

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

**Responses to Issues arising from  
the Meetings on 9 and 14 April 2015**

**PURPOSE**

This paper sets out the Judiciary's responses to the issues discussed with Members at the second and third meetings on 9 April and 14 April 2015. It also sets out the proposed technical changes to the draft rules upon further discussion with the Assistant Legal Advisor after the meetings.

**RESPONSES**

**A. Competition Tribunal Rules ("CTR")**

**Rule 2 (Interpretation)**

**(a) Consider amending the definition of "originating document" under rule 2(1) of the draft CTR to make it clearer that "originating document" does not include a separate statement of claim containing confidential information referred to in the proposed changes to rule 93(1)(b) of the draft CTR.**

2. For the sake of improved clarity, the Judiciary agrees to amend the definition of "originating document" under rule 2(1) of the CTR to indicate more clearly that "originating document" does not refer to the separate statement of claim in the proposed revised rule 93(1)(b) of the CTR (please see paragraphs 39 and 40 below).

3. For consistency, the Judiciary suggests adopting a more generic expression in the revised definition so that such clarification not only applies to the originating document for rule 93, but also to the originating documents in the other parts of the CTR. For example, affidavit required for an application for leave to apply for a review of a reviewable determination under rule 60 of the CTR will not be regarded as "originating document" either.

4. The proposed changes to the definition of “originating document” (for both the English and Chinese provisions) are shown in marked-up mode at Annex A.

**(b) To consider amending the meaning of "intervener" in paragraph (a) of the definition of "party" under rule 2(1) of the draft CTR to spell out that "intervener" refers to any person/party allowed to intervene in the proceedings under rules 20 and 21 of the draft CTR.**

5. To enhance clarity, the Judiciary agrees to clarify the meaning of “intervener” in rule 2(1) of the CTR by providing a new definition for this term. This will include any person allowed to intervene in the proceedings under rules 20 and 21 of the CTR, including the Competition Commission. The proposed changes are at Annex A.

### **Rule 13 (Method of service of originating documents)**

**(c) To consider amending rule 13(8) of the draft CTR to specify that a party must first apply for an order for substituted service before the Tribunal makes such an order and that such an application should be supported by affidavit.**

6. The Judiciary accepts that it would be procedurally clearer if rule 13(8) of the CTR is amended to specify that the Tribunal will only make an order for substituted service after an application is made and that such an application should be supported by affidavit. The proposed refinements to rule 13 are shown at Annex A.

**(d) To consider whether it is necessary to clarify in the relevant Practice Direction (“PD”) that it is normally the Registrar who will consider such applications for substituted service, though members of the Tribunal may also do so.**

7. While rule 13(8) of the draft CTR provides flexibility for either the Registrar or a member of the Tribunal to consider applications for substituted service, the Judiciary intends to follow the arrangements in the Court of First Instance (“CFI”) in that it will normally be the Registrar who considers such applications. Members of the Tribunal may however do so as

necessary, e.g. when dealing with an ex parte injunction and it is anticipated that there will be difficulty in service through the normal way.

8. As this is a well-established practice in the CFI and flexibility is needed, the Judiciary will consider whether it is desirable and necessary to spell out the above arrangement in the relevant PD.

**Rule 20 (Intervention by third party (other than the Commission))**

**(e) To examine the arrangements of the competition-related courts in the other overseas common law jurisdictions to see (i) whether there is any caselaw about the term “sufficient interest”; and (ii) whether they have a definition of “sufficient interest” in their related procedural rules.**

**(f) Subject to the above researches, whether the relevant provisions in the draft CTR, such as rule 20(1) indicating that a person (other than the Competition Commission) having a sufficient interest in the proceedings of the Tribunal might intervene in the proceedings of the Tribunal, should be refined.**

9. As explained in paragraph 19 of the paper titled “Responses to the Issues Raised by the Assistant Legal Advisor on the Draft Competition Tribunal Rules”, the precise scope of the term “sufficient interest” has to be developed by the Tribunal in its jurisprudence.

10. The Judiciary has examined the arrangements in respect of the United Kingdom (“the UK”), Canada and Australia. The expression “sufficient interest” is only used in the UK’s competition-related procedural rules. Rule 16 of the UK’s Competition Appeal Tribunal Rules 2003 (“CATR”) provides that :

*“(1) Any person who considers he has sufficient interest in the outcome may make a request to the Tribunal for permission to intervene in the proceedings.” (underline added)*

There is no elaboration in the UK’s CATR the types of people or organizations who can intervene.

11. According to the research of the Department of Justice (“DoJ”), it appears that there is no direct case authority on the meaning and scope of the expression of “sufficient interest” in the context of intervention in competition proceedings in the UK. But, DoJ notes from the discussions at the Committee Stage in the House of Lords for the enactment of CATR that Lord Simon of Highbury used representative bodies such as Consumers Associations or trades institutions as examples of persons who would have “sufficient interest” to appeal a decision.

12. In Hong Kong, the expression “sufficient interest” appears in quite a number of existing legislation in Hong Kong, e.g. section 21K(3) of the High Court Ordinance (Cap. 4), Order 53, rule 3(7) of the Rules of High Court (“RHC”) (Cap. 4A) in relation to applications for judicial review and section 85 of the Competition Ordinance (Cap. 619) about who may apply for review of reviewable determinations.

13. In the light of Members’ views, the Judiciary has reviewed the matter again by taking into account, among others, the above additional information. The Judiciary remains of the view that the expression “sufficient interest” has to be left for consideration and elucidation by reference to the facts of actual cases. Who has sufficient interest to intervene is sensitive to the precise issues raised in the particular case. The Tribunal needs to take into account the relationship between the parties and the matter to which the claim relates and all other relevant circumstances.

14. In light of the above considerations, as agreed by Members at the meeting on 14 April 2015, the Judiciary will not refine rule 20. But, the Judiciary will carefully consider whether it is appropriate to revise the relevant PD to provide more guidance in this aspect. The Judiciary notes in particular Members’ advice that care is needed when preparing any further guidance to avoid any possible abuse of excessive intervention.

**Rule 22 (Addition of parties)**

- (g) To provide more information, caselaw or otherwise, on the possible scenarios where a party may be substituted under Order 15, rule 7 of the RHC.**

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

- (a) the death or bankruptcy of a party; or
- (b) the assignment, transmission or devolution of an interest or liability of a party.

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

**Death or bankruptcy of a party**

17. According to DoJ, on the death of a party, the general rule is that the cause of action survives against or for the benefit of the estate. Where a party to an action dies or becomes bankrupt during proceedings but the cause of action survives, the action does not abate by reason of the death or bankruptcy (Order 15, rule 7(1) of the RHC), and continues after an order is duly obtained from the court under Order 15, rule 7(2) of the RHC to carry on the proceedings.

18. In proceedings before the Tribunal, if an individual claimant/respondent in a follow-on action dies, assuming the cause of action survives against or for the benefit of the estate, the executors or administrators may likewise apply for an order under Order 15, rule 7(1) of the RHC to carry on the proceedings. They will be considered as the "substituted party" under rule 22 of the draft CTR.

