



Index Reference :

**Regulations: Legal
Practitioners Ordinance,
Practice Directions and Rules**

CIRCULAR 16-127 (SD)

29 February 2016

LAW SOCIETY GUIDELINES

**CESSATION OF PRACTICE BY FOREIGN FIRMS
(Updated March 2016)**

The Guidelines will come into effect on 1 March 2016.

- **Cessation of Practice means the ceasing of practice as such by a foreign firm in Hong Kong.**

"Cessation" occurs or may occur on:

- (a) the retirement of a sole practitioner; or
- (b) the closure of a practice; or
- (c) the retirement of a partner from a partnership; or
- (d) the amalgamation of 2 existing firms; or
- (e) where an existing firm is dissolved and the partners divide into two or more new firms.

1A If a law firm converts from a general partnership to a limited liability partnership ("LLP") or vice versa, the conversion is not a cessation of practice for the firm. Practice Direction Q therefore does not apply.

- (a) Converting from a general partnership to a LLP

If your firm has been carrying on practice as a general partnership in Hong Kong immediately before becoming a LLP in Hong Kong:

- (i) You are required to complete and submit a LLP Commencement Notification (FP-2) at least 7 days prior to commencement of practice as a limited liability partnership in accordance with section 7AI(1) of the Legal Practitioners Ordinance.

- (ii) You are required to submit the form for Notification of Changes Relating to Particulars in An Application for Registration as a Foreign Firm (FP-4) to report on the change from a general partnership to a LLP and all relevant consequent changes together with the Declaration on Top-Up Insurance Cover for foreign law firms operating as a LLP (FP-1A) within 14 days from the change.
- (b) Converting from a sole proprietorship to a LLP
- (i) If your firm has been carrying on practice as a sole proprietorship in Hong Kong immediately before becoming a LLP in Hong Kong:
 - (ii) You are required to register a foreign lawyer who is to become a partner in the firm by completing and submitting a Form FL at least 4 weeks in advance of the commencement of practice as a LLP.
 - (iii) You are then required to complete and submit a LLP Commencement Notification (FP-2) at least 7 days prior to commencement of practice as a LLP in accordance with section 7AI(1) of the Legal Practitioners Ordinance.
 - (iv) You are required to submit the form for Notification of Changes Relating to Particulars in An Application for Registration as a Foreign Firm (FP-4) to report on the change from a sole proprietorship to a LLP and all relevant consequent changes together with the Declaration on Top-Up Insurance Cover for foreign law firms operating as a LLP (FP-1A) within 14 days from the change.
- (c) Converting from a LLP to a general partnership or a sole proprietorship
- (i) You are required to complete and submit a LLP Cessation Notification (FP-5) at least 7 days prior to cessation of practice as a limited liability partnership in accordance with section 7AI(2) of the Legal Practitioners Ordinance.
 - (ii) You are required to complete and submit the form for Notification of Changes Relating to Particulars in an Application for Registration as a Foreign Firm (FP-4) to report on the change from a limited liability partnership to a general partnership or a sole proprietorship and all relevant consequent changes at least 14 days from the change.

1. Notification to the Society

If your firm intends to cease practice as a law firm altogether, you should notify the Society **at least 8 weeks prior to the date of Cessation** by completing the Notice of Cessation of Practice form ("the Cessation Notice"). The Society must be notified of the firm which will act as your Agent (see paragraph 2 below).

[Click here for a copy of the Cessation Notice](#)

2. **Appointment of Cessation Agent**

The Agent can be a Hong Kong firm or a foreign firm in Hong Kong practising the law of the same jurisdiction of your firm. The Agent should be a firm of at least 2 partners resident in Hong Kong. The Agent should also be authorised to accept service of process on behalf of your firm. Firms which have been appointed as Agent should carefully review the Guidelines prepared by the Society on the duties and responsibilities of such appointment.

