

立法會
Legislative Council

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Paper for House Committee meeting on 23 November 2012

**Subcommittee on Five Sets of Amendment Rules made under
Sections 73 and 73A of the Legal Practitioners Ordinance and
Gazetted on 12 October 2012**

Purpose

This paper reports on the deliberations of the Subcommittee on Five Sets of Amendment Rules ("Amendment Rules") made under Sections 73 and 73A of the Legal Practitioners Ordinance and Gazetted on 12 October 2012 ("the Subcommittee").

Background

2. According to the information provided by The Law Society of Hong Kong ("Law Society") to the Panel on Administration of Justice and Legal Services ("AJLS Panel") in June 2005, the Law Society issued a Practice Direction J ("the Practice Direction") 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 Law Society's Council decided to suspend the Practice Direction in January 2004 until such time as interest rate reached the level payable in January 1997 when the Practice Direction was promulgated.

3. Following the discussion between the Consumer Council and the Law Society over the possibility of setting up a mechanism for reviewing and restoring the operation of the Practice Direction, the Law Society decided in June 2005 to make it mandatory, by way of amendments to the Solicitors' Accounts Rules (Cap. 159F), for solicitors to account for interest earned if -

- (a) the client's money deposited is of an amount specified in column 1 of the proposed Schedule to the Rules;

- (b) the money has been retained in the account continuously for a period specified in column 2 of the proposed Schedule; and
- (c) the amount of the interest thus accrued exceeds \$500.

4. The Law Society briefed the AJLS Panel on 27 June 2005 on the above proposal. According to the Law Society, it had consulted the Consumer Council on the proposal. Insofar as policy was concerned, the AJLS Panel had no objection to the proposal.

The Amendment Rules

5. The following rules are made by the Law Society's Council under section 73 of the Legal Practitioners Ordinance (Cap. 159) ("the Ordinance") subject to the prior approval of the Chief Justice –

- (a) Solicitors' Accounts (Amendment) Rules 2012 (L.N. 151);
- (b) Accountant's Report (Amendment) Rules 2012 (L.N. 152);
- (c) Solicitors' Practice (Amendment) Rules 2012 (L.N. 154); and
- (d) Foreign Lawyers Practice (Amendment) Rules 2012 (L.N. 155).

6. The Solicitors (Professional Indemnity) (Amendment) Rules 2012 (L.N. 153) is made by the Law Society under sections 73 and 73A of the Ordinance subject to the prior approval of the Chief Justice.

L.N. 151

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

- (a) set out the principles that must be observed by a solicitor in handling client's money;
- (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;
- (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;

- (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;
- (e) clarify the extent of a solicitor's obligation to keep accounts; and
- (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.

L.N. 152

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

L.N. 153

9. L.N. 153 amends the Solicitors (Professional Indemnity) Rules (Cap. 159M) 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.

L.N. 154

10. L.N. 154 amends the Solicitors' Practice Rules (Cap. 159H) 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. The amendments made in L.N. 154 are consequential to the proposed amendments made in Rule 11 of L.N. 151.

L.N. 155

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

12. 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.

The Subcommittee

13. At the House Committee meeting held on 19 October 2012, Members agreed to form a subcommittee to study the five sets of Amendment Rules. Hon Dennis KWOK was elected chairman of the Subcommittee, and the membership list of the Subcommittee is in **Appendix I**. The Subcommittee held one meeting on 13 November 2012 to meet with the Administration and the Law Society to scrutinize the Amendment Rules.

Deliberations of the Subcommittee

14. The Law Society has not provided any Legislative Council Brief or Information Note for the five sets of Amendment Rules. The Subcommittee has noted the correspondence between the legal adviser to the Subcommittee and the Law Society regarding the reasons for the proposed amendments and the legal and drafting aspects of the Amendment Rules. The Subcommittee has focused its deliberations on the objects of the Amendment Rules, the proposed amendments relating to the principles that a solicitor must observe in handling client's money, and the drafting issues that have not yet been resolved.

Objects of the Amendment Rules

15. With regard to the objects of the Amendment Rules, the Law Society has advised that the Amendment Rules seeks to modernize and codify the requirements for solicitors to account to their clients for interests on money deposited with them under the Solicitors' Accounts Rules. Currently, some of the requirements are provided in the rules made under the Ordinance and Practice Directions issued by the Law Society to its members.

16. The Subcommittee supports the objects of the Amendment Rules as explained by the Law Society.

Proposed Rule 1A (Principles) under L.N. 151

17. The Law Society proposes to introduce a new Rule 1A under the Solicitors' Accounts Rules (Cap. 159F) to set out the principles that a solicitor must observe in handling client's money. In response to the Subcommittee's enquiry, the Law Society has advised that these principles are drawn up with reference to the Solicitors' Accounts Rules of the United Kingdom. At present,

the principles that a solicitor must observe in handling client's money are not provided in a single Practice Direction but are scattered in various rules made under the Ordinance and Practice Directions.

Definition of "client account" under L.N. 151 and L.N. 152

18. The definition of "client account" is amended under proposed Rule 2 of L.N. 151 and proposed Rule 2 of L.N. 152. According to the Law Society, the proposed amendments clarify the reference to "a bank" in the definition of "client account". The proposed amendments make it clear that a client account must be an account at a bank located and licensed in Hong Kong and remove any ambiguity as to whether a client account can be maintained with an overseas bank or an overseas branch of a bank licensed in Hong Kong.