19. In the case of bankruptcy, if an individual claimant/respondent is adjudicated bankrupt during the course of the proceedings, his right of

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

Assignment, transmission or devolution of interest or liability

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

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

**Rule 28 (Hearing in public)**

(h) **To rectify the Chinese reference to the Tribunal in rule 28(2).**

21. This has been rectified as shown at **Annex A**.

**Rule 30 (Right of audience)**

- (i) **To provide information on which rule(s) of the RHC and/or other courts/tribunals on which rule 30(1)(b) of the draft CTR was based.**
- (j) **To consider amending rule 30 of the draft CTR to specify that overseas lawyers must be properly admitted on ad hoc basis before they could represent a party to the proceedings of the Tribunal.**
- (k) **To examine whether there was a need to revise rule 30(1)(b)(ii) of the draft CTR to make it clearer that the intent of the rule was to permit persons other than counsel or solicitor having a right of audience to represent a party to the proceedings of the Tribunal.**

22. As the Judiciary explained at the sub-committee meetings, legal representatives with a right of audience before the Tribunal sitting in open court or in chambers are those who have a right of audience before the CFI in its civil jurisdiction sitting in open court or in chambers respectively.

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

24. The above arrangements have been set out in the relevant draft PD prepared by the Judiciary and agreed by all the relevant stakeholders, particularly the Bar Association.

25. Given Members' views, the Judiciary has carefully reviewed the matter. *Ad hoc* admission of foreign lawyers is governed by section 27 of the Legal Practitioners Ordinance (Cap. 159). The requirement generally applies to proceedings in various levels of courts and tribunals. There is no need to repeat this requirement in the CTR. The Judiciary also notes that such requirement is not spelt out in similar right of audience provisions for other courts and tribunals either, e.g. section 15 of the District Court Ordinance (Cap. 336) and rule 26 of the Lands Tribunal Rules (Cap. 17A).

26. That said, as agreed by Members at the meeting on 14 April 2015, the Judiciary will review if the relevant paragraphs of the PD need to be refined in the light of Members' concerns. Depending on the extent of changes, the Judiciary may consult the relevant stakeholders, including the Bar Association, again as necessary.

**(l) To consider allowing applications for ad hoc admission of foreign lawyers under Cap. 159 to be handled by members of the Tribunal, instead of Judges of the CFI.**

27. At the moment, applications for *ad hoc* admission of foreign lawyers for all courts and tribunals are mainly handled by the Chief Judge of the High Court personally (with some by the Judges of the Court of Appeal), but not by the trial Judge. This practice is adopted mainly to avoid any perception of the trial Judge receiving communication from one party to the proceedings only. It is because while the Judge handling such applications

will hear the applicant for admission (who is usually represented by the lawyers acting for the party in the underlying proceedings seeking the applicant's admission), DoJ and/or the Bar Association etc. on the proposed admission, the Judge concerned will not hear the other party or parties in the underlying proceedings. So, if the trial Judge is invited to process such applications, this may lead to unilateral communication between the Judge and one of the parties. This may affect the perceived impartiality of the court.

28. Besides, admission applications are considered more from the public policy and public interest perspectives. The Judge's familiarity with the law and the case concerned etc. may not be critical.

29. Because of the above considerations, the Chief Judge of the High Court takes the view that it is not appropriate to make any exceptional arrangements in relation to admission for proceedings before the Tribunal. This was agreed by Members at the meeting on 14 April 2015.

**Rule 40 (Frivolous or vexatious proceedings)**

**(m) To consider whether Order 32A of the RHC would be applicable to the Tribunal so that the Tribunal might make an order against a person who has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings.**

30. As the Judiciary explained at the meeting on 14 April 2015, Order 32A of the RHC will not apply to the Tribunal because only the CFI has power to make an order under section 27 of Cap. 4 against a vexatious litigant. There is no similar empowering provision in Cap. 619.



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

- (n) To consider providing a definition of an "unless" order referred to in rule 44(2)(g) of the draft CTR to make the term more easily-understood by the general public.

31. As explained by the Judiciary at the meetings, "unless" orders are commonly made by the Judges and Judicial Officers. Relevant details of such orders are provided in a PD issued by the Judiciary<sup>1</sup>.

32. Given Members' suggestion and in the interest of enhancing the readability of the CTR, the Judiciary agrees to provide a definition of the term in rule 44. The proposed definition is at Annex A.

**Rule 49 (Proceedings transferred from Tribunal to CFI: effects of transfer)**

- (o) To consider replacing "make directions" with "give directions" in rule 49(1) for consistency with other similar provisions.

33. The proposed change is accepted as shown on Annex A.

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

- (p) To consider providing more details in the relevant PD on the procedures for the application for leave to search documents under rule 56(2).

34. The Judiciary will consider this suggestion when refining the relevant draft PD.

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<sup>1</sup> The relevant PD is PD16.5 titled "peremptory orders".

**Rules 66, 76 and 86 (Failure to file response and Failure to file affidavit in opposition)**

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

36. The proposed changes are shown at **Annex A**.

**Rules 70 and 71**

(q) **To consider spelling out that in rule 70, rule 71 and any other rules of the draft CTR which make reference to the filing of a summons that Form 2 in the Schedule of the CTR should be used for filing a summons.**

37. As the Judiciary explained at the meetings, rule 8 of the draft CTR already indicated that all interlocutory applications to the Tribunal must generally be made by filing a summons in Form 2 in the Schedule. As a form is specified for all interlocutory applications, it is strictly speaking not necessary to repeat it in every subsequent rule about interlocutory applications. A similar approach is adopted in rule 4 of the Lands Tribunal Rules (Cap. 17A). The Judiciary stands ready to further clarify this in the relevant PD and/or publicity materials.

38. Despite this, given Members' preference for greater clarity and user-friendliness, the Judiciary agrees to spell out in rule 70, rule 71 and any other rules of the draft CTR which make reference to filing of a summons that Form 2 in the Schedule is the requisite form. The proposed changes are shown at **Annex A**.

### **Rule 93 (Mode of commencing follow-on actions)**

- (r) **To refine the proposed changes to rule 93 of the draft CTR as necessary.**

39. As indicated in the paper entitled “Possible Further Streamlining of Procedures for bringing Follow-On Actions to the Competition Tribunal”, the Judiciary has suggested that the originating notice of claim (i.e. Form 8 in the Schedule) required under rule 93(1)(a) may be combined with the statement of claim required under rule 93(1)(b) under appropriate circumstances (e.g. if the plaintiff has no commercially sensitive information for disclosure). More guidance has also been proposed to be added in Form 8 so that litigants would have a better idea of what a statement of claim should normally cover.

40. The proposal was agreed by Members at the meeting on 9 April 2015, though it was also suggested that the definition of “originating document” in rule 2 of the draft CTR be refined as well. The proposed changes to rule 93 and Form 8 of the CTR have since then been refined at **Annex A**. For the proposed changes to the definition of “originating document”, please see paragraphs 2 to 4 above.

### **Rule 97 (Further conduct after reply or expiry of time for reply)**

- (s) **To clarify in rule 97 whether Order 25 of the RHC applies to follow-on actions.**

41. As the Judiciary explained at the meetings, rule 25 of the draft CTR has already indicated that Order 25 of the RHC applies to the Tribunal proceedings in general, including follow-on actions. Strictly speaking, it is not necessary for this to be repeated in rule 97 again. But in the interest of greater clarity and in the light of Members’ views, the Judiciary has no objection to this. The proposed changes are shown at **Annex A**.

