



21 December 2018

Ms. Vivien Lee
Director, Standards & Development
The Law Society of Hong Kong
3/F Wing On House
71 Des Voeux Road Central
Central, Hong Kong

Re: ACC Hong Kong's Response to the Hong Kong Law Society's FLRR Proposal

Dear Ms. Lee,

The Association of Corporate Counsel, Hong Kong ("ACC Hong Kong" or "we") is grateful for the invitation from the Law Society of Hong Kong (the "Law Society" or "you") to respond to certain proposed amendments to the Foreign Lawyers Registration Rules Cap. 159S ("FLRR"), as described in the Law Society's memorandum dated 2 October 2018. We understand that these amendments would make the following changes, among others: (i) restrict lawyers to practicing only the law of the jurisdiction in which they are qualified ("Proposed Rule 12(1)"); and (ii) increase the ratio of Hong Kong-qualified solicitors to registered foreign lawyers from 1:1 to 2:1 ("Proposed Rule 13(1)") (hereinafter, collectively, the "Proposed FLRR Amendments"). We understand that the Law Society is interested in its members' views on the Proposed FLRR Amendments, and we welcome this opportunity to provide our feedback.

As you are aware, ACC Hong Kong represents the interests of lawyers working for companies and government in Hong Kong. Established in 2003 as the Hong Kong Corporate Counsel Association, we are dedicated to supporting and advancing the in-house legal profession in Hong Kong. We currently have over 900 members, and today we are part of the Association of Corporate Counsel ("ACC"), a global bar association that promotes the common professional and business interests of in-house counsel who work for corporations, associations and other organizations through information, education, networking opportunities and advocacy initiatives. ACC has more than 42,000 members in more than 85 countries working for over 10,000 organizations. Additional information about ACC and ACC Hong Kong is available at <https://www.hkcca.net>.

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Given our broad membership of diverse companies and entities, ACC Hong Kong has a unique perspective on the provision of legal services in Hong Kong and the export of legal services from Hong Kong. The companies that we represent include a significant portion of multi-national and cross-border businesses. They have chosen to locate in Hong Kong because it is a leading financial hub, and they rely on Hong Kong-based law firms for multi-jurisdictional legal advice that is provided conveniently, competently, and efficiently.

Anecdotally, we believe that companies, and by extension, corporate counsel are some of the largest consumers of legal services in Hong Kong on an aggregate basis. Based on our representation of these companies, we have strong concerns that the Proposed FLRR Amendments will negatively impact the legal services sector and companies operating in Hong Kong, and therefore, the city's overall attractiveness as a place to do business. Additionally, we believe the Proposed FLRR Amendments will have effects beyond the borders of Hong Kong, as many companies based elsewhere rely on Hong Kong-based law firms to provide multi-jurisdictional legal services to meet their business needs in Asia. Accordingly, this matter is of interest not just to ACC Hong Kong, but to ACC members around the world.

We appreciate that the Proposed FLRR Amendments are intended to protect the practice of law in Hong Kong and to promote local talent. However, we respectfully submit that they run the risk of adversely impacting the city's legal and financial markets, as well as its business environment, reputation, and global brand. As described in greater detail below, our concerns regarding the Proposed FLRR Amendments fall into the following three major categories:

- **Firstly**, while intended to promote local talent and protect the profession, the Proposed FLRR Amendments may have the result of being anti-competitive, with negative impacts on the legal services sector, which would, in turn, harm businesses operating in the city that depend on the vitality of a robust legal marketplace.
- **Secondly**, the Proposed FLRR Amendments may undermine the Hong Kong government's economic goals and policy direction to remain a leading global financial center and open economy, particularly in the context of initiatives like the Belt and Road Initiative (the "BRI").
- **Finally**, an unintended impact of the Proposed FLRR Amendments may be a restructuring of the legal services sector in a way that is inconsistent with the Law

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Society's own objectives and a departure from the Law Society's historic emphasis on maintaining the quality and integrity of the legal profession in Hong Kong.

We discuss each of these potential impacts in greater detail below.

