

競爭事務審裁處

Competition Tribunal

法庭服務簡介

Guide to Court Services



競爭事務審裁處

引言

競爭事務審裁處(下稱“審裁處”)是根據香港法例第619章《競爭條例》(下稱“該條例”)設立的高級紀錄法院，負責處理有關競爭事宜的法律程序。

競爭事務審裁處的組成

審裁處以一名主任法官及一名副主任法官為首，他們均為原訟法庭(下稱“原訟庭”)法官。所有其他原訟庭法官都是審裁處的成員。

具特別資格的人士可獲委任為裁判委員，負責協助審裁處審理任何法律程序。

向審裁處提出的申請，可由任何以下人士所組成的審裁處聆訊和裁定—

- (a) 主任法官；
- (b) 主任法官及主任法官委任的一名或多於一名其他成員；或
- (c) 主任法官委任的一名或多於一名其他成員。

司法管轄權

審裁處具有聆訊和裁定以下事宜的司法管轄權：

- (a) 競爭事務委員會或通訊事務管理局(下稱“競委會”)就指稱違反或指稱牽涉入違反競爭守則而提出的申請；
- (b) 要求覆核可覆核裁定的申請；
- (c) 就違反或牽涉入違反行為守則而提起的私人訴訟；
- (d) 某方提出違反或牽涉入違反行為守則的指稱作為免責辯護；
- (e) 要求處置財產的申請；
- (f) 要求強制執行承諾的申請；
- (g) 與(a)、(b)、(c)、(d)、(e)或(f)段提述的事宜有關的任何事

宜，但只限於引致該等事宜的事實均屬相同或實質上相同的情況；及

(h) 從原訟庭移交的案件。

審裁處在行使其司法管轄權時批給衡平法上或法律上的補救及濟助的司法管轄權，等同於原訟庭的司法管轄權。此外，審裁處就行使其司法管轄權所需的所有事宜，具有原訟庭的所有權力、權利及特權。

審裁處的司法常務官(下稱“司法常務官”)可行使的權力，與高等法院司法常務官所行使的相同，而可執行的職責，亦與高等法院司法常務官所執行的相同，但以該等權力及職責適用於審裁處的事務及法律程序的範圍為限。

根據該條例或《競爭事務審裁處規則》(下稱“《審裁處規則》”)可由審裁處成員在內庭處理的所有事務，司法常務官亦有權處理之，並有權行使根據該條例或《審裁處規則》可由審裁處成員在內庭行使的所有權力及司法管轄權。

常規及程序

審裁處的常規及程序，受《審裁處規則》及《競爭事務審裁處實務指示1和2》(下稱“《審裁處實務指示》”)所管限。

如該條例及《審裁處規則》均沒有就某事宜作出規定，則《高等法院規則》(下稱“《高院規則》”)在可適用於該事宜的範圍內，適用於所有法律程序。

按照該條例第144(1)條的規定，審裁處可依循原訟庭的常規及程序。原訟庭民事訴訟程序的一般原則和概念與在審裁處進行的法律程序有關。

審裁處如認為如此行事(a)將會使審裁處能夠在符合秉行公義的原則下，盡量不拘形式地迅速進行其法律程序；(b)將會節省訟費，並且符合秉行公義的原則；或(c)在其他情況下有利於秉行公義，則審裁處可免除《高院規則》適用於某特定個案。

相關的法例和實務指示載於審裁處網站，以供查閱：

www.comptribunal.hk/。

由審裁處聆訊的案件

在審裁處進行的法律程序主要有四類。

1. 要求覆核可覆核裁定的申請

審裁處獲賦權覆核該條例第83條所指的、由競委會作出的可覆核裁定。

然而，在進行覆核前，須先取得審裁處的許可。

任何人如非某可覆核裁定的一方，但在該裁定中有充分的利害關係，可提出申請，要求覆核該裁定。

2. 強制執行法律程序

該條例第4部及《審裁處規則》第4部所指的要求強制執行承諾的申請，屬此一類別。

3. 後續訴訟

此等法律程序由因被裁定屬違反行為守則的作為而蒙受損失或損害的人針對以下的人提起：(a)已違反或正違反該守則的任何人；及(b)牽涉入或曾經牽涉入該項違反的任何人。

4. 移交的法律程序

此等於原訟庭展開但屬審裁處的司法管轄權以內的案件，根據該條例第113(1)條或第113(3)條移交審裁處。

法律程序的展開

在審裁處進行的所有法律程序，均須藉將採用《審裁處規則》附表(下稱“該附表”)中指明格式的原訴文件送交存檔而展開。將原訴文件送交存檔時須繳付的費用為港幣1,045元。

