24. PRACTICE DIRECTIONS

PREFACE

Under article 18(h) of the Articles of Association of the Society the Council is empowered to issue Practice Directions relating to the professional practice, conduct and discipline of solicitors. Article 6 provides that every solicitor shall be absolutely bound by all Practice Directions issued from time to time by the Society.

The Council has issued a number of Practice Directions. Some of the Directions are advisory only but some are mandatory, breach of which will be treated as professional misconduct in respect of which disciplinary action may be taken.

These Practice Directions replace all previous Directions made by the Council. They have been edited but there are no new Directions and no amendments of substance.

In a number of Directions reference is made to particular sums of money. These have been reviewed and some have been revised and are effective from the date of publication of this document.

Practice Directions which dealt with publicity have been repealed and a new Solicitors' Practice Promotion Code is published separately.

The date on which the original Direction came into effect is referred to in those Directions where it may be important to the obligations of solicitors before and after a particular date. Otherwise reference can be made to the table at Appendix 1.

January 1990

Note: These consolidated Practice Directions were first issued on 8 January 1990.

This revised print is current as at 1 June 2023.

A. CONVEYANCING

1. [Repealed]

2. Sale of flats in uncompleted or completed developments by way of grant or sale of sub-leases

3. Solicitors' Accounts Rules

4. Rule 5C of the Solicitors' Practice Rules - sale of flats in uncompleted developments

5. Management of buildings - deeds of mutual covenant

6. [Repealed]

7. Sale and purchase of partitioned residential flats

8. Certified copies of title deeds

9. Rule 5C(1) of the Solicitors' Practice Rules

9A. Rule 5C(1) of the Solicitors' Practice Rules - Home Ownership Scheme and Private Sector Participation Scheme Conveyancing Transactions

9B. Rule 5C(1) of the Solicitors' Practice Rules - Financial Secretary Incorporated Lease Extension Cases

10. Rule 5C(1) of the Solicitors' Practice Rules

11. Rule 5C(1) of the Solicitors' Practice Rules

12. Rule 5C of the Solicitors' Practice Rules
    Approved Form of bilingual Warning to Purchasers

13. Undertakings in Conveyancing Matter

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2. Solicitors (General) Costs Rules - equitable mortgage and legal charge

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C. CRIMINAL CASES

1. [Repealed]

2. [Repealed]

3. Steps to be taken in criminal matters

4. Video evidence of children

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1. Solicitors' employees qualified for admission in Hong Kong

2. Signature of post

3. [Repealed]

4. [Repealed]

5. Sharing an office and staff

6. Employees authorised for legal visits to persons in custody

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8. Format of electronic communications

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E. TRAINEE SOLICITORS AND ADMISSION

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1. Reference Table
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3. Form "B" Trainee Solicitor Contract
4. Form "C" Trainee Solicitor Contract
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A. CONVEYANCING

1. [Repealed on 1 January 2002]

2. SALE OF FLATS IN UNCOMPLETED OR COMPLETED DEVELOPMENTS BY WAY OF GRANT OR SALE OF SUB-LEASES

(1) Where a developer (or a sub-seller) is selling any interest in a property (whether completed or under construction) which is for less than the whole of the residue of the term of years under which the property is held under the relevant Government grant, Rules 5C(3) and (4) of the Solicitors' Practice Rules (Cap 159H) do not apply.

(2) It follows from paragraph (1) that in such circumstances the vendor and purchaser must be separately represented.

(3) As long as the documentation is properly prepared such transactions are not open to any legal objection. However, because such transactions are unusual and purchasers may misunderstand the true nature thereof, the parties must be separately represented.

(4) In any transaction to which this Practice Direction applies, the solicitors representing the vendor shall not seek payment of their fees from the purchaser or vice-versa.

(5) This Practice Direction was amended with effect from 31st March 2014.

3. SOLICITORS' ACCOUNTS RULES

(1) Solicitors who act as stakeholders in respect of funds received from purchasers where the Sale and Purchase Agreement is subject to either:-

- (a) the prior consent of the Director of Lands (previously the Registrar General (Land Officer)) pursuant to the special conditions under which the land is held; or

- (b) where the Sale and Purchase Agreement is entered into in accordance with the requirements of the Non-Consent Scheme,

may deposit such funds either in a bank in accordance with rule 3 of the Solicitors' Accounts Rules, or alternatively, provided the following conditions are fulfilled, with a licensed (but not a registered) Deposit Taking Company.

(2) The conditions are that the Sale and Purchase Agreement:-

- (a) contains an express instruction to the solicitor to hold the funds with a licensed Deposit Taking Company; and

- (b) identifies by name the licensed Deposit Taking Company with whom the funds are to be held.

(3) Except as stated above, clients' funds must be deposited with a licensed bank.

4. RULE 5C OF THE SOLICITORS' PRACTICE RULES - SALE OF FLATS IN UNCOMPLETED DEVELOPMENTS

(1) This Practice Direction is to be read in conjunction with rule 5C of the Solicitors' Practice Rules. It applies to the situation that arises where the vendor offers for sale property in an uncompleted development in circumstances where rule 5C applies and the vendor and the purchaser are separately represented.

(2) A solicitor may not directly or indirectly permit the vendor or any servant or agent of the vendor, to solicit business on his behalf. A solicitor must be satisfied before accepting instructions from a purchaser that the purchaser has not been improperly induced to give instructions to his firm.

(3) Where a solicitor accepts instructions from such a purchaser in respect of a flat in an uncompleted development, he must make a detailed comparison between the proposed form of Sale and Purchase Agreement drafted by the vendor and the clauses required by the Council for mandatory inclusion in such an agreement where the solicitor acts for both the vendor and the purchaser.

(4) The solicitor acting for the purchaser must give the purchaser written advice stating, if such be the case, that the proposed agreement does not contain all the mandatory clauses required by the Law Society in Sale and Purchase Agreements of uncompleted developments and giving details with full particulars of the omissions / variations (if any). The written advice must make it clear to the purchaser the extent to which he may be prejudiced by the omissions / variations in whole or in part of such mandatory clauses.

(5) Save in exceptional circumstances a period of not less than 48 hours must elapse between the delivery to the purchaser of written advice complying with paragraph (4) above and the execution by the purchaser of the Sale and Purchase Agreement.

(6) Solicitors are reminded of their duty to approach the vendor's solicitors with appropriate amendments to the Sale and Purchase Agreement with a view to including the contents of the mandatory clauses before allowing their purchaser client to sign it.

(7) This Practice Direction came into effect on 1st March 1983.

5. MANAGEMENT OF BUILDINGS - DEEDS OF MUTUAL COVENANT

Reference is made to the Society's Circular No. 23-88 on Guidelines for the drafting of Deeds of Mutual Covenant.

The Guidelines shall apply to all developments where approval of the Deeds of Mutual Covenant is not required to be given by the Director of Lands.

Subsequent amendments to the Guidelines shall be notified in Circulars and shall apply with effect from the date as stated in the relevant circulars.

Members who wish to deviate from the Guidelines must apply for a waiver setting out the grounds of the application.

6. [Repealed on 13 April 2004]

7. SALE AND PURCHASE OF PARTITIONED RESIDENTIAL FLATS

(1) A solicitor may not act for both the vendor and the purchaser in the sale and purchase of partitioned residential flats unless the following requirements are complied with :-

(a) (i) plans for alteration of such flats have been duly approved by the Building Authority; or

(ii) an authorised person has certified that no alteration plans are required to be approved by the Building Authority;

(b) where plans for alteration works have been approved by the Building Authority, an authorised person has certified that such alteration works have been carried out in accordance with the approved plans;

(c) there is no breach of the provisions of the relevant Crown Grant;

(d) there is no breach of the provisions of the relevant Deed of Mutual Covenant.

(2) A solicitor for the purchaser is under an obligation to draw his client's attention to the above requirements. Where the purchaser persists in proceeding with the transaction despite the non-compliance with such requirements or any of them, his solicitor should obtain from him an acknowledgment in writing to the effect that the purchaser has been advised of the requirements and that notwithstanding such advice, the purchaser has decided to proceed with the transaction.

(3) This Practice Direction does not apply to the sale and purchase of partitioned <u>non-residential</u> flats or units.

8. CERTIFIED COPIES OF TITLE DEEDS

(1) It is unethical for a purchaser's solicitor to make certified copies of title deeds or certified copies thereof supplied by the vendor's solicitor unless such copies are made:-

(a) with the express consent of the vendor's solicitors; or

(b) on the instructions and for the purpose of that purchaser who has already paid the vendor's solicitor for the certified copies supplied.

(2) This Practice Direction came into effect on 1st May 1989 and was amended on 17th February 2003.

9. RULE 5C(1) OF THE SOLICITORS' PRACTICE RULES

(1) In a conveyancing transaction to which rule 5C(1) of the Solicitors' Practice Rules applies a solicitor acting for one party, or any member of his firm, should not attest the signature of another party, who is not represented by that solicitor.

(2) This Practice Direction came into effect on 17th April 1990.

9A. RULE 5C(1) OF THE SOLICITORS' PRACTICE RULES - HOME OWNERSHIP SCHEME ("HOS") AND PRIVATE SECTOR PARTICIPATION SCHEME ("PSP") CONVEYANCING TRANSACTIONS

(1) Solicitors appointed by the Housing Authority to deal with HOS conveyancing transactions (i.e. initial sales, buy-backs and re-sales) and PSPS conveyancing transactions (i.e. buy-backs and re-sales) can attest the signature of the other party (i.e. purchasers in HOS initial sales and re-sales and PSPS re-sales and vendors in HOS and PSPS buy-backs) without representing that other party. In such event the solicitor must make it clear to that other party that the solicitor is acting only for the Housing Authority and not for that other party.

(2) This Practice Direction came into effect on 10th April 1995 and was amended with effect from 1st May 1996.

9B. RULE 5C(1) OF THE SOLICITORS' PRACTICE RULES - FINANCIAL SECRETARY INCORPORATED ("FSI") LEASE EXTENSION CASES

(1) Solicitors appointed by the FSI to deal with FSI lease extension cases may attest the signature of the assignees without representing the assignees. In such event the solicitor must make it clear to the assignee that the solicitor is only acting for the FSI and not for the assignee.

(2) Notwithstanding the provisions of Practice Direction A5, a general waiver is given for non-compliance with Practice Direction A5 involving FSI assignments. In these cases, as the assignments are in completed developments, in respect of which there is an existing deed of mutual covenant (DMC), the terms of the newly drawn up DMC must follow the existing DMC, the provisions of which might not comply with Practice Direction A5.

(3) This Practice Direction came into effect on 1st May 1996.

10. RULE 5C(1) OF THE SOLICITORS' PRACTICE RULES

(1) Where, in a conveyancing transaction to which rule 5C(1) applies, A sells to B, B sub-sells to C and there is an agreement in which A is the vendor, B the confirmor and C the purchaser, the solicitor who acts for A may not also act for either B or C.

(2) This Practice Direction came into effect on 20th August 1990.

11. RULE 5C(1) OF THE SOLICITORS' PRACTICE RULES

(1) Notwithstanding Practice Direction 9, in a conveyancing transaction where a sub-purchaser has been appointed as attorney for a confirmor, the solicitor acting for the sub-purchaser may attest the signature of the sub-purchaser in his capacity as attorney for the confirmor as well as in his own capacity as sub-purchaser.

(2) This Practice Direction came into effect on 15th July 1991.

12. RULE 5C OF THE SOLICITORS' PRACTICE RULES

(1) A solicitor or two or more solicitors practising in partnership or in association shall not act for both the vendor and the purchaser under the provisions of rules 5C(2), (3), (4) or (5) unless the bilingual "Warning to Purchasers" in the form below, duly signed by the purchaser, is delivered to the solicitor at the time of giving or confirming instructions to the solicitor.

(2) This Practice Direction came into effect on 1st May 1996 and was amended with effect from 21st October 2013.

WARNING TO PURCHASERS
PLEASE READ CAREFULLY

對買方的警告
買方請小心閱讀

(a) Before you execute the formal agreement for sale and purchase which you have to sign if you go on with your purchase you should instruct a solicitor to protect your interests and to ensure that your purchase is properly completed.

如你繼續進行購買本物業，你便須簽署正式買賣合約，在你簽立正式買賣合約之前，你應聘用律師，以保障你的權益，和確保妥善完成購買本物業。

(b) You can instruct your own independent solicitor to act for you to conduct the purchase or you can instruct the Vendor's solicitor to act for you as well as for the Vendor.

你可聘用你自己的獨立律師，以代表你進行購買本物業，你亦可聘用賣方的律師以同時代表你和賣方行事。

(c) **YOU ARE RECOMMENDED TO INSTRUCT YOUR OWN SOLICITOR**, who will be able, at every stage of your purchase, to give you independent advice.

現建議你聘用你自己的律師，你自己聘用的律師能在你購買本物業的每個階段，向你提供獨立意見。

(d) If you instruct the solicitor for the Vendor to act for you as well and if a conflict arises between you and the Vendor the solicitor may not be able to protect your interests and you will then have to instruct your own solicitor anyway, in which case the total fees you will have to pay may be higher than the fees which you would have had to pay if you had instructed your own solicitor in the first place.

倘若你聘用賣方的代表律師同時代表你行事，如你與賣方之間出現衝突，該律師未必能保障你的權益，屆時你始終需要聘用你自己的律師，在此情況下，你須支付的律師費總額，可能高於若你一開始便聘用你自己的律師的話會須支付的費用。

(e) You are free to choose whichever option you prefer. Please think carefully before deciding whether to instruct your own independent solicitor, or the Vendor's solicitor, to protect your interests.

你可自由選擇。請在決定聘用你自己的獨立律師或賣方的律師以保障你的權益之前，詳加考慮。

I/We acknowledge receipt of a copy of this warning and fully understand the contents thereof.

我/我們已收到此警告之副本及完全明白此警告之內容。

Dated this day of .

公曆 年 月 日

13. UNDERTAKINGS IN CONVEYANCING MATTER

(1) An undertaking to redeem a mortgage means that the mortgage must be redeemed in the normal course of business. To delay doing so in order to arrange refinancing for a client would constitute a breach of the undertaking.

(2) A reply to a requisition on title in the course of a conveyancing transaction can and often does amount to an undertaking. For example, if the reply to the standard requisition concerning the discharge of mortgages before completion or the furnishing of an undertaking in lieu is 'this will be done', the vendor's solicitor will have undertaken to do one or the other if the matter proceeds to completion. Following completion, it is no valid reason for non-compliance that at the particular time, the vendor's solicitor was unaware of the existence of any charge on the property, even though the purchaser's solicitor may have had that knowledge. Accordingly, it is recommended that when replying to this requisition, the seller's solicitor should make quite clear which mortgage or mortgages will be discharged on completion.

(3) Whilst promises to give "usual undertaking" or an undertaking on the "usual terms" should be avoided as there may be doubt as to what is "usual", if the terms of the undertaking are to be limited and reliance is placed exclusively upon the qualifications set out in the annex to Circular 14-411, the undertaking may refer to "usual Law Society qualifications".

(4) This Practice Direction came into effect on 10th February 2014.

B. COSTS

1. SOLICITORS' BILLS OF COSTS

If requested, an itemized Bill of Costs must be rendered to a client if the amount of costs exceeds $10,000. If there are Counsel's fees, these must be separately disclosed even if the total agreed sum includes Counsel's fees.

2. SOLICITORS (GENERAL) COSTS RULES - EQUITABLE MORTGAGE AND LEGAL CHARGE

(1) While the Solicitors (General) Costs Rules make no provision for a solicitor to charge a mortgagor at full scale fee for a legal charge which is executed pursuant to an equitable mortgage of the same property for which full scale costs have already been paid, paragraph 5(a) of Part 1 of the First Schedule provides:-

"5. The scale of costs in this Part shall not apply to the following non-contentious business, which shall be chargeable under rule 5:-

(a) a legal mortgage or debenture incorporating leasehold property or interests therein, executed pursuant to an agreement for a mortgage or debenture already charged for under this Part."

