunal at (address of the Competition Tribunal) on day, the day of 20..... at a.m./p.m.^{note 2} on the hearing of an application on the part of for an order to be made that ^{note 3} —

And further take notice that it is the intention of the to attend by counsel [delete if not to be attended by counsel].

Dated this day of 20.....

Registrar

This appeal is brought by the whose address in Hong Kong for service is

The following are the names and addresses of all persons/solicitors on whom this Notice is to be served:

To: The Registrar, Competition Tribunal and [names and addresses of the persons/solicitors]

.....
 Solicitors for the
 (Applicant/Plaintiff/Respondent/Defendant, etc.)

.....
Solicitors for the Applicant/
 Plaintiff/Respondent/Defendant
(or the name of the Applicant/
 Plaintiff/Respondent/
 Defendant who acts in person) ^{note 2}

Time estimate: (mins/hrs/days)

^{note 1} Insert the appropriate prefix.

^{note 2} Delete whichever is inapplicable.

^{note 3} State the object of the application.

<u>Form 8</u>

(Form for the action under Part 5 of the Competition Tribunal Rules)
 ORIGINATING NOTICE OF CLAIM

[rule 93]

CT^{note 1} _____ of _____

IN THE COMPETITION TRIBUNAL OF THE
 HONG KONG SPECIAL ADMINISTRATIVE REGION

Competition Tribunal No. _____ of _____

Between

A.B.

Plaintiff

And

C.D.

Defendant

Originating Notice of Claim

1. (Name, description and address of the Plaintiff)
2. (Name, description and address of the Defendant)
3. (State the date and decision of the Competition Tribunal/Court of First Instance/Court of Appeal/Court of Final Appeal or the admission in a commitment and the date of acceptance by the Competition Commission on which the Plaintiff relies to establish a contravention of a conduct rule)^{note 2}
4. (State how the relevant period as specified in section 111(1) of the Competition Ordinance has been satisfied)
5. (Specify the leave granted to commence the follow-on action under section 111(2) of the Competition Ordinance, if applicable)
6. (Identify the relevant findings in the decision/admission on the basis of which the claim for damages is made)^{note 3}
7. (State concisely the nature of claim and the relief sought)^{note 4}
8. (Statement of claim/ see statement of claim filed separately under rule 93(1B) ^{note 5} note 6 and note 7

Dated this day of 20.....

.....
Plaintiff/Solicitors for the Plaintiff

Name and address of the solicitors for the Plaintiff in Hong Kong for service:

To: The Registrar, Competition Tribunal and [name and address of the

Defendant]

Issued from the Registry of the Competition Tribunal this day
of 20.....

Note: 1. This Notice may not be served later than 6 months beginning
with the above date unless its validity is extended by the
Competition Tribunal.

~~2. The Plaintiff must file together with this form a separate
statement of claim setting out the material facts and relief
sought.~~

2. The statement of claim must be verified by a statement of truth
in accordance with O. 41A of the Rules of the High Court (Cap.
4 sub. leg. A).

Registrar

^{note 1} Insert the appropriate prefix.

^{note 2} See section 110(3) of the Competition Ordinance. If there is any
appeal against the decision relied on, state the references and the
result of the appeal.

^{note 3} See section 110(3) of the Competition Ordinance.

^{note 4} State the relief sought (see section 112 of, and Schedule 3 to, the
Competition Ordinance) including costs of the proceedings and the
amount of damages sought, if applicable. It is not necessary to
complete item 7 if the statement of claim is indorsed under item 8.

^{note 5} Delete whichever is inapplicable.

^{note 6} The Plaintiff may indorse this Notice with the statement of claim that
sets out the material facts, nature of claim and relief sought (see
section 112 of, and Schedule 3 to, the Competition Ordinance)
including costs of the proceedings and the amount of damages
sought, if applicable.

