

立法會 *Legislative Council*

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Paper for the House Committee meeting on 14 December 2018

Report of the Subcommittee on Foreign Lawyers Practice (Amendment) Rules 2018 (Commencement) Notice, Solicitors' Practice (Amendment) Rules 2018 (Commencement) Notice and Summary Disposal of Complaints (Solicitors) (Amendment) Rules 2018 (Commencement) Notice

Purpose

This paper reports on the deliberations of the Subcommittee on Foreign Lawyers Practice (Amendment) Rules 2018 (Commencement) Notice, Solicitors' Practice (Amendment) Rules 2018 (Commencement) Notice and Summary Disposal of Complaints (Solicitors) (Amendment) Rules 2018 (Commencement) Notice ("the Subcommittee").

Background

2. The Foreign Lawyers Practice (Amendment) Rules 2018 (L.N. 39 of 2018), the Solicitors' Practice (Amendment) Rules 2018 (L.N. 40 of 2018) and the Summary Disposal of Complaints (Solicitors) (Amendment) Rules 2018 (L.N. 41 of 2018) (hereinafter collectively referred to as "the three Amendment Rules") are made by the Council of The Law Society of Hong Kong ("the Law Society") under section 73 of the Legal Practitioners Ordinance (Cap. 159) with the prior approval of the Chief Justice.

3. L.N. 39 of 2018 amends the Foreign Lawyers Practice Rules (Cap. 159R) to provide that a principal of a foreign firm must not, except with the written approval of the Council of the Law Society, knowingly employ any unqualified person¹ who is in the part-time or full-time

¹ For the purposes of Cap. 159R and Cap. 159H, "unqualified person" means a person who is (a) not a foreign lawyer and (b) not qualified to act as solicitor under section 7 of Cap. 159 respectively.

employment of a Hong Kong firm or another foreign firm. L.N. 40 of 2018 amends the Solicitors' Practice Rules (Cap. 159H) to provide that a Hong Kong firm must not, except with the written approval of the Council of the Law Society, knowingly employ any unqualified person who is in the part-time or full-time employment of another Hong Kong firm or a foreign firm. L.N. 41 of 2018 amends the Summary Disposal of Complaints (Solicitors) Rules (Cap. 159AD) to empower the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel to deal with a breach of the new provision to Cap. 159R added by L.N. 39 of 2018 in a summary manner and to provide for the fixed penalty and fixed investigation cost relating to the breach.

4. The three Amendment Rules were published in the Gazette on 9 March 2018 and tabled at the Council meeting of 21 March 2018. No amendment had been made during the scrutiny period. The three Amendment Rules come into operation on a day to be appointed by the President of the Law Society by notice published in the Gazette.

Foreign Lawyers Practice (Amendment) Rules 2018 (Commencement) Notice, Solicitors' Practice (Amendment) Rules 2018 (Commencement) Notice and Summary Disposal of Complaints (Solicitors) (Amendment) Rules 2018 (Commencement) Notice

5. By the Foreign Lawyers Practice (Amendment) Rules 2018 (Commencement) Notice (L.N. 207 of 2018), Solicitors' Practice (Amendment) Rules 2018 (Commencement) Notice (L.N. 208 of 2018) and Summary Disposal of Complaints (Solicitors) (Amendment) Rules 2018 (Commencement) Notice (L.N. 209 of 2018) (hereinafter collectively referred to as "the three Commencement Notices"), the President of the Law Society has appointed 4 February 2019 as the day on which the three Amendment Rules come into operation. The three Commencement Notices were published in Gazette on 26 October 2018 and tabled at the Council meeting of 31 October 2018.

The Subcommittee

6. At the meeting of the House Committee on 2 November 2018, Members agreed to form a subcommittee to study the three Commencement Notices. The membership list of the Subcommittee is in the **Appendix**.

7. Under the chairmanship of Hon Dennis KWOK Wing-hang, the Subcommittee held one meeting to examine the three Commencement

Notices. The Law Society was invited to send representatives to attend the meeting held on 16 November 2018 but it did not do so.

