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24 October 2012

Miss Carrie WONG
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URGENT BY HAND

Dear Miss Wong,

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 18 October 2012 to our Secretary General Ms. Heidi Chu.

1. **Solicitors' Accounts (Amendment) Rules**

(a) Proposed rule 1A (Principles)

The Law Society intends to introduce these Principles in the Solicitors' Accounts Rules to re-inforce the principles that must be observed by a solicitor in handling client account. These Principles are based on the UK Solicitors' Accounts Rules. At present, there is no Practice Direction on this new proposed rule 1A.

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(b) Proposed rule 2 (Definition of client account)

The proposed amendment clarifies the reference to "a bank" in the definition of "client account". The proposed amendment makes it clear that a client account must be an account at a bank located and licensed in Hong Kong. It removes any ambiguity as to whether a client account can be maintained at an overseas bank or an overseas branch of a bank licensed in Hong Kong.

(c) Proposed rule 5(b) (Splitting)

- (i) The proposed amendment is to provide expressly what a solicitor has to do with the part of a payment that is not client money when he decides not to split the cheque or draft.
- (ii) Under the proposed amendment, if the solicitor does not split the payment, he can pay the entire sum into the client account provided that he shall transfer all office money out of the client account within 14 days of receipt.

(iii) It is based on the UK Solicitors' Accounts Rules.

(d) Proposed rule 7A (Authority required for drawing money from client account)

The proposed amendment is intended to stipulate that if a certified public accountant (practising) or an unqualified person approved by the Council is authorised to withdraw money from a client account, such withdrawal must also be countersigned by a solicitor, partner, consultant or foreign lawyer in the firm who has actual knowledge of the firm's practice and operation.

(e) Proposed rule 9(2) (Exceptions)

The proposed new rule 9(2A) covers the situation whereby a solicitor receives payment consisting of costs and disbursements. The disbursements may be further classified as disbursements:

- (i) anticipated but not yet incurred; such part of the payment must be paid into the client account (new rule 9(2A)(b)); or
- (ii) incurred but not yet paid, such part of the payment may be either paid into the client account or into an office account and settle the disbursements within 4 working days; otherwise, it must be paid into the client account (rule 9(2A)(c)).

(f) Proposed rule 9A (Duty to remedy breaches)

There is no proposed amendments save that the 3 definitions of "firm", "principal" and "solicitor" under rule 9A(3) be put under rule 2 so that all definitions are included in rule 2.

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(g) Proposed rule 10 (Obligation to keep accounts)

- (i) In view of the computerised book-keeping system commonly adopted by law firms, the Law Society proposed to make reference of this kind of booking keeping system in rule 10(5).
- (ii) To address the concern of possible loss of data in a computerised accounting system, it is proposed that a new rule 10(5A) be inserted to impose a requirement for computer back-up capability.

(h) Proposed rule 11 (Powers of Council)

It is proposed to amend rules 11(1) and (2) empowering the Council to require a solicitor to provide management accounts including monthly profit and loss accounts in order to ascertain his compliance with these Rules.

(i) Rule 15 (Waiver)

The Law Society proposed to introduce this waiver provision so that a solicitor may apply to the Council for a waiver of the requirement relating to the location of a client account.

(j) Definition of "principal" in rule 2

We have no objection to amend the definition of "principal" to include a solicitor who is held out or holds himself out as a sole practitioner or partner of a firm.

2. Solicitors (Professional Indemnity) (Amendment) Rules

The proposed rule 8(1A) sets out the qualification requirements of a certified public accountant (practising) to sign the report under these Rules. The proposed amendments incorporate similar provisions under rule 3 of the Accountant's Report Rules.

Yours sincerely,



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