^{note 7} However, if the plaintiff wishes to maintain the confidentiality of any
information contained in the statement of claim, the plaintiff may

file the statement of claim and this Notice separately under rule 93(1B) of the Competition Tribunal Rules. Otherwise, the plaintiff may apply for confidential treatment of the information under Rule 37 of the Competition Tribunal Rules.

A person may inspect and obtain a copy of this Notice, or with the leave of the Tribunal, inspect the statement of claim and obtain a copy of the statement, under rule 55 or 56 of the Competition Tribunal Rules.

**Proposed Changes to
the Amendments to the Rules of the High Court (Cap. 4A) relating to
the Competition Tribunal after the Sub-committee's Scrutiny**

1. **Order 59, rule 1 amended (application of Order to appeals)**
Order 59, rule 1(2), after “District Court”—

Add

“or the Competition Tribunal”.

2. **Order 59, rule 2BA added**
Order 59, after rule 2B—

Add

**“2BA. Application for leave to appeal against
interlocutory orders, etc. of Competition Tribunal (O. 59,
r. 2BA)**

- (1) If the Competition Tribunal refuses an application for leave to appeal against an interlocutory decision, determination or order of the member or members of the Tribunal under rule 45 of the Competition Tribunal Rules, another application for leave to appeal may be made to the Court of Appeal within 14 days from the date of the refusal.
- (2) If the Court of Appeal allows, the application for leave mentioned in paragraph (1) may be made direct to the Court of Appeal within 14 days from the date of the interlocutory decision, determination or order.
- (3) An application under this rule must be made inter partes if the proceedings to which the decision, determination or order relates are inter partes”.

3. Order 78

Proceedings transferred from Competition Tribunal to Court: effects of transfer (O. 78B, r. 3)

- (1) Proceedings transferred by a transfer order are regarded as having been transferred to the Court on the date on which the order is made, unless the Court otherwise directs.
- (2) On the transfer of the proceedings—
 - (a) a document issued, served, filed or lodged on a date in relation to the proceedings before the transfer is regarded as having been issued, served, filed or lodged, as may be applicable, on that date for the purpose of the proceedings in the Court; and
 - (b) a step taken by a party on a date in relation to the proceedings before the transfer is regarded as having been taken on that date for the purpose of the proceedings in the Court.
- (3) On the transfer of the proceedings, a judgment, decision, determination or order made by the Competition Tribunal in relation to the proceedings before the transfer has effect in the Court as if the judgment, decision, determination or order had been made by the Court on the date on which it was made ~~in~~by the Tribunal, unless the Court otherwise directs.
- (4) The transfer of the proceedings does not affect—
 - (a) any right of appeal to the Competition Tribunal or the Court of Appeal against—
 - (i) the transfer order itself; or
 - (ii) any judgment, decision, determination or order made by the Tribunal in the proceedings before the transfer; or
 - (b) the right to enforce in the Tribunal any judgment, decision, determination or order made by the Tribunal before the transfer.
- (5) If, before the transfer of the proceedings, an application had been made to the Competition Tribunal in relation to the proceedings but not yet been determined, the application is

regarded as having been made to the Court and to be dealt with by the Court accordingly.

- (6) If the application referred to in paragraph (5) is part-heard in the Competition Tribunal, the Court may either—
 - (a) continue to hear the application as if the earlier proceedings relating to the application had taken place before the Court; or
 - (b) require the application to be heard afresh.

Competition Tribunal Suitors' Funds Rules

Rule 1

1

**Proposed Changes to
the Draft Competition Tribunal Suitors' Funds Rules
after the Sub-committee's Scrutiny**

(Made by the Chief Judge after consulting the President of the Competition Tribunal under section 158A of the Competition Ordinance (Cap. 619))

1. Commencement

These Rules come into operation on a day to be appointed by the Chief Judge by notice published in the Gazette.

