

# **立法會**

## ***Legislative Council***

LC Paper No. CB(4)1271/17-18

Ref: CB4/SS/7/17

### **Paper for the House Committee meeting on 22 June 2018**

#### **Report of the Subcommittee on Practising Certificate (Solicitors) (Amendment) Rules 2018**

##### **Purpose**

This paper reports on the deliberations of the Subcommittee on Practising Certificate (Solicitors) (Amendment) Rules 2018 ("the Amendment Rules") ("the Subcommittee").

##### **Background**

2. Under section 73 of the Legal Practitioners Ordinance (Cap. 159), the Council of The Law Society of Hong Kong ("the Council") may, subject to the prior approval of the Chief Justice, make rules regulating the issue to solicitors of practising certificates and providing for the fees payable for solicitors' practising certificates.

##### **Practising Certificate (Solicitors) (Amendment) Rules 2018**

3. The Amendment Rules (L.N. 82), made by the Council under section 73 of Cap. 159 with the prior approval of the Chief Justice, amends the Practising Certificate (Solicitors) Rules (Cap. 159L) to:

- (a) increase the fee payable for an application for a solicitor's practising certificate for any practice year beginning on or after 1 January 2019 from \$5,000 to \$6,500 (Rule 4);
- (b) amend the statutory form of the practising certificate for a solicitor (i.e. Form 2 in the Schedule to Cap. 159L) to a

bilingual format to the effect that both English and Chinese versions can be printed on the same practising certificate (Rule 5); and

- (c) provide for transitional arrangements (Rule 3).

4. According to paragraph 1 under Part C of the Legislative Council Brief issued by The Law Society of Hong Kong ("the Law Society") on 11 May 2018, the practising certificate fee has remained at \$5,000 since 2010 based on the Law Society's 2016 audited accounts. As the operating costs and expenses of the Law Society have been increased since 2010, its reserve has been depleted to HK\$192.4 million, which comprised HK\$120.5 million of non-current assets. The fee increase is proposed as the Council considers it urgent that the reserve be replenished as soon as possible to ensure that the Law Society is financially ready to fulfill its statutory regulatory role whenever it is required to do so.

5. The Amendment Rules were published in the Gazette on 11 May 2018 and tabled at the Council meeting of 16 May 2018. Save for Rules 4 and 5 (relating to the amendments as stated in paragraph 3(a) and (b) above) which come into operation on 1 January 2019, L.N. 82 came into operation on the day on which it is published in the Gazette (i.e. 11 May 2018).

### **The Subcommittee**

6. At the meeting of the House Committee on 18 May 2018, Members agreed to form a subcommittee to study the Amendment Rules. The membership list of the Subcommittee is in the **Appendix**. Under the chairmanship of Hon Dennis KWOK Wing-hang, the Subcommittee held two meetings. Representatives of the Law Society have attended the first meeting to assist the Subcommittee in examining the Amendment Rules.

7. To allow more time for the Subcommittee to deliberate on the Amendment Rules, the Chairman has given notice to move a resolution at the Council meeting of 6 June 2018 to extend the scrutiny period for the Amendment Rules to the Council meeting of 4 July 2018. When the Council meeting of 6 June 2018 was adjourned, the agenda on the proposed resolution was not reached and was carried forward to the Council meeting of 13 June 2018. However, when the Council meeting of 13 June 2018 was adjourned, the agenda on the proposed resolution was still not reached and the scrutiny period for the Amendment Rules expired at that Council meeting.

## **Deliberations of the Subcommittee**

8. The deliberations of the Subcommittee are summarized in the ensuing paragraphs.

### Financial position of the Law Society

9. In response to members' enquiry, the Law Society has explained that its reserve of HK\$192.4 million includes HK\$120.5 million of non-current assets which mainly comprises of the office premises of the Law Society. According to the Law Society, its current asset is only about HK\$72 million which is not sufficient to meet the annual expenditure of the Law Society and therefore, there is an urgent need to increase the practicing certificate fees. The target of the Law Society is to maintain a reserve which can cover 1.5 years of expenditure.

