

Security for costs

Security for costs is the provision of an amount of money sufficient to cover a party's liability for costs in proceedings should they lose.

The Registrar will not make an order unless asked to do so and only if the parties are unable to come to an agreement on the matter. On the first request, the Registrar will remind the parties of their responsibility to reach an agreement between themselves on the matter. If the parties cannot reach agreement, the following procedures apply.

An order for security for costs could only be made against a party that neither resides nor carries on business in Hong Kong. To avoid unnecessary applications being made, it is good practice for parties to proceedings to state their place of residence or place of incorporation in their pleadings or if so requested by the other party.

Who may make the request?

The request is made by a party to proceedings before the Registrar when the conditions set forth in rule 84(1) exist. The party seeking security should specify the amount they seek, backed up by a taxable bill of costs for work completed up to the date of the request and immediately foreseeable.

In what circumstances may an order be made?

If a party to proceedings files :

- a notice of opposition under rule 16;
- a counter-statement under rule 17;

- a notice of objection to the amendment of an application under rule 26;
- an application for revocation for non-use under rule 36;
- an application for revocation on grounds other than non-use under rule 40;
- an application for a declaration of invalidity under rule 46;
- an application for variation of a trade mark or for the rectification of an error or omission in the register to which rule 48 applies;
- an application for leave to intervene under rule 51;
- a notice of objection to the alteration of a registered trade mark under rule 55;
- an application for leave to be substituted for another party under rule 83; or
- a notice of opposition or counter-statement under section 15 of the repealed Ordinance (Cap. 43) in relation to an application for the registration of a mark that is advertised under section 14 or 66 of the repealed Ordinance on or after the commencement date;

and if that party neither resides nor carries on business in Hong Kong, the Registrar may require him to give security for costs.

The power to make a security for costs order is discretionary. The Registrar must give the party against whom such an order is contemplated an opportunity to be heard. This

may, but does not necessarily, mean there will be a formal hearing. The party against whom the order is sought will be invited to make written comments on the request within a specified period. These must be copied to the other party. If the comments are not received within the time allowed, the matter will be decided on the requesting parties' comments.

The requesting party will be given an opportunity to respond within a specified time, copying those comments to the other side. If no comments are received within the time allowed, the request shall be considered as withdrawn.

The Registrar will then make a provisional order, which will become a final order unless a party requests a hearing under rule 74(2) – see chapter on Hearings.

Form of order

If made, the order shall set out the amount of the security to be made and how that is to be met. The order will also provide that the failure to pay the costs ordered will result in the application, opposition, notice of objection or defence thereto being abandoned or withdrawn under rule 84(2).

Further orders

Rule 84(3) provides the Registrar with the power to make further orders at any stage of the proceedings before giving his decision in the case. The procedures outlined above are applicable to any such further request.

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