



司法機構政務處

Judiciary Administration

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本函檔號 Our Ref.: SC 101/33/11 PT13  
來函檔號 Your Ref.:

28 August 2015


Ms Evelyn Lee  
Assistant Legal Advisor  
Legislative Council  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong

Dear Ms Lee,

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

Further to my letter to you of 24 July 2015 with the English version of the Judiciary's responses to your questions set out in your letter of 10 July 2015, I am sending you the Chinese version of the responses.

Yours sincerely,



( Ms Wendy CHEUNG )  
for Judiciary Administrator

c.c. Legal Advisor, Legislative Council  
Senior Assistant Legal Advisor, Legislative Council

## 有關訴訟人儲存金規則的法例修訂

### 對助理法律顧問所提出的事項的回應

#### 目的

本文件載述司法機構政務處對助理法律顧問在 2015 年 7 月 10 日信中所提出的事項的回應。

#### 回應

(a) 助理法律顧問留意到，在第 147 號法律公告（即《香港終審法院訴訟人儲存金規則》）第 2 條、第 151 號法律公告（即《2015 年勞資審裁處（訴訟人儲存金）（修訂）規則》）及《小額錢債審裁處（訴訟人儲存金）規則》（第 338D 章）中，**儲存金**的定義中並無提及“證券”。然而，在《高等法院訴訟人儲存金規則》（第 4B 章）、《區域法院訴訟人儲存金規則》（第 336E 章）及第 150 號法律公告（即《土地審裁處（訴訟人儲存金）規則》）中，**儲存金**的定義則包含了“證券”。請向委員解釋上述差異的理據。

(b) 此外，在第 147 號法律公告（即《終審法院訴訟人儲存金規則》）及第 338D 章第 2 條中，**儲存金**的定義中並無提及“動產”。然而，在第 4B 章、第 336E 章、第 150 號法律公告（即《土地審裁處（訴訟人儲存金）規則》）及第 151 號法律公告（即《2015 年勞資審裁處（訴訟人儲存金）（修訂）規則》）中，**儲存金**的定義則包含了“動產”。請向委員解釋上述差異的理據。

2. 各套訴訟人儲存金規則對“儲存金”一詞有不同的定義，以反映個別法院及審裁處的不同運作需要。

3. 由於高等法院及區域法院對多種訴訟因由具有司法管轄權，因此司法機構為其提供最大彈性，讓它們可接受款

項、證券及動產作為訴訟人儲存金。這是因為此等款項、證券及動產往往可能是訴訟的標的事項。

4. 至於土地審裁處，司法機構對其採用了類似的安排，原因是土地審裁處一般沿用原訟法庭所採用的常規及程序（《土地審裁處條例》（第 17 章）第 10 條）。

5. 至於其他法院，則無需如此大的彈性。例如，終審法院負責行使最終上訴司法管轄權，而其判決或命令則是由高等法院負責強制執行或執行（《香港終審法院條例》（第 484 章）第 17(5)條及《高等法院規則》（第 4A 章）第 32 號命令第 10 條），因此訴訟各方須向終審法院交存證券或動產的可能性不大。凡證券或動產在終審法院成為爭議標的事項，如終審法院認為需要將該等財產保存以待有關法律程序結束，則該等財產會存放在有關的原訟法院（如高等法院），因後者有權保存該等財產。此外，終審法院的訟費保證金等一般是以款項（或最多以銀行擔保）的形式提供的（第 484 章第 25 條及由司法機構發出的《實務指示 2.3》）。

6. 勞資審裁處方面，司法機構認為，在某些案件（例如涉及外籍家庭傭工的案件）中接受動產（如無日期限制的機票）作為保證金是合宜的做法。因此，司法機構建議勞資審裁處的訴訟人儲存金既可處理款項，亦能處理動產。然而，司法機構認為勞資審裁處無須接受證券。

7. 小額錢債審裁處方面，鑑於其性質及所處理的申索金額細小，小額錢債審裁處只須接受款項作為訴訟人儲存金。

(c) 助理法律顧問留意到，經《2014 年司法（雜項條文）條例》（“《修訂條例》”）第 23(5)條修訂的訴訟人的定義（見《高等法院條例》（第 4 章）第 57(3)條），並無在任何其他法院或審裁處的訴訟人儲存金規則中出現。請向委員解釋上述差異的理據。

