

# CHAPTER 1

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## USE AND INTERPRETATION OF THIS GUIDE

This Guide is divided into chapters comprising Principles and Commentaries. Chapter 15 is primarily concerned with the powers of the Law Society of Hong Kong ('Law Society') and applicable procedures in relation to allegations of misconduct. For this reason, it does not contain Principles and Commentaries. The headings for the Principles indicate their subject matter. The language is deliberate. If there is a compelling obligation to advise, act or cease to act, this will be indicated by the words 'must' or 'shall'. The phrase 'a solicitor is under a duty' and 'a solicitor is obliged to' carries the same mandatory obligation. Any breach of such Principles will be a disciplinary matter.

In many instances there is room for discretion, usually coupled with guidance about the steps to be taken by the prudent solicitor. The words 'should', 'may' or the context itself will make it clear that a discretion exists. Breaches of these guidelines *may* incur sanctions.

## GENDER AND NUMBER CLAUSE

In this Guide words and expressions importing the masculine gender include the feminine and neuter genders and words and expressions in the singular include the plural and words and expressions in the plural include the singular.

## PRINCIPLES OF PROFESSIONAL CONDUCT

### 1.00 Upholding the Basic Law

**A solicitor shall uphold The Basic Law of the Hong Kong Special Administrative Region of the People's Republic of China.**

#### ***Commentary***

The Basic Law is the constitutional document of the Hong Kong Special Administrative Region of the People's Republic of China. It forms the foundation for legal practice in Hong Kong. A solicitor shall act in a way that upholds the constitutional principle of the rule of law enshrined in the Basic Law.

added on  
27/07/2023 as per  
Circular 23-485

### **1.01 Rule 2 of the *Solicitors' Practice Rules* (Cap. 159 sub. leg. H)**

**'A solicitor shall not, in the course of practising as a solicitor, do or permit to be done on his behalf anything which compromises or impairs or is likely to compromise or impair—**

- (a) his independence or integrity;**
- (b) the freedom of any person to instruct a solicitor of his choice;**
- (c) his duty to act in the best interests of his client;**
- (d) his own reputation or the reputation of the profession;**
- (e) a proper standard of work; or**
- (f) his duty to the court.'**

#### ***Commentary***

Rule 2 of the *Solicitors' Practice Rules* (Cap. 159 sub. leg. H) sums up the basic principles of conduct governing the professional practice of solicitors. The principles set out in the Rule are the bedrock of a solicitor's practice and should always be kept in mind.

### **1.02 The general principles of professional conduct apply to all solicitors, trainee solicitors and registered foreign lawyers whether employed or not.**

#### ***Commentary***

1. As to trainee solicitors, see *Legal Practitioners Ordinance* (Cap. 159), *Trainee Solicitors Rules* (Cap. 159 sub. leg. J) and other applicable statutory and professional rules.
2. As to registered foreign lawyers, see *Legal Practitioners Ordinance* (Cap. 159), *Foreign Lawyers Practice Rules* (Cap. 159 sub. leg. R) and other applicable statutory and professional rules.

### **1.03 Conduct subject to discipline**

**A solicitor is an Officer of the Court (see section 3(2) of the *Legal Practitioners Ordinance* (Cap.159)), and should conduct himself appropriately.**

### **Commentary**

As an Officer of the Court, proper standards of behaviour whether in his practice or in his independent business activities are required of a solicitor as a member of an honourable profession.

## **1.04 Sources**

**The requirements of a solicitor's professional conduct are derived from both statutory and non-statutory sources.**

### **Commentary**

1. The principal statutory provisions which regulate solicitors' professional conduct include:
  - (a) the *Legal Practitioners Ordinance* (Cap. 159) and subsidiary legislation;
  - (b) the *Rules of the High Court* (Cap. 4 sub. leg. A).
2. Non-statutory sources include:
  - (a) the common law, which has developed and elaborated the basic principles of conduct;
  - (b) Law Society guidance on conduct, including:
    - (i) this Guide;
    - (ii) Law Society Circulars;
    - (iii) guidance issued by the Guidance Committee;
    - (iv) Practice Directions issued by the Council.
  - (c) decisions of the Solicitors' Disciplinary Tribunal and the court.
3. Many of the standards and obligations of professional conduct are derived from decisions and dicta by the judges in cases involving contract, tort, fiduciary duties, interlocutory issues, appeals against disciplinary findings and the criminal law. However, ethical standards and obligations stand apart from the legal sources. They have been established by lawyers as standards by which they will be bound. Some ethical standards and obligations are higher than the requirements of the law.