| 申請的性質 | 須使用的表格 |
|----------------------------|--------|
| 該條例第84(2)條所指的覆核可覆核裁定的許可的申請 | 7 |
| 該條例第63條所指的要求強制執行承諾的申請 | 1 |
| 該條例第6部所指的於審裁處提出的強制執行的申請 | 1 |
| 該條例第169條所指的要求施加罰款命令的申請 | 1 |
| 該條例第101條所指的取消資格申請 | 1 |
| 該條例第110條所指的後續訴訟 | 8 |
| 其他申請 | 1 |

有關表格可在審裁處網站下載。審裁處登記處(下稱“登記處”)亦備有各項表格可供索取。

如需有關覆核可覆核裁定的申請的進一步資料，請參閱《覆核可覆核裁定》單張。

如需有關展開後續訴訟的資料，請參閱《後續訴訟》單張。

非正審申請

除《審裁處規則》另有規定或審裁處另有指示外，所有在審裁處進行的非正審申請，均須藉將採用該附表中表格2的傳票送交存檔而提出。有關表格可在審裁處網站下載。登記處亦備有該表格可供索取。

非正審申請可由司法常務官或一名審裁處成員聆訊。

案件摘要

在下述各類法律程序中，申請人或原告人將原訴申請送交存檔後，須向司法常務官提交有關該法律程序的案件摘要：

- (a) 根據該條例第84(1)條就要求覆核可覆核裁定而提出的申請；
- (b) 根據該條例第63條就要求強制執行承諾而提出的申請，或根據該條例第92(1)、94(1)、97(1)或99(1)條就要求強制執行競爭守則而提出的申請；及
- (c) 根據該條例第110(1)條在審裁處提起的後續訴訟。

任何一方如取得命令，將法律程序從原訟庭移交審裁處，亦須向司法常務官提交案件摘要。

案件摘要須述明：

- (a) 各方的姓名或名稱；
- (b) 該項申請的性質；
- (c) 該項申請的理由；
- (d) 所尋求的濟助的詳情；及
- (e) 如該項申請是根據該條例第84條提出的一
 - (i) 關乎該項申請的裁定；及
 - (ii) 提出該項申請的人，以及該項申請所針對的人。

