



THE

LAW SOCIETY
OF HONG KONG

香港律師會

Index Reference:

Legal Practitioners Ordinance,
~~Practice Directions & Rules~~

3/F WING ON HOUSE · 71 DES VOEUX ROAD
CENTRAL · HONG KONG DX-009100 Central 1
香港中環德輔道中71號
永安集團大廈3字樓

TELEPHONE (電話) : (852) 2846 0500
FACSIMILE (傳真) : (852) 2845 0387
E-MAIL (電子郵件) : sg@hklawsoc.org.hk
HOME PAGE (網頁) : <http://www.hklawsoc.org.hk>

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ARRANGEMENTS ON DEATH OF SOLE PRINCIPAL

Forthcoming Amendments to Solicitors' Practice Rules and Foreign Lawyers' Practice Rules

1. Principle 2.06 of Volume 1 of "The Hong Kong Solicitors' Guide to Professional Conduct" provides as follows:

"2.06 Arrangements on death of sole principal

A sole principal must make a will containing provisions for the running of his practice after his death.

Commentary

1. Although it is not essential for him to appoint a solicitor as an executor, if he does, this will greatly facilitate the conduct of his practice after his death.
 2. In any event, clear instructions should be left by the sole practitioner to ensure that his executors are able to make arrangements immediately after his death for the continuance of his practice by a solicitor of sufficient seniority, pending the disposal of the practice.
 3. A personal representative of a deceased solicitor has no power to sign cheques on the client accounts of the deceased sole practitioner. This power is vested in the Council under section 4, Schedule 2 of the Legal Practitioners Ordinance.
 4. The Council has power to control a deceased solicitor's practice in certain circumstances: see section 26B of the Legal Practitioners Ordinance."
2. Amendments to the Solicitors' Practice Rules and the Foreign Lawyers Practice Rules are anticipated to come into effect on 1 September 2000. The amendments will, respectively, require "sole practitioner solicitors" and "sole practitioner foreign lawyers" (see paragraphs 4 and 5 below) to provide information to the Law Society regarding the location of their wills and the identity and contact details of their executors and the solicitors or foreign lawyers appointed to manage their practices.
 3. The purpose of the amendments is to avoid a situation where a sole practitioner dies without having appointed a solicitor (or foreign lawyer, as the case may be) to run his practice until its disposal, so that the Council is faced with the prospect of have to intervene into that practice. Interventions are costly and the costs would have to be met by the beneficiaries of the estate.

4. New rule 5AA of the Solicitors' Practice Rules will apply to "sole practitioners", defined as solicitors practising in their own name or under a firm name, as the sole proprietor of the firm. The following categories of solicitors will come within the ambit of the new rule:
 - (a) sole practitioners practising on their own account;
 - (b) sole principals who employ assistant solicitors and/or engage consultants; and
 - (c) solicitors who practise in a partnership in which they have one or more non-equity partners, but in which they are the sole principal, because in the event of death of the sole principal, there would be no other surviving equity partner/s of the firm with full financial and supervisory control of the practice.
5. New rule 9A of the Foreign Lawyers Practice Rules will apply to "sole practitioner foreign lawyers", defined as foreign lawyers practising in their own name or under a firm name, as the sole proprietor of the foreign firm. The rule will not apply to a sole practitioner foreign lawyer of a foreign firm which is registered with the Law Society as a branch office of an overseas firm.
6. Every sole practitioner, or sole practitioner foreign lawyer, to whom the new rules will apply will be required to advise the Law Society, and inform the Society of any changes within 14 days, of the following particulars:
 - (a) the name, address, telephone number, fax number, telex number and DX number, where appropriate, of:
 - (i) the solicitor who holds an unconditional practising certificate, or the foreign lawyer who holds an unconditional certificate of registration, who has given his consent to his appointment to manage the practice of the sole practitioner, or the sole practitioner foreign lawyer, after his death, pending the disposal or cessation of that practice; and
 - (ii) the executors of the will containing the testamentary provision which provides for the management of his practice after his death; and
 - (b) if the will has been lodged with a third party, the name and address of that party.
7. The records of the Law Society are maintained on a confidential basis.
8. When the new rules come into effect the Law Society will issue a form to enable the necessary particulars to be provided to the Society within 14 days. Sole practitioners and sole practitioner foreign lawyers who will be affected by the new rules should therefore ensure that they are able to provide the necessary particulars to the Law Society within 14 days of the commencement of the new rules.

Any enquiries can be directed to the Assistant Director, Regulation and Guidance on 2846-0503.