

## Legislative Council Brief

### A. Titles of the subsidiary legislation

Solicitors (Professional Indemnity) (Amendment) Rules 2016 (“PIS Amendment Rules”)

Solicitors’ Practice (Amendment) Rules 2016 (“Practice Amendment Rules”) (together “Amendment Rules”) (at Annex)

### B. Introduction / Background

- (a) Section 7(d) of the Legal Practitioners Ordinance (Cap 159 of the Laws of Hong Kong – “LPO”) states that no person shall be qualified to act as a solicitor unless he is complying with any indemnity rules made by the Council of the Law Society (“Council”). The power of the Council to make such rules derives from section 73A of the LPO.
- (b) The Solicitors (Professional Indemnity) Rules (“PIS Rules”) have been promulgated as subsidiary legislation under the LPO and constitute Cap 159M of the Laws of Hong Kong.
- (c) The PIS Rules provide that the Law Society is authorised to establish and maintain a fund to provide the indemnity mentioned in section 73A of the LPO. This fund is known as the Hong Kong Solicitors Indemnity Fund (“Fund”). The Fund is held and administered by Hong Kong Solicitors Indemnity Fund Limited (“Company”) which is a company limited by guarantee.
- (d) The Fund provides compulsory professional indemnity cover to all solicitors and/or their employees against loss arising from claims in respect of civil liability incurred in connection with the solicitors’ practices. The manner in which the Fund operates, such as the terms and conditions of indemnity, the method of calculation of deductibles, exclusions and the formulae for calculating the contributions to the Fund by all solicitors are set uniformly for all solicitors pursuant to the PIS Rules.

- (e) Over the years, the Board of the Company has noted various operational issues arising when applying the PIS Rules. A Queen’s Counsel (“QC”) has therefore been appointed to review and prepare draft amendments to update and enhance the PIS Rules.

**C. Justification for introducing the amendments to the subsidiary legislation**

The **PIS Amendment Rules** consist of miscellaneous amendments to the PIS Rules which:

- (a) enhance the operation of the Fund;
- (b) provide more clarity to the PIS Rules;
- (c) provide better protection to the public;
- (d) correct typos and grammatical errors in the PIS Rules.

The **Practice Amendment Rules** correct the Chinese text of the defined term “China-Appointed Attesting Officer” in the Chinese version of rule 2B of Cap. 159H from “中國委任的見證人員” to “中國委託公證人”.

**D. Explanation of main provisions**

The **PIS Amendment Rules** consist of miscellaneous amendments resolved by the Professional Indemnity Advisory Committee, the Civil Litigation, Personal Injuries and ADR Committees of the Law Society and the Board over the years, including:

- (a) the business of practising as a solicitor has been clarified to include “*the neutral in any form of alternative dispute resolution procedure, China-Appointed Attesting Officer or civil celebrant*” in the definition of “*Practice*” (Rule 2) thus expanding the scope of the Fund;
- (b) clarifying that disputes as to whether a claim should be contested (“Counsel’s Clause”) are to be determined by Counsel in accordance with the provisions of paragraph 8(1)(c) of Schedule 3 rather than being the subject of a full arbitration pursuant to rule 13;
- (c) amending the Counsel’s Clause giving the parties the choice to refer to either a Junior or Senior Counsel (the current PIS Rules only make reference to a Senior Counsel) which may result in savings of costs (paragraph 8(1)(c) of Schedule 3);

