

# CHAPTER 4

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#### 4.01 Inform clients about costs

**On taking instructions a solicitor should normally give his client the best information he can under the circumstances about the likely costs of the matter. The solicitor should discuss with the client how the costs and disbursements are to be met and must consider whether the client (if an individual) may be eligible and should apply for legal aid (including legal advice and assistance) or the assistance of the Duty Lawyer Service. The solicitor should also consider whether the client's liability for costs may be covered by insurance.**

#### *Commentary*

1. A solicitor should ensure that his client is given an explanation by a person with the appropriate competence about the work which is likely to be involved in carrying out his instructions and the time which may be taken.
2. Wherever possible, a solicitor should when requested by a client give an estimate of the likely costs of acting in a particular matter. If, because of the nature of the work, a solicitor cannot give even an approximate estimate of his costs and disbursements, he should inform his client accordingly and in that case should give such a general forecast as he can, with the indication of the method by which his fees will be calculated, taking care that his client is kept informed about the costs as the matter proceeds.
3. When giving estimates, a solicitor should take care to ensure that he is not binding himself to an agreed fee unless such is his intention. Clear and appropriate words should be used to indicate the nature of the estimate. To give an estimate which has been pitched at an unrealistically low level solely to attract the work and subsequently to charge a higher fee is improper because it misleads the client as to the true or likely cost. Regard should also be had to Principle 4.03 and its Commentary.
4. Disbursements are included in the definition of costs in the *Legal Practitioners Ordinance* (Cap. 159) section 2. Disbursements have been defined as 'such payments as the solicitor in the due discharge of his duty is bound to make (whether or not his client furnishes him with the money for the purpose or with money on account) as for example court fees, barrister's fees, expenses of witnesses, agents, stationers or printers'.
5. In all matters a solicitor must consider with his client whether the likely outcome will justify the expense or risk involved. It is in the interests of both the solicitor and the client that the solicitor's advice on these issues should be confirmed to the client in writing at the outset and at appropriate stages thereafter.

6. A solicitor may advertise his fees but any publicity concerning charges or a basis of charging must comply with the Solicitors' Practice Promotion Code.
7. Rule 3 of the *Solicitors' Practice Rules* (Cap. 159 sub. leg. H) provides:  
'A solicitor shall not hold himself out or allow himself to be held out directly or indirectly and whether or not by name as being prepared to do professional business in contentious matters at less than the scale fixed by Rules of Court or by any other enactment or in any other matters at less than such scale as may from time to time be fixed by any enactment or by the Society.'  
See section 56 of the *Legal Practitioners Ordinance* (Cap. 159).
8. If a client is not legally aided but the matter is contentious he should be informed at the outset of the case and at appropriate stages thereafter:
  - (a) that in any event he will be personally responsible for payment of his own solicitor's bill of costs regardless of any order for costs made against his opponent;
  - (b) of the probability that if he loses he will have to pay his opponent's costs as well as his own;
  - (c) that even if he wins his opponent may not be ordered to pay the full amount of the client's own costs and may not be capable of paying what he has been ordered to pay; and
  - (d) that if his opponent is legally aided he may not recover his costs even if successful. See section 16C of the *Legal Aid Ordinance* (Cap. 91).
9. Where a solicitor considers that his client may be eligible for legal aid including the Supplementary Legal Aid Scheme or the assistance of the Duty Lawyer Service, he must inform the client of its availability where to apply for it and must recommend that the client apply for it.
10. If such advice is given but the client chooses not to apply for legal aid or the assistance of the Duty Lawyer Service, either a written note of the advice given should be made and put on the file or, preferably, the advice given should be recorded in a letter to the client.
11. The duty to advise as to legal aid does not only apply at the outset of the retainer but, as the matter proceeds, it is the duty of a solicitor to ensure that any material change in his client's means of which he is aware is at once taken into consideration in the context of eligibility for legal aid. Equally a solicitor acting for an aided person has a duty to report to the Director of Legal Aid any wilful failure by his client to comply with any regulation as to the provision of information which includes a disclosure of a change in his financial circumstances (see also Principle 5.22 Commentary 5).