A. The Proposed FLRR Amendments May Adversely Impact the Legal Services Sector and Business Community

1. Proposed Rule 13(1) Will Limit the Availability, Diversity, and Quality of Counsel

The Law Society's proposal to double the required number of Hong Kong-qualified solicitors for each registered foreign lawyer ("RFL") may result in limitations regarding the availability and diversity of legal counsel. We have found that the current 1:1 ratio of Hong Kong-qualified lawyers to RFLs already creates constraints on law firms and their staffing strategies in Hong Kong to support Hong Kong-based businesses. To comply with the current FLRR ratio requirement, law firms have had to be strategic about developing certain practices areas in Hong Kong, while limiting their capabilities in other areas. In fact, we have observed that lawyers qualified to provide advice on certain matters may not be based in Hong Kong, due to difficulties that law firms have in satisfying the current FLRR ratio.

Changing the ratio of solicitors to RFLs to 2:1 could further discourage law firms from maintaining a diverse group of lawyers representing various practice areas in Hong Kong. We are concerned that this type of structural change would limit the ability of our constituents to meet their legal needs in Hong Kong. In a worst case scenario for companies in the city, law firms may choose to reduce their staff or retreat from Hong Kong altogether in light of increasingly stringent requirements.¹

Another possible, though less likely, consequence of Proposed Rule 13(1) may be that law firms resort to hiring Hong Kong solicitors solely for the purpose of meeting the mandatory ratio requirement. In such a scenario, these Hong Kong-qualified lawyers would not be utilized fully,

¹ South China Morning Post, "Law Society may plug loophole that allows foreign lawyers to work in Hong Kong, prompting fears of an exodus", October 18, 2018, available at <https://www.scmp.com/news/hong-kong/law-and-crime/article/2169022/law-society-may-plug-loophole-allows-foreign-lawyers>

which would impede their own development and unnecessarily divert resources of law firms without any tangible benefit to consumers of legal services.

2. *Proposed Rule 12(1) Will Limit the Discretion and Authority of In-House Counsel*

Proposed Rule 12(1) imposes additional, unnecessary criteria for companies when engaging external counsel by artificially restricting lawyers to practicing only the law of the jurisdiction in which they are qualified. This proposed amendment appears to extend significantly beyond the current limitation on RFLs to refrain from practicing Hong Kong law – an area that the Law Society has historically regulated within its clear scope of jurisdiction. In this regard, we fear that Proposed Rule 12(1) would place undue restrictions on the choice of external counsel on in-house counsel, who are sophisticated consumers of legal services and are well-positioned to ensure that the legal teams they hire are properly managed and supervised.

In our experience, our members in Hong Kong are sophisticated companies and in-house counsel operating in the city and are in the best position to assess their own legal needs. Cross-border transactions and disputes often involve the laws and regulations of many jurisdictions, and restricting RFLs to practicing only the law of the jurisdiction in which they are qualified will result in redundant staffing that will lead to significant inefficiencies and higher costs. Law firms are accountable for the services they provide and clients have legal recourse if law firms commit malpractice. We are satisfied with the existing regime for regulating foreign lawyers and do not see merit in implementing narrow limits on individual lawyers, particularly when lawyers are associated with global law firms that include practitioners with the relevant qualifications who can provide supervision when needed.

Moreover, it is our understanding that the issue of practice of law outside of the jurisdiction in which an attorney is qualified arises most frequently in the context of offshore (e.g., British Virgin Islands (“BVI”)/Cayman) firms in Hong Kong. Lawyers advising on BVI/Cayman laws in Hong Kong (and elsewhere) may not be qualified in all relevant jurisdictions, as the jurisdictions of BVI and Cayman impose no such restrictions on these lawyers. In fact, BVI/Cayman may allow lawyers qualified in certain other jurisdictions to advise on their laws in certain circumstances. In these and other scenarios, companies should have the ability to choose external counsel most appropriate for their needs. If a company determines that a lawyer is competent to advise on the law of a jurisdiction (other than that of Hong Kong) in which the lawyer is not licensed, it should be the company’s choice to proceed. In this regard, we are particularly concerned that Proposed

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Rule 12(1) would strip the business community in Hong Kong of its current choices and further limit competition in Hong Kong's legal marketplace.

With respect to the foregoing, Proposed Rule 12(1) serves no purpose in achieving the Law Society's stated objectives of promoting local talent, protecting the profession, and protecting the public (as broadly speaking, the general public does not engage BVI/Cayman lawyers on a regular basis). It does, however, create an additional barrier to competition and regulatory burden on law firms and seeks to regulate an area that is not regulated in a similar way by the home jurisdictions of those foreign lawyers. On this basis, our view is that the proposed change should be dropped entirely, and the Law Society's focus should be on ensuring (through enforcement) that registered foreign lawyers do not practise Hong Kong law, an area for which the existing regulations are already sufficient.

