

# HIGH COURT SUITORS' FUNDS (AMENDMENT) RULES 2008

## HIGH COURT SUITORS' FUNDS RULES (Cap. 4B)

Remarks:

Adaptation amendments retroactively made – see 25 of 1998 s. 2

### Remarks

#### 1. Citation

##### PRELIMINARY

These rules may be cited as the High Court Suitsors' Funds Rules.  
(25 of 1998 s. 2)

#### 2. Interpretation

In these rules, unless the context otherwise requires –

“Accountant” (會計師) means the Judiciary Accountant;

“court” (法院) means the High Court; (25 of 1998 s. 2)

“funds” (儲存金) or “funds in court” (法院儲存金) means any money or securities, movable property or any part thereof standing in or to be placed to the Registrar's account and includes boxes and other effects;

“ledger credit” (分類帳貸方) means the title of the cause or matter and the separate account (if any) opened or to be opened under an order or otherwise in the books of the Registrar to which any funds are credited or to be credited;

“lodge in court” (向法院交存) means pay or transfer into court or deposit in court, and “lodgment in court” (交存於法院), has a corresponding meaning;

“order” (命令) means an order of the court and includes a judgment or decree and includes the schedule or schedules to an order;

“Registrar” (司法常務官) means the Registrar of the court;

“title of the cause or matter” (訟案或事宜的標題) means the short title of the cause or matter with reference to the record.

**3. Lodgment of funds**

**LODGMENT OF FUNDS IN COURT**

- (1) All funds to be lodged in court on any ledger credit shall, unless required by any law to be dealt with in any particular way, be lodged with the Registrar who shall give to the person making the lodgment a receipt in respect thereof.
- (2) When it is proposed to lodge in court any securities, movable property, boxes or other effects, the Registrar may make such inspection thereof as he thinks fit, before giving to the person making the lodgment a receipt in respect thereof.
- (3) Every receipt given in respect of any lodgment shall be headed with the title of the cause or matter and the title of the ledger account to which the lodgment is referable and shall contain adequate particulars as to such lodgment and shall be as nearly as may be in Form 1 in the Schedule.
- (4) Where money is lodged in satisfaction or part satisfaction of any claim either with or without defence setting up tender or denying liability or where the same is lodged to security for costs or under or on account of any judgment or order, the receipt shall contain a statement of such of the following circumstances as are applicable –
- (a) paid in on behalf of defendant in satisfaction of claim of the above-named (name of party);
  - (b) paid in on behalf of defendant against claim of the above-named (name of party) with defence setting up tender;
  - (c) paid in on behalf of defendant against claim of the above-named (name of party) with defence denying liability;
  - (d) paid in under order dated the day of 19 ;
  - (e) paid in to security for costs account on behalf of (name of party);
  - (f) paid in on account of the judgment or order obtained by (name of party).

(4A) Where money is lodged by a party to arbitration proceedings who makes payment into the High Court in accordance with rules of court the receipt shall contain a statement of the circumstances as set out in the notice of payment which accompanied the payment in. (L.N. 351 of 1982; 25 of 1998 s. 2)

(5) Where the funds lodged are money the Registrar shall pay the same to an account to be called the “High Court Suitors’ Funds Account” at such bank as the Director of Accounting Services shall direct. (25 of 1998 s. 2)

**4. Keeping of accounts and register**

- (1) The Registrar shall –
- (a) keep appropriate ledger accounts to which all funds lodged in court which are money or securities shall be credited and any such funds withdrawn or transferred therefrom shall be debited to such accounts;

- (b) enter into such accounts in an appropriate manner the investment of any such funds lodged in court; and
  - (c) enter into such accounts in an appropriate manner any dealing, other than by way of lodgment, withdrawal, transfer or investment, of such funds as the circumstances of the case require.
- (2) The Registrar shall –
- (a) keep a register of all funds lodged in court which are not money or securities;
  - (b) enter in the register any lodgment, withdrawal, transfer or other dealings of such funds; and
  - (c) for each entry in the register make a memorandum in the appropriate manner in the ledger accounts.