### **Minor Drafting Issues**

42. After the sub-committee meetings, the LegCo’s Assistant Legal Advisor has also raised a few minor drafting issues. Our proposed changes to the CTR arising from his views as appropriate have also been incorporated into **Annex A**.

43. In particular, the Assistant Legal Advisor notes that rule 42(3) of the CTR indicates that an appeal against the decision etc. of Registrar to member of Tribunal will be heard in chambers. The relevant form (i.e. Form 6) after the proposed changes indicates that the hearing may be open to the public or not open to the public. He has asked the criteria for deciding whether a hearing is open to the public or not. In this regard, the Judiciary has issued a PD (i.e. PD 25.1) on the types of hearings that will not be open to the public. Most of the hearings are open to the public.

***B. Amendments to the Rules of the High Court***

**Order 59, rule 1(Application of Order to appeals)**

**(t) To add “the” before “Competition Tribunal”.**

44. The suggestion is agreeable. The proposed refinement is at **Annex B**.

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

**(u) To consider adding a subrule in rule 2BA which is similar to rule 2B(5) which provides that "An application under this rule must be made inter partes if the proceedings to which the judgment or order relates are inter partes".**

45. The Judiciary agrees to the suggestion. The proposed refinement is at **Annex B**.

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

**(v) To change “made in the Tribunal” to “made by the Tribunal” in subrule (3) for consistency.**

46. The suggestion is agreeable. The proposed refinement is at **Annex B**.

***C. Competition Tribunal Suitors' Funds Rules***

**Rule 2 (Interpretation)**

- (w) **To consider replacing “registrar”, where it appears in the draft Suitors’ Funds Rules, with “Registrar” for consistency with the other sets of draft Rules for the Tribunal.**

47. The suggestion is agreeable. Rules which make reference to “registrar” have been revised accordingly. The proposed changes are at **Annex C**.

**Rule 9 (Payment out of money lodged in Tribunal)**

- (x) **To refine the time for out-payment at the Tribunal.**

48. As agreed by Members at the meeting on 14 April 2015, for consistency with the other changes being proposed to the suitors’ funds rules for other courts and tribunals in another legislative exercise, the Judiciary will revise rule 9(3) to align the out-payment hours with the opening hours of the Tribunal’s accounts office. This will provide greater flexibility for account management. The proposed changes are at **Annex C**.

**Rule 17 (Power of registrar to invest money)**

- (y) **To consider changing the Chinese rendition of “business day” referred to in rule 17 from “工作日” to “辦公日” as used in section 261(7) of the Companies Ordinance (Cap. 622).**

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

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

**2. Interpretation**

(1) In these Rules—

*CFI* means the Court of First Instance;

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

*intervener* ( ) means –

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

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

*originating document* (原訴文件) means—

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

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

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

(a) an intervener; and

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

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

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

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

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

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

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

*Tribunal* (審裁處) includes—

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

## 7. Mode of commencement of proceedings

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

## 12. Parties to be served

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

## 13. Method of service of originating documents

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

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



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

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

(9) An application for the purposes of subrule (8) may be made by an affidavit stating the facts on which the application is founded.

### **23. Third party and similar proceedings**

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

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

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

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

(5) In subrule (2)(g)—

“unless” order ( ) means an order made by the Tribunal that—

(a) requires a person to take an action within the period specified in the order; and

(b) specifies the consequence for failure to comply with the requirement under paragraph (a).

**47. Transfer of proceedings from Tribunal to CFI**

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

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

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

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

#### **66. Failure to file response**

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

#### **70. Stay of execution of reviewable determination**

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

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

#### **71. Application to state case for Court of Appeal**

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

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

#### **76. Failure to file response**

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

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

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

#### **81. Interim orders**

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

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

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

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

#### **86. Failure to file affidavit in opposition**

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

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

(1) A follow-on action must be brought by filing ~~at the same time~~—an originating notice of claim in Form 8 in the Schedule and a statement of claim.

(1A) The statement of claim may be indorsed on the originating notice of claim.

(1B) However, if the statement of claim is not indorsed under subrule (1A), the statement of claim and the originating notice of claim may be filed separately, but in this case, the statement and the notice must be filed on the same date, unless the Tribunal otherwise directs.

(2) The originating notice of claim must specify the decision of the specified court or admission in a commitment on which the plaintiff relies to establish a contravention of a conduct rule.

(3) The statement of claim must specify the particular part of the decision or commitment referred to in subrule (2) which determines or admits that a relevant act is a contravention of a conduct rule.

(4) The plaintiff must serve on the defendant a copy of the originating notice of claim and, if applicable, the statement of claim filed under subrule (~~1B~~).

(5) In this rule—

*specified court* (指明法院) means—

- (a) the Tribunal;
- (b) the CFI;
- (c) the Court of Appeal; or
- (d) the Court of Final Appeal.

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

(1) After the reply is filed under rule 96 or after the expiry of the 28-day period mentioned in that rule, the plaintiff must take out a case management summons.

(2) If the plaintiff does not take out a case management summons in accordance with subrule (1), the defendant may—

- (a) take out a case management summons; or
- (b) apply for an order to dismiss the follow-on action.

(3) On application by the defendant for an order to dismiss the follow-on action under subrule (2), the Tribunal may either—

- (a) order to dismiss the action on such terms as the Tribunal thinks just; or

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

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



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

ORIGINATING NOTICE OF APPLICATION

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

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

<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> Grounds must be supported by an affidavit which verifies the facts relied on if so required by the relevant rules of the Competition Tribunal Rules.

**Form 2**

(Form for general inter partes application)  
INTER PARTES SUMMONS

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

CT<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<sup>note 2</sup>

And

C.D. Respondent/Defendant<sup>note 3</sup>

Inter Partes Summons

Let all parties concerned attend before ..... sitting in chambers (open to public/ not open to public<sup>note 4</sup>) at the Competition Tribunal at ..... (address of the Competition

Tribunal) on .....day, the ..... day of .....  
20..... at ..... a.m./p.m.<sup>note 4</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, etc.)

.....  
Solicitors for the Applicant/  
Plaintiff/Respondent/Defendant  
(or the name of the Applicant/  
Plaintiff/Respondent/  
Defendant who acts in person)<sup>note 4</sup>

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

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

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

<sup>note 3</sup> Insert the appropriate name.

<sup>note 4</sup> Delete whichever is inapplicable.

**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, etc.)

.....  
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 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>note2</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, etc.)

.....  
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 8**

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

[rule 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(1B)<sup>note 5)</sup> <sup>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 Plaintiff must file together with this form a separate statement of claim setting out the material facts and relief sought.~~

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

Registrar

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

<sup>note 2</sup> 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.

<sup>note 3</sup> See section 110(3) of the Competition Ordinance.

<sup>note 4</sup> 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.

<sup>note 5</sup> Delete whichever is inapplicable.

<sup>note 6</sup> 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.

