

立法會
Legislative Council

LC Paper No. LS4/12-13

**Paper for the House Committee Meeting
on 19 October 2012**

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 12 October 2012**

Date of tabling in LegCo : 17 October 2012

Amendment to be made by : 14 November 2012 (or 5 December 2012 if extended by resolution)

**Public Health and Municipal Services Ordinance (Cap. 132)
Designation of Libraries (Amendment) Order 2012 (L.N. 150)**

The Director of Leisure and Cultural Services (the Director), as the public officer designated to be the Authority by section 3 of the Public Health and Municipal Services Ordinance (Cap. 132), manages and controls the libraries listed in the Schedule to the Designation of Libraries Order (Cap. 132 sub. leg. O). Under section 105K of Cap. 132, the Director may, by order published in the Gazette, designate any building, or part of a building, as a library.

2. L.N. 150 is made by the Director under section 105K of Cap. 132 to designate the following premises as libraries –

- (a) the Students' Study Room on the first floor of the High Block of Ping Shan Tin Shui Wai Leisure and Cultural Building, 1 Tsui Sing Road, Tin Shui Wai, Yuen Long; and
- (b) the Students' Study Room on the fifth floor of Lam Tin Complex, 1 Hing Tin Street, Lam Tin, Kwun Tong.

They will be added to the Schedule to the Designation of Library Order accordingly.

3. The effect of L.N. 150 is that the management and control of the newly designated libraries will be vested in the Director. It will also enable the Director to exercise other statutory functions under Cap. 132 in respect of these libraries.

4. The designation of libraries in L.N. 150 as set out in paragraph 2(a) and (b) above will come into operation on 19 November 2012 and 30 November 2012 respectively.

5. Members may refer to the LegCo Brief (no reference number provided) issued by the Leisure and Cultural Services Department dated 8 October 2012 for background information. According to paragraph 6 of the LegCo Brief, the Yuen Long District Council and the Kwun Tong District Council have requested the early commissioning of the students' study rooms in the above-mentioned libraries.

6. The Panel on Home Affairs has not been consulted on L.N. 150. No difficulties relating to the legal or drafting aspects of L.N. 150 have been identified.

Legal Practitioners Ordinance (Cap. 159)

Solicitors' Accounts (Amendment) Rules 2012 (L.N. 151)

Accountant's Report (Amendment) Rules 2012 (L.N. 152)

Solicitors (Professional Indemnity) (Amendment) Rules 2012 (L.N. 153)

Solicitors' Practice (Amendment) Rules 2012 (L.N. 154)

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

7. L.N. 151, L.N. 152, L.N. 154 and L.N. 155 are made by the Council of The Law Society of Hong Kong (Law Society) under section 73 of the Legal Practitioners Ordinance (Cap. 159) (the Ordinance) subject to the prior approval of the Chief Justice. L.N. 153 is made by the Law Society's Council under sections 73 and 73A of the Ordinance subject to the prior approval of the Chief Justice.

8. L.N. 151 to L.N. 155 will come into operation on a day to be appointed by the Law Society's President by notice published in the Gazette.

9. In the scrutiny of L.N. 151 to L.N. 155, some technical issues have been observed. Our letter of enquiry to the Law Society (together with part of the enclosures) and its response are attached.

L.N. 151

10. L.N. 151 amends the Solicitors' Accounts Rules (Cap. 159 sub. leg. F) to –

- (a) set out the principles that must be observed by a solicitor in handling client's money (Rule 3);
- (b) extend the application of the principal Rules as amended by L.N. 151 to a solicitor corporation, a foreign lawyer and a foreign firm (Rule 4);
- (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 (Rule 6);
- (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 (Rule 8);
- (e) clarify the extent of a solicitor's obligation to keep accounts (Rule 10);
- (f) empower the Law Society's Council to, for the purpose of ascertaining whether a firm has complied with L.N. 151, require a solicitor to produce the management accounts including monthly profit and loss accounts of the firm for inspection (Rule 11).

11. Clarification was sought from the Law Society as to whether the amendments in Rule 3 reflect any current practice or Practice Direction. As the Law Society has made no clarification, the Legal Service Division will follow up as appropriate.

12. Save that the issue on interest on client account (Rule 6) had been discussed¹ and no members had expressed any objection at the Panel on Administration of Justice and Legal Services (the AJLS Panel) on 27 June 2005, the proposed amendments in the other Rules had not been discussed at the AJLS Panel. It can be seen from the minutes of that Panel meeting that the Consumer Council had been consulted on the issue on interest on client account. On the time lapse of 7 years from 2005 to 2012 to introduce the Amendment Rules, the Law Society has advised that it has taken several years for the Department of Justice to finalise the drafting exercise and for the Law Society to obtain the Chief Justice's final approval.

