

立法會
Legislative Council

LC Paper No. CB(4) 208/12-13
*(These minutes have been seen
by the Administration and The
Law Society of Hong Kong)*

Ref: CB4/SS/2/12

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

**Minutes of the meeting held on
Tuesday, 13 November 2012, at 2:30 pm
in Conference Room 3 of the Legislative Council Complex**

Members present : Hon Dennis KWOK (Chairman)
Hon Albert HO Chun-yan
Dr Hon Priscilla LEUNG Mei-fun, JP
Hon Paul TSE Wai-chun, JP

Member absent : Hon Cyd HO Sau-lan

**Public officers
attending** : **Agenda item II**

Mr Peter H H WONG
Deputy Solicitor General (General)
Department of Justice

Miss Amy CHAN
Senior Government Counsel
Department of Justice

Attendance by invitation : Agenda item II

The Law Society of Hong Kong

Mr Colin COHEN
Chairman
Working Party on Solicitors' Accounts Rules

Miss Angela LI
Assistant Director
Regulation and Guidance

Clerk in attendance : Ms Anita SIT
Chief Council Secretary (4)1

Staff in attendance : Miss Carrie WONG
Assistant Legal Adviser 4

Ms Angela CHU
Council Secretary (4)1

Ms Carmen HO
Senior Legislative Assistant (4)2

Miss Jenny LO
Administrative Assistant I (4)1

I. Election of Chairman

Mr Albert HO, the member with the highest precedence among those who were present at the meeting, presided over the election of the Chairman of the Subcommittee. He invited nominations for the chairmanship of the Subcommittee.

2. Mr Albert HO nominated Mr Dennis KWOK and the nomination was seconded by Mr Paul TSE. Mr Dennis KWOK accepted the nomination. There being no other nomination, Mr Dennis KWOK was elected Chairman of the Subcommittee.

Action

II. Meeting with the Administration and The Law Society of Hong Kong

- | | |
|---------------------------------|---|
| (L.N. 151 of 2012 | -- Solicitors' Accounts
(Amendment) Rules 2012 |
| L.N. 152 of 2012 | -- Accountant's Report
(Amendment) Rules 2012 |
| L.N. 153 of 2012 | -- Solicitors (Professional
Indemnity) (Amendment)
Rules 2012 |
| L.N. 154 of 2012 | -- Solicitors' Practice
(Amendment) Rules 2012 |
| L.N. 155 of 2012 | -- Foreign Lawyers Practice
(Amendment) Rules 2012 |
| LC Paper No. LS4/12-13 | -- Legal Service Division
Report |
| LC Paper No. CB(4)139/12-13(02) | -- Letter dated 18 October 2012
from Assistant Legal Adviser
to The Law Society of Hong
Kong |
| LC Paper No. CB(4)139/12-13(03) | -- Letter dated 24 October 2012
from The Law Society of
Hong Kong to the Assistant
Legal Adviser |
| LC Paper No. LS6/12-13 | -- Legal Service Division
Further Report |
| LC Paper No. CB(4)139/12-13(04) | -- Letter dated 7 November
2012 from The Law Society
of Hong Kong to the
Assistant Legal Adviser |

Action

- LC Paper No. CB(4)139/12-13(05) -- Marked-up copy of the Solicitors' Accounts (Amendment) Rules 2012
- LC Paper No. CB(4)139/12-13(06) -- Marked-up copy of Accountant's Report (Amendment) Rules 2012
- LC Paper No. CB(4)139/12-13(07) -- Marked-up copy of Solicitors (Professional Indemnity) (Amendment) Rules 2012
- LC Paper No. CB(4)139/12-13(08) -- Marked-up copy of Solicitors' Practice (Amendment) Rules 2012
- LC Paper No. CB(4)139/12-13(09) -- Marked-up copy of Foreign Lawyers Practice (Amendment) Rules 2012
- LC Paper No. CB(4)139/12-13(10) -- Background brief prepared by the Legislative Council Secretariat)

3. The Subcommittee deliberated (Index of proceedings attached at **Appendix**).

Follow-up actions

4. The Law Society of Hong Kong was requested to provide the Subcommittee with proposed amendments to the Amendment Rules as agreed at the meeting.

5. Members also agreed that the proposed amendments to the Amendment Rules would be circulated to members for their consideration and there was no need to hold an additional meeting.

Legislative timetable

6. Members noted that the scrutiny period of the five sets of Amendment Rules had been extended to 5 December 2012 by resolution of the Legislative Council on 7 November 2012.