司法常務官會以此案件摘要為依據，根據《審裁處規則》第19條擬備及發布關於申請或法律程序的通知。

介入法律程序

競委會或在法律程序所關乎的事宜之中有充分的利害關係的人，可申請許可，要求介入該法律程序。

要求介入的申請，須藉將採用該附表中表格3的申請書送交存檔而提出。有關表格可在審裁處網站下載。登記處亦備有該表格可供索取。

機密資料

如欲要求將資料作機密處理，可根據《審裁處規則》第37條提出申請。另請參閱《審裁處實務指示2》。

然而，某項資料會否被視為機密並作機密處理，將由審裁處按個別案件的情況而決定。

調解

調解是一個過程，調解員會在過程中協助訴訟各方就彼此的爭議達成和解。過去經驗顯示，調解所耗用的費用較少，可以較迅速及更有效地解決爭議。

我們尤其鼓勵後續訴訟的各方考慮並在合適的情況下採用另類排解程序的方法，例如調解。

如需取得進一步資料，可到香港灣仔港灣道12號灣仔政府大樓1樓113室司法機構綜合調解辦事處查詢。

法律代表

任何一方均可親自進行訴訟或延聘律師代表其進行訴訟。

然而，如任何一方屬法人團體，並擬由該方的一名董事在該法律程序中代表出庭，則須獲審裁處的許可。如需進一步詳情，請參閱《後續訴訟》單張第1.7節。

在合適的情況下，任何一方可在審裁處的許可下，由任何其他代表出庭。

法律援助並不提供予審裁處的法律程序。

公開聆訊

除審裁處另有指示外，審裁處的所有法律程序均公開進行。

查閱審裁處文件

法律程序的任何一方在繳付訂明費用後，均有權查閱送交存檔的原訴文件及審裁處作出的判決或命令，並取得其副本。如屬其他文件，則須獲審裁處的許可。

任何其他人在繳付訂明費用後，均可查閱送交存檔的原訴文件及審裁處作出的判決或命令，並取得其副本，但受機密處理命令限制者除外。如屬其他文件，則須獲審裁處的許可。

另請參閱《審裁處規則》第55及56條及《審裁處實務指示2》第8至10段。

上訴

針對審裁處成員的決定等而提出的上訴

除該條例第154(2)條及第155條另有規定外，針對審裁處作出的決定(包括就補償性制裁或罰款款額作出的決定)、裁定或命令而向上訴法庭提出上訴，屬當然權利。

就非正審決定、裁定或命令提出上訴，須有上訴法庭或審裁處的上訴許可(《審裁處規則》第44條指明的非正審決定、裁定或命令除外；針對其提出上訴屬當然權利)。許可申請須在自該決定、裁定或命令作出當日起計的14日內，先行向審裁處提出，但如上訴法庭根據《高院規則》第59號命令第2BA(2)條規則，容許直接向上訴法庭提出，則屬例外。

針對司法常務官的決定等而提出的上訴

任何一方可針對司法常務官的非正審決定、裁定或命令，向一名審裁處成員提出上訴，而針對該決定、裁定或命令提出上訴屬當然權利。上訴須在上述非正審決定、裁定或命令作出當日之後的14日內，藉將採用該附表中表格6的通知書送交存檔而提出(該表格可在審裁處網站下載或到登記處索取)。在該通知書送交存檔當日之後的5日內，須將其副本送達每一其他方。

如司法常務官 —

- (a) 就根據《高院規則》第14號命令第6(2)條規則及第36號命令第1條規則在由其審訊的訟案、事宜、問題或爭議點的聆訊或裁定，作出決定、裁定或命令(非正審決定、裁定或命令除外)；
- (b) 根據《高院規則》第37號命令或其他法律，在損害賠償的評估中作出決定、裁定或命令(非正審決定、裁定或命令除外)；
- (c) 就根據《高院規則》第49B號命令提出的申請的聆訊或裁定，作出決定、裁定或命令(非正審決定、裁定或命令除外)；或
- (d) 就第78(2)(b)條規則所述的取消資格申請或根據第83或84條規則提出的申請的聆訊或裁定，作出決定、裁定或命令(非正審決定、裁定或命令除外)，

則可向上訴法庭提出針對該決定、裁定或命令(非正審決定、裁定或命令除外)的上訴。

證據規則

審裁處在根據該條例進行的法律程序中，不受證據規則約束，並可收取任何有關的證據或資料和將之列入考慮，不論它可否在法院中接納為證據，但就尋求作出罰款命令而進行的法律程序除外。

採用語文

審裁處可在任何法律程序或其任何部分中，兼用兩種法定語文或採用其中一種。

執行判決

如案中其中一方已取得判決，但判定債務人卻沒有遵從法官的判決，則判定債權人可向審裁處申請強制執行判決，由執達主任藉扣押被告人的財產執行判決，以追討判定款項。如需進一步詳情，請參閱“執達事務組”小冊子。該小冊子可向登記處或執達事務組索取。

