

## **LEGISLATIVE COUNCIL BRIEF**

Competition Ordinance (Cap. 619)  
High Court Ordinance (Cap. 4)

### **COMPETITION TRIBUNAL RULES**

#### **RULES OF THE HIGH COURT (AMENDMENT) RULES 2015**

#### **COMPETITION TRIBUNAL FEES RULES**

#### **COMPETITION TRIBUNAL SUITORS' FUNDS RULES**

### **INTRODUCTION**

The Chief Judge of the High Court (“Chief Judge”), after consulting the President of the Competition Tribunal (“the Tribunal”) made the Competition Tribunal Rules (“CTR”) at **Annex A**, the Competition Tribunal Fees Rules (“the Fees Rules”) at **Annex B** and the Competition Tribunal Suitors’ Funds Rules (“the Suitors’ Funds Rules”) at **Annex C** on 26 May 2015 under sections 158 and 158A of the Competition Ordinance (“the CO”). The High Court Rules Committee (“the HCRC”)<sup>1</sup> also made the Rules of the High Court (Amendment) Rules 2015 at **Annex D** on 29 May 2015 under section 54 of the High Court Ordinance.

### **BACKGROUND**

2. 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

---

<sup>1</sup> The HCRC is constituted under section 55 of the High Court Ordinance which may make rules of court regulating and prescribing the procedure and the practice to be followed in the High Court. The Committee is chaired by the Chief Judge and comprises, among others, barristers nominated by the Hong Kong Bar Association and solicitors nominated by the Law Society of Hong Kong.

sector.

3. Since the enactment of the CO, the Government and the Judiciary have been working on its phased implementation. One of the key tasks for the Judiciary is to set up the Tribunal, which is a superior court of record established under the CO having primary jurisdiction to hear and adjudicate cases brought by the Competition Commission (“the Commission”) relating to alleged contraventions of the competition rules, follow-on private actions, alleged contravention of a conduct rule as a defence raised in proceedings before the Court of First Instance of the High Court (“the CFI”), as well as reviews of certain determinations of the Commission/Communications Authority (“CA”)<sup>2</sup>. Provisions relating to the Tribunal commenced on 1 August 2013<sup>3</sup>. The President and Deputy President of the Tribunal were also appointed.

## **PROPOSED RULES**

4. Section 144(1) of the CO provides that the Tribunal may decide its own procedures and may, in so far 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<sup>4</sup>, the Tribunal is not bound by the rules of evidence and may receive and take into account any relevant evidence or information.

---

<sup>2</sup> 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.

<sup>3</sup> The provisions relating to the Tribunal are those in Part 10 of the CO and the consequential amendments to the Judicial Officers Recommendation Commission Ordinance (Cap. 92).

<sup>4</sup> The exceptional proceedings are those in which the Commission applies for an order for (a) a pecuniary penalty order under section 93; and (b) a financial penalty order under section 169.

5. Accordingly and having regard to the arrangements for the High Court Ordinance, the following four sets of procedural and fees rules for the Tribunal have been made by the Chief Judge and the HCRC respectively -

- (a) the CTR at **Annex A**;
- (b) the Fees Rules at **Annex B**;
- (c) the Suitors' Funds Rules at **Annex C**; and
- (d) related amendments to the Rules of the High Court ("the RHC") (Cap. 4A) at **Annex D**.

**(I) The CTR**

6. The CTR are procedural rules for the Tribunal. To cater for different types of proceedings that the Tribunal may need to deal with, the relevant rules are grouped into the following five parts -

- (a) Part 2 : general rules applicable to all proceedings before the Tribunal;
- (b) Part 3 : specific rules applicable to reviews of the Commission's reviewable determinations under Part 5 of the CO;
- (c) 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;
- (d) Part 5 : specific rules applicable to follow-on actions under Division 2, Part 7 of the CO; and
- (e) Part 6 : specific rules applicable to proceedings transferred from the CFI under Division 3, Part 7 of the CO.

7. 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 that have informal procedures e.g. the Lands Tribunal Rules (Cap. 17A). The Judiciary has also taken into

account the rules and practice applicable to similar proceedings in other relevant common law jurisdictions, e.g. the UK (namely, the UK Competition Appeal Tribunal Rules 2003), Australia (namely, the procedures applicable to the Australian Competition Tribunal and the Federal Court) and Canada (namely, Canada's Competition Tribunal Rules).

### General Approaches

8. To harmonize with the RHC as far as desirable and practicable, the Judiciary has suggested that the practice under the RHC be adopted for the purpose of the Tribunal where appropriate. For instance, for reviews of the Commission's determinations in Part 3 of the CTR, given the structural similarity to judicial reviews in the CFI, the relevant parts of the CTR are largely modelled on the mechanism for judicial reviews under the RHC.

9. Given the above approach and because of other considerations, many of the rules in the RHC, with suitable modifications, may be needed for proceedings in the Tribunal. For example, cases or part of them may be transferred from the CFI to the Tribunal at various stages (section 113 of the CO). In addition, certain complex cases under Part 4 of the CTR (enforcement proceedings) may raise matters that are already comprehensively governed by the RHC. Further, private follow-on actions (under Part 5 of the CTR) are akin in nature to actions in the CFI.

10. So, while the CTR contains specific provisions on aspects of procedures that are of particular significance or different from those of the CFI, instead of reproducing all the relevant provisions of the RHC in the CTR, the Judiciary has suggested a general provision in the CTR (rule 4) indicating that where there is no provision in the CO and the CTR for a matter, the RHC apply to all proceedings before the Tribunal, so far as they may be applicable to that matter.

### Proactive Case Management

11. The Tribunal would take a proactive approach in case management to help ensure the expeditious handling of cases as necessary, with Members of the Tribunal (i.e. Judges of the CFI) taking the driving seat.

12. The Judiciary also recognizes the need to have continuity in the case management of proceedings. For example, after the Tribunal has been constituted for a matter, all interlocutory applications in that matter are to be dealt with by the Tribunal as constituted unless otherwise directed.

### Legal Costs

13. In formulating the procedures in the CTR, particularly for the follow-on actions, the Judiciary has taken into account the need for the Tribunal to be provided with all the relevant information for the fair disposal of the cases, while trying to enable the Tribunal to conduct its proceedings with as much informality as is consistent with attaining justice. The Tribunal also needs flexibility to handle cases of varying scale, nature and complexity.

14. With the above objectives, the Judiciary has proposed the following measures in the CTR to help minimize legal costs for Tribunal proceedings as appropriate and for other purposes –

- (a) to cater for different types of cases which may be dealt with by the Tribunal, especially those involving claims of small amounts and straight-forward cases, flexibility is to be provided for the Tribunal to dispense with the application of the RHC under certain specific conditions;
- (b) for the purpose of informality, relatively simple and general forms (such as notice of application/claim) are to be used to enable parties to set out their grounds of application and response in a succinct manner. This facilitates court users. Evidence would be filed in accordance with directions of the Tribunal having regard to the needs of a case;
- (c) the Tribunal is to be allowed to make orders including any finding, determination or decision by consent; and
- (d) similar to the CFI, the Tribunal is to be empowered to allow consolidation of cases if, for example, the cases arise from a common set of facts/laws, the reliefs sought are similar, or the reliefs are sought against the same defendant/respondent.

15. Besides, similar to the CFI, the CTR provides that a party

may act in person and a corporate litigant (i.e. a company) may be represented by its director with the Tribunal's leave. The CTR also provides a reserve power for the Tribunal to allow any other person to appear on the party's behalf. These arrangements may help reduce legal costs of parties under suitable circumstances.

### Handling of Confidential and Sensitive Information

16. As confidential commercial and sensitive information (including that relating to leniency agreements) may be involved in Tribunal cases, the Judiciary has proposed dedicated rules for handling applications for discovery of documents (rule 24) and confidential treatment of information in documents submitted/disclosed by the same party or another party (rule 37). The former rule deals with compulsory disclosure of documents by one party to another, while the latter tackles information which a party seeks to disclose to the Tribunal in full but not to some or all of the other parties or the public.

17. These two rules respectively provide for the key factors that the Tribunal would take into account when deciding whether to approve or disallow these applications. In general, the Judiciary needs to strike a balance among the proper administration of justice, the commercial interests of confidentiality and the protection of confidential and sensitive information for the effective functioning of the CO.

### Intervention

18. Intervention by interested parties is possible in proceedings in the CFI. Given the potential implications of the Tribunal's decisions on the relevant sector(s) and the related consumers etc., the Judiciary considers it necessary to introduce a more specific and elaborated procedure to facilitate early intervention by interested parties. Rules 19 and 20 of the CTR provide for the procedure relating to intervention by a person having a sufficient interest in the proceedings.

19. Besides, section 120 of the CO provides that the Commission may, with the leave of court, intervene in Tribunal proceedings involving alleged contravention or involvement in a contravention of a conduct rule. An application for leave should be made in the prescribed form. Rule 21 of the CTR provides for the detailed procedures for such intervention.

20. In general, for the types of proceedings falling within rule 19(1) of the CTR where the Judiciary considers that intervention (whether by interested parties or the Commission) would be more likely, the Registrar will publish a public notice with relevant information of the case so that any intended intervener may apply to intervene within 28 days of the notice.

21. Where intervention is permitted, the Tribunal will give directions for the conduct of the intervention. For interveners other than the Commission, the extent and nature of the intervention permitted and the directions necessary will depend on the particular circumstances of the case. For the Commission, according to section 120 of the CO, if intervention is allowed, the Commission will from the date of the grant of leave become a party to the proceedings and has all the rights, duties and liabilities of a party to the proceedings.

## **(II) The Fees Rules**

22. Similar to other levels of courts, the Judiciary proposes making rules to set out the fees to be paid by users of the Tribunal for various purposes, e.g. on filing of originating documents. Given the similarity in the nature of the proceedings in the Tribunal and those in the High Court, the Judiciary has suggested to model the Fees Rules on the High Court Fees Rules (Cap. 4D) as far as possible. In other words, the fee levels for the Tribunal will be similar to those for the High Court.

23. The Judiciary has also proposed a referential legislative approach for those fee items akin to those in the High Court Fees Rules. Instead of prescribing the fee amounts for the respective items in the Fees Rules, a reference to the corresponding fee items in the High Court Fees Rules is provided. By doing so, the same levels of fees for similar services/actions in both the CFI and the Tribunal will be charged. This would also reduce the legislative complexities in future amendment exercises.

## **(III) The Suitors' Funds Rules**

24. In general, suitors are parties to suits in a court of law. They may need to pay or transfer funds into the Tribunal or deposit funds in the Tribunal for various purposes, for example, as security against possible default on legal costs, by way of satisfaction of claims or judgment debts. Depending on the outcome of the lawsuits, the funds may have to be paid

out of the Tribunal to the persons entitled to such payment as the Tribunal orders.

25. Given the similarity in operation between the Tribunal and the CFI, the Judiciary has proposed that the Suitors' Funds Rules be modelled on the High Court Suitors' Funds Rules (Cap. 4B).

26. The Suitors' Funds Rules seek to govern the administration of suitors' funds for the Tribunal in a way similar to that of the High Court, 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.

27. Meanwhile, the Judiciary is taking forward a separate legislative exercise to make some enhancements to the suitors' funds rules of the other courts and tribunals. For instance, under the current High Court Suitors' Funds Rules, interest is to be credited to a suitor's account only since the 14th day after the money has been paid in to the High Court if they are paid for certain specified purposes<sup>5</sup>, unless an order directs otherwise. For the sake of fairness, the Judiciary suggests shortening the period before interest begins to accrue for individual suitors (from the 14th day to the third business day after the money is paid in). The Suitors' Funds Rules are also prepared on the same basis.

#### **(IV) Amendments to the RHC**

28. Amendments to the RHC have been put forward to provide for the procedures for proceedings transferred between the Tribunal and the CFI. There are also mirrored provisions in the CTR for a similar purpose.

29. Besides, amendments to the RHC have also been proposed to provide for the procedures for applications to the Court of Appeal for leave to appeal and for appeals from the decisions of the Tribunal. They generally reflect the practice for similar appeals from the CFI.

---

<sup>5</sup> These specified purposes are (a) as security for costs; (b) by way of satisfaction or amends for claims or counterclaims; or (c) in compliance with an order giving leave to defend upon such payments. Rule 16(3)(a) of the High Court Suitors' Funds Rules refers.



