

立法會
Legislative Council

LC Paper No. CB(4)341/16-17
(These minutes have been
seen by The Law Society of
Hong Kong)

Ref : CB4/SS/2/16

**Subcommittee on
Solicitors (Professional Indemnity) (Amendment) Rules 2016 and
Solicitors' Practice (Amendment) Rules 2016**

**Minutes of meeting
held on Tuesday, 13 December 2016, at 10:45 am
in Conference Room 3 of the Legislative Council Complex**

Members present : Hon Holden CHOW Ho-ding (Chairman)
Dr Hon Priscilla LEUNG Mei-fun, SBS, JP
Hon Dennis KWOK Wing-hang
Hon Alvin YEUNG
Dr Hon Junius HO Kwan-yiu, JP
Hon HUI Chi-fung

Member absent : Hon Paul TSE Wai-chun, JP

Attendance by invitation : Agenda item II
The Law Society of Hong Kong

Mr Patrick MOSS
Member of the Subcommittee of the Board and
Director of Hong Kong Solicitors Indemnity Fund
Limited

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Ms Fiona STEWART
Member of the Subcommittee of the Board of Hong
Kong Solicitors Indemnity Fund Limited

Ms Heidi CHU
Member of Hong Kong Solicitors Indemnity Fund
Limited and Secretary General

Mr Kenneth FOK
Director of Practitioners Affairs

Ms Gigi LIU
Assistant Director, Professional Indemnity Scheme

**Clerk in
attendance** : Miss Mary SO
Chief Council Secretary (4)2

**Staff in
attendance** : Mr Bonny LOO
Assistant Legal Adviser 4

Miss Joyce CHING
Senior Council Secretary (4)2

Ms Jacqueline LAW
Council Secretary (4)2

Miss Vivian YUEN
Legislative Assistant (4)2

I. Election of Chairman

Dr Priscilla LEUNG, the member who had the highest precedence among members present at the meeting, presided over the election of the Chairman.

2. Dr Priscilla LEUNG invited nominations for the chairmanship of the Subcommittee. Dr Junius HO nominated Mr Holden CHOW and the nomination was seconded by Dr Priscilla LEUNG. Mr Holden CHOW accepted the nomination. As there was no other nomination, Dr Priscilla

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LEUNG declared that Mr Holden CHOW was elected Chairman of the Subcommittee

II. Meeting with The Law Society of Hong Kong ("the Law Society")

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| L.N. 173 of 2016
(gazetted on 25 November 2016) | -- Solicitors (Professional Indemnity) Rules 2016 (Amendment) |
| L.N. 174 of 2016
(gazetted on 25 November 2016) | -- Solicitors' Practice (Amendment) Rules 2016 |
| <i>(issued by The Law Society of Hong Kong on 17 November 2016)</i> | -- Legislative Council ("LegCo") Brief |
| LC Paper No. LS12/16-17
<i>(issued vide LC Paper No. CB(2)296/16-17 on 1 December 2016)</i> | -- Legal Service Division Report |
| LC Paper No. CB(4)276/16-17(01) | -- Letter from The Law Society of Hong Kong dated 9 December 2016 responding to the letter dated 7 December 2016 from the Assistant Legal Adviser of LegCo Secretariat concerning the Chinese text of L.N. 173 of 2016 |
| LC Paper No. CB(4)276/16-17(02) | -- Marked-up copy of Solicitors (Professional Indemnity) (Amendment) Rules 2016 prepared by the Legal Service Division (<i>Restricted to members</i>) |
| LC Paper No. CB(4)276/16-17(03) | -- Marked-up copy of Solicitors' Practice (Amendment) Rules 2016 prepared by the Legal Service Division (<i>Restricted to members</i>) |

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3. The Subcommittee deliberated (index of proceedings attached at **Annex**).

Declaration of interest

4. Dr Junius HO declared that he was the past President and current Council member of the Law Society.

Discussion

5. At the invitation of the Chairman, the Law Society briefed members on the objects of the Solicitors (Professional Indemnity) (Amendment) Rules 2016 ("PIS Amendment Rules") and the Solicitors' Practice (Amendment) Rules 2016 ("two Amendment Rules"), details of which were set out in the LegCo Brief issued by the Law Society.

