

26 November 2002

Mrs Percy Ma  
Clerk to LegCo Panel on Administration of  
Justice and Legal Services  
Legislative Council  
Legislative Council Building  
8 Jackson Road  
Central  
Hong Kong

Dear Mrs Ma

**Re : Legal Practitioners (Risk Management Education) Rules**

Please find enclosed for the assistance of the Panel a copy of the latest draft of the Legal Practitioners (Risk Management Education) Rules (“Rules”).

The Rules govern the implementation of a mandatory risk education programme for all solicitors, trainee solicitors and registered foreign lawyers employed in Hong Kong solicitors’ firms.

The purpose of developing a risk management education programme is to enhance the level of professional competency in firms of solicitors with a view to reducing errors and omissions in their practices in the interest of the public. With the enhancement in professional competency, it is hoped that it will achieve a reduction of claims against the Professional Indemnity Scheme, thereby also benefiting the legal profession as a whole.

The risk management education programme is divided into core courses and elective courses. In the first year when the requirement to undertake the risk management education programme applies to the practitioners, they will have to complete the core course.

In each subsequent practice year, the participants will have to complete a minimum of 3 hours of training in elective courses. Alternatively, the participants can elect to complete a minimum of 6 hours of such training in every 2 consecutive practice years.

## **1. Implementation timetable**

### **Principals**

It is proposed that the Rules shall apply to all principals of solicitors' firms in Hong Kong from 1 January 2003. The principals will be divided into 2 tranches based on their admission dates.

The first tranche (admitted on or after 15 September 1990) will come under the Rules from 1 January 2003 and be required to complete the core course for principals by 31 December 2003, that is, within a period of 12 months. The second tranche (admitted before 15 September 1990) will come under the Rules from 1 January 2004 and be required to complete the core course for principals by 31 December 2004.

This proposal is aimed at spreading the number of principals (estimated to be over 1,800) over the 2-year period from 1 January 2003 to 31 December 2004 to complete the 16-hour core course for principals.

### **Non-principal solicitors**

It is proposed that the non-principal solicitors will also be divided into 2 tranches to make delivery of the course more manageable. On the basis of the present data, there are about 2,400 non-principal solicitors. The Rules will apply to the first tranche (admitted on or after 9 May 1998) from 1 November 2004. They will be required to complete the core course for non-principals by 31 October 2005. The second tranche (admitted before 9 May 1998) will come under the Rules from 1 November 2005 and will be required to complete the core course for non-principals by 31 October 2006.

### **Trainee Solicitors / Foreign Lawyers**

The Rules shall apply to trainee solicitors and foreign lawyers working in solicitors' firms in Hong Kong from 1 November 2006. They will be required to complete the core course for non-principals by 31 October 2007.

## **2. Two types of core courses**

The Rules have divided the core course into two types, one for the principals and the other for the non-principal categories (i.e. solicitors, trainee solicitors, registered foreign lawyers). The core course for the principals ("principal's core course") will be more intensive than the non-principals' core course ("general core course").

When a solicitor becomes a partner, he will be required to complete the more intensive principal's core course even though he may have completed the general core course.

Nevertheless, if a solicitor has completed the principal's core course while he was a partner and he subsequently ceases being a partner and starts working as an assistant solicitor, he will not be required to complete the general core course. He can proceed to complete the elective courses.

### **3. One-off course**

The Rules have expressly provided that the principal's core course and the general core course are one-off courses. Those who have attended them are not required to take them again.

### **4. Suspension**

The requirement to undertake training in risk management education in a practice year shall be suspended:

- (a) if the total period for which the Rules have applied to a solicitor, a trainee solicitor or a foreign lawyer of a Hong Kong firm is less than 100 days in the practice year; or
- (b) where the total period for which the Rules have applied to a solicitor, a trainee solicitor or a foreign lawyer of a Hong Kong firm is 100 days or more in the practice year, if he has been absent from work as a result of illness, or out of Hong Kong, for a single continuous period amounting to 75% or more of the period when the Rules are applicable to him in the practice year.

### **5. Providers of the risk management education courses**

The Rules empower the Society to authorise another person or organisation to conduct the risk management education courses. It is the intention of the Society to engage external providers. Tenders have been issued and bids are under consideration. It is expected that the core course for principals will be ready for launching in early 2003.

The draft Rules have been approved by the Council of the Law Society, and the Department of Justice has been requested to issue the blues.

The Chief Justice has approved in principle the introduction of the Rules. When the blues are available, they will be sent to the Chief Justice for his signature. They are expected to be gazetted in early December.