2. Interpretation

In these Rules—

funds (儲存金) means any money, securities, or movable property or any part of it, standing in or to be placed to the Registrar's account and includes boxes and other effects;

ledger account (分類帳帳目) means any separate account that bears the title of a cause or matter opened or to be opened under an order or otherwise in the Registrar's books to which any funds are credited or to be credited;

lodge (交存) means pay, transfer or deposit;

order (命令) means an order of the Tribunal and includes a judgment or decree, and any schedule to an order;

Registrar (司法常務官) means the Registrar of the Tribunal.

3. Lodgment of funds

- (1) All funds to be lodged in the Tribunal on any ledger account must, unless required by any law to be dealt with in any particular way, be lodged with the Registrar.

- (2) The Registrar must establish and maintain at such bank as the Director of Accounting Services directs an account called in English the "Competition Tribunal Suitors' Funds Account" and in Chinese "競爭事務審裁處訴訟人儲存金帳戶", and must pay into it any funds lodged that are money.

4. Receipt to be given by Registrar

- (1) The Registrar must give to a person who makes a lodgment a receipt in respect of the lodgment.
- (2) If any securities, movable property, boxes or other effects are proposed to be lodged in the Tribunal, the Registrar may, before giving a receipt under subrule (1), make such inspection of the lodgment as the Registrar thinks fit.
- (3) Subject to subrule (4), every receipt given in respect of any lodgment must—
 - (a) be headed with the title of the cause or matter to which the lodgment is referable;
 - (b) contain adequate particulars of the lodgment; and
 - (c) be in Form 1 in the Schedule.
- (4) If money is lodged in the Tribunal as funds, the receipt given in respect of the lodgment must—
 - (a) specify the amount of money received;
 - (b) specify the Tribunal action number to which the lodgment is referable;
 - (c) specify the date of any order directing the lodgment;
 - (d) specify the party making the lodgment;
 - (e) specify the method of the lodgment;
 - (f) contain a general description of the purposes of the lodgment; and
 - (g) be in Form 2 in the Schedule.

5. Keeping of accounts and register

(1) The Registrar must—

- (a) keep appropriate ledger accounts to which all funds lodged in the Tribunal that are money or securities must be credited, and to which any such funds withdrawn or transferred from the accounts must be debited;
- (b) enter into the accounts in an appropriate manner the investment of any such funds; and
- (c) enter into the accounts in an appropriate manner any dealing, other than by way of lodgment, withdrawal, transfer or investment, of such funds as the circumstances of the case require.

(2) The Registrar must—

- (a) keep a register of all funds lodged in the Tribunal that are not money or securities;
- (b) enter in the register any lodgment, withdrawal, transfer, investment or other dealings of such funds; and
- (c) for each entry in the register, make a memorandum in an appropriate manner in the ledger accounts.

6. Annual statement of accounts

(1) The Registrar must cause to be prepared for every period of 12 months ending on 31 March in each year a statement of the accounts kept under rule 5(1).

(2) The statement must—

- (a) include a receipts and payments account and a statement of assets and liabilities; and
- (b) be signed by the Registrar.

7. Securities

- (1) All kinds of securities may be lodged in the Tribunal.
- (2) Securities that are issued by companies or corporations constituted under the laws of Hong Kong and are fully paid up and free from all liability may be transferred to the #Registrar by the name of office of the #Registrar.
- (3) Other securities may be placed in a box or packet and lodged with the #Registrar, who must, before taking custody of the box or packet, ensure that it is properly marked and secured and must inspect the contents of it in the presence of the person lodging it.
- (4) When securities are to be transferred into the name of office of the #Registrar, the person lodging the securities must—
 - (a) execute a transfer and obtain from the #Registrar an authority that must be in Form 3 in the Schedule; and
 - (b) submit the transfer together with the authority at the office of the company or corporation in whose books the securities are to be transferred.
- (5) A company or corporation at the office of which a transfer and authority under subrule (4) have been submitted must, after registering the transfer—
 - (a) if the securities are not listed on a recognized stock market, lodge in the Tribunal a certificate in Form 4 in the Schedule, stating that the securities have been transferred as authorized; or
 - (b) if the securities are listed on a recognized stock market, lodge in the Tribunal the certificate of the securities issued in the name of office of the #Registrar.
- (6) On receiving a certificate under subrule (5), the #Registrar must give to the person making the lodgment a receipt referred to in rule 4(3) in respect of the lodgment.

