

# Competition (Amendment) Bill 2014

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# A BILL

## To

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

Enacted by the Legislative Council.

### **Part 1**

#### **Preliminary**

**1. Short title**

This Ordinance may be cited as the Competition (Amendment) Ordinance 2014.

**2. Enactments amended**

The enactments specified in Parts 2 and 3 are amended as set out in those Parts.

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## Part 2

### Amendments to Competition Ordinance (Cap. 619)

#### 3. Section 143 amended (powers of Tribunal)

Section 143(1)—

##### Repeal

“a superior court of record”

##### Substitute

“the Court of First Instance”.

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

After section 151—

##### Add

##### “151A. Order prohibiting departure from Hong Kong

(1) The Tribunal may make an order prohibiting a person from leaving Hong Kong (*prohibition order*)—

(a) to facilitate the enforcement or to secure the compliance of—

(i) a judgment or order against the person for the payment of a specified sum of money;

(ii) a judgment or order against the person for the payment of an amount to be assessed; or

(iii) a judgment or order against the person requiring the person to deliver any property or perform any other act; or

(b) to facilitate the pursuance of a civil claim (other than a judgment)—

(i) for the payment of money or damages; or

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

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

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

#### **151B. Duration and discharge of prohibition order**

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

- (5) A reference to the initial period in subsection (2) is a reference to the period of 1 month mentioned in subsection (1) or (4).
- (6) A person on whose application a prohibition order is made must, as soon as reasonably possible after the prohibition order is no longer required—
  - (a) serve on the Director of Immigration a notice stating that fact; and
  - (b) file with the Registrar of the Tribunal a copy of the notice mentioned in paragraph (a).
- (7) If the notice under subsection (6) is served and the copy of the notice under that subsection is filed on the same date, the prohibition order ceases to have effect on that date, but if the notice is served and the copy of the notice is filed on different dates, the prohibition order ceases to have effect on the later of those dates.
- (8) The Tribunal may, on application, discharge a prohibition order, either absolutely or subject to any conditions that it thinks fit.
- (9) In this section—

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

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

### 151C. Contravention of prohibition order

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



the person may be arrested by an immigration officer, a police officer or a bailiff of the Tribunal.

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

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

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

**5. Sections 153A and 153B added**

After section 153—

**Add****“153A. Interest on debts and damages**

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

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

**153B. Interest on judgment debts**

- (1) A judgment debt is to carry simple interest—
  - (a) at the rate that the Tribunal specifies by order; or
  - (b) in the absence of such an order, at the rate that the Chief Justice from time to time determines by order,

on the total amount of the judgment debt, or on the part of the judgment debt that for the time being remains unpaid, from the date of the judgment until payment.
- (2) Interest under this section may be calculated at different rates for different periods.”.

**6. Section 155A added**

Part 10, Division 3, after section 155—

**Add**

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

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

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

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

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

Section 156—

**Repeal**

“senior deputy registrar, deputy registrar”

**Substitute**

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

**8. Sections 156A to 156E added**

After section 156—

**Add**

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

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

- (b) may exercise the same powers and perform the same duties, in so far as they are applicable to the business and proceedings of the Tribunal, as the Registrar of the High Court.
- (2) The Registrar of the Tribunal has any other jurisdiction, privileges, powers and duties that may be conferred or imposed on him or her by or under the rules of the Tribunal made under section 158 or any other law.

### **156B. Jurisdiction and powers of deputy registrars of Tribunal**

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

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

#### **156C. Jurisdiction and powers of temporary registrars of Tribunal**

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

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

#### **156D. Protection of Registrar etc. of Tribunal**

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

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

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

**9. Section 157A added**

After section 157—

**Add**

**“157A. Reimbursement of witness expenses**

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

**10. Section 158 amended (Tribunal rules)**

(1) Before section 158(2)(a)—

**Add**

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

(2) Section 158(2)(d)—

**Repeal**

“; and”

**Substitute a semicolon.**

(3) Section 158(2)(e)—

**Repeal the full stop**

**Substitute**

“; and”.

(4) After section 158(2)(e)—

**Add**

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



**11. Section 158A added**

Part 10, Division 4, after section 158—

**Add**

**“158A. Suitors’ Funds Rules**

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

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

### **Amendments to Other Ordinances**

#### **Division 1—Amendment to High Court Ordinance (Cap. 4)**

**12. Section 54 amended (rules of court)**

Section 54(2)(a)—

**Repeal**

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

**Substitute**

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

#### **Division 2—Amendments to Evidence Ordinance (Cap. 8)**

**13. Section 81 amended (warrant or order to bring up prisoner to give evidence)**

(1) Section 81(2)—

**Repeal**

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

**Substitute**

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

(2) Section 81(2)—

**Repeal**

“or Labour Tribunal” (wherever appearing)

**Substitute**

“, Labour Tribunal or Competition Tribunal”.

**Division 3—Amendment to Legal Practitioners Ordinance  
(Cap. 159)**

**14. Section 39H amended (application to Assessment Board for higher rights of audience)**

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

**Add**

“the Competition Tribunal.”.

**Division 4—Amendment to Higher Rights of Audience  
Rules (Cap. 159 sub. leg. AK)**

**15. Rule 2 amended (interpretation)**

Rule 2, definition of *higher court of Hong Kong*, before paragraph (a)—

**Add**

“(aa) the Competition Tribunal;”.

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

16. **Schedule 2 amended (proceedings in relation to which sections 5, 5A, 6, 7 and 8 of this Ordinance do not apply under section 13(1) of this Ordinance)**

Schedule 2, after paragraph (c)—

**Add**

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

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

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

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

**Add**

“Competition Tribunal”.

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## **Explanatory Memorandum**

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

### **Part 1—Preliminary**

2. Clause 1 sets out the short title.

### **Part 2—Amendments to Competition Ordinance**

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

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

### **Part 3—Amendments to Other Ordinances**

12. Clause 12 amends section 54(2)(a) of the High Court Ordinance (Cap. 4) to enable the Rules Committee constituted under section 55 of that Ordinance to make rules of court for prescribing the procedure in connection with the transfer of proceedings between the Court of First Instance and the Competition Tribunal.

13. Clause 13 amends section 81(2) of the Evidence Ordinance (Cap. 8) to empower a member of the Competition Tribunal to issue a warrant or order for bringing up any person in lawful custody before the Competition Tribunal to enable the person to, among other things, give evidence in any proceedings before the Competition Tribunal.
14. Clause 14 amends the definition of *higher rights of audience* in section 39H(3) of the Legal Practitioners Ordinance (Cap. 159) by extending it to cover rights of audience before the Competition Tribunal.
15. Clause 15 amends the definition of *higher court of Hong Kong* in rule 2 of the Higher Rights of Audience Rules (Cap. 159 sub. leg. AK) by extending it to cover the Competition Tribunal.
16. Clause 16 adds a reference to the Competition Tribunal to Schedule 2 to the Electronic Transactions Ordinance (Cap. 553). The effect is that sections 5, 5A, 6, 7 and 8 of that Ordinance do not apply in relation to information given, presented or retained, documents served or signatures required for the purposes of any proceedings before the Competition Tribunal unless any rule of law relating to those proceedings provides for their application.
17. Clause 17 widens the definition of *court* in section 2(1) of the Shenzhen Bay Port Hong Kong Port Area Ordinance (Cap. 591) by including a reference to the Competition Tribunal in the list of courts in Part 1 of Schedule 4 to that Ordinance.