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Thomas S.T. So
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18 October 2017

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Dear Mr. Woo,

**Subcommittee on Trainee Solicitors (Amendment) Rules 2017
 (Commencement) Notice**

Meeting on 25 October 2017

I refer to your letter of 17 October 2017.

The Admission and Registration (Amendment) Rules 2017 (L. N. 103 of 2017) and Trainee Solicitors (Amendment) Rules 2017 (L. N. 104 of 2017) were gazetted on 26 May 2017. No amendments were made during the negative vetting period which expired on 28 June 2017.

The details and explanation of the amendments were set out in the Legislative Council Brief of 18 May 2017. I attach a copy of this Legislative Council Brief for your reference.

Pursuant to section 1 of the Trainee Solicitors (Amendment) Rules 2017, the President of the Law Society appointed 8 January 2018 as the Commencement Date of these Amendment Rules. The Trainee Solicitors (Amendment) Rules 2017 (Commencement) Notice was gazetted on 6 October 2017 ("the TS Commencement Notice").

Secretary General
 秘書長

Heidi K.P. Chu
 朱潔冰

Deputy Secretary General
 副秘書長

Christine W.S. Chu
 朱穎雲

The Law Society of Hong Kong

The Admission and Registration (Amendment) Rules 2017 come into operation on the day on which the Trainee Solicitors (Amendment) Rules 2017 come into operation.

The Law Society was informed in your letter of 17 October 2017 that a Subcommittee was formed by the House Committee to consider the TS Commencement Notice and the representatives of the Law Society are invited to attend the meeting of this Subcommittee on 25 October 2017.

To facilitate the discussion in the meeting on 25 October 2017, please advise us what specific issues would be raised by the Members of the Subcommittee so that we may prepare the relevant documents and information in advance.

As explained previously in the Legislative Council Brief, a disbarred barrister who wishes to become a solicitor is required to obtain a certificate from the Council of the Hong Kong Bar Association (“the Bar Association”) before applying for exemption from employment under a trainee solicitor contract. The amendments of the Trainee Solicitors Rules were intended to set out more specifically the matters to be included in the certificate. The Bar Association has no comment on these amendments. Their letter to the Law Society of 8 March 2017 is also attached for your reference. Since the amendments affected those barristers who wish to transfer to become solicitors, please advise us whether you have also informed and invited the representatives of the Bar Association to attend the meeting on 25 October 2017.

Meanwhile, please provide us with a List of Membership of the Subcommittee for our reference.

Yours sincerely,



Angela Li
Assistant Director
Regulation and Guidance
Email: adrg@hklawsoc.org.hk

Encls.



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 3rd 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.



立法會參考資料摘要

A. 附屬法例的標題

2017 年實習律師(修訂)規則，2017 年認許及註冊 (修訂)規則

B. 引言 / 背景

獲認許的資格

1. 法律執業者條例第 159 章(“本條例”)第 4 條列明在香港獲認許為律師的資格。第 4(1)(a)條指明法院可按終審法院首席法官訂明的方式，認許一名法院認為是適當作為律師，且就受僱為實習律師、考試合格和完成課程各方面已遵從理事會的規定的人為高等法院的律師。

大律師獲認許為律師

2. 根據實習律師規則第 159 章附屬法例 J 第 20 條，大律師如果希望獲認許為律師，可以向律師會申請豁免受僱為實習律師。實習律師規則第 20 條列明任何人：

- (a) 已在香港獲認許為大律師；
- (b) 根據本條在香港或其他地方從事大律師或訟辯人的執業(包括在指定的政府部門)不少於 5 年的期間；
- (c) 從香港大律師公會執委會(“執委會”)取得一份述明執委會並不知悉有任何理由為何他不應獲認許執業為律師的證明書(“執委會證明書”);
- (d) 為成為律師而已促使他本人取消大律師資格

須獲豁免，無須根據實習律師合約而受僱。

3. 認許及註冊規則(第 159 章)附屬法例 B 第 3(2)條列明如屬基於遵從本條例第 4(1)(a)條及實習律師規則第 20 條而謀求獲認許的人須按照附表表格 1B 向律師會申請一張符合資格獲認許為律師證明書。申請人必須在表格 1B 附上執委會證明書(表格 1B 第(3)段)。

