

For information

**Legislative Council
Panel on Administration of Justice and Legal Services**

Miscellaneous Amendments to the Rules of the High Court

PURPOSE

This paper briefs Members on the Judiciary's proposed miscellaneous amendments to the Rules of the High Court ("the RHC") (Cap. 4A).

BACKGROUND

2. The proposed amendments primarily seek to :
 - (a) remove the present automatic anonymity requirement for appeals to the Court of Appeal relating to disciplinary proceedings of solicitors. This is for alignment with the arrangements for other professionals; and
 - (b) remove the expression "(HK)" in the RHC, which no longer serves its original purpose.

Details are set out in the ensuing paragraphs.

Appeals relating to Disciplinary Proceedings of Solicitors

3. According to section 13(1) of the Legal Practitioners Ordinance ("LPO") (Cap. 159), an appeal against any order made by a Solicitors Disciplinary Tribunal ("the Tribunal") shall lie to the Court of Appeal and the provisions of Order 59 of the RHC shall generally apply to every such appeal.
4. Section 13(4) of the LPO specifically states that the hearing of any appeal from a Tribunal decision shall be in open court unless the Court of

Appeal may otherwise direct. But, according to Order 106, rule 12(1) of the RHC, for an appeal against the decision of the Tribunal to the High Court, the name of the solicitor or the solicitor's clerk concerned (as the case may be) cannot be disclosed at the title of the notice of the originating motion by which the appeal is brought.

5. In *A Solicitor v The Law Society of Hong Kong* CACV 20/2014 & CACV 78/2014, 2 April 2015, at paragraph 86, the Court of Appeal made the following observation as to the title of the proceedings in that case :

"... By reason of Order 106 Rule 12(1), the Solicitor is not named in the title of the proceedings. However, there is no similar restriction in respect of appeals from disciplinary tribunals of the other professions like doctors, accountants, dentists. It is doubtful if the restriction is in line with the current concept of open justice and the High Court Rules Committee should review the position."

Existing Arrangements for Earlier Stages of the Disciplinary Proceedings

6. After a review, the Judiciary notes that the non-disclosure arrangement under Order 106, rule 12(1) is not consistent with the early and final stages of the disciplinary proceedings as follows :

(i) *when the Law Society brings an application to the Tribunal*

According to rules 3 and 9 of the Solicitors Disciplinary Tribunal Proceedings Rules (Cap. 159C) ("Tribunal Proceedings Rules"), the solicitor's name is disclosed in the title of disciplinary proceedings on the application to consider complaint, the supporting affidavit and the notice. Both the solicitor's name and the name of the firm in which the solicitor was practising at the material times are disclosed in the title of the disciplinary proceedings as shown in all its related documents; and

(ii) *when the Law Society publishes the finding and order of the Tribunal*

Section 13A(1) of the LPO stipulates that the Law Society may, after the expiry of the time for appeal or the determination of

appeal, publish a summary of the finding and order of a Tribunal and the name of the solicitor who was the subject of the disciplinary proceedings in any of the Law Society's publication. In practice, the Judiciary understands that the Law Society publishes a summary of the Tribunal's finding and order and the solicitor's name in its monthly journal, *Hong Kong Lawyer*.

7. Moreover, pursuant to sections 5 and 12 of the LPO, the Tribunal's statement of finding that contains the name of solicitor concerned is registered in the roll of solicitors kept by the Registrar of the High Court. The roll of solicitors is open to inspection by the public free of charge. In the event that the solicitor concerned is ordered to be suspended or struck off the roll, a note of the order made by the Tribunal will be entered on the roll of solicitors against the solicitor involved and the order is to be gazetted, bringing it to the notice of the public.

8. In short, neither the LPO nor the Tribunal Proceedings Rules contains any provision that expressly requires non-disclosure of a solicitor's name in disciplinary proceedings. Order 106, rule 12(1) of the RHC is the only express provision that stipulates non-disclosure of solicitor's name in the notice of the originating motion for appeal against an order made by the Tribunal.