<sup>note 7</sup> However, if the plaintiff wishes to maintain the confidentiality of any information contained in the statement of claim, the plaintiff may

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

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

## 在小組委員會審議後 對草擬的《競爭事務審裁處規則》的建議修訂

### 2. 釋義

(1) 在本規則中 —

一方、方 (party) 就法律程序而言，指法律程序的某一方，並包括 —

(a) 介入者；及

(b) 凡審裁處指示根據第 64 條向某有利害關係的一方送達文件 — 該方；

介入者 (intervener) 指 —

(a) 根據第 20 條獲批予許可介入法律程序的人；或

(b) 根據第 21 條獲批予許可介入法律程序的競委會；

主持聆訊成員 (presiding member) 就審裁處聆訊的申請而言，指 —

(a) 根據本條例第 145(2) 條主持聆訊的主任法官；或

(b) 由主任法官根據本條例第 145(2) 條委任主持聆訊的審裁處成員；

司法常務官 (Registrar) 指審裁處的司法常務官；

法律程序 (proceedings) 指在審裁處進行的法律程序；

原訴文件 (originating document) —

(a) 凡 在審裁處進行的法律程序 一是藉將 採用附表中表格 1 的原訴申請通知書、採用附表中表格 7 的申請許可通知書、採用附表中表格 8 的原訴申索通知書，或採用本規則訂明的其他表格某文件 送交存檔而 在審裁處 展開的 — 指該文件；或及

(b) 就根據本條例第 113 條從原訟法庭移交審裁處的法律程序而言，凡在原訟法庭進行的該法律程序 — 是藉將傳訊令狀、原訴傳票、原訴動議或呈請書某文件送交存檔而在原訟法庭展開的 — 指該文件；

**送交存檔** (file)指送交審裁處登記處存檔；

**《高院規則》** (RHC)指《高等法院規則》(第 4 章，附屬法例 A)；

**審裁處** (Tribunal)包括 —

(a) 一名或多於一名審裁處成員；及

(b) 根據本條例或本規則而行使審裁處權力的司法常務官。

(2) 在本規則中，除另有規定外，提述審裁處成員，即包括審裁處的主任法官及副主任法官。

## 7. 展開法律程序的方式

除第 3、4 及 5 部另有規定外，在審裁處進行的所有法律程序，均須藉將採用附表中表格 1 的原訴申請通知書送交存檔而展開。

## 12. 須送達予各方 [中文文本無需修訂]

(1) 除審裁處作出的指示另有規定外，將文件送交存檔的一方，須向其他各方送達該文件。

(2) 審裁處可指示將文件送交存檔的一方，須向其他各方以外的任何人送達該文件。

## 13. 送達原訴文件的方法

(1) 本條適用於向任何人(包括競委會)或由任何人(包括競委會)送達原訴文件。

(2) 根據本規則規定須送達某人的原訴文件，在以下情況下，即屬妥為送達 —

- (a) 將該文件的一份副本，以面交方式送達該人；
  - (b) 如該人是在本司法管轄權範圍內 —
    - (i) 以掛號郵遞方式，註明該人為收件人，按該人的通常地址或最後為人所知的地址，將該文件的副本寄交該人；或
    - (ii) (如該地址設有信箱)將該文件的副本，置於註明該人為收件人的經密封信封內，並放入該信箱；或
  - (c) (如審裁處根據第(8)(a)款作出命令)將該文件的副本，以第(8)(b)款指明的形式送達。
- (3) 除非相反證明成立，根據第(2)(b)款送達的原訴文件 —
- (a) (如屬第(2)(b)(i)款的情況)須視為在該文件的副本根據該款寄交當日之後的第 7 日送達；或
  - (b) (如屬第(2)(b)(ii)款的情況)須視為在載有該文件的副本的信封根據該款放入有關信箱當日之後的第 7 日送達。
- (4) 如原訴文件是根據第(2)(b)款送達的，則證明該文件已妥為送達的誓章，須載有一項陳述，述明 —
- (a) 按宣誓人或(如宣誓人是申請人或原告人的律師，或是該律師的僱員)申請人或原告人的意見 —
    - (i) (如屬第(2)(b)(i)款的情況，而原訴文件的副本，已根據該款寄交)該文件的副本，將會在寄交當日之後的 7 日內，為答辯人或被告人所知悉；或
    - (ii) (如屬第(2)(b)(ii)款的情況，而該文件的副本，已根據該款放入信箱)該文件的副

- 本，將會在放入信箱當日之後的 7 日內，為答辯人或被告人所知悉；及
- (b) (如屬第(2)(b)(i)款的情況)原訴文件的副本，並沒有未能寄交註明的收件人而透過郵遞退回予申請人或原告人。
  - (5) 如答辯人或被告人的律師在原訴文件上註明一項陳述，述明自己是代答辯人或被告人接受該文件的送達，則該文件須視為已在該項註明作出當日，妥為送達答辯人或被告人。
  - (6) 每份供送達答辯人或被告人的原訴文件的副本，均須蓋上審裁處的印章。
  - (7) 本條的效力，受任何條例及本規則的條文所規限，凡有成文法則就向法人團體送達文件的可用方式訂定條文，則本條的效力，尤須受該成文法則所規限。
  - (8) 如審裁處應某方的申請而覺得，該某方按照第(2)(a)或(b)款將文件送達某人，在作出合理的努力後，仍屬不可能，審裁處可—
    - (a) 作出命令，飭令向該人作出替代送達；及
    - (b) 在該命令中，指明審裁處認為合適的送達形式(不論是在報章刊登廣告，抑或是其他形式)。
  - (9) 為第(8)款的目的而提出的申請，可藉述明有關申請所依據的事實的誓章提出。

## 23. 第三方及相類的法律程序

- (1) 除獲審裁處許可外，法律程序的任何一方均不得發出《高院規則》第 16 號命令第 1(1)或 8(1)條規則所指的通知書。

- (2) 根據第(1)款獲批予許可的一方(申請方)，須在審裁處指明的時限內，向屬上述通知書的發出對象的人，送達該通知書。
- (3) 凡有通知書根據第(2)款送達某人，該人無須發出擬抗辯通知書。
- (4) 申請方須在根據第(2)款向某人送達通知書當日之後的 14 日內 —
  - (a) 藉將採用附表中表格 2 的傳票送交存檔向審裁處申請指示；及
  - (b) 向該人及每一其他方送達該傳票。
- (5) 如申請方並沒有按照第(4)款申請指示，則根據第(2)款獲送達通知書的人可 —
  - (a) 藉將採用附表中表格 2 的傳票送交存檔向審裁處申請指示；及
  - (b) 向申請方及每一其他方送達該傳票。
- (6) 除本條另有規定外，《高院規則》第 16 號命令(第 3(2)、(3)及(4)、4(1)及(2)及 5(1)條規則除外)，適用於法律程序。

## 28. 公開聆訊

- (1) 除審裁處另有指示外，所有法律程序的聆訊(非正審申請的聆訊除外)，均須在公開法庭進行。
- (2) 除審裁處另有指示外，所有裁審審裁處的非正審申請的聆訊，均須在內庭進行。

## 44. 本條例第 155(2)條所指的非正審命令(針對該命令提出上訴屬當然權利)

- (1) 凡有 —
  - (a) 循簡易程序裁定任何一方的實質權利的決定、裁定或命令；



- (b) 否決全部或部分虛耗的訟費的命令，或規定由法律代表支付全部或部分虛耗的訟費的命令；
- (c) 根據按第 4 條適用的《高院規則》第 49B 號命令作出的將判定債務人監禁的命令；
- (d) 禁止判定債務人離開香港的命令；
- (e) 因犯藐視審裁處罪而交付羈押的命令；
- (f) 根據本條例第 84 條作出的拒絕就覆核可覆核裁定的申請批予許可的決定；
- (g) 根據本條例第 94(3)及 99(3)條作出的拒絕將限期延長的命令，

