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### Law Society: General

CIRCULAR 20-472 (SD)

21 September 2020

## **SUPERVISION AND TRAINING OF TRAINEE SOLICITORS DURING THE COVID-19 PANDEMIC**

### **Background**

1. As a result of the resurgence of the COVID – 19 pandemic and in response to the Government’s appeal to employers to make flexible work arrangements to reduce the risk of transmission, many law firms have adopted or resumed remote work arrangements.

### **Legislative Requirements on Supervision**

2. The minimum standards of supervision are set out in rule 4A of the Solicitors’ Practice Rules (Cap.159 sub. leg. H) and Principle 2.04 of the Hong Kong Solicitors’ Guide to Professional Conduct, Volume 1 (“Guide”).
3. The arrangements which sole proprietors should put in place in their absence from office are set out in Principle 2.05 of the Guide.
4. Rule 9(1) of the Trainee Solicitors Rules (Cap. 159 sub. leg. J) (“TS Rules”) reads, “*Subject to these rules, a trainee solicitor shall during the whole period of his trainee solicitor contract be actually employed under the trainee solicitor contract in the office of his principal.*”
5. Rule 22 of the TS Rules empowers the Council of the Law Society, in a particular case, to waive in writing the requirements in rule 9 of the TS Rules, subject to such conditions as the Council may impose.

### **Waiver granted by the Council**

6. In view of the need of law firms to take safety precautions and special operational measures during the COVID-19 pandemic, pursuant to its power under rule 22 of the TS Rules, **the Council has resolved to grant a waiver (the “Waiver”) to all trainee solicitors from the requirement to have their training conducted in the offices of their principals subject to the following conditions:**

- (i) The need for remote training and supervision is a direct response to COVID – 19;
  - (ii) Such training and supervision shall continue to take place within Hong Kong; and
  - (iii) Appropriate arrangements (see paragraph 7 below) are put in place to ensure effective supervision of trainee solicitors.
7. What would be the most appropriate and effective supervision arrangements may vary and will depend on the size and other factors pertinent to each firm. The Law Society considers any supervision arrangement should encompass and properly address the following key elements:
- (i) Methods of communication between the principal and the trainee including but not limited to emails, telephone calls, video conferencing or a mix of the different methods of communications;
  - (ii) Frequency of contacts between the principal and the trainee;
  - (iii) Management of workflow of the trainee by the principal;
  - (iv) Monitor of work progress of the trainee by the principal including review, feedback and access to the work of the trainee;
  - (v) The respective obligations of the principal and the trainee under the remote work arrangements;
  - (vi) Alternative arrangements in the event the principal is ill or otherwise unable to fulfil his or her obligations under the remote work arrangements;
  - (vii) Risk management strategies to address issues such as client’s confidentiality (in particular with respect to logistics such as file and document sharing), conflicts of interest, and handling clients’ complaints;
  - (viii) Record of the arrangements that have been put in place in addressing the aforesaid key elements.
8. The Society may from time to time ask for documentary evidence relating to details of any remote work arrangements made during the training of any trainee solicitor.
9. Principals will remain accountable and they must ensure, at all times and notwithstanding the Waiver granted, compliance with the statutory requirements on supervision and further that client protection, professional standards and the quality of training are not undermined or compromised under the remote work arrangements.

#### **Duration of the Waiver**

10. The Waiver operates with retrospective effect from 1 January 2020 and will continue until further notice.

11. The Law Society will monitor the public health conditions and the development of the epidemic closely including taking into account any special work arrangement for Government employees as a reference.

**Current Requirements to which the Waiver does not Apply shall Continue to be Operative**

12. Subject to the Waiver granted by the Council in paragraph 6, all provisions set out in the Trainee Solicitor Contracts - Forms A, B and C shall remain unchanged.
13. Rule 3(2)(b)(ii) of the Admission and Registration Rules (Cap. 159 sub. leg. B) provides that a trainee solicitor seeking admission as a solicitor must submit a Form 4 (Application for a Certificate of Eligibility for Admission as a Solicitor) which shall be accompanied by such documents as the Society may reasonably require. Such information includes but is not limited to information described in paragraph 7 above.
14. Unless expressly provisioned under the Waiver, other rules and requirements, including but not limited to the requirements for approval in cases of secondment (under Rule 9(3A) of the TS Rules) and training outside Hong Kong (Rule 9(4) of the TS Rules), shall continue to be fully operative.

**Enquiries**

15. All enquiries should be sent to [adrg@hklawsoc.org.hk](mailto:adrg@hklawsoc.org.hk).