## **THE RULES/AMENDMENT RULES**

### **(I) The CTR**

30. The CTR at **Annex A** provides for the rules and practices for the Tribunal. The main provisions are as follows –

- (a) Part 1 sets out the application of these Rules and the application of the RHC to proceedings before the Tribunal (“the proceedings”). In particular, where there is no provision in the CO and the CTR for a matter, the RHC apply to all proceedings before the Tribunal, so far as they may be applicable to that matter.
- (b) Part 2 sets out the practice and procedure applicable to all proceedings before the Tribunal which are generally not identical to the RHC. There are altogether 10 Divisions as follows –
  - (i) Divisions 1 and 2 specify the general matters such as commencement of proceedings, use of specified forms and service of documents;
  - (ii) Division 3 provides for the application for intervention by a person having a sufficient interest in the proceedings and the Commission. The Tribunal will decide on the extent of an intervener’s participation, except that the Commission will have all the rights, duties and liabilities of a party to the proceedings (section 120 of the CO);
  - (iii) Division 4 provides for the discovery and inspection of documents in the proceedings. Unlike the CFI, there will not be any automatic discovery of documents in the Tribunal. The Tribunal may disallow discovery of certain documents to protect confidential and sensitive information;
  - (iv) Divisions 5 and 6 provide for case management, right of audience, taking of evidence and disposal of proceedings and applications. Division 6 also provides for applications for confidential treatment of

information which helps protect confidential and sensitive information of a party from some or all of the other parties or the public (but not the Tribunal) as appropriate;

- (v) Division 7 sets out the jurisdiction and duties of the Registrar of the Tribunal, while Division 8 provides for the procedures for appeal to members of the Tribunal and the Court of Appeal;
  - (vi) Division 9 applies to the transfer of proceedings from the Tribunal to the CFI; and
  - (vii) Division 10 sets out the supplementary provisions, including the sittings of the Tribunal and its power to extend or abridge time under the CTR.
- (c) Part 3 provides for the procedures for the review of the Commission's reviewable determinations for the purpose of section 84 of the CO. Similar to judicial reviews to the CFI, an applicant needs to apply for leave from the Tribunal first. But, unlike the CFI, to save efforts, the Tribunal will treat the leave application as the application for review itself unless otherwise directed.
- (d) Part 4 covers the application procedures for enforcement before the Tribunal in cases where there are alleged breaches of the competition rules, including the application procedures for disqualification orders. It also covers the procedures for the Commission's application for enforcement of commitments under section 63 of the CO.
- (e) Part 5 covers the procedures for making a claim in a follow-on action to which section 110 of the CO applies. The Judiciary expects that these claims will be similar in nature to CFI actions. Regardless, the Tribunal will give instructions on how to handle each of these cases at a suitable juncture.
- (f) Part 6 is applicable to the proceedings transferred from the CFI to the Tribunal under section 113 of the CO.
- (g) The Schedule specifies the forms to be used for an

application under the CO or the CTR. The Judiciary has minimized the number of forms.

(II) The Fees Rules

31. The Fees Rules at **Annex B** prescribe fees payable in connection with the applications to the Tribunal and proceedings in the Tribunal. The key provisions are as follows –

- (a) rule 3(1) read together with Schedule 1 specifies the fees payable to the Tribunal by reference to the corresponding fees specified in the High Court Fees Rules for items which may use a referential legislative approach. These items are common to those of the CFI such as taking evidence, copies of documents, etc.;
- (b) rule 3(2) read together with Schedule 2 specifies the fees payable to the Tribunal in relation to all other remaining items, such as commencement of proceedings, setting down for trial, taxation of costs, etc.; and
- (c) rule 4 empowers the Registrar of the Tribunal to reduce, remit or defer payment of the fees.

(III) The Suitors' Funds Rules

32. The Suitors' Funds Rules at **Annex C** relate to the administration of the suitors funds kept by the Tribunal. The key provisions are as follows –

- (a) rules 3 to 6 govern the main duties of the Registrar of the Tribunal in relation to the funds lodged with the Registrar, such as giving receipts, keeping records of the funds lodged and preparing an annual statement of the accounts;
- (b) rules 7 and 8 relate to the securities lodged in the Tribunal;
- (c) rules 9 to 13 provide for the details of paying funds and costs out of the Tribunal; and
- (d) rules 14 to 19 mainly provide for the investment of money by the Registrar and the crediting of interest to individual

suitors' accounts.

(IV) Amendments to the RHC

33. The amendments to the RHC at **Annex D** seek to provide for the practice and procedure in the CFI for the transfer of proceedings under the CO and appeals. The main provisions are as follows –

- (a) a new Order 78A is added to the RHC to prescribe the procedure for the transfer of proceedings from the CFI to the Tribunal for the purpose of section 113 of the CO;
- (b) another new Order 78B is added to the RHC to prescribe the procedure for the transfer of proceedings from the Tribunal to the CFI for the purpose of section 114 of the CO; and
- (c) Order 59 of the RHC is amended to enable the Court of Appeal to handle appeals from the Tribunal/its Registrar with similar procedures as those from the CFI/its Registrar.

**PROPOSED LEGISLATIVE TIMETABLE**

34. The legislative timetable is proposed as follows :

Publication in the Gazette	5 June 2015
Tabling at the Legislative Council ("LegCo") for negative vetting	10 June 2015

**IMPLICATIONS OF THE PROPOSAL**

35. The proposed rules are in conformity with the Basic Law, including the provisions concerning human rights. They have no economic, productivity, sustainability, environmental or family implications. The proposed rules will not affect the current binding effect of the CO or the High Court Ordinance.

36. Arising from the establishment of the Tribunal, the Judiciary obtained on 15 March 2013 the approval of the Finance Committee of the LegCo for creating a CFI judge post and a Deputy Registrar post.

Besides, eight non-directorate civil service posts were created in the past two financial years for providing the necessary support and one more will be created in 2015/16.

## **PUBLIC CONSULTATION**

37. The Judiciary has consulted various stakeholders on the proposed rules, including the Hong Kong Bar Association, the Law Society of Hong Kong, the Commission and the CA. The Judiciary has taken into account their comments in refining the four sets of rules. They are now generally supportive of these rules.

38. The Judiciary Administration also consulted the LegCo Panel on Administration of Justice and Legal Services on 16 February 2015. Given the volume of the rules, the Panel recommended and the House Committee of the LegCo has agreed to form a sub-committee to scrutinize the draft rules before they are formally tabled before the LegCo. This allows more time for LegCo Members to scrutinize the draft rules as necessary. The sub-committee so formed, titled “Subcommittee to Study the Proposed Subsidiary Legislation on the Procedures to be Adopted by the Competition Tribunal”, completed its examination of the draft rules in May 2015 and has proposed some changes. The sub-committee’s comments have been incorporated as appropriate.

## **PUBLICITY**

39. A press release will be issued and a spokesperson will be available for answering media enquiries.

## **ENQUIRES**

40. Any enquiry on this brief should be directed to Ms Wendy CHEUNG, Assistant Judiciary Administrator (Development), at 2825 4244.

**Judiciary Administration**  
**June 2015**

## Competition Tribunal Rules

### Contents

Rule	Page
<b>Part 1</b>	
<b>Preliminary</b>	
1. Commencement.....	1
2. Interpretation .....	1
3. Application of these Rules.....	3
4. Application of RHC.....	3
5. Exercise of Tribunal’s powers .....	4
6. Effect of non-compliance with these Rules .....	4
<b>Part 2</b>	
<b>All Proceedings before Tribunal</b>	
<b>Division 1—Commencement of Proceedings and Interlocutory Application</b>	
7. Mode of commencement of proceedings.....	6
8. Interlocutory application.....	6
9. Consolidation, etc., of proceedings or applications .....	7
10. Forms.....	8
<b>Division 2—Service</b>	
11. Address for service provided in first document.....	8

Rule	Page
12. Parties to be served.....	8
13. Method of service of originating documents .....	9
14. Method of service of documents other than originating documents.....	11
15. Notice to be given by Tribunal .....	11
16. Service out of jurisdiction.....	12
17. No acknowledgement of service of originating documents.....	12
18. Duration and renewal of originating documents.....	12
<b>Division 3—Publication of Notice of Application, Intervention and Addition of Parties</b>	
19. Publication of notice of application or proceedings.....	13
20. Intervention by third party (other than Commission) .....	15
21. Intervention by Commission.....	16
22. Addition of parties .....	17
23. Third party and similar proceedings .....	18
<b>Division 4—Discovery and Inspection of Documents</b>	
24. Discovery and inspection of documents .....	19
<b>Division 5—Case Management, etc.</b>	
25. Case management.....	19
26. Interrogatories.....	20
27. Direction to file pleadings .....	20

Rule	Page
<b>Division 6—Hearings, etc.</b>	
28. Hearing in public .....	20
29. Composition of Tribunal and appointment of assessor.....	21
30. Right of audience.....	21
31. Disposal of proceedings.....	22
32. Disposal of interlocutory applications .....	22
33. Conduct of hearings.....	23
34. Judgment given in absence of party may be set aside.....	23
35. Mode of taking evidence .....	24
36. Witness summons .....	24
37. Confidential treatment of information .....	25
38. Adjournment.....	26
39. Orders made by consent in proceedings under Part 3, 4, 5 or 6.....	27
40. Frivolous or vexatious proceedings .....	27
<b>Division 7—Registrar</b>	
41. Jurisdiction, powers and duties of Registrar .....	28
<b>Division 8—Appeal</b>	
42. Appeal against decision, etc. of Registrar to member of Tribunal .....	29
43. Appeal against decision, etc. of Registrar to Court of Appeal.....	29

Rule	Page
44. Interlocutory order for purposes of section 155(2) of Ordinance (where appeal lies as of right) .....	30
45. Procedure on application for leave to appeal .....	32
<b>Division 9—Transfer of Proceedings from Tribunal to CFI</b>	
46. Interpretation of Division 9 .....	33
47. Transfer of proceedings from Tribunal to CFI.....	33
48. Duties of Registrar after transfer of proceedings from Tribunal to CFI.....	33
49. Proceedings transferred from Tribunal to CFI: effects of transfer.....	34
<b>Division 10—Supplementary Provisions</b>	
50. Time.....	34
51. Sittings and days on which Tribunal opens .....	35
52. Proof of decisions, block exemption orders and commitments, etc.....	35
53. Use of language in Tribunal .....	36
54. Translation of document to be used in Tribunal .....	36
55. Right of parties to inspect, etc. certain documents filed in Tribunal .....	37
56. Right of persons (other than parties) to inspect, etc. certain documents filed in Tribunal.....	38
57. Amendment of documents .....	39

Rule	Page
58. Clerical mistakes and slips.....	39
<b>Part 3</b>	
<b>Review of Reviewable Determination</b>	
59. Interpretation of Part 3.....	40
60. Application for leave .....	40
61. Determination of leave application.....	41
62. Leave with terms and directions .....	41
63. Appeal against refusal of leave .....	42
64. Application for review.....	42
65. Response by respondent .....	42
66. Failure to file response.....	43
67. Affidavit in reply .....	43
68. Further documents filed or served by parties.....	43
69. Withdrawal of application .....	44
70. Stay of execution of reviewable determination.....	44
71. Application to state case for Court of Appeal.....	44
<b>Part 4</b>	
<b>Applications for Enforcement before Tribunal</b>	
<b>Division 1—Preliminary</b>	
72. Interpretation of Part 4.....	46
<b>Division 2—Application for Enforcement of Commitments and other</b>	

Rule	Page
<b>Enforcement before Tribunal</b>	
73. Application of Division 2 .....	47
74. Mode of application.....	47
75. Response by respondent .....	47
76. Failure to file response.....	48
77. Reply by applicant.....	48
78. Directions by Tribunal after application.....	48
79. Withdrawal of application .....	49
80. Application for extension of time under section 94(3) or 99(3) of Ordinance.....	49
81. Interim orders .....	49
<b>Division 3—Application for Disqualification Orders and for Leave to Participate in Company’s Affairs</b>	
82. Application for disqualification order.....	50
83. Application for disqualification order as separate application.....	50
84. Application for leave to participate in company’s affairs.....	51
85. Opposition .....	51
86. Failure to file affidavit in opposition .....	51
87. Affidavit in reply by applicant.....	52
88. Further documents filed or served by parties.....	52
89. Hearing in public .....	52



Rule	Page
90. Making and setting aside of order.....	52
91. Withdrawal of application .....	53
<b>Part 5</b>	
<b>Follow-on Actions</b>	
92. Interpretation of Part 5.....	54
93. Mode of commencing follow-on actions .....	54
94. Applications under section 111(2) of Ordinance .....	55
95. Defence by defendant .....	56
96. Reply by plaintiff.....	56
97. Further conduct after reply or expiry of time for reply .....	56
<b>Part 6</b>	
<b>Proceedings Transferred from CFI</b>	
98. Interpretation of Part 6.....	58
99. Procedures after transfer of proceedings from CFI to Tribunal .....	58
100. Proceedings transferred from CFI to Tribunal: effects of transfer.....	59
Schedule Forms.....	61

## Competition Tribunal Rules

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

### Part 1

#### Preliminary

##### 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

(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* (介入者) 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 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.

### 3. Application of these Rules

- (1) This Part and Part 2 apply to all proceedings under the Ordinance.  
(2) Part 3 applies to an application for a review of a reviewable determination under section 84 of the Ordinance.  
(3) Part 4 applies to—  
(a) an application for enforcement of a commitment under section 63 of the Ordinance;  
(b) an application for enforcement before the Tribunal under Part 6 of the Ordinance; and  
(c) an application for an order under section 169 of the Ordinance.  
(4) Part 5 applies to an action brought under section 110 of the Ordinance.  
(5) Part 6 applies to all proceedings transferred from the CFI to the Tribunal under section 113 of the Ordinance.

### 4. Application of RHC

- (1) Where the Ordinance and these Rules make no provision for a matter, the RHC apply to all proceedings, so far as they may be applicable to that matter.  
(2) If any provision of the RHC applies to any proceedings, the provision applies—  
(a) with any necessary modifications; and  
(b) as if references to the Court in the RHC were references to the Tribunal.  
(3) Despite subrule (1), the Tribunal may, in a particular case, dispense with the application of the RHC if the Tribunal considers that—

- (a) doing so will enable the Tribunal to conduct its proceedings expeditiously with as much informality as is consistent with attaining justice;
- (b) doing so will save costs and is consistent with attaining justice; or
- (c) doing so is otherwise in the interests of justice.

**5. Exercise of Tribunal's powers**

Except as otherwise provided by the Ordinance and these Rules, the Tribunal may exercise its powers under these Rules either of its own motion or on application.