### Intervention in the practice of law firms

10. Noting that the substantial surge in the Law Society's expenses in 2016 is mainly due to the exercise of its statutory power to intervene in the practice of law firms which incurs costs as high as HK\$37.5 million, members have asked whether the Law Society will seek assistance from the Administration to bear the huge costs incurred, in view of the fact that the act is for protection of the interests of the clients of the firms and the public.

11. The Law Society advises that it is a self-regulatory professional body which is basically self-financing. While reimbursements may be claimed from the Department of Justice for expenses incurred in disciplinary proceedings conducted by the Law Society, the expenses on intervention in the practice of law firms are not reimbursable. Having regard to members' views, the Law Society will raise the matter for discussion with the Administration.

### The Common Entrance Examination and the Law Society Examination

12. Members noted that, in the report entitled "Comprehensive Review of Legal Education and Training in Hong Kong – Final Report of the Consultants" issued by the Standing Committee on Legal Education and Training ("SCLET")<sup>1</sup> in April 2018, SCLET has commented on the Law

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<sup>1</sup> Standing Committee on Legal Education and Training's Comprehensive Review of Legal Education and Training in Hong Kong – Final Report of the Consultants (April 2018) (<http://www.sclet.gov.hk/eng/pdf/final2018.pdf>) s.6.2.2

Society's consultation exercise on the Common Entrance Examination ("CEE") undertaken by a research team appointed by the Law Society comprising academics from Nottingham Law School, the Australian National University and the Institute of Advanced Legal Studies (University of London, UK).

13. It is also noted from the Law Society's paper entitled "Responses to Standing Committee on Legal Education and Training Consultants regarding unified law school and CEE and other recommendations"<sup>2</sup> that it is the Law Society's plan to establish a Law Society Examination ("LSE").

14. In view of the possible impact of conducting CEE and/or LSE on the financial strength and operation of the Law Society, such as the expenses for relevant consultation(s), whether members have access to the findings of CEE Consultation and the projected number of solicitors, and hence the fees for practicing certificates to be collected, as well as SCLET's comments and the Law Society's response mentioned above, members have requested the Law Society to provide information in relation to a number of questions on CEE and LSE.

15. In its written reply to the Subcommittee, the Law Society admits that it has not released findings of the CEE Consultation to the public or its members, and has declined SCLET's request for sharing the findings with them. The Law Society does not disclose the cost incurred for the CEE Consultation and advises that the proposed CEE and LSE are intended to be conducted on a self-funding basis, hence the financing in relation to LSE and CEE is not relevant to the proposed increment to the practising certificate fees under consideration by the Subcommittee. Furthermore, the Law Society refuses to send representatives to attend the meeting of the Subcommittee on 5 June 2018, claiming that it will be more appropriate to discuss the matter with the Panel on Administration of Justice and Legal Services which will discuss legal education and training in Hong Kong at its meeting on 25 June 2018.

16. The Subcommittee has no objection to the proposed increase in practicing certificate fee in general but some members have expressed concerns on the use of practising certificate fee collected by the Law

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<sup>2</sup> The Law Society's paper entitled "Responses to Standing Committee on Legal Education and Training Consultants regarding unified law school and the Common Entrance Examination and other recommendations"  
([http://www.sclet.gov.hk/eng/pdf/lawsociety\\_20180508.pdf](http://www.sclet.gov.hk/eng/pdf/lawsociety_20180508.pdf)) paragraphs 29 and 32.

Society, particularly on the above matters.

**Advice sought**

17. Members are invited to note the deliberations of the Subcommittee.

Council Business Division 4  
Legislative Council Secretariat  
21 June 2018

**Subcommittee on  
Practising Certificate (Solicitors) (Amendment) Rules 2018**

**Membership list**

<b>Chairman</b>	Hon Dennis KWOK Wing-hang
<b>Members</b>	Hon Paul TSE Wai-chun, JP Hon Kenneth LEUNG Hon Alvin YEUNG Dr Hon Junius HO Kwan-yiu, JP Hon Jimmy NG Wing-ka, JP  (Total : 6 members)
<b>Clerk</b>	Mr Lemuel WOO
<b>Legal Adviser</b>	Mr Alvin CHUI