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18 September 2015

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Dear Miss Lo,

**Trainee Solicitors (Amendment) Rules 2015 (“Amendment Rules”)**  
**(L. N. 174 of 2015)**

I refer to your letter of 8 September 2015 and the letter of 9 September 2015 from your Secretary General, Mr. Kenneth Chen to Ms. Heidi Chu.

1. LegCo Brief

I enclose a revised LegCo Brief.

2. Rule 1 – Commencement

(a) On your question why rule 14 of the Trainee Solicitors Rules Cap. 159J (“TS Rules”) was not amended in 2009, the records of the Law Society (“Society”) show the following:

(i) In addition to establishing the Postgraduate Certificate in Laws (“PCLL”) Programme, The Chinese University of Hong Kong (“CUHK”), together with the Bar, the Judiciary, the Department of Justice (“DOJ”) considered the proposal for an “Integrated Training Programme” (“ITP”) in 2006.

(ii) It was proposed that under the ITP, the PCLL would be delivered as a sandwich course over a period of three years. A PCLL student would attend certain parts of the

course for a few months before undergoing practical training for another few months. Such alternation of course work and practical training would repeat for a few times during that three-year period.

- (iii) The amendments to the TS Rules, the Continuing Professional Development (“CPD”) Rules and the Admission and Registration Rules (“Admission Rules”) for the establishment of the ITP were sent to the Chief Justice for approval in September 2007. The amendments at the time included the amendments to insert “The Chinese University of Hong Kong” in rule 14 of the TS Rules.
- (iv) It was explained to the Judiciary at the time that from the 2008/09 academic year i.e. September 2008 onwards, in addition to City University and The University of Hong Kong, CUHK would become a third PCLL provider. In addition to a one-year PCLL Programme, CUHK also planned to offer an alternative training model delivering the PCLL Programme as a sandwich course i.e. the ITP. Under the ITP, a student would be allowed, in the course of the PCLL, to have an opportunity to apply the skills learned in a real life legal practice under supervision. When CUHK offered the ITP from the 2008/09 academic year onwards, there would be two training models (the traditional model and the ITP) on offer at the same time. The TS Rules, the CPD Rules and the Admission Rules would therefore have to be amended to accommodate the ITP.
- (v) The Chief Justice granted his approval in principle to the proposed amendments in March 2008. Drafting Instructions were sent to DOJ in April 2008 on the amendments. In the covering letter to DOJ, the Society repeated the explanation to the Judiciary set out in paragraph 2(a)(iv) above.
- (vi) It appears from the files of the Society that whilst S34 of Part 9 of the Statute Law (Miscellaneous Provisions) Ordinance, Ord. No. 10 of 2008 amended S2(1) of the Legal Practitioners Ordinance Cap. 159 (“LPO”) by including the “The Chinese University of Hong Kong” in the definition of “Postgraduate Certificate in Laws” in S2(1) of the LPO, the legislative amendment process to amend the TS Rules (including the amendment to rule 14), the CPD Rules and the Admission Rules was not concluded until February 2012, by which time, CUHK indicated it no longer wished to proceed with the ITP. Accordingly, the Society withdrew all legislative

amendments relating to the ITP in March 2012.

- (vii) The Society made a separate application to the Judiciary and the DOJ again in 2013 to amend rule 14 of the TS Rules to include the name of CUHK.
  - (viii) In summary, rule 14 of the TS Rules was amended prior to 2009, but the legislative amendment process was aborted in 2012 and the process commenced again in 2013.
- (b) On your question on the legal basis of the Society registering the trainee solicitor contracts of those graduates who completed their PCLL in CUHK since 2009 whereby they might gain admission as solicitors under S4(1)(a) of the LPO, the Society considers that rule 14 of the TS Rules does not affect the power of the Society to approve a person to enter into a trainee solicitor contract under rule 7 of the TS Rules. Rule 14 of the TS Rules describes what evidence is sufficient to show whether a person has passed or failed an examination conducted by the Society, the Law Society of England & Wales, the University of Hong Kong, City University and City Polytechnic. The omission of the name of CUHK from the list in rule 14 does not preclude the Society from admitting the certificates of completion of PCLL issued by CUHK nor does the omission invalidate the evidence shown by the certificates of completion issued by CUHK. There is no indication the list is exhaustive and the production of evidence under rule 14 is not made a condition precedent for the Society to approve a person entering into a trainee solicitor contract under rule 7 of the TS Rules.

Rule 7(a)(i) of the TS Rules provides a person may only enter into a trainee solicitor contract if he has passed or received a certificate of completion in the PCLL and such other examination or course as the Society may require and set or approve.

Section 2(1) of LPO sets out the statutory definition of PCLL and the definition of PCLL already covers CUHK as one of the PCLL course providers. Hence, rule 7(a)(i) of the TS Rules coupled with the definition of "PCLL" in section 2(1) of the LPO is sufficient to empower the Society to register the trainee solicitor contracts of those who completed their PCLL in CUHK.

- (c) The Society is yet to determine the commencement date of the Amendment Rules.

## The Law Society of Hong Kong

- (d) The sequence of listing the tertiary institutions in rule 14 of the Amendment Rules follows the sequence in section 2(1) of the LPO. Please clarify whether by “grouping the three universities together”, you would like to put the “The Chinese University of Hong Kong” before “the City Polytechnic of Hong Kong”.

Yours sincerely,



Angela Li

Assistant Director

Regulation and Guidance

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Encl.



