

## **Telecommunications (Competition Provisions) Appeal Board**

### **Guidelines on Practice and Procedure**

The Telecommunications (Competition Provisions) Appeal Board (“Appeal Board”) hereby promulgates the first edition of the Guidelines on Practice and Procedure of the Appeal Board at the **Annex**.

The Appeal Board would like to thank the useful and constructive comments offered by various parties in the course of preparing the Guidelines, particularly during the two rounds of written consultation and at the round-table discussion.

As indicated in paragraph 3 therein, the Guidelines do not have the force of law and should not be interpreted as such. Its main purpose are to give practical guidance on the key steps of the appeal proceedings as well as their indicative timeframe and requirements, providing reference to potential parties so that the appeal cases can be dealt with in a fair and efficient manner. The Appeal Board will constantly review the Guidelines in the light of its practical experience.

For enquiries, please contact the Clerk to the Appeal Board (Tel : 2189 2293 or e-mail : [tel-appeal@cedb.gov.hk](mailto:tel-appeal@cedb.gov.hk)).

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Telecommunications (Competition Provisions) Appeal Board  
8 November 2010

**Telecommunications (Competition Provisions) Appeal Board  
Guidelines on Practice and Procedure**

First Edition  
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## **SECTION I – GENERAL**

### **1. Telecommunications (Competition Provisions) Appeal Board**

The Telecommunications (Competition Provisions) Appeal Board (“Appeal Board”) is established pursuant to section 32M of the Telecommunications Ordinance (Cap. 106) (the “Ordinance”). Its terms of reference is to deal with appeals under section 32N of the Ordinance by any person or carrier licensee who is aggrieved by any opinion, determination, direction or decision of, or any sanction or remedy imposed by the Telecommunications Authority (“TA”) (as the case may be) relating to section 7K, 7L, 7M, 7N or 7P(14) of the Ordinance. After hearing of an appeal, it has the power to determine the appeal by upholding, varying or quashing the appeal subject matter and may make such consequential orders as may be necessary.

### **2. Practice and Procedure**

Under section 32O(7) of the Ordinance, the Chairman may determine any matter of practice or procedure relating to hearing of appeals where no provision governing such matter is made in the Ordinance or in regulations made thereafter. Taking into account the actual proceedings of appeal cases and response to the draft rules once circulated to interested parties for comments, the Chairman decided to promulgate these Guidelines on Practice and Procedure to facilitate the smooth operations of the Appeal Board.

### **3. Purposes of the Guidelines**

These Guidelines do not have the force of law and should not be interpreted as such. In accordance with section 32U of the Ordinance, the power is vested with the Secretary for Commerce and Economic Development (the “Secretary”) to make rules relating to the practice and procedure of the Appeal Board. However, until such time the Secretary makes and promulgates rules on practice and procedure, the Chairman intends to give practical guidance on the key steps of the appeal proceedings as well as their indicative timeframe and requirements, providing reference to potential parties so that the appeal cases can be dealt with in a fair and efficient manner. These Guidelines will be kept under constant review in the light of the Appeal Board’s practical experience.

#### 4. Interpretation

In these Guidelines –

“Appellant” means a person who lodges an appeal under section 32N of the Ordinance.

“Chairman” means the “Deputy Chairman” as well because both the Chairman and the Deputy Chairman have the power to preside over the Appeal Board established under section 32M(1) of the Ordinance.

The terms on “appeal”, “Appeal Board”, “appeal subject matter”, “Chairman”, “Deputy Chairman” and “panel member” defined in section 32L of the Ordinance are used.

For the avoidance of doubt, the Deputy Chairman can exercise the powers contained in the Guidelines when he is sitting on the Appeal Board in place of the Chairman.