**6. Effect of non-compliance with these Rules**

- (1) Non-compliance with any of these Rules, or with any rule of practice that is in force, does not render any proceedings void unless the Tribunal so directs.
- (2) However, the Tribunal may—
  - (a) set aside the proceedings, either wholly or in part, as irregular; or
  - (b) amend, or otherwise deal with, the proceedings in the manner and on the terms that the Tribunal thinks fit.
- (3) The Tribunal—
  - (a) must not under subrule (2)(a) wholly set aside any proceedings as irregular only because the proceedings ought to have been commenced by filing a notice, a summons or an application required under these Rules other than the one employed; and

- (b) must instead give directions for the continuation of the proceedings in an appropriate manner.
-

**Part 2****All Proceedings before Tribunal****Division 1—Commencement of Proceedings and Interlocutory Application****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.

**8. Interlocutory application**

- (1) All interlocutory applications to the Tribunal must be made by filing a summons in Form 2 in the Schedule, unless—
  - (a) otherwise provided in these Rules; or
  - (b) the Tribunal otherwise directs.
- (2) If an interlocutory application is made with the consent of all parties, then evidence of the consent must be produced to the Tribunal.
- (3) Unless the Tribunal otherwise orders, the applicant must serve the summons on every other party of the application not less than 2 clear days before the date specified in the summons for the hearing of the application.
- (4) Despite subrule (3), a summons for an application for abridgment or extension of time may be served on the day before the date specified in the summons for the hearing of the application concerned.

**9. Consolidation, etc., of proceedings or applications**

- (1) Where 2 or more proceedings or applications are pending before the Tribunal, the Tribunal may make an order specified in subrule (2) if it appears to the Tribunal that—
  - (a) some common question of law or fact arises in both or all of them;
  - (b) the reliefs sought are in respect of, or arise out of, the same act or a series of acts;
  - (c) the reliefs are sought against the same defendant or respondent; or
  - (d) for some other reasons, it is desirable to make an order under this rule.
- (2) The order under subrule (1) may provide that—
  - (a) the proceedings or applications are to be consolidated on such terms as the Tribunal thinks just;
  - (b) the proceedings or applications are to be tried or determined at the same time, or one immediately after another; or
  - (c) any of the proceedings or applications is to be stayed until after the determination of any other of them.
- (3) Where the Tribunal makes an order under subrule (1) that 2 or more proceedings or applications are to be tried or determined at the same time but no order is made for them to be consolidated, then a party to one of those proceedings or applications may be treated as if it were a party to any of those other proceedings or applications for the purpose of making an order for costs, against the party or, in favour of the party.

**10. Forms**

The forms contained in the Schedule or forms to the like effect are to be used with such variations and modifications as the circumstances may require.

**Division 2—Service****11. Address for service provided in first document**

- (1) A party must provide in the first document that the party files for the proceedings—
  - (a) the party's name; and
  - (b) either—
    - (i) the party's address in Hong Kong for service for the proceedings, which must not be a post office box number; or
    - (ii) where the party is acting by a solicitor, the solicitor's name or the name of the solicitor's firm and a business address of the solicitor in Hong Kong.
- (2) A party may change the address provided under subrule (1)(b) by giving reasonable notice in writing to the Registrar and to every other party.

**12. Parties to be served**

- (1) Subject to any direction that the Tribunal may 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 7th 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 7th 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 may, on the application of the party—
- (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 purpose of subrule (8) may be made by an affidavit stating the facts on which the application is founded.

#### **14. Method of service of documents other than originating documents**

- (1) This rule applies to the service of a document, other than an originating document, on or by any person including the Commission.
- (2) Order 65 of the RHC applies to a document, other than an originating document, required to be served on a person under these Rules.

#### **15. Notice to be given by Tribunal**

If a notice is required to be given by the Tribunal to a person, whether a party or not, under the Ordinance, it may be given—

- (a) if the person is acting by a solicitor, by sending it by ordinary post addressed to the solicitor at the address for service or at the business address of the solicitor in Hong Kong;
- (b) if the person is not acting by a solicitor—
  - (i) by sending it by ordinary post addressed to the person at the address for service provided under rule 11; or

- (ii) if no address for service is provided under rule 11, by sending it by ordinary post addressed to the person at the person's usual or last known place of abode or business in Hong Kong; or
- (c) in any other manner that the Tribunal directs.

**16. Service out of jurisdiction**

- (1) Service of an originating document out of the jurisdiction is permissible with the leave of the Tribunal if each claim to which the document relates falls within the jurisdiction of the Tribunal.
- (2) Service out of the jurisdiction of any summons issued, notice given or order made in any proceedings is permissible with the leave of the Tribunal.
- (3) Subject to this rule, Order 11 of the RHC applies to the service of all documents out of the jurisdiction.

**17. No acknowledgement of service of originating documents**

- (1) A person on whom an originating document is served is not required—
  - (a) to acknowledge service of the originating document; or
  - (b) to give a notice of intention to defend.
- (2) Order 13 of the RHC does not apply to any proceedings.

**18. Duration and renewal of originating documents**

- (1) For the purpose of service—
  - (a) an originating document by filing of which proceedings are commenced in the Tribunal is valid in the first instance for 6 months, beginning with the date of its filing; and

- (b) to avoid doubt, an originating document by filing of which proceedings were commenced in the CFI before transfer to the Tribunal remains valid in the first instance for 12 months, beginning with the date of its filing in the CFI, despite the transfer.
- (2) If an originating document has not been served on a respondent or defendant within the period specified in subrule (1)(a) or (b), the Tribunal may, on application, extend the validity of the document from time to time for a period that the Tribunal thinks fit.
- (3) The period extended under subrule (2) must not exceed 6 months at any one time, beginning with the day next following the date on which it would otherwise expire.
- (4) Subject to this rule, Order 6, rule 8 of the RHC applies to the validity of originating documents.
- (5) This rule does not affect the requirement on service that may be prescribed in these Rules.

**Division 3—Publication of Notice of Application, Intervention and Addition of Parties****19. Publication of notice of application or proceedings**

- (1) The Registrar must publish a notice in a manner that the President may direct as soon as practicable after—
  - (a) the filing of an application under section 63(1), 92(1), 94(1), 97(1) or 99(1) of the Ordinance;
  - (b) the granting of leave to apply for a review of a reviewable determination under section 84(2) of the Ordinance;
  - (c) the receipt of a claim brought under section 110(1) of the Ordinance;

- (d) the transfer of any proceedings from the CFI to the Tribunal under section 113 of the Ordinance; or
  - (e) in any other proceedings, the Tribunal has given a direction to do so.
- (2) The notice published under subrule (1)(a), (b), (c) or (e) must state—
- (a) that an application has been filed, a claim has been received or a direction has been given;
  - (b) the nature of the application, claim or direction;
  - (c) the names of the parties;
  - (d) if the application is made under section 84 of the Ordinance—
    - (i) the determination to which the application relates; and
    - (ii) the person by, and against, whom the application is made;
  - (e) the particulars of the relief sought by the applicant, claimant or parties;
  - (f) in a summary form, the grounds on which the applicant, claimant or parties relied; and
  - (g) that a person who has a sufficient interest in the matters to which the application, claim or direction relates may apply for leave to intervene in the proceedings, in accordance with rule 20, within—
    - (i) 28 days from the date on which the notice is published; or
    - (ii) such other period as the President or the presiding member may direct.
- (3) The notice published under subrule (1)(d) must state—

- (a) that certain proceedings before the CFI have been transferred from the CFI to the Tribunal;
  - (b) the nature of the matters to which the proceedings relate;
  - (c) the names of the parties;
  - (d) the particulars of the relief sought by the parties in the proceedings;
  - (e) in a summary form, the grounds on which the parties relied in the proceedings; and
  - (f) that a person who has a sufficient interest in the matters to which the proceedings relate may apply for leave to intervene in the proceedings, in accordance with rule 20, within—
    - (i) 28 days from the date on which the notice is published; or
    - (ii) such other period as the President or the presiding member may direct.
- 20. Intervention by third party (other than Commission)**
- (1) 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.
  - (2) If the proceedings relate to an application, claim, direction or proceedings referred to in rule 19(1), the application for leave to intervene must be made within the period specified in rule 19(2)(g) or (3)(f), unless the Tribunal is satisfied that there is exceptional circumstance for extending time for making the application.
  - (3) The application for leave to intervene must be made by filing the application in Form 3 in the Schedule.
  - (4) The application must be served by the applicant on each party to the proceedings.



- (5) The Tribunal may invite the parties to file evidence and make representations on the application within the period specified by the Tribunal.
- (6) If the Tribunal is satisfied, having taken account of the evidence and representations of the parties, that the applicant has a sufficient interest, it may grant leave for the applicant to intervene in the proceedings, subject to any conditions imposed by the Tribunal.
- (7) On being granted the leave to intervene, the applicant is an intervener in the proceedings and the Tribunal may give any directions on the extent of participation of the intervener.
- (8) The directions under subrule (7) may include those relating to—
  - (a) the service on the intervener of the documents filed for the proceedings;
  - (b) the submission by the intervener of a statement of intervention that—
    - (i) contains a summary of the facts and arguments on which the intervener relies; and
    - (ii) specifies the relief sought by the intervener;
  - (c) if appropriate, the submission by the other parties of a response to the statement; and
  - (d) the filing of affidavits.

**21. Intervention by Commission**

- (1) An application by the Commission for leave to intervene under section 120(3) of the Ordinance must be made by filing the application in Form 3 in the Schedule.
- (2) The application must be served by the Commission on each party to the proceedings.

- (3) Whether the application for leave to intervene is made inter partes or ex parte, the Tribunal may determine the application—
  - (a) without a hearing; or
  - (b) after inviting and considering the evidence and representations of the Commission and the parties.
- (4) Without affecting section 120(4) of the Ordinance, on granting leave to the Commission to intervene, the Tribunal may give any directions which may include those relating to—
  - (a) the service on the Commission of the documents filed for the proceedings;
  - (b) the submission by the Commission of a statement of intervention that—
    - (i) contains a summary of the facts and arguments on which the Commission relies; and
    - (ii) specifies the relief sought by the Commission;
  - (c) if appropriate, the submission by the other parties of a response to the statement; and
  - (d) the filing of affidavits.
- (5) Where leave to intervene is granted on an application made ex parte to the Tribunal, a party may apply to the Tribunal to set aside the leave.

**22. Addition of parties**

- (1) Without affecting rules 20 and 21, the Tribunal may, on the application of a person, permit the person or another person to be joined in the proceedings, in addition to, or in substitution of, any party to the proceedings.

- (2) Subject to subrule (1), Order 15 of the RHC applies to any proceedings.

**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 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)—
- by filing a summons in Form 2 in the Schedule apply to the Tribunal for directions; and
  - 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—
- by filing a summons in Form 2 in the Schedule apply to the Tribunal for directions; and
  - 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.

**Division 4—Discovery and Inspection of Documents**

**24. Discovery and inspection of documents**

- (1) A party may apply to the Tribunal for an order for discovery and production of a document relating to the proceedings from a person for inspection.
- (2) The application may be determined by the Tribunal with or without a hearing.
- (3) The Tribunal may make or refuse to make an order for discovery and production of a document having regard to all the circumstances of the case, including—
- the need to secure the furtherance of the purposes of the Ordinance as a whole;
  - whether the information contained in the document sought to be discovered or produced is confidential;
  - the balance between the interests of the parties and other persons; and
  - the extent to which the document sought to be discovered or produced is necessary for the fair disposal of the proceedings.
- (4) Order 24 (except rules 1, 2, 3, 4 and 6) of the RHC applies to the discovery and production of documents in any proceedings.

**Division 5—Case Management, etc.**

**25. Case management**

- (1) The Tribunal may from time to time—
- give directions relating to the management of any proceedings;

- (b) fix the timetable for certain steps to be taken up to one or more of the following milestone dates—
    - (i) the date for a case management conference;
    - (ii) the date for a pre-trial review;
    - (iii) the date for the trial or the period in which the trial is to take place; and
  - (c) fix a date or period for other steps to be taken in the proceedings.
- (2) Order 25 (except rules 1, 1A, 1C, 8, 10 and 11) of the RHC applies to the management of any proceedings whether or not a case management summons is required to be filed.

**26. Interrogatories**

- (1) A party may not, without the leave of the Tribunal, serve on any other party interrogatories relating to any proceedings.
- (2) Subject to subrule (1), Order 26 of the RHC applies to any proceedings.

**27. Direction to file pleadings**

The Tribunal may direct the parties to file pleadings at any stage of the proceedings as the Tribunal thinks fit.

**Division 6—Hearings, etc.****28. Hearing in public**

- (1) The hearing of all proceedings except on interlocutory applications must be heard in open court, unless the Tribunal otherwise directs.
- (2) All interlocutory applications before the Tribunal must be heard in chambers, unless the Tribunal otherwise directs.

**29. Composition of Tribunal and appointment of assessor**

- (1) The hearing of any proceedings is to be conducted before a member of the Tribunal, unless the President otherwise directs.
- (2) For the purpose of subrule (1), the President may, either of his or her own motion or on application, direct that the hearing is to be conducted before more than one member of the Tribunal.
- (3) Any member of the Tribunal conducting a hearing may, either of his or her own motion or on application, direct that the hearing is to be conducted with one or more specially qualified assessors.