For the law affecting solicitors' practice reference can be made to appropriate texts such as Wilkinson & Sandor, *The Professional Conduct of Lawyers in Hong Kong* (LexisNexis Hong Kong, 2008) and Wilkinson & Sandor's *Student Edition* of the same text, A.M. Dugdale and K.M. Stanton, *Professional Negligence* (London: Butterworths, 1998), Frederic T. Horne, *Cordery's Law Relating to Solicitors*, 8th

edition (London: Butterworths, 1988) and The Hon. Mr. Justice Ma, *Professional Conduct and Risk Management in Hong Kong*, (Sweet & Maxwell Hong Kong, 2007).

### 1.05 Keeping abreast of changes

**A solicitor should keep abreast of changes in the statutory rules and non-statutory guidance governing solicitors' professional conduct as are published from time to time by the Law Society.**

#### ***Commentary***

1. The Law Society's Circulars announce rule changes, and reproduce or summarise major new requirements of professional conduct. They may be mandatory or advisory.
2. The Law Society's Standards and Development Department gives written or telephone advice on the requirements of professional conduct. If necessary, an opinion can be sought from the Guidance Committee. Advice is usually given on a confidential basis. This edition of the Guide sets out the law and practice in effect as at 1 September 2012. Readers are advised to check whether the Law Society's Circulars included in this Guide are still in force or have been amended from time to time.

### 1.06 The Law Society

**The Law Society registered as a company limited by guarantee under the *Companies Ordinance* (Cap. 32) is the professional body representing solicitors in Hong Kong as well as exercising statutory functions in the regulation of solicitors, trainee solicitors and registered foreign lawyers.**

#### ***Commentary***

1. The Law Society was incorporated on 19 March 1907. Its objects include:
  - (a) to support and protect the character, status and interests of solicitors in Hong Kong,
  - (b) to establish and promote good standards of practice and to repress malpractice, and
  - (c) to ensure compliance by solicitors with relevant laws, codes and regulations.

For full objects, see Clause 3 of the Law Society's Memorandum of Association.

2. By article 6 of the Law Society's Articles of Association, every member of the Law Society is bound by the Articles of Association and all Practice Directions, rules and regulations from time to time of the Law Society including but not limited to those relating to continuing professional development, risk management education, remuneration for professional charges and other charges connected with practice as a solicitor in Hong Kong and each member is deemed to have given an undertaking to the Law Society to abide by all such Practice Directions, rules and regulations and the Articles of Association. By article 6A of the Articles of Association this obligation is extended to associate members.
3. The Council has by Practice Direction I.2. determined that the standards of practice required of solicitors in Hong Kong shall be those set out in this Guide as revised from time to time.
4. Non-practising solicitors who are not members of the Law Society, trainee solicitors, registered foreign lawyers and employees of solicitors shall have regard to the Principles set out in this Guide as they are also subject to the jurisdiction of the Solicitors' Disciplinary Tribunal (see section 9A(1) of the *Legal Practitioners Ordinance* (Cap. 159)).

## **1.07 Information Communication Technology**

**A solicitor using information communication technology should endeavour to ensure within the parameters of technology, information and knowledge available at the time of use, that no Principle in the Guide or a provision in the Practice Directions or applicable law is breached by such use.**

### ***Commentary***

Solicitors may use the available information and knowledge available at the time to determine whether to adopt a particular approach to the use of information communication technology. For examples of non mandatory guidelines see Circular 04-604, ISO/IEC 17799:2005 and ISO/IEC 27001:2005 (see also Principle 8.01 Commentary 31).

## 1.08 Practice outside Hong Kong

**A solicitor when practising as a Hong Kong solicitor outside Hong Kong remains bound by the general principles of professional conduct which apply to him as a Hong Kong solicitor.**

### *Commentary*

1. The Principles and Commentaries in this Guide apply to practice outside Hong Kong with any modification necessitated by local conditions.
2. In addition to the provisions of Commentary 1, the Council has adopted as the basic code for solicitors practising outside Hong Kong the International Bar Association's International Code of Ethics (set out below) whenever the same is not inconsistent with this Principle.
3. In the absence of an express application of local rules to the solicitor as a foreign lawyer, a solicitor should nevertheless respect the rules of conduct applied to local lawyers. Where the structure and sphere of activity of the local legal profession or professions differ substantially from those of Hong Kong solicitors, it may be inappropriate or impossible for a solicitor to comply in every particular with the rules of conduct applicable to the local profession or professions, or it may be doubtful which rules of conduct should be applied. In such circumstances, the solicitor should observe the standards of conduct applicable to the local lawyers to the extent this can be done without infringing the rules applicable to Hong Kong solicitors and without hindering the proper exercise of his profession.
4. When attesting a conveyancing document overseas for use in Hong Kong, a solicitor must ensure that he complies with the appropriate laws and regulations applicable in Hong Kong (see Circular 00-127).



