

L.N. 112 of 2015

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

Liza Jane CRUDEN

Brian GILCHRIST

LUNG Kim-wan
Registrar, High Court

Stewart WONG, S.C.

Nigel FRANCIS

Herbert LI

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.