**30. Right of audience**

- (1) In any proceedings, a party—
  - (a) subject to subrule (2), may appear in person and be heard; or
  - (b) may be represented by—
    - (i) a counsel or solicitor having a right of audience before the CFI in its civil jurisdiction; or
    - (ii) any other person allowed with the leave of the Tribunal to appear on the party's behalf.
- (2) If the party is a body corporate and intends to be represented by one of its directors in the proceedings—
  - (a) Order 5, rule 6 of the RHC applies to the party who is an applicant or plaintiff; and
  - (b) Order 12, rule 1(2A), (2B), (2C) and (2D) of the RHC applies to the party who is a respondent or defendant.

**31. Disposal of proceedings**

- (1) This rule does not apply to an interlocutory application.
- (2) If no party appears at the time and place appointed for the hearing of the proceedings concerned, the Tribunal may dismiss the proceedings for want of appearance.
- (3) If a party does not appear in the hearing, the Tribunal may—
  - (a) consider the evidence and submissions of the party or parties appearing and dispose of the proceedings;
  - (b) on the application of the respondent appearing, dismiss the proceedings for want of appearance of the applicant;
  - (c) on the application of the applicant appearing—
    - (i) enter judgment against the respondent absent from the proceedings; or
    - (ii) make such decisions as the Tribunal thinks fit; or
  - (d) adjourn the hearing on such terms as to costs or otherwise as the Tribunal thinks fit.

(4) In this rule—

*applicant* (申請人) includes a plaintiff;

*respondent* (答辯人) includes a defendant.

**32. Disposal of interlocutory applications**

- (1) If no party appears at the time and place appointed for the hearing of the interlocutory application concerned, the Tribunal may dismiss the application for want of appearance.
- (2) If a party to the interlocutory application does not appear in the hearing, the Tribunal may—
  - (a) consider the submissions of the party or parties appearing and dispose of the application;

- (b) on the application of the respondent appearing, dismiss the interlocutory application for want of appearance of the applicant;
- (c) on the application of the applicant appearing—
  - (i) grant the order sought against the respondent absent from the interlocutory application; or
  - (ii) make such decisions as the Tribunal thinks fit; or
- (d) adjourn the hearing on such terms as to costs or otherwise as the Tribunal thinks fit.

(3) In this rule—

*applicant* (申請人) means the party making the interlocutory application;

*respondent* (答辯人) means the party responding to the interlocutory application.

**33. Conduct of hearings**

- (1) The Tribunal may, in its absolute discretion, decide—
  - (a) which party has the right to begin or reply at the hearing; and
  - (b) the order and number of addresses by the parties or their respective counsel, solicitors or any other person allowed by rule 30.
- (2) The Tribunal may direct that written submissions be made instead of, or in addition to, addresses made to the Tribunal by or on behalf of the parties.

**34. Judgment given in absence of party may be set aside**

- (1) If a party does not appear at the hearing of any proceedings in which a judgment is given, the judgment must be served on the party.

- (2) The Tribunal may, on the application of the party, set aside the judgment on the terms that the Tribunal thinks just.
- (3) The application must be made within 14 days after the day on which the judgment is served.
- (4) In this rule—

*judgment* (判決) includes a decision, a determination or an order of the Tribunal.

### 35. Mode of taking evidence

Subject to section 147 of the Ordinance, the evidence of witnesses at the hearing of any proceedings may be taken orally on oath or affirmation, or by affidavit, declaration or otherwise as the Tribunal thinks fit.

### 36. Witness summons

- (1) On application by a party to any proceedings in Form 4 in the Schedule and payment of a deposit in the sum of \$500 in respect of the witness's reasonable expenses, the presiding member may issue a witness summons requiring a person to attend a hearing of the proceedings in Form 5 in the Schedule.
- (2) In any proceedings, the Tribunal may order the reimbursement by one or more of the parties to a witness who has been served with a witness summons in respect of any expenses reasonably and properly incurred by that witness.
- (3) Any expenses ordered by the Tribunal to be paid must be assessed by the Tribunal or, if no such assessment is made, must be taxed (if not agreed) and paid by the party ordered to make the payment.
- (4) If the party ordered to make payment of the witness's expenses is the party who paid the deposit under subrule (1), the witness may—

- (a) recover the expenses, after assessment, agreement or taxation, from the deposit; and
- (b) recover the balance, if any, from the party.
- (5) The deposit (or any part of it that remains after payment to the witness under subrule (4)) must be refunded to the party that paid the deposit if—
  - (a) that party was not ordered to pay the costs of the witness; or
  - (b) that party was ordered to pay the costs of the witness and has effected payment of the costs after assessment, agreement or taxation.

### 37. Confidential treatment of information

- (1) A party (*the applicant*) may apply for an order to treat the whole or part of the following document as confidential—
  - (a) a document (other than an originating document) filed in connection with any proceedings; or
  - (b) a document (including an originating document) intended to be filed, served or otherwise disclosed in connection with any proceedings.
- (2) The application must be—
  - (a) made in writing;
  - (b) made as soon as reasonably practicable; and
  - (c) supported by an affidavit, unless otherwise directed by the Tribunal.
- (3) The application must—
  - (a) specify—
    - (i) the document or part of the document for which confidentiality is requested;

- (ii) the person or class of persons against whom confidentiality is asserted; and
- (iii) the reasons for the request and assertion; and
- (b) where the document has not been filed, be accompanied by an unredacted version of the document if it is available to the applicant.
- (4) The unredacted version of the document referred to in subrule (3)(b), regardless of whether it has been filed or not, need not be served on the parties concerned pending the decision or approval of the Tribunal under subrule (5).
- (5) The Tribunal may—
  - (a) decide the application on paper or after hearing the parties; and
  - (b) disallow or approve the application to such extent and on such terms as the Tribunal thinks fit.
- (6) In considering an application under this rule, the Tribunal must have regard to all the circumstances of the case, including—
  - (a) the public interest;
  - (b) for any commercial information relating to an undertaking—the legitimate business interests of the undertaking;
  - (c) for any information relating to the private affairs of a natural person—the interests of the natural person; and
  - (d) the interests of justice.

**38. Adjournment**

The Tribunal may adjourn a hearing of any proceedings to the time and place, and on the terms, that the Tribunal thinks fit.

- 39. Orders made by consent in proceedings under Part 3, 4, 5 or 6**
- (1) If the parties have agreed on the terms of an order to be made by the Tribunal in any proceedings under Part 3 or 4, the agreed terms, signed by or on behalf of the parties, must be sent to the Tribunal for approval.
  - (2) The Tribunal may make an order by consent in those proceedings with or without a hearing having regard to—
    - (a) the agreed terms; and
    - (b) any information submitted by the parties in support of those terms.
  - (3) In subrules (1) and (2)—
 

*order* (命令) includes any finding, determination or decision.
  - (4) Subject to this rule, Order 42 (except rule 5A) of the RHC applies to any proceedings under Part 3 or 4.
  - (5) If the parties have agreed on the terms of an order to be made by the Tribunal in any proceedings under Part 5 or 6, Order 42 of the RHC applies to the proceedings.
- 40. Frivolous or vexatious proceedings**
- (1) The Tribunal may, either of its own motion or on application of a party, at any stage of the proceedings, order an application or a claim, response, defence or reply filed in respect of the proceedings to be struck out or amended on the grounds that—
    - (a) it discloses no reasonable cause of action or defence;
    - (b) it is scandalous, frivolous or vexatious;
    - (c) it may prejudice, embarrass or delay the fair trial of the proceedings; or
    - (d) it is otherwise an abuse of the process of the Tribunal.

- (2) The Tribunal may order the proceedings to be stayed or dismissed or judgment to be entered accordingly.
- (3) No evidence is admissible on an application under subrule (1)(a).

### **Division 7—Registrar**

#### **41. Jurisdiction, powers and duties of Registrar**

- (1) Without limiting section 156A(1) of the Ordinance, and subject to subrules (2) and (3), the Registrar also has power to transact all the business and exercise all the authority and jurisdiction that under the Ordinance or these Rules may be transacted and exercised by a member of the Tribunal in chambers.
- (2) The Registrar has no jurisdiction to deal with—
  - (a) an application for an interim order under section 95 or 98 of the Ordinance; or
  - (b) an application for an order (including an order for the interim preservation of property) or an interlocutory injunction under Part I of Order 29 of the RHC.
- (3) However, the Registrar may deal with the application specified in subrule (2) if—
  - (a) a presiding member directs that the Registrar may do so; or
  - (b) the application is made in terms agreed by all the parties.
- (4) The Registrar may adjourn an application to be heard by a member of the Tribunal.
- (5) Subject to the Ordinance, the Registrar may, under the direction of the President, hear and determine an application or matter under the Ordinance.

### **Division 8—Appeal**

#### **42. Appeal against decision, etc. of Registrar to member of Tribunal**

- (1) A party may appeal against any interlocutory decision, determination or order of the Registrar given or made in relation to the proceedings concerned to a member of the Tribunal.
- (2) The appeal must be brought by—
  - (a) filing a notice in Form 6 in the Schedule within 14 days after the day on which the interlocutory decision, determination or order is given or made; and
  - (b) serving a copy of the notice on every other party within 5 days after the day on which the notice is filed.
- (3) The appeal is to be heard in chambers.
- (4) The appeal must not be heard less than 2 clear days after the day on which the notice is served.
- (5) Unless the Tribunal otherwise directs, the appeal does not operate as a stay of the proceedings in which the appeal is brought.
- (6) No further evidence may be received on the hearing of the appeal except on special grounds.
- (7) Subrule (6) does not apply to evidence as to matters which have occurred after the date on which the interlocutory decision, determination or order is given or made.

#### **43. Appeal against decision, etc. of Registrar to Court of Appeal**

- (1) An appeal lies to the Court of Appeal against any decision, determination or order (other than an interlocutory decision, determination or order) of the Registrar given or made—

- (a) on the hearing or determination of any cause, matter, question or issue tried before the Registrar under Order 14, rule 6(2) and Order 36, rule 1 of the RHC;
  - (b) on an assessment of damages under Order 37 of the RHC or otherwise;
  - (c) on the hearing or determination of an application under Order 49B of the RHC; or
  - (d) on the hearing or determination of a disqualification application mentioned in rule 78(2)(b) or an application under rule 83 or 84.
- (2) In this rule, a reference to a provision in the RHC is a reference to the provision as applied under rule 4.

**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 judgment 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(2) 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** (“*限時履行*”的命令) 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).

#### 45. Procedure on application for leave to appeal

- (1) For the purposes of section 155 of the Ordinance, an application for leave to appeal against an interlocutory decision, determination or order of the member or members of the Tribunal must be made to the Tribunal in the first instance within 14 days from the date of the decision, determination or order, unless the Court of Appeal allows the application for leave to be made direct to the Court of Appeal under Order 59, rule 2BA(2) of the RHC.

- (2) So far as is practicable, the application for leave must be made to the member or members of the Tribunal against whose decision, determination or order that the leave to appeal is sought.
- (3) The application must be made *inter partes* if the proceedings to which the decision, determination or order relates are *inter partes*.

### Division 9—Transfer of Proceedings from Tribunal to CFI

#### 46. Interpretation of Division 9

In this Division—

**transfer order** (移交令) means an order made by the Tribunal for the transfer of proceedings from the Tribunal to the CFI under section 114 of the Ordinance.

#### 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.

#### 48. Duties of Registrar after transfer of proceedings from Tribunal to CFI

If the Tribunal has made a transfer order, the Registrar of the Tribunal must, as soon as practicable after the transfer order has been sealed, send to the Registrar of the High Court—

- (a) all documents issued out of, or filed or lodged in, the Tribunal in the proceedings transferred by the transfer order;

- (b) any notes of the proceedings made by the Registrar, or a member, of the Tribunal; and
- (c) any transcripts or other records of the proceedings.

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

- (1) On making a transfer order, the Tribunal may 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.

**Division 10—Supplementary Provisions**

**50. Time**

- (1) Order 3 (except rule 5) of the RHC applies to the computation, extension and abridgement of time under the Ordinance and these Rules.
- (2) The Tribunal may, either of its own motion or on application, and on such terms as the Tribunal thinks just, by order extend or abridge the time (whether expired or not) fixed by these Rules or by any judgment, decision, determination or order for doing any act.

**51. Sittings and days on which Tribunal opens**

- (1) Order 64, rules 1, 2, 3 and 3A of the RHC do not apply to the sittings of the Tribunal.
- (2) Order 64, rule 7 of the RHC applies in respect of the days on which the offices of the Tribunal are to open and the office hours as if a reference to the High Court were a reference to the Tribunal.

**52. Proof of decisions, block exemption orders and commitments, etc.**

- (1) In any proceedings under the Ordinance or these Rules, a copy of the register, or any part of it, maintained—
  - (a) under section 34 of the Ordinance in respect of decisions and block exemption orders;
  - (b) under section 64 of the Ordinance in respect of commitments; and
  - (c) under section 16 of Schedule 7 to the Ordinance in respect of decisions on merger,
 certified by the Chief Executive Officer of the Commission or a person duly authorized by that Officer is, on its production without further proof, to be admitted in the proceedings as prima facie evidence of the matters recorded in it.
- (2) Where the Communications Authority performs the functions of the Commission under section 159(1) of the Ordinance, the reference in subrule (1) to the Chief Executive Officer of the Commission is to be read as including the Director-General of the Communications Authority.

