

立法會
Legislative Council

LC Paper No. LS41/19-20

**Legal Service Division Report on
Subsidiary Legislation Gazetted on 24 January 2020**

Tabling in LegCo : Council meeting of 19 February 2020

Amendment to be made by : Council meeting of 18 March 2020 (or that of 22 April 2020 if extended by resolution)

Solicitors (Professional Indemnity) (Amendment) Rules 2020 (L.N. 10)

L.N. 10 is made by the Council of The Law Society of Hong Kong ("the Law Society") under section 73A of the Legal Practitioners Ordinance (Cap. 159) with the prior approval of the Chief Justice. L.N. 10 amends the Solicitors (Professional Indemnity) Rules (Cap. 159M) to clarify certain conditions for making a claim for indemnity under Cap. 159M, and to introduce minor textual amendments to Cap. 159M.

2. The Professional Indemnity Scheme ("PIS"), which is governed by Cap. 159M, was set up to provide indemnity for solicitors against losses arising from claims in respect of any civil liability incurred by solicitors in connection with their practice. The Hong Kong Solicitors Indemnity Fund ("the Fund") was established by the Law Society to provide such indemnity, and the Fund is administered by Hong Kong Solicitors Indemnity Fund Limited ("the Company") subject to such directions, conditions and requirements as may be issued or imposed by the Law Society from time to time. Under rule 17 of Cap. 159M, the Company may either appoint a firm of solicitors from a panel of firms of solicitors appointed by the Council of the Law Society ("the Council"), or appoint a firm of solicitors not from the panel of firms of solicitors appointed by the Council, to act as a panel solicitor to represent persons who are entitled to be provided with indemnity out of the Fund under rule 10 of Cap. 159M ("entitled persons"), and to advise the Company on its obligations under Cap. 159M. The entitled persons include any principal in the firm to which the Company has issued a receipt for the payment of the initial contribution to the Fund, any person employed or working in connection with the business of practising as a solicitor ("Practice") (including any assistant solicitor, any foreign lawyer, any solicitor who is a consultant in the firm, and any trainee solicitor), and any former solicitor or any person who was employed or who worked in connection with the Practice (whether as an assistant solicitor, foreign lawyer, consultant, trainee solicitor or otherwise) and their estate and legal representatives.

3. The main purpose of L.N. 10 is to amend rule 17 to stipulate that unless the contrary has been expressly agreed in writing by the Company, any person seeking indemnity under rule 10 of Cap. 159M can only be represented by the panel solicitor appointed by the Company, and must not instruct any other firm of solicitors to represent them or be provided with indemnity in respect of the costs incurred as a result of instructing any such other firm of solicitors. In conjunction with the amendment to rule 17, L.N. 10 also amends the definition of "related costs" under rule 2 to make it clear that the Company's prior written consent for appointing non-panel solicitors is required before indemnity will be provided to the entitled persons in respect of the costs incurred by the non-panel solicitors.

4. L.N. 10 comes into operation on 1 May 2020.

5. According to Part C of the Legislative Council Brief (no file reference) issued by the Law Society on 24 January 2020, there have been few requests for the appointment of non-panel solicitors by the entitled persons since the setting up of PIS in 1989. However, to ensure the quality of service of firms acting on behalf of the entitled persons and to manage the overall cost borne by the Fund, the Law Society considers it necessary to introduce the amendments in L.N. 10 to clarify the mandatory nature of representation of the entitled persons by panel solicitors, while the Company's discretion under rule 17(2) to appoint a firm of solicitors which is not on the panel appointed by the Council to act as a panel solicitor is preserved.

6. As advised by the Clerk to the Panel on Administration of Justice and Legal Services ("Panel"), the Law Society provided an information paper dated 5 November 2019 (File No.: CB(4)110/19-20(01)) on the proposal to amend Cap. 159M, which was circulated to Panel Members for reference. Panel members did not discuss any matter arising from the information paper.

7. No difficulties have been identified in the legal and drafting aspects of L.N. 10.

Prepared by

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