

立法會
Legislative Council

LC Paper No. CB(4)341/15-16
(These minutes have been seen
by the Judiciary Administration)

Ref : CB4/SS/16/14

Subcommittee on Rules on Suitors' Funds

**Minutes of first meeting held on
Tuesday, 20 October 2015, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

- Members present** : Dr Hon CHIANG Lai-wan, JP (Chairman)
Hon Albert HO Chun-yan
Hon Cyd HO Sau-lan, JP
- Member absent** : Hon Dennis KWOK
- Public Officers attending** : Agenda item II
Judiciary Administration
Ms Wendy CHEUNG
Assistant Judiciary Administrator (Development)
Ms Cindy LEE
Chief Treasury Accountant
Mr Desmond WU
Senior Administrative Officer (Development)1
Department of Justice
Mr Newton CHAN
Senior Assistant Law Officer (Civil Law)

Miss Elaine NG
Senior Government Counsel

Mr Henry CHAN
Senior Government Counsel (Acting)

Clerk in attendance : Mr Daniel SIN
Chief Council Secretary (4)3

Staff in attendance : Miss Evelyn LEE
Assistant Legal Adviser 10

Ms Anki NG
Council Secretary (4)3

Action

I Election of Chairman

Dr CHIANG Lai-wan was elected Chairman of the Subcommittee.

II Meeting with the Judiciary Administration

(L.N. 147 of 2015	--	Hong Kong Court of Final Appeal Suitors' Funds Rules
L.N. 148 of 2015	--	High Court Suitors' Funds (Amendment) Rules 2015
L.N. 149 of 2015	--	District Court Suitors' Funds (Amendment) Rules 2015
L.N. 150 of 2015	--	Lands Tribunal (Suitors' Funds) Rules
L.N. 151 of 2015	--	Labour Tribunal (Suitors' Funds) (Amendment) Rules 2015
L.N. 152 of 2015	--	Small Claims Tribunal (Suitors' Funds) (Amendment) Rules 2015

- Ref: SC 101/33/11 -- Legislative Council Brief on "Legislative amendments relating to suitors' funds rules" issued by Judiciary Administration in June 2015
- LC Paper No. LS76/14-15 -- Legal Service Division Report
- LC Paper No. CB(4)31/15-16(01) -- Marked-up copy of the proposed subsidiary legislation related to the rules on suitors' funds prepared by the Legal Service Division (Restricted to members)
- LC Paper No. CB(4)31/15-16(02) -- Letter from Assistant Legal Adviser to the Judiciary Administration dated 10 July 2015
- LC Paper No. CB(4)31/15-16(03) -- Judiciary Administration's response to letter from Assistant Legal Adviser as set out in LC Paper No. CB(4)31/15-16(02))

2. The Subcommittee deliberated (index of proceedings in the **Appendix**).

Follow-up actions to be taken by the Judiciary Administration

3. The Judiciary Administration was requested to provide the following information:

- (a) updated statistics, the circumstances and precedent cases where the Labour Tribunal had made an order for security for the payment of an award or order against the employee who had been granted legal aid; and
- (b) the definition of "securities" as referred to under Rule 7 of the Lands Tribunal (Suitors' Funds) Rules 2015 (L.N.150 of 2015).

(Post-meeting note: The information provided by the Judiciary Administration was circulated to members vide LC Paper No. CB(4)156/15-16 on 3 November 2015.)

Legislative timetable

4. The Subcommittee completed its scrutiny work. Members generally supported the six sets of new or amendment rules related to suitors' funds. Members noted that the Chairman would move a motion to extend the scrutiny period of the subsidiary legislation to 18 November 2015 at the Council meeting of 28 October 2015. The Subcommittee would submit a written report to the House Committee at its meeting on 6 November 2015. Members also noted that the deadline for giving notice of motion to amend the subsidiary legislation at the Council meeting on 18 November 2015 was 11 November 2015.

III Any other business

5. There being no other business, the meeting ended at 12:15 pm.

Council Business Division 4
Legislative Council Secretariat
14 December 2015

**Proceedings of first meeting of the
Subcommittee on Rules on Suitors' Funds
on Tuesday, 20 October 2015, at 10:45 am
in Conference Room 2A of the Legislative Council Complex**