- (d) empowering the Company to appoint a firm of solicitors which is not on the panel appointed by the Council (rule 17). The flexibility may be necessary when expertise in a particular area of law is not available from the panel or when all panel firms might be conflicted in a claim;
- (e) clarifying that the power of the Company or the Society to disburse or reimburse out of the fund all expenses and liabilities incurred in the handling of claims is subject to the Company or the Society having acted in good faith (paragraph 3(d) of Schedule 2);
- (f) transferring the power to grant a waiver of deductible from the PIS Claims Committee to the Board of the Company (paragraph 1(1)(b) of Schedule 3);
- (g) removing an exclusion (paragraph 1(2)(c)(x) of Schedule 3) so that Indemnity will be provided even where no Receipt had been issued to the relevant practice because of some default by its principals. This means the relevant law firm will still be indemnified even when its principals have failed to pay the PIS contributions. The Company's remedy would be to rely on the power to charge interest on overdue contributions and to pursue each principal of the firm under paragraph 9 of Schedule 3;
- (h) consolidating the provisions for charging interest on overdue contributions and adopting a uniform penalty interest rate across the PIS Rules (same rate as that allowed for a judgment debt under section 49 of the High Court Ordinance (Cap. 4));
- (i) amending paragraph 8(1)(a) and adding paragraph 8(1)(d) of Schedule 3 so that the Company's discretion to take over the conduct of a claim is no longer dependent on the prior triggering of the Counsel's clause, which is important in cases where a claim may be made against a sole practitioner who has passed away and no personal representative has been appointed to administer the estate. Unless the Company takes over the conduct of the claim the claimant may go uncompensated.
- (j) amending paragraph 8(1)(a) of Schedule 3 so that defence costs incurred by the Company after it has taken over the conduct of a claim will erode the policy limit.

Please refer to paragraph C above for the explanation on the **Practice**

**Amendment Rules.**

**E. Date of tabling the subsidiary legislation in LegCo and its Commencement Date**

It is hoped that LegCo will table the Amendment Rules on 30 November 2016. The Commencement Date is to be appointed by the President of the Law Society by notice published in the Gazette.

**F. Result of any consultation with the relevant parties**

The amendments were proposed by various committees of the Law Society and the Board of the Company over the years and approved by the Board and the Council.

**G. Contact details of relevant officer**

The officer assisting in this amendment exercise at the Law Society is Ms. Gigi Liu, Assistant Director, Professional Indemnity Scheme of the Law Society at 3<sup>rd</sup> Floor, Wing On House, 71 Des Voeux Road Central, Hong Kong (Telephone No. 2846 0557).

**H. Issuing party and issuance date**

The Amendment Rules were gazetted on 25 November 2016. This brief was prepared by the Law Society on 17 November 2016.

## Solicitors (Professional Indemnity) (Amendment) Rules 2016

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## Solicitors (Professional Indemnity) (Amendment) Rules 2016

(Made by the Council of The Law Society of Hong Kong under sections 73 and 73A of the Legal Practitioners Ordinance (Cap. 159) subject to the prior approval of the Chief Justice)

### 1. Commencement

These Rules come into operation on a day to be appointed by the President of The Law Society of Hong Kong by notice published in the Gazette.

### 2. Solicitors (Professional Indemnity) Rules amended

The Solicitors (Professional Indemnity) Rules (Cap. 159 sub. leg. M) are amended as set out in rules 3 to 9.

### 3. Rule 2 amended (interpretation)

(1) Rule 2, definition of *former Practice*—

#### Repeal

“, for the purposes of Schedule 1,”.

(2) Rule 2, definition of *former principal*—

#### Repeal

“, for the purposes of Schedule 1,”.

(3) Rule 2—

#### Repeal the definition of *panel solicitor*

#### Substitute

“*panel solicitor* (委員會律師) means a firm of solicitors appointed by the Company—

- (a) to act on behalf of an indemnified or a former solicitor in respect of any claim against the indemnified or the former solicitor for which the indemnified or the former solicitor seeks Indemnity from the Company under these rules; or
- (b) to advise the Company on its obligations under these rules;”.
- (4) Rule 2, definition of *Practice*, paragraph (h)—  
**Repeal**  
“or”.
- (5) Rule 2, definition of *Practice*, paragraph (i)—  
**Repeal**  
“qualified,”  
**Substitute**  
“qualified;”.
- (6) Rule 2, definition of *Practice*, after paragraph (i)—  
**Add**  
“(j) the neutral in any form of alternative dispute resolution procedure;  
(k) China-Appointed Attesting Officer; or  
(l) civil celebrant of marriages appointed under the Marriage Ordinance (Cap. 181),”.
- (7) Rule 2—  
**Repeal the definition of related costs**  
**Substitute**  
“*related costs* (有關連訟費) means all costs and expenses—  
(a) incurred with authorized insurers’ or the Company’s consent in the defence or settlement of