## SECTION II - APPEALS

5. Initiation of an Appeal under section 32N of the Ordinance
  - (1) The Notice of Appeal to be lodged with the Appeal Board under section 32N(4) of the Ordinance (the “Notice of Appeal”) should be lodged in both hard and soft copies with the Clerk to the Appeal Board (“Clerk”), who should serve a copy to the Telecommunications Authority (“TA”) as soon as possible.
  - (2) The Notice of Appeal should state :
    - (a) the name and address of the Appellant;
    - (b) the name and address of the Appellant’s legal representative, if appropriate; and
    - (c) an address for service in Hong Kong.
  - (3) The Notice of Appeal should contain :
    - (a) a brief statement of the facts;
    - (b) a summary of the principal grounds for contesting the opinion, determination, direction, decision, sanction or remedy of the TA, identifying in particular :
      - (i) the particular provision of sections 7K, 7L, 7M, 7N and 7P(14) of the Ordinance which the Appellant claims has been engaged; and
      - (ii) to what extent (if any) the Appellant contends that the disputed decision was based on an error of fact or was wrong in law;
    - (c) the relief sought by the appellant, and any orders sought pursuant to section 32O of the Ordinance; and
    - (d) there should be annexed to the Notice of Appeal a copy of the disputed opinion, determination, direction, decision, sanction or remedy of the TA.

(4) The Notice of Appeal should be duly completed and signed by the Appellant or his legal representative. Where the Appellant is a body corporate, the Notice of Appeal should be completed and signed on its behalf by one of its directors or other officers or its legal representative. Where the Appellant is a partnership, the Notice of Appeal should be completed and signed on its behalf by one of the partners or its legal representative.

(5) The Appellant may amend the Notice of Appeal only with the permission of the Chairman. The Chairman shall not grant permission to amend in order to add a new ground for contesting the decision unless :

(a) such ground is based on matters of law or fact which have come to light since the Appeal was made; or

(b) it was not practicable to include that ground in the Notice of Appeal; or

(c) it is reasonable in all the circumstances to permit the amendment,

and only where the party has sought permission to amend the Notice of Appeal as soon as reasonably practicable, and in relation to Guideline 5(5)(a) as soon as reasonably practicable after the relevant matters of law or fact have been identified.

## 6. Defective Notices of Appeal

(1) If the Chairman considers that the Notice of Appeal is materially incomplete, or lacking in clarity, he may make such orders as may be necessary to ensure that the Appeal is put in order.

(2) If the Appellant has not remedied the defect pursuant to an order under (1) above, the Chairman may order that the Appeal be dismissed with an appropriate costs order.

(3) If the Chairman finds that the Appeal is not lodged within the appropriate time as set out in section 32N(4) of the Ordinance, he may make an order that the Appeal be dismissed with an appropriate costs order.

## 7. Consolidation of Appeals

- (1) Where two or more Appeals have been made in respect of the same subject matter or which involve the same or similar issues, the Chairman may, on the request of an Appellant or the TA or of his own initiative, order that the Appeals or any particular issue or matter raised in the Appeals be consolidated or heard together.
- (2) Before making the order, the Appellants and the TA should be invited to make representations in writing or orally on the consolidation of the proceedings.
- (3) The Clerk should as soon as practicable notify the Appellants and the TA of any order consolidating the proceedings.

## 8. Acknowledgement and notification

- (1) On receiving a Notice of Appeal, the Clerk should as soon as reasonably practicable send an acknowledgement of its receipt to the Appellant.
- (2) The Clerk should serve a copy of the Notice of Appeal on the TA as soon as possible after it has been lodged.
- (3) The Clerk should, as soon as reasonably practicable publish an announcement of the Appeal at the website of the Commerce and Economic Development Bureau.
- (4) The announcement should confirm that an Appeal has been received and should set out :
  - (a) the name of the Appellant;
  - (b) the disputed decision, opinion, direction, determination, sanction or remedy to which the Appeal relates;
  - (c) a summary of the principal grounds for contesting the opinion, determination, direction, decision, sanction or remedy of the TA as they appear in the Notice of Appeal;
  - (d) the particulars of the relief sought by the Appellant, and any orders sought pursuant to section 32O of the Ordinance; and

- (e) that any person who considers that he has sufficient interest may apply to the Appeal Board for leave to intervene.