The Council takes the view that an equitable mortgage is similar to an agreement for a mortgage and that Rule 5 rather than the scale of costs should apply to a legal charge executed pursuant to an equitable mortgage.

(2) The Council has decided, for the sake of uniformity and consistency, that the costs payable for a legal charge or mortgage executed pursuant to an equitable mortgage or agreement for a mortgage should be as follows:-

(a) where the consideration stated in the legal charge or mortgage exceeds $100,000.00, one half of the costs set out in Part I of the First Schedule to the Solicitors (General) Costs Rules on the consideration so stated subject to a maximum of $3,000.00; and

(b) where the consideration stated in the legal charge or mortgage does not exceed $100,000.00, a discretionary amount not exceeding $900.00.

Provided that where the legal charge or mortgage is prepared by a firm of solicitors other than the firm who prepared the equitable mortgage or agreement for a mortgage, the full scale costs set out in Part I of the First Schedule shall apply.

3. SOLICITORS (GENERAL) COSTS RULES - ASSIGNMENT BETWEEN SUBSIDIARY / ASSOCIATED COMPANIES

(1) The approval by a mortgagee's solicitor of an assignment made between two subsidiary or associated companies subject to an existing mortgage should be put on the same footing as any of the non-contentious business set out in paragraph 5 of Part I of the First Schedule to the Solicitors (General) Costs Rules. Accordingly, a mortgagee's solicitor in such circumstances should charge under rule 5 rather than in accordance with the scale of costs.

(2) This Practice Direction came into effect on 14th December, 1987.

Explanatory Note

The Council has considered the question whether a mortgagee's solicitor is entitled to charge a scale fee for approving an assignment made between two subsidiary or associated companies subject to an existing mortgage. The argument against charging a scale fee is that the mortgagee's solicitor need not approve the mortgagor's title to the property because this had already been done before the existing mortgage was executed. The situation is analogous to a legal mortgage executed pursuant to an agreement for mortgage or the approval of a second mortgage by a mortgagee's solicitor : see paragraph 5(a) and (b) of Part I of the First Schedule to the Solicitors (General) Costs Rules.

C. CRIMINAL CASES

1. MEASURES TO COMBAT TOUTING RELATING TO CRIMINAL CASES

[Replaced by rule 5D of the Solicitors' Practice Rules which came into effect on 30 April 1993.]

2. SURETY FOR BAIL

[Replaced by Practice Direction I.1 which came into effect on 12 September 1994.]

3. STEPS TO BE TAKEN IN CRIMINAL MATTERS

(1) This Practice Direction is to be read in conjunction with rule 5D(a) of the Solicitors' Practice Rules.

(2) When attending court, a solicitor shall keep in his possession a copy of the confirmatory letter signed by his client, and shall, upon demand by an inspector appointed by the Council in accordance with section 8AA of the Legal Practitioners Ordinance, produce a copy of the letter for inspection by the inspector.

(3) This Practice Direction came into effect on 2 January 1996.

4. VIDEO EVIDENCE OF CHILDREN

(1) When a solicitor instructed and acting for the prosecution or defence of an accused has in his possession a copy of a video recording of a child witness which may be admitted in evidence in a criminal trial in accordance with section 79C of the *Criminal Procedure Ordinance* (Cap. 221) he must have regard to the following duties and obligations:

(a) Upon receipt of the recording, a written record of the date and time and from whom the recording was received must be made and a receipt must be given.

(b) The recording and its contents must be used only for the proper preparation of the prosecution or defence case of an appeal against conviction and/or sentence and/or review, as the case may be, and the solicitor must not make or permit any disclosure of the recording or its contents to any person except when, in his opinion, such disclosure is in the interests of his proper preparation of that case.

(c) The solicitor must not make or permit any other person to make a copy of the recording, nor release the recording to the accused, and must ensure that:

(i) when not in transit or in use, the recording is always kept in a secure place, and;

(ii) when in transit, the recording is kept safe and secure at all times and is not left unattended, especially in vehicles or otherwise.

(d) Proper preparation of the case may involve viewing the recording in the presence of the accused. If this is the case, viewing should be done:

(i) if the accused is in custody, only in the prison or other custodial institution where he is being held, in the presence of the solicitor and/or the barrister;

(ii) if the accused is on bail, at the solicitor's office or in counsel's chambers or elsewhere in the presence of the solicitor and/or his barrister.

(e) The solicitor must ensure that the barrister returns the recording to him as soon as practicable after the conclusion of the barrister's role in the case. A written record of the date and time of despatch and to whom the recording was delivered must be made.

(2) This Practice Direction came into effect on 3 March 1997.

D. PRACTICE SUPERVISION

1. SOLICITORS' EMPLOYEES QUALIFIED FOR ADMISSION IN HONG KONG

Any solicitor who employs a person, who is qualified for admission as a solicitor, must ensure that his employee applies to be admitted as a solicitor in Hong Kong within a reasonable time after the person is employed or becomes so qualified.

2. SIGNATURE OF POST

(1) All letters from a firm of solicitors, including from any individual, in the course of the professional practice of the firm must be signed, whether in the name of the firm or of the individual, by a person who is an approved signatory for the purposes of this Practice Direction.

(2) The phrase "in the course of the professional practice" does not mean the same as "in the course of the business". For example, letters written on behalf of the firm to its landlords, its bankers, its stationery suppliers or its insurers would not be required to be signed by an approved signatory. On the other hand, the category of letters in the course of the professional practice of the firm will include (but not be limited to) all letters written to clients in their capacity as such, all letters to other lawyers regarding clients' affairs and all letters written on behalf of clients to third parties and/or correspondence with the Law Society.

(3) An approved signatory for these purposes is:-

(a) any solicitor who is qualified to act as a solicitor in accordance with section 7 of the Legal Practitioners Ordinance who is a sole practitioner or partner in, or an employee of, or a consultant to, the firm;

(b) any lawyer qualified in his own jurisdiction who has satisfied the requirements of section 4 or 5 of the Overseas Lawyers (Qualification for Admission) Rules and has satisfied the requirements as to residence and who is authorised by the firm to sign;

(c) any of the following who is an employee of the firm, in relation to matters within such person's competence in each case but not otherwise:

(i) a foreign lawyer;

(ii) a Chartered Accountant or Certified Public Accountant (practising) whose qualification has satisfied the membership admission requirements of the Hong Kong Institute of Certified Public Accountants;

(iii) a member of the United Kingdom Institute of Trademark Agents or the Hong Kong Institute of Trademark Practitioners;

(iv) a United Kingdom Chartered Patent Agent who has entered on the United Kingdom register of Patent Agents under the provisions of the Register of Patent Agents Rules 1982 administered under the United Kingdom Patents Act 1977;

(v) a fellow of the Institute of Chartered Secretaries and Administrators or the Hong Kong Institute of Chartered Secretaries;

(vi) a person of comparable qualification and / or experience approved by the Council on application to it, subject to such conditions as the Council may think fit.

(4) Where a person is an approved signatory by virtue only of 3(b) or 3(c):

(a) that person's authority to sign shall be in writing signed by the sole practitioner or a partner in the firm for the time being;

(b) the sole practitioner or, as the case may be, all partners in the firm or a partner designated in writing for the purpose shall be responsible for ensuring that that person:

(i) does not exceed his / her authority; and

(ii) complies with all relevant professional requirements; and

(c) the name of the approved signatory must appear in print below his / her signature, whether the signature is in the name of the individual or the firm.

(5) "Letters" means all written communications including fax and telex messages but:

(a) mere covering or "with compliments" communications need not be signed; and

(b) a telex message will be considered signed if an authority to despatch it is signed.

(6) This Practice Direction is without prejudice to other Practice Directions, in particular Practice Direction D4.

(7) It should be noted that legislation, practice directions of the court and other regulations may require certain documents (for example, pleadings) issued by a firm to be signed by a solicitor and not by any other approved signatory.

3. EMPLOYMENT OF PART-TIME CLERKS

4. MAXIMUM NUMBER OF UNQUALIFIED STAFF

[Replaced by rule 4B of the Solicitors' Practice Rules which came into effect on 30 April 1993.]

5. SHARING AN OFFICE AND STAFF

(1) A solicitor's practice should be conducted in self-contained premises. Staff and facilities should be under his exclusive control.

(2) Save as mentioned below, in the conduct of his practice as a solicitor he must not:

(i) share premises, which term shall include waiting rooms and reception areas;

(ii) share staff, which term shall include telephonists, receptionists and all other non-fee earning staff employed by him;

(iii) share telephone, computer or electronic equipment used for the transmission or storage of clients' confidential information.

(3) Subject to the need to maintain clients' confidentiality, a solicitor may:

(i) share premises, staff and facilities with another solicitor with whom he is in partnership;

(ii) share services reasonably regarded as those of an independent contractor with any other solicitor or third party;

(iii) share premises, personnel and facilities where there is a formal association between two firms of solicitors;

(iv) share premises, management, employees and facilities where there is a registered association between a firm of solicitors and one or more foreign firms; and

(v) share premises, management, facilities and employees who are unqualified persons in accordance with the provisions of the Solicitors (Group Practice) Rules.

(vi) share premises, management, employees and facilities in the Mainland where there is a registered association in the Mainland between a firm of solicitors and a Mainland law firm, in accordance with the Regulations for Association between Hong Kong and Macau Law Firms and Mainland Law Firms (Order No.83 of Ministry of Justice).

(4) Where a building is shared with other business or where there are shared common areas:

(i) signs must be displayed in a conspicuous position at the main entrance of the office premises of the solicitor so as to distinguish them from the premises occupied by others;

(ii) common areas must not give the appearance of being part of another business.

(5) For the purposes of paragraph 3(iii), a "formal association" means an association between Hong Kong firms of solicitors where there is at least one partner common to each of the associated firms. It does not include an association between a Hong Kong firm and a foreign law firm.

(6) [Repealed]

(7) The prohibition on sharing of staff is not intended to prohibit short secondments of staff between firms or companies or organisations, for example, for staff development. In these cases, the secondee would be regarded as an employee of the Hong Kong firm.

(8) This Practice Direction came into effect on 23 March 1992 and was amended on 26 September 1994, 1 February 2003 and 1 January 2004.

(9) The Council may, in a particular case, waive in writing any provision of this Practice Direction, subject to such conditions as it may impose.

6. EMPLOYEES AUTHORISED FOR LEGAL VISITS TO PERSONS IN CUSTODY

(1) Subject to the provisions of this Practice Direction, a firm is permitted to have a maximum of 10 clerks authorised to visit persons in custody (“authorised clerks”).

(2) A principal of a firm shall ensure that:

(a) each authorised clerk in his firm shall be properly supervised by a full-time solicitor in his firm who is ordinarily resident in Hong Kong;

(b) the supervising solicitor named in the application for authorisation of a clerk to visit persons in custody shall have sufficient relevant experience capable of affording appropriate supervision to the clerk;

(c) for the purposes of sub-paragraph (b) above,

(i) any full-time solicitor in his firm with less than 2 years of post-qualification experience in the litigation practice shall not be made responsible for supervising any authorised clerk;

(ii) any full-time solicitor in his firm with at least 2 years of post-qualification experience in the litigation practice shall be made responsible for supervising not more than 2 authorised clerks; and

(iii) any full-time solicitor in his firm with at least 5 years of post-qualification experience in the litigation practice shall be made responsible for supervising not more than 4 authorised clerks.

(3) For the purpose of this Practice Direction, a full-time solicitor shall not be taken into account in respect of more than one firm.

(4) Application for authorisation of a clerk to visit persons in custody shall be made in a form approved by the Society.

(5) A principal of a firm shall advise the Society in writing any change in the supervising solicitor named in the application within 14 days of such change and shall ensure that the new supervising solicitor has sufficient relevant experience capable of affording appropriate supervision to the authorised clerk in accordance with this Practice Direction.

7. CESSATION OF PRACTICE

(1) Where a firm intends to cease practice, the firm must notify the Society of the intended cessation in writing in a form approved by the Society at least 8 weeks prior to the date of cessation.

(2) Where a firm intends to cease practice, the firm must appoint a firm of solicitors with at least 2 partners as its agent to deal with all consequential matters. The firm shall notify the Society of the names and contact details of its sole practitioner or all of its partners and of the agent appointed when it notifies the Society of its intended cessation pursuant to subparagraph (1). Any change to the contact details must be notified by the person to whom the change relates to the Society in writing within 7 days of such change.

(3) A solicitor who was a principal of the firm as at the date of cessation shall ensure that:

(a) where an existing appointment of the agent is for any reason terminated, another firm of solicitors with at least 2 partners (the “substitute agent”) is to be appointed within 7 days; and

(b) any change to the particulars of the agent or the substitute agent is notified to the Society in writing within 7 days of such change.

(4) (a) The agent whose appointment as such is terminated shall within 7 days of such termination apply in writing to the Council for directions to be given pursuant to Rule 8(2) of the Solicitors' Accounts Rules on the unclaimed balances on its clients' accounts pertaining to its appointment as the firm's agent.

(b) The agent whose appointment as such is terminated and the substitute agent to whom any unclaimed balances on clients' accounts have been transferred from the former agent shall notify the Society in writing the total aggregate amount in the clients' accounts so transferred within 7 days of the transfer.

(5) Notwithstanding the requirement in section 5(3) of the Solicitors' Practice Rules to furnish a declaration in respect of the relevant calendar year, a solicitor who was a principal of the firm as at the date of cessation shall advise the Society in writing in a form approved by the Society within 14 days of the date of cessation of any change in the employment of staff of the firm that occurred as a result of the cessation.

(6) It is a mandatory requirement that all old physical files must be stored in Hong Kong in order to ensure inter alia the preservation of confidentiality and easy retrieval (see Circular no. 12-475 (PA)).

(7) This Practice Direction came into effect on 16 June 1997 and was amended on 2 August 2004, 16 October 2006 and 25 June 2012.

(8) Other than in respect of subparagraph (6) above, the Council may, in a particular case, waive in writing any provision of this Practice Direction, subject to such conditions as it may impose.

8. FORMAT OF ELECTRONIC COMMUNICATIONS

(1) All communications issued electronically from a firm of solicitors in the course of the professional practice of the firm must, subject to (3)(c) below, incorporate a "signature block" stating:

(a) the firm's name and address; and

(b) that a list of the firm's principals will be provided to the recipient of the electronic communication upon request;

and must at the end state the name of the firm or of the individual who has authorised its despatch.

(2) The issue of all such communications must be authorised by a person who is approved to do so for the purposes of this Practice Direction as follows:

(a) any solicitor who is a sole practitioner or partner in, or an employee of, or a consultant to, the firm;

(b) any lawyer qualified in his own jurisdiction who has satisfied the requirements of section 4 or 5 of the Overseas Lawyers (Qualification for Admission) Rules and has satisfied the requirements as to residence and who is so authorised by the firm;

(c) any of the following who is an employee of the firm, in relation to matters within such persons competence in each case but not otherwise:

(i) a foreign lawyer;

(ii) Chartered Accountant or Certified Public Accountant (practising) whose qualification has satisfied the membership admission requirements of the Hong Kong Institute of Certified Public Accountants;

(iii) a member of the United Kingdom Institute of Trademark Agents or the Hong Kong Institute of Trademark Practitioners;

(iv) a United Kingdom Chartered Patent Agent who has entered on the United Kingdom register of Patent Agents under the provisions of the Register of Patent Agents Rules 1982 administered under the United Kingdom Patents Act 1977;

(v) a fellow of the Institute of Chartered Secretaries and Administrators or the Hong Kong Institute of Chartered Secretaries;

(vi) a person of comparable qualification and/or experience approved by the Council on application to it, subject to such conditions as the Council may think fit.