## **5. Annual statement of accounts**

- (1) The Registrar shall cause to be prepared for every period of 12 months ending on 31 March in each year a statement of the accounts kept under rule 4(1) which statement shall –
- (a) include a receipts and payments account and a statement of assets and liabilities; and
  - (b) be signed by the Registrar.
- (2) (Repealed 32 of 2000 s. 23)

## **6. Shares and securities**

- (1) All kinds of securities may be lodged in court.
- (2) Shares and securities issued by companies or corporations constituted under the laws of Hong Kong, such shares being fully paid up and free from all liability, may be transferred to the Registrar by his name of office.
- (3) Other shares and securities may be placed in a box or packet and lodged with the Registrar, who shall, before taking custody of such box or packet, ensure that it is properly marked and secured and shall inspect the contents thereof in the presence of the person lodging the same.
- (4) When shares or securities are to be transferred into the name of the Registrar, the person lodging such shares or securities shall –
- (a) execute a transfer thereof and shall obtain from the Registrar an authority which shall be as nearly as may be in Form 2 in the Schedule; and
  - (b) lodge such transfer together with the authority at the office of the company or corporation in whose books the securities are to be transferred.

(5) A company or corporation at the office of which a transfer and authority under paragraph (4) has been lodged shall, after registering such transfer, forward to the Registrar a certificate that the securities have been transferred as authorized, which certificate shall be as nearly as may be in Form 3 in the Schedule.

(6) On receiving a certificate under paragraph (5) the Registrar shall give to the person making the lodgment his receipt in respect thereof.

**7. Principal money and dividend in respect of securities to be placed in books**

Any principal money or dividends received by the Registrar in respect of securities lodged in court shall be placed in his books, in the case of principal money to the credit to which the securities whereon such money arose were standing at the time of the receipt thereof, and in the case of dividends to the credit to which the securities whereon such dividends accrued were standing at the time of closing of the transfer books of such securities previously to the dividends becoming due.

**PAYMENT, DELIVERY AND TRANSFER OF FUNDS OUT OF COURT  
AND OTHER DEALINGS WITH FUNDS**

**8. Payment out of money lodged in court**

- (1) Any money lodged in court may be paid out –
- (a) if the amount does not exceed \$250, in cash or by cheque;
  - (b) if the amount exceeds \$250, by cheque; or
  - (c) in respect of any amount, by payments made by the transfer of funds from the bank account of the court,

and any cheque or instructions to the bank for a transfer of funds shall be signed by 2 persons as may from time to time be authorized in writing by the Registrar. (L.N. 345 of 1980)

(2) Payment out shall be made at the High Court on weekdays, except Saturdays and general holidays, between the hours of 10.00 a.m. and 1.00 p.m., and between the hours of 2.00 p.m. and 4.00 p.m. (25 of 1998 s. 2)

**9. Ascertainment of sums by certificate of Registrar**

When an order directs any sums to be ascertained by the certificate of the Registrar and to be afterwards paid in accordance therewith, such certificate shall be as nearly as may be in Form 4 in the Schedule and the Registrar shall on the request of the persons entitled to payment pay such sum in accordance with rule 8.

**10. Payment of costs**

When an order directs payment out of a fund in court of any costs directed to be taxed, the Registrar shall –

- (a) state in his certificate the name and address of the person to whom such costs are payable, which certificate shall be as nearly as may be in Form 5 in the Schedule; and
- (b) on the request of the persons entitled to payment, pay such sum in accordance with rule 8.