3. *The Proposed FLRR Amendments Will Increase the Cost and Decrease the Efficiency of Legal Services*

In addition, ACC Hong Kong anticipates that the above-described unintended consequences of the Proposed FLRR Amendments will have a corresponding impact on the efficiency and cost associated with obtaining legal support. Hong Kong is home to companies in a wide array of industries with operations and transactions throughout the region. Companies depend on their in-house counsel to make informed internal decisions on a timely basis. If in-house counsel cannot reliably and conveniently obtain outside legal support in Hong Kong, they will be forced to turn to law firms in other markets, which may result in delays in receiving critical legal input for operational decision-making.

Moreover, law firms that are able to structure their operations to achieve consistency with the Proposed FLRR Amendments will likely face increased costs of doing business, which they will then pass on to the consumers of their services. On the whole, the Proposed FLRR Amendments threaten the vitality of the legal marketplace, affecting not only the consumers of legal services but the economy of Hong Kong, which derives a significant economic and social benefit from the success of these businesses.

B. The Proposed FLRR Amendments May Undermine Hong Kong's Economic Goals and Policy Priorities

1. *The Proposed FLRR Amendments May Adversely Impact Hong Kong's Goal to Remain a Global Financial Center*

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The Law Society has indicated that the Proposed FLRR Amendments are aligned with the interests of Hong Kong and the public policy direction set by Mrs. Carrie Lam Cheng Yuet-ngor (“Mrs. Lam”), the Chief Executive of Hong Kong. We respectfully submit that the Proposed FLRR Amendments are incompatible with Hong Kong’s goal to remain a leading international finance center. In fact, the Proposed FLRR Amendments threaten to undermine Hong Kong’s competitive position.

In her recent 2018 Policy Address², Mrs. Lam stated that one of the government’s goals is to cement Hong Kong’s status as an international finance center, and Hong Kong’s “internationally-aligned legal and regulatory system” was cited as an important factor of success. Mrs. Lam also proposed initiatives to enhance Hong Kong as a leading center for dispute resolution and arbitration. As described above, we believe the Proposed FLRR Amendments would adversely impact the availability, diversity, quality, efficiency, and cost of legal services available in Hong Kong, and the knock-on effects on the capital markets ecosystem would harm Hong Kong’s competitiveness as an international financial center.

2. The Proposed FLRR Amendments May Damage Hong Kong’s Status as an Open Economy and Broader Policy Initiatives

Furthermore, as Mrs. Lam proclaimed in her 2018 Policy Address, Hong Kong prides itself on its economic freedom. Notably, the Heritage Foundation has ranked Hong Kong as the world’s freest economy for 24 consecutive years.³ The anti-competitive consequences of the Proposed FLRR Amendments will negatively impact the city’s economic freedom by limiting the choices of in-house counsel, who depend on Hong Kong-based law firms for a wide range of legal services. This would be detrimental to Hong Kong’s legal industry, with a corresponding negative impact on Hong Kong’s business community and equally important, its reputation. In such circumstances, Hong Kong would certainly risk losing legal talent to regional competitors like Singapore, which would make it more difficult for companies to obtain advice on law in Hong Kong other than Hong Kong law. One of the great advantages of Hong Kong currently is the physical proximity of business and legal professionals, which enables enhanced attorney-client relationships by facilitating in-person meetings.

² “The Chief Executive’s 2018 Policy Address”, available at <https://www.policyaddress.gov.hk/2018/eng/policy.html>

³ The Heritage Foundation, 2018 Index of Economic Freedom, available at <https://www.heritage.org/index/country/hongkong>

In this context, it is worth noting that recent policy priorities of Hong Kong, such as the BRI and the Greater Bay Area Development, are largely predicated upon the connectedness and openness of Hong Kong in relation to other countries in Asia. Hong Kong-based businesses and companies will play an important role in contributing to the investment, trade, and resources that ultimately support the foregoing initiatives. As it currently stands, the numerical limitation on RFLs risks impacting Hong Kong's role in economic growth and development opportunities that have become priorities of both Hong Kong and mainland China. We are concerned that the doubling of the numerical requirement would severely impact Hong Kong's commercial competitiveness and would be a step backwards vis-à-vis other jurisdictions, such as Singapore, that are progressively working to loosen regulations on the legal profession.