聯絡我們

競爭事務審裁處登記處

地址：香港金鐘道38號高等法院大樓低層三樓LG343室

電話：2825 0426

傳真：2487 5509

電郵：enquiry@comptribunal.hk

會計部

地址：香港金鐘道38號高等法院大樓低層二樓

電話：2825 4275

傳真：2596 0512

不提供法律意見

司法機構必須保持公正中立，因此登記處或綜合調解辦事處的職員不會提供任何法律意見，或就個別案件的進行或勝訴機會作出評論。

如需要法律意見或援助，請聯絡律師或向提供免費法律諮詢服務的機構尋求協助。

辦公時間

登記處

星期一至星期五 上午八時四十五分至下午一時

下午二時至下午五時三十分

(星期六、日及公眾假日休息)

如遇上惡劣天氣，審裁處有何安排？

請參閱審裁處網站(www.comptribunal.hk/)颱風及暴雨警告的安排一欄或留意電台／電視台的相關報導。

司法機構

二〇一五年十二月

(第一版)

Competition Tribunal

Introduction

The Competition Tribunal (“the Tribunal”) is a superior court of record set up by the Competition Ordinance, Cap 619 (“CO”) to deal with legal proceedings concerning competition matters.

Constitution of the Competition Tribunal

The Tribunal is headed by a President and a Deputy President. They are judges of the Court of First Instance (“CFI”). All other CFI judges are members of the Tribunal.

Specially qualified persons may be appointed as assessors to assist the Tribunal to dispose of any proceedings.

An application to the Tribunal may be heard and determined by a Tribunal constituted by any of the following—

- (a) the President;
- (b) the President and one or more other members appointed by the

President; or

(c) one or more other members appointed by the President.

Jurisdiction

The Tribunal has jurisdiction to hear and determine:

(a) applications made by the Competition Commission or Communications Authority (“the Commission”) with regard to alleged contraventions, or alleged involvements in contraventions, of the competition rules;

(b) applications for the review of reviewable determinations;

(c) private actions in respect of contraventions, or involvements in contraventions, of the conduct rules;

(d) allegations of contraventions, or involvements in contraventions, of the conduct rules raised as a defence;

(e) applications for the disposal of property;

(f) applications for the enforcement of commitments;

(g) any matter related to a matter referred to in paragraph (a), (b), (c), (d), (e) or (f) if the matters arise out of the same or substantially the same facts; and

(h) cases transferred from the CFI.

The Tribunal in the exercise of its jurisdiction has the same jurisdiction to grant remedies and reliefs, equitable or legal, as the CFI. Further, with respect to all matters necessary for the exercise of its jurisdiction, it has all the powers, rights and privileges of the CFI.

The Registrar of the Tribunal (“the Registrar”) may exercise the same powers and perform the same duties, in so far as they are applicable to the business and proceedings of the Tribunal, as the Registrar of the High Court.

The Registrar also has power to transact all the business and exercise all the authority and jurisdiction that under the CO or the Competition Tribunal Rules (“the CTR”) may be transacted and exercised by a member of the Tribunal in chambers.

Practice and Procedure

The CTR and Competition Tribunal Practice Direction (“the CTPD”) No.1 and No.2 govern the practice and procedure in the Tribunal.

Where the CO and CTR make no provision for a matter, the Rules of High Court (“RHC”) apply to all proceedings, so far as they may be applicable to that matter.

As provided in section 144(1) of the CO, the Tribunal may follow

the practice and procedure of the CFI. The general principles and concepts of the civil procedure of the CFI are relevant in proceedings before the Tribunal.

The Tribunal may, in a particular case, dispense with the application of the RHC if the Tribunal considers that doing so (a) will enable the Tribunal to conduct its proceedings expeditiously with as much informality as is consistent with attaining justice; (b) will save costs and is consistent with attaining justice; or (c) is otherwise in the interests of justice.

The relevant legislation and practice directions can be found at the Tribunal website: www.comptribunal.hk/.

Cases heard by the Tribunal

There are four main types of proceedings before the Tribunal.

1. Application to review a reviewable determination

The Tribunal is empowered to review reviewable determinations under section 83 of the CO of the Commission.

Leave however must be obtained from the Tribunal before a review can be made.

A person who is not a party to a reviewable determination but has sufficient interest in it may apply to review the reviewable determination.

2. Enforcement Proceedings

Applications to enforce commitment under part 4 of the CO and part 4 of the CTR fall under this category.