- any claim against the indemnified or a former solicitor; or
- (b) incurred by the Company in the exercise of its power under paragraph 8(1)(d) of Schedule 3;”.
4. **Rule 11 amended (provision of Indemnity)**
- (1) Rule 11(1)(b)—  
**Repeal**  
“costs and expenses incurred in respect of the defence, settlement or compromise of the claim”  
**Substitute**  
“related costs”.
- (2) Rule 11(1)(c)—  
**Repeal**  
“costs and expenses incurred in respect of the defence or settlement or compromise of the claim,”  
**Substitute**  
“related costs,”.
- (3) Rule 11(1)(c)—  
**Repeal**  
“such costs and expenses”  
**Substitute**  
“such costs”.
5. **Rule 13 amended (disputes)**
- (1) Rule 13—  
**Repeal**  
“Any dispute or difference concerning the existence in”

**Substitute**

“Subject to paragraph 8(1)(c) of Schedule 3, a dispute or difference concerning the existence or”.

## (2) Rule 13—

**Repeal**

“quantum of any claim to be provided with Indemnity”

**Substitute**

“quantum of any claim in respect of which Indemnity is to be provided”.

6. **Rule 17 substituted**

Rule 17—

**Repeal the rule****Substitute****“17. Panel of firms of solicitors**

- (1) The Council is to appoint a panel of firms of solicitors from which the Company may appoint a panel solicitor.
- (2) The Company may, if it considers it necessary to do so, appoint a firm of solicitors which is not on the panel appointed by the Council under subrule (1) to act as a panel solicitor.”.

7. **Schedule 1 amended (contributions to fund)**

## (1) Schedule 1—

**Repeal**

“[rules 2, 4 & 9]”

**Substitute**

“[rr. 2, 4 & 9 & Schs. 2 & 3]”.

## (2) Schedule 1, paragraph 2(1)—

**Repeal sub-subparagraph (d)****Substitute**

- “(d) On a principal making good all failures under sub-subparagraph (c), the Company must assess the contribution payable in respect of the Practice, and—
- (i) if the amount of the contribution as assessed is less than the amount of the contribution paid, the difference must be repaid to the firm without interest; or
  - (ii) if the amount of the contribution as assessed exceeds the amount of the contribution paid, the firm must on demand pay and each principal of the firm is jointly and severally liable to pay to the Company the balance of the amount of the contribution together with interest on the amount of the balance calculated in accordance with paragraph 5(3) until receipt of payment by the Company.”.

## (3) Schedule 1, after paragraph 4—

**Add****“5. Interest on overdue contributions**

- (1) The Company may at any time demand in writing from each principal of the firm who is required to make contribution in respect of the firm to pay any outstanding balance of the amount of the contribution together with interest on the outstanding balance calculated in accordance with subparagraph (3).

- (2) Each principal of the firm is jointly and severally liable to pay to the Company the amount under subparagraph (1) within 14 days after the issue of the written demand.
- (3) Interest is to be calculated—
  - (a) from the date on which the outstanding balance is due and payable or from any later date as the Company may specify in the written demand; and
  - (b) at the same rate as allowed for a judgment debt from time to time under section 49 of the High Court Ordinance (Cap. 4).”.

**8. Schedule 2 amended (management and administration of fund)**

- (1) Schedule 2, English text—

**Repeal**

“[rule 5]”

**Substitute**

“[r. 5]”.

- (2) Schedule 2, paragraph 2(d)—

**Repeal**

“and compromise”.

- (3) Schedule 2, paragraph 2(e)—

**Repeal**

“and compromise”.

- (4) Schedule 2, paragraph 3(d)—

**Repeal**

“fund,”

**Substitute**

“fund and these rules.”.

- (5) Schedule 2, paragraph 3(d)—

**Repeal**

everything after “Society”

**Substitute**

“or the Company, acting in good faith, in respect of all or any of the following—

- (i) the establishment or maintenance, or the management, administration or protection, of the fund;
- (ii) the handling of any claim for Indemnity from the fund;
- (iii) the handling of any claim by a third party against an indemnified or a former solicitor.”.

