

立法會
Legislative Council

LC Paper No. LS6/12-13

**Paper for the House Committee Meeting
on 2 November 2012**

**Legal Service Division Further Report on
Solicitors' Accounts (Amendment) Rules 2012
Accountant's Report (Amendment) Rules 2012
Solicitors (Professional Indemnity) (Amendment) Rules 2012
Solicitors' Practice (Amendment) Rules 2012
Foreign Lawyers Practice (Amendment) Rules 2012 (L.N.151 – 155)
gazetted on 12 October 2012**

Members may recall that at the House Committee meeting on 19 October 2012, the Legal Service Division reported that it would follow up with The Law Society of Hong Kong (the Law Society) on the background to and the need for the above Amendment Rules and the drafting of the definition of "principal" in the proposed Rule 2 of L.N. 151. At the meeting, Members decided to form a subcommittee to study the Amendment Rules. However, due to inadequate membership, the subcommittee has not been formed.

2. The Law Society has since replied to our follow-up queries. Our scrutiny of these Amendment Rules reveals a number of drafting issues and we have raised them with the Law Society (see our letter dated 29 October 2012 at Appendix).

3. The period for negative vetting of these Amendment Rules expires on 14 November 2012 (or 5 December 2012 if extended by resolution). In order to allow time for the Law Society to respond to our said letter and for us to consider the Law Society's response which may contain proposed amendments to these Amendment Rules, we recommend the extension of the period for amending these Amendment Rules under section 34(4) of the Interpretation and General Clauses Ordinance (Cap. 1) to the meeting of 5 December 2012, to be moved by the Chairman of the House Committee in the usual manner.

Prepared by

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31 October 2012

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Urgent by Fax (2845 0387)
29 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)

We would be grateful for your clarifications on the legal and drafting aspects of the captioned Amendment Rules as follows –

L.N. 151

The proposed Rule 1A – Principles

The proposed Rule 1A(c) refers to "client account (當事人帳戶)". Please consider, with reference to section 57A(1) of the Companies Ordinance (Cap. 32), whether it is sufficient to include "client account" if the accounting system is in the English language or "當事人帳戶" if the accounting system is in the Chinese language, rather than both unless it is envisaged that the accounting system could only be bilingual.

The proposed Rule 2 – Definition of "client account"

Please consider whether "deposit account" should be replaced by "savings account" to achieve consistency with the proposed Rule 6A(1).

The proposed Rule 6A – Interest on client account

The proposed Rule 6A(1) provides that a solicitor must without delay deposit client's money in respect of a particular matter in a designated interest bearing client account and must account to the client for any interest earned on the account, failing which the solicitor must pay to the client a sum equivalent to the interest which would have accrued for the benefit of the client if the money had been deposited in a Hong Kong dollar savings account of The Hongkong and Shanghai Banking Corporation Limited. It is unclear which of the two antecedent requirements, or both of them, as signified by the word "must" is referred to by the word "which" in "failing which". Further, by providing for the requirement as signified by the third-appearing "must", it appears that the antecedent requirement(s) may not really be mandatory requirement(s) but merely an advisory course of action, which may more suitably be expressed as "may" instead of "must". The same problem is also noted in the proposed Rule 9(2A)(c)(ii).

Please explain, with reference to the proposed Rule 6A(1), the requirement set out in the proposed Rule 6A(6) arising from administrative work to be undertaken for accounting to the client for the interest earned, and whether there is any need for administrative work to be undertaken for accounting to the client for the interest accrued. We ask this question as the proposed Rule 6A(1) seems to suggest that the interest earned is from an interest-bearing account and the solicitor may simply account to the client the interest borne by the account, as opposed to the interest accrued that has to be determined (with probably more administrative work) as if the money had been deposited in a Hong Kong dollar savings account of The Hongkong and Shanghai Banking Corporation Limited.

It is noted that in the proposed Rule 6A(1) and (2), "interest... accrued" is rendered as "衍生的利息". Please consider whether "衍生" is the proper equivalent of "accrued" in this context. Please also clarify whether the interest stated in the proposed Rule 6A(6) should be interest earned or interest accrued as the current rendition for "interest earned" is "衍生的利息".