(3) Where a person is approved to issue such electronic communications by virtue only of (2)(b) or (c) above:

(a) that persons authority shall be in writing signed by the sole practitioner or a partner in the firm for the time being;

(b) the sole practitioner or, as the case may be, all partners of the firm or a partner designated in writing for that purpose shall be responsible for ensuring that the person:

(i) does not exceed his/her authority; and

(ii) complies with all relevant professional requirements; and

(c) the name of the approved person must appear at the end of the communication together with that person's status within the firm.

(4) This Practice Direction is without prejudice to other Practice Directions, in particular Practice Direction D.2.

(5) This Practice Direction came into effect on 1 January 1998 and was amended on 5 January 2004.

9. BANKRUPTCY

(1) A solicitor shall notify the Society in writing within 7 days:

(a) after he has filed a bankruptcy petition against himself with the Registry of the High Court; or

(b) after he has been served with a sealed copy of a bankruptcy petition by his creditor.

(2) A solicitor shall notify the Society in writing within 7 days after the date of a bankruptcy order against him.

(3) This Practice Direction came into effect on 24 November 2003.

E. TRAINEE SOLICITORS AND ADMISSION

1. [Repealed]

2. TRAINEE SOLICITOR CONTRACTS - APPROVED FORMS

(1) Pursuant to rule 8 of the Trainee Solicitors Rules the following forms of trainee solicitor contract have been adopted:

(a) form A (appendix 2) applies to trainee solicitors employed by solicitors in private practice;

(b) form B (appendix 3) applies to trainee solicitors working for the Government; and

(c) form C (appendix 4) applies to trainee solicitors employed in commerce and industry.

These forms must be used in all cases.

(2) A trainee solicitor contract in form A, that is the form applicable to trainee solicitors employed by solicitors in private practice, must provide for a salary of not less than $13,000 per month for the first year of the contract and $15,000 for the second year.

(3) Trainee solicitor contracts commencing on or after 1 January 2018 which do not provide for salaries of at least these amounts will not be accepted for registration.

3. TRAINEE SOLICITORS - ABSENCES FROM THE OFFICE

[Replaced by rule 9(2) of the Trainee Solicitors Rules which came into effect on 18 March 1994.]

This Practice Direction will come into effect on 1 January 2018 and apply to trainee solicitor contracts commencing on or after that date. It will not affect trainee solicitor contracts that commenced before 1 January 2018.

F. COUNSEL

1. INSTRUCTIONS TO COUNSEL

(1) (a) Whenever counsel is briefed in proceedings in Court, the instructing solicitor must deliver to him a formal brief or backsheet with the fee marked. Failure to deliver a brief or backsheet or failure to mark the fee would result in counsel being unable to comply with the Code of Conduct of the Bar of Hong Kong. Further, in a criminal matter, the requirements under rule 5D(e) of the Solicitors' Practice Rules must be complied with.

(b) Every backsheet must contain the following information:

(i) the name of the solicitor in charge of the matter;

(ii) the name of the firm of the instructing solicitors;

(iii) the name of the case (and the court number if known at the time);

(iv) the name of counsel;

(v) the agreed brief fee and any agreed refresher or "Legal Aid" or "No Fee" as appropriate.

(2) (a) Where counsel is briefed in a criminal matter, the instructing solicitor must personally sign the backsheet or other written instructions to counsel (rule 5D(e) of the Solicitors' Practice Rules).

(b) Where counsel is briefed in any other matter, the instructing solicitor must sign the backsheet or other written instructions to counsel either in his personal signature or in the name of the firm of the instructing solicitors. If a firm name is used, then the initials of the solicitor who has signed on behalf of the firm should appear on the instructions or covering letter for identification purposes.

(3) Whenever counsel is instructed, counsel should always be approached in the first instance by the instructing solicitor, and not by the solicitor's staff and only such instructing solicitor, and not the solicitor's staff, is entitled to negotiate a fee with counsel or counsel's staff.

(4) Whenever a solicitor agrees with a client to charge a lump sum for the conduct of a case, and the sum agreed includes counsel's fees, this fee should be clearly indicated in writing to the client at the time the lump sum fee is agreed.

G. PROFESSIONAL STATIONERY

1. BUSINESS LETTERS

(1) The name of every solicitor admitted in Hong Kong who is a principal in a firm of solicitors and who holds a current practising certificate shall be stated in legible characters on all business letters in connection with a solicitor's practice.

(2) The names of principals not ordinarily resident in Hong Kong need not be stated, but if they are, they must be described as non-resident.

(3) The Council may exempt a partnership from the requirement in paragraph 1 where the number of partners' names is so large that it would be unreasonable to require them to be stated. In such cases the Council may require the firm to take other steps to make known the names of the partners.

(4) This Practice Direction came into effect on 1 May 1990.

Explanatory Note (Circular 138/90)

The requirement to state a principal's name on business letters in connection with a solicitor's practice applies whether the letter is transmitted by post or electronically.

If a fax transmission is no more than a compliments slip then it would not be treated as a letter, but if it contained substantial matter it would be treated as a letter and the Practice Direction would apply.

1A. BUSINESS LETTERS - REFERENCE TO FOREIGN LAWYERS

(1) A firm shall ensure that in respect of any individual foreign lawyer employed by the firm whose name appears on business letters issued in connection with the firm's practice, his foreign jurisdiction of admission or the country of that jurisdiction is stated.

(2) This Practice Direction came into effect on 1 January 1997.

2. BUSINESS CARDS

(1) A solicitor or foreign lawyer may state on his business card any academic or professional qualification held by him, not being an examination qualification which leads to such qualification.

(2) This Practice Direction came into effect on 1 May 1995, and was amended on 1 July 1996.

Explanatory Note (Circular 122/95)

The letters "PCLL" and similar terms designate an examination leading to professional qualification as a solicitor, and as such may not appear on business cards of solicitors.

Explanatory Note (Circular 169/96)

Specialist credentials granted by a professional body in another jurisdiction are not a professional qualification, and as such may not appear on business cards of solicitors or foreign lawyers.

H. OTHER MATTERS

1. ELECTION ADDRESSES

(1) Where a solicitor is a candidate for election to public office or publicly supporting or endorsing any candidate for election to public office then, subject to the provisions of paragraph 2, a solicitor may:

(i) be so described in an election address to constituents;

(ii) be so described in the body of a poster, banner, or other promotional material.

(2) A solicitor shall in neither case allow:

(i) the name and address of the solicitor's firm to be mentioned;

(ii) any advertisement of his work as a solicitor.

I. PROFESSIONAL CONDUCT

1. SURETY FOR BAIL

The following is an extract from "The Professional Conduct of Solicitors (1993)" published by The Law Society of England & Wales.

> "22.10 Principle
>
> It is undesirable for a solicitor to offer to stand bail for a person for whom he or any partner is acting as solicitor or agent."

The Council considers that it is fundamental to the proper administration of justice that a surety for a person charged with a criminal offence or in relation to a civil matter must not be drawn from the ranks of that person's legal advisers, and adopts the principle enunciated in the cited publication.

The Council has decided that no solicitor or his employee may act as a surety for bail for a client of the firm without the prior consent of the Council, which consent would be forthcoming only in the most exceptional circumstances. Failure to comply with this Practice Direction may render the offender liable to disciplinary action.

This Practice Direction came into effect on 12 September 1994.

2. "THE HONG KONG SOLICITORS' GUIDE TO PROFESSIONAL CONDUCT"

The Council has determined that solicitors in Hong Kong shall be required to comply with the standards of practice and rules of conduct set out in "The Hong Kong Solicitors' Guide to Professional Conduct" first published by the Law Society of Hong Kong in 1995 and revised from time to time.

This Practice Direction came into effect on 1 June 1995.

J. INTEREST ON CLIENTS' ACCOUNT

1. REQUIREMENT TO PAY INTEREST

Subject to paragraph 2 hereof, on each occasion when a solicitor holds or receives money for or on account of a client in respect of a particular matter, the solicitor shall deposit such money in a designated interest bearing clients' account in a bank and shall account to the client for any interest earned thereon failing which the solicitor shall pay to the client a sum equivalent to the interest which would have accrued for the benefit of the client if the money had been deposited in a Hong Kong dollar savings account of the Hongkong and Shanghai Banking Corporation Limited.

2. MINIMUM AMOUNT AND TIME

A solicitor shall only be required to account in accordance with paragraph 1 above where the solicitor holds the money for as long as or longer than the time set out in the right hand column of the Table below and the minimum amount held equals or exceeds the corresponding figure in the left hand column of the Table:

The Table

Minimum Amount	Minimum Time
Exceeding $3,000,000.00	4 Banking Days
Exceeding $250,000.00 but not exceeding $3,000,000.00	2 Weeks
Exceeding $100,000.00 but not exceeding $250,000.00	4 Weeks
Exceeding $50,000.00 but not exceeding $100,000.00	8 Weeks

3. REMEDY AVAILABLE TO CLIENT

Without prejudice to any other remedy which may be available to him, any client who feels aggrieved that interest, or a sum equivalent thereto, has not been paid to him under these Practice Directions shall be entitled to require the solicitor to obtain from the Council of the Law Society a certificate as to whether or not interest ought to have been earned for him, and if so, the amount of such interest. Upon receipt of such a request the Council shall cause the matter to be investigated and if it determines that interest should have been earned it shall issue a certificate to that effect setting out the amount of interest which should have been earned in accordance with these Practice Directions. On the issue of such a certificate the sum certified to be due shall be payable by the solicitor to the client.

4. EXCEPTIONS

Subject to paragraph 5 hereof nothing in the Practice Directions shall:

(a) affect any agreement in writing whenever made between a solicitor and his client as to the application of the client's money or interest thereon;

(b) apply to money received by a solicitor, being money subject to a trust of which the solicitor is a trustee; or

(c) affect any agreement in writing for payment of interest on stakeholder money held by the solicitor.

5. ARRANGEMENT FOR NO INTEREST SHALL BE VOID

Any arrangement howsoever made to the effect that no interest shall be payable in respect of monies deposited with a solicitor shall be void.

6. ADMINISTRATION FEE PERMITTED

A solicitor who deposits a client's money in accordance with paragraph 1 hereof shall be entitled to charge and be paid such sum as is fair and reasonable by way of an administration charge in respect of the work undertaken in the deposit and withdrawal of monies and accounting to the client for the interest accrued thereon.

This Practice Direction came into effect on 1 January 1997.

CIRCULAR 04-4 dated 5 January 2004

LAW SOCIETY PRACTICE DIRECTIONS

Practice Direction J – Interest on Client's Account

The Council has resolved to suspend the operation of Practice Direction J relating to the payment of interest of client account with effect from 1st January 2004 until such time as interest rates attain the level they reached prior to promulgation of the Practice Direction namely 5.375% p.a.

The reason for suspension of the Practice Direction is the low rate of interest payable by Hong Kong banks and the burden placed on the profession in calculating amounts of interest which are consistently lower than the administrative cost of placing deposits in interest bearing accounts.

The Council therefore considers that the Practice Direction currently serves no useful purpose since the administrative charge which solicitors are entitled to make generally exceeds the interest for which they are accountable.

However, solicitors are reminded that Practice Direction J was a "default" provision in the absence of any alternative agreement with the client. It remains open to solicitors to reach agreement as to the payment of interest to their clients should the client wish to do so and the suspension of the Practice Direction does not relieve the solicitor of his fiduciary duties to his clients.

K. CLIENT ACCOUNTS

1. DUTY TO REMEDY BREACHES

[Replaced by rule 9A of the Solicitors’ Accounts Rules which came into effect on 1 February 2002.]

2. RECONCILIATION OF CLIENT ACCOUNTS

[Replaced by rule 10A of the Solicitors’ Accounts Rules which came into effect on 1 February 2002.]

3. GUIDELINES FOR ACCOUNTING PROCEDURES AND SYSTEMS

The Council may from time to time publish Guidelines for accounting procedures and systems to assist solicitors to comply with the Solicitors' Accounts Rules, and solicitors may be required to justify any departure from the Guidelines. The Guidelines which have been adopted by the Council are at Appendix 5.

4. MONITORING ACCOUNTANT

A solicitor or firm of solicitors must at the time and place fixed by the Council produce to any person appointed by the Council pursuant to rule 5B of the Solicitors' Practice Rules and rule 11 of the Solicitors' Accounts Rules any books of account, bank pass books, loose-leaf bank statements, statements of account, vouchers and other documents necessary to enable preparation of a report on compliance with the rules.

This Practice Direction came into effect on 1 September 2000.

L. ATTESTATION OF DOCUMENTS

1. Where the signing / execution of documents is required by law or practice to be witnessed / attested by a solicitor, the solicitor should be physically present when witnessing / attesting the same where the attestation clause is in the following terms:-

"Signed by ....)
in the presence of:-)

Solicitor, Hong Kong SAR"

Some solicitors have adopted the practice of attesting to the signature of a document when in fact they were not present and did not witness the actual signing of that document. The effect of this practice is that the resulting document contains a false and dishonest statement by the solicitor.

2. If a solicitor is not required by law to witness / attest the signing / execution of a document, the Council has made the following directions:

(a) A firm of solicitors may appoint one or more experienced clerk or clerks for the purpose of witnessing / attesting the signing / execution of documents not required by law to be witnessed / attested by a solicitor.

(b) A clerk so appointed must be physically present when witnessing / attesting the signing / execution of documents.

(c) The signature of the appointed clerk who acted as witness shall be verified by a solicitor of the firm. The following clause is considered appropriate:

"I hereby verify the signature of (name of appointed clerk):-

Solicitor, Hong Kong SAR"

3. (a) Where a document is executed by a limited company, whether under seal or not, the signatures of directors / officers or attorneys appearing on the document may be verified by a solicitor if such signatures are known to the solicitor. The following clauses are considered appropriate:

"Sealed with the Common Seal of)
ABC Co. Ltd. and signed by)
.................(directors /)
officers) whose signatures are)
verified by:-)

Solicitor, Hong Kong SAR"

OR

"Signed by ....)
(directors / officers) for and)
on behalf of ABC Co. Ltd. whose)
signatures are verified by:-)

Solicitor, Hong Kong SAR"

OR

"Signed (Sealed and Delivered))
by ....(attorney(s)))
lawful attorney(s) for ABC Co.)
Ltd. whose signature(s) is / are)
verified by:-)

Solicitor, Hong Kong SAR"

(b) Where a document is executed by a company in liquidation acting by its liquidator(s) / official receiver(s), whether under seal or not, the signature(s) of the liquidator(s) / official receiver(s) appearing on the document may be verified by a solicitor if such signature(s) is / are known to the solicitor. The following clauses are considered appropriate:

"Signed (Sealed and Delivered))
by ……….(the official receiver(s) /)
liquidators of ABC Co. Ltd.))
whose signature(s) is / are)
verified by:-)

Solicitor, Hong Kong SAR"

OR

"Signed by ABC Co. Ltd. by its)
official receiver(s), its liquidator(s) /)
the liquidators whose signature(s))
is / are verified by:-)

Solicitor, Hong Kong SAR"

OR

Sealed with the Common Seal of)
ABC Co. Ltd. (in liquidation) and)
signed by …..(the official receiver(s),)
its liquidator(s) / the liquidator(s)))
whose signature(s) is / are)
verified by:-

Solicitor, Hong Kong SAR"

(c) Where a document is executed by a receiver(s) appointed under a legal charge / mortgage / other security documents, whether under seal or not, the signature(s) of the receiver(s) appearing on the document may be verified by a solicitor if such signature(s) is/are known to the solicitor. The following clauses are considered appropriate:

"Signed (Sealed and Delivered))
by ………(the duly appointed)
[joint and several] receiver(s) [and)
Manager(s)] of the Property)
without personal liability),)
whose signature(s) is / are)
verified by:-)

Solicitor, Hong Kong SAR"

OR

"Signed (Sealed and Delivered))
by ………(the duly appointed)
[joint and several] receiver(s))
for and on behalf of ABC Co. Ltd.)
without personal liability),)
whose signature(s) is / are)
verified by:-)

Solicitor, Hong Kong SAR"

(d) Save as in paragraphs 3(a), (b) and (c) above, the signature of an individual must be attested (as opposed to verified) by a solicitor or his appointed clerk.