19. The Subcommittee has enquired about the rationale for the requirement that a client account must be an account at a bank located and licensed in Hong Kong and the waiver provision. The Law Society has explained that past experience reveals that in the event of intervention by the Law Society's Council in a solicitor's mishandling of client's money, there may be problems with the access to the client account concerned if the account is with an overseas bank or an overseas branch of a bank licensed in Hong Kong. Hence, imposition of that requirement is in the interest of solicitors' clients. As to the waiver provision, the Law Society has explained that a solicitor shall not deposit a client's money in an overseas bank account even on client's instruction unless there is a waiver application which will only be granted on very good reasons.

Drafting issues

20. In response to the comments of the Subcommittee's legal adviser, the Law Society has agreed to arrange moving amendments to the Amendment Rules as set out in **Appendix II**. The Subcommittee supports these proposed amendments.

Advice sought

21. Members are requested to note the deliberations of the Subcommittee.

**Subcommittee on Five Sets of Amendment Rules made under
Sections 73 and 73A of the Legal Practitioners Ordinance and
Gazetted on 12 October 2012**

Membership List

Chairman Hon Dennis KWOK

Members Hon Albert HO Chun-yan
Hon Cyd HO Sau-lan
Dr Hon Priscilla LEUNG Mei-fun, JP
Hon Paul TSE Wai-chun, JP

Total : 5 Members

Clerk Ms Anita SIT

Legal Adviser Miss Carrie WONG

Date 13 November 2012

Interpretation and General Clauses Ordinance**Resolution of the Legislative Council****Solicitors' Accounts (Amendment) Rules 2012****Accountant's Report (Amendment) Rules 2012**

Resolution made and passed by the Legislative Council under section 34(2) of the Interpretation and General Clauses Ordinance (Cap. 1) on 2012.

Resolved that—

- (a) the Solicitors' Accounts (Amendment) Rules 2012, published in the Gazette as Legal Notice No. 151 of 2012 and laid on the table of the Legislative Council on 17 October 2012, be amended as set out in Schedule 1;
 - (b) the Accountant's Report (Amendment) Rules 2012, published in the Gazette as Legal Notice No. 152 of 2012 and laid on the table of the Legislative Council on 17 October 2012, be amended as set out in Schedule 2.
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Schedule 1

[para. (a)]

**Amendments to Solicitors' Accounts (Amendment)
Rules 2012**

1. **Rule 4 amended (rule 2 amended (interpretation))**
 - (1) Rule 4(1)(a), Chinese text, after ““指以律師名義在”—
Add
“銀行開立的往來或儲蓄”.
 - (2) Rule 4(1)(a), Chinese text, after “牌照的”—
Add
“銀行開立的往來或存款”.
 - (3) Rule 4(5), new definition of *principal*, after “partner of a firm”—
Add
“and also includes any solicitor who is held out or holds himself or herself out as such a partner or sole practitioner”.
2. **Rule 6 amended (rule 6A added)**
 - (1) Rule 6, Chinese text, new rule 6A(1)—
Repeal
“衍生”
Substitute
“累算”.
 - (2) Rule 6, Chinese text, new rule 6A(2)—
Repeal
“衍生”

Substitute

“累算”.

- (3) Rule 6, English text, new rule 6A(3)(b)—

Repeal

“On”

Substitute

“After”.

- (4) Rule 6, Chinese text, new rule 6A(6)—

Repeal

“衍生”

Substitute

“賺取”.

3. Rule 6A added

After rule 6—

Add**“6A. Rule 7 amended (drawings from a client account)**

Rule 7(a)(iv), Chinese text—

Repeal

“告知”

Substitute

“通知”.

4. Rule 8 amended (rule 9 amended (exceptions))

- (1) Rule 8(1), Chinese text, new rule 9(2)(c)(i)—

Repeal

“告知”

Substitute

“通知”.

- (2) Rule 8(2), new rule 9(2A)(b), after “client account”—

Add

“without delay”.

- (3) Rule 8(2), new rule 9(2A)(c)(i), after “client account”—

Add

“without delay”.

- (4) Rule 8(2), English text, new rule 9(2A)(c)(ii)—

Repeal

“should”

Substitute

“must”.

- (5) Rule 8(2), Chinese text, new rule 9(2A)(c)(ii), before “4
-
- 個”—

Add

“第”.

- (6) Rule 8(2), Chinese text, new rule 9(2A)(c)(ii), before “5
-
- 個”—

Add

“第”.

**5. Rule 10 amended (rule 10 amended (obligation to keep
accounts))**

- (1) Before rule 10(1)—

Add

“(1A) Rule 10(4), Chinese text—

Repeal

“告知” (wherever appearing)

Substitute

“通知”.

- (2) Rule 10(1), English text, before “as are necessary”—

Add

“such cards or other permanent documents”.

- (3) Rule 10(1)—

Repeal

“or, as the case may be,”

Substitute

“any cards or other permanent documents or”.

6. Rule 11A added

After rule 11—

Add

“11A. Rule 12 amended (delivery of intimation and notification)

- (1) Rule 12, heading—

Repeal

“intimation and notification”

Substitute

“written intimation etc.”.

- (2) Rule 12, Chinese text—

Repeal

“告知”

Substitute

“通知”。

Schedule 2

[para. (b)]

**Amendments to Accountant's Report (Amendment)
Rules 2012**

1. **Rule 3 amended (rule 2 amended (interpretation))**
 - (1) Rule 3(1)(a), Chinese text, after ““指以律師或律師行名義在”—
Add
“銀行開立的往來或儲蓄”.
 - (2) Rule 3(1)(a), Chinese text, after “牌照的”—
Add
“銀行開立的往來或存款”.

Clerk to the Legislative Council

2012