Action

7. Members noted the following legislative timetable –
 - (a) the Subcommittee would submit a written report to the House Committee for its consideration on 23 November 2012; and
 - (b) the deadline for giving notice of amendment(s) to the five sets of Amendment Rules would be 28 November 2012.

III. Any other business

8. There being no other business, the meeting ended at 3:45 pm.

Council Business Division 4
Legislative Council Secretariat
5 December 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

**Proceedings of the meeting on
Tuesday, 13 November 2012, at 2:30 pm
in Conference Room 3 of the Legislative Council Complex**

Time Marker	Speaker	Subject(s)	Action Required
I. <u>Election of Chairman</u>			
000000 – 000230	Mr Albert HO Mr Dennis KWOK	Election of Chairman	
II. <u>Meeting with the Administration and The Law Society of Hong Kong</u>			
000231 – 000428	Chairman	Introductory remark	
000429 – 000758	The Law Society of Hong Kong ("Law Society")	<u>L.N. 151 - 155</u> The Law Society advised that the objects of the Amendment Rules were to codify and modernize the requirements for solicitors to account to their clients on the money deposited with them under the Solicitors' Accounts Rules (Cap. 159F). Currently, some of the requirements were set out in the rules made under the Legal Practitioner Ordinance (Cap. 159) and in the Practice Directions issued by the Law Society to its members. The Law Society explained the threshold which a solicitor would be required to account to a client for the interest earned on the client's money deposited with the solicitor, as provided in proposed Rule 6A(2) under L.N. 151.	
000759 – 001020	Department of Justice ("DoJ")	<u>L.N. 151 - 155</u> DoJ advised that the Amendment Rules were made by the Law Society's Council with the approval of the Chief Justice. DoJ provided assistance to the Law Society by providing comments on the drafting of the Amendment Rules and, where appropriate, giving advice from the broad legal policy perspective.	

Time Marker	Speaker	Subject(s)	Action Required
001021 – 001735	ALA4 Law Society Chairman	<p><u>L.N. 151 - Proposed Rule 1A (Principles)</u></p> <p>ALA4 remarked that no information such as that provided by the Administration in its Legislative Council Briefs had been provided by the Law Society to explain the background to the Amendment Rules to facilitate Members' understanding of the amendments.</p> <p>ALA4 enquired about the purpose(s) for introducing Principles under proposed Rule 1A, and whether the requirements set out therein were new. The Law Society advised that proposed Rule 1A was intended to set out clearly the principles that solicitors must observe when dealing with clients' money deposited with them. The Principles set out in proposed Rule 1A were drawn up with reference to the relevant provisions in other jurisdictions and were either derived from previous rules, practice directions or fundamental principles.</p>	
001736 – 002650	ALA4 Law Society DoJ Chairman	<p>The Chairman noted from the correspondence passing between the Subcommittee's legal adviser (ALA4) and the Law Society exchanged before the meeting that some of the renditions in the Chinese texts and English texts in L.N. 151 - 155 were not consistent.</p> <p>DoJ remarked that it had taken note of the said correspondence and DoJ did not have strong views on the drafting issues raised. It would be for the Law Society to consider, subject to the Subcommittee's view, whether it would accept the recommendations made.</p>	
002651 – 003506	ALA4 Law Society Mr Paul TSE Chairman	<p>The Chairman directed that the Subcommittee would focus on those proposed rules the drafting aspects of which had not yet been resolved.</p> <p><u>L.N. 151 - Proposed Rule 9(2)(c)(i)</u></p> <p>ALA4 pointed out that in proposed Rule 9(2)(c)(i) of L.N. 151, the Chinese expression "告之交付" was not readily comprehensible if it was read in isolation without reference to the English text. Mr Paul TSE suggested to put the expression "交付" before "一份事務費單或關於事務費款額的其他書面告知" in order to make the sentence more comprehensible. The</p>	Law Society to take follow-up action