**53. Use of language in Tribunal**

- (1) The Tribunal may use either or both of the official languages in any proceedings as it considers appropriate for the just and expeditious disposal of the proceedings.
- (2) The decision of the Tribunal under subrule (1) is final.
- (3) A party to, or a witness in, any proceedings may—
  - (a) use either or both of the official languages; and
  - (b) address the Tribunal or testify in any language.
- (4) A legal representative in any proceedings may use either or both of the official languages.
- (5) Documents prepared for use by or filed in the Tribunal in any proceedings may be in either official language.
- (6) A party may file any document to be served on another party or person in either official language.
- (7) The official record of proceedings must be kept in the official language or official languages as the presiding member hearing the proceedings may direct.
- (8) In this rule, a reference to any proceedings includes a part of the proceedings.

**54. Translation of document to be used in Tribunal**

- (1) A party served with a document (*requesting party*) in an official language with which the party is not familiar may, within 3 days of being served with the document, request in writing the party serving the document (*serving party*) to provide a translation of the document into the other official language.
- (2) The serving party must, within 3 days of receiving the request, indicate in writing whether that party will provide the translation or not.

- (3) The serving party who agrees to provide a translation must do so as soon as practicable.
- (4) If the requesting party's request is refused, that party may apply to the Tribunal for an order that the serving party must provide the requesting party with a translation of the document.
- (5) The Tribunal may—
  - (a) order the serving party to provide a translation of the document if the Tribunal is satisfied that the request is reasonable; and
  - (b) order that the time for compliance with any rule or order requiring the taking of any step in proceedings within a particular period will not start to run until the translation is received by the requesting party.
- (6) A party applying for an order from the Tribunal under subrule (4) must—
  - (a) supply the minutes for the order in the language in which the order is to be made; and
  - (b) produce a certified translation of the order in the other official language if the Tribunal directs that the other version is necessary or appropriate.
- (7) The costs of, and incidental to, providing a translation under this rule are costs in the cause of the proceedings, unless the Tribunal otherwise directs.

**55. Right of parties to inspect, etc. certain documents filed in Tribunal**

- (1) A party to any proceedings may search for, inspect and obtain a copy of the following documents—
  - (a) the copy of an originating document filed in respect of the proceedings; and

- (b) any judgment given or order made by the Tribunal or the copy of that judgment or order.
- (2) A party to any proceedings may, with the leave of the Tribunal, search for, inspect and obtain a copy of any affidavit or other documents—
- filed in respect of those proceedings; or
  - filed before the commencement of those proceedings but made with a view to their commencement.
- (3) An application for the leave under subrule (2) may be made *ex parte*.
- (4) The party may search for, inspect and obtain a copy of the documents during the hours that the Registrar may direct.
- 56. Right of persons (other than parties) to inspect, etc. certain documents filed in Tribunal**
- (1) A person (other than a party to the proceedings concerned) may, on payment of the prescribed fee, search for, inspect and obtain a copy of any of the following documents—
- the copy of an originating document filed in respect of the proceedings;
  - any judgment given or order made by the Tribunal or the copy of that judgment or order;
  - with the leave of the Tribunal, any other document filed in respect of the proceedings.
- (2) An application for the leave under subrule (1)(c) may be made *ex parte*.
- (3) The person may search for, inspect and obtain a copy of the documents during the hours that the Registrar may direct.

**57. Amendment of documents**

- (1) The Tribunal may, at any stage of the proceedings, allow a party to amend any of the documents that the party filed subject to any terms that the Tribunal thinks fit.
- (2) The documents referred to in subrule (1) include documents filed in the CFI relating to proceedings transferred from the CFI to the Tribunal under section 113 of the Ordinance.
- (3) Subject to subrule (1), Order 20 (except rules 1, 3 and 4) of the RHC applies to the amendment of the documents.

**58. Clerical mistakes and slips**

The Tribunal may, at any time, correct—

- a clerical mistake in a judgment, decision or determination or an order; or
- an error arising from an accidental slip or omission.

### Part 3

#### Review of Reviewable Determination

##### 59. Interpretation of Part 3

In this Part—

*applicant* (申請人), in relation to an application for leave referred to in rule 60, means the person who applies for the leave;

*respondent* (答辯人), in relation to an application for leave referred to in rule 60, means the person who is named as a respondent in the application.

##### 60. Application for leave

- (1) An application for leave to apply for a review of a reviewable determination under section 84(2) of the Ordinance must be made *ex parte* by filing—
  - (a) a notice of application for leave in Form 7 in the Schedule setting out the relief sought; and
  - (b) an affidavit in support of the application.
- (2) The affidavit must—
  - (a) verify the facts on which the applicant relies; and
  - (b) exhibit the documents relevant to the application.
- (3) If the application is not made within the time prescribed in section 88(1) of the Ordinance, the notice filed under subrule (1)(a) must set out the extension of time sought under section 88(2) of the Ordinance and the grounds for that extension.
- (4) The applicant must, within 1 day after making the application for leave, serve on the respondent all the documents that have been filed under subrule (1).

##### 61. Determination of leave application

- (1) An application for leave under rule 60 may be determined by a member of the Tribunal without a hearing.
- (2) If the application is determined without a hearing, the Registrar must notify the applicant of the result.
- (3) If the Tribunal considers that a hearing is necessary or the applicant requests for a hearing, the Registrar must—
  - (a) fix a date for the hearing; and
  - (b) give notice to the applicant and such other persons as the Tribunal thinks fit.
- (4) The hearing must be open to the public, unless the Tribunal otherwise directs.

##### 62. Leave with terms and directions

- (1) If the Tribunal grants leave to make an application for a review of a reviewable determination under section 84(2) of the Ordinance, it may—
  - (a) specify the grounds in respect of which leave is granted; and
  - (b) impose terms (including those relating to costs and security) that the Tribunal thinks fit.
- (2) If the Tribunal grants leave to make an application for review, then, unless the Tribunal otherwise directs, the application for leave is to stand as an application for that review, and the application for that review is regarded as having been made on the date on which the application for leave is made.
- (3) The Tribunal may give directions as to the further conduct of the application for the review when it grants leave to make the application or at any time after that.

**63. Appeal against refusal of leave**

If the Tribunal—

- (a) refuses to grant leave to make an application for a review of a reviewable determination under section 84(2) of the Ordinance; or
- (b) grants leave to make the application on terms,

the applicant may appeal to the Court of Appeal against the decision in accordance with Order 59 of the RHC.

**64. Application for review**

- (1) The applicant of an application for leave under rule 60 must, within 7 days after the day on which the leave was granted, serve on—
  - (a) the respondent and the interested parties that the Tribunal may direct—
    - (i) the order granting the leave; and
    - (ii) any directions given by the Tribunal under rule 62(3); and
  - (b) the interested parties that the Tribunal may direct all the documents that have been filed under rule 60(1).
- (2) The applicant must not raise, or rely on, a ground that is not set out in the application for leave under rule 60 in the hearing of the application for review except with the permission of the Tribunal.

**65. Response by respondent**

The respondent must, within 28 days after the day on which the documents are served under rule 64(1)—

- (a) file a response and an affidavit in opposition; and

- (b) serve on the applicant and the interested parties that the Tribunal may direct—
  - (i) the response; and
  - (ii) the affidavit in opposition.

**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 an order granting the relief sought, proceed to hear and determine the application, or give any directions that the Tribunal thinks fit.
- (3) If the Tribunal makes an 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) An application for the purpose of subrule (4) must be made within 14 days after the day on which the order is served.

**67. Affidavit in reply**

The applicant may, within 28 days after the day on which the response and affidavit in opposition are served under rule 65—

- (a) file an affidavit in reply; and
- (b) serve the affidavit on the respondent and the interested parties that the Tribunal may direct.

**68. Further documents filed or served by parties**

After an affidavit in reply is filed under rule 67 or after the expiry of the 28-day period mentioned in that rule, the parties to the

application must not file or serve any further documents except with the leave of the Tribunal.

**69. Withdrawal of application**

- (1) The applicant may, at any time, withdraw the application filed under rule 60 with the leave of the Tribunal.
- (2) The Tribunal may grant leave to the applicant to withdraw the application on the terms that the Tribunal thinks fit.

**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).
-

## Part 4

### Applications for Enforcement before Tribunal

#### Division 1—Preliminary

#### 72. Interpretation of Part 4

In this Part—

*applicant* (申請人)—

- (a) in relation to an application referred to in rule 74 or 83, means the person who files an originating notice of application under that rule;
- (b) in relation to an application referred to in rule 84, means the person who files a summons under that rule;

*disqualification application* (取消資格申請) means an application for a disqualification order under section 101(1) of the Ordinance;

*enforcement application* (強制執行申請) means an application referred to in rule 73(a), (b) or (c);

*respondent* (答辯人)—

- (a) in relation to an application referred to in rule 74 or 83, means the person who is named as a respondent in the originating notice of application filed under that rule; or
- (b) in relation to an application referred to in rule 84, means the person who is named as a respondent in the summons filed under that rule.

### Division 2—Application for Enforcement of Commitments and other Enforcement before Tribunal

#### 73. Application of Division 2

This Division applies to—

- (a) an application for enforcement of a commitment under section 63 of the Ordinance;
- (b) an application for enforcement before the Tribunal under Part 6 of the Ordinance;
- (c) an application for an order imposing a financial penalty under section 169 of the Ordinance; and
- (d) a disqualification application made together with an enforcement application.

#### 74. Mode of application

- (1) An application to which this Division applies must be made by filing an originating notice of application in Form 1 in the Schedule setting out—
  - (a) the grounds for the application;
  - (b) the material facts relating to the application; and
  - (c) the relief sought by the applicant.
- (2) The applicant must serve a copy of the originating notice of application on the respondent.

#### 75. Response by respondent

A respondent who is served with an originating notice of application under rule 74(2) must, within 28 days after the day on which the document is served—

- (a) file a response; and
- (b) serve a copy of the response on the applicant.



**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 an order granting the relief sought, proceed to hear and determine the application, or give any directions that the Tribunal thinks fit.
- (3) If the Tribunal makes an 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) An application for the purpose of subrule (4) must be made within 14 days after the day on which the order is served.

**77. Reply by applicant**

The applicant may, within 28 days after the day on which the response is served under rule 75—

- (a) file a reply to the response; and
- (b) serve a copy of the reply on the respondent.

**78. Directions by Tribunal after application**

- (1) At any stage after an originating notice of application is filed under rule 74, the Tribunal may, from time to time and in addition to its power exercisable under rules 25 and 27, give any directions about the further conduct of the application, including the filing of—
  - (a) an affidavit;
  - (b) any witness statements;
  - (c) any expert evidence; and

(d) any other evidence or documents.

- (2) For an application referred to in rule 73(d), the direction under subrule (1) may provide that—
  - (a) the application is to be heard by a member of the Tribunal; or
  - (b) the part relating to the disqualification application is to be transferred to be heard by the Registrar.

**79. Withdrawal of application**

- (1) The applicant may, at any time, withdraw the application filed under rule 74 with the leave of the Tribunal.
- (2) The Tribunal may grant leave to the applicant to withdraw the application on the terms that the Tribunal thinks fit.

**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.

### **Division 3—Application for Disqualification Orders and for Leave to Participate in Company’s Affairs**

#### **82. Application for disqualification order**

A disqualification application—

- (a) made together with an enforcement application referred to in rule 73(d) is to be made in accordance with Division 2; and
- (b) made as a separate application is to be made in accordance with this Division.

#### **83. Application for disqualification order as separate application**

- (1) A disqualification application as a separate application must be made by filing—
  - (a) an originating notice of application in Form 1 in the Schedule; and
  - (b) an affidavit in support of the application.

- (2) The applicant must serve on the respondent a copy of the originating notice of application and the supporting affidavit filed under subrule (1).

#### **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).

#### **85. Opposition**

The respondent who is served with an originating notice of application or a summons under rule 83 or 84 must, within 28 days after the day on which the documents are served—

- (a) file an affidavit in opposition; and
- (b) serve a copy of the affidavit on the applicant.

#### **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 an order granting the relief sought, proceed to hear and determine the application, or give any directions that the Tribunal thinks fit.
- (3) If the Tribunal makes an 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) An application for the purpose of subrule (4) must be made within 14 days after the day on which the order is served.

**87. Affidavit in reply by applicant**

The applicant may, within 21 days after the day on which the affidavit in opposition is served under rule 85—

- (a) file an affidavit in reply to the affidavit in opposition; and
- (b) serve a copy of the affidavit in reply on the respondent.

**88. Further documents filed or served by parties**

After an affidavit in reply is filed under rule 87 or after the expiry of the 21-day period mentioned in that rule, the parties to the application must not file or serve any further documents except with the leave of the Tribunal.

**89. Hearing in public**

- (1) An application referred to in rule 83 or 84 may be heard before the Registrar.
- (2) The Registrar may transfer the application to be heard by a member or members of the Tribunal if the Registrar thinks fit.
- (3) The application must be heard in open court, whether by the Registrar or a member or members of the Tribunal, unless the Registrar or member or members otherwise direct.

**90. Making and setting aside of order**

- (1) The Tribunal may make a disqualification order against the respondent whether or not the respondent appears at the hearing.

- (2) A disqualification order made in the absence of the respondent may be varied or set aside by the Tribunal on the terms that the Tribunal thinks just.

**91. Withdrawal of application**

- (1) The applicant may, at any time, withdraw the application filed under rule 83 or 84 with the leave of the Tribunal.
  - (2) The Tribunal may grant leave to the applicant to withdraw the application on the terms that the Tribunal thinks fit.
-

## Part 5

### Follow-on Actions

#### 92. Interpretation of Part 5

In this Part—

*defendant* (被告人), in relation to a claim under section 110 of the Ordinance, means the person who is named as the defendant in the claim;

*follow-on action* (後續訴訟) means a claim under section 110 of the Ordinance;

*plaintiff* (原告人), in relation to a claim under section 110 of the Ordinance, means the person who brings the claim.

