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LAW SOCIETY
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香港律師會

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29 September 2015

Miss Winnie LO
Assistant Legal Adviser
Legislative Council Secretariat
Legal Service Division
Legislative Council Complex,
1 Legislative Council Road,
Central, Hong Kong

By email and by post
wwylo@legco.gov.hk

Dear Miss Lo,

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

In the course of preparing the Chinese translation of the LegCo Brief, we have spotted some typographical errors.

Accordingly, we have revised the Law Society’s letter sent on 18 September 2015 and the English version of the LegCo Brief sent on that day.

For the letter of the Law Society sent on 18 September 2015, the word “ITP” in line 11 of paragraph 2(a)(iv) should be “PCLL”.

A revised letter is enclosed for your attention.

For the English version of the LegCo Brief, the word “ITP” in line 9 of paragraph B(v) should be “PCLL”. The words “in March 2012” appeared twice in the last 3 lines of paragraph B(viii) and that the second of these 3 words should be deleted.

A revised English LegCo Brief and its Chinese translation are enclosed for your attention.

Yours sincerely,

Angela Li

Assistant Director
Regulation and Guidance
Email: adrg@hklawsoc.org.hk

Encls.





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wwylo@legco.gov.hk

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 PCLL 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
Email: adrg@hklawsoc.org.hk

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 PCLL 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.
- (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.

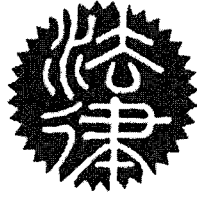
The amendments were approved by the Society's Trainee Solicitors Committee, the Legal Education Committee, the Standing Committee on Standards & Development, and the Council, comprising a wide cross section of the solicitors' profession in Hong Kong.

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.



立法會摘要

A. 附屬法例的標題

2015 年實習律師(修訂)規則

B. 引言/背景

- (i) 香港中文大學("中大")在 2006 年提議開辦法學專業證書課程。
- (ii) 除提供法學專業證書課程外，中大連同大律師公會、司法機構、律政司和律師會亦考慮開辦"綜合培訓課程"的建議。
- (iii) 根據倡議的綜合培訓課程，法學專業證書課程將會提供三年制的交替課程。法學專業證書的學生需要在三年的課程年度，有幾個月進行實務培訓，又有幾個月進行學術課程。在三年內，學術課程和實務培訓重覆交替。
- (iv) 開辦綜合培訓課程需要修訂實習律師規則、專業進修規則及認許及註冊規則。律師會在 2007 年 9 月向終審法院首席法官申請批核有關的修訂。其中一項修訂包括在實習律師規則第 14 條加入中大，即現在提出的修訂。
- (v) 在申請批核時，律師會向司法機構解釋由 2008/09 學期年度，即由 2008 年 9 月開始，除香港城市大學及香港大學外，中大將會成為第三間提供法學專業證書課程的機構。除一年制法學專業證書課程外，中大亦計劃提供另類交替培訓模式的法學專業證書課程，即綜合培訓課程。依據綜合培訓課程，學生可以在進修法學專業證書課程期間，有機會在監管下，實施在實際法律執業內學到的技巧。當中大由 2008/9 學期開始提供法學專業證書課程時，中大會提供兩種訓練模式(傳統模式和綜合培訓課程)。為配合實施綜合培訓課程，實習律師規則、專業進修規則及認許及註冊規則需要作出修訂。

- (vi) 終審法院首席法官在 2008 年 3 月原則上批准所提出的修訂建議。修訂草擬文件在 2008 年 4 月送交律政司，律師會亦同時向律政司解釋如上文 B(v)所列出的修訂原因。
- (vii) 成文法(雜項規定)條例(2008 年第 10 號條例)("雜項條例")在 2008 年公佈。雜項條例第 9 部第 34 條修訂法律執業者條例(第 159 章)第 2(1)條，在法學專業證書的定義內加入中大。但是，實習律師規則(包括第 14 條的修訂)、專業進修規則及認許及註冊規則的立法修訂程序在 2012 年 2 月才完結。在 2012 年 3 月，中大通知律師會中大決定不會推出綜合培訓課程。於是，律師會撤回所有有關綜合培訓課程的修訂立法動議。
- (viii) 因為律師會撤回所有有關綜合培訓課程的修訂動議，律師會需要開始另一立法修訂程序單獨修訂實習律師規則第 14 條。律師會在 2013 年重新展開現時的修訂規則的立法程序。

C. 修訂附屬法例的理據

- (i) 實習律師規則第 14 條列明何等證據可被視為足夠證據證明某人成功考取律師會、英格蘭及威爾斯律師會、香港大學、香港城市大學或香港城市理工學院的考試。
- (ii) 實習律師規則第 7(a)條列明任何人如在法學專業證書以及律師會所規定與指定或認可的其他考試或課程中考取合格或收到結業證明書或圓滿結業證明書(視屬何情況而定)，才可訂立實習律師合約。
- (iii) 由於雜項條例已經將法律執業者條例第 2(1)條內法學專業證書的定義修訂加入中大舉辦的法學專業證書課程，因此提議包括中大所發出的法學專業證書在實習律師規則第 14 條內。

D. 主要條文的解釋

實習律師規則第 14 條列明那些證據證明申請註冊實習律師合約的人已經在考試中合格。

E. 提交立法會審議的日期及生效日期

律師會期望在 2015 年 10 月 14 日將 2015 年實習律師(修訂)規則提交立法會審議。律師會會長將以憲報公告指定的日期起實施修訂規則。

F. 諮詢有關團體的結果

當綜合培訓課程在 2006 年首次提出時，律師會曾經就綜合培訓課程和有關修訂諮詢中大、大律師公會、司法機構及律政司，亦曾經尋求香港城市大學、香港大學及當時法律教育及培訓常設委員會主席的意見。

這些修訂亦經過律師會轄下廣泛代表香港律師界別的委員會，如實習律師委員會、法律教育委員會、專業水準及發展常務委員會及理事會批核。

G. 聯絡職員的資料

職員 : 條例及指導部副總監
地址 : 香港中環德輔道中 71 號永安集團大廈 3 樓
電話號碼 : 852-2846 0503

H. 提交的機構及日期

實習律師(修訂)規則在 2015 年 9 月 4 日在憲報刊登。此摘要在 2015 年 9 月 18 日為律師會擬備。