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Report of the Subcommittee on Solicitors (Group Practice) Rules

Purpose

This paper reports on the deliberations of the Subcommittee on Solicitors (Group Practice) Rules (the Rules).

The Subcommittee

2. At the House Committee meeting on 4 October 2002, members agreed to form a subcommittee to scrutinise the Rules. Under the chairmanship of Hon Margaret NG, the Subcommittee has held two meetings with The Law Society of Hong Kong (the Law Society) and the Administration. A membership list of the Subcommittee is in the **Appendix**.

The Rules

3. The Rules are made by the Law Society under section 73 of the Legal Practitioners Ordinance (Cap. 159). Section 73 of the Ordinance provides for, amongst other things, regulation of solicitors' practice in Hong Kong.

4. The Rules seek to regulate arrangements whereby two or more solicitors or firms of solicitors, each of whom is carrying on the business of practising as a solicitor or as solicitors, conduct their businesses together in mutual co-operation but without being in partnership. Such arrangements are referred to in the Rules as "group practice".

Deliberations of the Subcommittee

Background

5. The Law Society has advised the Subcommittee that according to Solicitors' Practice Directions of the Hong Kong Solicitors' Guide to Professional

conduct, a solicitor's practice is required to be conducted in self-contained premises. A solicitor is not permitted to share premises, staff and facilities with another solicitor unless they are in partnership or have a "formal association". A "formal association" is defined to mean an association between Hong Kong firms of solicitors where there is at least one partner common to each of the associated firms. In addition, according to the Solicitors' Practice Rules (Cap. 159 sub. leg.), a solicitor is not allowed to share unqualified staff except with the permission of the Law Society.

6. In 1997, the Council of the Law Society set up a Working Party to, inter alia, consider the desirability and feasibility of permitting solicitors to practise under a "chambers system", to enable them to share premises, staff and resources and thus lower their overheads and provide an environment in which they would have the support of other solicitors and assist one another. "Chambers practices" are permitted in England, New South Wales of Australia and Singapore. The Working Party took into account the various models in arriving at its recommendations. The Working Party also agreed to adopt the term "Group Practice" for use in Hong Kong, as used in Singapore, to avoid confusion with barristers' chambers.

The Administration's views

7. The Administration has advised the Subcommittee that its main concern is whether the Rules would have any adverse impact on the legal profession, the interests of the public and the quality of legal services. The Administration also considers that it is important to ensure that members of the public understand the new mode of practice when the Rules come into effect. The Administration, nevertheless, has no objection to the Rules from the legal policy point of view.

Definition of group practice

8. Under section 3 of the Rules, two or more solicitors or firms conduct their businesses (or part of their businesses) from the same address, separately but in mutual co-operation, are regarded as members of a group practice.

9. In response to the request of members for clarification about the meaning of the phrase "separately but in mutual co-operation", the Law Society has explained that members of a group practice conduct their businesses independently of each other. They are not to be regarded as practising in partnership with each other, except as otherwise provided in section 11 of the Rules, i.e. in matters relating to conflict of interest and confidentiality. However, members of a group practice are regarded as "in mutual co-operation" because they will share office premises, facilities and unqualified staff.

Consultation

10. As the Rules represent a significant change in the practice of solicitors in Hong Kong, members have asked the Law Society whether it has conducted any consultation with the legal profession and the public.

11. The Law Society has informed the Subcommittee that an article introducing the concept of "Solicitors Chambers" was published in the Hong Kong Lawyer in June 1998. It invited members of the Law Society to express their views on the proposed mode of practice and the Law Society has not received any adverse comments. Moreover, the proposal had been considered by the relevant working party and standing committees of the Law Society, which comprised of a wide cross-section of members of the profession, before it was approved by the Council of the Law Society.

12. The Law Society is of the view that members of the Law Society are generally in support of the arrangements introduced in the Rules, a majority of which are in fact proposed at the request of solicitors. The Law Society has pointed out that 41% of the law firms in Hong Kong are firms of sole practitioners, and 90%, including the sole practitioner firms, are small firms with five or fewer partners. The implementation of the Rules would enable them to share premises, staff and facilities, and to maximise resources and efficiency in the provision of legal services to the public.