4. Solicitors and their clerks whose signatures appear on a document whether as witnesses, interpreters, identifiers, verifiers or certifiers should have their names and firm names or company names indicated in legible form in full immediately below their signatures unless their names and firm names or company names appear elsewhere in the same document. The date on which a document is certified must be indicated.

5. Hong Kong Identity Cards or other appropriate means of identification may be used for identification purposes.

6. This Practice Direction came into effect on 19 August 2002.

M. LIMITATION OF LIABILITY BY CONTRACT

1. Although it is not acceptable for a solicitor to attempt to exclude all liability to his clients, there is no objection as a matter of professional conduct to a solicitor seeking to limit his liability in business other than contentious business to his clients provided that the following conditions are fulfilled:

   (a) he has in full force and effect valid professional indemnity cover in accordance with the requirements of the Solicitors (Professional Indemnity) Rules;

   (b) the limitation of liability for any one claim is not below the limit of indemnity available for any one claim pursuant to the Solicitors (Professional Indemnity) Rules in force at the date the limitation of liability is agreed.

2. The limitation of liability is subject to the position in law and the general fiduciary obligations of solicitors to their clients. Relevant provisions include the following:

   (a) Under section 59(2) of the Legal Practitioners Ordinance, a provision purporting to exclude a solicitor's liability for negligence in an agreement for fees in contentious business will be void.

   (b) The Control of Exemption Clauses Ordinance

      (i) prohibits, under section 7, exclusion or restriction of liability for death or personal injury resulting from negligence and requires exclusion or restriction of liability for other loss or damage resulting from negligence to satisfy the requirement of reasonableness;

      (ii) states, under section 3(1), that the requirement of reasonableness is satisfied only if the court or arbitrator determines that the contract term was a fair and reasonable one to be included having regard to the circumstances which were, or ought reasonably to have been, known to or in the contemplation of the parties when the contract was made;

      (iii) provides, under section 3(5), that in considering whether a contract term restricting liability to a specified sum of money satisfies the requirement of reasonableness, the court or arbitrator shall have regard in particular to the resources which he could expect to be available to him for the purpose of meeting the liability should it arise and how far it was open to him to cover himself by insurance;

3. Contractual terms are only binding if they are incorporated into a contract. Incorporation of a term into the contract is presumed if the parties have signed a written contract containing that term. However, a person wishing to rely on a particular term against a party that had not signed the contract would need to show that the term had been brought fairly and reasonably to the attention of the non-signing party. The more unusual the contract term the more effort needs to be made to bring it to the other party's attention. Accordingly, if a limitation of liability provision is contained in a solicitor's engagement letter, and the letter is not countersigned by the client, this provision will not bind the client unless the solicitor can show that the provision had been brought, fairly and reasonably, to the attention of the client and accepted by him.

4. Liability for fraud or dishonesty cannot be limited.

5. The contract of limitation may be affected by foreign law where the act or omission covered by the contract of limitation occurs outside Hong Kong or the governing law is not Hong Kong law.

6. This Practice Direction came into effect on 1 October 2019.

7. This Practice Direction is regarded as advisory.

N. EMPLOYED SOLICITORS

1. This Practice Direction applies to a solicitor[1] employed by a non-solicitor employer (referred to as "employed solicitor") save and except those solicitors whose appointments fall within section 75(1)(a) of the Legal Practitioners Ordinance[2] or those solicitors who are employees of statutory bodies and who are empowered by law to act in a legal capacity in the discharge of their duties with such employer.

2. An employed solicitor shall satisfy the following conditions (which apply to him under section 7 of the Legal Practitioners Ordinance) before he can act as a solicitor in accordance with this Practice Direction:

   (a) his name is for the time being on the roll of solicitors;

   (b) he is not suspended from practice;

   (c) he has in force a current practising certificate.

3. Subject to the provisions in this Practice Direction, an employed solicitor acting in the course of his employment as a solicitor for his employer and any related body[3] of such employer is in the same position as a solicitor acting for a client. However, he shall advise the parties involved in the matter in which he is acting as a solicitor that he is not covered by the Professional Indemnity Scheme referred to in the Solicitors (Professional Indemnity) Rules.

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[1] "Solicitor" means a person who is enrolled on the roll of solicitors and who, at the material time, is not suspended from practice (section 2(1) of Legal Practitioners Ordinance).

[2] This Practice Direction does not apply to any legal officer within the meaning of section 2 of the Legal Officers Ordinance (Cap. 87), any person holding an appointment under section 3(1) of the Legal Aid Ordinance (Cap. 91) or any person deemed to be a legal officer for the purpose of the Legal Officers Ordinance (Cap. 87) by virtue of section 3(3) of the Director of Intellectual Property (Establishment) Ordinance (Cap. 412) or section 75(3) of the Bankruptcy Ordinance (Cap. 6) or require any such person or any clerk, trainee solicitor or officer appointed to act for him to be admitted in any case where it would not have been necessary for him to be admitted if this Ordinance had not been enacted.

[3] (a) Where the employer is a company, a "related body" of the employer means a subsidiary or an associated company or holding company of the employer and:

   (i) a company is a subsidiary of another company if the company is deemed to be a subsidiary of that other company for the purposes of the Companies Ordinance (Cap. 32);

   (ii) a company is the holding company of another company if that other company is a subsidiary of the company; and

   (iii) a company is deemed to be an associated company of another company if both of them are subsidiaries of the same holding company.

(b) Where the employer is a partnership, a "related body" of the employer means a partnership or a company beneficially owned or controlled by the employer.

4. (a) An employed solicitor can act as a solicitor in conveyancing transactions only in the following circumstances:

   (i) For his employer where the employer is not in the capacity of a trustee and is:

   (aa) either the purchaser or lessee;

   (bb) the landlord provided that the employed solicitor does not act for the tenant as well and that the tenant has been advised to seek independent legal advice;

   (cc) the mortgagee provided that the mortgagor is represented by another solicitor and that the mortgagee should not be entitled to charge the mortgagor for any legal costs or disbursements;

   (dd) the vendor of a completed development provided that the purchaser is represented by another solicitor who is not in the same employment and provided that the vendor should not be entitled to charge the purchaser for any legal costs or disbursements.

   (ii) For both his employer and a related body of his employer where none are in the capacity of a trustee and:

   (aa) one of them is the vendor and the other is the purchaser in the sale and purchase of any land;

   (bb) one of them is the lessor and the other is the lessee in the lease of any land;

   (cc) one of them is the borrower or mortgagor and the other is the lender or mortgagee in the mortgage of any land.

   (b) Where an employed solicitor acts as a solicitor in a conveyancing transaction, he shall not act as stakeholder or give professional undertakings in the transaction.

5. Where an employed solicitor acts as a solicitor for his employer or a related body of his employer in litigation or conveyancing transactions, he must have a current practising certificate which does not bear any condition restricting him not to practise as a solicitor on his own account or in partnership (referred to as an "unconditional practising certificate") or be supervised by a solicitor holding a current unconditional practising certificate.

6. An employed solicitor may, in the course of his employment, make or prepare any statement, certificate, report or other document to be made or prepared by a solicitor under Schedule 1 to the Occupational Retirement Schemes Ordinance (Cap 426) in respect of the registration of any occupational retirement scheme operated by a customer or client of his employer or a related body of his employer or under the Mandatory Provident Fund Schemes Ordinance (Cap. 485) or specified in the guidelines issued by the Mandatory Provident Fund Schemes Authority under section 6H of that Ordinance in respect of any provident fund scheme operated by a customer or client of his employer or a related body of his employer provided that he:

   (a) has a current unconditional practising certificate or be supervised by a solicitor holding one;

(b) advises the person or company he is acting for that he is not covered by the Professional Indemnity Scheme referred to in the Solicitors (Professional Indemnity) Rules; and

(c) is adequately insured or indemnified in respect of the matter for which he is acting by a professional indemnity insurance or an indemnity given by his employer against negligence claims.

7. An employed solicitor may, as a solicitor, administer oaths, affidavits / affirmations or declarations[4] or certify that a document is a true copy of the original produced to him in the same manner as a solicitor in private practice.

8. An employed solicitor may act as a civil celebrant in the same manner as a solicitor in private practice provided that he advises the couple that he is not covered by the Professional Indemnity Scheme referred to in the Solicitors (Professional Indemnity) Rules.

9. In the course of acting as a solicitor, an employed solicitor is subject to the same general principles of professional conduct, rules and regulations governing a solicitor in private practice, insofar as they are applicable to him.

10. This Practice Direction came into effect on 1 June 2007.

11. This Practice Direction is mandatory.

[4] See Principle 13.09 in The Hong Kong Solicitors' Guide to Professional Conduct Volume 1 Commentary 2(c), Principle 13.09 states that "*a solicitor who is in the full-time or part-time employment of a company must not administer oaths in matters in which the company is concerned.*"

P. GUIDELINES ON ANTI-MONEY LAUNDERING AND TERRORIST FINANCING

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ANNEXURE

1. What are money laundering and terrorist financing?

2. Summary of key provisions in legislation on money laundering, terrorist financing, financial sanctions and proliferation financing

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4. Examples of suspicious transaction indicators and risk areas

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P. GUIDELINES ON ANTI-MONEY LAUNDERING AND TERRORIST FINANCING

A. TABLE OF MANDATORY REQUIREMENTS

<table>
<tr><th>Mandatory Requirements</th><th></th></tr>
<tr><td>1. Client identification and verification</td><td>
▪ Objective:-
Take reasonable measures to obtain basic information on the identity of the client, and in an Applicable Circumstance (as defined in paragraph 25 of this Practice Direction), verify the client's identity.
Client identification and verification are two distinct concepts. Identification refers to the basic information a solicitor is required to obtain and record about his clients to know who they are whenever he is retained: their names, addresses, telephone numbers, occupation, etc. Verification refers to the information a solicitor needs to obtain to confirm that his clients are who or what they say they are.
▪ Applicable situations:-
Client identification is required in all cases including cases for the same client. Client verification is only required when a solicitor is acting for a client (new or existing) or giving instructions on behalf of such client in any of the Applicable Circumstances as defined in paragraph 25 of this Practice Direction, i.e. any one of the situations (i) to (vi) set out in this Section A item 2 (Client due diligence) below.
▪ When:-
(i) Establishing business relationship; or
(ii) Carrying out occasional transactions;
(iii) In exceptional or urgent circumstances where it is not practicable to verify client's identity before accepting instructions (as, for example, if it is necessary not to interrupt the normal conduct of business) and any risk of money laundering or terrorist financing that may be caused by carrying out the verification procedure after accepting the instruction is effectively managed, verification should be made as soon as practicable after accepting the instructions.
▪ How:-
to conduct identification and verification is set out in paragraphs 104 – 115.
</td></tr>
<tr><td>2. Client due diligence</td><td>
▪ Applicable situations:-
When acting for a client (new or existing) in any of the following activities:-
(i) Financial transactions (e.g. buying and selling of real estate, business, company, securities and other assets and property)
(ii) Managing client money[1], securities or other assets;
(iii) Management of bank, savings or securities accounts;
(iv) The formation, structure, re-organisation, operation or management of companies and other entities and legal arrangements;
(v) Insolvency cases and tax advice;
(vi) Other transactions involving custody of funds as stakeholder or escrow agent or transfer of funds through their bank accounts.
</td></tr>
</table>

[1] Simply operating a solicitor's client account would not generally be regarded as "managing client money". However, where a solicitor handles money under the terms of a power of attorney for a client, it may be considered as "managing client money".

	▪ **How**:- (i) Obtain information on the nature and intended purpose of the transaction; (ii) Obtain information on the business relationship between the client and other interested parties to the transaction; (iii) Obtain information on the source of funding; (iv) Where appropriate, check client's and beneficial owner's name against the United Nations sanctions list and the list of terrorists or terrorist associates[2]; and (v) Assess money laundering and terrorist financing risks associated with a new or existing client by taking into account various factors such as client risk, country risk, service risk, transaction and delivery channels risk to apply appropriate and proportionate client due diligence and risk mitigating measures. **Firms should adopt a risk-based approach in determining the level of information to be obtained.**
3. Enhanced client due diligence	▪ **Applicable situations**:- (i) When handling complex, unusually large transactions, or an unusual pattern of transactions, which have no apparent economic or lawful purpose; or (ii) When acting for clients considered as "high risk", for example (without limitation):- - Overseas companies where corporate information is not readily accessible or with nominee shareholders/directors or a significant portion of capital in the form of bearer shares; or - Non-Hong Kong and other high-risk politically exposed persons ("**PEPs**") and persons, companies and government organisations related to them; or - Persons or entities from or in non-cooperative countries and territories ("**NCCT**")[3] identified by the Financial Action Task Force ("**FATF**")[4] or such other jurisdictions known to have insufficiently complied with FATF Recommendations; (iii) When preliminary interview leads to:- - Suspicion of money laundering, terrorist or proliferation financing; or - Doubt about the veracity or adequacy of previously obtained client identification data. or

[2] Where a client is a legal person, a trust or other similar legal arrangement, consideration should be given to identify all the connected parties of the client by obtaining their names and screen against PEP lists, the United Nations sanctions list and the list of terrorists or terrorist associates subject to a risk-based approach.

A connected party of a client that is a legal person, a trust or other similar legal arrangement:
(a) in relation to a corporation, means a director of the client;
(b) in relation to a partnership, means a partner of the client;
(c) in relation to a trust or other similar legal arrangement, means a trustee (or equivalent) of the client; and
in other cases not falling within subsection (a), (b) or (c), means a natural person holding a senior management position or having executive authority in the client.

[3] The current list of NCCTs can be found on the FATF website.

[4] The FATF was established in 1989 in an effort to thwart attempts by criminals to launder the proceeds of crime through the financial system. Hong Kong has been a full member of FATF since March 1991 and has the obligation to implement the FATF Recommendations, which include the 40 Recommendations of the FATF on Money Laundering and the 9 Special Recommendations of FATF on Terrorist Financing. The current list of FATF Members and Observers can be found on the FATF website.

<table>
<tr><td></td><td>(iv) Where the Government through the Law Society has issued notices informing Members of situations which may present a high risk of money laundering or terrorist financing.
▪ How:-
Conduct enhanced due diligence as set out in paragraphs 122 – 125.</td></tr>
<tr><td>4. Politically exposed person (Non-Hong Kong PEP)</td><td>▪ A non-Hong Kong PEP means:-
(a) an individual who is or has been entrusted with a prominent public function outside Hong Kong and
(i) includes a head of state, head of government, senior politician, senior government, judicial or military official, senior executive of a state-owned corporation and an important political party official;
(ii) but does not include a middle-ranking or more junior official of any of the categories mentioned in subparagraph (i);
(b) a spouse, a partner, a child or a parent of an individual falling within paragraph (a), or a spouse or a partner of a child of such an individual; or
(c) a close associate of an individual falling within paragraph (a).