¹ See LC Paper No. CB(2)2060/04-05(05) and LC Paper No. CB(2)2502/04-05.

L.N. 152

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

L.N. 153

14. L.N. 153 amends the Solicitors (Professional Indemnity) Rules (Cap. 159 sub. leg. M) 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.

15. The amendments to be effected by L.N. 153 have not been discussed at the AJLS Panel.

L.N. 154

16. L.N. 154 amends the Solicitors' Practice Rules (Cap. 159 sub. leg. H) 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, 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. It appears that the amendments made in L.N. 154 are consequential to the proposed amendments made in Rule 11 of L.N. 151.

L.N. 155

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

Conclusion

18. No difficulties have been identified in the legal and drafting aspects of L.N. 150.

19. The Legal Service Division will follow up with the Law Society on the background to and the need for L.N. 151 to L.N. 155, as well as the drafting of the definition of "principal" in the proposed Rule 2 of L.N. 151. A further report will be made if necessary. Nevertheless, should there be a Subcommittee appointed to study these items of subsidiary legislation, the issues could be considered by the Subcommittee with our assistance.

Encls.

Prepared by

Carrie WONG
Assistant Legal Adviser
Legislative Council Secretariat
18 October 2012

LS/S/4/12-13



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LEGAL SERVICE DIVISION
LEGISLATIVE COUNCIL SECRETARIAT

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Urgent by Fax (2845 0387)
15 October 2012

Ms Heidi CHU
Secretary General
The Law Society of Hong Kong
3/F, Wing On House
71 Des Voeux Road Central
Hong Kong

Dear Ms CHU,

Legal Practitioners Ordinance (Cap. 159)
Solicitors' Accounts (Amendment) Rules 2012 (L.N. 151)
Accountant's Report (Amendment) Rules 2012 (L.N. 152)
Solicitors (Professional Indemnity) (Amendment) Rules 2012 (L.N. 153)
Solicitors' Practice (Amendment) Rules 2012 (L.N. 154)
Foreign Lawyers Practice (Amendment) Rules 2012 (L.N. 155)

It is noted that no Legislative Council Brief or Information Note has been prepared for the captioned Amendment Rules. To assist members of the House Committee in deciding whether to form a Subcommittee to study these Amendment Rules in detail, please let us have a paper setting out the background and the need for these Amendment Rules, e.g. problems that the amendments seek to address and how they affect the existing provisions.

Please also clarify the following matters –

L.N. 151

The proposed Rule 1A – Principles

Do the Principles reflect the current practices or any Practice Direction? If so, please provide such information.

The proposed Rule 2 – Definition of "principal"

Under the proposed Rule 2, "principal" is defined as a sole practitioner or partner of a firm. It is noted that "principal" has a different defined meaning in the Solicitors' Practice Rules (Cap. 159H), the Foreign Lawyers Registration Rules (Cap. 159S) and the Notary Public (Practice) Rules (Cap. 159AI). Is it your intention not to include a solicitor who is held out or holds himself or herself out as a sole practitioner or partner of a firm in the definition of "principal" under the proposed Rule 2?

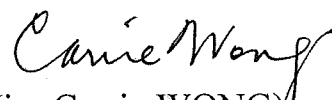
The proposed Rule 6A – Interest on client account

We enclose copies of the extract of the Minutes of the Meeting for the Panel on Administration of Justice and Legal Services ("AJLS") of 27 June 2005 (LC Paper No. CB(2)2502/04-05) and the Submission by the Law Society on the Solicitors' Accounts (Amendment) Rules to the Panel on AJLS (LC Paper No. CB(2)2060/04-05(05)). Please explain the time lapse from 2005 to 2012 in amending the Solicitors' Accounts (Amendment) Rules. Please also explain how the Deputy Solicitor General's concerns raised at that meeting as reflected in paragraph 55 of the said Minutes have been addressed in these Amendment Rules.

The proposed Rule 6A(1) provides "... on each occasion when a solicitor holds or receives **client's money** in respect of a particular matter, the solicitor must without delay deposit **the money** in a designated interest bearing client account and must account to the client for any interest earned on the **account** ..." (emphasis added). As the language flows, should the bolded word "account" be changed to "money" for consistency within the same paragraph and to achieve consistency with the same usage in the proposed Rule 6A(6) (i.e. "for the interest earned on the money")?

As the House Committee will be held on 19 October 2012, please let us have your reply in both languages by 17 October 2012.

Yours sincerely,


(Miss Carrie WONG)
Assistant Legal Adviser

Encls.