12. If a client is not entitled to legal aid or chooses not to apply for legal aid or the assistance of the Duty Lawyer Service, a solicitor would be well advised to obtain sufficient funds for his costs and disbursements to cover the entire case. He should reach a clear agreement with the client, recorded in writing, on costs and disbursements, for example the amount to be charged, the basis on which they are calculated, when and the stages at which they will be payable.
13. If a client is legally aided in civil proceedings, he should be informed at the outset of the case and at appropriate stages thereafter:
  - (a) of the effect of the statutory charge on his case;
  - (b) that if he loses the case he may still be ordered by the Court to contribute to his opponent's costs even though his own costs are covered by legal aid;
  - (c) that even if he wins, his opponent may not be ordered to pay the full amount of his costs and may not be capable of paying what he has been ordered to pay; and
  - (d) of his obligation to pay any contribution assessed and of the consequences of any failure to do so.
14. If a client is legally aided in criminal proceedings, he should be informed at the outset of the case that he may be liable to pay a contribution and the effect of not paying it.
15. In criminal litigation, a solicitor shall as soon as practicable and not more than seven days after receiving instructions, confirm by letter to the client, inter alia, the services to be provided by the firm and the fee to be charged or an estimate of such fee (see rule 5D of the *Solicitors' Practice Rules* (Cap. 159 sub. leg. H) and Principle 4.02 Commentary 3). Principle 4.02 Commentary 3 is applicable equally to persons who give instruction under rule 5D of the *Solicitors' Practice Rules* (Cap. 159 sub. leg. H).
16. In matters other than criminal litigation, it would be advisable for a solicitor to draft and prepare a retainer letter identifying the scope of service to be provided and the costs to be charged in order to avoid any potential dispute with the client and the client should sign the letter in confirmation.
17. Solicitors are prohibited from taking cases referred to them by recovery agents as they will be in breach of Principle 3.01 and Circular 12-176.

## 4.02 Agreed fees must be recorded

**When fees have been agreed with a client the solicitor must promptly provide the client with a written record of the agreement, signed by the solicitor stating what the fee is, and what it covers and whether it includes disbursements.**

### ***Commentary***

1. If there is an agreement between a solicitor and his client that the solicitor is to be remunerated at an agreed fee, the solicitor is bound to do the work covered by the agreement for that fee, even though circumstances arise which make the work unremunerative for the solicitor.
2. Sections 56 and 58–62 of the *Legal Practitioners Ordinance* (Cap. 159) make provision for agreements on fees in non-contentious and contentious business respectively. The effect of such provisions is to restrict a client's right to challenge a bill, subject to safeguards.
3. Section 56 of the *Legal Practitioners Ordinance* (Cap. 159) requires an agreement as to remuneration in non-contentious matters to be in writing and signed by the person to be bound by it or his agent. Section 58 requires an agreement as to remuneration in contentious matters to be in writing. Rule 5D of the *Solicitors' Practice Rules* (Cap. 159 sub. leg. H) provides that an agreement as to fees in criminal matters must be in writing and signed by the client and the solicitor.
4. Under rule 9(2) of the *Solicitors' Accounts Rules* (Cap. 159 sub. leg. F), money received for or on account of an agreed fee which is paid by a client to his solicitor must be paid into an office account. This applies whether or not the work for which the fee was paid has been undertaken.
5. If requested, an itemized bill of costs must be rendered to a client if the amount of costs exceeds \$10,000 even though there has been an agreed fee. If there are barrister's fees, these must be separately disclosed even if the total agreed sum includes barrister's fees: Practice Direction B.1.

### 4.03 Provide details of fees

If no fee has been agreed or estimate given, a solicitor should tell his client how the fee will be calculated, for example, whether on the basis of an hourly rate plus any mark-up, a percentage of the value of the transaction or a combination of both, or any other proposed basis. The solicitor should tell his client what other reasonably foreseeable payments he may have to make either to his solicitor or to a third party and the stages at which they are likely to be required.

#### *Commentary*

All disbursements incurred by a solicitor should be expressly or impliedly authorised by his client and, if the amount is substantial, the solicitor should obtain the client's agreement in writing. If the solicitor does not obtain the client's agreement in writing the client may not be required to reimburse the solicitor, if he disputes the bill (see Order 62 rule 29(1) of the *Rules of the High Court* (Cap. 4 sub. leg. A)).

### 4.04 Oral estimates

Oral estimates should preferably be confirmed in writing. The final amount should not substantially vary from the estimate unless the client has been informed of the reasons for the variations, preferably in writing.

#### *Commentary*

A solicitor should inform his client from the moment it appears that his estimate will be or is likely to be exceeded. He should not wait until he submits his bill of costs.

#### **4.05 Limit on costs may be set**

**If a matter is not to be undertaken under legal aid or covered by insurance so that the client is personally liable for his solicitor's costs he should be told in appropriate cases that he may set a limit on the costs which may be incurred without further reference to him.**

##### ***Commentary***

1. A solicitor must not exceed any limit without the authority of his client. Further, a solicitor must, as soon as possible, inform his client where the limit imposed on the expenditure is insufficient and obtain the client's instructions as to whether he wishes the solicitor to continue with the matter.
2. Where a solicitor continues to act after the costs have exceeded the limit which his client has fixed and then presents a bill for a sum which substantially exceeds that limit, he may be guilty of professional misconduct. The excess may also be disallowed on taxation in which case the solicitor may be liable for the costs of the taxation.