則該等決定、裁定或命令即為本條例第 155(2)條所指的、符合以下說明的非正審決定、裁定或命令：針對該等決定、裁定或命令而向上訴法庭提出上訴，屬當然權利。

- (2) 在不局限第(1)(a)款的原則下，以下各項屬循簡易程序裁定任何一方的實質權利的決定、裁定或命令 —
  - (a) 剔除以下項目的命令 —
    - (i) 某項申請或其他法律程序的全部或部分；
    - (ii) 申請通知書、申索通知書、申索陳述書、回應、抗辯書或答覆書的全部或部分；
  - (b) 根據按第 4 條適用的《高院規則》第 14 號命令作出的簡易判決；
  - (c) 在不就訴訟進行全面審訊之下，對其中的法律問題或文件的釋疑解釋作出裁定的決定、裁定或命令；

- (d) 在不就訴訟進行全面審訊之下，在對其中的法律問題或文件的釋疑解釋作出裁定之後，撤銷有關訟案或事宜的決定、裁定或命令；
  - (e) 就某初步爭議點作出的決定、裁定或命令；
  - (f) 以在訴訟程序中無人作出行動為理由，撤銷或剔除申請或其他法律程序的命令；
  - (g) 依據一項“限時履行”的命令而取得的決定或裁定；
  - (h) 拒絕將因欠缺行動而作出的判決作廢的決定；
  - (i) 拒絕容許以下修訂的決定 —
    - (i) 修訂申請通知書或申索書，以加入新爭議點或申索；或
    - (ii) 修訂回應或抗辯書，以加入新爭議點或辯護；
  - (j) 因應承認事實或部分案情而作出的決定、裁定或命令。
- (3) 凡審裁處某成員已經或將會作出某項決定、裁定或命令，在該項決定、裁定或命令是否屬第(1)(a)款所指者的問題上，可向該成員尋求指示。
- (4) 提述第(1)(b)、(c)、(d)及(e)款所指明的命令，即包括拒絕作出、更改或撤銷該等命令的命令。
- (5) 在第(2)(g)款中 —

“限時履行”的命令 (“unless” order)指審裁處作出的、符合以下說明的命令 —

- (a) 要求某人在該命令指明的限期內採取某行動；及
- (b) 指明不遵從(a)段所指的要求的後果。

**47. 法律程序從審裁處移交原訟法庭**

- (1) 審裁處可主動作出移交令，亦可應一方的申請作出移交令。
- (2) 上述申請須藉將採用附表中表格 2 的傳票送交存檔而提出，而該傳票須列明將會移交原訟法庭的法律程序(或法律程序的有關部分)的範圍。

**49. 從審裁處移交原訟法庭的法律程序：移交的效力**[中文文本無需修訂]

- (1) 審裁處在作出移交令時，可就訴訟人儲存金移交原訟法庭一事，作出進一步指示。
- (2) 作出移交令，並不影響 —
  - (a) 針對 —
    - (i) 該命令本身；或
    - (ii) 審裁處於該命令作出前在法律程序中作出的判決、決定、裁定或命令，而向審裁處或上訴法庭提出上訴的權利；或
  - (b) 在審裁處強制執行審裁處於移交前作出的判決、決定、裁定或命令的權利。

**52. 決定、集體豁免命令及承諾等的證明**[只修訂中文文本]

- (1) 在本條例或本規則所指的法律程序中，凡登記冊(或其任何部分)的副本 —
  - (a) 就決定及集體豁免命令而根據本條例第 34 條備存；
  - (b) 就承諾而根據本條例第 64 條備存；及
  - (c) 就合併決定而根據本條例附表 7 第 16 條備存，  
則登記冊(或其任何部分)的如該副本如經競委會的行政總裁或獲其妥為授權的人核證，則該副本

在法律程序中交出時，即須予接納為作為其內所記錄的事宜的表面證據，而無須再作證明。

- (2) 如通訊事務管理局根據本條例第 159(1)條執行競委會的職能，在第(1)款中提述競委會的行政總裁，須理解為包括通訊事務管理局的總監。

#### 60. 申請許可 [只修訂中文文本]

- (1) 本條例第 84(2)條所指的覆核可覆核裁定的許可的申請，須藉將以下文件送交存檔而單方面提出 —
  - (a) 採用附表中表格 7 的通知書，該通知書須列明所尋求的濟助；及
  - (b) 支持該申請的誓章。
- (2) 上述誓章須 —
  - (a) 核實上述申請人所倚據的事實；及
  - (b) 展示攸關該申請的文件。
- (3) 如上述申請沒有在本條例第 88(1)條所訂明的時限內提出，則根據第(1)(a)款送交存檔的通知書，須列明根據本條例第 88(2)條尋求的延長時限，以及延長的理由。
- (4) 申請人須在提出許可申請之後的 1 日內，將所有已根據第(1)款送交存檔的文件，送達答辯人。

#### 66. 沒有將回應送交存檔

- (1) 如答辯人沒有在第 65 條指明的時限內，將回應送交存檔，則申請人可向審裁處提出申請，要求針對答辯人作出命令，批予在有關申請中尋求的濟助。
- (2) 審裁處可作出命令，批予所尋求的濟助、著手對有關申請進行聆訊並作出裁定，或作出審裁處認為合適的指示。

- (3) 如審裁處作出第(2)款所指的命令，該命令須送達答辯人。
- (4) 審裁處可應答辯人的申請，按審裁處認為公正的條款，將有關命令作廢。
- (5) 上述申請，須在有關命令送達當日之後的 14 日內提出。

#### 70. 擱置執行可覆核裁定

根據本條例第 89(2)條就擱置執行某裁定而提出的申請，須藉將以下文件傳票及支持申請的誓章送交存檔而提出 —

- (a) 採用附表中表格 2 的傳票；及
- (b) 支持申請的誓章。

#### 71. 向上訴法庭呈述案件的申請

- (1) 根據本條例第 86 條將法律問題交由上訴法庭裁定的申請，須藉將附表中表格 2 的傳票送交存檔而提出。
- (2) 如上述申請是在根據本條例第 84 條提出的要求覆核的申請獲裁定之後提出的，則須在該裁定作出當日之後的 28 日內提出。
- (3) 申請人須 —
  - (a) 將以案件呈述的草擬本支持的申請送交存檔；及
  - (b) 在該申請及案件呈述的草擬本送交存檔當日之後的 7 日內，將該申請及案件呈述的草擬本，送達有關覆核的每一其他方。
- (4) 審裁處可在經聆訊或不經聆訊的情況下，就上述申請作出裁定。

- (5) 如審裁處不經聆訊而就上述申請作出裁定，司法常務官須將審裁處的決定，通知有關覆核的每一其他方。
- (6) 《高院規則》第 61 號命令第 2 及 3 條規則，適用於第(1)款所提述的申請。

#### 76. 沒有將回應送交存檔

- (1) 如答辯人沒有在第 75 條指明的時限內，將回應送交存檔，則申請人可向審裁處提出申請，要求針對答辯人作出命令，批予在有關申請中尋求的濟助。
- (2) 審裁處可作出命令，批予所尋求的濟助、著手對有關申請進行聆訊並作出裁定，或作出審裁處認為合適的指示。
- (3) 如審裁處作出第(2)款所指的命令，該命令須送達答辯人。
- (4) 審裁處可應答辯人的申請，按審裁處認為公正的條款，將有關命令作廢。
- (5) 上述申請，須在有關命令送達當日之後的 14 日內提出。