Yours sincerely

Heidi Chu  
Assistant Director  
Regulation and Guidance

c.c. Mrs Margaret Hill  
Director of Standards and Development

Mr Patrick Moss  
Secretary General, Law Society

**LEGAL PRACTITIONERS (RISK MANAGEMENT  
EDUCATION) RULES**

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## **LEGAL PRACTITIONERS (RISK MANAGEMENT EDUCATION) RULES**

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

### **1. Commencement**

These Rules shall come into operation –

- (a) in relation to a solicitor who is a principal –
  - (i) who was admitted as a solicitor of the High Court on or after 15 September 1990, on 1 January 2003;
  - (ii) who was admitted as a solicitor of the High Court before 15 September 1990, on 1 January 2004;
- (b) in relation to a solicitor other than a principal –
  - (i) who was admitted as a solicitor of the High Court on or after 9 May 1998, on 1 November 2004;
  - (ii) who was admitted as a solicitor of the High Court before 9 May 1998, on 1 November 2005;
- (c) in relation to a trainee solicitor or a foreign lawyer, on 1 November 2006.

### **2. Interpretation**

- (1) In these Rules, unless the context otherwise requires –

"elective course" ( ) means an RME course specified as such under  
section 4(3)(c)(iii);

"exempted practice year" ( ) has the meaning assigned to it in section 8(1);

"first practice year" ( ), in relation to a person to whom these Rules apply,  
means the practice year in which these Rules first apply to him;

"foreign lawyer" ( ) means a person registered as a foreign lawyer under  
Part IIIA of the Ordinance and is practising as such in a Hong Kong firm;

"general core course" ( ) means an RME course specified as such  
under section 4(3)(c)(i);

"practice year" ( ) means the period of 12 months ending on 31 October  
each year;

"principal" ( ) means –

- (a) a solicitor who is carrying on a business of practising as  
such in his own name in Hong Kong;
- (b) a solicitor who is practising as the sole practitioner or a  
partner of a Hong Kong firm; or
- (c) any other solicitor who is held out or holds himself out to  
be a person referred to in paragraph (a) or (b);

"principal's core course" ( ) means an RME course specified as such  
under section 4(3)(c)(ii);

"Programme" ( ) means the Risk Management Education Programme  
described in section 4(1) and (2);

"risk management" ( ) means any action or plan of action the objective of  
which is to minimize the risk of a person's exposure to claims against him  
in the course of his professional practice and to reduce the extent of loss  
which may arise from such claims;

"RME course" ( ) means any workshop, lecture, seminar, course or any  
other programme of instruction conducted –

- (a) under section 4(3)(a);
- (b) with an authorization given under section 4(3)(b)(i); or
- (c) with an approval given under section 4(3)(b)(ii);

"solicitor" ( ) means a person who is qualified to practise as a solicitor under section 7 of the Ordinance and is carrying on the business of practising as such in his own name in Hong Kong or practising as such in a Hong Kong firm;

"trainee solicitor" ( ) has the meaning assigned to it in section 2 of the Trainee Solicitors Rules (Cap. 159 sub. leg.).

(2) In sections 5, 6 and 7, a requirement to attend any RME course shall be construed as a requirement to attend the RME course to the satisfaction of the Society.

**3. Application**

These Rules apply to --

- (a) a solicitor;
- (b) a trainee solicitor; and
- (c) a foreign lawyer.

**4. Risk Management Education Programme**

(1) The Society shall implement a programme of training on risk management known as the Risk Management Education Programme.

(2) The Programme shall consist of general core courses, principal's core courses and elective courses.

(3) The Society may, for the purposes of the Programme --

- (a) conduct any course on risk management;

- (b) subject to such conditions as it considers necessary –
  - (i) authorize another person or organization to conduct any course on risk management; or
  - (ii) approve any course on risk management conducted by another person or organization;
- (c) specify any RME course to be –
  - (i) a general core course;
  - (ii) a principal's core course; or
  - (iii) an elective course;
- (d) provide guidelines from time to time as to the implementation of the Programme and compliance with these Rules, including guidelines setting out matters it proposes to have regard to in determining whether a person has attended an RME course to the satisfaction of the Society.

**5. Attendance requirement in respect of general core course**

(1) A person who becomes a solicitor, a trainee solicitor or a foreign lawyer shall, within the practice year specified in subsection (2), attend all general core courses.

(2) The practice year specified for the purposes of subsection (1) is –

- (a) the first practice year of the solicitor, trainee solicitor or foreign lawyer; or



(b) if the practice year referred to in paragraph (a) is an exempted practice year, the first succeeding practice year which is not an exempted practice year.

(3) Subsection (1) does not apply to any person who, during the practice year within which he would otherwise be required under that subsection to attend all general core courses, is also required under section 6 to attend all principal's core courses.