C. 修訂附屬法例的理據

4. 實習律師規則第 20(1)(c)條，祇要求取消大律師資格的大律師從執委會取得一份述明執委會並不知悉有任何理由為何他不應獲認許執業為律師的證明書。這條規則並無指明這份證明書須列明那些資料。大律師的申訴及操守研訊是律師會其中一項考慮因素，以便決定他是否一名適當人士獲認許為香港律師。因此，執委會須要在證明書提供這些資料給律師會考慮。實習律師規則第 20 條修訂後，執委會可以發出證明書列明該大律師的申訴及操守研訊的詳情。

D. 解釋修訂

5. 實習律師規則第 20(1)(c)條修訂，要求執委會發出的證明書須要包括下列資料：
 - (a) 執委會不曾通過該人有違反適當的專業準則的決議；
 - (b) 執委會不曾由於向執委會作出的申訴或其他原因而通過由大律師紀律審裁組對該人的行為操守進行研訊的決議；
 - (c) 該人作為大律師的行為操守，不是正於大律師紀律審裁組或上訴法庭進行的法律程序的標的，亦不是大律師紀律審裁組或上訴法庭的仍然待決的法律程序的標的；
 - (d) 大律師紀律審裁組不曾根據本條例第 37 條針對該人作出命令；
及
 - (e) 是否有任何針對該人而尚未解決並有待執委會處理的指稱或申訴。
6. 另外，新增第 20(1)(e)條，要求申請人向律師會提供一份法定聲明，述明就該人所知、所掌握資料和所信，是否有任何針對該人而尚未解決並有待執委會處理的指稱或申訴，如有的話，則亦述明該等指稱或申訴的詳情。

7. 此外，新增第 20(1A)及(1B)條，賦權律師會在第(1B)款的規限下，可給予根據第(1)款提出的申請豁免。新增的第(1B)款是指如有任何針對該人而尚未解決並有待執委會處理的指稱或申訴，律師會只能在執委會通知律師會執委會就該等指稱或申訴作出的決定或決議的結果後，才可給予豁免。
8. 認許及註冊規則表格 1B 第(3)段亦須作相應的修訂。

E. 提交立法會審議的日期及生效日期

9. 律師會期望在 2017 年 5 月 31 日將 2017 年實習律師(修訂)規則及認許及註冊(修訂)規則提交立法會審議。律師會會長將以憲報公告指定的日期起實施修訂規則。

F. 諮詢有關團體的結果

10. 大律師公會確認對修訂無異議。
11. 這些修訂亦經過律師會轄下廣泛代表律師界的委會員，如審批委員會、專業水準及發展常務委員會及理事會批准。

G. 聯絡職員的資料

- | | | |
|--------|---|-------------------------|
| 12. 職員 | : | 條例及指導部副總監 |
| 地址 | : | 香港中環德輔道中 71 號永安集團大廈 3 樓 |
| 電話號碼 | : | 852-28460503 |

H. 提交的機構及日期

13. 實習律師(修訂)規則及認許及註冊(修訂)規則在 2017 年 5 月 26 日在憲報刊登。此摘要在 2017 年 5 月 18 日為律師會擬備。



Handwritten note: 2017年3月8日

HONG KONG BAR ASSOCIATION

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8 March 2017

Ms. Angela Li
Assistant Director
Regulation and Guidance
The Law Society of Hong Kong
3/F Wing On House
71 Des Voeux Road Central, H.K.

By Hand

Dear Ms. Li,

Re: Trainee Solicitors (Amendment) Rules
Admission and Registration (Amendment) Rules

I refer to your letters dated 28 September 2016, 8 February 2017 and 6 March 2017 in relation to the captioned matter.

I write to inform you that the Bar Council has no further comments.

Yours sincerely,

Maggie Wong
Honorary Secretary

香港大律師公會

香港金鐘道三十八號高等法院低層二樓

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