#### 80. 根據本條例第 94(3)或 99(3)條延長時限的申請

- (1) 根據本條例第 94(3)或 99(3)條就延長時限而提出的申請，須單方面提出，並須以誓章支持。
- (2) 將延長時限的命令作廢的申請，須 —
  - (a) 藉將採用附表中表格 2 的傳票送交存檔而提出；及
  - (b) 在該命令送達當日之後的 14 日內提出。

### 81. 臨時命令

- (1) 要求根據本條例第 95 條作出臨時命令或延長其有效期的申請，須藉將以下文件送交存檔而提出 —
  - (a) 採用附表中表格 2 的傳票；及
  - (b) 支持該申請的誓章。
- (2) 要求根據本條例第 98 條作出臨時命令的申請，須藉將以下文件送交存檔而提出 —
  - (a) 採用附表中表格 2 的傳票；及
  - (b) 支持該申請的誓章。
- (3) 如情況緊急且有特殊情況，申請可單方面提出，並以列明申請理由的誓章支持。
- (4) 審裁處作出的臨時命令，可包括 —
  - (a) 關於訟費或其他方面的條款；及
  - (b) 審裁處認為公正的條件。
- (5) 受臨時命令影響的一方，可向審裁處提出申請，要求更改該命令，或將之作廢。

### 84. 申請許可參與公司的事務

- (1) 根據本條例第 104(2)條要求審裁處許可，以參與公司的事務的申請，須藉將以下文件送交存檔而提出 —
  - (a) 採用附表中表格 2 的傳票；及
  - (b) 支持該申請的誓章。
- (2) 申請人須向競委會送達根據第(1)款送交存檔的傳票及支持誓章的副本。

### 86. 沒有將反對誓章送交存檔

- (1) 如答辯人沒有在第 85 條指明的時限內，將反對誓章送交存檔，則申請人可向審裁處提出申請，

要求針對答辯人作出命令，批予在有關申請中尋求的濟助。

- (2) 審裁處可作出命令，批予所尋求的濟助、著手對有關申請進行聆訊並作出裁定，或作出審裁處認為合適的指示。
- ~~(3) 如審裁處作出第(2)款所指的命令，該命令須送達答辯人。~~
- ~~(4) 審裁處可應答辯人的申請，按審裁處認為公正的條款，將有關命令作廢。~~
- ~~(5) 上述申請，須在有關命令送達當日之後的 14 日內提出。~~

### 93. 展開後續訴訟的方式

- ~~(1) 後續訴訟須藉將採用附表中表格 8 的原訴申索通知書及申索陳述書以下各項一併送交存檔而提起——
  - ~~(a) 採用附表中表格 8 的原訴申索通知書；及~~
  - ~~(b) 申索陳述書。~~~~
- ~~(1A) 申索陳述書可註在原訴申索通知書之上。~~
- ~~(1B) 然而，若申索陳述書並非根據第(1A)款註在原訴申索通知書之上，則該陳述書及該通知書可分開送交存檔，但在此情況下，除審裁處另有指示外，該陳述書及該通知書須在同一日送交存檔。~~
- (2) 如原告人倚據指明法院的決定，或倚據在承諾中作出的承認，以確立行為守則遭違反，則原訴申索通知書須指明該項決定或承認。
- (3) 第(2)款所提述的決定中裁定有關作為屬違反行為守則的特定部分，或該款所提述的承諾中承認有關作為屬違反行為守則的特定部分，須於申索陳述書中指明。



- (4) 原告人須向被告人送達根據第(1)款送交存檔的原訴申索通知書的副本及(如適用的話)根據第(1B)款送交存檔的申索陳述書的副本。
- (5) 在本條中 —  
**指明法院** (specified court)指 —
- (a) 審裁處；
  - (b) 原訟法庭；
  - (c) 上訴法庭；或
  - (d) 終審法院。

**97. 在答覆後或在答覆時限屆滿後繼續進行的事宜**

- (1) 原告人須在答覆書根據第 96 條送交存檔後，或在該條所述的 28 日限期屆滿後，取得案件管理傳票。
- (2) 如原告人沒有按照第(1)款取得案件管理傳票，被告人可 —
- (a) 取得案件管理傳票；或
  - (b) 申請撤銷有關後續訴訟的命令。
- (3) 如被告人根據第(2)款申請命令撤銷後續訴訟，審裁處可 —
- (a) 按其認為公正的條款，命令撤銷該訴訟；或
  - (b) 在猶如該申請是案件管理傳票的情況下，處理該申請。
- (4) 《高院規則》第 25 號命令(第 1、1A、1C、8、10 及 11 條規則除外)適用於上述案件管理傳票所關乎的法律程序。

原訴申請通知書

[第 7、74、83 及 94  
條]

競爭事務審裁處案件<sup>註</sup>  
<sup>2</sup> \_\_\_\_\_ 年第 \_\_\_\_\_  
宗

香港特別行政區  
競爭事務審裁處

競爭事務審裁處案件編號 \_\_\_\_\_ 年第 \_\_\_\_\_ 宗

A.B. 申請人

及

C.D. 答辯人

原訴申請通知書

1. 本申請根據《競爭條例》第.....條<sup>註 3</sup>提出。
2. (申請人的姓名或名稱、描述及地址)
3. (答辯人的姓名或名稱、描述及地址)
4. (適當地述明申請內容)<sup>註 4</sup>

5. (述明所尋求的濟助)<sup>註 5</sup>

6. (述明尋求濟助的理由)<sup>註 6</sup>

日期：20.....年.....月.....日

.....  
申請人/申請人的代表律師

申請人的代表律師的姓名或名稱及在香港的供送達地址：

致：競爭事務審裁處的司法常務官及[答辯人的姓名或名稱及地址]

本通知書於 20.....年.....月.....日從競爭事務審裁處登記處發出。

**備註：**本通知書在自發出日期起計的 6 個月之後，即不得送達，但如競爭事務審裁處延長本通知書的有效期限，則不在此限。

司法常務官

<sup>註 1</sup> 如沒有為有關法律程序而訂明可用表格，則可使用本表格，但如屬《競爭事務審裁處規則》第 4 部所指的法律程序，則必須使用本表格。

- 註 2 填上適當的案件性質填上顯示案件性質的適當英文字母。
- 註 3 填上根據哪些條文提出本申請(如《競爭條例》第 63、92、94、97、99、104(1)、111(2)或 169 條)。
- 註 4 例如 —
1. 如申請是根據《競爭條例》第 92、94、97 或 99 條提出的，述明投訴內容，並藉提述有關的合併守則或行為守則，指出有關的違反行為。
  2. 如申請是根據該條例第 63 條提出的，藉提述承諾紀錄冊，填上有關承諾，並指出有關的違反行為。
  3. 如申請是根據該條例第 104(1)條提出的，述明該條例第 102 及 103 條在何種情況下獲符合。
  4. 述明為何可以在該條例第 111(1)條所指明的期間內，提起後續訴訟。
  5. 如申請是根據該條例第 169 條提出的，述明該條例第 168 及 169 條在何種情況下獲符合。[中文文本無需修訂]
- 註 5 述明所尋求的濟助，包括《競爭條例》附表 3 或 4 所指的命令、法律程序的訟費，以及該條例第 96 條所指的命令。
- 註 6 如《競爭事務審裁處規則》有關的條文，要求有關理由須以核實所倚據的事實的事實的誓章支持，則該理由須以該誓章支持。