### **SECTION III – PRELIMINARY ISSUES**

9. Power to strike out Appeals

- (1) The Chairman or the Appeal Board may either of its or his own motion, or after considering representations of the Appellant and the TA, as appropriate, strike out an Appeal at any stage in the proceedings if he or the Appeal Board is satisfied :
  - (a) that the Notice of Appeal discloses no valid ground of Appeal;
  - (b) that the Appeal is scandalous, frivolous or vexatious;
  - (c) that the Appeal is otherwise an abuse of process; or
  - (d) that the Appellant has failed to comply with any order of the Chairman or of the Appeal Board.
- (2) The Chairman may give directions for a hearing of the strike out application including as to the exchange of written submissions by the parties if he considers that a hearing is necessary for the proper disposal of the application.

10. Determination of the Appeal Board's Jurisdiction

- (1) The Chairman may at any time, whether upon the application of a party to an Appeal or upon his own initiative, direct that the issue of the Appeal Board's jurisdiction to determine an Appeal be heard as a separate preliminary issue. The Chairman may make such directions as he thinks fit (including for the exchange of written submissions by the parties, any necessary discovery, exchange of lay and expert witness statements and cross-examination) as to the issue of the jurisdiction of the Appeal Board and for the fixing of the hearing of the preliminary issue.
- (2) If the Appeal Board finds that it does not have jurisdiction to hear an Appeal, it should dismiss the Notice of Appeal and make such order as to costs as it considers just and equitable.

11. Other Preliminary Issues

- (1) The Chairman may at any time, whether upon the application of a party to an Appeal or upon his own initiative, direct that issues (other than the Appeal Board's jurisdiction) may be considered by the Appeal Board at a separate preliminary hearing in the interests of securing a just, economical and expeditious resolution of the Appeal.
- (2) The Chairman may make such directions as he considers appropriate in relation to such preliminary hearing.

12. Interveners

- (1) Any person wishing to intervene ("Intervener") in the Appeal shall seek the leave of the Chairman or the Appeal Board to do so at the earliest opportunity and in any event no later than 28 days of publication of the announcement of the Notice of Appeal on the website of the Commerce and Economic Development Bureau. The Chairman and Appeal Board may grant leave to intervene later in the Appeal proceedings if the Intervener can demonstrate that it was not feasible for it to have sought leave within the time limit.
- (2) The Intervener should make its request for leave in writing explaining why it has sufficient interest which is directly related to or connected with the matters in the Appeal.
- (3) The Clerk should give notice of the request for leave to intervene to the parties to the Appeal and invite their observations on that request; and if granted, the documents to be made available to the intervening person, within a specified period.
- (4) If the Chairman or Appeal Board is satisfied, having taken into account the observations of the parties, that it is appropriate to grant leave, it should make such directions as he or it sees fit relating to the participation of the Intervener in the Appeal in the stages of case management and preparatory issues (Section IV below), appeal proceedings (Section V) and award (Section VI), as appropriate.

## **SECTION IV – CASE MANAGEMENT and PREPARATORY ISSUES**

### 13. Case Management Conference

- (1) Where it appears to the Chairman that any proceedings would be facilitated by holding a case management conference, the Chairman may, on the request of the Appellant or the TA or of his own motion, give directions for such a conference or review to be held.
- (2) A case management conference should be held in private unless the Chairman otherwise directs.
- (3) The purpose of a case management conference should be :
  - (a) to ensure the efficient conduct of the proceedings;
  - (b) to determine the points on which the parties must present further argument or which call for further evidence to be produced;
  - (c) to clarify if necessary the forms of order sought by the Appellant and the TA, their arguments of fact and law and the points at issue between them;
  - (d) to ensure that all agreements that can be reached between the Appellant and the TA about the matters in issue and the conduct of the proceedings are made and recorded; and
  - (e) to facilitate the settlement of the proceedings.

