

L.N. 266 of 1999

Solicitors (Professional Indemnity)

(Amendment) (No. 2) Rules 1999

(Made by the Council of The Law Society of Hong Kong under sections 73 and 73A of the Legal Practitioners Ordinance (Cap. 159) with the prior approval of the Chief Justice)

1. Interpretation

Rule 2 of the Solicitors (Professional Indemnity) Rules (Cap. 159 sub. leg.) is amended by repealing the definition of "Practice" and substituting---

"Practice" (執業業務) means the business of practising as a solicitor, including the acceptance of obligations connected with and incidental to such practice as--

- (a) trustee;
- (b) executor;
- (c) attorney acting under a power of attorney;
- (d) tax agent;
- (e) patent agent;
- (f) trade-mark agent;
- (g) company secretary;
- (h) company director; or
- (i) notary public, provided the solicitor is so qualified,

undertaken by the indemnified or his predecessor in business alone or with others, provided always that wherever any fees or other income accrue therefrom they inure to the benefit of that business;".

2. Production of documents and information

Rule 8 is amended---

(a) in subrule (1)---

(i) in paragraph (a)---

(A) by renumbering it as paragraph (a)(i);

(B) in subparagraph (i), by repealing everything after and including "or" and substituting "; or";

(C) by adding---

"(ii) if a certificate mentioned in subparagraph (i) is not available, subject to the approval of the Council and terms, if any, the Council thinks fit, a certificate signed by a certified public accountant containing particulars of the gross fee income attributable to the Practice for the accounting year of the Practice ending not

earlier than 31 March in the preceding year; and";

(ii) by repealing paragraphs (b) and (c) and substituting---

"(b) such other information in connection with the Practice made up to 31 July (or other date as determined by the Council) in the same indemnity period required by the Company in a form approved by the Company for the purpose of assessing the contributions payable by that Practice, including the following---

(i) (in addition to the certificate referred to in paragraph (a)) particulars of the gross fee income attributable to the Practice for the immediately preceding accounting year of the Practice;

(ii) the names of all the principals in the Practice;

(iii) the names of all foreign lawyers in the Practice;

(iv) the names of all other solicitors, including assistant solicitors and consultants employed in or otherwise involved in the Practice;

(v) the names of all trainee solicitors in the Practice; and

(vi) the name and address of the firm carrying on the Practice.";

(b) in subrule (3), by repealing ", an apportionment thereof" and ", apportionment";

(c) in subrule (4)---

(i) by repealing "or an apportionment thereof";

(ii) by adding "within 30 days of the receipt of notice from the Society requesting him to show reasonable cause" after "(2)";

(iii) in paragraph (a), by repealing "專業行爲不當" and substituting "不當專業行爲";

(iv) in paragraph (b), by repealing "show reasonable cause why they should not supply such particulars, apportionment and information" and substituting "disclose such particulars and information".

### 3. Rule added

The following is added---

#### "8A. Investigatory powers

(1) In order to ascertain whether full and accurate information has been provided in accordance with these rules and to obtain the information that has not been provided, the Company may appoint a person ("the appointed person") whom it thinks fit.

(2) The Company may require a solicitor who is or was a principal of a Practice to produce to the appointed person accounting and other records and documents, information and explanations relating to the Practice specified by that person at times and places as specified by him.

(3) Any solicitor to whom a requirement is made under subrule (2) shall comply

with such requirement.

(4) The appointed person---

(a) shall report in writing to the Company on matters about which he has been required by the Company to report; and

(b) may report to the Company on any other matter if he thinks it fit to do so, and the Company may then report any such matter to the Council.

(5) A requirement under subrule (2) shall be made in writing and sent or delivered by the Company to the solicitor at the principal practising address of the solicitor last known to the Society or the Company.

(6) Where a requirement is sent by registered post or recorded delivery to the address referred to in subrule (5), the solicitor to whom it is sent shall be deemed to have received it 2 days after the requirement is so sent."

#### 4. Failure to make payment

Rule 15(1) is amended by repealing "專業行爲不當" and substituting "不當專業行爲".

#### 5. Reporting

Rule 18 is amended---

(a) in subrule (1)---

(i) by repealing "Council" where it twice appears and substituting "Claims Committee";

(ii) by repealing "covered by" and substituting "which is the subject matter of a claim under";

(b) by repealing subrule (2) and substituting---

"(2) Where it appears to the Claims Committee that there may have been professional misconduct, whether in relation to the circumstances giving rise to the claim, the handling of the claim, any failure or refusal to co-operate with the Claims Committee or the panel solicitors, or otherwise, the Claims Committee may at any time inform the Council of full details of such professional misconduct and the circumstances under which it was committed and supply the Council with any related documents.

(3) Where the Claims Committee has informed the Council under subrule (2), the Council may take any action as it thinks fit, including referring the details and documents supplied by the Claims Committee to the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel."

