

L.N. 173 of 2016

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

Contents

Rule	Page
1. Commencement	B3283
2. Solicitors (Professional Indemnity) Rules amended	B3283
3. Rule 2 amended (interpretation)	B3283
4. Rule 11 amended (provision of Indemnity)	B3287
5. Rule 13 amended (disputes)	B3289
6. Rule 17 substituted	B3289
17. Panel of firms of solicitors.....	B3289
7. Schedule 1 amended (contributions to fund)	B3291
8. Schedule 2 amended (management and administration of fund)	B3293
9. Schedule 3 amended (exclusions and conditions)	B3295

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”.
Substitute
“qualified;”.
- (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”.

Rule 9

- (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 5th day of October 2016.

Geoffrey MA
Chief Justice

Made this 8th day of November 2016.

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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.