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Paper for the House Committee meeting on 20 November 2015

**Report of the Subcommittee on Commencement Notices related to
Five Sets of Amendment Rules made under Sections 73 and 73A
of the Legal Practitioners Ordinance and Gazetted on 17 July 2015**

Purpose

This paper reports on the deliberations of the Subcommittee on Commencement Notices related to Five Sets of Amendment Rules made under Sections 73 and 73A of the Legal Practitioners Ordinance and Gazetted on 17 July 2015 (L.N. 161 to L.N. 165) ("the Commencement Notices").

Background

2. To codify the requirements for solicitors to account to clients for any interest earned on money deposited with them under the Solicitors' Accounts Rules (Cap. 159F), which previously were provided in a Practice Direction issued by The Law Society of Hong Kong ("Law Society"), the following five sets of amendments rules ("the Amendment Rules") were gazetted in October 2012 under sections 73 and 73A of the Legal Practitioners Ordinance (Cap. 159), subject to the prior approval of the Chief Justice –

- (a) Solicitors' Accounts (Amendment) Rules 2012 (L.N. 151 of 2012);
- (b) Accountant's Report (Amendment) Rules 2012 (L.N. 152 of 2012);
- (c) Solicitors (Professional Indemnity) (Amendment) Rules 2012 (L.N. 153 of 2012);
- (d) Solicitors' Practice (Amendment) Rules 2012 (L.N. 154 of 2012);
and

- (e) Foreign Lawyers Practice (Amendment) Rules 2012 (L.N. 155 of 2012).

The Amendment Rules

L.N. 151 of 2012

- 3. L.N. 151 of 2012 amends Cap. 159F to –
 - (a) set out the principles that must be observed by a solicitor in handling client's money;
 - (b) extend the application of the principal Rules as amended by L.N. 151 of 2012 to a solicitor corporation, a foreign lawyer and a foreign firm;
 - (c) impose a duty on a solicitor to account for any interest earned on the client's money if the amount of money and the period for holding the money are within those amounts and periods as specified in the Schedule;
 - (d) set out certain exceptions to the solicitor's duty to pay client's money held or received by the solicitor into the client account;
 - (e) clarify the extent of a solicitor's obligation to keep accounts; and
 - (f) empower the Law Society's Council to, for the purpose of ascertaining whether a firm has complied with L.N. 151 of 2012, require a solicitor to produce the management accounts including monthly profit and loss accounts of the firm for inspection.

L.N. 152 of 2012

4. L.N. 152 of 2012 amends the existing definition of "client account" and introduces a definition of "solicitor" in the Accountant's Report Rules (Cap. 159A). The amendments made in L.N. 152 of 2012 are minor drafting changes and amendments consequential to L.N. 151 of 2012.

5. By a resolution made and passed by the Legislative Council on 5 December 2012 (L.N. 185 of 2012), amendments relating to the drafting aspects of both English and Chinese texts of L.N. 151 of 2012 and L.N. 152 of 2012 have been made.

L.N. 153 of 2012

6. L.N. 153 of 2012 amends the Solicitors (Professional Indemnity) Rules (Cap. 159M) to prescribe the qualifications that a certified public accountant (practising) must have before the accountant is qualified to sign a report of gross fee income in relation to the practice of a solicitor.

L.N. 154 of 2012

7. L.N. 154 of 2012 amends the Solicitors' Practice Rules (Cap. 159H) to empower the Law Society's Council to, for the purpose of ascertaining whether a firm has complied with the principal Rules as amended by L.N. 154 of 2012, require a solicitor to produce the management accounts including monthly profit and loss accounts of the firm for inspection by the Law Society's Council.

L.N. 155 of 2012

8. Item 2 of the Schedule to the Foreign Lawyers Practice Rules (Cap. 159R) becomes redundant as a result of the amendment to the definition of "solicitor" in Cap. 159F introduced by L.N. 151 of 2012. L.N. 155 of 2012 consequentially amends the principal Rules by repealing item 2 of the Schedule to the principal Rules.

The Commencement Notices

9. To bring into effect the relevant provisions of the Amendment Rules, the Commencement Notices, i.e. L.N. 161 to L.N. 165, were gazetted on 17 July 2015 and tabled at the Legislative Council meeting of 14 October 2015.

10. By the Commencement Notices, the President of the Law Society has appointed 1 July 2016 as the day on which the Amendment Rules come into operation.

The Subcommittee

11. At the House Committee meeting held on 9 October 2015, Members agreed that a subcommittee should be formed to study the Commencement Notices. The membership list of the Subcommittee is in the **Appendix**.

12. Under the chairmanship of Dr Hon Priscilla LEUNG, the Subcommittee held two meetings, including one with the representatives of the Law Society.