Existing Arrangements in respect of Barristers and other Professions

9. Such a non-disclosure arrangement under Order 106, rule 12(1) is not in line with that for similar court proceedings for barristers either. Sections 34 to 39 in Part III of the LPO are related to the disciplinary proceedings against barristers. Most of the provisions relating to the Barristers Disciplinary Tribunal ("BDT") are similar to those governing the Tribunal¹. But, Order 106 of the RHC is not applicable to appeals against BDT's decisions because that Order is only applicable to proceedings relating to solicitors, not barristers. There is no anonymity of barristers in the titles of proceedings of appeals against BDT's decisions.

¹ The main difference between the disciplinary proceedings against solicitors and barristers in the LPO is that the BDT proceedings, according to section 35B(2) of the LPO, can be open to the public upon request of the barrister whose conduct is being inquired into despite the requirement to hold the proceedings in camera.

10. There is no similar anonymity restriction either in respect of appeals from disciplinary tribunals of other professions such as public accountants and medical practitioners².

UK Experience

11. The UK Court of Appeal made the following remarks on the equivalent provision in Order 106, rule 12(1) of the Rules of the Supreme Court in *R v Legal Aid Board, Ex parte Kaim Todner* [1999] QB 966 at 975H as follows :

"There can be no justification for singling out the legal profession for special treatment. The inference that they should be singled out should not be drawn from Ord. 106, r. 12. The Order certainly presupposes that solicitors in disciplinary appeals to the High Court should not be identified in the title to the proceedings. However this is probably a remnant from earlier times when the disciplinary proceedings were themselves in private which is no longer the position. The situation in relation to other professions, e.g. doctors and dentists appealing to the Privy Council, is that in general they are not granted any anonymity. In our view, the Rules of the Supreme Court should now be amended to

² The Professional Accountants Ordinance (Cap. 50) sets out under its Part V disciplinary proceedings relating to professional accountants. The Council of Hong Kong Institute of Certified Public Accountants has also issued their Disciplinary Committee Proceedings Rules ("the Proceedings Rules") to set out procedures of disciplinary proceedings. According to section 41 of Cap. 50, an appeal against disciplinary decisions should be made to the Court of Appeal. No provisions in Cap 50 and the Proceedings Rules require non disclosure of the concerned accountant's name. There is no such requirement in the RHC either.

The Medical Registration Ordinance (Cap. 161) sets out under its Part IV inquiries, disciplinary proceedings and offences relating to medical practitioners. The Medical Practitioners (Registration and Disciplinary Procedure) Regulation (Cap. 161E) provides for, among others, the relevant investigation and disciplinary procedures. According to section 26 of Cap. 161, an appeal against disciplinary decisions should be made to the Court of Appeal. No provisions in Cap. 161 and Cap. 161E require non-disclosure of the concerned medical practitioner's name. There is no such requirement in the RHC either.

bring the position of solicitors in line with that general practice."

12. In England and Wales, Order 106 of the Rules of the Supreme Court was revoked by the *Civil Procedure (Amendment No. 4) Rules 2004* which came into force on 1 April 2005.

13. Besides, with the enactment of *The Rules of the Court of Judicature (Northern Ireland) (Amendment) 2015* which came into operation in May 2015, the automatic anonymity for solicitors under Order 106 has also been removed in Northern Ireland. It is explained in the explanatory memorandum that the automatic anonymity given to solicitors should be removed in the interest of openness and transparency.

The expression “(HK)”

14. The RHC, which were largely modeled on the Rules of the Supreme Court (“RSC”) in the England and Wales, were enacted in 1988. For ease of reference, the English numbering system as it existed at that time was followed in the RHC. For those rules or orders that were unique to Hong Kong, they were indicated with the expression “(HK)” in the RHC.