6. Members noted that the PIS Amendment Rules sought to amend the Solicitors (Professional Indemnity) Rules (Cap. 159M) to, amongst others, (a) enhance the operation of the Hong Kong Solicitors Indemnity Fund ("the Fund"); (b) provide more clarity to Cap. 159M; (c) provide better protection to the public; and (d) correct typos and grammatical errors in Cap. 159M.

7. Members further noted that the PIS Amendment Rules consisted of miscellaneous amendments resolved over the years by the Professional Indemnity Advisory Committee and the Civil Litigation, Personal Injuries and Alternative Dispute Resolution Committees of the Law Society as well as the Board of the company managing the Fund, i.e. the Hong Kong Solicitors Indemnity Fund Limited ("Company") which was established by the Law Society under rule 3(1) of Cap. 159M to maintain the Fund. The main provisions of these amendments included:

- (a) expanding the Fund to cover a solicitor acting as the neutral in any form of alternative dispute resolution procedure, as a China-Appointed Attesting Officer ("CAAO"), or as a civil celebrant of marriages appointed under the Marriage Ordinance (Cap. 181) (rule 3(6));
- (b) clarifying that arbitration under rule 13 of, and determination by counsel under paragraph 8(1)(c) of Schedule 3 to, Cap. 159M were separate procedures for resolving disputes between the Company and the indemnified (rule 5(1));

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- (c) empowering the Company to appoint a law firm which was not on the panel appointed by the Council of the Law Society to act for an indemnified (rule 6) or to advise the Company on its obligations (rule 3(3));
- (d) providing for the payment of interest on any overdue contributions (for which each principal of the indemnified firm was jointly and severally liable) at the same rate as allowed for a judgment debt under section 49 of the High Court Ordinance (Cap. 4) (rule 7);
- (e) removing the exclusion under paragraph 1(2)(c)(x) of Schedule 3 to Cap. 159M so that indemnity might be provided for a claim which arose from circumstances occurring when a receipt for the initial contribution due had not been issued to the indemnified firm for failure to comply with any provision of Cap. 159M (rule 9(6)); and
- (f) requiring the referral of any dispute between the indemnified and the Company relating to the conduct of a claim to a junior or senior counsel for determination (rule 9(13) and (14)).

8. The Law Society also explained why it did not see the need to add "的任何爭議或歧見" after "額量" in rule 5(2) of the PIS Amendment Rules (rule 13 of Cap. 159M) and make other textual changes as suggested by the Legal Adviser to the Subcommittee, given that the existing drafting of the PIS Amendment Rules could accurately reflect the meaning and effect of the provisions. The Legal Adviser to the Subcommittee agreed that the drafting issues should not affect the meaning or effect of the relevant provisions.

9. In respect of the Solicitors' Practice (Amendment) Rules 2016, members noted that these Amendment Rules sought to amend the Solicitors' Practice Rules (Cap. 159H) to correct the Chinese rendition of CAAO in rule 2B(3)(d)(iii) from "中國委任的見證人員" to "中國委託公證人".

10. Noting that a Queen's Counsel had been appointed by the Board of the Company to review Cap. 159M and to make recommendations to address various operational issues of the Fund which had arisen over the years when applying Cap. 159M, Mr Alvin YEUNG asked whether all of the recommendations made by the Queen's Counsel had been and would be adopted by the Company. The Law Society replied in the positive.