(4) Subsection (1) does not apply to any person who has previously attended all general core courses or all principal's core courses.

**6. Attendance requirement in respect of principal's core course**

(1) A solicitor who becomes a principal shall, within the practice year specified in subsection (2), attend all principal's core courses.

(2) The practice year specified for the purposes of subsection (1) is –

- (a) the principal's first practice year;
- (b) the practice year in which he first becomes a principal; or
- (c) if the practice year referred to in paragraph (a) or (b) is –
  - (i) an exempted practice year; or
  - (ii) a practice year during which he is a principal for less than 100 days,

the first succeeding practice year which is not an exempted practice year and during which he is a principal for 100 days or more.

**7. Attendance requirement in respect of elective course**

(1) A person to whom these Rules apply shall, within each practice year other than a practice year specified in subsection (3), attend at least 3 hours of elective courses.

(2) Where a solicitor or a foreign lawyer fails to comply with subsection (1) in any practice year, he shall, within that practice year and the first succeeding practice year which is not a practice year specified in subsection (3), attend at least 6 hours of elective courses.

(3) The practice year specified for the purposes of subsections (1) and (2) is –

- (a) an exempted practice year; or
- (b) a practice year within which the person concerned is required under these Rules to attend all general core courses or all principal's core courses.

**8. Exempted practice year**

(1) For the purposes of these Rules, an exempted practice year, in relation to any person to whom these Rules apply, is any practice year in which –

- (a) the total period for which these Rules apply to him consists of less than 100 days; or
- (b) he has been –
  - (i) out of Hong Kong; or
  - (ii) absent from work due to illness, for a continuous period which constitutes 75% or more of

the total period for which these Rules apply to him.

(2) Where a person to whom these Rules apply asserts that any practice year is an exempted practice year in relation to him, he shall, if so requested by the Society, make a statutory declaration of the facts upon which he makes the assertion.

## **9. Record of attendance**

(1) A person to whom these Rules apply shall –

(a) keep and retain a record of his attendance at any RME course in a form specified by the Society; and

(b) at the request of the Society –

(i) produce to the Society the record referred to in paragraph (a);

(ii) furnish the Society with such information relating to his attendance at any RME course within such time and in such manner as may be specified by it; and

(iii) attend before the Council and furnish the Council with such additional information relating to his attendance at any RME course as the Council considers necessary.

(2) Any person or organization (other than the Society) conducting an RME course shall keep and retain a record of attendance in respect of the RME course in accordance with the guidelines provided by the Society under section 4(3)(d) concerning the keeping and retaining of such record.

(3) The Society may require the person or organization concerned to produce the record of attendance referred to in subsection (2) within 7 days from the completion of the RME course concerned.

## **10. Review**

(1) Any person aggrieved by a decision made by or on behalf of the Society in respect of the Programme may apply in writing to the Council, or to such committee formed under the Council as may be appointed by the Council for the purposes of this section, for a review of the decision within 1 month after he is informed of the decision.

(2) The Council, or the committee referred to in subsection (1), shall consider an application made under that subsection and may confirm or vary the decision to which the application relates.

## **Related Amendment**

### **Foreign Lawyers Registration Rules**

#### **11. Section added**

The Foreign Lawyers Registration Rules (Cap. 159 sub. leg.) are amended by adding –

#### **"6A. Compliance with Legal Practitioners (Risk Management Education) Rules**

A certification of registration as a foreign lawyer is subject to the condition that during any period for which the foreign lawyer is employed by a Hong Kong firm to practise foreign law, he shall comply

with the Legal Practitioners (Risk Management Education) Rules (L.N. of 2002).".

## **12. Transitional**

- (1) The practice year for the period ending on 31 October 2003 shall be the period between 1 January 2003 and 31 October 2003.
- (2) As regards a person –

  - (a) whose first practice year would, but for this subsection, end on 31 October 2003 and who was admitted as a solicitor of the High Court on or after 15 September 1990 –

    - (i) his first practice year shall commence on 1 January 2003 and end on 31 December 2003; and
    - (ii) the practice year succeeding his first practice year shall commence on 1 January 2004 and end on 31 October 2004; or
  - (b) whose first practice year would, but for this subsection, end on 31 October 2004 and who was admitted as a solicitor of the High Court before 15 September 1990 –

    - (i) his first practice year shall commence on 1 January 2004 and end on 31 December 2004; and
    - (ii) the practice year succeeding his first practice year shall commence on 1 January 2005 and end on 31 October 2005.

Approved this      day of      2002.

**Chief Justice**

Made this      day of      2002.

### **Explanatory Note**

These Rules provide for the implementation of a programme of training courses on risk management for solicitors or foreign lawyers who practise in Hong Kong firms and for trainee solicitors.