

LN162-E

L.N. 162 of 2001

Solicitors (Professional Indemnity)

(Amendment) Rules 2001

(Made by the Council of The Law Society of Hong Kong under sections 73 and 73A of the Legal Practitioners Ordinance (Cap. 159) with the prior approval of the Chief Justice)

1. Commencement

These Rules shall come into operation on 1 October 2001.

2. Interpretation

Rule 2 of the Solicitors (Professional Indemnity) Rules (Cap. 159 sub. leg.) is amended---

(a) in the definition of "indemnified", by adding "named in the receipt referred to in rule 9" after "firm" where it first appears;

(b) by repealing the definition of "relevant date" and substituting---
""relevant date" (有關日期) means---

(a) the date when a claim for which Indemnity is provided is first made against the indemnified or a former solicitor;

(b) where the circumstances which might give rise to such a claim first came to the notice of the indemnified or a former solicitor on a date earlier than the date referred to in paragraph (a), that earlier date; or

(c) where the firm has ceased the Practice at the date referred to in paragraph (a) or (b) (as may be applicable), the date when the cause of action first accrued against the firm;".

3. Production of documents and information

Rule 8 is amended---

(a) in subrule (2), by repealing "thereof" and substituting "in that Practice";

(b) in subrule (4)---

(i) by repealing "if such principal" and substituting "if any principal";

(ii) by adding "for not supplying the particulars or the other information" after "reasonable cause" where it secondly appears.

4. Receipt

Rule 9 is amended by repealing "Practice" and substituting "firm".

5. Entitlement to Indemnity

Rule 10(3) is amended by adding "12," after "11,".

6. Contributions to fund

Schedule 1 is amended, in paragraph 2(1)(a)(i)---

- (a) by repealing "\$8,500" and substituting "\$20,000";
- (b) by repealing "\$5,500" and substituting "\$13,000";
- (c) in the table, by repealing everything from "over 0 but not exceeding 5" to "0.31% * gross fee income" and substituting---

"over 0 but not exceeding 5	2.64% * gross fee income
over 5 but not exceeding 6	142,000
over 6 but not exceeding 7	161,000
over 7 but not exceeding 8	181,000
over 8 but not exceeding 9	197,000
over 9 but not exceeding 10	212,000
over 10 but not exceeding 11	228,000
over 11 but not exceeding 12	241,000
over 12 but not exceeding 13	253,000
over 13 but not exceeding 14	265,000
over 14 but not exceeding 15	274,000
over 15 but not exceeding 16	281,000
over 16 but not exceeding 17	286,000
over 17 but not exceeding 18	290,000
over 18 but not exceeding 19	295,000
over 19 but not exceeding 20	299,000
over 20 but not exceeding 21	302,000
over 21 but not exceeding 22	306,000
over 22 but not exceeding 23	309,000
over 23 but not exceeding 24	313,000
over 24 but not exceeding 25	316,000
over 25 but not exceeding 50	1.27% * gross fee income (subject to a maximum amount of \$543,000)
over 50 but not exceeding 75	1.09% * gross fee income (subject to a maximum amount of \$673,000)
over 75 but not exceeding 100	0.90% * gross fee income (subject to a maximum amount of \$732,000)
over 100	0.73% * gross fee income".

7. Exclusions and conditions

Schedule 3 is amended---

- (a) in paragraph 1---

- (i) in subparagraph (2), by adding "to the indemnified or a former solicitor" after "provide Indemnity";

- (ii) in subparagraph (2)(c)(iii), by repealing "the principal" and

substituting "any person who was a principal at the relevant time";

(iii) in subparagraph (2)(c)(iiia)---

(A) by repealing "Practice" where it first appears and substituting "firm or the indemnified";

(B) by repealing "a principal" and substituting "any person who was a principal at the relevant time";

(iv) by repealing subparagraph (2)(c)(viii) and substituting---

"(viii) for wrongful dismissal or any other alleged breach by the indemnified in respect of any contract of employment; or for wrongful termination or any other alleged breach by the indemnified in respect of any contract for supply to, or use by, the indemnified of services, materials, equipment or other goods; or for any other relief in respect of any such contract;"

