

LCQ10: Solicitors practising as a solicitor corporation

Following is a question by the Hon Lam San-keung and a written reply by the Secretary for Justice, Ms Teresa Cheng, SC, in the Legislative Council today (April 6):

Question:

In 2017, the State President pointed out that the Hong Kong Government should be able to "make decisions after discussions and put the decisions into actions". However, quite a number of persons of the legal profession have relayed to me that the law-making process in Hong Kong is lengthy because the Government often "makes no decision after discussion and takes no action after a decision is made" in respect of legislative proposals on which the profession has been consulted. For example, the provisions relating to the incorporation of solicitors' practice (the relevant provisions) in the Legal Services Legislation (Miscellaneous Amendments) Ordinance 1997, which was enacted in as early as June 1997, have not yet been brought into operation. In this connection, will the Government inform this Council:

(1) of the reasons why the relevant provisions have not yet been brought into operation;

(2) given that section 73(1)(a)(i) of the Legal Practitioners Ordinance (Cap. 159) empowers the Council of the Law Society of Hong Kong to make rules relating to the professional practice of solicitors and foreign lawyers, whether it knows the contents and the progress of drafting of the rules and subsidiary legislation relating to the incorporation of solicitors' practice, and when they will be introduced into this Council for scrutiny;

(3) whether it has drawn up a timetable for implementing the relevant provisions and amending the relevant subsidiary legislation; if so, of the details; and

(4) whether it has regularly reviewed the drafting and consultation processes of legislation; if so, of the details; of the measures in place to expedite such processes, so that the legislation in Hong Kong can keep pace with the times?

Reply:

President,

Hong Kong's legal profession currently implements a self-regulatory regime. The Legal Practitioners Ordinance (Cap. 159) (the Ordinance) and its subsidiary legislation provide for the powers and functions of the Law Society of Hong Kong (Law Society) as the regulatory body for solicitors in Hong Kong. The Law Society must, in compliance with the relevant laws,

exercise its powers and perform its functions independently.

Amongst others, section 73(1)(a)(i) of the Ordinance empowers the Council of the Law Society to make rules providing for matters including the professional practice (for example the establishment of solicitor corporations and foreign lawyer corporations), conduct and discipline of solicitors and foreign lawyers. Section 73(2) of the Ordinance requires that every rule made by the Council of the Law Society under the Ordinance shall be subject to the prior approval of the Chief Justice of the Court of Final Appeal (Chief Justice).

In general, the workflow of the relevant legislative work could be summarised as follows:

- (1) The Law Society completes drafting of the draft rules and submits them to the Judiciary for approval-in-principle by the Chief Justice (Note 1). Where necessary, the Constitution and Policy Affairs Division (CPAD) of the Department of Justice (DoJ) will provide comments to the Judiciary;
- (2) The Chief Justice gives approval-in-principle to the draft rules;
- (3) The Law Society vets the content of the draft rules again to ensure no further amendments will be made. The draft rules will then be submitted by the Law Society to the Law Drafting Division (LDD) of the DoJ for vetting of format and styles. In case the proposed rules involves consequential amendments to the Ordinance, CPAD will separately discuss with the Law Society on taking forward these amendments by way of an omnibus bill;
- (4) The Law Society requests LDD to prepare the faired final draft of the rules (Note 2);
- (5) The Law Society submits final version of the draft rules to the Judiciary for final approval by the Chief Justice;
- (6) The Chief Justice gives final approval to final version of the draft rules;
- (7) The rules made by the Law Society or the relevant authorised persons are subject to the "negative vetting" procedure: upon publication in the Gazette, the rules shall be laid on the table of the Legislative Council (LegCo) at its next meeting. Unless the rules have been amended or repealed by resolution within 28 days (or extended deadline) after that sitting, the rules, as originally drafted, will generally commence on the date of its publication in the Gazette.

The power to make rules relevant to the professional practice of solicitor is vested with the Council of the Law Society. When the Law Society exercises its statutory power to make rules in accordance with the Ordinance, the DoJ would only provide the Law Society with limited assistance on law drafting and legislative procedures etc. as requested.

