

LEGISLATIVE COUNCIL BRIEF

Audit Ordinance
(Chapter 122)

AUDIT ORDINANCE (AMENDMENT OF SCHEDULE 1) NOTICE 2018

INTRODUCTION

Schedule 1 to the Audit Ordinance (Cap. 122) sets out the accounts and funds subject to audit by the Director of Audit. Pursuant to section 18 of Cap. 122, the Financial Secretary (“FS”) may, by notice published in the Gazette, amend that Schedule. Under Section 3 of the Interpretation and General Clauses Ordinance (Cap. 1), a reference to FS includes the Secretary for Financial Services and the Treasury (“SFST”).

2. SFST has exercised his power under section 18 of Cap. 122 to amend Schedule 1 by adding three suitors’ funds, namely –

- (a) the Competition Tribunal Suitors’ Funds (“CTSF”);
- (b) the Hong Kong Court of Final Appeal Suitors’ Funds (“HKCFASF”); and
- (c) the Lands Tribunal Suitors’ Funds (“LTSF”),

by publishing in the Gazette the Audit Ordinance (Amendment of Schedule 1) Notice 2018 (“the Amendment Notice”) at **Annex**.

BACKGROUND AND JUSTIFICATIONS

3. Section 8(1)(b) of Cap. 122 provides that the Director of Audit shall examine, inquire into and audit the accounts, statements and records kept in respect of the accounts or funds specified in Schedule 1 by the public officers specified in that Schedule. Six funds and accounts under the purview of the Judiciary are now covered in that Schedule, as follows –

- (a) the High Court Suitors' Funds;
- (b) the District Court Suitors' Funds;
- (c) the Small Claims Tribunal Suitors' Funds;
- (d) the Labour Tribunal Suitors' Funds;
- (e) the Master in Lunacy Account; and
- (f) the Official Administrator's Account.

4. The CTSF was established upon commencement of the Competition Tribunal Suitors' Funds Rules (Cap. 619F) in December 2015, and the HKCFASF and LTSF upon commencement of the Hong Kong Court of Final Appeal Suitors' Funds Rules (Cap. 484C) and the Lands Tribunal (Suitors' Funds) Rules (Cap. 17C) in April 2016. On the proposal of the Judiciary and with the agreement of the Director of Audit, SFST agrees that the said suitors' funds should be subject to audit by the Director of Audit in line with the existing audit arrangement of the six funds and accounts set out in paragraph 3 above. Schedule 1 to Cap. 122 should be amended to enable the Director of Audit to audit the three suitors' funds mentioned in paragraph 2 above.

5. Suitors are parties to suits in a court of law. They may need to pay or transfer funds into court (including tribunals) or deposit funds in court for various purposes, for example, as security against possible default on legal costs, and in satisfaction of claims or judgement debts. Depending on the outcome of the lawsuits, the funds may have to be paid out of court to the persons entitled to such payment as the court orders. In general, suitors' funds may be accepted in the form of money, securities and/or movable properties. The administration of the suitors' funds is governed by the respective legislations.

6. It would be in the public interest to ensure that the financial statements of the CTSF, HKCFASF and LTSF are properly audited with a view to safeguarding the interests of the suitors. The independent audit by the Director of Audit pursuant to Cap. 122 would be essential in giving reasonable assurance to suitors and members of the public on the proper administration of these funds.

7. It is also important for the Judiciary to maintain its neutrality and institutional independence in the administration of justice. To avoid any conflict of interest, it would be more appropriate for the Director of Audit (as opposed to any private audit firms which may become a litigant or interested party in a court case) to audit the financial statements of the suitors' funds under the Judiciary's management.

THE AMENDMENT NOTICE

8. The Amendment Notice at Annex amends Schedule 1 to Cap. 122 to give effect to the changes set out in paragraph 2 above.

LEGISLATIVE TIMETABLE

9. The legislative timetable is as follows –

| | |
|--|---------------|
| Publication in the Gazette | 6 April 2018 |
| Tabling at the Legislative Council (for negative vetting) | 11 April 2018 |
| Commencement | 8 June 2018 |

IMPLICATIONS OF THE PROPOSAL

10. The amendment will provide the legal backing for the Director of Audit to audit the CTSF, HKCFASF and LTSF under section 8(1)(b) of Cap. 122. The resources required will be absorbed from within the existing resources of the Audit Commission.

ENQUIRY

11. In case of enquiries about this Brief, please contact Mr Patrick Poon, Assistant Secretary for Financial Services and the Treasury (Treasury)E2, at 2810 3752.

Financial Services and the Treasury Bureau
March 2018

Audit Ordinance (Amendment of Schedule 1) Notice 2018

(Made by the Secretary for Financial Services and the Treasury under
section 18(1) of the Audit Ordinance (Cap. 122))

1. Commencement

This Notice comes into operation on 8 June 2018.

2. Audit Ordinance amended

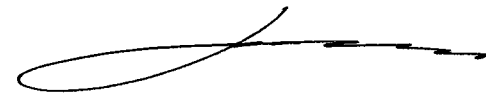
The Audit Ordinance (Cap. 122) is amended as set out in section 3.

3. Schedule 1 amended (accounts and funds subject to audit by the Director)

Schedule 1—

Add

- | | | | |
|------|---|--|---|
| “14. | Competition Tribunal Suitsors’ Funds | Registrar of the Competition Tribunal | Rule 5 of the Competition Suitsors’ Funds Rules (Cap. 619 sub. leg. F). |
| 15. | Hong Kong Court of Final Appeal Suitsors’ Funds | Registrar of the Hong Kong Court of Final Appeal | Rule 5 of the Hong Kong Court of Final Appeal Suitsors’ Funds Rules (Cap. 484 sub. leg. C). |
| 16. | Lands Tribunal Suitsors’ Funds | Registrar of the Lands Tribunal | Rule 5 of the Lands Tribunal (Suitsors’ Funds) Rules (Cap. 17 sub. leg. C).”. |



Secretary for Financial Services and
the Treasury

22 March 2018

Explanatory Note

Schedule 1 to the Audit Ordinance (Cap. 122) specifies the accounts and funds subject to audit by the Director of Audit under section 8(1)(b) of that Ordinance.

2. This Notice amends that Schedule by adding 3 suitors' funds managed by the Judiciary, namely—
 - (a) the Competition Tribunal Suitors' Funds;
 - (b) the Hong Kong Court of Final Appeal Suitors' Funds;
and
 - (c) the Lands Tribunal Suitors' Funds.