3. Follow-On Actions

These are proceedings by persons who have suffered loss or damage as a result of any act that has been determined to be a contravention of a conduct rule, against (a) any person who has contravened or is contravening the rule; and (b) any person who is, or has been, involved in that contravention.

4. Transferred Proceedings

These are cases commenced in the CFI that are within the jurisdiction of the Tribunal and are transferred to the Tribunal under sections 113(1) or 113(3) of the CO.

Commencement of Proceedings

All proceedings before the Tribunal must be commenced by filing an originating document in specified form in the Schedule to the CTR (“the Schedule”). A fee of HK\$1,045 is payable upon filing an originating document.

| Nature of Application | Form to be used |
|--|-----------------|
| An application for leave to apply for a review of a reviewable determination under section 84(2) of the CO | 7 |
| An application for enforcement of a commitment under section 63 of the CO | 1 |
| An application for enforcement before the Tribunal under Part 6 of the CO | 1 |
| An application for an order imposing a financial penalty under section 169 of the CO | 1 |
| A disqualification application under section 101 of the CO | 1 |
| A follow-on action under section 110 of the CO | 8 |
| Other applications | 1 |

The forms can be downloaded from the Tribunal website. Copies are also available at the Registry of the Tribunal (“the Registry”).

For further information on application to review a reviewable determination, please refer to the leaflet entitled Review of Reviewable Determination.

For further information on commencement of follow-on actions, please refer to the leaflet entitled Follow-on Action.

Interlocutory Application

All interlocutory applications to the Tribunal must be made by filing a summons in Form 2 in the Schedule unless otherwise provided in the CTR or the Tribunal otherwise directs. The form can be downloaded from the Tribunal website. Copies are also available at the Registry.

Interlocutory applications may be heard by the Registrar or a member of the Tribunal.

Case Summary

Upon filing the originating application in the following types of proceedings, the applicant or plaintiff is required to lodge a case summary of the proceedings with the Registrar

- (a) application for a review of a reviewable determination under section 84(1) of the CO;
- (b) application for the enforcement of a commitment under section 63 or for the enforcement of competition rules under sections 92(1), 94(1), 97(1) or 99(1) of the CO; and
- (c) a follow-on action brought in the Tribunal under section 110(1) of the CO.

A party who has obtained an order for the transfer of proceedings in the CFI to the Tribunal is also required to lodge a case summary with the Registrar.

The case summary must state:

- (a) the names of the parties;
- (b) the nature of the application;
- (c) the grounds of the application;
- (d) the particulars of the relief sought; and
- (e) if the application is made under section 84 of the CO
 - (i) the determination to which the application relates; and
 - (ii) the person by, and against, whom the application is made.

The Registrar will, based on the case summary, prepare and publish the notice of application or proceedings pursuant to rule 19 of the CO.

Intervention

The Commission or a person who has sufficient interest in the matters to which any proceedings relate may apply for leave to intervene in the proceedings.

An application to intervene must be made by filing an application in Form 3 in the Schedule. The form can be downloaded from the Tribunal website. Copies are also available at the Registry.

Confidential information

Application can be made for confidential treatment of information under rule 37 of the CTR. Please also refer to CTPD No.2.

However, whether particular information is to be regarded as confidential and to be accorded confidential treatment is a matter for the Tribunal to decide in the circumstances of the individual case.

Mediation

Mediation is a process through which a mediator will assist the parties to reach settlement for their disputes. Experience has shown that this is a cheaper, more effective and faster process for resolution of disputes.

Parties to follow-on actions are particularly encouraged to consider and, where appropriate, adopt alternative methods of dispute resolution, such as mediation.

Further information may be obtained from the Integrated Mediation Office of the Judiciary at Room 113, 1/F, Wanchai Tower, 12 Harbour Road, Wanchai, Hong Kong.

Legal Representation

A party can act in person or engage a lawyer to act on his behalf.

However, if a party is a body corporate and intends to be represented by one of its directors in the proceedings, leave from the Tribunal is required. For further details, please refer to section 1.7, Leaflet entitled Follow-on Action.