Specifically, the purpose of LDD to assist the Law Society in law drafting is to ensure that the format and styles of the rules drafted by the

Law Society comply with the current drafting practice in Hong Kong, and are consistent with those of Hong Kong legislation in general. Examples of assistance offered by LDD include: vetting the format and styles of the rules drafted by the Law Society; preparing the faired final draft of the rules as requested by the Law Society; advising the Law Society on legislative procedures regarding the gazettal arrangement as may be necessary. Separately, CPAD would provide comments to the Judiciary, as requested, on the content of rules drafted by the Law Society from the legal policy perspective (for example, whether it is consistent with the Basic Law, established principles underlying the legal system).

With regard to various parts of the question raised by the Hon Lam San-keung, having made enquiries with the Law Society, the DoJ replies as follows:

(1) to (3) The Legal Services Legislation (Miscellaneous Amendments) Ordinance 1997 was enacted in June 1997 to amend the Ordinance to include provisions regarding solicitor corporations (Part IIAA) and foreign lawyer corporations (Part IIIA). When the new provisions come into operation, solicitors will be able to practise in Hong Kong in the form of a limited company, which is another mode of practice for law firms in addition to sole proprietorships and partnerships.

Currently, the relevant provisions have not yet come into operation, whereas the exact implementation date depends on the Law Society's progress in completing the drafting of the Solicitor Corporation Rules, the Foreign Lawyer Corporation Rules (jointly referred to as the "Corporation Rules"), and the consequential amendments to the relevant subsidiary legislation under the Ordinance, as well as the timing of obtaining final approval from the Chief Justice. According to the information provided by the Law Society, there is a total of 17 pieces of subsidiary legislation under the Ordinance which have to be amended consequentially to the enactment of the Corporation Rules. Details are at Annex.

As understood by the DoJ, so far the Law Society has only obtained approval-in-principle from the Chief Justice on the Solicitor Corporation Rules. The Foreign Lawyer Corporation Rules and the consequential amendments to the 17 pieces of subsidiary legislation under the Ordinance are still being drafted, and approval from the Chief Justice thereon has not yet been obtained. According to the information provided by the Law Society, the latest progress of the relevant legislative work is as follows:

- Solicitor Corporation Rules: the Law Society is currently discussing with LDD on the format and styles of the Rules; regarding the English draft, based on the revised draft provided by the Law Society to LDD on February 9, 2022, LDD provided the Law Society with the 18th draft on February 15, 2022 and is now awaiting reply from the Law Society; regarding the Chinese draft, based on the revised draft provided by the Law Society to LDD on January 25, 2022, LDD provided the Law Society with the 1st draft (Note 3) (as opposed to the six working drafts in the past) on February 15, 2022 and is now awaiting reply from the Law

Society;

- Foreign Lawyer Corporation Rules: the Law Society is currently discussing with LDD on the format and styles of the Rules; regarding the English draft, based on the revised draft provided by the Law Society to LDD on February 9, 2022, LDD provided the Law Society with the 8th working draft on February 15, 2022 and is now awaiting reply from the Law Society; regarding the Chinese draft, based on the 1st draft provided by the Law Society to LDD on January 25, 2022, LDD provided the Law Society with the 1st working draft on February 15, 2022 and is now awaiting reply from the Law Society;
- Consequential amendments to the 17 pieces of subsidiary legislation under the Ordinance: the Law Society is currently preparing draft legislative amendments with LDD's assistance; LDD has respectively provided the Law Society with a number of Chinese and English drafts in relation to consequential amendments to the 17 pieces of subsidiary legislation under the Ordinance (see latest progress in Annex), which are still pending reply from the Law Society.

As to the work progress of implementing the relevant provisions, since the enactment of the Legal Services Legislation (Miscellaneous Amendments) Ordinance 1997 in June 1997, the DoJ, as requested by the Law Society and the Judiciary, has all along been providing them with assistance and comments in an expeditious and efficient manner as far as practicable, including LDD and CPAD had respectively, for a number of times, provided the Law Society with assistance in drafting of relevant rules and legislative amendments, and the Judiciary with comments.