13. The Law Society has also advised that although formal consultation with the public has not been conducted, it is envisaged that the new mode of practice will not affect the provision and quality of legal services to the public.

Operation of group practice

14. Some members have pointed out that the mode of operation of a group practice and the physical environment in which members of a group practice conduct their business together could give rise to the misconception that members of the same group practice are in partnership with each other. Members consider it important that the public should have an accurate understanding of the operation of the group practice, and they would not confuse it with a single large partnership. Members have expressed concern whether the public could differentiate the identity of a group practice from that of the individual member solicitors or member firms within the group practice.

15. The Law Society has explained that section 6 of the Rules stipulates that the name of a group practice should be displayed on the letterhead and should appear as part of the address of the member of the group practice. The name of the member should be displayed on the letterhead and should appear more prominently than the name of the group practice. It is envisaged that, e.g. the name of a group practice might appear in the address as "XXX Street/Building

Group Practice", separately from the name of the member solicitor or member firm, on the letterhead.

16. Some members have expressed concern that the Chinese translation of "group practice", i.e. "律師聯合執業事務所" might mislead the public into believing that a group practice is itself a legal entity, e.g. a law firm or a large partnership. They have requested the Law Society to consider whether the Chinese translation should be revised.

17. The Law Society is of the view that any alternative Chinese translation of "group practice" is bound to attract some kind of criticism. The proposed expression of "事務所" is not intended to carry the meaning of a legal entity, but to convey the idea of practising "in the same address or office". The Law Society considers that the risk of misunderstanding can be reduced by educating the public on the working of the new system, instead of trying to find an alternative translation of the term "group practice". The Subcommittee accepts the Law Society's view.

18. The Law Society has also pointed out that there are provisions in the Rules to safeguard the interests of the public. For instance, section 5 provides that the name to be adopted by a group practice must be approved by the Council of the Law Society. Section 10 prohibits the promoting of a group practice as such, or in a manner which suggests that the group practice is a legal entity or that any of its members are in partnership with each other.

Publicity and guidance to solicitors

19. The Subcommittee considers that to enhance understanding of the new mode of practice, the Law Society should assist its members and the public in familiarising with what group practice is and how it operates. The Subcommittee has suggested that the Law Society should issue information leaflets to educate the public, and also provide practical guidelines to solicitors on relevant matters relating to the operation of a group practice.

20. The Law Society has responded that it has no objection to issuing information leaflets, prior to the Rules coming into operation, to explain -

- (a) the meaning of group practice;
- (b) the reason for introducing the mode of group practice;
- (c) the main provisions in the relevant rules governing solicitors of a group practice; and

- (d) the difference in the way legal services are to be provided by solicitors practising in a group practice and those not practising in a group practice.

21. According to the Law Society, the information leaflet will be posted on the Society's website. The leaflets will also be available in hardcopies for distribution to widen the scope of circulation.

22. As regards guidance to solicitors, the Law Society has advised that it intends to publish an advisory manual for its members. The manual will cover -

- (a) practical guidance on matters to consider when establishing a group practice;
- (b) advice on the obligations of solicitors in a group practice under the relevant rules; and
- (c) samples of notifications and declarations required to be submitted under the relevant rules.

23. In respect of ethical issues that apply to solicitors in a group practice, e.g. conflict of interest, confidentiality and professional relationship among solicitors of the same group practice, the Law Society considers that they should more appropriately be dealt with by way of a circular to its members. Eventually, the issues will be incorporated as part of the Solicitors' Guide to Professional Conduct.

Group practice management company

24. Under section 7 of the Rules, members of a group practice are required to maintain a company, incorporated with limited liability, of which members solicitors or principals of member firms are the sole directors and shareholders, to undertake matters relating to the management of the group practice. Members have sought clarification about the need for this mandatory requirement which is absent in the Singaporean rules.