8. 在訂立《修訂條例》之前，《高等法院條例》（第 4 章）第 57(3)條中已有“訴訟人”的定義。《修訂條例》

並無改變上述定義的實質內容，而只是對其格式作出相應的改變。這是因為《修訂條例》加入了有關“證券”的新的定義，“訴訟人”的定義因而須要調動到新的段落。

9. 有關“訴訟人”的非盡列形式的定義只在第 4 章而不在其他相關法例出現，原因是只有高等法院須要處理由仲裁程序任何一方支付的款項（參閱《仲裁條例》（第 609 章）附表 2 第 6 及 7 條）。

(d) 助理法律顧問留意到，第 147 號法律公告（即《香港終審法院訴訟人儲存金規則》）並無訂定條文，規定有關從訴訟人儲存金作支出或轉撥，以給予任何作為在命令中明確指名的人之合法遺產代理人的人之情況。然而，第 4B 章第 11 條、第 336E 章第 11 條、第 150 號法律公告（即《土地審裁處（訴訟人儲存金）規則》）第 12 條、《勞資審裁處（訴訟人儲存金）規則》（第 25D 章）第 7 條及第 338D 章第 7 條則分別載有該等條文。請向委員解釋上述差異的理據。

10. 《香港終審法院訴訟人儲存金規則》（“《終審法院規則》”）是在考慮終審法院的運作需要後而擬備的。司法機構認為，類似《高等法院訴訟人儲存金規則》（第 4B 章）第 11 條的條文，對《終審法院規則》並無真正或實際作用。

11. 由高等法院持有的訴訟人儲存金，其主要來源包括以下的例子：

- (a) 因民事法律訴訟而判給無行為能力的人（即未成年人及／或精神上無行為能力的人）的損害賠償；
- (b) 屬於精神上無行為能力的人的資產（不論是款項、證券或動產），而法庭已委任受託監管人管理其產業；
- (c) 因民事法律程序有待和解或以其他方式解決而由法院持有的款項（如附帶條款付款、訟費保證金及根

據批予有條件許可作抗辯的命令而支付的款項)；  
及

(d) 根據法例而向法院繳存並由法院持有的款項。

12. 第 4B 章第 11 條提供一個行政機制，以處理如有有權收取儲存金的人在實際獲付款前死亡，如何透過辦理訂明的正式手續，支出由法院持有的儲存金。例如，在高等法院的待決民事訴訟中，原告人藉接受附帶條款付款而令訴訟各方得以和解，但如原告人在款項實際作支出前死亡，則其合法遺產代理人在辦理第 11(1)條所訂明的正式手續後，便可獲得從法院儲存金作支出的款項，而無需進一步的法院命令。此舉可縮短從法院獲得款項的時間。

13. 有別於高等法院，在終審法院進行的民事法律程序中，只有訟費保證金才會繳存至法院的訴訟人儲存金。上文所述以其他方式繳存法院的儲存金，並不適用於終審法院。如要從留在法院的款項作支出，則須在各方參與下由法院作出命令。法院在作出該命令時，將會考慮各方當時的情況。因此，就終審法院的法律程序而言，第 11 條並無真正或實際作用。如在終審法院出現需援引第 11 條的情況，則可由司法常務官或法庭作出相應的法庭命令。

(e) 助理法律顧問留意到，就指示將繳存法院的訴訟人儲存金以支出、提取或投資以外的方式處理的命令，第 147 號法律公告（即《香港終審法院訴訟人儲存金規則》）第 12(1)條並無明確提及任何以“轉撥”處理的方式。然而，第 4B 章第 14 條、第 336E 章第 14 條及第 150 號法律公告（即《土地審裁處（訴訟人儲存金）規則》）第 15(1)條，則提及以“轉撥”以外的方式處理訴訟人儲存金。此外，第 25D 章及第 338D 章似乎也沒有類似的明確條文。請向委員解釋上述差異的理據。

14. 上述差異是基於個別法院或審裁處的不同運作需要。

15. 就終審法院而言，《終審法院規則》第 10 至 12 條應一併閱讀。第 10 條對從儲存金作支出的情況作出管限。

正如在上文就問題(a)及(b)的回覆所解釋，訴訟各方一般無需向終審法院交存證券或動產。因此，第 10 條有“支付”一詞已經足夠，而無需有“轉撥”一詞。第 11 條對終審法院的儲存金（即款項）的投資作出管限。第 12 條則處理第 10 及 11 條未有涵蓋的情況。由於第 10 條並無提及“轉撥”，因此第 12 條亦無需提及“轉撥”。

16. 就高等法院、區域法院及土地審裁處而言，由於它們亦可接受證券及動產，因此需在有關它們的規則中使用涵蓋較廣的法律詞句，包括“轉撥”。

17. 至於勞資審裁處及小額錢債審裁處，鑒於它們的運作簡單，而所涉及的訴訟人儲存金的金額一般亦相對較小，它們的訴訟人儲存金規則整體較簡單。從運作的角度來看，它們無需類似的規則。