#### 93. Mode of commencing follow-on actions

- (1) A follow-on action must be brought by filing an originating notice of claim in Form 8 in the Schedule and a statement of claim.
- (2) The statement of claim may be indorsed on the originating notice of claim.
- (3) However, if the statement of claim is not indorsed under subrule (2), 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.
- (4) 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.

- (5) The statement of claim must specify the particular part of the decision or commitment referred to in subrule (4) which determines or admits that a relevant act is a contravention of a conduct rule.
- (6) 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 (3).
- (7) 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.

#### 94. Applications under section 111(2) of Ordinance

- (1) An application for permission under section 111(2) of the Ordinance must be made by filing—
  - (a) an originating notice of application in Form 1 in the Schedule; and
  - (b) an affidavit in support of the application setting out the grounds for the application and the material facts in support.
- (2) The Tribunal may only grant permission after seeking the representation of the party against whom the follow-on action is to be brought.
- (3) The Tribunal may receive the representation at a hearing or in writing.

**95. Defence by defendant**

The defendant must, within 28 days after the day on which the originating notice of claim is served under rule 93(6)—

- (a) file a defence; and
- (b) serve a copy of the defence on the plaintiff.

**96. Reply by plaintiff**

The plaintiff may within 28 days after the defence is served under rule 95—

- (a) file a reply; and
- (b) serve a copy of the reply on the defendant.

**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) make an 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.

**Part 6****Proceedings Transferred from CFI****98. Interpretation of Part 6**

In this Part—

*transfer order* (移交令) means an order made by the CFI for the transfer of proceedings from the CFI to the Tribunal under section 113 of the Ordinance.

**99. Procedures after transfer of proceedings from CFI to Tribunal**

- (1) The Registrar must, as soon as practicable after the receipt of the documents sent under Order 78A, rule 3 of the RHC in relation to a transfer order—
  - (a) give notice of the transfer and the receipt of the documents to—
    - (i) all the parties to the proceedings transferred by the transfer order; and
    - (ii) the Commission; and
  - (b) appoint a date for a hearing before the Tribunal for giving directions as to the further conduct of the proceedings.
- (2) A party must, within 14 days after the receipt of the notice given under subrule (1)(a), in writing acknowledge receipt of the notice.
- (3) At the hearing mentioned in subrule (1)(b), the Tribunal may give any directions as to the further conduct of the proceedings, including the procedures to be adopted in the proceedings.

**100. Proceedings transferred from CFI to Tribunal: effects of transfer**

- (1) Proceedings transferred by a transfer order are regarded as having been transferred to the Tribunal on the date on which the order is made, unless the Tribunal 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 Tribunal; 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 Tribunal.
- (3) The document referred to in subrule (2) includes the document issued, served, filed or lodged on a date in relation to the proceedings in the CFI before the Tribunal is established.
- (4) On the transfer of the proceedings, any judgment, decision, determination or order made by the CFI in relation to the proceedings before the transfer has effect in the Tribunal as if the judgment, decision, determination or order had been made by the Tribunal on the date on which it was made by the CFI, unless the Tribunal otherwise directs.
- (5) The judgment, decision, determination or order referred to in subrule (4) includes any judgment, decision, determination or order made by the CFI in relation to the proceedings before the Tribunal is established.
- (6) The transfer of the proceedings does not affect—
  - (a) any right of appeal to the CFI or the Court of Appeal against—

- (i) the transfer order itself; or
  - (ii) any judgment, decision, determination or order made by the CFI in the proceedings before the transfer; or
  - (b) the right to enforce in the CFI any judgment, decision, determination or order made by the CFI before the transfer.
- (7) If, before the transfer of the proceedings, an application had been made to the CFI in relation to the proceedings but not yet been determined, the application is regarded as having been made to the Tribunal and to be dealt with by the Tribunal accordingly.
- (8) The application referred to in subrule (7) includes an application made to the CFI before the Tribunal is established.
- (9) If the application referred to in subrule (7) is part-heard in the CFI, the Tribunal may either—
- (a) continue to hear the application as if the earlier proceedings relating to the application had taken place before the Tribunal; or
  - (b) require the application to be heard afresh.
- \_\_\_\_\_

**Schedule**

[rules 2, 7, 8,  
10, 20, 21, 23,  
36, 42, 47, 60,  
70, 71, 74, 80,  
81, 83, 84,  
93 & 94]

**Forms**

**Form 1**<sup>note 1</sup>

ORIGINATING NOTICE OF APPLICATION

[rules 2, 7, 74, 83 & 94]

CT<sup>note 2</sup> \_\_\_\_\_ 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<sup>note 3</sup>.
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)<sup>note 4</sup>
5. (State the relief(s) sought)<sup>note 5</sup>
6. (State the grounds on which the relief(s) is/are sought)<sup>note 6</sup>

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

<sup>note 1</sup> 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.

<sup>note 2</sup> Insert the appropriate prefix.

<sup>note 3</sup> 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).

<sup>note 4</sup> For example—

1. State the complaints and identify the breach with reference to the relevant merger rule or conduct rule if 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 a 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 if the application is made under section 169 of that Ordinance.

<sup>note 5</sup> 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.

<sup>note 6</sup> The 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**

[rules 8, 23, 47, 70,  
71, 80, 81 & 84]

CT<sup>note 1</sup> \_\_\_\_\_ 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

Inter Partes Summons

Let all parties concerned attend before ..... sitting in

chambers (open to public/not open to public<sup>note 2</sup>)/in open court<sup>note 2 and note 3</sup>  
 at the Competition Tribunal at ..... (address of  
 the Competition Tribunal) on ..... day, the ..... day  
 of ..... 20..... at ..... a.m./p.m.<sup>note 2</sup> 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  
 (or the name of the Applicant/  
 Plaintiff/Respondent/  
 Defendant who acts in person)<sup>note 2</sup>

Time estimate: ..... (mins/hrs/days)

<sup>note 1</sup> Insert the appropriate prefix.

<sup>note 2</sup> Delete whichever is inapplicable.

<sup>note 3</sup> If an application is made under rule 84(1) of the Competition Tribunal  
 Rules, the application will be heard in open court.

**Form 3**

APPLICATION FOR LEAVE TO INTERVENE IN PROCEEDINGS

[rules 20 & 21]

CT<sup>note 1</sup> \_\_\_\_\_ of \_\_\_\_\_

IN THE COMPETITION TRIBUNAL OF THE  
HONG KONG SPECIAL ADMINISTRATIVE REGION

Competition Tribunal \_\_\_\_\_ No. \_\_\_\_\_ of \_\_\_\_\_

Between

A.B. Applicant

And

C.D. Respondent

Application for Leave to Intervene in Proceedings

To: The Registrar, Competition Tribunal

The intended intervener applies for leave to intervene in the above

specified proceedings before the Competition Tribunal.

1. Name of the intended intervener: Competition Commission/.....
2. Matters in issue affecting the intended intervener:
3. Reasons for making the application: [include any exceptional circumstances for extending time for making the application]
4. Particulars of the relief sought by the intended intervener:
5. The intended intervener's address in Hong Kong for service:

Dated this ..... day of ..... 20.....

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

.....  
Intended Intervener/  
Solicitors for the Intended Intervener

<sup>note 1</sup> Insert the appropriate prefix.  
\_\_\_\_\_

**Form 4**

APPLICATION FOR SUMMONS TO A WITNESS

[rule 36]

CT<sup>note 1</sup> \_\_\_\_\_ 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.<sup>note 2</sup> 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  
 (or the name of the Applicant/  
 Plaintiff/Respondent/  
 Defendant who acts in person)<sup>note 2</sup>

**Note:** The Applicant for a summons to a witness is required to pay

\$500 as deposit under rule 36 of the Competition Tribunal Rules.

<sup>note 1</sup> Insert the appropriate prefix.

<sup>note 2</sup> Delete whichever is inapplicable.

**Form 5**

SUMMONS TO A WITNESS TO APPEAR  
(AND TO PRODUCE DOCUMENTS)

[rule 36]

CT<sup>note 1</sup> \_\_\_\_\_ 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

Summons to a Witness to Appear (and to Produce Documents)

To: [Name, address and occupation of the witness]

You are summoned to attend at a sitting of the Competition Tribunal to be held at ..... (address of the Competition Tribunal) on .....day, the ..... day of ..... 20..... at ..... a.m./p.m.<sup>note 2</sup> to give evidence in the above proceedings (and also to bring with you and produce [state particulars of the documents required]).

This summons was issued on behalf of the ..... (Applicant/Plaintiff/Respondent/Defendant, etc.)

Dated this ..... day of ..... 20.....

.....  
Presiding Member, Competition Tribunal

<sup>note 1</sup> Insert the appropriate prefix.

<sup>note 2</sup> Delete whichever is inapplicable.

**Form 6**

NOTICE OF APPEAL AGAINST DECISIONS OF REGISTRAR OF  
COMPETITION TRIBUNAL

[rule 42]

CT<sup>note 1</sup> \_\_\_\_\_ 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<sup>note 2</sup>) at the Competition Tribunal at .....  
(address of the Competition Tribunal) on .....day, the .....  
day of ..... 20..... at ..... a.m./p.m.<sup>note 2</sup> on the  
hearing of an application on the part of ..... for an order to  
be made that<sup>note 3</sup>—

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  
 (or the name of the Applicant/  
 Plaintiff/Respondent/  
 Defendant who acts in person)<sup>note 2</sup>

Time estimate: ..... (mins/hrs/days)

<sup>note 1</sup> Insert the appropriate prefix.

<sup>note 2</sup> Delete whichever is inapplicable.

<sup>note 3</sup> State the object of the application.

\_\_\_\_\_

**Form 7**

NOTICE OF APPLICATION FOR LEAVE TO REVIEW A  
 REVIEWABLE DETERMINATION

[rules 2 & 60]

CT<sup>note 1</sup> \_\_\_\_\_ of \_\_\_\_\_

IN THE COMPETITION TRIBUNAL OF THE  
 HONG KONG SPECIAL ADMINISTRATIVE REGION

Competition Tribunal \_\_\_\_\_ No. \_\_\_\_ of \_\_\_\_\_

Notice of Application for Leave to Apply for a Review of a Reviewable  
 Determination

To: The Registrar, Competition Tribunal

The Applicant applies for leave to make an application for a review of a reviewable determination of the Competition Commission/ Communications Authority<sup>note 2</sup> [and for an extension of time under section 88(2) of the Competition Ordinance]<sup>note 3</sup>.



Name, description and address of the Applicant <sup>note 4</sup> :	
The capacity of the Applicant in making this application <sup>note 5</sup> :	
Name, description and address of the Respondent:	
Determination in respect of which review is sought:	
Indicate the applicable paragraph number and the type of decision specified in the definition of <i>reviewable determination</i> in section 83 of the Competition Ordinance <sup>note 6</sup> :	
Relief sought [state briefly but clearly the terms in respect of which relief(s) is/are sought]:	

Name, description and address of all interested parties (if any) known to the Applicant:	
Name and address of the solicitors for the Applicant:	
Signed	Dated

Grounds on which the relief(s) is/are sought<sup>note 7</sup> :

(If an extension of time is sought under section 88(2) of the Competition Ordinance, set out the grounds here).

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

.....  
 Applicant/Solicitors for the Applicant

- note 1 Insert the appropriate prefix.
- note 2 You may select the Communications Authority if it performs the functions of the Competition Commission under section 159 of the Competition Ordinance.
- note 3 Delete if not applicable.
- note 4 Insert the address of the Applicant in Hong Kong for service.
- note 5 Specify the capacity according to section 85(1) or (2) of the Competition Ordinance.
- note 6 For example: paragraph (a) of the definition of *reviewable determination* in section 83 of the Competition Ordinance—a decision regarding an agreement, made by the Competition Commission under section 11 of the Competition Ordinance.
- note 7 The grounds must be supported by an affidavit which verifies the facts relied on.

\_\_\_\_\_

<b>Form 8</b>
---------------

(Form for an action under Part 5 of the Competition Tribunal Rules)

ORIGINATING NOTICE OF CLAIM

[rules 2 & 93]

CT<sup>note 1</sup> \_\_\_\_\_ 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)<sup>note 2</sup>
  
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)<sup>note 3</sup>
  
7. (State concisely the nature of claim and the relief sought)<sup>note 4</sup>
  
8. (Statement of claim/see statement of claim filed separately under rule 93(3) of the Competition Tribunal Rules<sup>note 5)note 6 and note 7</sup>)

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]

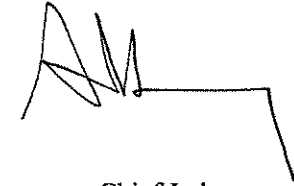
Issued from the Registry of the Competition Tribunal this ..... day of ..... 20.....

- 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 statement of claim must be verified by a statement of truth in accordance with Order 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(3) of the Competition Tribunal Rules. Otherwise, the Plaintiff may apply for confidential treatment of the information under rule 37 of those 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.



Chief Judge

26th May 2015

---

**Explanatory Note**

These Rules prescribe the practice and procedure to be followed in the Competition Tribunal (*Tribunal*) in all matters with respect to which the Tribunal has jurisdiction and any matters incidental or relating to that practice or procedure. Unless the Competition Ordinance (Cap. 619) (*Ordinance*) or these Rules provide otherwise, the Rules of the High Court (Cap. 4 sub. leg. A) (*RHC*) apply in respect of proceedings before the Tribunal. This is provided for under section 144 of the Ordinance.