(7) In this rule—

recognized stock market (認可證券市場) has the meaning given by section 1 of Part 1 of Schedule 1 to the Securities and Futures Ordinance (Cap. 571).

8. Principal money and dividends in respect of or on securities to be placed in the Registrar's books

- (1) Any principal money or dividends received by the Registrar in respect of or on securities lodged in the Tribunal must be placed in the Registrar's books.
- (2) For principal money, it is to be placed to the credit of the account in which the securities giving rise to the money are standing at the time of receipt of the money.
- (3) For dividends, they are to be placed to the credit of the account in which the securities accruing the dividends are standing at the time of closing of the transfer books of the securities, before the dividends become due.

9. Payment out of money lodged in Tribunal

- (1) Any money lodged in the Tribunal may be paid out—
 - (a) if the amount does not exceed \$250, in cash or by cheque;
 - (b) if the amount exceeds \$250, by cheque; or
 - (c) in respect of any amount, by payments made by the transfer of funds from the bank account of the Tribunal.
- (2) Any cheque or instruction to a bank for a transfer of funds must be signed by 2 persons as may from time to time be authorized in writing by the Registrar.
- (3) Payment out in cash or by cheque must be made at the Tribunal on any day that is neither a Saturday nor a general holiday and during the opening hours of the accounts office of the

~~Tribunal~~ weekdays, except Saturdays and general holidays,
~~between 10 a.m. and 1 p.m., and between 2 p.m. and 4 p.m.~~

10. Payment out to be ascertained by certificate of ~~the~~ Registrar

- (1) If an order directs any sum to be ascertained by a certificate of the ~~the~~ Registrar and to be afterwards paid in accordance with the certificate, the certificate must be in Form 5 in the Schedule.
- (2) On the request of a person entitled to payment under subrule (1), the ~~the~~ Registrar must pay the sum in accordance with rule 9.

11. Payment of costs

- (1) If an order directs payment out of the funds of any costs directed to be taxed, the ~~the~~ Registrar must state in a certificate of the ~~the~~ Registrar the name and address of the person to whom the costs are payable, and the certificate must be in Form 6 in the Schedule.
- (2) On the request of a person entitled to payment under subrule (1), the ~~the~~ Registrar must pay the costs in accordance with rule 9.

12. Payment out, transfer, etc. of funds to personal representatives of persons entitled to payment

- (1) This rule applies if—
 - (a) an order directs funds to be paid, transferred or delivered out to any person named or described in the order or in a certificate of the ~~the~~ Registrar; and
 - (b) the order or certificate does not express the person to be entitled to the funds as trustee, executor or administrator, or otherwise than in the person's own right or for the person's own use.

- (2) The funds referred to in subrule (1)(a) (or any portion of them remaining unpaid, untransferred or undelivered) may, unless the order otherwise directs, be paid, transferred or delivered out to the legal personal representative of the person on proof of the death of the person—
 - (a) (if payment is directed to be made to the person as a creditor) before the date of the order; or
 - (b) (in any other case) whether on or after the date of the order.
- (3) If—
 - (a) no administration has been taken out to the deceased who has died intestate; and
 - (b) the assets of the deceased do not exceed \$5,000 in value, including the amount of the funds directed to be paid, transferred or delivered out to the deceased,the funds may be paid, transferred or delivered out to the person who, being widower, widow, child, father, mother, brother or sister of the deceased, would be entitled to take out the administration to the estate of the deceased, on making a declaration in Form 7 in the Schedule.
- (4) If an order directs funds to be paid, transferred or delivered out to 2 or more persons as legal personal representatives, the funds (or any portion of them remaining unpaid, untransferred or undelivered) may be paid, transferred or delivered out to the surviving representatives on proof of the death of any representative, whether on or after the date of the order.
- (5) No funds are to be paid, transferred or delivered out of the Tribunal under this rule to the legal personal representative of any person under any probate or letters of administration purporting to be granted at any time after the expiry of 2 years—