**司法機構政務處**  
**2015 年 7 月**

香港司法機構  
司法機構政務處



JUDICIARY ADMINISTRATION  
JUDICIARY  
HONG KONG

本函檔號 OUR REF: SC 101/33/11 PT 12

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24 July 2015

Ms Evelyn Lee  
Assistant Legal Advisor  
Legislative Council  
Legislative Council Complex  
1 Legislative Council Road  
Central, Hong Kong

Dear Ms Lee,

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

Thank you for your letter of 10 July 2015. Please find attached the Judiciary's responses to your questions. The Chinese version will follow.

Yours sincerely,

( Ms Wendy CHEUNG )  
for Judiciary Administrator

c.c. Legal Advisor, Legislative Council  
Senior Assistant Legal Advisor, Legislative Council

## **Legislative Amendments relating to Suitors' Funds Rules**

### **Responses to the Issues raised by the Assistant Legal Adviser**

#### **PURPOSE**

This paper sets out the responses from the Judiciary Administration to the issues raised by the Assistant Legal Adviser in her letter of 10 July 2015.

#### **RESPONSES**

- (a) It is noted that the definitions of *funds* in section 2 of L.N. 147 (i.e. the Court of Final Appeal Suitors' Funds Rules), L.N. 151 (i.e. the Labour Tribunal (Suitors' Funds)(Amendment) Rules 2015) and the Small Claims Tribunal (Suitors' Funds) Rules (Cap. 338D) do not refer to "securities". However, "securities" is included in the definitions of *funds* under the High Court Suitors' Funds Rules (Cap. 4B), the District Court Suitors' Funds Rules (Cap. 336E) and L.N. 150 (i.e. the Lands Tribunal (Suitors' Funds) Rules). Please explain to Members the rationale for the aforesaid differences.
- (b) It is also noted that the definitions of *funds* in L.N. 147 (i.e. the Court of Final Appeal Suitors' Funds Rules) and section 2 of Cap. 338D do not refer to "movable property". However, "movable property" is included in the definitions of *funds* under Cap. 4B, Cap. 336E, L.N. 150 (i.e. the Lands Tribunal (Suitors' Funds) Rules) and L.N. 151 (i.e. the Labour Tribunal (Suitors' Funds)(Amendment) Rules 2015). Please explain to Members the rationale for the aforesaid differences.

2. The different definitions of "funds" in the various sets of suitors' funds rules seek to reflect the different operational needs for the various courts and tribunals involved.

3. For the High Court and District Court with jurisdictions over a wide range of causes of actions, the Judiciary has provided for maximum flexibility by allowing money, securities and movable property to be accepted as suitors' funds. It is because these may well be the subject matters of litigation.



4. For the Lands Tribunal, the Judiciary has adopted a similar arrangement because the Lands Tribunal generally follows the practice and procedure of the Court of First Instance (section 10 of the Lands Tribunal Ordinance (Cap. 17)).

5. For the other courts, they do not need such great flexibility. For example, for the Court of Final Appeal ("CFA"), since it is exercising final appellate jurisdiction and the enforcement or execution of its judgment or order is to be carried out by the High Court (section 17(5) of the Hong Kong Court of Final Appeal Ordinance (Cap. 484) and Order 32, rule 10 of the Rules of the High Court (Cap. 4A)), it is quite unlikely that the parties are required to lodge securities or moveable properties in the CFA. Where securities or movable property become a subject matter of dispute in the CFA, if it is deemed necessary to preserve such properties pending the conclusion of the proceedings, they would be kept by the first-instance courts (e.g. the High Court) which have powers to preserve such properties. Moreover, security for costs etc. in the CFA is usually given in money (or at most bank guarantee) (section 25 of Cap. 484 and Practice Direction 2.3 issued by the Judiciary).

6. For the Labour Tribunal, the Judiciary considers it desirable to accept movable properties (such as open air tickets) as security for some cases (e.g. those involving foreign domestic maids). Hence, the Judiciary suggests that the Labour Tribunal's suitors' funds handle both money and movable properties. But, the Judiciary does not consider it necessary for the Labour Tribunal to accept securities.

7. As regards the Small Claims Tribunal ("SCT"), given its nature and the small amount of claims handled, it is only necessary for the SCT to receive money as suitors' funds.

