

Competition law implementation approaches in Hong Kong May 2014

The Competition (Amendment) Bill 2014 ("**Bill**") was published in the official gazette on 9 May 2014. The Bill is yet another step in the process of implementation for the Hong Kong Competition Ordinance ("**Ordinance**"), which was enacted in June 2012.

Parts of the Ordinance are already in force, namely those relating to the establishment of the Competition Commission and the Competition Tribunal ("**Tribunal**"). The Bill tables the provisions necessary for the full operation of the Tribunal as a superior court of record with primary jurisdiction to hear and adjudicate competition-related cases, before the Ordinance comes into full effect – now expected to be in 2015.

The Bill will have its first reading in the Legislative Council on 14 May, and few objections are expected to be raised.

Key amendments

The Bill endows the Tribunal with all the powers, rights and privileges of the Court of First Instance ("**CFI**"), including:

- the power to make orders prohibiting persons from leaving Hong Kong;
- the power to award simple interest on debts and damages for which judgment is given and to provide that judgment debts are to carry simple interest;
- provision for the payment of penalties and fines imposed by the Tribunal to be enforced by the Tribunal in the same manner in which a judgment of the CFI may be enforced;
- provisions regarding the Tribunal's registrars, their jurisdiction and powers, and the privileges and immunities they enjoy;
- the power for members of the Tribunal to order the reimbursement of expenses incurred by witnesses by reason of their attendance at the proceedings;
- miscellaneous consequential amendments to other Ordinances.

Comments

Since the Ordinance was enacted in June 2012, the authorities have pursued a step-by-step approach in putting into effect the rules and laying out the detailed substantive and procedural framework for the future enforcement activities. The Bill is yet another step towards implementing Hong Kong's competition law regime in full.

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The Bill is also a reminder that the enforcement regime for the Ordinance is a 'mixed system,' with both an initial administrative law procedure followed by a litigation process. Businesses and their lawyers will need to engage in a cooperative, multi-disciplinary preparation effort as early as possible before the prohibitions in the Ordinance are enforced with vigour.

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