13. To allow time for the Subcommittee to complete its scrutiny work and report its work to the House Committee, a motion was moved by Dr Hon Priscilla LEUNG, on behalf of the Subcommittee, at the Council meeting of 4 November 2015 to extend the scrutiny period of the Commencement Notices to the Council meeting of 2 December 2015.

Deliberations of the Subcommittee

14. In the course of examination of the Commencement Notices, members have expressed concerns on the timing for the commencement of the Amendment Rules and whether foreign law firms and local law firms are at the same level playing field under the Amendment Rules.

Timing for the commencement of the Amendment Rules

15. Members have enquired about the time taken for bringing the Amendment Rules into operation since they were gazetted on 12 October 2012. The Law Society has advised that the commencement dates of the Amendment Rules has been fixed on 1 July 2016 with an intention of allowing ample time for its members to familiarize themselves with the operation of the Amendment Rules and to update the computer systems, if necessary, in order to comply with the new requirements under the Amendment Rules. The Law Society has also completed the following preparatory work prior to the commencement of the Amendment Rules:

- (a) putting in place a waiver application system and preparing new waiver guidelines for the amended Cap. 159F;
- (b) reviewing and revising the existing Manual on Solicitors' Accounting to align the Manual with the new provisions in the amended Cap. 159F;
- (c) liaising with the Hong Kong Association of Banks and the Hong Kong Monetary Authority on the requirements of opening a "client account" under the amended Cap. 159F; and
- (d) organizing seminars for its members to highlight the relevant amendments and practical issues.

Foreign law firms to be regulated by the Amendment Rules

16. Members have expressed concern as to whether foreign law firms operating in Hong Kong are also regulated by the Amendment Rules as in the

case of local law firms to ensure that all law firms operating in Hong Kong are on the same level playing field under the Amendment Rules.

17. The Law Society has advised that solicitors practicing in Hong Kong will be subject to the Amendment Rules after they are brought into operation on 1 July 2016. According to the amended Cap. 159F, the definition of "solicitor" has been expanded to include, apart from a solicitor of the Court and a firm of solicitors, a solicitor corporation, a foreign lawyer and a foreign firm. Under the new requirements, a solicitor must keep other people's money in bank account identifiable as a client account at a bank located and licensed in Hong Kong. This can address the problems with access to information on the client account concerned if the account is maintained at an overseas bank or an overseas branch of a bank licensed in Hong Kong. The Subcommittee has noted that the new requirements under the amended Cap. 159F would be examined under the subject "Accounts and Professional Conduct" in the Overseas Lawyers Qualification Examination starting from 2016.

18. The Law Society has further advised about how conflicts between the ethical rules in the jurisdictions of the foreign law firms and those in Hong Kong are to be handled. Chapter 1 of Volume 1 of The Hong Kong Solicitors' Guide to Professional Conduct ("Guide") addresses the issue of conflicts between the ethical rules of different jurisdictions. Principle 1.08 provides that a solicitor when practising as a Hong Kong solicitor outside Hong Kong remains bound by the general principles of professional conduct which apply to him as a Hong Kong solicitor. Commentary 2 to Principle 1.08 provides that in addition to the Principles and Commentaries in the Guide, the Law Society's Council has adopted as the basic code for solicitors practising outside Hong Kong the International Bar Association's International Code of Ethics whenever the same is not inconsistent with Principle 1.08. Commentary 3 to Principle 1.08 provides that in the absence of an express application of local rules to the solicitor as a foreign lawyer, a solicitor should nevertheless respect the rules of conduct applied to local lawyers. Where the structure and sphere of activity of the local legal profession or professions differs substantially from those of Hong Kong solicitors, it may be inappropriate or impossible for a solicitor to comply in every particular with the rules of conduct applicable to the local profession or professions, or it may be doubtful which rules of conduct should be applied. In such circumstances, the solicitor should observe the standards of conduct applicable to the local lawyers to the extent this can be done without infringing the rules applicable to Hong Kong solicitors and without hindering the proper exercise of his profession.

Recommendation

19. The Subcommittee supports the Commencement Notices and will not propose any amendment.

Advice sought

20. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 4
Legislative Council Secretariat
18 November 2015

**Subcommittee on Commencement Notices related to
Five Sets of Amendment Rules made under Sections 73 and 73A
of the Legal Practitioners Ordinance and Gazetted on 17 July 2015**

Membership list

Chairman Dr Hon Priscilla LEUNG Mei-fun, SBS, JP

Members Hon Paul TSE Wai-chun, JP
Hon Dennis KWOK
Hon CHUNG Kwok-pan

(Total : 4 members)

Clerk Anthony CHU

Legal adviser Miss Carrie WONG