Action

11. Noting that the Fund had a reserve of some HK\$2 billion, Mr Dennis KWOK urged the Board of the Company to consider further reducing the annual contributions payable by its members so as to alleviate the financial burden of solicitors. The Chairman and Dr Priscilla LEUNG expressed similar view. The Law Society responded that the objective of the Fund was to provide indemnity to the profession as well as to safeguard the general public. The Board of the Company would consider whether there was room for further reduction of contributions payable by solicitors on the condition that such reduction would not adversely affect the sustainability of the Fund, taking into account the objective of the Fund. At the request of members, the Law Society undertook to provide a paper setting out (a) the annual financial situation of the Fund, including the claims statistics, from 2010-2011 to 2014-2015 indemnity years, (b) the annual contributions payable by its members from 2009-2010 to 2014-2015 indemnity years, including the contribution assessment formula used; and (c) the measures taken/would be taken by the Law Society to maintain the financial sustainability of the Fund for protection of the public interest on the one hand and alleviating the financial obligations of its members to the Fund on the other.

The Law
Society

12. Members then proceeded to clause-by-clause examination of the two Amendment Rules. Members agreed to the legal and drafting aspects of the two Amendment Rules.

13. Upon the Chairman's enquiry, the Law Society indicated that the two Amendment Rules would be commenced as soon as practicable.

Conclusion

14. As the Subcommittee had completed scrutiny of the two Amendment Rules, the Chairman said that a report on the deliberations of the two Amendment Rules would be submitted to the meeting of the House Committee scheduled for 6 January 2017.

III. Any other business

15. There being no other business, the meeting ended at 11:36 am.

**Subcommittee on Solicitors (Professional Indemnity) (Amendment) Rules
2016 and Solicitors' Practice (Amendment) Rules 2016**

**Proceedings of meeting
held on Tuesday, 13 December 2016, at 10:45 am
in Conference Room 3 of the Legislative Council Complex**

Time Marker	Speaker(s)	Subject(s)	Action required
Election of Chairman			
000010-000216	Dr Hon Priscilla LEUNG Dr Hon Junius HO Kwan-yiu Hon Holden CHOW	Election of Chairman	
Meeting with The Law Society of Hong Kong			
000216-000636	Chairman The Law Society of Hong Kong	Briefing by The Law Society of Hong Kong on the Solicitors (Professional Indemnity) (Amendment) Rules 2016 and Solicitors' Practice (Amendment) Rules 2016 ("two Amendment Rules")	
000636-000758	Dr Hon Junius HO Kwan-yiu Chairman	Declaration of interest	
000758-001238	Hon Alvin YEUNG Chairman The Law Society of Hong Kong	Adoption of the recommendations made by the Queen's Counsel appointed by the Board of the Hong Kong Solicitors Indemnity Fund Limited ("Company") to review the Solicitors (Professional Indemnity) Rules (Cap. 159M)	
001238-002039	Hon Dennis KWOK The Law Society of Hong Kong Dr Hon Priscilla LEUNG	Suggestion on further reducing the annual contributions payable by solicitors to the Hong Kong Solicitors Indemnity Fund	
002039-002400	Chairman The Law Society of Hong Kong	Explanation that amending paragraph 8(1)(a) and adding new paragraph 81(d) of the Schedule of Cap. 159M so that the Company's discretion to take over the conduct of a claim was to deal with such cases where a claim might be made against a sole practitioner who had passed away and no personal representative had been appointed to administer the estate	
002400-002814	Dr Hon Junius HO Kwan-yiu The Law Society of Hong Kong	The Law Society undertook to provide a paper setting out (a) the annual financial situation of the Fund, including the claim statistics, from 2010-2011 to 2014-2015 indemnity years, (b) the annual contributions payable by its members from 2009-2010 to 2014-2015 indemnity years, including the contribution assessment formula used; and (c) the measures taken/would be	Para 11 of the minutes refers

Time Marker	Speaker(s)	Subject(s)	Action required
		taken by the Law Society to maintain the financial sustainability of the Fund on the one hand and alleviating the financial obligations of its members to the Fund on the other.	
002814-005059	Chairman The Law Society of Hong Kong ALA4	Clause-by-clause examination of the two Amendment Rules Commencement of the two Amendment Rules	
Any other business			
005059-005213	Chairman	Completion of scrutiny and reporting to the House Committee on 6 January 2017	

Council Business Division 4
Legislative Council Secretariat
22 December 2016