## 1.09 Statutory provisions overriding the Guide

added on  
16/12/2022 as per  
Circular 22-827

**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).

## **APPENDICES**

### **PRINCIPLE 1.07**

**CIRCULAR 04–604**

**29 November 2004**

## **GUIDELINES**

### **Guidelines on E-mail for Solicitors**

The Law Society's Management and Technology Committee has prepared a revised set of Guidelines on E-mail to assist members to consider 'best practice' in relation to E-mail. Members should note the Guidelines do not create or extend or define the scope of any duties of professional conduct. These Guidelines have been adapted, with permission, from the Guidelines published by the Law Society of England and Wales.

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

Circular 03-490 is superseded.

## **PRINCIPLE 1.08 COMMENTARY 2**

### **INTERNATIONAL CODE OF ETHICS OF THE INTERNATIONAL BAR ASSOCIATION**

Adopted by the Council of the Law Society as the basic code for solicitors practising outside the jurisdiction

#### **Preamble**

The International Bar Association is a federation of National Bar Associations and Law Societies with full or sustaining organisational members and individual members. Most of the full or sustaining organisational members have established Codes of Legal Ethics as models for or governing the practice of law by their members. In some jurisdictions these Codes are imposed on all practitioners by their respective Bar Associations or Law Societies or by the courts or administrative agencies having jurisdiction over the admission of individuals to the practice of law.

Except where the context otherwise requires, this Code applies to any lawyer of one jurisdiction in relation to his contacts with a lawyer of another jurisdiction or to his activities in another jurisdiction.

Nothing in this Code absolves a lawyer from his obligation to comply with such requirements of the law or of rules of professional conduct as may apply to him in any relevant jurisdiction. It is a re-statement of much that is in these requirements and a guide as to what the International Bar Association considers to be a desirable course of conduct by all lawyers engaged in the international practice of law.

The International Bar Association may bring incidents of alleged violations to the attention of relevant organisations.

#### **Rules**

1. A lawyer who undertakes professional work in a jurisdiction where he is not a full member of the local profession shall adhere to the standards of professional ethics in the jurisdiction in which he has been admitted. He shall also observe all ethical standards which apply to lawyers of the country where he is working.
2. Lawyers shall at all times maintain the honour and dignity of their profession. They shall in practice as well as in private life, abstain from any behaviour which may tend to discredit the profession of which they are members.
3. Lawyers shall preserve independence in the discharge of their professional duty. Lawyers practising on their own account or in

partnership where permissible, shall not engage in any other business or occupation if by doing so they may cease to be independent.

4. Lawyers shall treat their professional colleagues with the utmost courtesy and fairness.

Lawyers who undertake to render assistance to a foreign colleague shall always keep in mind that the foreign colleague has to depend on them to a much larger extent than in the case of another lawyer of the same country. Therefore their responsibility is much greater, both when giving advice and when handling a case.

For this reason it is improper for lawyers to accept a case unless they can handle it promptly and with due competence, without undue interference by the pressure of other work. To the fees in these cases rule 19 applies.

5. Except where the law or custom of the country concerned otherwise requires, any oral or written communication between lawyers shall in principle be accorded a confidential character as far as the court is concerned, unless certain promises or acknowledgements are made therein on behalf of a client.
6. Lawyers shall always maintain due respect towards the court. Lawyers shall without fear defend the interests of their clients and without regard to any unpleasant consequences to themselves or to any other person.

Lawyers shall never knowingly give to the court incorrect information or advice which is to their knowledge contrary to the law.

7. It shall be considered improper for lawyers to communicate about a particular case directly with any person whom they know to be represented in that case by another lawyer without the latter's consent.
8. A lawyer should not advertise or solicit business except to the extent and in the manner permitted by the rules of the jurisdiction to which that lawyer is subject. A lawyer should not advertise or solicit business in any country in which such advertising or soliciting is prohibited.
9. A lawyer should never consent to handle a case unless:
  - (a) the client gives direct instructions, or
  - (b) the case is assigned by a competent body or forwarded by another lawyer, or
  - (c) instructions are given in any other manner permissible under the relevant local rules or regulations.

10. Lawyers shall at all times give clients a candid opinion on any case. They shall render assistance with scrupulous care and diligence. This applies also if they are assigned as counsel for an indigent person.

Lawyers shall at all times be free to refuse to handle a case, unless it is assigned by a competent body.

Lawyers should only withdraw from a case during its course for good cause, and if possible in such a manner that the client's interests are not adversely affected.

The loyal defence of a client's case may never cause advocates to be other than perfectly candid, subject to any right or privilege to the contrary which clients choose them to exercise, or knowingly to go against the law.

11. Lawyers shall, when in the client's interest, endeavour to reach a solution by settlement out of court rather than start legal proceedings.

