



## *Index Reference :*

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

CIRCULAR 22-827 (SD)

16 December 2022

## **22-827 (SD) THE HONG KONG SOLICITORS' GUIDE TO PROFESSIONAL CONDUCT, VOLUME 1 ("THE GUIDE")**

### **Introduction of new Principle 1.09 and related amendments to the Guide**

1. All provisions of Part 10A (Third Party Funding of Arbitration) of the Arbitration Ordinance (Cap. 609) have come into operation since 1 February 2019 and all provisions of Part 10B (Outcome Related Fee Structure Agreement for Arbitration) of the Arbitration Ordinance (Cap. 609) and the Arbitration (Outcome Related Fee Structures for Arbitration) Rules have come into operation since 16 December 2022.
2. As a result of the aforementioned pieces of legislation, a new Principle, Principle 1.09 is included in the Guide. Principle 1.09 provides as follows :-

#### ***"1.09 Statutory provisions overriding the Guide***

***Where applicable a solicitor shall comply with the statutory provisions to ensure that no principle in the Guide or a provision in the Practice Directions or applicable law is breached.***

#### ***Commentary***

1. *The provisions of the Arbitration and Legal Practitioners Legislation (Outcome Related Fee Structures for Arbitration) (Amendment) Ordinance 2022, Part 10B, Arbitration Ordinance (Cap. 609) ("ORFSO") and the Arbitration (Outcome Related Fee Structures for Arbitration) Rules ("ORFSR"), Part 10B, Arbitration Ordinance (Cap. 609) (collectively "ORFS") impose specific statutory obligations on a solicitor which override provisions of the Guide. See Principle 4.07 Commentary 3, Principle 4.16, Principle 4.17 and its Commentary 4, Principle 5.01 Commentary 9, Principle 5.02 Commentary 4, Principle 5.04 Commentary 3, Principle 5.05 Commentary 2, Principle 5.07 Commentary 3, Principle 5.14 Commentary 2, Principle 5.19 Commentary, Principle 5.22 Commentary 13, Principle 7.02 Commentary 8, Principle 12.04 Commentaries 1, 6 to 7 and Principle 12.05 Commentaries 1 and 4.*



2. *The provisions of the Third Party Funding of Arbitration, Part 10A, Arbitration Ordinance (Cap. 609) ('TFA') impose specific statutory obligations on a solicitor which override provisions of the Guide. See Principle 3.01 Commentaries 5 and 10, Principle 4.16, Principle 4.17 and its Commentaries 4 to 5, Principle 5.01 Commentary 9, Principle 5.14 Commentary 2, Principle 5.19 Commentary, Principle 5.22 Commentary 13, Principle 7.02 Commentary 8, Principle 12.04 Commentary 6 and Principle 12.05 Commentary 4.*
3. *In the case of TFA, a solicitor should ensure the TFA agreement, process and conduct comply with (a) the Code of Practice issued under Section 98P of the Arbitration Ordinance (Cap. 609) and (b) relevant provisions of Part 10A of the Arbitration Ordinance (Cap. 609)."*
3. Consequential amendments are made to [Chapters 1, 3, 4, 5, 7 and 12 of the Guide](#).
4. The major consequential amendments are :-
  - a. Principle 4.16 of the Guide is amended to make it clear that the prohibition against a solicitor's sharing of profits costs with a person other than a practising solicitor is subject to Parts 10A and 10B of the Arbitration Ordinance (Cap. 609).
  - b. Principle 4.17 of the Guide is amended to make it clear that where permitted under the law e.g. under the Arbitration Ordinance (Cap. 609), a solicitor may enter into a contingency fee arrangement in contentious proceedings.
  - c. New Commentaries 6 and 7 to Principle 12.04 of the Guide and a new Commentary 4 to Principle 12.05 of the Guide are introduced to confirm the applicability of the notes for guidance in agreeing fees with a barrister as set out in Circular 00-334(PA) where fees are agreed with a barrister under ORFS or TFA (as defined in the new Principle 1.09) and to remind Members to include appropriate terms in the agreement with a barrister for a barrister's fees payable under ORFS or TFA (as defined in the new Principle 1.09) and to remind Members to consider advising clients to enter into an ORFS agreement directly with the barrister to cover for the uplifted portion.
5. This Circular serves as an Addendum to the Guide.
6. This Circular is mandatory.
7. All enquiries should be sent by email to  
Assistant Director, Regulation and Guidance  
Email address: [adrg2@hklawsoc.org.hk](mailto:adrg2@hklawsoc.org.hk)