

# 立法會

## *Legislative Council*

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### **Paper for the House Committee meeting on 6 November 2015**

### **Report of the Subcommittee on Rules on Suitors' Funds**

#### **Purpose**

This paper reports on the deliberations of the Subcommittee on Rules on Suitors' Funds.

#### **Background**

2. Parties in a law suit (suitors) may need to pay or transfer funds into courts (including tribunals) or deposit funds in courts to serve as security against possible default on legal cost or in satisfaction of claims or judgment debts. These funds are held as suitors' funds. In general, the funds may be accepted in the form of money, securities and/or movable properties. Depending on the outcome of the lawsuits, the funds may have to be paid out of courts to the persons entitled to such payment as the court orders.

3. Save for suitors' funds in the Court of Final Appeal ("CFA") and the Lands Tribunal (which are being operated administratively), suitors' funds in the High Court, the District Court, the Labour Tribunal and the Small Claims Tribunal are managed and operated in accordance with their respective dedicated suitors' funds rules.

4. To improve the administration of the suitors' funds, the Judiciary has proposed certain enhancements to, and alignment of practices in, the existing suitors' funds rules of the High Court, District Court, Labour Tribunal and the Small Claims Tribunal. To provide a clearer legal basis for the administration of the suitors' funds of CFA and the Lands Tribunal, the Judiciary has introduced new sets of suitors' funds rules for these courts, which are made under specific rule-making powers provided in the Court of Final Appeal Ordinance (Cap. 484) and the Lands Tribunal Ordinance (Cap. 17) as amended

by the Administration of Justice (Miscellaneous Provisions) Ordinance (Ord. No. 20 of 2014) for the administration of suitors' funds in the said respective courts.

5. Ord. No. 20 of 2014 was enacted in December 2014 to introduce specific rule-making powers in Cap. 484 and Cap. 17. For the sake of clarity and consistency, Ord. No. 20 of 2014 has also provided for specific rule-making powers in the Labour Tribunal Ordinance (Cap. 25) and the Small Claims Tribunal Ordinance (Cap. 338) relating to suitors' funds. Furthermore, Ord. No. 20 of 2014 has also made certain amendments to the corresponding rule-making provisions in the High Court Ordinance (Cap. 4) and the District Court Ordinance (Cap. 336).

6. The provisions in Ord No. 20 of 2014 have not yet taken effect, but on the basis of the provisions, the Judiciary has made new rules and amendment rules in respect of the administration of suitors' funds in various courts.

#### Common features in the rules related to suitors' funds

##### *Time from which interest is accrued for individual suitors' funds accounts*

7. Funds deposited in suitors' funds accounts may accrue interest. For funds paid into the court for certain specified purposes at the High Court and the District Court, such as security for costs, interest is to be credited to an individual suitors' funds account starting from the 14th day after the money has been deposited, unless an order directs otherwise. For the sake of fairness, the Judiciary considers that this period should be shortened to the third business day after the money has been paid in, and that this practice should apply to all relevant courts in respect of funds paid for similar specified purposes. There are exceptions in respect of sanctioned payment relating to costs (see paragraph 12) where the interest will continue to start to accrue only after the expiry date for acceptance of such payments by the other party (i.e. 14 days after the money is paid in court).

##### *Opening hours of the account offices*

8. At present, payment out can only be made on weekdays, except Saturdays and general holidays, between the hours of 10:00 am and 1:00 pm, and between the hours of 2:00 pm and 4:00 pm. The requirements are considered restrictive and the Judiciary suggests aligning the payment-out hours generally with the opening hours of the accounts offices in different courts.

## **The Rules**

### Hong Kong Court of Final Appeal Suitors' Funds Rules (L.N. 147) Lands Tribunal (Suitors' Funds) Rules (L.N. 150)

9. These two new sets of rules (L.N. 147 and L.N. 150) introduce rules relating to specific requirements for suitors' funds lodged into CFA and the Lands Tribunal respectively. Provisions include how suitors' funds are lodged in and paid out of court, investment of funds, crediting of interest to individual suitors' funds accounts and preparation of annual financial statements for the funds.

10. For the suitors' fund in the Lands Tribunal in particular, there are specific rules to deal with funds that are lodged in the form of securities and movable properties.

### High Court Suitors' Funds (Amendment) Rules 2015 (L.N. 148) District Court Suitors' Funds (Amendment) Rules 2015 (L.N. 149)

11. These two instruments amend the High Court Suitors' Funds Rules (Cap. 4B) and the District Court Suitors' Funds Rules (Cap. 336E) to update the information that must be included in the receipts for money paid into the High Court and the District Court respectively, and to specify the documentary proof that is required for listed and unlisted securities that are lodged in the respective courts.