- (a) from the date of the order directing the payment, transfer or delivery; or
- (b) (if the funds consist of interest or dividend) from the date of the last receipt of the interest or dividend.

13. Order directing payment out, transfer, etc. of funds to describe persons entitled to payment etc.

- (1) An order directing funds to be paid, transferred or delivered out must—
 - (a) set out in full the name of every person to whom the payment, transfer or delivery is to be made, unless the name is to be stated in a certificate of the Registrar; or
 - (b) (for payment, transfer or delivery to a firm) state the business name of the firm.
- (2) If an order directs money lodged in the Tribunal to be paid out to 2 or more persons described in the order or in a certificate of the Registrar as co-partners, the money may be paid out to any one or more of the co-partners or to the surviving co-partners.

14. Order directing investment of money lodged in Tribunal

- (1) If an order directs money lodged in the Tribunal to be invested, the party having the carriage of the order must lodge with the Registrar a request in writing for the investment to be effected.
- (2) On receiving the request, the Registrar must procure the investment of the money in the manner directed by the order.
- (3) An order directing investment of money lodged in the Tribunal must set out the name or the name of office of the person in whose name the money is directed to be invested.

15. Order directing other dealings with money lodged in Tribunal

- (1) If an order directs money lodged in the Tribunal to be dealt with otherwise than by lodgment, withdrawal, transfer or investment, the party having the carriage of the order must lodge with the Registrar a request in writing for the money to be dealt with in the terms of the order.
- (2) On receiving the request, the Registrar must act in accordance with the order.

16. Carrying over of funds to separate account

If funds are ordered to be carried over to a separate account, the title of the account to be opened for the purpose must state the title of the cause or matter to which the funds relate.

17. Power of Registrar to invest money

- (1) The Registrar may, unless an order directs otherwise—
 - (a) invest any money lodged in the Tribunal that is standing to the credit of any ledger account in such manner as the Registrar thinks fit; and
 - (b) vary the investment at any time.
- (2) Subject to subrule (3), if the Registrar invests any money lodged in the Tribunal that is standing to the credit of any ledger account, any interest or dividend or any principal money the Registrar receives on or in respect of the investment must be—
 - (a) paid into the Competition Tribunal Suitors' Funds Account; and
 - (b) placed in the Registrar's books to the credit of the account in which the investment was standing when the interest or dividend became due or when the principal money was received.

- (3) Unless an order directs otherwise and subject to subrules (4), (5) and (6), no interest is to be credited to any money lodged in the Tribunal that is standing to the credit of any ledger account if—
 - (a) the money is paid into the Tribunal as security for costs or by way of satisfaction or amends or in compliance with an order giving leave to defend on payment of the money;
 - (b) the amount is less than \$7,500;
 - (c) the money is paid into the Tribunal for payment of expenses including but not limited to watchmen's fees, caretakers' fees and witness expenses;
 - (d) the money is paid into the Tribunal as the proceeds of sale; or
 - (e) the money is paid into the Tribunal by way of satisfaction of a judgment debt.
- (4) If money is paid into the Tribunal for any purpose referred to in subrule (3)(a), interest must be credited to the ledger account for the relevant cause or matter, beginning on the 3rd business day after the day on which the money is paid into the Tribunal.
- (5) Despite subrule (4), if the money paid into the Tribunal for any purpose referred to in subrule (3)(a) is a sanctioned payment within the meaning of Order 22 of the Rules of the High Court (Cap. 4 sub. leg. A), interest must be credited to the ledger account for the relevant cause or matter, beginning on the 28th day after the day on which the money is paid into the Tribunal.
- (6) Despite subrule (4), if the money paid into the Tribunal for any purpose referred to in subrule (3)(a) is a sanctioned payment within the meaning of Order 62A of the Rules of the