**9. Schedule 3 amended (exclusions and conditions)**

- (1) Schedule 3—

**Repeal**

“[rules 2 & 10]”

**Substitute**

“[rr. 2, 10 & 13 & Sch. 2]”.

- (2) Schedule 3, paragraph 1(1), proviso, paragraph (a)—

**Repeal**

“pay or include in any payment made out of the fund in respect of any claim”

**Substitute**

“at any time pay or include in any payment made out of the fund in respect of any claim, claimant’s costs or related costs”.



- (3) Schedule 3, paragraph 1(1), proviso, paragraph (a)—

**Repeal**

“as the Company may request of any payment so made and interest on the amount of any payment so made from the date of the payment thereof”

**Substitute**

“of the deductible applicable to that payment as the Company may request and interest on the amount so requested by the Company from the date of the payment”.

- (4) Schedule 3, paragraph 1(1), proviso, paragraph (a), after “each principal”—

**Add**

“and former principal”.

- (5) Schedule 3, paragraph 1(1), proviso—

**Repeal paragraph (b)**

**Substitute**

“(b) if, in relation to any claim—

- (i) there is no admission or finding or acceptance of liability on the part of the indemnified; and
- (ii) there is no payment made from the fund to the claimant in respect of the claimant’s claim against the indemnified,

the Company may waive in writing in whole or part the Company’s right to be reimbursed the amount of the deductible paid out of the fund, and amend or revoke the waiver.”.

- (6) Schedule 3, paragraph 1(2)(c)—

**Repeal sub-sub-subparagraph (x).**

- (7) Schedule 3, paragraph 1(2)(d)—

**Repeal**

“and disbursements”.

- (8) Schedule 3, paragraph 2(2), English text—

**Repeal**

“purpose”

**Substitute**

“purposes”.

- (9) Schedule 3, paragraph 4—

**Repeal**

“in any”

**Substitute**

“in respect of any”.

- (10) Schedule 3, paragraph 6—

**Repeal subparagraph (2).**

- (11) Schedule 3, paragraph 7(1)—

**Repeal**

“1(c)(vii)”

**Substitute**

“1(2)(c)(vii)”.

- (12) Schedule 3, paragraph 8(1)(a)—

**Repeal**

everything after “unreasonably”

**Substitute**

“withheld”.

- (13) Schedule 3, paragraph 8(1)(c)—

**Repeal sub-sub-subparagraph (i)**

**Substitute**

“(i) If a difference or dispute arises between the indemnified and the Company regarding the contest, defence, settlement or otherwise of a claim, the difference or dispute must be referred by the Claims Committee to a counsel (to be mutually agreed on by the indemnified and the Company or failing agreement to be appointed by the President of the Society) for a determination whether the claim should be contested, defended, settled or otherwise disposed of, and the counsel is to be instructed to certify whether the counsel has found substantially in favour of the Company.”.

- (14) Schedule 3, paragraph 8(1)(c)(iii), (iv), (v), (vii), (viii), (xii) and (xv)—

**Repeal**

“the Senior Counsel” (wherever appearing)

**Substitute**

“the counsel”.

- (15) Schedule 3, after paragraph 8(1)(c)—

**Add**

“(d) Subject to sub-subparagraph (c), the Company may, in its discretion and at any time, take over in the name of the indemnified the conduct of the defence or settlement of any claim, including any claim in respect of which the indemnified may become entitled to partial indemnity under any insurance with any insurers and any claim which but for paragraph 2(2) or 3(1)(b) or (2)(b) would have fallen within the scope of the Indemnity provided by these rules; and the indemnified must at their own cost give all reasonable assistance to the Company and

panel solicitors and co-operate in the defence or settlement of any claim.”.

- (16) Schedule 3, paragraph 8(2)—

**Repeal**

“shall procure that notice to the Company shall be given”

**Substitute**

“must notify the Company”.

- (17) Schedule 3, paragraph 8(2)(b)—

**Repeal**

“claim.”