15. In 1999, the RSC were largely replaced by the Civil Procedure Rules (“CPR”). The English CPR are considered to be an entirely new code of civil procedure. In Hong Kong, although the substantial amendments to the RHC in 2009 relating to the Civil Justice Reform were heavily influenced by the English CPR, only selected aspects of the CPR have been adopted, and in some cases in modified format.

16. It is also noted that in recent years, there has not been a consistent practice of adding such an expression to the RHC. For example, such expression was not added in some of the HK-unique provisions since 1990. Moreover, the expression has not been included in any amendments to the RHC since 1997.

17. The Judiciary therefore considers that the existing arrangement may not be the most satisfactory for statute readers or users. For provisions without the expression “(HK)”, they were either adapted from the RSC or subsequently added to the RHC. In the former case, if the English counterparts have been repealed by the CPR in 1999, although the HK

provisions originated from the RSC, arguably they have now become “HK-specific” provisions. In the latter case, it is unclear to statute users whether the provisions are “HK-specific” or not as no “(HK)” can be found.

18. Moreover, according to section 18 of the Interpretation and General Clauses Ordinance (Cap. 1), these expressions have no legal effect for interpretation of the law.

PROPOSED LEGISLATIVE AMENDMENTS

19. For appeals relating to solicitors, the Judiciary suggests repealing Order 106, rule 12(1) of the RHC so as to remove the automatic anonymity requirement in appeals against decisions of the Tribunal to the Court of Appeal. This is to uphold the interest of open justice and make the arrangements on a par with the other professionals, particularly the barristers. The court's present discretion to order anonymity in individual cases as the circumstances may require remains unaffected.

20. As regards the expression “(HK)” in the RHC, the Judiciary proposes to remove all of them.

21. The opportunity is also taken to introduce some minor textual amendments to the RHC.

22. A marked-up version showing the proposed changes to the RHC is at **Annex A**. For the proposed removal of the expression “(HK)”, given the many provisions involved, for simplicity, we only show the provision numbers concerned at **Annex B**.

CONSULTATION

23. We have consulted various stakeholders, including the Bar Association, the Law Society and the Privacy Commissioner for Personal Data, on the relevant parts of the legislative amendments. They are supportive of the relevant proposed amendments.

WAY FORWARD

24. Members are invited to note the contents of this paper. We aim at tabling the proposed amendments at the Legislative Council for negative vetting before the summer of 2017.

Judiciary Administration
February 2017

**Proposed Amendments to
the Rules of the High Court (Cap. 4 sub. leg. A)
in Marked-up Mode**

Order 102 The Companies Ordinance and The Companies (Winding Up and Miscellaneous Provisions) Ordinance

14. Certifying lists of creditors entitled to object to reduction (O. 102, r. 14)

The list of creditors entitled to object to such reduction as is mentioned in rule 7(4), as settled by the Court under section 227 of the Companies Ordinance (Cap 622) shall be certified and filed by the Registrar and his certificate shall- (28 of 2012 ss. 912 & 920)

- (a) specify the debts or claims (if any) disallowed by the ~~Court~~,Court;
- (b) distinguish the debts or claims (if any) the full amount of which is admitted by the company, the debts or claims (if any) the full amount of which, though not admitted by the company, the company is willing to appropriate, the debts or claims (if any) the amount of which has been fixed by adjudication of the Court under section 227 of the Companies Ordinance (Cap 622) and other debts or claims; (28 of 2012 ss. 912 & 920)
- (c) specify the total amount of the debts or claims payment of which has been secured by appropriation under section 227 of the Companies Ordinance (Cap 622); (28 of 2012 ss. 912 & 920)
- (d) show which creditors consent to the reduction and the total amount of their debts or claims;
- (e) specify the creditors who sought to prove their debts or claims under rule 13 and state which of such debts or claims were allowed.