2. There are 6 Parts and 1 Schedule in these Rules.
3. Part 1 contains the definitions used in these Rules. It also sets out the application of these Rules and the application of the RHC to proceedings before the Tribunal (*proceedings*).
4. Part 2 sets out the practice and procedure applicable to all proceedings. This Part contains 10 Divisions—
  - (a) Division 1 specifies the commencement of the proceedings and interlocutory application in the Tribunal. It also covers the use of specified forms.
  - (b) Division 2 provides for the service of documents, including substituted service and service out of the jurisdiction.
  - (c) Division 3 provides for the application for intervention by a person having a sufficient interest in the proceedings. It also covers addition of parties to the proceedings.
  - (d) Division 4 provides for the discovery and inspection of documents in the proceedings.
  - (e) Division 5 provides for case management and interrogatories.

- (f) Division 6 prescribes the procedures in the Tribunal hearings, including the disposal of the proceedings and applications, the taking of evidence and confidential treatment of information.
  - (g) Division 7 sets out the jurisdiction and duties of the Registrar of the Tribunal.
  - (h) Division 8 provides for the procedures for appeal to the Tribunal and the Court of Appeal.
  - (i) Division 9 applies to the transfer of proceedings from the Tribunal to the Court of First Instance under section 114 of the Ordinance.
  - (j) Division 10 sets out the supplementary provisions including the sittings of the Tribunal and its power to extend or abridge time under these Rules. It also covers the use of language in the Tribunal.
5. Part 3 provides for the procedures for the review of the Competition Commission's reviewable determination for the purpose of section 84 of the Ordinance. A reference to determination includes a determination made by the Communications Authority if the Authority performs the functions of the Commission under section 159 of the Ordinance. The procedures include the mode of application for leave and the application for the review itself.
  6. Part 4 covers the application procedures for enforcement before the Tribunal in cases where there are breaches of the competition rules, including the application procedures for disqualification orders. This Part also applies to the Competition Commission's application for enforcement of commitments under section 63 of the Ordinance.
  7. Part 5 covers the procedures for making a claim in a follow-on action to which section 110 of the Ordinance applies.
  8. Part 6 is applicable to the proceedings transferred from the Court of First Instance to the Tribunal under section 113 of the Ordinance.

9. The Schedule specifies the forms to be used for an application under the Ordinance or these Rules.

## Competition Tribunal Fees Rules

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

### 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

(1) In these Rules—

*CTR* (《審裁處規則》) means the Competition Tribunal Rules;  
*proceedings* (法律程序) means any proceedings before the Tribunal;

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

*Registry* (登記處) means the Registry of the Tribunal;

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

(2) A reference in Schedule 1 or 2 to a provision of the RHC is a reference to the provision as applied under the CTR.

### 3. Fees payable in Tribunal

(1) A fee of the amount specified in the First Schedule to the High Court Fees Rules (Cap. 4 sub. leg. D) for the item that bears the item number specified in column 3 of Schedule I is payable to the Registrar in connection with any proceedings for the matter described in column 2 of that Schedule opposite that item number.

(2) A fee of the amount specified or described in column 3 of Schedule 2 is payable to the Registrar in connection with any

proceedings for the matter described in column 2 of that Schedule opposite that amount.

### 4. Power of Registrar

- (1) The Registrar may reduce, remit or defer payment of a fee payable under these Rules as he or she thinks fit in a particular case.
- (2) If the Registrar exercises the power under subrule (1), he or she must endorse on the relevant document a note of the reduction, remission or deferment and the reason for it.

### 5. Proof of payment of fees

A fee paid under these Rules is evidenced by causing the relevant document to be franked with the amount of the fee.

**Schedule 1**

[rr. 2 & 3(1)]

**Matters for which Fees Equivalent to those Fees Specified in High Court Fees Rules (Cap. 4 sub. leg. D) are Payable**

Column 1	Column 2	Column 3
Item	Description	Corresponding item in First Schedule to the High Court Fees Rules
1.	Taking evidence, etc.	
	(a) For every witness examined for taking evidence for future use by a member of the Tribunal or the Registrar, per day or part of a day	3
	(b) Attendance of a public officer to produce or prove in the Tribunal a record or document, per hour or part of an hour	4
	(c) Attendance by the Registrar or officer of the Tribunal outside the Tribunal, per occasion	7
2.	Copies	
	(a) Copy of documents typed in the Registry and certifying it—	

Column 1

Column 2

Column 3

Item	Description	Corresponding item in First Schedule to the High Court Fees Rules
	(i) for the first copy, per page	8(a)
	(ii) for each additional copy, per page	8(b)
	(b) Photostatic copy of a document made in the Registry, per page	9(a)
	(c) Photostatic copy and certification, per page	9(b)
	(d) Photostatic copy of a library book, per page	9(c)
3.	Translations and transcriptions	
	(a) Translation made in the Registry of a document from Chinese into English, or vice versa including certificate, per page	10(a)
	(b) Transcription and translation made in the Registry, from Chinese into English, or vice versa, of a tape or recording including certificate, per page	10(b)
	(c) Certifying translations made outside the Registry, from Chinese into English, and vice versa, per page	11(a)



Column 1	Column 2	Column 3
Item	Description	Corresponding item in First Schedule to the High Court Fees Rules
	(d) Certifying transcription made outside the Registry, from Chinese into English, and vice versa, of a tape or recording, per page	11(b)
4.	Searches Search in the Registry, for each document or file referred to or required	12
5.	Service Service of a document by a bailiff, per document	13
6.	Execution (a) Arresting any person (b) Execution of writ of possession, per writ	14 15
7.	Bailiff's expenses Watchman's fee, per day or part of a day	17(a)
8.	Miscellaneous fees (a) Authentication of document by	21

Column 1	Column 2	Column 3
Item	Description	Corresponding item in First Schedule to the High Court Fees Rules
	the Registrar, per document	
(b)	Sealing a notice in Form No. 80 under Order 50, rule 11(2) of the RHC, per notice	22
(c)	Sealing an injunction order made before the commencement of proceedings, per order	23

**Schedule 2**

[rr. 2 &amp; 3(2)]

**Matters for which Specified Fees are Payable**

Column 1 Item	Column 2 Description	Column 3 Fees
1.	Commencement of proceedings	
	(a) Sealing an originating notice of application mentioned in rule 7, 74, 83 or 94 of the CTR, per notice	\$1,045.00
	(b) Sealing a notice of application for leave to apply for review of a reviewable determination mentioned in rule 60 of the CTR, per notice	\$1,045.00
	(c) Sealing an originating notice of claim mentioned in rule 93 of the CTR, per notice	\$1,045.00
2.	Setting down for trial or entry for hearing in the Tribunal	
	(a) Setting down an application, action, matter or issue for trial, for each application, action, matter or issue	\$1,045.00
	(b) Entering a reference for hearing of an assessment of damages by the Registrar, for each case	\$1,045.00

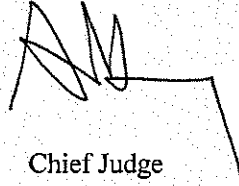
Column 1 Item	Column 2 Description	Column 3 Fees
3.	Taking evidence, etc.	
	(a) Attendance of a public officer to give evidence as an expert witness, per hour or part of an hour	The amount as assessed by the member of the Tribunal or the Registrar or, if no such amount is assessed, \$440.00
	(b) Attendance of a public officer to give evidence other than as an expert witness—	
	(i) for the first 2 hour or part of it	\$440.00
	(ii) for each subsequent hour or part of it	\$220.00
4.	Bailiff's expenses	
	(a) Caretaker's fee, per day or part of a day	An amount equal to the actual expenditure
	(b) Caretaker or watchman's transportation expenses	An amount equal to the actual expenditure plus 20% of that expenditure
5.	Taxation of costs	
	(a) Filing of a notice of commencement of taxation	

Column 1 Item	Column 2 Description	Column 3 Fees
	under Order 62, rule 21(1) of the RHC or on any assessment or determination of costs under an order made by the Tribunal or the Court of First Instance or an Ordinance (except assessment under Order 62, rule 9 or 9A of the RHC),	
	for every \$100 or fraction of \$100 of the amount claimed—	
	(i) for the first \$100,000	\$6.00
	(ii) for the next \$150,000	\$4.00
	(iii) for the next \$250,000	\$3.00
	(iv) for the remainder	\$1.00
	(b) Withdrawal of a bill of costs within 7 days after the application for setting down the taxation under Order 62, rule 21A(1) of the RHC is made	An amount equal to 10% of the taxing fee which would be payable if the bill was to be allowed in full or \$1,000, whichever is the lesser
6.	Execution	
	(a) Sealing a warrant for arrest of a respondent or defendant, or for the attachment of property before judgment, per warrant	\$1,045.00

Column 1 Item	Column 2 Description	Column 3 Fees
	(b) Sealing a writ of execution or writ of possession, per writ	\$1,045.00
	(c) Sealing a prohibitory order, per order	\$1,045.00
	(d) Sealing an order for the examination of a judgment debtor (or an officer of the judgment debtor), per order	\$1,045.00
	(e) Sealing a prohibition order, per order	\$1,045.00
	(f) Sealing an order imposing a pecuniary penalty under section 93 of the Ordinance, per order	\$1,045.00
	(g) Sealing an order imposing a financial penalty under section 169 of the Ordinance, per order	\$1,045.00
	(h) Sealing an order of declaration made under the Ordinance, per order	\$1,045.00

26th May 2015

---



Chief Judge

### Explanatory Note

These Rules are made under section 158 of the Competition Ordinance (Cap. 619) for prescribing fees payable in connection with the applications to the Competition Tribunal (*Tribunal*) and proceedings in the Tribunal.

2. Rule 2 defines the terms used in the Rules.
3. Rule 3(1) read together with Schedule 1 specifies the fees payable to the Registrar of the Tribunal (*Registrar*) by reference to the corresponding fees specified in the High Court Fees Rules (Cap. 4 sub. leg. D). As a result, the fees for similar matters in the High Court and the Tribunal can be standardized. The matters covered are taking evidence, copies of documents, translations, searches, service of documents, execution of orders and bailiff's expenses.
4. Rule 3(2) read together with Schedule 2 specifies the fees payable to the Registrar in relation to other items such as commencement of proceedings, setting down for trial, taxation of costs, sealing an order imposing a financial penalty or order of declaration, etc.
5. Rule 4 empowers the Registrar to reduce, remit or defer payment of the fees.
6. Rule 5 specifies the method of evidencing the payment of the fees.

**Competition Tribunal Suitors' Funds Rules**

**Contents**

Rule	Page
1. Commencement.....	1
2. Interpretation .....	1
3. Lodgment of funds .....	1
4. Receipt to be given by Registrar.....	2
5. Keeping of accounts and register.....	3
6. Annual statement of accounts.....	3
7. Securities .....	4
8. Principal money and dividends in respect of or on securities to be placed in Registrar's books.....	5
9. Payment out of money lodged in Tribunal .....	5
10. Payment out to be ascertained by certificate of Registrar.....	6
11. Payment of costs.....	6
12. Payment out, transfer, etc. of funds to personal representatives of persons entitled to payment.....	6
13. Order directing payment out, transfer, etc. of funds to describe persons entitled to payment etc. ....	8
14. Order directing investment of money lodged in Tribunal .....	8
15. Order directing other dealings with money lodged in	

Rule	Page
Tribunal .....	8
16. Carrying over of funds to separate account.....	9
17. Power of Registrar to invest money.....	9
18. Surplus income .....	11
19. Cost of administering Competition Tribunal Suitors' Funds Account .....	11
20. Evidence by affidavit of life or of fulfilment of condition .....	12
21. Evidence by affidavit or statutory declaration of other matters .....	12
22. Certificate of amount and description of funds .....	12
23. Transcript of account in Registrar's books.....	13
24. Transfer of unclaimed money in Tribunal .....	13
Schedule Forms .....	14

## Competition Tribunal Suitors' Funds Rules

(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 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.

**10. Payment out to be ascertained by certificate of Registrar**

- (1) If an order directs any sum to be ascertained by a certificate of 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 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 Registrar must state in a certificate of 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 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 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.

**Schedule**

**Forms**

Form 1

[r. 4(3)]

COMPETITION TRIBUNAL SUITORS' FUNDS RULES

*Receipt*

IN THE COMPETITION TRIBUNAL OF  
THE HONG KONG SPECIAL ADMINISTRATIVE REGION

(*Title of cause or matter.* No.        of        )

Received from

\*the following securities (*insert particulars here*) / a packet marked  
purporting to contain (*insert list of contents here*) / the following movable property (*insert particulars here*).

\*Delete as appropriate.

(Signature)

Registrar

Dated this        day of        ,        .

Form 2 [r. 4(4)]

COMPETITION TRIBUNAL SUITORS' FUNDS RULES

*Receipt*

IN THE COMPETITION TRIBUNAL OF  
 THE HONG KONG SPECIAL ADMINISTRATIVE REGION

(Title of cause or matter. No. of )

Receipt no. Amount received

Date of receipt

Action no.

Date of order (if applicable)

Payer

Purposes of payment

Payment code Payment method Amount received

Form 3 [r. 7(4)]

COMPETITION TRIBUNAL SUITORS' FUNDS RULES

*Authority to company or corporation to register transfer of securities*

IN THE COMPETITION TRIBUNAL OF  
 THE HONG KONG SPECIAL ADMINISTRATIVE REGION

(Title of cause or matter. No. of )

To \_\_\_\_\_ Limited,  
 Hong Kong.