It is also noted that "on receipt of" is rendered as "在接獲...後" in the proposed Rule 6A(3)(b) and "在收取...時" in the proposed Rule 9(2A). As different renditions have been adopted for the same expression, please consider whether there is a need for consistency in the Chinese text.

The word "or" is rendered as "及" in the proposed Rule 6A(4)(b). Please clarify whether the proposed sub-rule (4)(a), (b) and (c) is to be read disjunctively or conjunctively.

The proposed Rule 9 – Exceptions

The Chinese expression "告知交付" in the proposed Rule 9(2)(c)(i) is not readily comprehensible if it is read in isolation without reference to the English text. Please give further thought to the Chinese rendition.

It is noted that "not later than" is rendered as "在...或之前" twice in the proposed Rule 9(2A)(c)(ii). Please consider adopting "不遲於" for "not later than" to distinguish it from the expression "on or before". It is also noted that in the same Rule, "該兩項作為" is used to refer to "該部分付款" and "代墊付費用". As "act" is not mentioned in the English text, please consider redrafting this proposed Rule along the following line –

"無論如何須在不遲於從當事人收取該部分付款後的第4個工作日，將該部分付款存入律師行帳戶並繳付代墊付費用，否則[須/應]在不遲於收取該項付款後的第5個工作日，將該部分付款存入當事人帳戶。"

In this connection, please also consider our earlier comments on the use of "must" followed by the use of "failing which".

Under the proposed Rule 6A(1), a solicitor must "without delay" deposit the money in a designated interest bearing client account. It is noted that while a "without delay" qualification has been added in the proposed Rule 9(2A)(a) and a deadline has been imposed in the proposed Rule 9(2A)(c)(ii), there is nothing in the proposed Rule 9(2A)(b) and (c)(i) on the timing of the execution of the requirements under that Rule. Please therefore consider whether there is any need to add the phrase "without delay" or other timeframe after "client account" in the proposed Rule 9(2A)(b) and after "client account" in the proposed Rule 9(2A)(c)(i).

The proposed Rule 10 – Obligation to keep accounts

The Chinese text in the proposed Rule 10(5) does not tally with the English text. Please clarify whether the qualification "that are necessary for the operation of a mechanical or computerized system of book-keeping" modify (i) a loose-leaf book; (ii) such cards; and/or (iii) other permanent documents". As for the Chinese text, please consider whether "須" in "而亦須" is necessary as there is no mandatory requirement in the corresponding English text.

The proposed Rule 15 – Waiver

It appears that the Chinese text does not tally with the English text in that the English text provides that the Council may grant a waiver "subject to the conditions that it may impose" but the Chinese text seems to suggest that the Council may only grant a waiver if it has imposed a condition. Please consider replacing "它所施加" by "它可施加".

L.N. 152 and L.N. 153

The proposed Rule 3 in L.N. 152 – Qualifications of accountant

The proposed Rule 8 in L.N. 153 – Production of documents and information

It is explained in your letter of 24 October 2012 that the proposed amendments in the proposed Rule 8(1A) incorporate similar provisions under Rule 3 of the Accountant's Report Rules (Cap. 159 sub. leg. A). It is noted that the proposed Rule 8(1B) and (1C) also incorporate similar provisions under the said Rule 3. The expression "observations or instructions" ("觀點或指示") is used in the proviso of Rule 3(2) of the Accountant's Report Rules. It is noted that in the proposed Rule 8(1C) in L.N. 153, another expression "observations or representations" ("意見或申述") is used in a similar context while in the proposed Rule 3(2) in L.N. 152, the expression is changed from "observations or instructions" ("觀點或指示") to "observations or representations" ("意見或申述"). Please clarify the reason(s) for such changes.

Apart from the above, it may also assist members of the House Committee to know whether there has been any consultation by The Law Society of Hong Kong on the draft of the captioned Amendment Rules and if so, the views its members on these Amendment Rules.

We would be grateful if you could let us have your reply and your proposed amendments that you consider necessary (including the proposed amendments to the definition of "principal" in the proposed Rule 2 in L.N. 151) arising out of our comments in both languages **by Thursday, 1 November 2012.**

As some of our comments relate to the drafting aspects, we are copying this letter to the Law Draftsman for his comment, if any.

Yours sincerely,

(Miss Carrie WONG)
Assistant Legal Adviser

c.c. Department of Justice
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