**表格 2**

各方之間的傳票  
(適用於各方之間的一般申請的表格)

[第 8、23、  
47、70、71、80、81 及  
84 條]

競爭事務審裁處案件<sup>註 1</sup>  
\_\_\_\_\_年第\_\_\_\_\_宗

香港特別行政區  
競爭事務審裁處

競爭事務審裁處案件編號\_\_\_\_\_年第\_\_\_\_\_宗

A.B. 申請人/原告人<sup>註 2</sup>

及

C.D. 答辯人/被告人<sup>註 3</sup>

各方之間的傳票

所有有關各方，均須於 20.....年.....  
月.....日星期.....上/下午<sup>註 4</sup>.....時.....  
分.....，到.....位  
於.....  
.....(競爭事務審裁處的地址)的競爭事務  
審裁處，在競爭事務審裁處內庭(該內庭向/不向公眾開  
放)<sup>註 4</sup>的.....席前，出席就.....要求作出  
以下命令的申請而進行的聆訊：[列明所尋求的命令，以  
及根據《競爭條例》及/或《競爭事務審裁處規則》/《高  
等法院規則》甚麼條文作出該命令]，以及有關申請的訟  
費[列明所尋求的訟費命令]。

日期：20.....年.....月.....日

本傳票是由.....取得，其在香港的供送達  
地址是.....。

以下是將獲送達本傳票的所有人/代表律師的姓名或名稱及地址：

致：競爭事務審裁處的司法常務官及[上述的人/代表律師的姓名或名稱及地址]

.....  
.....(申請人/原告人/  
答辯人/被告人等)的代表律師  
(如申請人/原告人/

答辯人/被告人是親自行事，則填寫其姓名或名稱)<sup>註 4</sup>

估計需時：..... (分鐘/小時/日)

註 1 填上適當的案件性質填上顯示案件性質的適當英文字母。

註 2 填上適當的姓名或名稱。

註 3 填上適當的姓名或名稱。

註 4 刪去不適用者。

**表格 4**

證人傳票申請書

[第 36 條]

競爭事務審裁處案件<sup>註</sup>  
1 \_\_\_\_\_年 第 \_\_\_\_\_  
宗

香港特別行政區  
競爭事務審裁處

競爭事務審裁處案件編號 \_\_\_\_\_年 第 \_\_\_\_\_宗

A.B. 申請人/原告人

及

C.D. 答辯人/被告人

證人傳票申請書

致：競爭事務審裁處的司法常務官

鑑於 .....，  
其 ..... 地 ..... 址  
為 .....  
，相當可能會為.....(申請人/原告人/答辯人/被告人等)提供事關重要的證據，本人.....現申請向.....發出傳票，規定其於 20.....年.....月.....日星期.....上/下午<sup>註 2</sup>.....時.....分，在.....(競爭事務審裁處的地址)開庭的競爭事務審裁處出庭，為.....(申請人/原告人/答辯人/被告人等)提供證據(並攜備和交出[述明所需文件的詳情])。

日期：20.....年.....月.....日

.....  
.....(申請人/原告人/  
答辯人/被告人等)的代表律師(如申請人/原告人/  
答辯人/被告人是親自行事，則填寫其姓名或名稱)<sup>註 2</sup>

**備註：**證人傳票的申請人，須根據《競爭事務審裁處規則》第 36 條支付 \$ 500 作為按金。

註 1 填上適當的案件性質填上顯示案件性質的適當英文字母。

註 2 刪去不適用者。



**表格 6**

上訴通知書  
(針對競爭事務審裁處的司法常務官決定的上訴)

[第 42 條]

競爭事務審裁處案件<sup>註</sup>  
1 \_\_\_\_\_ 年第 \_\_\_\_\_  
宗

香港特別行政區  
競爭事務審裁處

競爭事務審裁處案件編號 \_\_\_\_\_ 年第 \_\_\_\_\_ 宗

A.B. 申請人/原告人

及

C.D. 答辯人/被告人

上訴通知書(針對競爭事務審裁處的司法常務官決定的上訴)

請注意：上述 ..... 擬針對競爭事務審裁處的司法常務官 ..... 於 ..... 年 ..... 月 ..... 日作出的決定提出上訴，

該決定命令.....。

並請注意：你須於 20.....年.....月.....日星期.....上/  
下午<sup>註 2</sup>.....時.....分，到位於.....(競爭事務審裁處的地址)  
的競爭事務審裁處，在主持聆訊成員.....法官  
內庭(該內庭向 / 不向 公眾開放)<sup>註 2</sup>席前，出席就.....  
要求作出以下命令的申請而進行的聆訊<sup>註 3</sup>  
3 \_

並請注意：.....擬由大律師代表出席[如不會由  
大律師代表出席，則刪去此段]。

日期：20.....年.....月.....日

司法常務官

本上訴由.....提出，其在香港的供送達地址  
為.....  
.....。

以下是將獲送達本通知書的所有人/代表律師的姓名或名稱及地址：

致： 競爭事務審裁處的司法常務官及[上述的人/代表  
律師的姓名或名稱及地址]

.....  
 .....(申請人/原告人/  
答辯人/被告人等)的代表律師  
 (如申請人/原告人/  
 答辯人/被告人是親自行事，則填寫其姓名或名稱)<sup>註 2</sup>

估計需時：..... (分鐘/小時/日)

- 註 1 填上適當的案件性質填上顯示案件性質的適當英文字母。
- 註 2 刪去不適用者。
- 註 3 述明申請目的。

<b>表格 8</b>
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原訴申索通知書  
 (《競爭事務審裁處規則》第 5 部所指的訴訟的表格)

[第 93  
條]

競爭事務審裁處案件  
<sup>註 1</sup> \_\_\_\_\_ 年第  
 \_\_\_\_\_ 宗

香港特別行政區  
 競爭事務審裁處

競爭事務審裁處案件編號 \_\_\_\_\_ 年第 \_\_\_\_\_ 宗

A.B. 原告人

及

C.D. 被告人

### 原訴申索通知書

1. (原告人的姓名或名稱、描述及地址)
2. (被告人的姓名或名稱、描述及地址)
3. (如原告人倚據競爭事務審裁處/原訟法庭/上訴法庭/終審法院的決定，以確立違反行為守則，須述明該決定的日期及該決定；如原告人倚據在某承諾中作出的承認，以確立違反行為守則，須述明該承認及競爭事務委員會接受該承諾的日期)<sup>註 2</sup>
4. (述明已如何符合《競爭條例》第 111(1)條所指明的有關期間)
5. (如適用的話，指明根據《競爭條例》第 111(2)條批予的展開後續訴訟許可)
6. (指出構成提出損害賠償申索基礎的決定/承認中的有關裁斷)<sup>註 3</sup>
7. (扼要述明申索的性質，以及所尋求的濟助)<sup>註 4</sup>