**11. Payment out, transfer, etc. of fund to personal representative of person entitled to payment**

(1) When funds in court are by an order directed to be paid, transferred or delivered to any person named or described in an order or in a certificate of the Registrar (except to a person therein expressed to be entitled to such funds as trustee, executor or administrator, or otherwise than in his own right or for his own use), such funds or any portion thereof for the time being remaining unpaid or untransferred or undelivered may, unless the order otherwise directs, on proof of the death of such person whether on or after the date of such order or in the case of payment directed to be made to a creditor as such before the date of such order, be paid or transferred or delivered to the legal personal representatives of such deceased person or to the survivors of them.

(2) If no administration has been taken out to such deceased person who has died intestate and whose assets do not exceed the value of \$5,000 including the amount of the funds directed to be so paid, transferred or delivered to him, such funds may be paid, transferred or delivered to the person who being widow, child, father, mother, brother or sister of the deceased would be entitled to take out administration to his estate upon a declaration by such person in Form 6 in the Schedule.

(3) When funds in court are by an order directed to be paid, transferred or delivered to any persons as legal personal representatives, such funds or any portion thereof for the time being remaining unpaid, untransferred or undelivered may, upon proof of the death of any of such representatives, whether on or after the date of such order be paid, transferred or delivered to the survivors of them.

(4) No funds shall under this rule be paid, transferred or delivered out of court to the legal personal representatives of any person under any probate or letters of administration purporting to be granted at any time subsequent to the expiration of 2 years from the date of the order directing such payment, transfer or delivery, or in case such funds consist of interest or dividends, from the date of the last receipt of such interest or dividends under such order.

**12. Order directing payment out, transfer etc. to describe person entitled to payment etc.**

(1) Every order which directs funds in court to be paid, transferred or delivered out shall set forth in full the name of every person to whom such payment, transfer or delivery is to be made unless the name is to be stated in a certificate of the Registrar and in the case of payment to a firm, it shall be sufficient to state the business name of such firm.

(2) When money in court is by an order directed to be paid to any persons described in the order or in a certificate of the Registrar as co-partners, such money may be paid to any one or more of such co-partners or to the survivor of them.

**13. Order directing investment of money lodged in court**

(1) When money lodged in court is by an order directed to be invested, the party having the carriage of the order shall lodge with the Registrar a request in writing for the investment to be effected and the Registrar shall thereupon procure the investment of such money in the manner directed by the order.

(2) An order directing investment of money lodged in court shall set forth the name or the name of the office of the person in whose name such money is directed to be invested.

**14. Order directing other dealings with money lodged in court**

When money in court is by an order directed to be dealt with otherwise than by lodgment, withdrawal, transfer or investment, the party having the carriage of the order shall lodge with the Registrar a request in writing for the money to be dealt with in the terms of the order, and the Registrar shall thereupon act in accordance with such order.

**15. Carrying over of funds to separate account**

When funds in court are ordered to be carried over to a separate account, the title of the ledger credit to be opened for the purpose shall commence with the title of the cause or matter to which such funds are standing.

**INVESTMENT OF FUNDS LODGED**

**16. Power of Registrar to invest funds**

(1) The Registrar may, unless an order directs otherwise, invest any money lodged in court on any ledger credit in such manner as he thinks fit and may vary at

any time such investments.

(2) Subject to paragraph (3), if the Registrar invests any money lodged in court on any ledger credit, any dividend or interest received on such investments, or any principal money received in respect thereof, by the Registrar shall be –

- (a) paid into the High Court Suitors' Funds Account; and (25 of 1998 s. 2)
- (b) placed in his books to the credit of the account in which the investments were standing when the dividend or interest became due or when the principal money was received.