8. Before that meeting, the Law Society had written to the Clerk to Subcommittee requesting the Subcommittee to set out the questions that it would raise at the meeting to enable the Law Society to identify the appropriate persons to attend the meeting. The Law Society was informed by the Clerk to Subcommittee that as the Subcommittee's membership had yet to be finalized, its request could not be acceded to.

9. At the meeting held on 16 November 2018, the Subcommittee scrutinized the three Commencement Notices in the absence of representatives from the Law Society. While the Subcommittee raises no objection to the commencement of the three Amendment Rules on 4 February 2019, members have expressed views and concerns about issues relating to the enforcement of Cap. 159R and review of the foreign lawyers' regulatory regime.

Deliberations of the Subcommittee

Enforcement of the Foreign Lawyers Practice Rules (Cap. 159R)

10. Members note that, while the registered foreign firms and the registered foreign lawyers ("RFLs") are prohibited from practising Hong Kong law, some RFLs do overstep the line and practise Hong Kong law when they are not permitted to do so.

11. In view of the above, members want to know the number of cases in the past five years in which RFLs were found in breach of Cap. 159R for practising Hong Kong law, and the number and nature of enforcement actions which were taken against these cases. Enquiry has also been raised on the difficulties encountered by the Law Society in enforcing the rules and prohibitions under Cap. 159R in the past five years, and the possible challenges that the Law Society may face in ensuring that Hong Kong law firms and foreign law firms in Hong Kong would strictly comply with Cap. 159R in general.

Review of the foreign lawyers' regulatory regime

12. Members note that the Law Society is conducting an overall review of the foreign lawyers' regulatory regime ("the Review"), and is seeking views from legal professionals on some proposals made by the Law Society.

13. Both the Chairman and members wish to know whether the Law Society would take the opportunities of the Review to clearly and better set out and define the roles and duties of RFLs under the relevant legislation including Cap. 159R so as to distinguish them from Hong Kong qualified solicitors and other unqualified persons, such as paralegals and legal managers.

14. On the other hand, members want to ensure that any new proposals made by the Law Society should not adversely affect Hong Kong law firms and foreign law firms in Hong Kong, as well as job opportunities for less experienced local lawyers. In this connection, members stress that the proposals should not have any negative impact on Hong Kong as an international legal services centre. A balanced approach must be struck.

Other views

15. A member notes that Members did not raise any questions on the three Amendment Rules nor consider it necessary to form a subcommittee to study them after they were tabled at the Council meeting of 21 March 2018. He considers that it should have been more appropriate for Members to raise the relevant policy issues during the scrutiny period of the three Amendment Rules.

Follow-up

16. The Subcommittee has written to the Law Society, requesting it to provide information in response to members' concern raised at the meeting on 16 November 2018 and extend the Subcommittee's invitation to its members for their views so as to facilitate the Subcommittee members' discussion on relevant issues in other forums of the Legislative Council.

17. To allow sufficient time for the Subcommittee to complete its scrutiny work and report its work to the House Committee, the Chairman moved a motion at the Council meeting of 21 November 2018 to extend the scrutiny period of the three Commencement Notices to the Council meeting of 9 January 2019. The motion was passed.

Recommendation

18. Although the information from the Law Society is still pending as at the date of this report, the Subcommittee has no objection to the three Commencement Notices and will not propose any amendment to them.

Advice sought

19. Members are invited to note the deliberations and recommendation of the Subcommittee.

Council Business Division 4
Legislative Council Secretariat
11 December 2018

**Subcommittee on
Foreign Lawyers Practice (Amendment) Rules 2018
(Commencement) Notice, Solicitors' Practice (Amendment) Rules 2018
(Commencement) Notice and Summary Disposal of Complaints
(Solicitors) (Amendment) Rules 2018 (Commencement) Notice**

Membership list

Chairman Hon Dennis KWOK Wing-hang

Members Hon Paul TSE Wai-chun, JP
Dr Hon Junius HO Kwan-yiu, JP

(Total : 3 members)

Clerk Mr Lemuel WOO

Legal Adviser Ms Clara TAM