Click the link below for:

[Law Society Practice Direction Q
Guidelines on Appointment as an Agent](#)

3. **Notice to the Insurer**

Notice of Cessation of Practice must be given to your insurer.

4. **Notice to Clients**

- (a) You must give sufficient notice to your clients with a view to avoiding any prejudice to your clients' interests and affording your clients adequate opportunity to take such steps as they consider appropriate in the circumstances. What will be sufficient notice will depend upon the particular circumstances of your firm and of the Cessation and it may well be necessary to give notice well before the official notification to the Society (see paragraph 1 above), but in any event not later than the official notification date to the Society. For example there may be files due for completion at about the date of Cessation or you may have a large number of 'live' files to wind-up. Failure to give sufficient notice to clients could amount to an act of negligence and could also lead to disciplinary action.

[Click here for a sample letter to clients](#)

- (b) If you are planning to cease practice, you should be open and frank with your clients when obtaining instructions where it appears likely that the matter will continue beyond your planned date of Cessation. Extra care should be taken to ensure that you do not leave your client unrepresented.

5. **Notice Generally**

- (a) You must provide fellow practitioners, barristers and others (including relevant Government Bureaux and Departments) involved in transactions with your firm, adequate notice to enable the files to be handed over in good time, or to conclude matters with your firm, and to take such other steps as may be appropriate in the circumstances. The recommended period of notice should be at least 8 weeks prior to the date of Cessation.

[Click here for a suggested list of organisations to be notified](#)

- (b) Notification should also be given to the Commissioner of Inland Revenue pursuant to the provisions of the Business Registration Ordinance Cap. 310.

6. **Publication of Cessation**

(a) **Notice in the Law Society's Circulars**

The Society will advise the membership of the firm's intention to cease practice in the weekly circulars once the Cessation Notice has been filed.

(b) **Notice of Rescission**

If the firm changes its decision on Cessation, a Notice of Rescission together with the payment of the fee, as prescribed by Council, must be filed before the expiration of the 8-week notification of the date of Cessation. A Notice of the Rescission will be circulated to the membership in the weekly circulars.

[Click here for the Notice of Rescission](#)

7. **Money in Client Accounts**

Solicitors' Accounts Rules are applicable to foreign firms.

This section should be reviewed in conjunction with the guidance provided in paragraph 8 below.

The funds held in client accounts must be returned to the clients or dealt with as they direct. If a client cannot be traced it is suggested that you should advertise. At the date of Cessation all outstanding balances in the client accounts must be transferred to the firm appointed to act as the firm's Agent in accordance with the directions from Council (pursuant to the firm's application under Section 8 (2) of the Solicitors' Accounts Rules). The firm must notify the Society in writing within 7 days of the date of Cessation of the total aggregate amount in the firm's client accounts transferred to the Agent, such notification to be countersigned by the Agent by way of acknowledgement.

8. **Delivery of Final Accountant's Report**

Accountant's Report Rules are applicable to foreign firms.

(a) **Date of Delivery of Final Accountant's Report**

The Society will confirm the deadline for delivery of the Final Accountant's Report following receipt of the Cessation Notice.

(b) **Legislation**

The legislation dealing with the Final Accountant's Report can be found in:

a. **Section 8 (2) of the Legal Practitioners Ordinance**

This provides that the last date for delivery of the firm's Final Accountant's Report shall be within 6 months from the date on which your firm ceased business.

[Click here for a copy of Section 8 of the Legal Practitioners Ordinance](#)

b. **Accountant's Report Rules**

The Report must also comply with the requirements stated in Rule 8 (2) which states:

“(2) The firm shall deliver the accountant's report to the Council not more than 6 months (or the period prescribed by rules made under section 73(1)(b) of the Ordinance) after the accounting period specified in the report.”

The Council has the power to waive any of the provisions of the Accountant's Report Rules under Rule 12 in any particular case. Any application to the Council should be made *before delivery* of the Final Accountant's Report.