Time marker	Speaker	Subject(s)	Action required
Election of Chairman			
000330 – 000635	Mr Albert HO Ms Cyd HO Dr CHIANG Lai-wan	Election of Chairman	
Meeting with the Judiciary Administration			
000636 – 001034	Chairman Judiciary Administration	Briefing by the Judiciary Administration	
001035 – 001925	Chairman Ms Cyd HO Judiciary Administration Administration	<p>Ms Cyd HO enquired about the circumstances where parties in a law suit were required to deposit funds in the court to be held in suitors' funds accounts, the amount of the deposit that might be involved, and in particular, the grounds and criteria upon which the Labour Tribunal might require an employee in a Labour Tribunal case who was receiving legal aid to make security payment by depositing funds into the suitors' funds account of the Labour Tribunal.</p> <p>The Judiciary Administration ("JA") advised that the court had discretion in determining whether and, if so, the amount of funds a party was required to put into the relevant suitors' funds account as security for costs. The Department of Justice ("DoJ") advised that the factors the court might consider included the purpose of lodging the suitors' funds, the complexity of the case, and the relevant evidence from the parties on the estimated legal cost.</p> <p>JA supplemented that suitors' funds held, for example, by the High Court mainly originated from:</p> <p>(a) damages awarded to minors and/or mentally incapacitated persons being persons under disability as a result of civil legal actions;</p> <p>(b) assets belonging to mentally incapacitated persons for which the court has appointed committees to manage their estates;</p>	

Time marker	Speaker	Subject(s)	Action required
		<p>(c) monies held in court pending settlement or other resolution of civil legal actions (e.g. sanctioned payments, securities for costs and payment made under order granting conditional leave to defend); and</p> <p>(d) monies paid into and held by the court pursuant to statutes.</p> <p>JA further explained that the new section 30 of the Labour Tribunal Ordinance (Cap. 25) as amended by the Administration of Justice (Miscellaneous Provisions) Ordinance 2014 (Ord. No. 20 of 2014) provided that the Labour Tribunal might order a party to give security for the payment of any award that has been or may be made if the Tribunal considered it just and expedient to do so. Possible conditions for invoking the provision included whether a party had conducted the proceedings in a manner that delayed the determination of the case and whether there was a real risk for a party to dispose of his or her assets.</p> <p>In response to the request of Ms Cyd HO, JA agreed to follow up on providing information, if available, on updated statistics, the circumstances and precedent cases where the Labour Tribunal had made an order for security for the payment of an award or order against the employee who had been granted legal aid.</p>	<p>The Judiciary Admin. to follow up as per para. 3(a) of the minutes</p>
001926 – 002942	<p>Chairman Mr Albert HO Judiciary Administration</p>	<p>Mr Albert HO enquired whether the passing of the six sets of new or amendment rules related to suitors' funds would align the provisions of suitors' funds rules in various courts and tribunals. JA advised that whereas the basic approaches for administering suitors' funds were consistent among the various courts, there were variations in the seven sets of suitors' funds rules (including the rules for the Competition Tribunal) to reflect the operational needs and practices of the courts concerned. Such differences included the acceptance of "movable property" or "securities" as a kind of suitors' funds only by some of the courts or tribunals concerned.</p> <p>Mr Albert HO enquired about the power of investment of the Registrar on suitors' funds, and whether there was a standard for the investment return. Mr HO also enquired whether a segregate account was set up for each party who had put payment in a suitors' fund.</p>	

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		<p>JA advised that the proposed new rules and amendment rules had not altered the investment principles for suitors' funds. The Judiciary adopted a conservative investment approach. Money paid into a suitors' fund account was mainly invested in three- to six-month fixed deposits as a standing practice. However, the law allowed flexibility for the Registrar to invest money lodged in court in such manner as he or she considered fit and might vary at any time such investments.</p> <p>JA further informed members that whereas a separate account was set up for each case, the money held in different accounts would be aggregated for the purpose of investment. Interest accrued or investment returns would largely be credited into individual suitors' funds accounts.</p> <p>Mr Albert HO raised queries about how the courts handled "securities" being held as suitors' funds and whether fees were charged for managing the securities or cash held in the suitors' funds. JA advised that the Registrar of a court essentially played a custodian role for securities held under suitors' funds, and would handle them in accordance with the court orders. These securities were recorded separately in the Registrar's books. As the funds were managed by the accounts office of JA, no management fees needed to be paid to any external service providers for the management of the securities. Where the securities had been transferred into the name of the Registrar of the court, shares management activities such as rights issues would be dealt with in accordance with the established practice and procedure of the Government.</p>	
002943 – 003346	Chairman Administration	The Chairman asked, in case where a certain amount of money was claimed under a lawsuit, the amount of money (expressed as a percentage of the amount claimed) that was required to be put up as suitor's fund for the lawsuit. DoJ advised that the factors the court might consider generally included the purpose of requiring the suitor's funds to be lodged, the complexity of the case, and the relevant evidence from the parties on the estimated legal costs.	
003347 – 004054	Chairman Mr Albert HO Judiciary Administration Assistant Legal Advisor 10 ("ALA10")	Mr Albert HO commented that some of the provisions in the suitors' funds rules were too detailed and too restrictive. Members considered that those provisions relating to operational matters should be left to the Judiciary or to the respective administrative staff of the	