## Legislative Council Brief

### A. Title of the subsidiary legislation

Trainee Solicitors (Amendment) Rules 2015 (“Amendment Rules”).

### B. Introduction / Background

- (i) In 2006, The Chinese University of Hong Kong (“CUHK”) proposed to establish the Postgraduate Certificate in Laws (“PCLL”) Programme.
- (ii) In addition to establishing the PCLL Programme, CUHK, together with the Bar, the Judiciary, the Department of Justice (“DOJ”) and the Law Society (“Society”) considered a proposal for an “Integrated Training Programme” (“ITP”).
- (iii) It was proposed that under the ITP, the PCLL would be delivered as a sandwich course over a period of three years. A PCLL student would attend certain parts of the course for a few months before undergoing practical training for another few months. Such alternation of course work and practical training would repeat for a few times during that three-year period.
- (iv) The amendments to the Trainee Solicitors Rules Cap. 159J (“TS Rules”), the Continuing Professional Development (“CPD”) Rules and the Admission and Registration Rules (“Admission Rules”) for the establishment of the ITP were sent to the Chief Justice for approval in September 2007. The amendments at the time included the amendments to insert “The Chinese University of Hong Kong” in rule 14 of the TS Rules i.e. the amendments which are currently being introduced by the Amendment Rules.
- (v) It was explained to the Judiciary at the time that from the 2008/09 academic year i.e. September 2008 onwards, in addition to City University (“CityU”) and The University of Hong Kong (“HKU”), CUHK would become a third PCLL provider. In addition to a one-year PCLL Programme, CUHK also planned to offer an alternative training model delivering the PCLL Programme as a sandwich course i.e. the ITP.

Under the ITP, a student would be allowed, in the course of the PCLL, to have an opportunity to apply the skills learned in a real life legal practice under supervision. When CUHK offered the ITP from the 2008/09 academic year onwards, there would be two training models (the traditional model and the ITP) on offer at the same time. The TS Rules, the CPD Rules and the Admission Rules would therefore have to be amended to accommodate the ITP.

- (vi) The Chief Justice granted his approval in principle to the proposed amendments in March 2008. Drafting Instructions were sent to DOJ in April 2008 on the amendments. In the covering letter to DOJ, the Society repeated the explanation to the Judiciary set out in paragraph B(v) above.
- (vii) The Statute Law (Miscellaneous Provisions) Ordinance, Ord. No. 10 of 2008 (“Miscellaneous Ordinance”) was promulgated in 2008. S34 of Part 9 of the Miscellaneous Ordinance amended the definition of “Postgraduate Certificate in Laws” in S2(1) of the Legal Practitioners Ordinance Cap. 159 (“LPO”) by including the PCLL conducted by CUHK in the definition. However, the legislative amendment process to amend the TS Rules (including the amendment to rule 14), the CPD Rules and the Admission Rules relating to ITP was only concluded in February 2012. In March 2012, CUHK advised the Society it no longer wished to pursue the ITP. The Society therefore withdrew all legislative amendments relating to the ITP in March 2012.
- (viii) As the Society had withdrawn all amendments relating to the ITP, it was necessary for the Society to commence another legislative amendment exercise to solely amend rule 14 of the TS Rules. This the Society did in 2013 which resulted in the present Amendment Rules.

**C. Justification for introducing the amendments to the subsidiary legislation**

- (i) Rule 14 of the TS Rules describes what evidence is sufficient to show whether a person has passed or failed an examination conducted by the Society, the Law Society of England & Wales, the University of Hong Kong, City University and City Polytechnic.
- (ii) Rule 7(a) of the TS Rules stipulates that a person may only enter into a trainee solicitor contract if he has passed or received a certificate of completion or certificate of satisfactory completion as the case may be in the PCLL and such other examination or course as the Society may require and set or approve.
- (iii) Since the Miscellaneous Ordinance has already amended the definition of PCLL in S2(1) of the LPO to include the PCLL conducted by CUHK, it is proposed to amend rule 14 of the TS to include the certificates of completion of PCLL issued by CUHK.

**D. Explanation of main provision**

Rule 14 of the TS Rules sets out what evidence shows that an applicant for registration of trainee solicitor contract has passed an examination.

**E. Date of tabling the subsidiary legislation in LegCo and its Commencement Date**

It is hoped that LegCo will table the Amendment Rules on 14 October 2015. The Commencement Date is to be appointed by the President of the Society by notice published in the Gazette.

**F. Result of any consultation with the relevant parties**

When the ITP was first proposed in 2006, the Society liaised with CUHK, the Bar, the Judiciary and the DOJ on the amendments to the TS Rules, including the amendment to rule 14 of the TS Rules. The views of the other 2 law schools, CityU and HKU, and the then Chairman of the Standing Committee on Legal Education and Training were also sought.

The amendments were approved by the Society's Trainee Solicitors Committee, the Legal Education Committee, the Standing Committee on Standards & Development, and the Council, comprising a wide cross section of the solicitors' profession in Hong Kong.

**G. Contact details of relevant officers**

The relevant officer for this amendment exercise is Assistant Director, Regulation and Guidance of the Law Society at 3rd Floor, Wing On House, 71 Des Voeux Road Central, Hong Kong (Telephone No. 852-2846 0503).

**H. Issuing party and issuance date**

The Amendment Rules were gazetted on 4 September 2015. This brief is prepared by the Society on 18 September 2015.