Time Marker	Speaker	Subject(s)	Action Required
		Chairman requested Law Society to consider using a more comprehensible expression, taking into account Mr Paul TSE's suggestion.	
003507 – 004330	ALA4 Administration Chairman Mr Albert HO Mr Paul TSE Law Society	<p><u>L.N. 151 - Proposed Rule 9(2A)(c)(ii)</u></p> <p>ALA4 pointed out that if the requirement under proposed Rule 9(2A)(c)(ii) was intended to be mandatory as reflected in the use of "須" in the Chinese text, the use of the word "should" in the phrase beginning with "failing which" might not really be a mandatory requirement but merely an advisory course of action. Mr Paul TSE suggested replacing the word "should" with "must". The Chairman requested Law Society to consider the suggestion.</p> <p>ALA4 remarked that for accuracy's sake, the Chinese renditions of the expressions "the 4th working day" and "the 5th working day" should be revised to "第四個工作日" and "第五個工作日" respectively.</p> <p>Mr Albert HO expressed concern on whether the time periods specified in proposed Rule 9(2A)(c)(ii) were too short. The Law Society explained that four to five working days were actually about one week. In practice, if a solicitor could not determine whether the payment received from a client was for disbursements incurred but not yet paid within a short period, the solicitor would normally deposit the payment into the client's account instead of the office account in the first instance and settle the disbursements at a later time, in order not to breach the requirement.</p>	Law Society to take follow-up action
004331 – 005532	ALA4 Law Society Chairman Mr Paul TSE Mr Albert HO	<p><u>L.N. 151 - Proposed Rule 10(5)</u></p> <p>ALA4 pointed out –</p> <p>(a) that the expression "mechanical or computerized system of book-keeping" was rendered differently in the English and Chinese texts;</p> <p>(b) according to "A guide to Styles and Practices" issued by DoJ, the expression "as the case may be" was unnecessary in the English and Chinese texts; and</p>	Law Society to take follow-up action

Time Marker	Speaker	Subject(s)	Action Required
		<p>(c) the word "such" in the expression "such cards or other permanent documents" should be replaced by "any" to be consistent with the use of "任何" in the Chinese text.</p> <p>The Chairman requested the Law Society to refine the drafting of the proposed rule.</p>	
005533 – 005949	<p>ALA4 Law Society Dr Priscilla LEUNG</p>	<p><u>L.N. 151 - Proposed Rule 6A</u></p> <p>ALA4 enquired whether the expressions "interest earned" and "interest accrued" had different meanings. The Law Society confirmed that the two expressions had different meanings, and undertook to review the use of the Chinese renditions of the expressions. Dr Priscilla LEUNG opined that the Chinese expression "衍生的利息" was an inappropriate rendition for "interest accrued".</p>	<p>Law Society to take follow-up action</p>
005950 – 010310	<p>Chairman ALA4 Law Society Mr Albert HO</p>	<p><u>L.N. 151 - Proposed Rule 6A(3)(b)</u></p> <p>Referring to the expression "On receipt of" which was rendered as "在接獲...後" in proposed Rule 6A(3)(b), ALA4 noted that "On receipt of" was rendered as "在收取...時" in proposed Rule 9(2A) and enquired whether the word "after", instead of "on", should be used to reflect the intended meaning. The Law Society agreed with the suggestion.</p>	<p>Law Society to take follow-up action</p>
010311 - 011055	<p>Chairman ALA4 Law Society Mr Albert HO</p>	<p><u>L.N. 152 - Proposed Rule 2</u></p> <p>ALA4 referred to the definition of "client account" and remarked that the Chinese rendition of "deposit account" should be "存款帳戶" instead of "儲蓄帳戶", as the Chinese rendition of "deposit account" in the Banking Ordinance (Cap. 155) was "存款帳戶". The Law Society agreed with the suggestion.</p> <p>Mr Albert HO enquired about the rationale for the requirement that a client account must be an account at a bank located and licensed in Hong Kong. He also enquired about the provision on waiver in L.N. 151. The Law Society explained that past experience revealed that in the event of intervention by the Law Society's Council in a solicitor's mishandling of client's</p>	<p>Law Society to take follow-up action</p>

Time Marker	Speaker	Subject(s)	Action Required
		<p>money, there might be problems with the access to the client account concerned if the account was with an overseas bank or an overseas branch of a bank licensed in Hong Kong. As to the waiver provision, the Law Society explained that a solicitor shall not deposit a client's money in an overseas bank account even on client's instruction unless there was a waiver application which would only be granted on very good reasons.</p>	
<p>011056 011508</p>	<p>Chairman Clerk Hon Albert HO Law Society</p>	<p>The Clerk advised members on the legislative timetable.</p> <p>Members agreed that the Law Society should provide the Subcommittee with proposed amendments to the Amendment Rules as agreed at the meeting, in both the Chinese and English languages. The proposed amendments would be considered by the Subcommittee by way of circulation, and there was no need for an additional meeting. The Subcommittee would report to the House Committee on 23 November 2012.</p> <p>The Chairman reminded the Law Society that in future all correspondence should be provided in both the English and the Chinese languages.</p> <p>The Chairman also reminded the Law Society that in future, at the time of introducing a subsidiary legislation, the Law Society as the policymaker should provide the Legislative Council with adequate background information on the legislative proposals, similar to that provided by the Administration in its Legislative Council Briefs, so as to facilitate Members in the scrutiny of the subsidiary legislation.</p>	