#### **4.06 Regular information**

**Whether or not a client has set a limit he should be told on an appropriately regular basis the approximate amount of the costs to date.**

##### ***Commentary***

1. A solicitor should monitor the position regarding costs which have accrued to date. The keeping of adequate time records will assist.
2. Failure to keep a client informed, so far as possible of the costs incurred, could prejudice a solicitor's ability to recover a fair and reasonable fee for the work done.



#### 4.07 Payment on account

**A solicitor may, at the outset of the retainer, require his client to make a payment or payments on account of profit costs and disbursements to be incurred.**

##### ***Commentary***

1. Where a solicitor receives such a payment on account of profit costs or disbursements to be incurred, he should make it clear to his client that they may be greater than the sum paid in advance, unless such sums represent the total charges for the whole work.

See also Principle 4.01 Commentary 13 and Principle 12.04 Commentary 4.

2. If a solicitor requires a client to pay a sum on account of costs to be incurred, that sum must be a reasonable amount in all the circumstances.
3. Where a solicitor is acting under an ORFS agreement, no payment on account or deposit on account should be collected for the uplifted portion of relevant fee (i.e. the portion of the fee the payment of which is dependent on the relevant outcome of the arbitration) under the conditional fee agreement, damages-based agreement or hybrid damages-based agreement (as defined in Part 10B of the *Arbitration Ordinance* (Cap. 609)), which depends on the triggering of a condition which will take place on a future occasion (see Principle 1.09).

For the avoidance of doubt, payment on account may be collected for the lower fees agreed in such an ORFS agreement (which does not depend on any such trigger condition).

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

#### 4.08 Interim bills

**If a solicitor wishes to render interim bills he must have the agreement of his client.**

##### ***Commentary***

1. An agreement for interim payments should be evidenced in writing.
2. Without such an agreement, a solicitor cannot sue for his profit costs until the work which is the subject of the retainer is completed and a bill rendered, nor can he justifiably terminate his retainer if the client refuses to make such a payment.

#### 4.09 Deliver bill of costs promptly

**A solicitor should deliver a bill of costs to his client within a reasonable time of concluding the matter to which the bill relates.**

##### ***Commentary***

See the definition of 'client' in section 2(1) of the *Legal Practitioners Ordinance* (Cap. 159) and rule 5D of the *Solicitors' Practice Rules* (Cap. 159 sub. leg. H).

#### 4.10 Detailed costs in the bill

**A solicitor's bill of costs must contain sufficient information to identify the matter to which it relates and in the case of interim bills must state the period covered.**

##### **Commentary**

1. A solicitor must ensure that a bill complies with the requirements of section 66 of the *Legal Practitioners Ordinance* (Cap. 159). The section provides inter alia, that where a solicitor wishes to sue on a bill, the bill must be signed by the solicitor if he is a sole practitioner or, if the costs are due to a firm, by one of the partners of that firm, either in his own name or in the name of the firm. Alternatively, the bill may be accompanied by a letter which is so signed and which refers to the bill.
2. A bill should show disbursements separately from profit costs.
3. In contentious matters if a bill is disputed, the client has the right to require the solicitor to deliver, in lieu of a gross sum bill, a bill containing detailed items, provided that the client makes the request within the time limit specified in section 63 of the *Legal Practitioners Ordinance* (Cap. 159). Once such a request has been made, the effect is that the original gross sum bill is of no effect.

See also Principle 4.02 Commentary 5.

#### 4.11 Solicitor cannot sue client for one month

**A solicitor may not sue his client until the expiration of one month from the delivery of the bill, unless the solicitor has been given leave to do so on the grounds set out in section 66 of the *Legal Practitioners Ordinance* (Cap. 159).**

##### **Commentary**

A solicitor wishing to sue on an agreement for his remuneration, whether in contentious or non-contentious matters, should refer to Part VI of the *Legal Practitioners Ordinance* (Cap. 159).

#### 4.12 Taxation of bill

**If a dispute arises on a bill or a query is raised about a bill the client must be told, preferably in writing, of his right to apply to have the bill taxed.**

#### 4.13 Overcharging

**A solicitor must not overcharge.**

##### ***Commentary***

1. See the *Solicitors (General) Costs Rules* (Cap. 159 sub. leg. G) and in particular rule 5 as to what may be fair and reasonable.
2. If an agreement has been made between a solicitor and his client which is found to be wholly unreasonable as to the amount of the fees charged or to be charged, disciplinary action could be taken against the solicitor.
3. Where a solicitor has a bill of costs prepared by a costs draftsman, the bill is nonetheless the responsibility of the solicitor.