立法會
Legislative Council

Encl.

LC Paper No. CB(2)2502/04-05
(These minutes have been seen
by the Administration)

Ref : CB2/PL/AJLS

Panel on Administration of Justice and Legal Services

(Extract from)

Minutes of meeting
held on Monday, 27 June 2005 at 4:30 pm
in Conference Room A of the Legislative Council Building

Members present : Hon Margaret NG (Chairman)
Hon LI Kwok-ying, MH (Deputy Chairman)
Hon Albert HO Chun-yan
Hon Martin LEE Chu-ming, SC, JP
Hon Miriam LAU Kin-ye, GBS, JP
Hon Emily LAU Wai-hing, JP
Hon Audrey EU Yuet-mee, SC, JP
Hon KWONG Chi-kin

Member absent : Hon MA Lik, JP

Public Officers attending : Item IV

Mr Stephen WONG Kai-yi
Deputy Solicitor General

Mr Godfrey KAN
Senior Government Counsel

Items V and VI

Mr Stephen WONG Kai-yi
Deputy Solicitor General

Mr Michael Scott
Senior Assistant Solicitor General

Action

VI. Solicitors' Accounts (Amendment) Rules

(LC Paper No. CB(2)2060/04-05(05) – Paper provided by the Law Society of Hong Kong)

53. Mr Colin COHEN briefed members on the paper provided by the Law Society on the proposed amendments to the Solicitors' Accounts Rules in relation to the requirement for solicitors to account to their clients for interests on monies deposited with them.

54. In brief, the paper explained that a Practice Direction J was issued by the Law Society to its members in 1997, which required solicitors to deposit a client's money in an interest bearing account and to account to the client for any interest earned. However, in view of the declining interest rates since 1997, the administrative costs for solicitors in calculating and accounting for the interest accrued frequently exceeded the interest earned. Accordingly, the Practice Direction was suspended in January 2004 until such time as interest rate reached the level payable in January 1997 when the Practice Direction was promulgated. The latest position was that the Council of the Law Society decided in June 2005 to make it mandatory, by way of the amendment rules, for solicitors to account for interest earned if –

- (a) the client's monies deposited were of an amount specified in column 1 of the Schedule to the rules;
- (b) the monies had been retained in the account continuously for a period specified in column 2 of the Schedule; and
- (c) the amount of the interest thus accrued exceeded \$500.

55. In response to DSG's enquiry, Mr Colin COHEN clarified that the amount of interest which solicitors should pay to their clients would be the amount in excess of \$500, the \$500 being the administrative costs for solicitors in calculating and accounting for the interest accrued. DSG suggested that this should be clearly explained in the rules to avoid misunderstanding. Mr COHEN considered that this was a drafting issue which the Law Society Council would consider in further consultation with DOJ.

56. In response to the Chairman, Mr Colin COHEN said that the Consumer Council had been consulted on the proposed amendments.

57. The Chairman said that so far as policy was concerned, the Panel had no objection to the proposed amendments. She added that Members would have the opportunity to examine the new rules upon their introduction into LegCo.

58. The meeting ended at 6:45 pm.



THE
LAW SOCIETY
 OF HONG KONG
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 Your Ref : LS/S/4/12-13
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Miss Carrie WONG
 Assistant Legal Adviser
 Legislative Council Secretariat
 Legal Service Division
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 1 Legislative Council Road,
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 Hong Kong

URGENT BY HAND

Dear Miss Wong

Re: Legal Practitioners Ordinance (Cap. 159)
 Solicitors' Accounts (Amendment) Rules 2012 (L. N. 151)
 Accountant's Report (Amendment) Rules 2012 (L. N. 152)
 Solicitors (Professional Indemnity) (Amendment) Rules 2012 (L. N. 153)
 Solicitors' Practice (Amendment) Rules 2012 (L. N. 154)
 Foreign Lawyers Practice (Amendment) Rules 2012 (L. N. 155)

I refer to your letter of 15 October 2012 to our Secretary General Miss Heidi Chu.

Solicitors' Accounts (Amendment) Rules

1. Rule 1A – Principles

This new Rule 1A sets out the principles that a solicitor must observe in handling client's money.

2. Rule 2 – Definition of "principal"

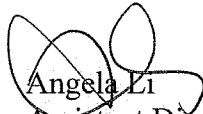
It is the Law Society's intention to include a solicitor who is held out or holds himself out as a sole practitioner or partner of a firm in the definition of "principal" under the proposed rule 2.