Order 106 Proceedings Relating to Solicitors: The Legal Practitioners Ordinance

14. ~~Title, service, etc.~~ Service of notice of motion (O. 106, r. 12)

~~(1) The notice of the originating motion by which an appeal is brought must be entitled in the matter of a solicitor, or, as the case may be, a solicitor's clerk,~~

~~without naming him, and in the matter of the Ordinance.~~

(2) Unless the Court otherwise orders, ~~the persons to be served with such notice~~ are the notice of the originating motion by which an appeal is brought must be served on every party to the proceedings before the disciplinary tribunal and the Society. (L.N. 275 of 1998)

(3) The notice must be served within 21 days from the day on which the order appealed against is pronounced. (L.N. 275 of 1998)

(4) (Repealed L.N. 275 of 1998)

Order 115 (HK) Mutual Legal Assistance In Criminal Matters Ordinance (Cap. 525)

1. Interpretation (O. 115A, r. 1)

(1) In this Order “the Ordinance” ~~“(條例)”~~ means the Mutual Legal Assistance in Criminal Matters Ordinance (Cap 525), and a section referred to by number in rules 3 to 12 means the section so numbered in the Ordinance and in rules 13 to 18 means the section so numbered in Schedule 2 to the Ordinance.

(2) Expressions used in this Order which are used in the Ordinance (including Schedule 2 to the Ordinance) have the same meanings in this Order as in the Ordinance.

Annex B

Proposed Removal of the Expression “(HK)” in the Rules of the High Court (Cap. 4 sub. leg. A)

The expression “(HK)” is suggested to be repealed in the following provisions :

- (a) Order 1, rules 2(2), 4(1) and 7A;
- (b) Order 10, rule 4(2);
- (c) Order 11, rules 1(4), 6(1) and 7A(1);
- (d) Order 15, rule 4(3);
- (e) Order 18, rule 5A, heading;
- (f) Order 19, rule 8A, heading;
- (g) Order 25, rule 8(1);
- (h) Order 32, rules 10 and 22;
- (i) Order 35, rule 12(1);
- (j) Order 36, rule 1;
- (k) Order 37, rule 1(1A) and rule 1A, heading;
- (l) Order 38, rule 14(5), (6), (7), (8) and (9);
- (m) Order 41, rule 1(9);
- (n) Order 42, rules 4(3) and 5B(1);
- (o) Order 44A, heading;
- (p) Order 45, rules 1(1), 14(1), 15, 16 and 17(1);
- (q) Order 47, rule 6(1) and (5) and rule 7, heading and rule 8, heading;
- (r) Order 49B, heading;
- (s) Order 50, rule 10(4);
- (t) Order 52, rule 2, heading and rule 2(1), (4), (5), (6) and (7);
- (u) Order 53, rules 3(4) and 13;
- (v) Order 55, rule 1(2) and rule 2, heading;
- (w) Order 58, rule 2;
- (x) Order 59, rules 6(3) and 9(1);
- (y) Order 60A, heading;
- (z) Order 62, rules 1(1), 2(1), 13(1) and 34(1);
- (za) Order 63, rule 3A, heading;
- (zb) Order 64, rule 3A(1);
- (zc) Order 67, rule 6A;
- (zd) Order 71, rule 9(3);

- (ze) Order 72, heading;
- (zf) Order 73, rules 10(1) and (6A) and 10A;
- (zg) Order 75, heading;
- (zh) Order 77, rule 4(2);
- (zi) Order 79, rule 1;
- (zj) Order 80, rule 13(3);
- (zk) Order 83A, heading;
- (zl) Order 84A, heading;
- (zm) Order 86, rule 8, heading and rule 9, heading;
- (zn) Order 89, rule 1(1);
- (zo) Order 90, rules 4B, 8 and 10(3A);
- (zp) Order 113, rule 4(1);
- (zq) Order 114, heading and rules 1(1) and 2;
- (zr) Order 115, rules 22(1) and 23(1);
- (zs) Order 115A, heading;
- (zt) Order 116, heading;
- (zu) Order 117, heading;
- (zv) Order 117A, heading;
- (zw) Order 118, heading;
- (zx) Order 119, heading;
- (zy) Order 120, heading and rules 1, 2, 3 and 4.