



## Legislative Council Brief

### A. Title of the subsidiary legislation

Trainee Solicitors (Amendment) Rules 2017, and Admission and Registration (Amendment) Rules 2017

### B. Introduction / Background

#### *Qualifications for admission*

1. Section 4 of the Legal Practitioners Ordinance Cap. 159 (“the Ordinance”) sets out the qualification requirements for admission as a solicitor in Hong Kong. Section 4(1)(a) of the Ordinance provides that the Court may, in such manner as may be prescribed by the Chief Justice, admit as a solicitor a person who the Court considers is a fit and proper person to be a solicitor and who has complied with the requirements prescribed by the Council with respect to employment as a trainee solicitor, the passing of examinations and the completion of courses.

#### *Admission as a solicitor by a barrister*

2. A barrister wishing to be admitted as a solicitor may apply to the Law Society for exemption from employment as a trainee solicitor under rule 20 of the Trainee Solicitors Rules Cap. 159 sub. leg. J (“TS Rules”). Rule 20(1) of the TS Rules stipulates that any person who has:
  - (a) been called to the Bar in Hong Kong;
  - (b) been engaged in the practice of a barrister or advocate (including practice in various specified Government departments) for a period of not less than 5 years;

- (c) obtained from the Bar Council a certificate stating that it knows of no reason why he should not be admitted to practise as a solicitor; and
- (d) procured himself to be disbarred with a view to becoming a solicitor,

shall be exempted from employment under a trainee solicitor contract.

- 3. Rule 3(2)(a) of the Admission and Registration Rules, Cap. 159 sub. leg. B (“the AR Rules”) provides that a person seeking admission on the basis of compliance with section 4(1)(a) of the Ordinance and of rule 20 of the TS Rules shall apply to the Law Society for a certificate of eligibility for admission as a solicitor in accordance with Form 1B in the Schedule to the AR Rules. An applicant is required to attach a certificate from the Bar Council in Form 1B (paragraph (3) of Form 1B).

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

- 4. Rule 20(1)(c) of the TS Rules only required the disbarred barrister to obtain from the Bar Council a certificate stating that it knows of no reason why he should not be admitted to practise as a solicitor. This provision does not specify what kind of information should be stated in the certificate. The complaint record and disciplinary proceedings against a barrister are relevant factors for the Law Society to determine whether he is a fit and proper person to be admitted as a solicitor in Hong Kong. Therefore, it is necessary for the Bar Council to provide such information in the certificate for the Law Society’s consideration. The proposed amendments to rule 20 of the TS Rules would enable the Bar Council to issue a certificate setting out the particulars of the complaints and the relevant disciplinary proceedings against the barrister.

**D. Explanation of the amendments**

- 5. Rule 20(1)(c) of the TS Rules is proposed to be amended requiring the certificate issued by the Bar Council to include the following information:
  - (a) no resolution has been passed by the Bar Council that the person has been in breach of proper professional standards;

- (b) no resolution has been passed by the Bar Council as a result of a complaint being made to it or otherwise that the conduct of the person should be inquired into by a Barristers Disciplinary Tribunal;
  - (c) no conduct of the person as a barrister is the subject of proceedings being conducted or pending before the Barristers Disciplinary Tribunal or the Court of Appeal;
  - (d) no order has been made against the person by a Barristers Disciplinary Tribunal under section 37 of the Ordinance; and
  - (e) whether there are any outstanding allegations or complaints against the person that are to be dealt with by the Bar Council.
6. Rule 20(1)(e) of the TS Rules is proposed to be introduced requiring the applicant to provide a statutory declaration to the Law Society stating to his knowledge, information and belief as to whether there are any outstanding allegations or complaints against him to be dealt with by the Bar Council, and if so, the particulars of those allegations or complaints.
7. Rules 20(1A) and (1B) of the TS Rules are also proposed to be introduced to deal with the situation whereby there are outstanding allegations or complaints against the applicant, the Law Society may grant an exemption only after the Bar Council notifies the Law Society of the outcome of its decision or resolution by the Bar Council.
8. Incidental amendments are made to paragraph (3) in Form 1B of the AR Rules.

**E. Date of tabling the subsidiary legislation in the Legislative Council (“LegCo”) and its Commencement Date**

9. It is hoped that the LegCo will table the Amendment Rules on 31 May 2017. 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**

10. The Bar Association was consulted and they confirmed that they had no

comment on the proposed amendments.

11. The proposed amendments were approved by the Law Society's Consents Committee, the Standing Committee on Standards & Development, and the Council, comprising a wide cross section of the solicitors' profession in Hong Kong.

**G. Contact details of relevant officers**

12. The relevant officer for this amendment exercise is Assistant Director, Regulation and Guidance of the Law Society at 3<sup>rd</sup> Floor, Wing On House, 71 Des Voeux Road Central, Hong Kong (Telephone No. 852-2846 0503).

**H. Issuing party and issuance date**

13. The Amendment Rules were gazetted on 26 May 2017. This brief is prepared by the Law Society on 18 May 2017.