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		<p>courts. JA clarified that the six pieces of new and amendment rules related to suitors' funds were drafted according to prevailing conventions and having regard to procedural justice. That said, the opportunity was taken to introduce more flexibility in the proposed subsidiary legislation. For example, rather than prescribing detailed hours of the day for payment out of money lodged in courts, the rules generally aligned the payment-out hours with the opening hours of the courts' account offices.</p> <p>Discussion on the handling and management of valuable properties lodged with courts and tribunals as suitors' funds.</p> <p>ALA 10 advised that queries on the relevant subsidiary legislation had been answered by JA in previous correspondence.</p>	
004055 – 005630	Chairman ALA10 Mr Albert HO Judiciary Administration	<p><u>Clause-by-clause examination of the subsidiary legislation</u></p> <p>Marked-up version (LC Paper No. CB(4)31/15-16(01))</p> <p>High Court Suitors' Funds (Amendment) Rules 2015 (Cap.4 sub. leg. B) <u>L.N. 148 of 2015</u></p> <p><u>Rules 2 and 3 amended</u> Members raised no query.</p> <p><u>Rule 4 amended (Keeping of accounts and register)</u> Mr Albert HO's enquiry and JA's response regarding the meaning of "investment" and the account name and arrangements under which the funds would be kept.</p> <p><u>Rule 6 amended (Securities)</u> Mr Albert HO's enquiry and JA's response regarding the holding of securities account by the Registrar in office as a legal entity and the signatories for such account.</p> <p><u>Rules 8, 11, 12, 14 and 15 amended</u> Members raised no query.</p> <p><u>Rule 16 amended</u> JA advised that under Rule 16(3)(c), money paid in court would include payment of watchmen's fees, caretakers' fees and witness expenses, and no interest was payable for these types of expenses. Rule</p>	

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		<p>16(3AB) was a transitional provision so that upon commencement of the rules, the new arrangements relating to interest payment could be implemented as soon as practicable. Rule 16(3C) governed the payment of interest relating to funds which were sanctioned payments within the meaning of Order 62A of the Rules of the High Court (Cap. 4 sub. leg. A).</p> <p><u>Rules 17 and 19 amended</u> Members raised no query.</p> <p><u>Rule 21 amended (Certificate of description and amount of funds)</u> Mr Albert HO's enquiry and JA's response regarding the capacity of the person requesting for the issue of the certificate.</p> <p><u>Rules 23 amended and Rule 24 repealed</u> Members raised no query.</p> <p><u>Schedule amended (Forms 1 to 6)</u> Members raised no query.</p>	
005631 – 005700	Chairman Mr Albert HO Judiciary Administration	<p>District Court Suitors' Funds Rules (Cap.336 sub. leg. E) <u>L.N. 149 of 2015</u> Members raised no query.</p>	
005701 – 010020	Chairman Judiciary Administration Administration	<p>Labour Tribunal Suitors' Funds Rules (Cap.25 sub. leg. D) <u>L.N. 151 of 2015</u></p> <p><u>Rule 2 amended</u> Members raised no query.</p> <p><u>Rule 3 amended (Lodgment of funds)</u> The Chairman's enquiry and DoJ's response regarding the meaning of "交存".</p> <p><u>Rule 4 amended</u> Members raised no query.</p> <p><u>Rules 5 to 7, Rule 9 amended</u> Members raised no query.</p> <p><u>Schedule amended (Forms 1 and 2)</u> Members raised no query.</p>	

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010021 – 010200	Chairman Judiciary Administration	<p>Small Claims Tribunal (Suitors' Funds) (Amendment) Rules 2015 (Cap. 338 sub. leg. D) <u>L.N. 152 of 2015</u></p> <p><u>Rules 2 to 4 and 6 amended</u> Members raised no query.</p> <p><u>Rule 10 amended (Annual statement of accounts and audit)</u> The Chairman's enquiry and JA's response regarding the number of registrar(s) in the Small Claims Tribunal.</p> <p><u>Schedule amended (Forms 1 and 2)</u> Members raised no query.</p>	
010201 – 011710	Chairman Judiciary Administration ALA 10	<p>Hong Kong Court of Final Appeal Suitors' Funds Rules (Cap.484) <u>L.N. 147 of 2015</u></p> <p>JA advised that the funds referred to in this set of rules included money only, not securities or movable property. A new bank account would be opened in the name of "Hong Kong Court of Final Appeal Suitors' Funds Account" for depositing suitors' funds paid into the Court of Final Appeal.</p> <p><u>Rules 1 to 5 added</u> Members raised no query.</p> <p><u>Rule 6 added (Annual statement of accounts)</u> Mr Albert HO's enquiry and JA's response regarding the submission of the annual accounts statement to the Audit Commission.</p> <p><u>Rule 7 added (Payment out of funds in Court)</u> Mr Albert HO's enquiry and JA's response regarding the payment out of funds in Court exceeding \$250.</p> <p><u>Rules 8 to 13 added</u> Members raised no query.</p> <p><u>Rule 14 added (Power of Registrar to invest funds)</u> Mr Albert HO's enquiry and JA's response regarding the Registrar's power to invest funds paid into Court. The funds were placed under fixed deposit terms as a standing practice. Mr HO remarked that this rule might introduce flexibility on the Registrar's power to invest funds paid into Court. JA advised that any changes in the present prudent investment strategy</p>	