25. The Law Society has explained that the provision is required for the efficient and proper functioning of a group practice, as members within a group practice are allowed to share premises, facilities and unqualified staff. The use of a service company with limited liability to carry out the administrative functions involved in running a practice is very common among law firms. Under the Rules, the management company is responsible for the administration of matters such as leasing of office premises, management of unqualified staff, and facilities and equipment which are to be shared among members of the group practice. The Law Society has further explained that unqualified staff refers to persons such as receptionists, tea ladies and messengers. Under section 9(4) of

the Rules, unqualified persons employed within a group practice do not include trainee solicitors or full-time law students.

26. Mr Albert HO Chun-yan has pointed out that it is not uncommon for solicitors' firms to maintain service companies to minimise tax liability, thereby giving rise to a fact of profit sharing. He has sought clarification from the Law Society as to whether members of a group practice are permitted to agree on some form of profit sharing arrangements with the group practice management company.

27. The Law Society has advised the Subcommittee that as provided under the Rules, a group practice management company shall not engage in any activity other than an activity that consists of or is related to the management of the affairs of the group practice. These affairs are limited to administrative matters such as leasing of premises and management of unqualified staff and facilities. According to the Law Society, the existence of a group practice management company should not be inferred as profit sharing amongst members of a group practice.

28. The Subcommittee has requested the Law Society to explain clearly the scope of activities of a group practice management company in the advisory manual to be issued to its members.

Separate representation

29. Another issue raised by the Subcommittee is whether member solicitors or member firms of a group practice are allowed to act for respective parties in a case where separate representation is required.

30. The Law Society has advised that in cases involving conflict of interests or confidentiality such as divorce cases or conveyancing transactions, solicitors and principals of member firms of a group practice shall be regarded as practising in partnership with each other and would not be allowed to act for respective parties in the same case.

31. The Law Society has supplemented that under Rule 5C of the Solicitors' Practice Rules (Cap. 159 sub. leg.) on representation in conveyancing transactions, save as otherwise provided in the rule, a solicitor, or two or more solicitors practising in partnership or association, shall not act for both the vendor and the purchaser. The Law Society has advised the Subcommittee that section 14 of the Solicitors (Group Practice) Rules amends Rule 5C of the Solicitors' Practice Rules to the effect that Rule 5C shall apply to two or more member solicitors or member firms of a group practice as it now applies to two or more solicitors practising in partnership or association.

Defining liability

32. The Subcommittee has noted that the Law Society is of the view that it is not necessary to provide express provisions in the Rules relating to the liability of a member of a group practice.

33. The Law Society has explained that members of a group practice are separate independent practices and are not to be regarded as practising in partnership with each other save when issues of conflict of interest and confidentiality are involved. Any rules applicable to solicitors or solicitor firms will also apply to members of a group practice. The Partnership Ordinance (Cap. 38) applies to member firms of a group practice as it applies to any other law firm. The requirements of professional indemnity as provided in the Solicitors (Professional Indemnity) Rules (Cap. 159 sub. leg.) also apply to each member of a group practice as they apply to any other law firm, and the right of claims of a client against his solicitor will not be diminished in any way in the case of a group practice.

34. The Law Society has also explained that any solicitors who are in breach of the Solicitors' Guide to Professional Conduct, including members of a group practice, would be subject to disciplinary proceedings.

Recommendation

35. The Subcommittee recommends that the Rules be supported.

Advice sought

36. Members are invited to note the deliberations and recommendation of the Subcommittee.

Subcommittee on Solicitors (Group Practice) Rules

Membership List

Chairman Hon Margaret NG

Members Hon Albert HO Chun-yan
Hon Eric LI Ka-cheung, JP
Hon Jasper TSANG Yok-sing, GBS, JP
Hon Miriam LAU Kin-yee, JP
Hon Audrey EU Yuet-mee, SC, JP

(Total : 6 Members)

Legal Adviser Miss Kitty CHENG

Clerk Mrs Percy MA

Date 9 October 2002