#### 4.14 Solicitor liable to pay agents

**Subject to Principle 12.04, unless there is an agreement to the contrary, a solicitor is personally responsible for paying the proper costs of any professional agent or other person whom he instructs on behalf of his client, whether or not he receives payment by his client.**

##### ***Commentary***

1. Principle 4.14 covers the proper costs of experts as well as professional and ordinary witnesses and enquiry agents.
2. Where a solicitor wishes to restrict his liability to an agent to whatever sums are allowed on taxation, he should make this clear to the agent before instructing him.

#### 4.15 Overseas lawyers' fees

**A solicitor who instructs an overseas lawyer whether practising in Hong Kong or elsewhere is liable personally to pay that lawyer's proper fees, unless there has been an express agreement to the contrary.**

##### **Commentary**

1. Difficulties may sometimes arise in ascertaining what are the proper fees of a foreign lawyer. In some circumstances, fees may be regulated by a scale approved by the relevant bar association, law society or other authority. In case of difficulty, reference may be made to the appropriate foreign bar association or law society in an endeavour to ascertain what would be the proper fee in the case in question. It should be noted that there are sometimes time limits within which fees must be challenged.
2. There is no objection to a Hong Kong solicitor when instructing a foreign lawyer in proceedings in a foreign jurisdiction agreeing to pay the foreign lawyer's fees on a contingency basis provided that contingency fees are permitted within that jurisdiction.

#### 4.16 Sharing profit costs

**Subject to the exceptions set out in rule 4 of the *Solicitors' Practice Rules* (Cap. 159 sub. leg. H) and Parts 10A and 10B of the *Arbitration Ordinance* (Cap. 609), a solicitor shall not share or agree to share his profit costs with any person other than a practising solicitor.**

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

##### **Commentary**

1. A solicitor should not factor his book debts: see also Principle 8.01 Commentary 33.
2. The Council has granted a general waiver under rule 6 from rule 4 of the *Solicitors' Practice Rules* (Cap. 159 sub. leg. H) to enable solicitors to accept payment of their fees by the use of a credit card facility.
3. See Circular 16-1125.

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

#### 4.17 Contingency fee arrangements

**A solicitor may not enter into a contingency fee arrangement for acting in contentious proceedings (save where permitted under the law, e.g. under the *Arbitration Ordinance* (Cap. 609)): see section 64 of the *Legal Practitioners Ordinance* (Cap. 159).**

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

##### **Commentary**

1. A contingency fee arrangement is any arrangement whereby a solicitor is to be rewarded only in the event of success in litigation by the payment of any sum (whether fixed, or calculated either as a percentage of the proceeds or otherwise). This is so, even if the agreement further stipulates a minimum fee in any case, win or lose.
2. This Principle 4.17 only extends to agreements which involve the institution of proceedings. Consequently, it would not be unlawful for a solicitor to enter into an agreement on a commission basis to recover debts due to a client, provided that the agreement is limited strictly to debts which are recovered without the institution of legal proceedings.
3. As to champerty and maintenance see *Winnie Lo v. HKSAR* FACC 2 of 2011.
4. For TFA and ORFS agreements under Parts 10A and 10B of the *Arbitration Ordinance* (Cap. 609) respectively, see Principle 1.09 and relevant Commentaries thereunder and Principles 7.01, 7.02 and 7.03 and relevant Commentaries thereunder.
5. For TFA agreements under Part 10A of the *Arbitration Ordinance* (Cap. 609), see also Principle 3.01 Commentaries 5 and 10.

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

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

**APPENDICES**

**PRINCIPLE 4.01 COMMENTARY 17**

**CIRCULAR 12-176 ‘RECOVERY AGENTS’ SEE CHAPTER 3**

## PRINCIPLE 4.16 COMMENTARY 3

CIRCULAR 16-1125

28 December 2016

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

### SOLICITORS' PRACTICE RULES

#### Rule 4 – Sharing of Fees

1. The Society is aware that some Hong Kong firms wish to share profits with their parent firms (or other firms with which they have an association) in overseas jurisdictions.
2. The effect of rule 4 of the *Solicitors' Practice Rules* (Cap. 159 sub. leg. H) ('the Rules') is that a Hong Kong solicitor may not share profits with any unqualified persons, with certain specified exceptions.
3. Pursuant to rule 6 of the Rules, the Council has the power to waive any of the provisions of the Rules in any particular case either unconditionally or subject to such conditions as the Council may think fit to impose.
4. Accordingly, members who wish to share profits with lawyers practising overseas must apply for a waiver of rule 4. Applications should contain all relevant information and will be dealt with on a case-by-case basis by the Consents Committee. With effect from 1 January 2017, the fee for such application is \$20,000.
5. Circular 09-397 is superseded.
6. Enquiries should be directed to the Assistant Director, Regulation and Guidance on telephone no. 2846-0503.