C. The Proposed FLRR Amendments Will Not Advance the Law Society's Objectives

1. *The Proposed FLRR Amendments May Damage the Vitality of the Legal Services Sector and Result in Fewer Opportunities for Solicitors*

The Law Society sets out its objectives in its Memorandum of Association.⁴ Amongst others, the Law Society endeavors “[t]o develop and maintain the work of solicitors in all areas of the law, legal practice and legal procedures.” The Law Society has indicated that the Proposed FLRR Amendments are designed to encourage law firms to hire a greater number of Hong Kong-qualified lawyers and boost job opportunities for local graduates. ACC Hong Kong believes the Proposed FLRR Amendments, while well-intentioned, could have the opposite effect.

As described above, the Proposed FLRR Amendments may discourage international law firms from expanding their Hong Kong practices. In a worst case scenario, they would dissuade law firms from establishing or maintaining an office in Hong Kong altogether. Such unintended consequences would not only reduce the number of available positions for both Hong Kong-qualified solicitors and RFLs, it would also result in fewer job opportunities for related service personnel, including paralegals, legal clerks, secretaries, and administrative staff. Even if law firms were to adjust their structures to accommodate the hiring of twice as many Hong Kong-qualified solicitors as RFLs, it is unlikely that the resulting structural changes would be economically viable or sustainable in the long run. Also, such law firms may not provide local

⁴ Memorandum of Association of The Law Society of Hong Kong, available at http://www.hklawsoc.org.hk/pub_e/professionalguide/volume2/default.asp?cap=23#1

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solicitors with meaningful training or development opportunities in an environment where such hiring was based on regulatory dictate rather than commercial need.

2. The Law Society Plays a Vital Role in Ensuring the Competence and Quality of Legal Services

The Law Society provides a vital function in ensuring that Hong Kong’s legal services sector is robust. Its aims include the “promot[ion] of good standards of practice” and “compliance...with relevant laws, codes, regulations and practice directions.” We respectfully submit that an arbitrary ratio of Hong Kong-qualified solicitors to RFLs does not protect the public or ensure the competence of legal professionals. Rather, we believe that the Law Society should focus on enforcing its existing rules applicable to the practice of law, which hold lawyers to high standards of quality, professionalism, and competence.

In today’s competitive marketplace, Hong Kong’s continued viability as a leading financial center depends on having a vibrant and high-quality legal services sector. From our perspective representing hundreds of companies in Hong Kong, the Law Society’s continued attention to ensure the quality and competence of the legal sector is critical to companies in Hong Kong, and significantly more important than imposing further regulations that will limit their choices and operational capabilities.

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Given our unique vantage point, ACC Hong Kong respectfully submits that the best way to ensure the quality and efficiency of the legal industry in Hong Kong is to maintain a legal services sector in which lawyers qualified in different jurisdictions can compete based on their unique areas of expertise in response to the direct needs of their clients. We believe that any regulation of lawyers should have as its primary objective the improvement of legal services to clients. If Hong Kong seeks to remain an international hub for multinational companies and other financial institutions with global business operations, a dynamic and diverse legal workforce is vital to support their wide-ranging and ever-changing needs. Although well-intentioned, the Proposed FLRR Amendments risk creating a protectionist environment that does damage to the city’s legal services sector, business community, and reputation.

We applaud the Law Society for actively soliciting comments on the Proposed FLRR Amendments. We are encouraged by the Law Society’s commitment to understanding the potential impact of the amendments. On behalf of ACC Hong Kong’s more than 900 members,

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potential impact of the amendments. On behalf of ACC Hong Kong's more than 900 members, and ACC members more broadly, we urge you to reconsider the passage of the amendments, taking into account the concerns we have expressed herein. To the extent the Law Society would be interested in further comments or discussion on the Proposed FLRR Amendments, we would welcome the opportunity to meet with you.

Best regards,



Lin Shi
President
Association of Corporate Counsel Hong Kong

Susanna McDonald
Vice President and Chief Legal Officer
Association of Corporate Counsel

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and ACC members more broadly, we urge you to reconsider the passage of the amendments, taking into account the concerns we have expressed herein. To the extent the Law Society would be interested in further comments or discussion on the Proposed FLRR Amendments, we would welcome the opportunity to meet with you.

Best regards,

Lin Shi
President
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Susanna McDonald
Vice President and Chief Legal Officer
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