▪ A close associate means:-
(i) an individual who has close business relations with a person falling under paragraph (a), including an individual who is a beneficial owner of a legal person or trust of which the person falling under paragraph (a) is also a beneficial owner; or
(ii) an individual who is the beneficial owner of a legal person or trust that is set up for the benefit of a person falling under paragraph (a).

When a solicitor knows that a client or a beneficial owner of a client is a non-Hong Kong PEP, it should, before (i) establishing a business relationship or (ii) continuing an existing business relationship where the client or the beneficial owner is subsequently found to be a non-Hong Kong PEP, apply enhanced due diligence measures set out in paragraph 124.

In determining what constitutes a prominent (public) function, solicitor should consider on a case-by-case basis, taking into account various factors, including but not limited to:

(a) the powers and responsibilities associated with a particular public function;
(b) the organisational framework of the relevant government or international organisation; and
(c) any other specific concerns connected to the jurisdiction where the public function is/has been entrusted.</td></tr>
<tr><td>5. Politically exposed person (Hong Kong PEP)</td><td>▪ A Hong Kong PEP means:-
(a) an individual who is or has been entrusted with a prominent public function in Hong Kong and
(i) includes head of government, senior politician, senior government, or judicial official, or senior executive of a government-owned corporation and an important political party official;</td></tr>
</table>

	(ii) but does not include a middle-ranking or more junior official of any of the categories mentioned in subparagraph (i); (b) a spouse, a partner, a child or a parent of an individual falling within paragraph (a), or a spouse or a partner of a child of such an individual; or (c) a close associate of an individual individual falling within paragraph (a).
6. Politically exposed person (International Organisation PEP)	▪ **An international organisation[5] PEP means**:- (a) an individual who is or has been entrusted with a prominent function by an international organisation, and (i) includes members of senior management, i.e. directors, deputy directors and members of the board or equivalent functions; (ii) but does not include a middle-ranking or more junior official of the international organisation; (c) a spouse, a partner, a child or a parent of an individual falling within paragraph (a), or a spouse or a partner of a child of such an individual; or (d) a close associate of an individual falling within paragraph (a).
7. Enhanced client due diligence measures for Hong Kong and International Organisation PEPs	Solicitors should take reasonable measures to determine whether a client or a beneficial owner of a client is a Hong Kong or an international organisation PEP and assess money laundering/terrorist financing risks to determine whether the client or or a beneficial owner of the client pose a higher risk of money laundering/terrorist financing. Hong Kong or international organisation PEP status in itself does not automatically confer higher risk. Solicitors should apply the enhanced due diligence measure set out in paragraph 124 in situation where the Hong Kong or the internal organisation PEP presents a higher risk of money laundering/terrorist financing taking into account all risk factors, including those set out in paragraph 121 that are relevant to the business relationship.
8. Treatment of former Hong Kong, Non-Hong Kong and International Organisation PEPs (former PEPs)	▪ **A former PEP means**:- (a) an individual who has been but is not currently entrusted with a prominent public function; (b) a spouse, a partner, a child or a parent of an individual falling within paragraph (a), or a spouse or a partner of a child of such an individual; or (c) a close associate of an individual falling within paragraph (a)

[5] International organisations are entities established by formal political agreements between their member states that have the status of international treaties; their existence is recognised by law in their member countries; and they are not treated as resident institutional units of the countries in which they are located. Examples of international organisations include the United Nations and affiliated international organisations such as the International Maritime Organization; regional international organisations such as the Council of Europe, institutions of the European Union, the Organization for Security and Co-operation in Europe and the Organization of American States; military international organisations such as the North Atlantic Treaty Organization, and economic organisations such as the World Trade Organization or the Association of Southeast Asian Nations, etc.

	Following a risk-based approach, solicitors may decide not to apply or continue to apply the enhanced client due diligence measures set out in paragraph 124 to a client who is, or whose beneficial owner is, a former PEP. Such decision can only be made with the approval of the senior management and on the basis that the PEP no longer presents a high risk of money laundering/terrorist financing. To determine whether a former PEP no longer presents a high risk of money laundering/terrorist financing, solicitors should conduct an appropriate assessment on the money laundering/terrorist financing risk associated with the PEP status, taking into account various risk factors, including but not limited to: (a) the level of (informal) influence that the individual could still exercise; (b) the seniority of the position that the individual held as the PEP; and (c) whether the individual's previous and current function are linked in any way (e.g. formally by appointment of the PEP's successor, or informally by the fact that the PEP continues to deal with the same substantive matters).
9. Simplified client due diligence (SDD)	Solicitors may apply SDD measures to clients and products presenting a low money laundering/terrorist financing risk as defined in section 4, Division 1, Part 2, Schedule 2 to the AMLO. SDD measures should not be applied or continue to be applied, where: (a) a client or transaction presents high risk of money laundering/terrorist financing as defined in the *Table of mandatory requirements under Section A, item 3 (Enhanced client due diligence)*; (b) the risk assessment changes during the course of business; (c) there is a suspicion of money laundering/terrorist financing; or (d) where there are doubts about the veracity or accuracy of documents or information previously obtained for the purposes of identification or verification. SDD measures in relation to beneficial owners: (a) a solicitor may choose not to identify and take reasonable measures to verify the beneficial owner in relation to client or products listed in section 4, Division 1, Part 2, Schedule 2 to the AMLO; (b) if a client not falling within the scope of section 4, Division 1, Part 2, Schedule 2 to the AMLO has in its ownership chain an entity that falls within the scope of section 4 Division 1, Part 2, Schedule 2 to the AMLO, it is not necessary to identify or verify the beneficial owners of that entity in that chain when establishing a business relationship. However, solicitors should still identify and take reasonable measures to verify the identity of beneficial owners in the ownership chain that are not connected with that entity; (c) where a client is a corporation listed on any stock exchange, solicitors may choose not to identify and take reasonable measures to verify its beneficial owners only if the public company is subject to disclosure requirements (either by stock exchange rules, or through law or enforceable means), which impose requirements to ensure adequate transparency of beneficial ownership of the client;

(d) where a client is an investment vehicle[6], solicitors may choose not to identify and take reasonable measures to verify its beneficial owners (i.e. the investors) where the person responsible for carrying out the client due diligence measures in relation to all the investors of the investment vehicle is:

(i) a Financial Institution as defined in the AMLO;

(ii) an institution incorporated or established in Hong Kong, or in an equivalent jurisdiction, which has measures in place to ensure compliance with requirements similar to those set out in the Schedule 2 to the AMLO, and is supervised for compliance with those requirements.

(e) an investment vehicle whether or not responsible for carrying out client due diligence measures on the underlying investors under the governing law of the jurisdiction in which the investment vehicle is established may, where permitted by law, appoint another institution ("appointed institution"), such as a manager, a trustee, an administrator, a transfer agent, a registrar or a custodian, to perform the client due diligence. Where the person responsible for carrying out the client due diligence measures (the investment vehicle or the appointed institution) falls within any of the categories of institution set out in section 4(3)(d) of Schedule 2 to the AMLO, solicitors may choose not to identify and take reasonable measures to verify the beneficial owners of the investment vehicle provided that it is satisfied that the investment vehicle has ensured that there are reliable systems and controls in place to conduct the client due diligence (including identification and verification of the identity) on the underlying investors in accordance with the requirements similar to those set out in the Schedule 2 to the AMLO.

(f) if neither the investment vehicle nor appointed institution fall within any of the categories of institution set out in section 4(3)(d) of Schedule 2 to the AMLO, solicitors should identify any investor owning or controlling more than 25% interest of the investment vehicle. The solicitors may consider whether it is appropriate to rely on a written representation from the investment vehicle or appointed institution (as the case may be) responsible for carrying out the client due diligence stating, to its actual knowledge, the identities of such investors or (where applicable) there is no such investor in the investment vehicle. This will depend on risk factors such as whether the investment vehicle is being operated for a small, specific group of persons. Where solicitors accept such a representation, this should be documented, retained, and subject to periodic review. For the avoidance of doubt, solicitors are still required to take reasonable measures to verify those investors owning or controlling more than 25% interest of the investment vehicle and (where applicable) other beneficial owners in accordance with Annexure 8.

[6] An investment vehicle may be in the form of a legal person or trust, and may be a collective investment scheme or other investment entity.

	Examples of possible SDD measures include: (a) accepting other documents, data or information (e.g. proof of Financial Institution's license, listed status or authorization status); (b) adopting SDD measures in relation to beneficial owners as described above; (c) reducing the frequency of updates of client's identification information; (d) reducing the degree of ongoing monitoring; or (e) not collecting specific information or carrying out specific measures to understand the purpose and intended nature of the business relationship, but inferring the purpose and intended nature from the type of transactions or business relationship established.
10. Timing for conducting client due diligence	▪ **When:-** (i) Establishing a solicitor / client relationship; or (ii) Carrying out occasional transactions; (iii) In exceptional or urgent circumstances where it is not practicable to conduct client due diligence at the time of instructions, due diligence should be done as soon as practicable after preliminary client identification. **Nevertheless, law firms should determine the risks involved in acting for a client considered as "high risk" before completing due diligence.** (iv) Ongoing review is required for any client considered as "high risk", or where there are changes to instructions or a relationship between a client and relevant party(ies) which give rise to suspicions.
11. Record keeping	Files including records for client identification and due diligence should be kept for the period as follows:- (i) Conveyancing matters - 15 years; (ii) Tenancy matters - 7 years; (iii) Other matters, except criminal cases - 7 years; and (iv) Criminal cases - 5 years from expiration of any appeal period. Records of a transaction which is subject to a suspicious transaction report and investigation should be kept until the relevant authority has confirmed that the case has been closed.
12. Staff awareness and training	(i) Make the Guidelines and the firm's internal policies and procedures (as supplemented and updated from time to time) available to new and existing employees; and (ii) Provide ongoing training to staff on how to recognise and deal with suspicious transactions and to keep them up-to-date on relevant legal provisions and on trends of money laundering, terrorist and proliferation financing techniques.

B. INTRODUCTION

13. In July 2004, the Law Society set up a Working Party on Anti-Money Laundering to consider the impact of the revised Forty Recommendations in relation to measures against money laundering developed by the FATF. Given the complexity and importance of the issues, the Working Party was converted into a full Committee in November 2004. In late 2006, the Law Society on the recommendation of the Committee on Anti-Money Laundering resolved to publish a comprehensive set of Guidelines relating to anti-money laundering and terrorist financing for use by law firms, solicitors and foreign lawyers practising in Hong Kong.

14. These Guidelines supersede Circular 97-280, Circular 03-428, Circular 05-291 (SD) and Circular 18-647 (SD) on money laundering and terrorist financing:

15. These Guidelines apply to all law firms, solicitors and foreign lawyers practising in Hong Kong and aim to:-

    15.1 provide general guidance on the subjects of anti-money laundering, terrorist financing, financial sanctions and proliferation financing

    15.2 summarise the relevant legislative provisions on anti-money laundering, terrorist financing, financial sanctions and proliferation financing;

    15.3 require compliance by practitioners of prescribed requirements to prevent money laundering, terrorist and proliferation financing;

    15.4 offer useful general guidelines to law firms for developing their own procedures on anti-money laundering, terrorist and proliferation financing appropriate to their businesses; and

    15.5 highlight issues which would affect the practice of law in Hong Kong.

16. These Guidelines do not have the force of law and should not be interpreted as such. However, where provisions are specified as mandatory herein (currently paragraphs 21 – 33), any law firm, solicitor or foreign lawyer practising in Hong Kong that fails to comply with such provisions may face disciplinary action (see Chapter 15 of The Hong Kong Solicitors' Guide to Professional Conduct ("**Guide to Professional Conduct**"). In addition, firms which do not comply with these Guidelines will be exposed to additional risks of being involved in money laundering and terrorist financing activities, with severe consequences of criminal prosecution and significant loss of reputation.

17. These Guidelines will be kept under review and revised from time to time.

C. LEGISLATION ON MONEY LAUNDERING, TERRORIST FINANCING, FINANCIAL SANCTIONS AND PROLIFERATION FINANCING

18. Legislation concerned with money laundering, terrorist financing, financial sanctions and financing of proliferation of weapons of mass destruction:-

    18.1 Anti-Money Laundering and Counter-Terrorist Financing Ordinance (Cap. 615) ("**AMLO**");

    18.2 Drug Trafficking (Recovery of Proceeds) Ordinance (Cap. 405) ("**DTRPO**");

    18.3 Organized and Serious Crimes Ordinance (Cap. 455) ("**OSCO**");

18.4 United Nations (Anti-Terrorism Measures) Ordinance (Cap. 575) ("**UNATMO**");

18.5 United Nations Sanctions Ordinance (Cap. 537) ("**UNSO**"); and

18.6 Weapons of Mass Destruction (Control of Provision of Services) Ordinance (Cap. 526) ("**WMD(CPS)O**").

19. It is important for solicitors to raise their awareness of these provisions and to comply with them to minimise the risk of becoming involved inadvertently in criminal offences such as:-

19.1 assisting persons known or suspected to be laundering money generated by drug trafficking or any indictable offence, or providing or collecting funds used to commit terrorist acts or making funds available to terrorists or terrorist associate(s);

19.2 failing to report a suspicious case of money laundering or terrorist financing;

19.3 tipping off clients who were subject to investigation for an offence of money laundering or terrorist financing;

19.4 failing to comply with court orders for the purpose of investigation of crime and to make information available;

19.5 make available any funds or other financial assets or economic resources to, or for the benefit of, designated persons or entities under the UNSO, as well as those acting on their behalf, at their direction, or owned or controlled by them; or to deal with any funds, other financial assets or economic resources belonging to, or owned or controlled by, such persons and entities; or

19.6 provide any services where it is believed or suspected, on reasonable grounds, that those services will or may assist the development, production, acquisition or stockpiling of Weapons of Mass Destruction ("WMD") in Hong Kong or elsewhere.

20. Summaries on the key provisions of the DTRPO, OSCO, UNATMO, UNSO and WMD(CPS)O are set out in **Annexure 2**.

D. BASIC POLICIES AND PROCEDURES REQUIRED OF LAW FIRMS

21. In support of the international initiatives to combat money laundering, terrorist and proliferation activities, there is a need for awareness and vigilance on the part of legal practitioners and their staff. Law firms should therefore have in place appropriate policies and procedures of internal control for identifying and (where appropriate) reporting suspicious transactions. With the implementation of AMLO on 1 March 2018, law firms are required to comply with the provisions of this Ordinance.

Mandatory Requirements

22. Every law firm carrying on business in Hong Kong is required to comply with the requirements outlined in paragraphs 21 – 33 below when they act for clients in any matter.

Client identification, verification and due diligence

23. As a basic requirement, law firms must make reasonable efforts to identify and, in an Applicable Circumstance, verify the true identity of all clients (new or existing) requesting the firm's services. Each firm should carefully consider whether financial transactions should be conducted with clients who fail to provide satisfactory evidence of their identities. Recommended procedures and policies on client identification and verification are set out in paragraphs 104 – 115.

24. In general, law firms should satisfy themselves with the identity of the client and the beneficial owner(s)[7]of a client which is not a natural person at the time of the instruction. In exceptional or urgent circumstances where this is not reasonably practicable, the verification procedure should be made as soon as practicable after the preliminary identification.

25. In addition to the basic client identification and verification measures, law firms are required to carry out different levels of client due diligence as set out in the *Table of mandatory requirements under Section A* when instructed to act in any of the following activities (referred to therein as the "Applicable Circumstances"; and any one of them an "Applicable Circumstance"):-

    25.1 financial transactions such as buying and selling of real estate, business, company, securities and other assets and property;

    25.2 managing client money, securities or other assets;

    25.3 management of bank, savings or securities accounts;

    25.4 the formation, structure, re-organisation, operation or management of companies and other entities and legal arrangements;

    25.5 insolvency cases and tax advice;

    25.6 other transactions involving custody of funds by law firms as stakeholder or escrow agent or transfers of funds through their bank accounts.