### 14. Case Management

- (1) The Chairman may at any time, on the request of the Appellant or the TA or of his own motion, at a case management conference or otherwise, make the following orders as he thinks fit to ensure the just, expeditious and economical conduct of the proceedings –
  - (a) as to the manner in which the proceedings are to be conducted, including any time limits to be observed in the conduct of the hearing;

- (b) as to the submission in advance of a hearing of any witness statements or expert reports additional to those annexed to the Appellant's Particulars and the Response;
  - (c) as to the necessity or otherwise for examination or cross-examination of witnesses;
  - (d) for the preparation and exchange of skeleton arguments for any hearing;
  - (e) as to the fixing of time limits with respect to any aspect of the proceedings;
  - (f) as to the abridgement or extension of any time limits, whether or not expired;
  - (g) requiring persons to attend and give evidence or to produce documents;
  - (h) as to the evidence which may be required or admitted in proceedings before the Appeal Board and the extent to which it should be oral or written;
  - (i) for the production by the Appellant and the TA of documents or classes of documents;
  - (j) for the appointment and instruction of experts (where the Appeal Board considers expert evidence to be necessary) whether by the Appeal Board or by the parties, and as to the manner in which expert evidence is to be given; and
  - (k) as to the invitation of the Appellant and the TA or their representatives to meetings before the substantive hearing.
- (2) If the Appellant or the TA fails to comply with any order made by the Appeal Board, it may order, if it considers that it is in the interest of justice to do so, that such party be debarred from taking any further part in the proceedings without the Appeal Board's permission.

## SECTION V – APPEAL PROCEEDINGS

### 15. Date, time and place of hearing

As soon as practicable, the Appeal Board should :

- (a) set a timetable outlining the steps to be taken by the parties pursuant to the directions of the Appeal Board in preparation for the substantive hearing of the Appeal;
- (b) fix the date for the substantive hearing; and
- (c) notify the parties in writing of the date and place of the substantive hearing and of the timetable for that hearing.

### 16. The Appellant to give full particulars of its Appeal

- (1) The Appellant should, within 42 days of his receipt of a notice served by the Clerk, or any extended or abridged time-frame as specified by the Chairman, provide full written particulars of its Appeal (the “Appellant’s Particulars”) to the Clerk and subject to (4) below, to the TA.
- (2) The Appellant’s Particulars should contain :
  - (a) details of the opinion, determination, direction, decision, sanction or remedy appealed against;
  - (b) a concise statement of the relevant facts;
  - (c) a summary of the principal grounds for contesting the opinion, determination, direction, decision, sanction or remedy appealed against;
  - (d) a succinct presentation of the arguments supporting each of the grounds of Appeal;
  - (e) an explanation of steps that have been taken by the Appellant to employ alternative forms of relief available to the Appellant under the Ordinance to address the matters raised in the Appeal. If the Appellant has not taken any such steps and, alternative remedies are available, the Appellant should explain the reasons for pursuing the appeal rather than these other remedies;

- (f) names of witnesses, if any;
  - (g) a list of materials that are relied upon by the Appellant in making the submission;
  - (h) if relevant, the Appellant's explanation as to why it is not practicable to annex to the Appellant's Particulars any of the documents relied upon by the Appellant, identifying when such documents can be expected to be disclosed; and
  - (i) the relief and any orders sought by the Appellant.
- (3) There should be annexed to the Appellant's Particulars (subject to (4) below), as far as practicable, a copy of every document (suitably marked as to relevance) on which the Appellant relies, including the written statements of all witnesses of fact, and those of any expert witnesses if leave has been given to rely upon expert evidence.
- (4) If the Appellant wishes to request confidential treatment for any part of the Appellant's Particulars, or the documents annexed to them, he should make a written request to the Chairman giving detailed reasons for the request and identifying the material which he wishes to keep confidential. The Chairman shall decide whether such request should be acceded to. If the Chairman so requests, the Appellant may be requested to provide both the confidential version and the non-confidential version of the Appellant's Particulars to the Clerk and the TA. If the Chairman does not accede to the request, the Appellant should re-submit the Appellant's Particulars.
- (5) The signed original of the Appellant's Particulars (and its annexures) must be accompanied by three copies certified by the Appellant or his legal representative as conforming to the original.

## 17. The TA's Response

- (1) The TA should, within 42 days of the receipt of the Appellant's Particulars from the Appellant, or any extended or abridged time-frame as specified by the Chairman, send his response in writing (the "Response") to the Clerk and subject to (5) below, to the Appellant.

