

立法會

Legislative Council

LC Paper No. LS 9/01-02

Paper for the Subcommittee on Solicitors (Professional Indemnity) (Amendment) Rules 2001 (L.N. 162 of 2001)

Purpose of the paper

At the Subcommittee meeting on 10 October 2001, members requested the legal adviser to the Subcommittee to prepare a paper on the options under section 34(2) of the Interpretation of General Clauses Ordinance (Cap. 1) in relation to the Solicitors (Professional Indemnity) (Amendment) Rules 2001 (L.N. 162 of 2001) ("the Amendment Rules").

Section 34(2) of Cap. 1

2. In brief, section 34(2) of Cap. 1 provides that the Legislative Council may by resolution amend subsidiary legislation in any manner whatsoever consistent with the power to make such subsidiary legislation. If any such resolution is so passed, the subsidiary legislation shall, without prejudice to anything done thereunder, be deemed to be amended as from the date of publication in the Gazette of such resolution.

3. Under section 3 of Cap. 1 the term "amend" includes repeal, add to or vary and the doing of all or any of such things simultaneously or by the same Ordinance or instrument.

4. In short, the Legislative Council has power to repeal or amend the Amendment Rules under section 34(2) of Cap. 1.

Power to repeal

5. Since the Amendment Rules have already come into operation on 1 October 2001, the repeal of the Amendment Rules does not revive anything existing at the time at which the repeal takes effect: section 23 of Cap. 1. In order to avoid any legal vacuum consequential upon repeal of the Amendment Rules, members may wish to revive the pre-existing level of contributions to the Fund or fill that vacuum by any appropriate level of contributions.

6. Since the Amendment Rules have already come into operation, their repeal takes place from the date of publication of the Legislative Council's resolution in the Gazette without prejudice to anything done during the period of their validity, i.e. from 1 October 2001 to the date of publication of the Legislative Council's resolution in the Gazette. As the Law Society indicated at the last meeting, its members' contributions to the Fund in respect of the 2001-02 indemnity period had been made according to the revised level of contributions under the Amendment Rules. Upon repeal of the Amendment Rules, it appears that there is no legal basis for refund of the contributions to the Fund, which have been made by 30 September 2001, in respect of the 2001-02 indemnity period. For subsequent indemnity periods, the level of contributions immediately preceding the Amendment Rules, if that is substituted, will apply until further amended.

7. The reasons for our view that there is no refund are as follows. The indemnified have made contributions according to the new level of contributions under paragraph 1 of Schedule to the Principal Rules. The act of making contributions has been done though the period of indemnity is for one year. According to section 34(2) of Cap. 1, amendment to the subsidiary legislation shall be without prejudice to anything done thereunder. Thus, repeal of the Amendment Rules shall be without prejudice to the act of collecting and making contributions to the Fund. The argument for no refund of the contributions is further reinforced by provisions in the Principal Rules. Paragraph 4 of Schedule 1 to the Principal Rules provides that a contribution is not refundable. It is noted that paragraph 2(1)(b)(iv) of Schedule 1 to the Principal Rules provides for exceptions to paragraph 4. However, they are specific instances relating to adjustment of contributions due to change in number of principals or gross fee income of a firm, and refund to a firm due to dissolution of the firm. They are not similar in nature to our scenario in question.

Power to amend

8. At the last meeting, there was proposal by a member that the Amendment Rules are to be amended to the effect that they would subsist for a period of time, say one year. Upon the expiry of one year, the relevant provisions affected by the Amendment Rules will be revived. From a legal point of view, the proposed amendment is consistent with the power to make the subsidiary legislation for it to subsist for any period of time. The legal consequence of the proposal is that before the expiry date, the Law Society may make another piece of Amendment Rules for consideration by the Legislative Council under section 34 of Cap. 1 if it is not satisfied with the revival of the repealed provisions.

9. We have appended a copy of the draft resolution for members reference.

Encl

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12 October 2001

Adviser01-02/Solicitors

INTERPRETATION AND GENERAL CLAUSES ORDINANCE

RESOLUTION

(Under section 34(2) of the Interpretation and
General Clauses Ordinance (Cap. 1))

**SOLICITORS (PROFESSIONAL INDEMNITY)
(AMENDMENT) RULES 2001**

RESOLVED that the Solicitors (Professional Indemnity) (Amendment) Rules 2001, published in the Gazette as Legal Notice No. 162 of 2001 and laid on the table of the Legislative Council on 11 July 2001, be amended by adding—

"8. Expiration

- (1) These Rules shall expire on _____ .
- (2) With effect on and from _____, the pre-existing provisions of the Solicitors (Professional Indemnity) Rules (Cap. 159 sub. leg.) which are amended by these Rules shall be revived in force as if the amendments effected by these Rules had not been made."