26. The timing required for conducting client due diligence is similar to that required for client identification and verification (i.e. at the time of the instruction and before accepting the instruction). However, in exceptional or urgent circumstances where this is not practicable, it would be permissible to have the due diligence process completed as soon as practicable after accepting the instruction. Nevertheless, **where the client is considered as "high risk", the firm should carefully determine the risks involved in acting for such client before completing the due diligence process**.

27. Where a solicitor is unable to verify the identity of a client or is suspicious of the relevant transaction after conducting due diligence, the solicitor should carefully evaluate the risks involved and determine whether he should continue to act for the client and, if appropriate, report any suspicion on money laundering or terrorist financing activities to an authorized officer. In this respect, care must be taken to ensure that he would not inadvertently commit the offence of tipping off (see paragraphs 79 – 80 and 90 – 91).

Record keeping

28. Law firms should also make reasonable efforts in keeping the records of their existing clients updated from time to time and conducting periodic reviews on the risk profile of the clients.

[7] See the definition of beneficial owner in Annexure 8.

29. All files, including all documents relating to the transactions and records obtained or compiled for client identification and due diligence, should be retained in order to facilitate the retrieval of information relating to client identification and due diligence. The recommendations contained in the existing Circular 12-475 should be observed. The retention period for the following types of transactions is as follows:-

    29.1 conveyancing matters – 15 years;

    29.2 tenancy matters – 7 years;

    29.3 other matters, except criminal cases – 7 years; and

    29.4 criminal cases – 5 years from expiration of any appeal period.

    The above retention periods also apply to copies of the individual client's identification documents including the Hong Kong identity cards and passports collected in relation to the files or transactions.

30. Such records should be kept in such a way that the law firm can swiftly comply with any information requests from a competent authority.

31. Records of a transaction which is the subject of a suspicious transaction reporting and investigation should be kept until the relevant authority has confirmed that the case has been closed.

Staff Awareness and Training

32. These Guidelines and the firm's internal policies and procedures (as supplemented and updated from time to time) are to be made available to new and existing employees to raise awareness of money laundering, terrorist and proliferation financing, financial sanctions and facilitate recognition and (where appropriate) reporting of suspicious transactions.

33. Further, each law firm has to provide ongoing training to staff on recognition, reporting and handling of suspicious transactions and on the updated legislation and trends of money laundering, terrorist and proliferation financing techniques.

Recommended Measures

34. Solicitors are reminded that the effort in combating money laundering, terrorist and proliferation financing does not end at the point of accepting instructions and care must be taken at all times to identify suspicious transactions. Examples of suspicious transaction indicators and risk areas are provided in **Annexure 4**.

35. Law firms should develop and implement policies and procedures of internal control appropriate to the nature and scope of their business for identifying and (where appropriate) reporting money laundering, terrorist and proliferation financing.

36. In establishing such policies and procedures, law firms should take a risk-based approach. The guiding principle is that objective reasonable steps should be taken to detect and prevent money laundering, terrorist and proliferation financing activities and transactions. It is prudent for law firms to keep written records of the steps taken by them. They are required to make their own independent assessment taking into consideration the circumstances of each case. Recommended procedures and policies for recognition and reporting of suspicious transaction are provided in **Annexure 5**. A standard report form is at www.jfiu.gov.hk.

37. Such procedures should be communicated in writing to all solicitors and staff of the firm and be reviewed and updated on a regular basis to ensure their effectiveness.

38. Law firms should co-operate with law enforcement authorities to the extent permitted by law or contractual obligations relating to client confidentiality.

New services, new business practices and use of new technologies

39. Law firms should identify and assess the money laundering and terrorist financing risks that may arise in relation to:

    39.1 the development of new services and new business practice(s), including new delivery mechanisms; and

    39.2 the use of new or developing technologies for both new and pre-existing services.

40. Law firms should undertake the risk assessment prior to the launch of the new service, new business practice, or the use of new or developing technologies, and should take appropriate measures to manage and mitigate the risks identified.

41. Law firms should also consider conducting a periodic firm-wide risk assessment depending on the size and complexity of the law firm to identify, assess and understand how and to what extent it is vulnerable to money laundering, terrorist and proliferation financing risks. To determine the appropriate level and type of mitigation, a documented firm-wide risk assessment should take into account:

    (a) the size of the law firm;

    (b) type of clients;

    (c) jurisdictions or countries its clients are from;

    (d) services it provides; and

    (e) type of transactions and delivery channels.

E. RELEVANT LEGAL ISSUES

Legal Professional Privilege ("LPP")

42. Special privilege from disclosure, known as LPP, is rendered to communications made:-

    42.1 between a legal adviser and his client for the purpose of giving legal advice to the client; and

    42.2 between a legal adviser and his client and any other person in connection with or in contemplation of legal proceedings and for the purposes of such proceedings.

43. LPP does not exist for communications or documents which are held with the intention of furthering a criminal purpose.

44. In recognition of the LPP under common law, there are provisions in the DTRPO, OSCO and UNATMO[8] exempting items subject to LPP from the disclosure requirements therein.

[8] Section 2(14) of DTRPO, section 2(18) of OSCO and section 2(5) of UNATMO.

45. Interpretive Note to Recommendation 23 of The 40 Recommendations of the FATF on Money Laundering also provides that:-

“Lawyers, notaries, other independent legal professionals, and accountants acting as independent legal professionals, are not required to report suspicious transactions if the relevant information was obtained in circumstances where they are subject to professional secrecy or legal professional privilege.”

46. Nevertheless, where a solicitor, through information subject to LPP, becomes aware or suspicious that a transaction being handled by him involves criminal or terrorist activities in contravention of the DTRPO, OSCO or UNATMO, he should consider if it remains appropriate for him to continue to act for the relevant client.

47. If the solicitor considers there is a conflict of interest or does not wish to continue to act, he should cease to act for that client. **It is therefore advisable for law firms to include a standard clause in their engagement letters to the effect that the firm may terminate its relationship with the client at any time if it is of the opinion that a conflict of interest arises,** whether the conflict is between clients of the firm or between the client and the firm.

Client Confidentiality

48. Solicitors are required to comply with Rule 8.01 of the Guide to Professional Conduct which provides:-

“A solicitor has a legal and professional duty to his client to hold in strict confidence all information concerning the business and affairs of his client acquired in the course of the professional relationship, and must not divulge such information unless disclosure is expressly or impliedly authorised by the client or required by law or unless the client has expressly or impliedly waived the duty.”

49. Such general duty of confidentiality may, in certain circumstances, be overridden by orders of the court. For example, an order made pursuant to section 4 of the OSCO, which requires the production of particular material (other than that subject to legal professional privilege) which is relevant for the purpose of an investigation into an organized crime or proceeds of crime.

50. Where a solicitor becomes aware or suspicious that a client’s transaction may relate to money laundering or terrorist financing and that the information he has does not fall within LPP, he should consider carefully whether a report should be made to an authorized officer or he may be held liable for failing to make disclosure as required by the DTRPO, OSCO or UNATMO.

51.1 If the solicitor determines that a report should be made, a conflict of interest may arise between him and the client. In these circumstances, the solicitor should consider carefully whether he should continue to act for the client.

51.2 The statutory protections under section 25A(3) of the OSCO, section 25A(3) of the DTRPO and section 12(3) of the UNATMO should also be considered. These subsections (which are identical) read as follows:

“A disclosure referred to in subsection (1) [i.e. a report]-

(a) shall not be treated as a breach of any restriction upon the disclosure of information imposed by contract or by any enactment, rule of conduct or other provision;

(b) shall not render the person who made it liable in damages for any loss arising out of-

(i) the disclosure;

(ii) any act done or omitted to be done in relation to the property concerned in consequence of the disclosure."

52. When a report has been made, the solicitor should not disclose to the client or any third party the making of such report, otherwise the solicitor may commit the offence of "tipping off".

53. The standard clause recommended to be incorporated into a law firm's engagement letter with its client under the above paragraph 47 is particularly useful in circumstances where a report has been made to the authority so that the law firm may terminate the solicitor/client relationship without giving information which may make it liable for the offence of tipping off.

Litigation

54. There are provisions under the DTRPO, OSCO and UNATMO imposing criminal liability on persons (i) having knowledge of or suspicion on money laundering and/or terrorist financing activities and (ii) entering into or becoming involved in such activities, unless disclosure is made and consent to continue with the involvement is obtained from an authorized officer (the "**Relevant Provisions**"). Details of these provisions are provided in **Annexure 2**.

55. Solicitors may in the course of representing clients in existing or contemplated legal proceedings become aware of or suspicious that the subject matter of the proceedings relates to money laundering or terrorist financing activities, or enter into or become involved in such activities. Solicitors in these situations may be at risk of being caught by the Relevant Provisions.

56. In circumstances where the relevant information was obtained from one's own client, disclosure would be exempted by reason of LPP set out in paragraph 42 above.[9]

57. The position is less clear where the relevant information was obtained as a result of discovery made by the opposing party. Based on the decision of the English Court of Appeal in **Bowman v Fels** [2005] EWCA Civ 226, in the absence of clear language, the disclosure obligation imposed by the Relevant Provisions would not override the implied undertaking of lawyers not to use documents disclosed in the discovery procedure of a legal proceeding to any third party or for other purpose. Further, the English Court of Appeal expressed the view that the function of litigation is to resolve the rights and duties of two parties according to law and therefore the conduct of legal proceedings would not be regarded as "carrying out" a "transaction" relating to money laundering. It therefore appears that the Relevant Provisions would not apply to solicitors conducting genuine legal proceedings for their clients. This proposition however is yet to be tested before the Hong Kong Courts.

58. If the solicitor considers there is a conflict of interest or does not wish to continue to act, he should not accept any further instructions from the client.

Civil liability

59. Section 25A(3) of DTRPO and OSCO and section 12(3) of UNATMO expressly provide that the making of disclosure under section 25A(2) of DTRPO and OSCO and section 12(2) of UNATMO respectively shall not be treated as breach of contract or confidentiality and the person making such disclosure shall not be made liable in damages for any loss arising out of the disclosure or any act done or omitted to be done in relation to the property concerned in consequence of the disclosure.

[9] See also paragraph 77.

60. These exemptions from liability in damages, however, do not prevent a party adversely affected by the disclosure made pursuant to the relevant legislation, to make other civil claims such as constructive trusteeship, money had and received and tracing in equity.

Confidentiality Agreement

61. Commercial solicitors are often required by clients (particularly corporate clients) to enter into confidentiality agreements before the clients disclose information relating to their transactions. To ensure that they are not deprived of the protection of section 25A(3) of the DTRPO and OSCO and section 12(3) of UNATMO, solicitors should be cautious in entering into confidentiality agreements **subject to foreign law**. Further, solicitors should be cautious when required by clients to confirm that clients' information will remain confidential, as such representations could be considered to be misleading.

F. DISCLAIMER

62. Notwithstanding the recommendations made by the Law Society, these Guidelines are not intended to provide legal advice. Practitioners are required to form their own opinions on each individual case.

ANNEXURE 1

What are money laundering and terrorist financing?

63. Money laundering is a transaction or a series of transactions effected with the aim to conceal or change the identity of criminal proceeds, so that the money, after such processing, will appear to have originated from a legitimate source.

64. "Money laundering" is defined in Part 1 of Schedule 1 to AMLO to mean an act intended to have the effect of making any property—

    (a) that is the proceeds obtained from the commission of an indictable offence under the laws of Hong Kong, or of any conduct which if it had occurred in Hong Kong would constitute an indictable offence under the laws of Hong Kong; or

    (b) that in whole or in part, directly or indirectly, represents such proceeds,

    not to appear to be or so represent such proceeds.

65. Similar to money laundering, terrorist financing also aims at disguising the origin of funds, but its focus is on the directing of funds, whether legitimate or not, to terrorists. It is defined in Part 1 of Schedule 1 to AMLO to mean

    (a) the provision or collection, by any means, directly or indirectly, of any property—

        (i) with the intention that the property be used; or

        (ii) knowing that the property will be used,

        in whole or in part, to commit one or more terrorist acts (whether or not the property is actually so used);

    (b) the making available of any property or financial (or related) services, by any means, directly or indirectly, to or for the benefit of a person knowing that, or being reckless as to whether, the person is a terrorist or terrorist associate; or

    (c) the collection of property or solicitation of financial (or related) services, by any means, directly or indirectly, for the benefit of a person knowing that, or being reckless as to whether, the person is a terrorist or terrorist associate.

66. There are 3 common stages of money laundering:-

    66.1 *Placement* - the introduction of criminal proceeds into the financial system. Law firms are at risk of getting involved by dealing with client money.

    66.2 *Layering* - after the criminal proceeds are placed into the financial system, complex transactions are effected to disguise the audit trail and obscure the origin of the funds.

    66.3 *Integration* - if the layering process succeeds, the criminal proceeds will reappear in the financial system as legitimate funds and assets.

    Law firms are at risk of being targeted to assist in transactions such as the purchase or sale of property which may be a part of placement, layering or integration in a money laundering scheme. The offence of "dealing" in section 2 of DTRPO and OSCO is set out in paragraph 75 of **Annexure 2** of this Practice Direction.

67. There is an increasing sophistication of techniques used by criminals in laundering funds including the increased use of legal persons to disguise the true ownership and control of illegal proceeds, and the increased use of professionals to provide advice and assistance in laundering criminal funds. Particular attention should be paid when cash is received from clients. Proceeds of many crimes are often generated in the form of cash. As law firms receive and deal with client money on daily basis, they are increasingly targeted as a route to placing cash into the financial system.

ANNEXURE 2

Summary on key provisions in the DTRPO, OSCO and UNATMO

Key Provisions under DTRPO and OSCO (collectively the "Ordinances")

Failure to disclose

68. Section 25A(1) of the Ordinances imposes a duty on a person, who knows or suspects that any property:-

    (a) in whole or in part directly or indirectly represents any person's proceeds of;

    (b) was used in connection with; or

    (c) is intended to be used in connection with,

    drug trafficking or an indictable offence, to disclose that knowledge or suspicion, together with any matter on which that knowledge or suspicion is based, to an authorized officer as soon as it is reasonable for him to do so.

69. It should be noted that references to an indictable offence in sections 25 and 25A of OSCO include conduct which would constitute an indictable offence if it had occurred in Hong Kong. Accordingly, it is an offence for a person to deal with the proceeds of crime or fail to make the necessary disclosure although the principal crime is not committed in Hong Kong provided that it would constitute an indictable offence if it had occurred in Hong Kong. Similarly references to drug trafficking in sections 25 and 25A of DTRPO include drug trafficking committed outside Hong Kong.

70. An "authorized officer", as defined under section 2 of the Ordinances, includes:-

    (a) any police officer;

    (b) any member of the Customs and Excise Service; and

    (c) any other person authorized by the Secretary for Justice for the purposes of the Ordinances including any officer in the Joint Financial Intelligence Unit ("**JFIU**")[10].

71. Failure to make a disclosure under section 25A(1) is an offence and the penalties upon conviction are imprisonment for 3 months and a fine at level 5 (currently at HK$50,000).

72. Section 25A(3) of the Ordinances provides that such disclosure shall not be treated as a breach of any restriction on disclosure imposed by contract, enactment or rule of conduct and the person making such disclosure shall not be made liable in damages for any loss arising out of the disclosure or any act done or omitted to be done in relation to the property concerned in consequence of the disclosure.