- (2) The Response should contain :
  - (a) a succinct presentation of the TA's arguments in response to the Appellant's grounds for contesting the opinion, determination, direction, decision, sanction or remedy appealed against;
  - (b) the relief and any orders sought by the TA;
  - (c) names of witnesses, if any;
  - (d) a list of materials that are relied upon by the TA in support of the Response; and
  - (e) if relevant, the TA's explanation as to why it is not practicable to annex to the Response any of the documents relied upon by the TA and, identifying when such documents can be expected to be disclosed.
- (3) There should be annexed to the Response, subject to (5) below, as far as practicable, a copy of every document (suitably marked as to relevance) upon which the TA relies, including the written statements of all witnesses of fact, and those of any expert witnesses if leave has been given to rely upon expert evidence.
- (4) The signed original of the Response (and its annexures) must be accompanied by three copies certified by the TA or his legal representative as conforming to the original.
- (5) If the TA wishes to request confidential treatment for any part of the Response, and the documents attached to the Response, he or she should make a written request to the Chairman setting out the reasons for the request and identifying the material which he or she wishes to keep confidential. The Chairman may, at his discretion, conduct hearing as may be necessary, and should decide whether such request should be acceded to. If the Chairman so requests, the TA may be requested to provide both the confidential version and the non-confidential version of the Response to the Clerk and the Appellant. If the Chairman does not accede to the request, the TA should re-submit his Response.

18. Use of Disclosed Documents

Any documents disclosed for the purpose of the Appeal should not be published or used for any other purpose without the permission of the Chairman.

19. Further particulars

- (1) The Appellant and the TA may, by written request to the Chairman, seek a direction that further written particulars be given of respectively the TA's Response or the Appellant's Particulars, provided such request is made at least 42 days before the date ordered for the commencement of the substantive Appeal hearing. The Chairman may make such directions as he considers appropriate for the proper and efficient disposal of the Appeal.
- (2) If the Appellant or the TA providing the further particulars wishes to request confidential treatment for any part of them, he or she may make a written request to the Chairman. The request should set out the reasons for the request and identify the material which he or she wishes to keep confidential. The Chairman shall decide whether such request should be acceded to. If the Chairman so requests, the Appellant or the TA may be requested to provide both the confidential version and the non-confidential version of the particulars to the Clerk and the requesting party. If the Chairman does not accede to the request, the Appellant or the TA should re-submit the particulars.

20. Production of Documents by the Parties

- (1) The Chairman or the Appeal Board may, upon the written application of a party, or on his or its initiative, require a person to produce certain documents if in the opinion of the Chairman or Appeal Board :
  - (a) the documents sought are necessary, relevant and proportionate to determine the issues before the Appeal Board;
  - (b) the production of the documents would be necessary to secure the just, expeditious and economical conduct of the proceedings; and
  - (c) to order production of the documents would not be oppressive or burdensome in the circumstances of the case.

- (2) The Appeal Board should not be bound by the rules for discovery of documents in court proceedings to production of documents in an Appeal.

## 21. Evidence

- (1) Strict rules of evidence should not apply to proceedings before the Appeal Board.
- (2) The Appeal Board may control the evidence by giving directions as to :
  - (a) the issues on which it requires evidence;
  - (b) the nature of the evidence which it requires to decide these issues; and
  - (c) the way in which the evidence is to be placed before the Appeal Board.
- (3) The Appeal Board may admit or exclude evidence whether or not the evidence was available to the TA when the disputed decision was taken.
- (4) The Appeal Board may allow a witness to give evidence through a video link or by other means.

## 22. Expert Evidence

- (1) Any party wishing to rely upon expert evidence in an Appeal should, as soon as reasonably practicable, seek leave of the Chairman or Appeal Board to do so.
- (2) Any request for leave should be in writing, copied to the other parties. It should identify the issues on which the party wishes to rely on expert evidence and explain why the party considers that expert evidence will assist the Appeal Board in resolving the matters before it in the Appeal.
- (3) Leave will only be given if in the opinion of the Chairman or Appeal Board, he or it considers expert evidence is relevant to the matters in issue and necessary for the just expeditious and economical conduct of the proceedings.