**Substitute**

“claim; and”.

- (18) Schedule 3, after paragraph 8(2)(b)—

**Add**

“(c) any circumstances of which the indemnified becomes aware during the period of indemnity and which may (whether during or after the period of indemnity) give rise to any such claim.”.

- (19) Schedule 3, paragraph 8—

**Repeal subparagraph (3).**

- (20) Schedule 3, paragraph 8(4)—

**Repeal**

“or (3)”.

- (21) Schedule 3, paragraph 8(5)—

**Repeal**

“(3)”

**Substitute**

“(c)”.

- (22) Schedule 3, paragraph 8(10), after “Claims Committee”—

**Add**

“or panel solicitors”.

- (23) Schedule 3, paragraph 8(10)(a) and (b)—

**Repeal**

“or (3)”.

- (24) Schedule 3—

**Repeal paragraph 9**

**Substitute**

**“9. Special condition**

- (1) If the issue of a receipt under rule 9 has been withheld or delayed as a result of a failure to pay any contribution due in accordance with these rules by a principal of the firm and a claim has been made or intimated against the indemnified in respect of which the indemnified would otherwise have been entitled to be provided with Indemnity, the Company must provide the payment (up to the limit provided for in paragraphs 2 and 3) in or towards satisfying, or enabling the indemnified to satisfy, the claim, claimant’s costs and related costs.
- (2) Each principal of the firm must, on request, reimburse to the Company the whole or such part as the Company may request of any payment so made and interest on the amount calculated in accordance with paragraph 5(3) of Schedule 1. Each principal of the firm so indemnified under subparagraph (1) is jointly and severally liable to the Company for the reimbursement.”.

Approved this            day of            2016.

Chief Justice

Made this            day of            2016.

### Explanatory Note

These Rules mainly seek to enhance the Solicitors (Professional Indemnity) Rules (Cap. 159 sub. leg. M) (*principal Rules*) in various aspects, including—

- (a) to clarify that the business of practising as a solicitor includes a solicitor acting as the neutral in any form of alternative dispute resolution procedure, as a China-Appointed Attesting Officer or as a civil celebrant of marriages;
- (b) to specify that the arbitration procedure to resolve disputes between the indemnified and Hong Kong Solicitors Indemnity Fund Limited, the company managing the indemnity fund (*Company*), is a separate procedure from the reference to counsel under paragraph 8(1)(c) of Schedule 3 to the principal Rules;
- (c) to clarify that the Company has a discretion to appoint a firm of solicitors which is not on the panel appointed by the Council of The Law Society of Hong Kong to act for an indemnified;
- (d) to provide for payment of interest on any overdue contribution which is required to be made under rule 4 of the principal Rules;
- (e) to remove the restriction on providing indemnity to a firm for losses arising during the period when the contribution payable by the firm remains outstanding; and
- (f) to empower the Claims Committee, which has the power to settle or defend claims under the principal Rules, to refer any dispute (not only disputes in relation to settlement) between the indemnified and the Company

relating to the conduct of a claim to a counsel for a determination.

2. These Rules also make other miscellaneous amendments to update the principal Rules.

## Solicitors' Practice (Amendment) Rules 2016

(Made by the Council of The Law Society of Hong Kong under section 73 of the Legal Practitioners Ordinance (Cap. 159) subject to the prior approval of the Chief Justice)

### 1. Commencement

These Rules come into operation on the day on which the Solicitors (Professional Indemnity) (Amendment) Rules 2016 come into operation.

### 2. Solicitors' Practice Rules amended

The Solicitors' Practice Rules (Cap. 159 sub. leg. H) are amended as set out in rule 3.

### 3. Rule 2B amended (letterhead)

Rule 2B(3)(d)(iii), Chinese text—

#### Repeal

“中國委任的見證人員”

#### Substitute

“中國委託公證人”。

Approved this            day of            2016.

Made this            day of            2016.

Chief Justice

**Explanatory Note**

These Rules seek to make a textual amendment to the Chinese text of rule 2B of the Solicitors' Practice Rules (Cap. 159 sub. leg. H).

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