73. Section 25A(4) of the Ordinances further extends the provisions of section 25A to disclosure made by an employee to an appropriate person in accordance with the procedure established by his employer for the making of such a disclosure. This provides protection to employees of a law firm against the risk of prosecution where they have reported knowledge or suspicion of money laundering transactions to the person designated by their employer.

[10] The JFIU is operated jointly by the Police and the Customs and Excise Service

Active money laundering

74. Section 25(1) of the Ordinances makes it an offence for a person to deal with any property which he, knowing or having reasonable grounds to believe that such property in whole or in part directly or indirectly represents any person's proceeds of drug trafficking or of an indictable offence respectively.

75. "Dealing" is defined under section 2 of the Ordinances to include:-

 (a) receiving or acquiring the property;

 (b) concealing or disguising the property (whether by concealing or disguising its nature, source, location, disposition, movement or ownership or any rights with respect of it or otherwise);

 (c) disposing of or converting the property;

 (d) bringing into or removing from Hong Kong the property;

 (e) using the property to borrow money, or as security (whether by way of charge, mortgage or pledge or otherwise).

76. The penalties for these offences are, on indictment 14 years imprisonment and a fine of HK$5,000,000 and on summary conviction, 3 years imprisonment and a fine of HK$500,000.

77. Section 25(2) of both Ordinances provides that it is a defence for a person charged with an offence under section 25(1) to prove that:-

 (a) he intended to disclose such knowledge, suspicion or matter to an authorized officer; and

 (b) there is reasonable excuse[11]for his failure to make disclosure in accordance with section 25A(2).

78. Further, section 25A(2) of both Ordinances provides that if a person who has made the necessary disclosure does any act in contravention of section 25(1) and the disclosure relates to that act, he does not commit an offence if:-

 (a) that disclosure is made before he does that act and the act is done with the consent of an authorized officer; or

 (b) that disclosure is made after he does that act on his initiative and as soon as it is reasonable for him to make it.

Tipping off

79. Section 25A(5) of the Ordinances makes it an offence for a person, knowing or suspecting that a disclosure has been made under section 25A, to disclose to any other person any matter which is likely to prejudice any investigation which might be conducted following the first-mentioned disclosure.

80. The penalties for the offence are, upon indictment a fine of HK$500,000 and imprisonment for 3 years and on summary conviction, a fine at level 6 (currently at HK$100,000) and imprisonment for 1 year.

[11] The existence of common law legal professional privilege constitutes a "reasonable excuse" for not reporting and as a defence to the principal offence of money laundering. See paragraphs 44 and 45 of these Guidelines.

Key Provisions under UNATMO

Failure to disclose

81. Section 12 of the UNATMO provides that where a person knows or suspects that any property is terrorist property, then the person shall disclose to an authorized officer the information or other matter:-

    (a) on which the knowledge or suspicion is based; and

    (b) as soon as is practicable after that information or other matter comes to the person's attention.

82. Section 2 of the UNATMO provides definitions to the following:-

    "Authorized officer" – (a) a police officer; (b) a member of the Customs and Excise Service; (c) a member of the Immigration Service; or (d) an officer of the Independent Commission Against Corruption.

    "Terrorist" – a person who commits, or attempts to commit, a terrorist act or who participates in or facilitates the commission of a terrorist act.

    "Terrorist act" – the use or threat of action where (i) the action is carried out with the intention of, or the threat is made with the intention of using action that would have the effect of (A) causing serious violence against a person; (B) causing serious damage to property; (C) endangering a person's life, other than that of the person committing the action; (D) creating a serious risk to the health or safety of the public or a section of the public; (E) seriously interfering with or seriously disrupting an electronic system; or (F) seriously interfering with or seriously disrupting an essential service, facility or system, whether public or private; and (ii) the use or threat is (A) intended to compel the Government or to intimidate the public or a section of the public; and (B) made for the purpose of advancing a political, religious or ideological cause.

    "Terrorist associate" – an entity owned or controlled, directly or indirectly, by a terrorist.

    "Terrorist property" – (a) the property of a terrorist or terrorist associate; or (b) any other property consisting of funds that was used or is intended to be used to finance or otherwise assist the commission of a terrorist act.

83. A list of designated terrorist, terrorist associates and terrorist properties is from time to time published in the Gazette. Section 5(4) of the UNATMO provides that in the absence of evidence to the contrary, it shall be presumed that persons or properties specified in such a list are terrorists, terrorist associates or terrorist properties.

84. Section 14 of UNATMO provides that the maximum penalty for failure to make disclosure under section 12 is imprisonment for 3 months and a fine at level 5 (currently at HK$50,000).

85. Similar to section 25A(3) of the Ordinances, section 12(3) of the UNATMO provides that the making of the required disclosure shall not be treated as a breach of contract or enactment or rule of conduct which restricts disclosure and shall not render the person who made the disclosure liable in damages therefor.

86. Similar to section 25A(4) of the Ordinances, section 12(4) of UNATMO renders protection to employees against the risk of prosecution where they have made disclosure to an appropriate person in accordance with the procedure established by their employers.

Active terrorist financing

87. Section 7 of the UNATMO prohibits a person from providing or collecting, by any means, directly or indirectly, funds:-

    (a) with the intention that the funds be used; or

    (b) knowing that the funds will be used,

    in whole or in part, to commit one or more terrorist acts (whether or not the funds are actually so used).

88. Section 8 of the UNATMO prohibits any person, except under the authority of a licence granted by the Secretary for Security, from making any funds or financial (or related) services available, directly or indirectly, to or for the benefit of a person he knows or has reasonable grounds to believe is a terrorist or terrorist associate.

89. Under section 12(2), it is a defence against prosecution under section 7 or 8 if a person who has made a disclosure under section 12(1) does any act before or after the disclosure and :-

    (a) that disclosure is made before the person does that act and the person does that act with the consent of an authorized officer; or

    (b) that disclosure is made after the person does that act on the person's initiative and as soon as it is practicable for the person to make it.

Tipping off

90. Section 12(5) of the UNATMO prohibits a person who knows or suspects that a disclosure has been made from disclosing to another person any information or other matter which is likely to prejudice any investigation which might be conducted following the first-mentioned disclosure.

91. Any person found guilty of the offence under section 12(5) shall be liable on conviction on indictment to a fine and to imprisonment for 3 years and on summary conviction to a fine at level 6 (currently at HK$100,000) and to imprisonment for 1 year.

Other Provisions under the Ordinances and UNATMO

92. In addition to the above offences under the Ordinances and UNATMO, such Ordinances also confer extensive powers on the authorities to carry out investigation on drug trafficking, organized crimes and terrorist activities, including the production of materials and furnishing of information (other than those subject to legal professional privilege) and authority to search premises, with an order of the court. Failure to comply with such order or hindrance of the relevant authority in execution of such order may amount to criminal liability. There are also provisions imposing criminal liability on persons committing acts which may prejudice investigation.

Financial Sanctions and Proliferation Financing

Financial Sanctions

93. The UNSO provides for the imposition of sanctions against persons and against places outside the People's Republic of China arising from Chapter 7 of the Charter of the United Nations. Most United Nation Security Council Resolutions ("UNSCR") are implemented in Hong Kong under the UNSO.

94. The UNSO empowers the Chief Executive to make regulations to implement sanctions decided by the United Nations Security Council ("UNSC"), including targeted financial sanctions[12] against certain individuals and entities, such as those designated by the UNSC or its Committees. Designated persons and entities are specified by notice published in the Gazette or on the website of the Commerce and Economic Development Bureau ("CEDB").

Except under the authority of a licence granted by the Chief Executive, it is an offence:

(a) to make available, directly or indirectly, any funds, or other financial assets, or economic resources, to, or for the benefit of:

(i) designated persons or entities;

(ii) persons or entities acting on behalf or, at the direction of designated persons or entities; or

(iii) entities owned or controlled by the aforementioned; or

(b) to deal with, directly or indirectly, any funds, or other financial assets or economic resources belonging to, or owned or controlled by, such persons and entities.

95. The Chief Executive may grant a licence for making available any funds, or economic resources to, or dealing with any funds or other financial assets or economic resources belonging to, or owned or controlled by, certain persons or entities under specified circumstances in accordance with the provisions of the relevant regulation made under the UNSO. Solicitors seeking such licence should write to the CEDB.

96. Section 3 of the UNSO provides that the maximum penalty for a contravention or breach of financial sanctions on summary conviction is 2 years and a fine of HK$500,000, and on indictment, imprisonment for 7 years and an unlimited fine.

97. Lists of persons and entities subject to financial sanctions under the UNSO are available on the websites of the UNSC and CEDB.

12 Targeted financial sanctions refer to both asset freezing and prohibitions to prevent funds, other financial assets or economic resources from being made available to, directly or indirectly, or for the benefit of certain persons and entities.

Proliferation financing

98. FATF defines "**proliferation financing**" as:

"the act of providing funds or financial services which are used, in whole or in part, for the manufacture, acquisition, possession, development, export, trans-shipment, brokering, transport, transfer, stockpiling or use of nuclear, chemical or biological weapons and their means of delivery and related materials (including both technologies and dual use goods used for non-legitimate purposes), in contravention of national laws or, where applicable, international obligations".

99. FATF Recommendation 7 requires countries to implement targeted financial sanctions to comply with the UNSCRs relating to the prevention, suppression and disruption of proliferation of weapon of mass destruction and its financing.

100. To combat proliferation financing, the UNSC adopts a two-tiered approach through resolutions made under Chapter VII of the UN Charter imposing mandatory obligations on UN member states:

(a) global approach under UNSCR 1540 (2004) and its successor resolutions; and

(b) country-specific approach under UNSCR 1718 (2006) against the Democratic People's Republic of Korea (DPRK) and UNSCR 2231 (2015) against the Islamic Republic of Iran (Iran) and their successor resolutions.

101. The counter proliferation financing regime is implemented in Hong Kong through the targeted financial sanctions against Democratic People's Republic of Korea and Iran under the WMD(CPS)O and the following two UNSO regulations, namely the:

(a) United Nations Sanctions (Democratic People's Republic of Korea) Regulation (Chapter 537AE); and

(b) United Nations Sanctions (Joint Comprehensive Plan of Action—Iran) Regulation (Chapter 537BV).

102. Section 4 of the WMD(CPS)O prohibits a person from providing any services where he believes or suspects, on reasonable grounds, that those services may be connected to weapons of mass destruction proliferation in or outside Hong Kong. The provision of services is widely defined and includes the lending of money or other provision of financial assistance as well as the provision of professional services.

103. Providing services that will or may assist the development, production, acquisition or stockpiling of weapons of mass destruction is an offence and the penalties on summary conviction is imprisonment for 2 years and a fine of HK$500,000, and on indictment, imprisonment for 7 years and an unlimited fine.

ANNEXURE 3

Client identification, verification and due diligence

Client identification and verification

104. In general, reasonable measures must be taken:-

104.1 to identify the client;

104.2 in an Applicable Circumstance, to verify the identity of the client by using reliable and independent source documents, data or information; and

104.3 for companies and other legal entities, to identify and, in an Applicable Circumstance, verify the persons who have effective control or beneficial ownership of the company or legal entity.

105. **Original documents** (e.g. identity card or passport of an individual, certificate of incorporation or registration of a company or other legal entity) should be inspected whenever possible for verification purpose. Where originals are not available, copies of such documents from a reliable independent source (e.g. copies certified by appropriately regulated professional) should be obtained. Where verification and client due diligence are required, law firms, solicitors and foreign lawyers are required to take or collect copies of individual client's identification documents. Individual client's identification documents include Hong Kong identity cards and passports. Copies of all such documents must be kept as a record. It is also advisable to note down when the original document(s) was/were inspected and when the copy(ies) was/were taken.

Individuals

106. For clients who are individuals, reasonable measures must be taken to obtain and, in an Applicable Circumstance, verify the following information:-

106.1 name;

106.2 number of identification document, such as identity card or passport;

106.3 address, as confirmed by documents such as a recent utility bill or bank statement;

106.4 occupation or business.

Companies

107. The separate entity of a company makes it an attractive form to money launderers. It is important for solicitors acting for corporate clients to have sufficient knowledge on the background of such clients. For corporate clients, reasonable measures must be taken to:-

107.1 identify the person purporting to give instructions on behalf of the client and, in an Applicable Circumstance, verify his identity;

107.2 verify that such person is duly authorized, e.g. obtaining a copy of the company's board resolution which evidenced the conferring of authority on the person concerned;

107.3 obtain proof on the legal status of the client, such as a certificate of incorporation, information recorded at the public register such as the Companies Registry, Business Registration Office, the register of authorized institutions of the Monetary Authority and the register of licensed companies of the Securities and Futures Commission, identity of directors and/or trustees, office address and constitutive documents such as Memorandum and Articles of Association;

107.4 identify and understand the beneficial ownership and control structure of the client and, in an Applicable Circumstance, take reasonable steps to verify the identity of persons having such ownership or control.

108. In determining what constitutes reasonable steps to verify the identity of a beneficial owner or persons having ultimate ownership or control over the client, solicitors should take into account the money laundering/terrorist financing risks posed by the client, and consider whether it is appropriate to make use of the records of a beneficial owner available in the public domain (e.g. the significant controllers register), request its client to provide documents or information in relation to the beneficial owner's identity obtained from a reliable and independent source, or corroborate the client's undertaking or declaration with publicly available information.

Power of Attorney and Agency

109. When a solicitor acts for an attorney or agent of another person, reasonable measures must be taken to obtain the identity and, in an Applicable Circumstance, verification documents of both the attorney/agent and the principal. Enquiry must be made on the relationship between the attorney/agent and the principal.

110. Solicitors should inspect the original document conferring the authority on the person giving instruction, such as the original Power of Attorney or letter of appointment of the agent, and obtain a copy of it. Where originals are not available, copies of such documents from a reliable independent source (e.g. copies certified by an appropriately regulated professional) should be inspected and copied.

Estates

111. When acting for an estate, the client would be the executor(s) or administrator(s) of that estate. The identity of such individual/legal entity will have to be verified by appropriate measures applicable to an individual or legal entity as provided above. In addition, the following document(s) should be obtained:-

111.1 Death certificate; and

111.2 (where appropriate) Grant of probate or letters of administration.

Trust arrangements

112. Complex trust arrangement is a common form used by criminals to shield their money laundering or terrorist financing activities, for the ownership of the underlying trust property is not apparent. Where the client itself or the transaction to be undertaken involves trust arrangements, the firm must take reasonable steps to identify all parties involved, including the trustee, settlor and beneficial owners, and, in an Applicable Circumstance, verify their identities accordingly.

113. Enquiries should be made to understand the nature of the trust.

114. A copy of the trust deed should be obtained.

Charities

115. Charities may be used as a vehicle of money laundering and terrorist financing in that donations received from donors are apparently applied for charitable purposes. When accepting instructions from an existing charity, a copy of the charity's constitution, trust deed or Memorandum and Articles of Association must be obtained and, in an Applicable Circumstance, its status verified from reliable independent source such as conducting a search at the Companies Registry. Reasonable measures, in an Applicable Circumstance, must be taken to verify the identity of the individuals having effective control of the charity.
In setting up charities for clients, in addition to the client identification and verification procedures, solicitors should carefully assess the purpose of the charity and consider if there are indicators that donations could be directed to an organization with a suspicious background.

Non-face to face relationship

116. Due to the increasing money laundering threat of using new or developing technology that favours anonymity, special attention must be paid to non-face to face business relationships or transactions, or if a client refuses to meet face to face without a good reason.