#### 6. Exclusions and conditions

Paragraph 8(1)(c) of Schedule 3 is repealed and the following substituted---

"(c) (i) Where a difference or dispute arises between the indemnified and the Company regarding the contest or otherwise of actual or threatened legal proceedings

relating to a claim, the difference or dispute shall be referred by the Claims Committee to a Senior Counsel (to be mutually agreed upon or failing agreement to be appointed by the President of the Society) for a determination whether the proceedings should be contested, and the Senior Counsel shall be instructed to certify whether or not he has found substantially in favour of the Company.

(ii) The determination referred to in sub-sub-subparagraph (i) shall be binding on the indemnified and the Company and shall be conclusive between them.

(iii) The Claims Committee shall make available to the indemnified a draft of the terms of the reference to the Senior Counsel, and the indemnified shall make available to the Claims Committee his comments, if any, on the draft within 7 days of the draft being made available to him.

(iv) If the comments of the indemnified are given in accordance with sub-sub-subparagraph (iii), they shall be sent to the Senior Counsel.

(v) Unless the Claims Committee otherwise agrees, it shall be a condition precedent to the making of a reference to the Senior Counsel that the indemnified deposits with the Company an amount fixed by the Claims Committee as security for the costs of the reference (in case costs have to be reimbursed by the indemnified under sub-sub-subparagraph (viii)) within 7 days of the Claims Committee requiring the indemnified to do so.

(vi) If the indemnified fails to deposit the amount in accordance with sub-sub-subparagraph (v), he shall be bound by the decision of the Claims Committee in respect of the difference or dispute referred to in sub-sub-subparagraph (i).

(vii) Subject to sub-sub-subparagraph (viii), the costs of the reference to the Senior Counsel shall be paid by the Company.

(viii) If the Senior Counsel certifies that he has found substantially in favour of the Company, the indemnified shall reimburse the Company for the costs of the reference to the Senior Counsel paid by the Company in accordance with this subparagraph.

(ix) Subject to sub-sub-subparagraph (x), where the costs of the reference are to be reimbursed by the indemnified, the amount referred to in sub-sub-subparagraph (v) may be applied by the Company in or towards reimbursement of those costs to the Company.

(x) (A) If the amount deposited in accordance with sub-sub-subparagraph (v) is less than the amount payable by the indemnified in respect of the costs of the reference, the indemnified shall pay the balance to the Company within 7 days of the request made by the Company.

(B) If there is any surplus after the payment of the costs of the reference by the indemnified, it shall be returned to the indemnified without interest.

(xi) The balance mentioned in sub-sub-subparagraph (x)(A) shall be recoverable as a civil debt and shall carry simple interest at the judgment rate determined for the time being under section 49(1)(b) of the High Court Ordinance (Cap. 4) from the date of payment by the Company to the date of actual payment of the amount outstanding by the indemnified.

(xii) If the Senior Counsel does not find substantially in favour of the Company, the amount referred to in sub-sub-subparagraph (v) shall be refunded by the Company to the indemnified without interest.

(xiii) The Claims Committee may, in its sole discretion, extend or abridge any of the time limits specified under this sub-subparagraph (including the time limits mentioned in sub-sub-subparagraphs (iii) and (v)).

(xiv) For the purpose of sub-sub-subparagraph (i), "contest" (爭辯) includes a contest in respect of the defence, prosecution, appeal or taking of interlocutory or any ancillary steps or procedures in legal proceedings to which a claim relates.

(xv) For the purpose of this sub-subparagraph, costs of the reference to the Senior Counsel include fees of the Senior Counsel."

Approved this 5th day of October 1999.

Andrew LI

Chief Justice

Made this 12th day of October 1999.

Anthony W. K. CHOW Michael J. LINTERN-SMITH

Mark J. BRADLEY John Y. C. PANG

Lester G. HUANG Raymond Y. B. TANG

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#### Explanatory Note

The main purpose of these Rules is to amend the Solicitors (Professional Indemnity) Rules (Cap. 159 sub. leg.) ("the Rules") so as to---

- (a) revise the definition of "Practice" to include business of practising as a notary public;
- (b) require every principal who is in Practice in Hong Kong to supply certain information to the Hong Kong Solicitors Indemnity Fund Limited ("the Company");
- (c) remove the requirement to produce a certificate signed by a principal in the

Practice containing an apportionment of the gross fee income of the Practice as certified pursuant to the Rules into categories of business;

- (d) allow a principal in Practice in Hong Kong, who fails to produce documents or information in accordance with rule 8(1) or (2) of the Rules, a 30 days period to show reasonable cause for not supplying such documents or information;
- (e) provide the Company investigatory powers to ascertain whether full and accurate information has been provided by a solicitor in accordance with the Rules;
- (f) provide the Claims Committee with the power to inform the Council of The Law Society of Hong Kong of full details of any professional misconduct and the circumstances under which it was committed and supply the Council with relevant documents;
- (g) modify and amend the provisions in respect of settling any differences or disputes between the indemnified and the Company in respect of a claim.