

The Competition Tribunal and the Tribunal System (Relevant to AAT Examination Paper 6 — Fundamentals of Business Law)

C K Chang, K W Sin and L P Chan

Introduction

A number of decisions relating to legal matters in Hong Kong are not made in the courts. They are made by 'tribunals'. However, there are different types of tribunal. Article 80 of the Basic Law provides that the courts of Hong Kong at all levels shall be the judiciary of the HKSAR, exercising judicial power. Article 81 goes on to say that the Court of Final Appeal, the High Court, district courts, magistrates' courts and other 'special courts' shall be established in the HKSAR. These 'special courts' include some tribunals and some courts like the Coroner's Court and Family Court. Thus, tribunals under the 'special court' category are part of the judiciary of Hong Kong and are courts of record. These 'judicial' tribunals should be distinguished from administrative tribunals such as the Market Misconduct Tribunal or the Securities and Futures Appeals Tribunal.

The common 'judicial' tribunals that candidates of AAT Paper 6 are familiar with are the Lands Tribunal, Labour Tribunal and Small Claims Tribunal. One of the most recent additions is the Competition Tribunal ("CT"). All of these are independent bodies created by statute.

In AAT Paper 6, candidates tend to regard all of these tribunals as being similar: they are less expensive, the procedures for taking evidence are simpler and lawyers are not allowed to represent the parties. This is an over-generalised view. The composition and procedures of these tribunals are all different. In this short article, we attempt to illustrate the similarities and differences among the tribunals by comparing the Competition Tribunal with other 'judicial' tribunals.

Establishment

The Competition Ordinance Cap 619, enacted in 2012, is the governing legislation regulating competition in business in Hong Kong. Through different conduct rules, the Competition Ordinance prohibits restrictions on competition. Therefore, a Competition Commission has been established to investigate conduct that may contravene the competition rules and enforce the competition law, among other functions. In order to hear and decide cases connected with competition law, one of the purposes of the Competition Ordinance is to establish the Competition Tribunal side by side with the Competition Commission. The provisions of the Competition Ordinance concerning the establishment of the Competition Tribunal came into effect on 1 August, 2013 when the President and Deputy President were appointed.

In this respect, the creation of the CT is not different from that of other tribunals: all of them are created by legislation. Their establishment has to go through the legislative process. The Small Claims Tribunal, for example, was also created by an Ordinance: the Small Claims Tribunal Ordinance.

The constitution

Unlike other tribunals, the CT is a tribunal set up as a superior court of record. Thus, the composition of the CT is different from that of other tribunals. A court of record is one where the proceedings are recorded, published and the transcripts are available to the public. The CT is a superior court of record because it is a higher court in the court hierarchy. The other superior courts of record are the Court of Final Appeal, the Court of Appeal and the Court of First Instance. In contrast, courts like District Courts, the Labour Tribunal, the Small Claims Tribunal and the Lands Tribunal are only courts of record.

The CT consists of the judges of the Court of First Instance. The President and Deputy President are appointed by the Chief Executive from the judges of the Court of First Instance, acting in accordance with the recommendation of the Judicial Officers Recommendation Commission. At present, Mr Justice Godfrey Lam has been appointed as the President and Madam Justice Queeny Au-Yeung has been appointed as the Deputy President.

In any proceedings, the CT may appoint specially qualified assessors and may dispose of the proceedings with the assistance of the assessors, but the decision of the CT is that of the members of the CT only.

In contrast, the Lands Tribunal, a court of record, consists of the President, who is a Judge of the Court of First Instance of the High Court; the presiding officers, who are the District Judge and deputy District Judge; and eligible members, who could be qualified lawyers with at least 5 years' experience or qualified surveyors with at least 5 years' experience in the practice of land valuation.

The Small Claims Tribunal is different. Although it is also a court of record, it consists solely of adjudicators and deputy adjudicators. Adjudicators are qualified lawyers in Hong Kong with at least 5 years' experience.

The appeal

If the party is not satisfied with the result of the decision of a tribunal, he may appeal. However, because different tribunals have different positions in the court hierarchy, their route of appeal is also different.

For CT, as it is composed of the judges of the Court of First Instance, an appeal will lie as of right to the Court of Appeal against any decision, determination or order. Similarly, for the Lands Tribunal, the appeal is to the Court of Appeal. A party can appeal on the

grounds that the judgment, order or decision is erroneous in point of law. He cannot appeal if the grounds concerns factual issues only. However, for the Small Claims Tribunal, the route of appeal is to the Court of First Instance.

The jurisdiction and procedures

Because they are specialist courts, it is not surprising that the jurisdiction and procedures are different for different tribunals.

The jurisdiction of the CT is complex, as it deals with special issues under the competition law. In brief, it has jurisdiction to hear applications made by the Competition Commission or private actions with regard to alleged contraventions of the competition rules. The jurisdictions of the Lands Tribunal are also diverse. One of the main functions is to determine all matters under the Landlord and Tenant (Consolidation) Ordinance. In contrast, the jurisdiction of Small Claims Tribunal is simple: it only hears minor monetary claims involving amounts not exceeding \$50,000.

The CT may receive any evidence whether or not it would otherwise be admissible in a court of law, and may determine the manner in which it will receive evidence. Lawyers can represent the parties in the CT and Lands Tribunal but do not have a right of audience in the Small Claims Tribunal. For the Small Claims Tribunal, the hearing of proceedings is conducted in an informal manner. The tribunal can summon any witness and require the production of any document or record that is relevant in any proceedings. Unlike courts, where proceeding is adversarial, the Small Claims Tribunal can inquire into any matter that it may consider relevant to a claim, whether or not it has been raised by a party.

Conclusion

As can be seen from the above discussion, these special tribunals provide an alternative service to the normal courts. Through specialisation, they take away some types of work of the normal courts and reduce their workload. The hearings are fair and rational and the tribunals are thus important for the delivery of administrative justice. The simplified rules of evidence and procedures in some tribunals could also reduce legal costs so that more people are able to access the legal system.