

立法會

Legislative Council

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Paper for the House Committee meeting on 6 January 2017

Report of the Subcommittee on Solicitors (Professional Indemnity) (Amendment) Rules 2016 and Solicitors' Practice (Amendment) Rules 2016

Purpose

This paper reports on the deliberations of the Subcommittee on Solicitors (Professional Indemnity) (Amendment) Rules 2016 and Solicitors' Practice (Amendment) Rules 2016 ("two Amendment Rules").

Background¹

2. Compulsory professional indemnity insurance for solicitors was introduced by The Law Society of Hong Kong ("Law Society") in 1980. The current Professional Indemnity Scheme ("Scheme") was set up in 1989 under which indemnity was provided by the Solicitors Indemnity Fund. Pursuant to rule 3(1) of the Solicitors (Professional Indemnity) Rules (Cap. 159M), the Law Society is authorized to establish and maintain the Hong Kong Solicitors Indemnity Fund ("Fund").

3. In general terms, the purpose of the Scheme is to provide indemnity against loss arising from claims in respect of the civil liability incurred by a solicitor in connection with his/her practice.

4. The Fund is administered in accordance with Cap. 159M by the Hong Kong Solicitors Indemnity Fund Limited ("Company"), a company established by the Law Society for this purpose.

¹ Extracted from the written reply by the Secretary for Justice to a Member's question concerning the Fund raised at the Council meeting of 21 October 2009

The two Amendment Rules

Solicitors (Professional Indemnity) (Amendment) Rules 2016 ("PIS Amendment Rules")

5. The PIS Amendment Rules seek to amend Cap. 159M to, amongst others, (a) enhance the operation of the Fund; (b) provide more clarity to Cap. 159M; (c) provide better protection to the public; and (d) correct typos and grammatical errors in Cap. 159M. The PIS Amendment Rules consist of miscellaneous amendments resolved over the years by the Professional Indemnity Advisory Committee and the Civil Litigation, Personal Injuries and Alternative Dispute Resolution Committees of the Law Society as well as the Board of the Company. The main provisions of these amendments include:

- (a) expanding the Fund to cover a solicitor acting as the neutral in any form of alternative dispute resolution procedure, as a China-Appointed Attesting Officer ("CAAO"), or as a civil celebrant of marriages appointed under the Marriage Ordinance (Cap. 181) (rule 3(6));
- (b) clarifying that arbitration under rule 13 of, and determination by counsel under paragraph 8(1)(c) of Schedule 3 to, Cap. 159M were separate procedures for resolving disputes between the Company and the indemnified (rule 5(1));
- (c) empowering the Company to appoint a law firm which was not on the panel appointed by the Council of the Law Society to act for an indemnified (rule 6) or to advise the Company on its obligations under Cap. 159M (rule 3(3));
- (d) providing for the payment of interest on any overdue contributions (for which each principal of the indemnified firm was jointly and severally liable) at the same rate as allowed for a judgment debt under section 49 of the High Court Ordinance (Cap. 4) (rule 7);
- (e) removing the exclusion under paragraph 1(2)(c)(x) of Schedule 3 to Cap. 159M so that indemnity may be provided for a claim which arose from circumstances occurring when a receipt for the initial contribution due had not been issued to the indemnified firm for failure to comply with any provision of Cap. 159M (rule 9(6)); and
- (f) requiring the referral of any dispute between the indemnified and the Company relating to the conduct of a claim to a junior or

senior counsel for determination (rule 9(13) and (14)).

Solicitors' Practice (Amendment) Rules 2016

6. The Solicitors' Practice (Amendment) Rules 2016 seek to amend the Solicitors' Practice Rules (Cap. 159H) to correct the Chinese rendition of CAAO in rule 2B(3)(d)(iii) from "中國委任的見證人員" to "中國委託公證人".

The Subcommittee

7. At the House Committee ("HC") meeting held on 2 December 2016, Members agreed that a subcommittee should be formed to study the two Amendment Rules. The membership list of the Subcommittee is in the **Appendix**.

8. Under the chairmanship of Hon Holden CHOW, the Subcommittee has held one meeting with The Law Society.

9. To allow time for the Subcommittee to complete its work, a motion was moved by Hon Starry LEE, HC Chairman, on behalf of the Subcommittee, at the Council meeting of 7 December 2016 to extend the scrutiny period of the two Amendment Rules from the Council meeting of 14 December 2016 to that of 18 January 2017.

Deliberations of the Subcommittee

10. Noting that a Queen's Counsel had been appointed by the Board of the Company to review Cap. 159M and to make recommendations to address various operational issues of the Fund which had arisen over the years when applying Cap. 159M, question was raised as to whether all of the recommendations made by the Queen's Counsel had been and would be adopted by the Company. The Law Society replied in the positive.

11. In view of the fact that the Fund has a reserve of some HK\$2 billion, members have urged the Board of the Company to consider further reducing the annual contributions payable by its members so as to alleviate the financial burden of solicitors. The Law Society has responded that the objective of the Fund is to provide indemnity to the profession as well as to safeguard the general public. The Board of the Company would consider whether there is room for further reduction of contributions payable by solicitors on the condition that such reduction would not adversely affect the sustainability of the Fund, taking into account the objective of the Fund. Upon members' request, The Law Society provided a paper on (a) the annual financial situation of the Fund,

including the claims statistics, from 2010-2011 to 2014-2015 indemnity years; (b) the annual contributions payable by its members from 2009-2010 to 2014-2015 indemnity years, including the contribution assessment formula used; and (c) the measures taken/would be taken by The Law Society to maintain the financial sustainability of the Fund for protection of the public interest on the one hand and alleviating the financial obligations of its members to the Fund on the other (LC Paper No CB(4)327/16-17(01)). Members did not raise any queries/concerns on the information provided in the paper.

12. Members did not raise objection to the legal and drafting aspects of the two Amendment Rules.

13. Members note that The Law Society plans to implement the two Amendment Rules as soon as practicable. The commencement date is to be appointed by the President of The Law Society by notice published in the Gazette.

Advice sought

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

**Subcommittee on
Solicitors (Professional Indemnity) (Amendment) Rules 2016
and Solicitors' Practice (Amendment) Rules 2016
Membership list**

Chairman Hon Holden CHOW Ho-ding

Members Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
 Hon Paul TSE Wai-chun, JP
 Hon Dennis KWOK Wing-hang
 Hon Alvin YEUNG
 Dr Hon Junius HO Kwan-yiu, JP
 Hon HUI Chi-fung

 (Total : 7 Members)

Clerk Mary SO

Legal adviser Bonny LOO