In an appropriate case, a party may be represented by any other person with the leave of the Tribunal.

Legal aid is not available to proceedings in the Tribunal.

Hearing in public

All proceedings before the Tribunal are open to the public unless the Tribunal otherwise directs.

Inspection of Competition Tribunal documents

A party is entitled to inspect and obtain a copy of the originating document filed and the judgment or order made by the Tribunal on payment of the prescribed fee. As to other documents, leave from the Tribunal must be obtained.

Subject to any order for confidential treatment, any other person

may inspect and obtain a copy of the originating document filed and the judgment or order made by the Tribunal on payment of the prescribed fee. As to other documents, leave from the Tribunal must be obtained.

Please also refer to rules 55 and 56 of the CTR and paragraphs 8 to 10 of the CTPD No.2.

Appeal

Appeal against decision etc. of a member of the Tribunal

Subject to section 154(2) and section 155 of the CO, an appeal lies as of right to the Court of Appeal against any decision (including a decision as to the amount of any compensatory sanction or pecuniary penalty), determination or order of the Tribunal.

For interlocutory decision, determination or order (except those specified under rule 44 of the CTR where appeal lies as of right), leave to appeal is required by the Court of Appeal or the Tribunal. The leave application must be made to the Tribunal in the first instance within 14 days from the date of the decision, determination or order unless the Court of Appeal allows the application for leave to be made direct to the Court of Appeal under Order 59, rule 2BA(2) of the RHC.

Appeal against decision etc. of the Registrar

A party may appeal against any interlocutory decision, determination or order of the Registrar to a member of the Tribunal as of right. The appeal must be brought by filing a notice in Form 6 in the Schedule within 14 days after the day on which the interlocutory decision, determination or order is made. (The form can be downloaded from the Tribunal website and is also available at the Registry). A copy of the notice must be served on every other party within 5 days after the day on which the notice is filed.

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

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

Rules of evidence

In proceedings under the CO, other than proceedings in which an order for a pecuniary penalty or a financial penalty is being sought, the Tribunal is not bound by the rules of evidence and may receive and take into account any relevant evidence or information, whether or not it would be otherwise admissible in a court of law.

Use of Language

The Tribunal may use either or both of the official languages in any proceedings or part of any proceedings.

Execution of Judgment

If a party has obtained a judgment but the judgment debtor fails to obey the order, the judgment creditor may apply to the Tribunal to enforce the judgment. The bailiff will levy execution on the property of the defendant in order to recover judgment. For further details, please refer to the “Bailiff Section” booklet available from the Registry or the Bailiff Section.

Contact Us

Competition Tribunal Registry

Address: Room LG343, LG3, High Court Building, 38 Queensway,
Hong Kong

Telephone: 2825 0426

Facsimile: 2487 5509

E-mail: enquiry@comptribunal.hk

Accounts Office

Address: LG2, High Court Building, 38 Queensway, Hong Kong

Telephone: 2825 4275

Facsimile: 2596 0512

No Legal Advice

In order to maintain the impartial role of the Judiciary, our staff members at the Registry or the Integrated Mediation Office will not provide any legal advice or offer any comment on the conduct or merits of specific cases and proceedings.

Please consult a lawyer or approach free legal advisory bodies for assistance if you require legal advice or assistance.

Business Hours

Registry

Monday to Friday 8:45 a.m. to 1:00 p.m.

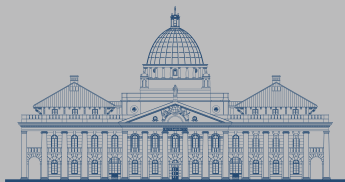
2:00 p.m. to 5:30 p.m.

(Closed on Saturdays, Sundays and Public Holidays)

What are the arrangements of the Tribunal in case of bad weather?

Please refer to Typhoon and Rainstorm Warning Arrangements in the Tribunal website www.comptribunal.hk/ or radio/television announcements of the same.

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司 法 機 構

JUDICIARY

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香港特別行政區政府新聞處設計封面
政府物流服務署印

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