8. (申索陳述書/根據第 93(1B)條分開送交存檔的申索陳述書<sup>註 5)</sup> 註 6 及註 7

日期：20.....年.....月.....日

.....  
原告人/原告人的代表律師

原告人的代表律師的姓名或名稱及在香港的供送達地址：

致：競爭事務審裁處的司法常務官及[被告人的姓名或名稱及地址]

本通知書於 20.....年.....月.....日從競爭事務審裁處登記處發出。

- 備註：**
1. 本通知書在自發出日期起計的 6 個月之後，即不得送達，但如競爭事務審裁處延長本通知書的有效期限，則不在此限。
  2. 原告人須將另一份列明事關重要的事實及所尋求的濟助的申索陳述書，連同本表格一併送交存檔。申索陳述書須按照《高等法院規則》(第 4 章，附屬法例 A)第 41A 號命令，藉一項屬實申述，予以核實。

司法常務官

- 註 1 填上適當的案件性質填上顯示案件性質的適當英文字母。
- 註 2 參閱《競爭條例》第 110(3)條。如有上訴針對所倚據的決定提出，則須述明該上訴的參考編號及結果。
- 註 3 參閱《競爭條例》第 110(3)條。
- 註 4 述明所尋求的濟助(參閱《競爭條例》第 112 條及附表 3)，包括法律程序的訟費，以及(如適用的話)所尋求的損害賠償金額，但如在第 8 項之下已註有申索陳述書，則無須填寫第 7 項。
- 註 5 刪去不適用者。
- 註 6 原告人可將列明以下事項的申索陳述書註在本通知書之上：事關重要的事實、申索的性質，以及所尋求的濟助(參閱《競爭條例》第 112 條及附表 3)，包括法律程序的訟費，以及(如適用的話)所尋求的損害賠償金額。
- 註 7 然而，如原告人擬將申索陳述書所載的資料保持機密，則原告人可根據《競爭事務審裁處規則》第 93(1B)條將申索陳述書及本通知書分開送交存檔，否則原告人可根據《競爭事務審裁處規則》第 37 條提出申請，要求將有關資料列作機密處理。  
任何人可根據《競爭事務審裁處規則》第 55 或 56 條查閱本通知書，並取得其副本，或在審裁處的許可下，查閱申索陳述書，並取得其副本。

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

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

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

**Add**

“or the Competition Tribunal”.

**2. Order 59, rule 2BA added**

Order 59, after rule 2B—

**Add**

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

(1) If the Competition Tribunal refuses an application for leave to appeal against an interlocutory decision, determination or order of the member or members of the Tribunal under rule 45 of the Competition Tribunal Rules, another application for leave to appeal may be made to the Court of Appeal within 14 days from the date of the refusal.

(2) If the Court of Appeal allows, the application for leave mentioned in paragraph (1) may be made direct to the Court of Appeal within 14 days from the date of the interlocutory decision, determination or order.

(3) An application under this rule must be made inter partes if the proceedings to which the decision, determination or order relates are inter partes”.

### 3. Order 78

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

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



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

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

在小組委員會審議後  
對《2015年高等法院規則(修訂)(第2號)規則》的建議修訂

1. 修訂第 59 號命令第 1 條規則(本命令對上訴的適用範圍)

[中文文本無需修訂]

2. 加入第 59 號命令第 2BA 條規則  
第 59 號命令，在第 2B 條規則之後 —  
加入

“2BA. 就提出針對競爭事務審裁處的非正審命令等的上訴而申請許可(第 59 號命令第 2BA 條規則)

- (1) 如競爭事務審裁處根據《競爭事務審裁處規則》第 45 條，拒絕就針對其一名或多於一名成員所作的非正審決定、裁定或命令而提出的上訴申請批出許可，則可在自拒絕日期起計的 14 日內，另行向上訴法庭申請上訴許可。
- (2) 如上訴法庭容許，第(1)款所述的許可申請，可在自作出上述非正審決定、裁定或命令的日期起計的 14 日內，直接向上訴法庭提出。
- (3) 如上述決定、裁定或命令所關乎的法律程序，是在各方之間進行的，則本條規則所指的申請，必須在各方之間提出。”

第 78B 號命令

3. 從競爭事務審裁處移交法庭的法律程序：移交的效力(第 78B 號命令第 3 條規則)

[中文文本無需修訂]

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

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

**1. Commencement**

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

**2. Interpretation**

In these Rules—

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

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

***lodge*** (交存) means pay, transfer or deposit;

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

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

**3. Lodgment of funds**

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

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

#### 4. **Receipt to be given by Registrar**

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

**5. Keeping of accounts and register**

- (1) The **Registrar** must—
  - (a) keep appropriate ledger accounts to which all funds lodged in the Tribunal that are money or securities must be credited, and to which any such funds withdrawn or transferred from the accounts must be debited;
  - (b) enter into the accounts in an appropriate manner the investment of any such funds; and
  - (c) enter into the accounts in an appropriate manner any dealing, other than by way of lodgment, withdrawal, transfer or investment, of such funds as the circumstances of the case require.
- (2) The **Registrar** must—
  - (a) keep a register of all funds lodged in the Tribunal that are not money or securities;
  - (b) enter in the register any lodgment, withdrawal, transfer, investment or other dealings of such funds; and
  - (c) for each entry in the register, make a memorandum in an appropriate manner in the ledger accounts.

**6. Annual statement of accounts**

- (1) The **Registrar** must cause to be prepared for every period of 12 months ending on 31 March in each year a statement of the accounts kept under rule 5(1).
- (2) The statement must—
  - (a) include a receipts and payments account and a statement of assets and liabilities; and
  - (b) be signed by the **Registrar**.

## 7. Securities

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

(7) In this rule—

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

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

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

**9. Payment out of money lodged in Tribunal**

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

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

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

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- (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 ~~r~~R~~e~~gistrar 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 ~~r~~R~~e~~gistrar 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.

在小組委員會審議後  
對草擬的《競爭事務審裁處訴訟人儲存金規則》的建議修訂

2. 釋義

在本規則中 —

**分類帳目** (ledger account)指冠以訟案或事宜的標題的任何獨立帳目，而該獨立帳目是根據(或將會根據)命令或其他依據而在司法常務官簿冊上開立的，並有(或將會有)儲存金記入其貸方；

**司法常務官** (Registrar)指審裁處的司法常務官；

**交存** (lodge)指繳存、轉入或存放；

**命令** (order)指審裁處的命令，包括判決或判令，並包括命令的任何附表；

**儲存金** (funds)指記在(或將會記入)司法常務官帳目的任何款項、證券或動產或其任何部分，並包括箱盒及其他財物。

9. 交存審裁處的款項的支出

- (1) 交存審裁處的款項，可按以下方式支出 —
  - (a) 款額不超過\$250者，以現金或支票方式；
  - (b) 款額超過\$250者，以支票方式；或
  - (c) (就任何款額而言)藉著從審裁處的銀行帳戶轉撥儲存金而作出付款。
- (2) 任何支票或向銀行發出的從儲存金作轉撥的指示，須由司法常務官不時以書面授權的2人簽署。
- (3) 以現金或支票所作的支出，須於任何周日(星期六及公眾假期除外)，於上午10時至下午1時及下午2時至下午4時不屬星期六或公眾假期的任何日子，於審裁處會計部的辦公時間內，在審裁處辦理。