(3) Unless an order directs otherwise and subject to ~~paragraph (3A)~~ **paragraphs (3A) and (3B)**, no interest shall be credited to any money lodged in court on any ledger credit if – (L.N. 274 of 1998)

Rule 2

- (a) such money is paid in court as security for costs or by way of satisfaction or amends or in compliance with an order giving leave to defend upon such payments;
- (b) the amount is less than \$7,500; (L.N. 274 of 1998)
- (c) such money is paid in court as watchmen's fees;
- (d) such money is paid in court as the proceeds of sale;
- (e) such money is paid in court by way of satisfaction of a judgment debt;
- (f) such money is paid in court in compliance with an order made under the Matrimonial Causes Ordinance (Cap. 179), the Matrimonial Proceedings and Property Ordinance (Cap. 192) or the Separation and Maintenance Orders Ordinance (Cap. 16); or (L.N. 274 of 1998)
- (g) (Repealed L.N. 274 of 1998)
- (h) such money is paid in court in any Admiralty proceedings under Order 75 of the Rules of the High Court (Cap. 4 sub. leg.). (25 of 1998 s. 2)

(3A) Where money is paid in court for any purpose referred to in paragraph (3)(a), interest shall be credited on the ledger credit for the relevant cause or matter, beginning 14 days after the money is paid in. (L.N. 274 of 1998)

**(3B) Notwithstanding paragraph (3A), where money paid in court for any purpose referred to in paragraph (3)(a) is a sanctioned payment within the meaning of Order 22 of the Rules of the High Court (Cap. 4 sub. leg. A), interest shall be credited on the ledger credit for the relevant cause or matter, beginning 28 days after the money is paid in.**

(4) Interest on any money lodged in court shall not be computed on a fraction of one dollar.

(5) The Registrar shall not be required to apportion any amount of interest payable on money lodged in court on any ledger credit.

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**Note:**

**Please see the transitional provision in rule 2 of L.N. 274 of 1998.**

**17. Surplus income**

The Registrar shall pay into the Treasury as soon as is practicable after the end of each financial year any sum standing in the High Court Suitors' Funds Account over and above the amounts required by these rules to be credited to the various accounts, and such sum shall be transferred into the general revenue of Hong Kong.

**18. Cost of administering Suitors' Funds Account**

The cost of administering the various accounts required to be kept under these rules shall be defrayed out of the general revenue of Hong Kong.

EVIDENCE OF LIFE, ETC.

**19. Evidence by affidavit of life or fulfilment of condition**

Where any person is entitled under an order to receive dividends or other periodical payments and the Registrar requires evidence of life or of the fulfilment of any conditions affecting such payments, such evidence shall be furnished by affidavit.

**20. Evidence by affidavit or declaration of other matters**

When, in carrying into effect the directions of an order, evidence is required by the Registrar for any purposes other than those included in rule 19, he may receive and act upon an affidavit or upon a statutory declaration, and every such affidavit or statutory declaration shall be filed in court when the Registrar shall consider it necessary.

MISCELLANEOUS

**21. Certificate of description and amount of funds**

(1) The Registrar, upon a request signed by or on behalf of a person claiming to be interested in any funds in court standing to the credit of any account specified in such request, shall, unless there is good reason for refusing, issue a certificate of the amount and description of such funds, and such certificate shall have reference to the morning of the day of the date thereof and shall not include the transactions of that day.



- (2) The Registrar shall notify on a certificate issued under paragraph (1) –
- (a) the dates of any charging order affecting or of any order restraining the transfer, sale, payment, delivery out or other dealing with the funds in court to the credit of the account specified in the certificate, in respect of which order he has received notice;
  - (b) whether such charging or restraining order affects principal or interest;
  - (c) the names of the persons to whom notice is to be given or in whose favour such charging or restraining order has been made.
- (3) The Registrar may redate any certificate issued under paragraph (1) if no alteration in the amount or description of funds has been made since the issue of the certificate.

## **22. Transcript of accounts in Registrar's books**

Upon a request signed by or on behalf of a person claiming to be interested in funds in court, the Registrar shall, unless there is good reason for refusing –

- (a) issue a transcript of the account in his books specified in such request; and
- (b) supply such other information or issue such certificates with respect to any transactions or dealings with funds in court as may from time to time be required in any particular case.