12. Provisions are also introduced to align the payment-out hours of the suitors' funds generally with the opening hours of the accounts offices of the relevant courts, and to shorten the period before interest begins to accrue for individual accounts for certain specified purposes from 14 days to three business days. For sanctioned payment relating to costs, which is a kind of payment lodged in a court by a suitor to act as an incentive for the relevant litigating parties to settle disputes over costs at an early stage, interest would continue to start to accrue only after the expiry date for acceptance of such payments by the other party (i.e. 14 days after the money is paid in court).

### Labour Tribunal (Suitors' Funds) (Amendment) Rules 2015 (L.N. 151) Small Claims Tribunal (Suitors' Funds) (Amendment) Rules 2015 (L.N. 152)

13. Provisions are introduced in these two amendment rules to align the payment-out hours of the suitors' funds generally with the opening hours of the accounts offices of the relevant tribunals, etc.

14. The amendment rules L.N. 151 would, among other things, enable the Labour Tribunal to accept movable properties as suitors' funds which are lodged

into the Tribunal. The amendment rules also require that a register to be kept for all non-monetary funds and provide for the relevant dealings. L.N. 152 provides, among other things, that the statement of accounts concerned must be signed by the Registrar of the District Court instead of the Registrar of the High Court, to reflect the fact that Registrar of the District Court acts as the Registrar of the Small Claims Tribunal.

### **Commencement**

15. L.N. 147 and L.N. 150 to L.N. 152 will come into operation on a day to be appointed by the Chief Justice by notice published in the Gazette. L.N. 148 and L.N. 149 will come into operation on a day to be appointed by the Chief Judge by notice published in the Gazette.

### **The Subcommittee**

16. At the House Committee meeting held on 9 October 2015, Members agreed that a subcommittee should be formed to study the six sets of rules related to suitors' funds. The membership list of the Subcommittee is in **Appendix I**.

17. Under the chairmanship of Dr Hon CHIANG Lai-wan, the Subcommittee has held one meeting with the Judiciary Administration ("JA") and the Department of Justice ("DoJ").

18. To allow more time for the Subcommittee to prepare its report for the House Committee, Dr Hon CHIANG Lai-wan moved a motion at the Council sitting of 28 October 2015 to extend the scrutiny period of the six sets of rules related to suitors' funds from the Council sitting of 28 October 2015 to that of 18 November 2015.

### **Deliberations of the Subcommittee**

#### Consistency among the six sets of rules related to suitors' funds

19. Subcommittee members have queried whether the provisions and requirements prescribed in the six sets of subsidiary legislation on suitors' funds are identical. JA advises that whereas the basic approaches for administering suitors' funds are consistent among the various courts, there are variations in the different suitors' funds rules to reflect the operational needs and practices of the courts concerned.

### Circumstances for payment into suitors' funds

20. The Subcommittee has queried the circumstances where parties in a law suit are required to deposit funds in the court and held in suitors' funds accounts, and the amount of the deposit that may be involved. According to JA, the court has discretion in determining whether and, if so, the amount of funds a party is required to put into the relevant suitors' funds account as security for costs. DoJ has advised that the factors the court may consider generally include the purpose of lodging the suitors' funds, the complexity of the case, and the relevant evidence from the parties on the estimated legal cost.

21. The Subcommittee notes that, as an illustration, suitors funds held by the High Court mainly originate from:

- (a) damages awarded to minors and/or mentally incapacitated persons being persons under disability as a result of civil legal actions;
- (b) assets (whether in form of money, securities or movable property) belonging to mentally incapacitated persons for which the court has appointed committees to manage their estates;
- (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
- (d) monies paid into and held by the court pursuant to statutes.

22. Concerns have been raised where an employee in a Labour Tribunal case, who is receiving legal aid, is required to deposit funds into the suitors' funds account of the Labour Tribunal. Members are concerned that such a requirement may put the employee in a difficult financial situation. The Subcommittee also enquires about the grounds and criteria upon which the Labour Tribunal may require the employee to make security payment. JA explains that the new section 30 of Cap. 25 as amended by Ord. No. 20 of 2014 provides that the Labour Tribunal may order a party to give security for the payment of any award as the Tribunal considers it just and expedient to do so. Possible conditions for invoking the provision include whether a party has conducted the proceedings in a manner that delays the determination of the case and whether there is a real risk for a party to dispose of his or her assets.