(c) **“Date of Cessation”**

The firm's books should be made up as at the date of Cessation, namely when the firm ceased legal practice. Post-Cessation events should be recorded in supplemental or reconciliation statements to the Society.

9. **Office Accounts**

A firm can maintain its Office Account after the date of Cessation in order to deal with post-Cessation settlement of bills and accounts receivable, etc. **Any correspondence referring to the firm thereafter should make reference to the firm having ceased**

practice which is achieved by clear notification on the firm's stationery e.g. letterhead, compliments slips, receipts etc. (In addition see paragraph 17 below)

10. Preservation of Books of Account

A firm which has ceased practice must also comply with the following requirements:

(a) Solicitors' Accounts Rules

Rule 10 (6)

"Every solicitor shall preserve for at least 6 years from the date of the last entry therein all books, accounts and records kept by him under this rule."

Rule 10 (6A)

"Subject to paragraph (8), the books and accounts, ledgers and records kept by a solicitor under this rule must be kept in Hong Kong."

Rule 10 (8)

"Notwithstanding paragraph (6A), the Council may specifically exempt a foreign lawyer from that paragraph upon such conditions as it thinks it."

(b) Inland Revenue Ordinance Cap. 112

Consideration should also be given to provisions in the Inland Revenue Ordinance e.g. See S.22 on "Assessment of Partnerships" and S.51C on "Business records to be kept".

11. Storage and Destruction of Old Files

- (a) Members should review the Society's Guidance Note on *The Storage and Destruction of Old Files* in circular 12-475 (PA).

[Click here for a copy of circular 12-475 \(PA\)](#)

- (b) Full details on the location of the firm's old files must be given to the Society in the Cessation Notice.
- (c) Consideration should also be given to the relevant provisions in the Limitation Ordinance Cap. 347.

12. **Final Notification of Changes**

(a) **Final Notification of Changes**

The Society will send you the Final Notification of Changes following receipt of the Cessation Notice, which must be completed and filed with the Society within 14 days of the date of Cessation pursuant to rule 9 (2) (b) of the Foreign Lawyers Practice Rules.

[Click here for a copy of the Final Notification of Changes](#)

(b) **Final Declaration as to particulars relating to foreign firms**

It must be filed pursuant to Practice Direction Q5 within 14 days of the date of Cessation.

[Click here for a copy of the Final Declaration as to particulars relating to foreign firms.](#)

(c) **Inland Revenue Ordinance**

Consideration should also be given to the provisions in the Inland Revenue Ordinance Cap. 112.

13. **Outstanding Professional Fees and Undertakings**

The liability of a sole principal, and of partners for the liabilities of their co-partners, or former partners, for outstanding professional fees and undertakings is a continuing one and is not determined or superseded by Cessation.

14. **Certificate of Registration as a foreign lawyer**

Upon cessation of practice, the Certificate of Registration as a foreign lawyer will be deemed to have been suspended until notice has been received of a new employment in another law firm in Hong Kong and of the existence of an appropriate policy of insurance pursuant to rule 6 of the Foreign Lawyers Registration Rules.

15. **The Retainer – "Entire Contract Rule"**

(a) A current retainer with the firm may be "entire", i.e. one has to complete the work for which the retainer was given and therefore it cannot be terminated before completion unless there is good cause and reasonable notice.

(b) It would be prudent to plan in advance and try and complete the retainers to which

the entire contract rule applies before Cessation. If that is not possible, and the retainer will be terminated for good cause, the client should be given adequate notice of the Cessation. Appropriate steps should be taken to ensure the client is not left unrepresented.

16. **Papers to be handed over on termination of retainer**

All documents and materials belonging to a client e.g. title deeds, original wills, codicils, etc., should, subject to any lien, be returned to or disposed of according to the client's directions. (Please see paragraph 11 above)

17. **Destruction of stationery and chops**

Upon Cessation all stationery and chops relevant to the Hong Kong practice with your firm's name should be destroyed, unless they are required for use in dealing with outstanding matters in relation to the firm's Office Account.