23. Procedure at the hearings and meetings

- (1) The Appeal Board should seek to avoid formality in all hearings and meetings and conduct the hearing in such manner as it considers most appropriate for the clarification of the issues before it and generally to achieve the just, expeditious and economical handling of the proceedings.
- (2) The Chairman shall be responsible for directing the proper conduct of the hearing.
- (3) The Appellant and the TA may appear at the hearing of the Appeal, by their legal representative or by any duly authorised officer, director, partner or employee.
- (4) Unless the Appeal Board otherwise orders, no witness of fact or expert should be heard unless the relevant witness statement or expert report has been submitted in advance of the hearing and in accordance with any orders made by the Appeal Board.
- (5) The Appeal Board may limit examination, cross-examination or re-examination of witnesses to any extent or to any manner it deems appropriate, having regard to the just, expeditious and economical conduct of the proceedings.
- (6) Where the Appeal Board hearing an Appeal, after consulting the Appellant and the TA, is satisfied that it is in the interest of justice to do so, it may –
  - (a) direct that a hearing or part of a hearing should take place in private and give directions as to the persons who may be present; and
  - (b) give directions prohibiting the publication, disclosure or other use of any material the Appeal Board receives at a sitting, or part of a sitting, which is held in private.

24. Withdrawal of Appeal

- (1) The Appellant may withdraw his Appeal only with the permission of the Appeal Board, or if the Appeal has not yet proceeded to a hearing, the Chairman.

- (2) Where a permission to withdraw is given under (1) above, the Appellant may –
  - (a) do so on such terms as to costs or on substantive matters as the Appeal Board or the Chairman considers fit, subject to first permitting the parties to make representations on this issue; and
  - (b) instruct the Clerk to publish an announcement of the withdrawal and the terms thereof at the website of the Commerce and Economic Development Bureau.
- (3) Where an Appeal is withdrawn –
  - (a) any orders made under these Guidelines and any order made under section 32O(1)(d) (other than orders made in respect of costs and prohibiting the publication or other disclosure of any material the Appeal Board receives, as appropriate), shall immediately cease to have effect; and
  - (b) a fresh Appeal cannot be brought by the Appellant on the same issues in relation to the opinion, decision, determination, direction, sanction or remedy which was the subject of the withdrawn Appeal.

## 25. Failure to appear

- (1) If the Appellant or the TA fails to attend the hearing whether in person or by counsel or a solicitor, the Appeal Board may make such direction for the future conduct of the Appeal as it thinks fit which may include –
  - (a) postponement or adjournment of the hearing for such period as it thinks fit;
  - (b) proceeding to hear the Appeal on the information before it; or
  - (c) dismissing the Appeal.
- (2) The Appeal Board may make such order as to costs as it thinks fit.

## **SECTION VI – AWARD**

### 26. Determination of the Appeal Board

- (1) The Appeal Board may order when its determination of an Appeal should come into operation.
- (2) The Clerk should serve a copy of the Appeal Board's determination and its reasons for its determination on the Appellant and the TA.
- (3) The Clerk should publish the Appeal Board's determination (subject to the Appeal Board's orders as to the deletion of confidential information) and the reasons for its determination at the website of the Commerce and Economic Development Bureau.

### 27. Costs and witness expenses

- (1) The Chairman or Appeal Board may in his or its discretion make such order as he or it considers just and equitable in all the circumstances of the case in relation to the payment of costs or reasonable expenses by one party to another in respect of the whole or part of the Appeal proceedings.
- (2) In determining how much a party is required to pay, the Chairman or Appeal Board may take account of the conduct of all parties in relation to the proceedings.
- (3) The Appeal Board may assess the costs to be paid on a gross sum basis or may direct a taxing officer of the High Court to make a detailed assessment of the costs to be paid.
- (4) In assessing costs, the Chairman and the Appeal Board should not be bound by any rules of the Court relating to taxation or assessment of costs.

### 28. Consent orders

- (1) If the Appellant and the TA agree the terms on which to settle all or any part of the proceedings, they may request the Appeal Board to make a consent order.

- (2) A request for a consent order should be made by sending to the Clerk a draft consent order.
- (3) In respect of any request for a consent order the Appeal Board may, as it thinks fit, after hearing the parties :
  - (a) make the order in the terms requested;
  - (b) invite the Appellant and the TA to vary the terms; or
  - (c) refuse to make any order.