**(c) It is noted that the definition of *suitors* (in section 57(3) of the High Court Ordinance (Cap. 4)) which is amended by section 23(5) of the Administration of Justice (Miscellaneous Provisions) Ordinance 2014 (Ord. No. 20 of 2014) ("the Amendment Ordinance") does not appear in any of the suitors' funds rules of other courts or tribunals. Please explain to Members the rationale of the aforesaid differences.**

8. The definition of "suitors" had already been in section 57(3) of the High Court Ordinance (Cap. 4) before the introduction of the Amendment Ordinance. The Amendment Ordinance did not change the substance of the said definition. But rather, only consequential changes to

the formatting of this definition were introduced. It was because a new definition for "securities" was added by the Amendment Ordinance and the definition of "suitors" had to be moved to a new paragraph.

9. A non-exhaustive definition for "suitors" is included only in Cap. 4, but not the others, because only the High Court is required to handle the payment of money made by the party to the arbitral proceedings (sections 6 & 7 of Schedule 2 of the Arbitration Ordinance (Cap. 609) refers).

**(d) It is noted that L.N. 147 (i.e. the Court of Final Appeal Suitors' Funds Rules) does not provide for payment out or transfer of suitors' funds to any persons as legal personal representatives of a person named in an order specifically. However, there are such provisions in rule 11 of Cap. 4B, rule 11 of Cap. 336E, rule 12 of L.N. 150 (i.e. the Lands Tribunal (Suitors' Funds Rules), rule 7 of the Labour Tribunal (Suitors' Funds) Rules (Cap. 25D) and rule 7 of Cap. 338D respectively. Please explain to Members the rationale for the aforesaid differences.**

10. The CFA Suitors' Funds Rules ("CFA Rules") are drafted taking into account of its operational need. It is considered that similar provisions in rule 11 of the High Court Suitors' Funds Rules (Cap. 4B) serve no real or practical purpose for the CFA Rules.

11. The suitors funds held for example 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.

12. Rule 11 of Cap. 4B provides an administrative mechanism for payment of fund held by the court to person entitled to such fund dies before actual payment is made upon compliance of the prescribed formalities. For example, in a civil action pending in the High Court, parties have settled the action upon the acceptance of sanctioned payment by the plaintiff. In case if the plaintiff dies before actual payment out is made, his legal personal representative can obtain payment out of the fund from the court upon compliance with the formalities prescribed under rule 11(1) without further order of the court. This may shorten the time for obtaining payment from the court.

13. Unlike the High Court, for civil proceedings in the CFA, only securities for costs will be paid into the court's suitors' funds. Other forms of funds paid into court as stated above have no application to the CFA. Any payment out of the money remained in court must require an order of the court on an inter-partes basis. The court when making such order for payment out will take into account of the prevailing situation of the parties. Thus, rule 11 will serve no real or practical purpose for proceedings pending in the CFA. In the event of situation in which rule 11 has to be invoked in the CFA, a court order by the Registrar or the court may be made accordingly.

**(e) It is noted that in respect of an order directing the suitors' funds paid into court to be dealt with otherwise than by payment, withdrawal or investment, rule 12(1) of L.N. 147 (i.e. the Court of Final Appeal Suitors' Funds Rules) does not refer to any dealing by way of "transfer" specifically. However, rule 14 of Cap. 4B, rule 14 of Cap. 336E and rule 15(1) of L.N. 150 (i.e. the Lands Tribunal (Suitors' Funds) Rules) refer to dealing with the suitors' funds otherwise than by way of "transfer". Furthermore, it appears that there are no similar specific provisions in Cap. 25D and Cap. 338D. Please explain to Members the rationale for the aforesaid differences.**

14. The differences identified above are due to the different operational needs of the respective courts and tribunals.

15. For the CFA, rules 10 to 12 of the Court of Final Appeal Suitors' Funds Rules should be read together. Rule 10 governs the payment out of funds. As explained in the replies to questions (a) and (b) above, normally the parties are not required to lodge securities or moveable properties in the CFA. Hence, the expression "payment" in rule 10 is sufficient and "transfer" is not necessary. Rule 11 governs the investment of funds (i.e.

money) in the CFA. Rule 12 deals with the situations not yet covered by rules 10 and 11. Since rule 10 does not refer to "transfer", it is not necessary to refer to "transfer" in rule 12 either.

16. For the High Court, the District Court and the Lands Tribunal, since they also accept securities and movable properties, their respective rules need some wider some legal expressions, including "transfer".

17. As regards the Labour Tribunal and the Small Claims Tribunal, given the simplicity of their operation and the relatively small amounts of suitors' funds involved in general, their suitors' funds rules are generally simpler. No similar rule is needed for them from an operational point of view.

**Judiciary Administration**  
**July 2015**