Please register transfer of securities Nos. \_\_\_\_\_ of (name of  
*company or corporation*) from \_\_\_\_\_ to the  
 Registrar of the Tribunal.

(Signature)

Registrar

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

Form 4 [r. 7(5)]

COMPETITION TRIBUNAL SUITORS' FUNDS RULES

*Certificate of registration of securities*

IN THE COMPETITION TRIBUNAL OF  
THE HONG KONG SPECIAL ADMINISTRATIVE REGION

The securities Nos. \_\_\_\_\_ of *(name of company or corporation)*  
have this day been transferred to the Registrar of the Tribunal as  
authorized.

(Signature)

Secretary of \_\_\_\_\_, Limited

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

Form 5 [r. 10(1)]

COMPETITION TRIBUNAL SUITORS' FUNDS RULES

*Certificate of ascertained sums*

IN THE COMPETITION TRIBUNAL OF  
THE HONG KONG SPECIAL ADMINISTRATIVE REGION

*(Title of cause or matter. No. \_\_\_\_\_ of \_\_\_\_\_)*

I certify that under the order dated \_\_\_\_\_, \_\_\_\_\_, the sums  
stated in the schedule to this certificate amounting in the whole to  
\$ \_\_\_\_\_ have been ascertained to be the sums payable under the  
above order to the persons respectively named in respect of *(state  
purpose of payment)*.

(Signature)

Registrar

Dated this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_

Schedule

Name	Address (if ascertained)	Amount to be paid

Form 6 [r. 11(1)]

COMPETITION TRIBUNAL SUITORS' FUNDS RULES

*Certificate of taxed costs*

IN THE COMPETITION TRIBUNAL OF

THE HONG KONG SPECIAL ADMINISTRATIVE REGION

(Title of cause or matter. No. of )

I certify that I have taxed the bill of costs of (name of party) against (name of party) on (date of taxation) pursuant to an order by (name of judge) dated , and allow as follows:

(Basis of costs)

Solicitors' profit costs	\$
Disbursements	\$
Costs of taxation	\$
Taxing fees	\$
Allowed at	\$

The above taxed costs and fees are payable to (name of payee) of (address of payee) out of the funds in the Tribunal.

(Signature)

Registrar

Dated this day of , .

Form 7

[r. 12(3)]

COMPETITION TRIBUNAL SUITORS' FUNDS RULES

Declaration

IN THE COMPETITION TRIBUNAL OF THE HONG KONG SPECIAL ADMINISTRATIVE REGION

(Title of cause or matter. No. of )

I (name and address of applicant) solemnly and sincerely declare that I am the (degree of relationship) and next or one of the next of kin of (name of deceased) and that I am entitled to take out the administration to his or her estate and to receive the sum of \$ directed to be paid to him or her by the order dated , .

And I further declare that the total value of the assets of the deceased including the above amount does not exceed \$5,000, and I certify that the death-bed and funeral expenses of the deceased have been paid.

I make this solemn declaration conscientiously believing it to be true and by virtue of the provisions of the Oaths and Declarations Ordinance (Cap. 11).

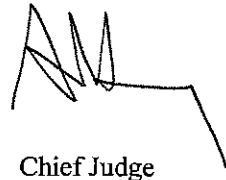
(Signature of applicant)

Declared at

Before me this day of , .

(Signature)

Person authorized by law to take  
and receive the declaration under  
the Oaths and Declarations  
Ordinance (Cap. 11)



Chief Judge

26th May 2015

---

**Explanatory Note**

These Rules relate to the administration of the suitors' funds kept by the Competition Tribunal (*Tribunal*) established under the Competition Ordinance (Cap. 619).

2. Rule 1 provides for commencement.
3. Rule 2 contains the definitions used in the Rules.
4. Rule 3 requires all funds to be lodged with the Registrar of the Tribunal (*Registrar*) and the Registrar to maintain an account called the "Competition Tribunal Suitors' Funds Account" (*Account*).
5. Rule 4 requires the Registrar to issue a receipt for a lodgment. The rule also sets out the requirements of the receipt.
6. Rule 5 provides that the Registrar must keep records of all funds lodged in the Tribunal, including records of their withdrawal, transfer, investment, etc.
7. Rule 6 requires the Registrar to prepare an annual statement of the accounts kept under rule 5.
8. Rule 7 allows securities to be lodged in the Tribunal. The rule also covers the procedures relating to their transfer.
9. Rule 8 requires any principal money or dividends received for securities lodged in the Tribunal to be entered in the Registrar's books.
10. Rule 9 prescribes the means of paying out the money lodged in the Tribunal and the time for the payment.
11. Rule 10 deals with the case where outgoing payments are ascertained by a certificate of the Registrar.
12. Rule 11 prescribes the details that a certificate of the Registrar must contain where payment of costs has to be taxed.



13. Rule 12 provides for the circumstances in which funds may be paid, transferred, etc. to the personal representatives of the persons entitled to the payment.
14. Rule 13 requires an order directing the payment, transfer, etc. of funds to name the persons entitled to the payment.
15. Rule 14 covers the procedures following the making of an order directing the investment of the money lodged in the Tribunal.
16. Rule 15 covers the procedures following the making of an order directing other dealings with the money lodged in the Tribunal.
17. Rule 16 provides for the carrying over of funds to a separate account.
18. Rule 17 empowers the Registrar to invest the money lodged in the Tribunal. The rule also provides for the accrual of interest on the investment.
19. Rule 18 requires any surplus in the Account to be transferred to the general revenue.
20. Rule 19 provides that the cost of administering the accounts kept under the Rules is to be paid out of the general revenue.
21. Rule 20 requires evidence of life or fulfilment of condition to be given by an affidavit. Rule 21 allows evidence of other matters to be given by an affidavit or a statutory declaration.
22. Rule 22 provides that the Registrar must, on request, issue a certificate of the amount and description of the funds specified in the request. The rule also sets out the requirements of the certificate.
23. Rule 23 provides that the Registrar must, on request, issue a transcript of the account specified in the request.
24. Rule 24 provides for the transfer of unclaimed money in the Tribunal to the general revenue.

25. The Schedule specifies the forms to be used under the Rules.

## Rules of the High Court (Amendment) Rules 2015

(Made by the Rules Committee of the High Court under section 54 of the High Court Ordinance (Cap. 4))

### 1. Commencement

These Rules come into operation on a day to be appointed by the Rules Committee of the High Court by notice published in the Gazette.

### 2. Rules of the High Court amended

The Rules of the High Court (Cap. 4 sub. leg. A) are amended as set out in rules 3 to 7.

### 3. Order 59, rule 1 amended (application of Order to appeals)

Order 59, rule 1(2), after “District Court”—

**Add**

“or the Competition Tribunal”.

### 4. 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 interlocutory decision, determination or order relates are *inter partes*.”.

### 5. Order 59, rule 2C amended (refusal by single judge of application for leave to appeal)

Order 59, rule 2C(1)—

**Repeal**

“or 2B(3)”

**Substitute**

“, 2B(3) or 2BA(1)”.

### 6. Order 59, rule 4 amended (time for appealing)

Order 59, after rule 4(4)—

**Add**

- “(5) In relation to an appeal from the Competition Tribunal or the Registrar of the Tribunal under the Competition Ordinance (Cap. 619), a notice of appeal must be served under rule 3(5) within—
- (a) if leave to appeal to the Court of Appeal is required under sections 154(2)(c) and 155(1) of that Ordinance, 7 days after the date on which leave to appeal is granted; and
- (b) if an appeal lies as of right against—

- (i) any decision, determination or order of the Tribunal under section 154(1) of that Ordinance;
- (ii) any interlocutory decision, determination or order of the Tribunal under section 155(2) of that Ordinance; or
- (iii) any decision, determination or order of the Registrar of the Tribunal under rule 43 of the Competition Tribunal Rules,  
28 days after the date on which the decision, determination or order is made.”.

#### 7. Orders 78A and 78B added

After Order 78—

Add

#### “Order 78A

#### Transfer of Proceedings from Court of First Instance to Competition Tribunal under Competition Ordinance

##### 1. Interpretation of this Order (O. 78A, r. 1)

In this Order—

*transfer order* (移交令) means an order made by the Court for the transfer of proceedings from the Court to the Competition Tribunal under section 113 of the Competition Ordinance (Cap. 619).

##### 2. Transfer of proceedings from Court to Competition Tribunal (O. 78A, r. 2)

- (1) A transfer order may be made by the Court either of its own motion or on application of a party.

- (2) The application must be made by filing a summons setting out the scope of the proceedings, or the part of the proceedings, to be transferred to the Competition Tribunal.

##### 3. Duties of Registrar of the High Court after transfer of proceedings from Court to Competition Tribunal (O. 78A, r. 3)

If the Court has made a transfer order, the Registrar of the High Court must, as soon as practicable after the transfer order has been sealed, send to the Registrar of the Competition Tribunal—

- (a) all documents issued out of, or filed or lodged in, the Court in the proceedings transferred by the transfer order;
- (b) any notes of the proceedings made by a judge of the Court or the Registrar or a master of the High Court; and
- (c) any transcripts or other records of the proceedings.

##### 4. Proceedings transferred from Court to Competition Tribunal: effects of transfer (O. 78A, r. 4)

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

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

### Order 78B

#### Transfer of Proceedings from Competition Tribunal to Court of First Instance under Competition Ordinance

##### 1. Interpretation of this Order (O. 78B, r. 1)

In this Order—

*transfer order* (移交令) means an order made by the Competition Tribunal for the transfer of proceedings from the Tribunal to the Court under section 114 of the Competition Ordinance (Cap. 619).

##### 2. Procedures after transfer of proceedings from Competition Tribunal to Court (O. 78B, r. 2)

- (1) The Registrar of the High Court must, as soon as practicable after the receipt of the documents sent under rule 48 of the Competition Tribunal Rules in relation to a transfer order—
  - (a) give notice of the transfer and the receipt of the documents to—
    - (i) all the parties to the proceedings transferred by the transfer order;
    - (ii) the Competition Commission; and
    - (iii) the Communications Authority if it performs the functions of the Commission under

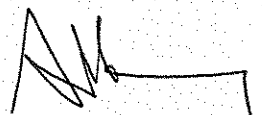
section 159 of the Competition Ordinance (Cap. 619); and

- (b) appoint a date for a hearing before the Court for giving directions as to the further conduct of the proceedings.
  - (2) A party must, within 14 days after the receipt of the notice given under paragraph (1)(a), in writing acknowledge receipt of the notice.
  - (3) At the hearing mentioned in paragraph (1)(b), the Court may give any directions as to the further conduct of the proceedings, including the procedures to be adopted in the proceedings.
- ##### 3. 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

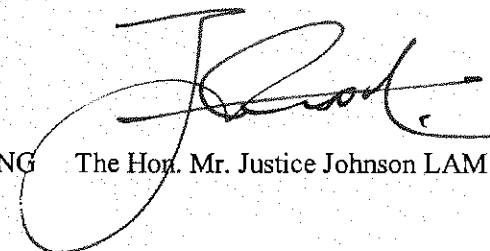
Tribunal in relation to the proceedings before the transfer has effect in the Court as if the judgment, decision, determination or order had been made by the Court on the date on which it was made by the Tribunal, unless the Court otherwise directs.

- (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.”

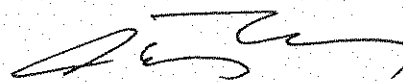
Made this 29th day of May 2015.



The Hon. Mr. Justice Andrew CHEUNG  
Chief Judge of the High Court



The Hon. Mr. Justice Johnson LAM V.P.



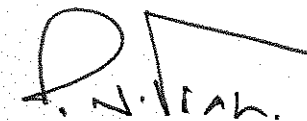
The Hon. Mr. Justice Thomas AU



Stewart WONG, S.C.



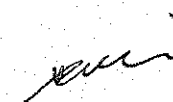
Liza Jane CRUDEN



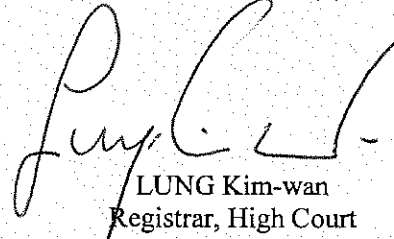
Nigel FRANCIS



Brian GILCHRIST



Herbert LI



LUNG Kim-wan  
Registrar, High Court

### Explanatory Note

These Rules amend the Rules of the High Court (Cap. 4 sub. leg. A) (*principal Rules*) to provide for the practice and procedure in the Court of First Instance (*Court*) for the transfer of proceedings under the Competition Ordinance (Cap. 619) (*CO Ordinance*).

2. A new Order 78A is added to the principal Rules to prescribe the procedure for the transfer of proceedings from the Court to the Competition Tribunal (*Tribunal*) for the purpose of section 113 of the CO Ordinance. The new Order sets out the duties of the Registrar of the High Court after the transfer. It also makes clear the effects of the transfer.
3. A new Order 78B is added to the principal Rules to prescribe the procedure for the transfer of proceedings from the Tribunal to the Court for the purpose of section 114 of the CO Ordinance. The new Order sets out the duties of the Registrar of the High Court after the transfer. It also makes clear the effects of the transfer.
4. These Rules also amend Order 59 of the principal Rules by revising rules 1, 2C and 4 of, and adding a new rule 2BA to, that Order to provide for the service of a notice of appeal in relation to an appeal from the Tribunal (or the Registrar of the Tribunal) to the Court of Appeal under the CO Ordinance and Competition Tribunal Rules.