Lawyers should never stir up litigation.

12. Lawyers should not acquire a financial interest in the subject matter of a case which they are conducting. Neither should they, directly or indirectly, acquire property about which litigation is pending before the court in which they practise.
13. Lawyers should never represent conflicting interests in litigation. In non-litigation matters, lawyers should do so only after having disclosed all conflicts or possible conflicts of interest to all parties concerned and only with their consent. This rule applies to all lawyers in a firm.
14. Lawyers should never disclose, unless lawfully ordered to do so by the court or as required by statute, what has been communicated to them in their capacity as lawyers even after they have ceased to be the client's counsel. This duty extends to their partners, to junior lawyers assisting them and to their employees.
15. In pecuniary matters lawyers shall be most punctual and diligent. They should never mingle funds of others with their own and they should at all times be able to refund money they hold for others. They shall not retain money they receive for their clients for longer than is absolutely necessary.
16. Lawyers may require that a deposit is made to cover their expenses, but the deposit should be in accordance with the estimated amount of their charges and the probable expenses and labour required.
17. Lawyers shall never forget that they should put first not their right to compensation for their services, but the interests of their clients and the exigencies of the administration of justice.

The lawyers' right to ask for a deposit or to demand payment of out-of-pocket expenses and commitments, failing payment of which they may withdraw from the case or refuse to handle it, should never be exercised at a moment at which the client may be unable to find other assistance in time to prevent irreparable damage being done.

Lawyers' fees should, in the absence of non-applicability of official scales, be fixed on a consideration of the amount involved in the controversy and the interest of it to the client, the time and labour involved and all other personal and factual circumstances of the case.

18. A contract for a contingent fee, where sanctioned by the law or by professional rules and practice, should be reasonable under all circumstances of the case, including the risk and uncertainty of the compensation and subject to supervision of a court as to its reasonableness.
19. Lawyers who engage a foreign colleague to advise on a case or to cooperate in handling it, are responsible for the payment of the latter's charges except where there is express agreement to the contrary. When lawyers direct a client to a foreign colleague they are not responsible for the payment of the latter's charges, but neither are they entitled to a share of the fee of this foreign colleague.
20. Lawyers should not permit their professional services or their names to be used in any way which would make it possible for persons to practise law who are not legally authorised to do so.  
  
Lawyers shall not delegate to a legally unqualified person not in their employ and control any functions which are by the law or custom of the country in which they practise only to be performed by a qualified lawyer.
21. It is not unethical for lawyers to limit or exclude professional liability subject to the rules of their local bar association and to there being no statutory or constitutional prohibitions.

## PRINCIPLE 1.08 COMMENTARY 4

CIRCULAR 00–127

2 May 2000

### ATTESTATION, CERTIFICATION AND NOTARIZATION OF DOCUMENTS BY HONG KONG SOLICITORS AND NOTARIES OUTSIDE HONG KONG

The Council wishes to draw members' attention to the following matters:-

1. Declarations/Affidavits taken by Hong Kong Solicitor outside Hong Kong

A solicitor is not allowed to take an oath or a declaration under the *Oaths and Declarations Ordinance* (Cap. 11) outside Hong Kong because the power to do so is confined to the jurisdiction of Hong Kong.

2. Attestation and Certification of Documents for use in Hong Kong by Hong Kong Solicitors outside Hong Kong

A Hong Kong solicitor holding a current practising certificate may:

1. attest the execution of documents; and
2. certify copy documents

for use in Hong Kong outside Hong Kong

3. Notarization of Documents by Notary Public outside Hong Kong

A Notary Public may not notarize a document or otherwise exercise his office as notary outside Hong Kong for the following reasons:-

- (a) A Notary is appointed as such for and in Hong Kong only.
- (b) The Notarial Faculty issued to a Notary bears the following words:

'You may henceforward at the Colony of Hong Kong and not in any other place wheresoever exercise such office of Notary .....

and under Section 14(1) of the *Hong Kong Reunification Ordinance* (Instrument A601):-

'Every Notary public who immediately before 1 July 1997 was registered on the register of notaries public kept by the Registrar of the High Court under Section 41 of the *Legal Practitioners Ordinance* (Cap. 159) shall on and after that date continue to be a notary public with all the powers which immediately before that date were exercisable by a notary public under the law of Hong Kong.'

4. Identification of Signatory to Document executed outside Hong Kong by Attesting Solicitor

An attesting solicitor should identify a signatory to a document executed outside Hong Kong in the same manner as if the document were executed in Hong Kong, i.e. by means of documentary evidence, or in the absence of such evidence, a statutory declaration or declarations to be made by the signatory and/or others who are in a position to identify the signatory.

5. Circular 97-227 is superseded.