High Court (Cap. 4 sub. leg. A), interest must be credited to the ledger account for the relevant cause or matter, beginning on the 14th day after the day on which the money is paid into the Tribunal.

- (7) Interest on any money lodged in the Tribunal is not to be computed on a fraction of \$1.
- (8) The Registrar is not required to apportion any amount of interest payable on money lodged in the Tribunal that is standing to the credit of any ledger account.
- (9) In this rule—

business day (工作日) means any day other than—

- (a) a general holiday;
- (b) a Saturday; or
- (c) a gale warning day or black rainstorm warning day as defined by section 71(2) of the Interpretation and General Clauses Ordinance (Cap. 1).

18. Surplus income

- (1) The Registrar must pay into the Treasury as soon as is practicable after the end of each financial year any sum standing in the Competition Tribunal Suitors' Funds Account over and above the amounts required by these Rules to be credited to the various accounts.
- (2) The sum referred to in subrule (1) must be transferred to the general revenue.

19. Cost of administering Competition Tribunal Suitors' Funds Account

The cost of administering the various accounts required to be kept under these Rules is to be defrayed out of the general revenue.

20. Evidence by affidavit of life or of fulfilment of condition

If a person is entitled under an order to receive dividends or other periodical payments, and the Registrar requires evidence of life or of the fulfilment of any condition before payment to the person can be made, the evidence must be given by an affidavit.

21. Evidence by affidavit or statutory declaration of other matters

- (1) If, in carrying into effect any direction of an order, the Registrar requires evidence for any purposes other than those specified in rule 20, the Registrar may receive and act on an affidavit or a statutory declaration.
- (2) An affidavit or a statutory declaration referred to in subrule (1) must be filed in the Tribunal when the Registrar considers it necessary.

22. Certificate of amount and description of funds

- (1) On a request signed by or on behalf of a person claiming to be interested in any funds standing to the credit of an account specified in the request, the Registrar must, unless there is a good reason for refusing, issue a certificate of the amount and description of the funds.
- (2) A certificate issued under subrule (1) must refer to the state of the account at the beginning of the day of the date of the certificate, and must not include the transactions of that day.
- (3) A certificate issued under subrule (1) must state—
 - (a) the date of any charging order affecting, or of any order restraining, the transfer, sale, payment or delivery out of, or other dealing with, the funds standing to the credit of the account specified in the certificate, in respect of the order the Registrar receives notice;

- (b) whether the charging or restraining order affects the principal money, interest or dividend that comprises the funds; and
 - (c) the names of the persons to whom the certificate is to be issued or in whose favour the charging or restraining order is made.
- (4) The Registrar may redate a certificate issued under subrule (1) if no alteration in the amount or description of funds has been made since the issue of the certificate.

23. Transcript of account in Registrar's books

On a request signed by or on behalf of a person claiming to be interested in any funds, the Registrar must, unless there is a good reason for refusing—

- (a) issue a transcript of the account in the Registrar's books specified in the request; and
- (b) supply other information or issue certificates with respect to any transaction or dealing with the funds as may from time to time be required in a particular case.

24. Transfer of unclaimed money in Tribunal

- (1) If any sum of money remains unclaimed in the Tribunal for 5 years, the Chief Justice may, on application by the Registrar, order the sum to be transferred to the general revenue.
- (2) Before making an order under subrule (1), the Chief Justice may direct that such notice as the Chief Justice thinks necessary must be given, and to such party as the Chief Justice thinks fit.