## SECTION VII – SUPPLEMENTARY

### 29. Service

- (1) Service of any notice or document under these Guidelines to the Appeal Board should be addressed to the Clerk to the Appeal Board, Telecommunications (Competition Provisions) Appeal Board, c/o Commerce and Economic Development Bureau, presently at 2<sup>nd</sup> Floor, Murray Building, Garden Road, Central, Hong Kong (fax: (852) 2827 0119; email: tel-appeal@cedb.gov.hk)
- (2) Service of any notice or document under these Guidelines may be effected personally or by registered post addressed –
  - (a) in the case of the TA, to the headquarters of the Office of the Telecommunications Authority;
  - (b) in the case of a company within the meaning of the Companies Ordinance (Cap. 32), to its registered office;
  - (c) in the case of a partnership, to its principal place of business;
  - (d) in the case of an individual, to his last known address;
  - (e) in the case of an overseas company within the meaning of the Companies Ordinance (Cap. 32), to the person resident in Hong Kong who is authorised to accept service of process and notices on its behalf for the purposes of Part XI of that Ordinance at his address delivered to the Registrar of Companies under that Ordinance;
  - (f) such other address as the parties may specify for the purpose of the Appeal;
  - (g) where a firm of Hong Kong solicitors has been instructed by a party in relation to the Appeal, to that firm; and
  - (h) notwithstanding the above, the Appeal Board may if it thinks just make an order for substituted service of any notice or document.

30. Irregularities

- (1) Any irregularity resulting from failure to comply with any requirement of these Guidelines before the Appeal Board has reached its decision should not of itself render the proceedings void.
- (2) Where any such irregularity is brought or comes to the attention of the Appeal Board, the Appeal Board may, and must if it considers any person may have been prejudiced by the irregularity, give such directions as it thinks fit to cure or waive the irregularity before reaching its decision.
- (3) Clerical mistakes in any document recording a direction, order or decision of the Chairman or the Appeal Board, or errors of any nature in such a document, may be corrected by the Chairman.

31. Time frame for Merger and Acquisition Cases

The Chairman shall exercise the discretion to vary the time limits mentioned in this practice or procedure so that in normal circumstances an Appeal lodged under section 32N(1A), 32N(1B) or 32N(1C) of the Ordinance will have its hearing completed and ruling delivered within three months' time and a written notice of the ruling be issued within the following 28 days.

32. Appeal by Case Stated

- (1) A party may, by a written request to the Appeal Board, request the Appeal Board to refer any question of law to the Court of Appeal for determination by way of case stated either :
  - (a) at any time during an Appeal; or
  - (b) within 21 days following the issuance of a final determination by the Appeal Board.
- (2) The party's written request to the Appeal Board to exercise its discretion to refer a question of law to the Court of Appeal should –
  - (a) state clearly, concisely and without ambiguity the question of law it wishes to be raised;

- (b) where the request is made prior to the Appeal Board's determination, explain the relevance of the question of law to the matters in the Appeal and why it is necessary for the proper determination of the Appeal to seek a determination from the Court of Appeal; and
  - (c) where the request is made after the Appeal Board's determination has been issued, explain why the question of law raised forms the basis for the Appeal Board's determination and why it is necessary for it to be raised with the Court of Appeal.
- (3) The other parties to the Appeal should provide to the Appeal Board their written response to the request for a case stated within 21 days counting from the receipt of the written request for determination of question of law by way of case stated served by the Clerk.
  - (4) The Appeal Board should, having considered the representations made by the parties, decide whether it is necessary for the fair disposal of the Appeal, to refer the proposed question of law to the Court of Appeal having regard to the additional costs and delay that may be incurred.
  - (5) The Appeal Board may, on its own initiative at any time during the Appeal or upon making its determination, refer any question of law to the Court of Appeal for determination by way of case stated. Where the Appeal Board intends to refer a question of law to the Court of Appeal after it has issued its written determination of an Appeal, it should identify the questions of law to be referred in its written determination.

~ End ~