3. Proposed rule 6A – Interest on client account

- (a) It takes several years for the Department of Justice to finalise the drafting exercise and for the Law Society to obtain the Chief Justice's final approval of the proposed amendments. The Chief Justice granted his final approval of the proposed amendments on 7 May 2012 and he signed the Amendment Rules on 8 September 2012.
- (b) Under the new proposed rule 6A(2), a solicitor is not required to pay to his client interest if the interest accrued is less than \$500. The sum of HK\$500 would be the administrative costs for solicitors in calculating and accounting for the interest accrued.
- (c) There is no doubt that the words "interest earned on the account" refers to the interest earned on the client's money in the client account".

I also attach a summary of the Law Society's proposed amendments to the Solicitors' Accounts Rules and the other 4 relevant Rules for your reference.

Yours sincerely,



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

Enclosure

#1019331

SUMMARY OF THE PROPOSED AMENDMENTS TO:-

- (A) SOLICITORS' ACCOUNTS RULES**
(B) ACCOUNTANT'S REPORT RULES
(C) SOLICITORS (PROFESSIONAL INDEMNITY) RULES
(D) SOLICITORS' PRACTICE RULES
(E) FOREIGN LAWYERS PRACTICE RULES
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(A) Solicitors' Accounts Rules

Rule 1A – Principles

The Law Society proposed to introduce a new rule 1A setting out the principles that a solicitor must observe in handling client's money.

Rule 2 – Interpretation

- (1) The Law Society proposed to amend the meaning of “client account” making it clear that the account must be maintained at a bank located and licensed in Hong Kong.
- (2) The Law Society proposed to introduce new meanings of “disbursements”, “office money” and “working day”.
- (3) The Law Society proposed to expand the meaning of “solicitor” to include a solicitor corporation, a foreign lawyer and a foreign firm.

Rule 5 – Splitting

The Law Society proposed to amend rule 5(b) setting out a proviso of transferring all office money out of the client account within 14 days of receipt.

Rule 6A and Schedule – Interest on client account

The Law Society proposed to introduce a new rule 6A and a new Schedule imposing 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 handling the money are within those amounts and the periods as specified in the Schedule.

Rule 7A – Authority required for drawing money from client account

- (1) The Law Society proposed to amend rule 7A(1)(b) and (c) to stipulate that the persons specified in rule 7A(1)(a) must countersign the withdrawal authorization if the person specified in rule 7A(1)(b) or (c) is authorised to withdraw money from the client account.

- (2) The Law Society proposed to introduce a new rule 7A(3) empowering it to suspend or waive the operation of this rule upon prior written application.

Rule 9 – Exceptions

- (1) The Law Society proposed to amend rule 9(2)(c) setting out certain exceptions to a solicitor’s duty to pay client’s money into the client account.
- (2) The Law Society proposed to introduce a new rule 9(2A) dealing with the scenario whereby a solicitor received client’s money which includes disbursements.

Rule 9A – Duty to remedy breaches

The Law Society proposed to repeal the 3 definitions under rule 9A(3) and insert them under rule 2.

Rule 10 – Obligation to keep accounts

The Law Society proposed to amend rule 10(5) and introduce a new rule 10(5A) to deal with the computerized accounting system.

Rule 11 – Powers of Council

The Law Society proposed to amend rule 11(1) and (2) empowering it to require a solicitor to produce the management accounts including monthly profit and loss accounts in order to ascertain whether there is compliance with the Solicitors’ Accounts Rules.

Rule 15 - Waiver

The Law Society proposed to introduce a new rule 15 empowering it to waive the provision relating to the location of a client account upon prior written application.

(B) Accountant’s Report Rules

Rule 2 – Interpretation

The proposed amendments to the meanings of “client account” and “solicitor” mirror the proposed amendments to these 2 terms under rule 2 of the Solicitors’ Accounts Rules.

Rule 3 – Qualifications of accountant

The proposed amendments to rule 3(2) mirror the proposed introduction of rule 8(1B) and (1C) of the Solicitors (Professional Indemnity) Rules.

(C) Solicitors (Professional Indemnity) Rules

The Law Society proposed to introduce a new rule 8(1A), (1B) and (1C) prescribing the qualifications of a certified public accountant (practising) in order to enable him to sign a report of gross fee income.

(D) Solicitors' Practice Rules

The Law Society proposed to amend rules 5B(1) and (2) empowering it to require a solicitor to produce the management accounts including monthly profit and loss accounts in order to ascertain whether there is compliance with the Solicitors' Practice Rules.

(E) Foreign Lawyers Practice Rules

The meaning of "solicitor" in the Solicitors' Accounts Rules is proposed to be amended to include a foreign lawyer. Item 2 in the Schedule to the Foreign Lawyers Practice Rules will be redundant. Therefore, the Law Society proposed to repeal this item 2.