

LEGISLATIVE COUNCIL BRIEF

(Cap. 159 sub. leg. AM)

Solicitor Advocates (Higher Rights of Audience Certificates) Rules (Commencement) Notice

1. The Solicitor Advocates (Higher Rights of Audience Certificates) Rules (“the Rules”) were gazetted on 10 May 2019. No amendments were made during the negative vetting period.
2. Details of the Rules were set out in the attached previous Legislative Council Brief.
3. Pursuant to section 1 of the Rules, the President of the Law Society appointed 20 January 2020 as the Commencement Date of the Rules.

Date: 18 October 2019



Legislative Council Brief

A. Title of the subsidiary legislation

Solicitor Advocates (Higher Rights of Audience Certificates) Rules

B. Introduction / Background

Legal Practitioners Ordinance (“the Ordinance”)

1. Under section 73(1)(de) of the Ordinance, the Council of the Law Society is empowered to make rules regulating the issue to solicitor advocates of higher rights of audience certificates (“HRA Certificates”) and the form of and other matters relating to the HRA Certificates.
2. Part IIIB of the Ordinance for the HRA came into effect on 22 June 2012.
3. Section 39H(3) of the Ordinance states that for the purposes of the Ordinance, “higher rights of audience” means rights of audience before the High Court and the Court of Final Appeal, whether in civil proceedings, criminal proceedings, or both, but does not include any of those rights that solicitors generally may from time to time have apart from the Ordinance.
4. Section 39N of the Ordinance provides that on the granting by the Assessment Board of an application made under section 39H, the applicant has the HRA in respect of which the Board has granted the application and those rights are exercisable by the applicant as a solicitor.

C. Justification for introducing the subsidiary legislation

5. Section 39P(1) of the Ordinance provides that as soon as practicable after being notified under section 39K(3) of the granting by the Assessment Board of an application in respect of any HRA, the Council must issue to the person by whom the application has been made a certificate in respect of those rights. The Law Society proposed

to introduce the Solicitor Advocates (Higher Rights of Audience Certificates) Rules (“the Rules”) providing a statutory mechanism for the issuance of a HRA Certificate to a solicitor advocate in accordance with section 39P of the Ordinance.

6. Section 39P(2) of the Ordinance stipulates that if under section 39O(1) the person ceases to have HRA (whether or not only for a specified period), any certificate issued to the person under this section in respect of those rights also ceases to have effect.
7. Section 39O(1) of the Ordinance specifies the circumstances whereby a person who has HRA under this Part ceases to have those rights, i.e. the person being adjudged bankrupt, the person’s name ceases to be on the roll of solicitors or the person being suspended from practice as a solicitor.

D. The Rules

8. The Rules set out 4 statutory Forms:
 - a. Form 1 for civil proceedings;
 - b. Form 2 for criminal proceedings;
 - c. Form 3 for both civil and criminal proceedings; and
 - d. Form 4 for civil/criminal proceedings on an earlier date and was additionally granted HRA for civil/criminal proceedings subsequently.
9. The Forms specify the date on which the HRA was granted to the solicitor subject to section 39O(1) of the Ordinance for the loss of HRA.

E. Date of tabling the subsidiary legislation in the Legislative Council and its Commencement Date

10. It is hoped that the Legislative Council will table the Rules at its meeting of 15 May 2019. The Commencement Date is to be appointed by the President of the Law Society by notice published in the Gazette.

F. Contact details of relevant officer

11. The relevant officer for this legislative exercise is Assistant Director, Regulation and Guidance (1) of the Law Society at 3rd Floor, Wing On House, 71 Des Voeux Road Central, Hong Kong (Telephone No. 852-2846 0503).

G. Issuing party and issuance date

12. The Rules were gazetted on 10 May 2019. This brief is prepared by the Law Society on 10 May 2019.

Date: 10 May 2019