(v) by adding---

"(2A) For the purposes of paragraph 1(2)(c)(iii) and (iiia), a person was a principal at the relevant time if he was a principal---

(a) at the time of the event which was alleged to give rise to the claim;

(b) at the time when the claim was first made against the indemnified; or

(c) in the case of a claim which arose out of circumstances previously notified to the Company, at the time when such notification was given to the Company.";

(b) in paragraph 2, by adding---

"(4) (a) Where---

(i) a claim ("first-mentioned claim") is made against the indemnified or a former solicitor in any indemnity period; and

(ii) one or more claim has been made against the same indemnified or former solicitor in that indemnity period or the 2 preceding indemnity periods,

then in addition to the deductibles described in subparagraph (2)(a) or (b) and subparagraph (2)(c) and subject to subparagraph (3)---

(iii) where the first-mentioned claim is the second such claim in the 3 consecutive indemnity periods referred to in sub-sub-subparagraphs (i) and (ii), the first-mentioned claim shall be subject to a further deductible of an amount equivalent to 50% of the deductible applicable to the first claim in those 3 indemnity periods;

(iv) where the first-mentioned claim is the third such claim in the 3 consecutive indemnity periods referred to in sub-sub-subparagraphs (i) and (ii), the first-mentioned claim shall be subject to a further deductible of an amount equivalent to 100% of the deductible applicable to the first claim in those 3 indemnity periods;

(v) where the first-mentioned claim is the fourth or any subsequent such claim in the 3 consecutive indemnity periods referred to in sub-sub-subparagraphs (i) and

(ii), the first-mentioned claim shall be subject to a further deductible of an amount equivalent to 200% of the deductible applicable to the first claim in those 3 indemnity periods.

(b) For the purpose of sub-subparagraph (a), a number of claims arising out of the same act or omission shall be treated as one claim.";

(c) in paragraph 3, by adding---

"(3) In applying rule 16 for the purpose of this paragraph, the reference to "principal" in that rule shall be taken as a reference to "former solicitor".";

(d) in paragraph 6---

(i) in subparagraph (1)---

(A) by repealing "Practice or any member of that Practice or both" and substituting "indemnified or former solicitor or any combination of persons";

(B) by adding "or 3, whichever is smaller" after "paragraph 2";

(ii) in subparagraph (2), by repealing "relevant" wherever it appears and substituting "related";

(e) in paragraph 8---

(i) by repealing subparagraph (2)(a) and substituting---

"(a) any claim made during the period of indemnity against the indemnified, which falls within rule 10;";

(ii) in subparagraph (5), by adding "due" before "notice" where it first appears;

(iii) in subparagraph (6), by repealing "Practice" and substituting "firm or indemnified";

(f) in paragraph 9---

(i) by adding "or a former solicitor" after "indemnified" where it first appears;

(ii) by adding "or former solicitor" after "indemnified" where it secondly and thirdly appears.

Approved this 3rd day of July 2001.

Andrew LI

Chief Justice

Made this 3rd day of July 2001.

Herbert H. K. Tsoi Paul C. Y. TAN

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Explanatory Note

The purpose of these Rules is to amend the Solicitors (Professional Indemnity) Rules (Cap. 159 sub. leg.) ("the principal Rules") so as to---

- (a) revise the definition of "relevant date" in order to clarify that the relevant date shall mean the date when the cause of action first accrued against the firm in certain cases (rule 2(b));
- (b) increase the contributions to the fund referred to in rule 3(1) of the principal Rules (rule 6);
- (c) exclude the entitlement to the indemnity for an innocent partner in respect of losses arising out of any claim brought about by the dishonesty or fraud of his fellow partner (rule 7(a)(ii));
- (d) clarify the position regarding a former solicitor where a claim is made after the retirement of the former solicitor (rule 7);
- (e) introduce a further deductible in respect of the indemnity if more than one claim is made against the indemnified or a former solicitor during any 3 consecutive indemnity periods (rule 7(b));
- (f) provide for other miscellaneous amendments.