## **23. Transfer of unclaimed moneys in court**

(1) When any sum of money remains unclaimed in the court for a period of 5 years, the Chief Justice may, on application by the Registrar of the High Court, order such sum to be transferred to the general revenue of Hong Kong. (25 of 1998 s. 2)

(2) Before making any such order under paragraph (1) the Chief Justice may direct that such notice, if any, as he thinks necessary shall be given and to such parties as he may think fit.

## **24. Application of English procedures**

In any case not provided for by these rules, the practice of the Paymaster General's Office for business of the Supreme Court of Judicature in England may be followed as nearly as the circumstances of the case will admit.

**SCHEDULE**

Remarks:

Adaptation amendments retroactively made - see 25 of 1998 s. 2

FORM 1

[rule 3(3)]

Receipt

IN THE HIGH COURT OF HONG KONG

(Title of cause or matter. No. of 19 )

Ledger account

(if the same as the cause, state as above)

Received from the sum of

[or the following securities or a packet  
marked purporting to contain (here insert list of contents), or the following movable  
property (here insert particulars)].

(Signature) .....

Registrar

Dated this day of , 19 .

(25 of 1998 s. 2)

FORM 2

[rule 6(4)]

Authority to company to register transfer

IN THE HIGH COURT OF HONG KONG

(Title of cause or matter. No. of 19 )

Ledger account

(if the same as the cause, state as above)

To , Limited,

Hong Kong.

Please register transfer of shares Nos.

from  
to the Registrar of the High Court.

(Signature) .....

Registrar

Dated this day of , 19 .

(25 of 1998 s. 2)

FORM 3

[rule 6(5)]

Certificate of registration of shares

The above-mentioned shares have this day been transferred to the Registrar of the High Court as authorized.

(Signature) .....

Secretary of  
, Ltd.

Dated this day of , 19 .

(25 of 1998 s. 2)

FORM 4

[rule 9]

Certificate of ascertained sums

IN THE HIGH COURT OF HONG KONG

(Title of cause or matter. No. of 19 )

Ledger account

(if the same as the cause, state as above)

I hereby certify that under order dated , 19 , the sums stated in the schedule subjoined hereto amounting in the whole to \$ have been ascertained to be the sums payable under the said order to the persons respectively named in respect of (state in what character paid).

Dated this day of , 19 .

(Signature) .....

Registrar

SCHEDULE

Name	Address (if ascertained)	Amount to be paid

(25 of 1998 s. 2)

Certificate of taxed costs

IN THE HIGH COURT OF HONG KONG

(Title of cause or matter. No. of 19 )

Ledger account

(if the same as the cause, state as above)

In pursuance of an order dated 19 , I have been attended by the solicitors for and I certify that I have taxed the costs specified in the schedule subjoined hereto directed to be taxed by the order at the sums respectively stated in the schedule, which sums with the fees of taxation specified amount to the total sum of

Dated this day of , 19 .

(Signature) .....

Registrar

SCHEDULE

Cost of	Payable to		Amount of taxed costs and fees
	Address	Name	
			Total \$

(25 of 1998 s. 2)

Declaration

IN THE HIGH COURT OF HONG KONG

(Title of cause or matter. No. of 19 )

Ledger account

(if the same as the cause, state as above)

I (name and address of applicant) solemnly and sincerely declare that I am the (degree of relationship) and next or one of the next of kin of (name of deceased) and that I am entitled to take out administration to his estate and to receive the sum of \$ directed to be paid to him by the order dated the , 19 :

And I further declare that the total value of the assets of the deceased including the above sum does not exceed \$5000, and I certify that the death-bed and funeral expenses of the deceased have been paid: And I make this solemn declaration

**Remarks**

conscientiously believing the same to be true and by virtue of the provisions of the Oaths and Declarations Ordinance.

(Signature of applicant) .....

Declared at

Before me this day of , 19 .

(Signature) .....

Notary public, or  
other authorized officer  
(47 of 1997 s. 10; 25 of 1998 s. 2)