### Administration of the suitors' fund

23. The Subcommittee has commented that some of the provisions in the suitors' funds rules are too detailed and too restrictive. Members consider that those provisions are related to operational matters that should be left to the Judiciary or to the respective administrative staff of the courts. JA clarifies that the six pieces of subsidiary legislation related to suitors' funds are drafted according to prevailing conventions and having regard to procedural justice. That said, the opportunity is 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 now generally align the payment-out hours with the opening hours of the courts' account offices.

24. The Subcommittee has raised queries on the capacity in which the Registrar of a court or tribunal holds and pays out money from the suitors' funds, as some members consider that the post of the Registrar, by itself, is not a legal entity, and the post-holder may change from time to time. Queries are also made on whether a corporate body (similar to the Financial Secretary Incorporation) should be set up to administer the suitors' funds. JA clarifies that the Registrar is defined in the statute and has the legal capacity to receive payments made to the Judiciary; certain officers in the courts are authorized to sign cheques in respect of payments. The Subcommittee is also informed that accounts in the Judiciary are subject to annual audit by the Direct of Audit.

25. The Subcommittee notes that some money in the suitor' funds accounts such as interest of sanctioned payments not to be credited to the respective suitors' funds accounts may become surplus income of courts. The income would be transferred to the General Revenue and paid into the Treasury as soon as is practicable after the end of each financial year in accordance with the various suitors' funds rules.

26. The Subcommittee also notes that funds unclaimed for five years would be transferred to the General Revenue and that there are no legislative provisions in the proposed new rules or the existing rules after amendments which purport to allow owners to recover such funds under justifiable circumstances. JA explains that there is an existing administrative mechanism for applications to be made to recover any such unclaimed funds from the Treasury.

### Investment and management of the suitors' funds

27. The Subcommittee notes that the Registrar of a court has the power to invest any money lodged in court. Members has enquired about the Registrar's investment power on suitors' funds, whether there is a standard for the

investment return, and whether a segregate account is set up for each party who has put payment in a suitors' fund. JA advises that the proposed rules and amendment rules have not altered the investment principles for suitors' funds. The Judiciary adopts a conservative investment approach. Money paid to a suitors' fund is mainly invested in three- to six-month fixed deposits as a standing practice. However, the law allows flexibility for the Registrar to invest money lodged in court in such manner as he or she thinks fit and may vary at any time such investments.

28. The Subcommittee is further informed that whereas a separate account is 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.

29. Some members have raised queries about how the courts handle "securities" being held as suitors' funds and whether fees are charged for managing the securities or cash held in the suitors' funds. The Subcommittee notes that the Registrar of a court essentially plays a custodian role for securities held under suitors' funds, and would handle them in accordance with the court orders. These securities are recorded separately in the Registrar's books. As the funds are managed by the Judiciary in-house, no management fees need to be paid to any external service providers for the management of the securities. Where the securities have been transferred to the Judiciary Administrator's account, shares management activities such as rights issues would be dealt with in accordance with the established practice and procedure of the Government.

30. Enquiries have been raised on the meaning of "securities" under the Lands Tribunal (Suitors' Funds) Rules (L.N.150). DoJ advises that these Rules are made under the new section 10AA of Cap. 17. Section 10AA(3) of Cap. 17 provides that securities include shares and the term "securities" in the Lands Tribunal (Suitors' Funds) Rules is to be interpreted accordingly. The Lands Tribunal (Suitors' Funds) Rules are largely based on the High Court Suitors' Funds Rules (Cap. 4B) and the District Court Suitors' Funds Rules (Cap. 336E). While the term "securities" is not defined in those suitors' funds rules, DoJ has advised that it should be given its general meaning. Generally, other than shares, securities would cover items such as debentures and bonds.

31. The Subcommittee also notes that movable properties held under a suitors' fund may include items which form the subject matter of a dispute in a law suit. Items of considerable value are held in high-security storage facilities in the Judiciary.

32. The Subcommittee supports the six sets of new or amendment rules related to suitors' funds.

**Advice sought**

33. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 4  
Legislative Council Secretariat  
4 November 2015



**Subcommittee on Rules on Suitors' Funds**

**Membership List**

<b>Chairman</b>	Dr Hon CHIANG Lai-wan, JP
<b>Members</b>	Hon Albert HO Chun-yan
	Hon Cyd HO Sau-lan, JP
	Hon Dennis KWOK

(Total : 4 members)

<b>Clerk</b>	Mr Daniel SIN
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<b>Legal Adviser</b>	Miss Evelyn LEE
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<b>Date</b>	20 October 2015
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