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		<p>would need to be carefully considered. The Judiciary did not see any need for change at this stage.</p> <p><u>Rule 15 added (Surplus income)</u> Mr Albert HO's enquiry and JA's response regarding the nature of the surplus income. JA advised that some money in the suitor' funds accounts such as interest of sanctioned payments not to be credited to the respective suitors' funds accounts might become surplus income of courts. The income would be transferred to the General Revenue and paid into the Treasury as soon as was practicable after the end of each financial year in accordance with the various suitors' funds rules.</p> <p><u>Rules 16 to 18 added</u> Members raised no query.</p> <p><u>Rule 19 added (Transfer of unclaimed money in Court)</u> Mr Albert HO's enquiry and JA's response regarding whether the claimant could reserve his right to claim back the funds lodged with the Court after five years if he could provide justifiable reasons. ALA 10 advised that there were no provisions in the new rules or the existing rules as amended which deal with the means that owners might recover such funds under the circumstances that was raised by Mr Albert HO.</p> <p>JA advised that there was existing administrative mechanism for applications to be made to recover any such unclaimed funds from the Treasury.</p> <p><u>Rule 20 added</u> JA advised that the purpose of this rule was to provide that the funds in the Court immediately before commencement of the rules which were operated administratively be transferred to a statutory operational account, namely, the Court of Final Appeal Suitors' Funds Account, upon commencement of the rules, while the conditions and restrictions (if any) applicable to the funds before such commencement remained unchanged.</p> <p><u>Schedule added (Forms 1 to 3)</u> Members raised no query.</p>	

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011711 – 012754	Chairman Judiciary Administration ALA 10 Administration	<p>Lands Tribunal (Suitors Funds) Rules (Cap.17) <u>L.N. 150 of 2015</u></p> <p>JA advised that the funds referred to in this set of rules included money, securities and movable property.</p> <p><u>Rules 1 to 6 added</u> Members raised no query.</p> <p><u>Rule 7 added (Securities)</u> JA advised that all kinds of securities might be lodged in the Tribunal.</p> <p>The Chairman's enquiry and JA's response regarding the definition of "securities" under this set of rules.</p> <p>JA would provide the meaning of "securities" applicable to this rule.</p> <p><u>Rules 8 to 11 added</u> Members raised no query.</p> <p><u>Rule 12 added (Payment out, transfer, etc. of funds to personal representatives of persons entitled to payment)</u> Regarding Rule 12(2), Mr Albert HO's enquiry and JA's response regarding the arrangement for paying out the funds to the person named or described under the order on the death of such person.</p> <p><u>Rules 13 to 25 added</u> Members raised no query.</p> <p><u>Schedule added (Forms 1 to 7)</u> Members raised no query.</p> <p>Mr Albert HO's enquiry about the suitors' funds rules applicable to the Competition Tribunal. JA advised that to prepare for the full operation of the new Competition Tribunal, the Judiciary had also prepared for that Tribunal a new set of suitors' funds rules by modeling on Cap. 4B incorporating the necessary refinements. This set of rules had been dealt with separately with the other rules for the Competition Tribunal.</p>	The Judiciary Admin. to follow up as per para. 3(b) of the minutes.

Time marker	Speaker	Subject(s)	Action required
012755 – 012814	Chairman Mr Albert HO ALA 10	The Subcommittee requested ALA 10 to examine the English text of the subsidiary legislation, and to alert the Subcommittee if issues were identified which required the Subcommittee to consider.	
012815 – 012929	Chairman ALA 10 Judiciary Administration Administration	Discussion on the meaning of "securities" regarding Rule 7 of L.N. 150 of 2015.	
012930 – 013025	Chairman	Legislative timetable and extension of the scrutiny period.	

Council Business Division 4
Legislative Council Secretariat
14 December 2015