

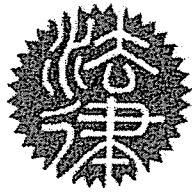
LEGISLATIVE COUNCIL BRIEF

(Cap. 159 sub. leg. R, H and AD)

Foreign Lawyers Practice (Amendment) Rules 2018 Solicitors' Practice (Amendment) Rules 2018 and Summary Disposal of Complaints (Solicitors) (Amendment) Rules 2018 (Commencement) Notices

1. The Foreign Lawyers Practice (Amendment) Rules 2018, Solicitors' Practice (Amendment) Rules 2018 and Summary Disposal of Complaints (Solicitors) (Amendment) Rules 2018 (the "Amendment Rules") were gazetted on 9 March 2018. No amendments were made during the negative vetting period.
2. The amendments were set out in the attached previous Legislative Council Brief.
3. Pursuant to section 1 of the Amendment Rules, the President of the Law Society appointed 4 February 2019 as the Commencement Date of the Amendment Rules.

Date: 26 October 2018



Legislative Council Brief

A. Title of the subsidiary legislation

Solicitors' Practice (Amendment) Rules 2018

Foreign Lawyers Practice (Amendment) Rules 2018

Summary Disposal of Complaints (Solicitors) (Amendment) Rules 2018

B. Introduction / Background

Explanation of main provision

Solicitors' Practice Rules ("the SP Rules")

1. Rule 4B(2) of the SP Rules provides as follows:

"No firm shall, except with the written approval of the Council, knowingly employ any unqualified person who is in the part-time or full-time employment of another firm."

2. Under rule 1A of the SP Rules, a "firm" means a firm as from time to time constituted, whether of a sole practitioner or as a partnership carrying on the business of practising as a solicitor or as solicitors and whether conducted from one address or more than one address. It does not include a foreign firm.

Legal Practitioners Ordinance ("the Ordinance")

3. Under section 2(1) of the Ordinance, "unqualified person" means a person who is not a solicitor.
4. Under section 39C(1) of the Ordinance, a Hong Kong firm may form an Association with a foreign firm whereby they may share employees.

Foreign Lawyers Practice Rules ("the FLP Rules")

5. Under rule 8(1) of the FLP Rules, an "unqualified person" means a person who is not a foreign lawyer.

6. There is no corresponding provision of rule 4B(2) of the SP Rules in the FLP Rules. There is no express provision in the FLP Rules prohibiting a foreign firm's employee who is not a foreign lawyer to work full-time or part-time in another foreign firm or Hong Kong firm simultaneously.

Summary Disposal of Complaints (Solicitors) Rules ("SD Rules")

7. Under the SD Rules, a breach of rule 4B(2) of the SP Rules can be dealt with in a summary manner. The fixed penalty is \$10,000 and the fixed investigation cost is \$15,000.

C. Justification for introducing the amendments to the subsidiary legislation

8. The Law Society proposed to amend rule 4B(2) of the SP Rules to make it clear that an unqualified person employed by a Hong Kong law firm cannot be employed by another Hong Kong firm or a foreign firm simultaneously, full time or part time unless approved by the Law Society in writing.
9. The Law Society proposed to introduce a new rule 8(4) of the FLP Rules so that an unqualified person employed by a foreign firm cannot be employed simultaneously, full time or part time, by another foreign firm or a Hong Kong firm unless approved by the Law Society in writing. This is a corresponding provision of rule 4B(2) of the SP Rules for foreign firms.
10. The Law Society also proposed to introduce a new item 7A under the heading of "Foreign Lawyers Practice Rules" in the Schedule to the SD Rules so that a breach of rule 8(4) of the FLP Rules can be dealt with under the SD Rules. The fixed penalty is \$10,000. The fixed investigation cost is \$15,000. This is in line with a breach of rule 4B(2) of the SP Rules.

D. Date of tabling the subsidiary legislation in the Legislative Council and its Commencement Date

11. It is hoped that the Legislative Council will table the Amendment Rules on 21 March 2018. The Commencement Date is to be appointed by the President of the Law Society by notice published in the Gazette.

E. Consultation with the Legislative Council's Panel on Administration of Justice and Legal Services ("AJLS Panel")

12. The Law Society consulted the AJLS Panel on the proposed amendments. The AJLS Panel has no comment on the Law Society's proposed amendments. The email from the Legislative Council Secretariat of 14 August 2017 is attached.

F. 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).

G. Issuing party and issuance date

The Amendment Rules were gazetted on 9 March 2018. This brief is prepared by the Law Society on 9 March 2018.

Date: 9 March 2018