Furthermore, from June 1997 till now, the Law Society has taken a relative longer time to follow up on a number of occasions, and has requested suspension of the relevant work, key examples include:

- June 1997 – December 2000 (around 3.5 years): the Law Society did not communicate or follow up with the DoJ on the relevant work;
- July 2007 – May 2009 (around 1 year 10 months): the Law Society did not communicate or follow up with the DoJ on the relevant work;
- March 2012 – November 2016 (around 4 years 8 months): In March 2012, LDD provided the Law Society with the 11th draft of the Solicitor Corporation Rules. On November 17, 2016, the Law Society reverted to LDD with a revised English draft (Note 4);
- 2012 – July 2021 (around 9 years 7 months): the Law Society did not provide any draft rules to the Judiciary for approval by the Chief Justice;
- December 2019 – February 2021 (around 1 year 2 months): the Law Society requested suspension of drafting of the Statute Law (Miscellaneous Amendments) Bill 2019. In February 2021, the Law Society proposed a new

round of amendments to the Ordinance and other relevant subsidiary legislation.

The legislative timetable regarding the implementation of solicitor corporations-related provisions wholly depends upon the Law Society. The DoJ has previously taken the initiative to inquire with the Law Society of its legislative timetable for a number of times, yet the Law Society did not respond positively nor provide any specific dates. Therefore, the DoJ does not have the relevant information.

As mentioned at the beginning of this reply, Hong Kong's legal profession currently implements a self-regulatory regime. As the regulatory body for solicitors in Hong Kong, the Law Society shall exercise its statutory power in accordance with the law, based on the actual needs of the sector, to make relevant rules and consequential amendments to the Ordinance. As understood by the DoJ, the Law Society is aware that it is empowered to make rules and is responsible for steering the relevant drafting work. The Law Society indicated that it is the Law Society's priority to complete drafting of the Corporations Rules and consequential amendments to the relevant laws with a view to introducing an additional mode of practice of law firms for the sector to choose from. The DoJ will continue to maintain close communication with the Law Society and, as requested by the Law Society, provide it with necessary assistance regarding law drafting and procedures in implementing the legislative amendments.

(4) All legislation or legislative amendments proposed by the Government are taken forward by the relevant bureaux. Before introducing a bill into LegCo, normally the relevant bureaux will first consult the parties affected by the bill (including through launching public consultation) and the relevant Panel of LegCo.

As the Government's legal adviser, the DoJ, at different stages of the law-making process, provides independent professional legal advice and drafts legislation in accordance with the requirements and instructions of the relevant bureaux. This working mechanism has always been effective.

Separately, in order to keep the statutory laws of Hong Kong up to date, the Law Reform Commission (LRC) Secretariat has embarked upon the task to undertake the Systematic Review of Statutory Laws of Hong Kong. The review of the relevant laws and its progress are still being driven by the responsible bureaux. The LRC Secretariat is now actively co-ordinating and liaising with various bureaux and departments, to assist and facilitate the relevant authorities in reviewing the laws under their policy and work purview in three areas (namely adaptation of laws (Note 5), repeal of obsolete laws, and consolidation of laws). Upon completion of the review, the responsible bureaux will seek to amend the relevant legislation and submit the proposed amendments to LegCo for scrutiny.

Note 1: Before making any rules under section 73(1) of the Ordinance, the Law Society is required to respectively obtain approval-in-principle and final approval from the Chief Justice. It is understood by the DoJ that such arrangement is an internal administrative measure of the Judiciary.

Note 2: To ensure that the format and styles of the rules comply with the current drafting practice in Hong Kong, and are consistent with those of Hong Kong legislation in general.

Note 3: On the nomenclature, "the 1st draft" refers to a draft cleared by a Senior Assistant Law Draftsman or his/her senior. Normally, LDD would have already released a number of "working drafts" providing comments to the Law Society before releasing "the 1st draft".

Note 4: During which LDD did not receive further draft or request for assistance in drafting from the Law Society.

Note 5: The adaptation of laws refers to the process of identifying and amending certain provisions or references in the ordinances and subsidiary legislation that were in force in Hong Kong before July 1, 1997 so that they are consistent with the Basic Law and the status of Hong Kong as a Special Administrative Region of China.