117. In such a situation, copies of identification documents certified by qualified persons, such as solicitors or accountants, should be obtained if possible. If certified documents cannot be obtained, law firms should attempt to verify the identity of the clients by alternative means (e.g. obtain information through a credit reference agency or information service provider). In any event, the law firm must satisfy itself that the evidence so obtained is reasonably capable of establishing that the client is the person he claims to be. Section 18, Division 4, Part 2 of Schedule 2 to the AMLO provides for carrying out of client due diligence by means of specified intermediaries (see paragraph 118 below). Alternatively, funds should be remitted through a bank in Hong Kong or an equivalent jurisdiction.

Instructions referred by intermediaries

118. Law firms may rely on client identification and verification conducted by specified intermediaries (including an overseas office of the firm) in respect of clients referred by them, provided that the following are satisfied:-

118.1 the specified intermediary is adequately regulated or supervised, and has appropriate measures in place to comply with the client identification and verification requirements (e.g. banks, other law firms or professionals such as accountants); and

118.2 copies of the client identification and verification documents must be obtained from the specified intermediary and kept as a record. Where the intermediary is an overseas office of the firm, the firm may choose not to obtain copies of such documents if they are readily available from the overseas office upon request but the client identity information must be obtained.

118.3 the categories of specified intermediaries are contained in section 18, Division 4, Part 2, Schedule 2 to the AMLO.

IMPORTANT

119. Although solicitors may rely on client information provided by a specified intermediary, **they will not be absolved from potential liability** in connection with money laundering or terrorist financing as the ultimate responsibility to establish client identity remains with them.

Client due diligence

120. When acting for a client (new or existing) in any financial transaction or any activity involving custody, management or transfer of funds or assets, or management of companies or other entities, insolvency cases or tax advice, reasonable measures must be taken to conduct client due diligence to:-

120.1 obtain information on the nature and intended purpose of the transaction(s) to be undertaken;

120.2 obtain information on the business relationship between the client and other interested parties to the transaction(s);

120.3 obtain information on the source of funding of the client;

120.4 where appropriate, check client's and beneficial owner's name against the United Nations sanctions list and the list of terrorists or terrorist associates; and

120.5 assess money laundering and terrorist financing risks associated with a new or existing client by taking into account various factors such as client risk, country risk, service risk, transaction and delivery channels risk to apply appropriate and proportionate client due diligence and risk mitigating measures.

121. The extent of client due diligence may vary from client to client, depending on the type of client, business relationship and the transaction to be undertaken. When determining the risk profile of a client, the following factors should be taken into account:-

121.1 client risk factor, for example:
(i) the client or the beneficial owner of the client is a PEP;
(ii) cash intensive/higher risk sector or business;
(iii) the ownership structure of the corporate client or legal arrangement appears unusual or excessively complex given the nature of the corporate client's or legal arrangement's business; involves shell vehicle(s), nominee shareholders/directors or bearer shares; or
(iv) the client is seeking anonymity.

121.2 country risk factor, client or beneficial owner of the client is from or located in:
(i) non-cooperative countries and territories identified by the FATF, or such other jurisdictions known to have insufficiently complied with FATF Recommendations;
(ii) countries or jurisdictions having a significant level of corruption;
(iii) countries or jurisdictions subject to sanctions, embargos or similar measures implemented by the United Nations; or
(iv) countries, jurisdictions or geographical areas that have designated organization operations or strong links to terrorist activities.

121.3 transaction or delivery channel risk factors, for example:
(i) value and complexity of the transaction;
(ii) involvement of cash payment(s);
(iii) the geographical origin/destination of a payment or receipt; or
(iv) payment(s) received from or instructed to be credited to a third party unassociated with the transaction.

121.4 service risk factor - legal services which may attract a higher level of money laundering /proliferation or terrorist financing risk;

121.5 purpose of the transaction to be undertaken; and

121.6 other information that may suggest that the client is of high money laundering or terrorist financing risk.

Enhanced client due diligence

122. Where enhanced due diligence is required in applicable situations or in respect of clients considered as "high risk", additional measures must be applied by solicitors, including:-

122.1 requiring approval from the management or senior partner to establish the business relationship or to continue an existing business relationship; and

either

122.2 taking reasonable measures to establish the relevant client's or beneficial owner's source of wealth and the source of funds that will be involved in the business relationship; or

122.3 taking additional measures to mitigate the risk of money laundering and terrorist financing involved (e.g. by obtaining and verifying further details on the transaction(s) to be undertaken, their underlying purpose and parties involved); and

122.4 conducting enhanced on-going monitoring of the business relationship.

123. The further enquiry/investigation and findings made by the solicitor must be kept on record. Documents verifying that information must also be obtained and kept on record.

Enhanced client due diligence measures for politically exposed person

124. In relation to Non-Hong Kong and other high-risk PEPs and persons, companies and government organisations clearly related to them, additional measures must be taken by solicitors including:-

124.1 taking reasonable measures to establish the source of wealth and source of funds of such persons;

124.2 requiring approval from the management or a partner of the firm before accepting instructions; and

124.3 conducting enhanced on-going monitoring of the business relationship with such persons.

125. Since not all PEPs pose the same level of money laundering risks, solicitors should adopt a risk-based approach in determining the extent of enhanced due diligence measures in paragraph 124 taking into account factors such as:

125.1 the nature of the prominent (public) functions that a PEP holds;

125.2 the geographical risk associated with the jurisdiction where a PEP holds prominent (public) functions;

125.3 the nature of the business relationship (e.g. the delivery/distribution channel used; or the service offered); and

125.4 if the PEP is a former PEP, the risk factors specified in the *Table of mandatory requirements under Section A, item 8 (Treatment of former Hong Kong, Non-Hong Kong and International Organisation PEPs).*

ANNEXURE 4

Examples of suspicious transaction indicators and risk areas

Suspicious transaction indicators

126. The following are some examples of suspicious transaction indicators:-

126.1 unusual settlement requests - such as settlement by cash in large transactions for the purchase of property; or payment by way of third-party cheque or money transfer where there is a variation between the account holder, the signatory and the prospective investor without justification or apparent reason;

126.2 unusual instructions (e.g. where the relevant client has no discernable reason for using the firm's services such as when an overseas client could find the same service in his country of residence); or clients whose requirements do not fit into the normal pattern of the firm's business and could be more easily serviced elsewhere;

126.3 large sums of cash to be held in client account, either pending further instructions from the client or for no other purpose than for onward transmission to a third party;

126.4 secretive clients, in particular those with non-face to face relationship;

126.5 client or party(ies) to the transaction from suspect territories such as the NCCTs;

126.6 use of a power of attorney or trust, especially when there is no apparent reason for the client to authorise a third party to deal with assets on his behalf by creating a power of attorney or trust;

126.7 suspect personality, such as a person known or suspected to be a triad member, drug trafficker or criminal or who is introduced by a known or suspected triad member, drug trafficker or criminal;

126.8 "u-turn" transactions, where money or assets pass from one party to another and then back to the original party;

126.9 "structuring" or "smurfing", where many lower value transactions are conducted when just one, or a few, large transactions could be used.

Property transactions

127. A property transaction is an attractive way of money laundering for it can involve any stage of the money laundering process, as described in paragraph 66.

128. The use of nominee companies as registered owners of properties, in the absence of reasonable explanation, may be suspicious.

129. The provision of funds by one party to purchase property registered in the name of another person also requires explanation. The extent of information regarding the source of funds to be obtained from the client should be determined by a risk-based approach. It is not uncommon for family members to assist another family member in purchasing property. In such a situation, a simple enquiry would be sufficient. However, in any case where funds are provided by a party with no apparent relationship with the intended owner, more extensive enquiry should be made.

130. A majority of conveyancing transactions are financed by mortgage loans. Solicitors should be alerted in situations where the purchase price is paid without such financing arrangement, in particular for clients who do not appear to have the means to make such payment themselves. Enquiries must be made on the source of funding.

131. Risk assessment must be made by solicitors when cash payments in large amounts are made as criminal proceeds are usually in the form of cash.

Examples of risk areas in acting for clients

Private client work

132. Solicitors engaging in private client work will inevitably involve learning about clients' assets, which may lead to knowledge or suspicion of money laundering or terrorist financing. If solicitors become involved in the active management of or dealing with assets of clients, they may be at risk of being involved in money laundering and terrorist financing.

Administration of estate

133. Estate administration is likely to involve financial or real property transactions. During the administration, solicitors may become aware or suspicious of certain illegal dealings or terrorist financing transactions undertaken by the deceased person. As the offences under the DTRPO, OSCO and UNATMO have no limitation on the time of the underlying crime or terrorist financing act, solicitors should consider obtaining consent from the authorized officer prior to continuing with the administration of the estate.

134. Special attention should be paid to assets in foreign jurisdictions (in particular those in NCCTs) since the definition of "money laundering activities" under the Securities and Futures Ordinance (Cap. 571) covers activities which are lawful in an overseas jurisdiction but which constitute an offence if carried out in Hong Kong.

Trust arrangements

135. Similar to administration of estates, solicitors may obtain information regarding the criminal origin of trust properties. In such a situation, the solicitor should assess whether a report to an authorized officer is necessary.

Charities

136. Where a solicitor is involved in the administration of a charity, special attention should also be paid when unusually large sums of donations are received or paid out. If appropriate, an enquiry on the identity of the donor or recipient should be made.

Corporate secretarial service, bankruptcy and insolvency practice

137. Particular attention should be paid if corporate secretarial service is to be performed for the client.

138. As solicitors in bankruptcy and insolvency practice are extensively involved in the identification of assets and liabilities of the bankrupt person or insolvent company and dealing in such assets, they are susceptible to the risk of getting involved in money laundering and terrorist financing activities.

Use of solicitor's client account

139. Solicitor’s client account should not be used simply for banking purpose as money launderers may use this as a way to get around the extensive anti-money laundering measures taken by financial institutions.

140. When receiving funds from clients, solicitors should be alert and should make enquiry on the source of the funds, for payments from unknown source pose significant risk of money laundering.

141. Solicitors should not establish a client account where the identity of the client or the source of funding is unknown.

ANNEXURE 5

Recognition and reporting of suspicious transactions

142. A Systemic Approach to Identifying Suspicious Transaction was recommended by the JFIU[13] It includes:-

Step One:	Recognition of suspicious financial activity indicator(s);
Step Two:	Ask the client appropriate question(s) to obtain information;
Step Three:	Find out client's records. Review information already known to the firm when deciding whether the apparently suspicious activity is to be expected;
Step Four:	Evaluate all the above information to decide if the financial activity concerned is in fact suspicious.

143. Depending on the size of a law firm, it is advisable for law firms to appoint a compliance officer who is of sufficient seniority within the firm to act as the reception point of suspicious transaction reports and to consider what appropriate actions to take following receipt of such reports.

144. Law firms and their compliance officer (if appointed) should keep written record of all suspicious transaction reports received including information and other matters leading to the making of the report and any other information which the firm and/or the compliance officer has taken into account when considering what appropriate actions to take. If it is decided that it is not necessary to report the matter to an authorized officer, the reasons for such decision should be fully documented.

145. Where a suspicious transaction is identified, it will be necessary for the law firm to consider whether in the circumstances of the transaction there is a need to file a report.

146. Suspicious transaction reports may be made to the JFIU in one of the following ways:-

    146.1 by email to **jfiu@police.gov.hk**;

    146.2 by fax to 2529 4013; or

    146.3 by mail to Joint Financial Intelligence Unit, GPO Box, 6555 Hong Kong

    Enquiries can be made on the JFIU Hotline 2866 3366 or 2860 3404.

147. Law firms should note the following points as regards the making of a report to the JFIU:

    (a) No disclosure should be made to the client or any third party of any matter that may prejudice any investigation which may be conducted following such report, otherwise, the "tipping off" offence may be committed (see paragraph 44 above).

    (b) If the report is made before the law firm deals with any property which is the subject of such report (e.g. the payment or receipt of money or the transfer or receipt of any property), the law firm must wait to receive the consent of the relevant authority before it actually deals with the property.

[13] Joint Financial Intelligence Unit

(c) If the report is made after the law firm deals with any property which is the subject of such report, the report must be made on its own initiative and as soon as it is reasonable (or, depending on the relevant statutory provision, as soon as it is practicable) for the firm to do so. In this case, the law firm should also be able to demonstrate when it first knew or had suspicion(s) that the property represented the proceeds of an indictable offence (or was used or intended to be used in connection therewith), and that it intended to make the report and has a reasonable excuse for any delay in making it.

ANNEXURE 6

(Repealed)

ANNEXURE 7

LIST OF FATF MEMBERS AND OBSERVERS (AS AT MARCH 2023)

FATF Members

1. Argentina
2. Australia
3. Austria
4. Belgium
5. Brazil
6. Canada
7. China
8. Denmark
9. European Commission
10. Finland
11. France
12. Germany
13. Greece
14. Gulf Co-operation Council
15. Hong Kong, China
16. Iceland
17. India
18. Ireland
19. Israel
20. Italy
21. Japan
22. Korea
23. Luxembourg
24. Malaysia
25. Mexico
26. Netherlands
27. New Zealand
28. Norway
29. Portugal
30. Russian Federation*
31. Saudi Arabia
32. Singapore
33. South Africa
34. Spain
35. Sweden
36. Switzerland
37. Turkey
38. United Kingdom
39. United States

* FATF suspended membership of the Russian Federation on 24 February 2023

FATF Observer Country

1. Indonesia

FATF Associate Members

1. Asia/Pacific Group on Money Laundering (APG) *(See also: APG website)*
2. Caribbean Financial Action Task Force (CFATF) *(See also: CFATF website)*
3. Committee of Experts on the Evaluation of Anti-Money Laundering Measures (MONEYVAL) *(See also: Moneyval website)*
4. Eurasian Group (EAG) *(See also: EAG website)*
5. Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) *(See also: ESAAMLG website)*
6. Financial Action Task Force of Latin America (GAFILAT) (formerly known as Financial Action Task Force on Money Laundering in South America (GAFISUD)) *(See also: GAFILAT website)*
7. Inter Governmental Action Group against Money Laundering in West Africa (GIABA) *(See also: GIABA website)*
8. Middle East and North Africa Financial Action Task Force (MENAFATF) *(See also: MENAFATF website)*
9. Task Force on Money Laundering in Central Africa (GABAC) *(See also: GABAC website)*

ANNEXURE 8

BENEFICIAL OWNER

A “beneficial owner” —

(a) in relation to a corporation—

(i) means an individual who—

(A) owns or controls, directly or indirectly, including through a trust or bearer share holding, more than 25% of the issued share capital of the corporation;

(B) is, directly or indirectly, entitled to exercise or control the exercise of more than 25% of the voting rights at general meetings of the corporation; or

(C) exercises ultimate control over the management of the corporation; or

(ii) if the corporation is acting on behalf of another person, means the other person;

(b) in relation to a partnership—

(i) means an individual who—

(A) is entitled to or controls, directly or indirectly, more than a 25% share of the capital or profits of the partnership;

(B) is, directly or indirectly, entitled to exercise or control the exercise of more than 25% of the voting rights in the partnership; or

(C) exercises ultimate control over the management of the partnership; or

(ii) if the partnership is acting on behalf of another person, means the other person;

(c) in relation to a trust, means—

(i) a beneficiary or a class of beneficiaries of the trust entitled to a vested interest in the trust property, whether the interest is in possession or in remainder or reversion and whether it is defeasible or not;

(ii) the settlor of the trust;

(iii) the trustee of the trust

(iv) a protector or enforcer of the trust; or

(v) an individual who has ultimate control over the trust; and

(d) in relation to a person not falling within paragraph (a), (b) or (c)—

(i) means an individual who ultimately owns or controls the person; or

(ii) if the person is acting on behalf of another person, means the other person.

ANNEXURE 9

CATEGORIES OF SPECIFIED INTERMEDIARIES IN SECTION 18, DIVISION 4, PART 2, SCHEDULE 2 TO AMLO

S18(3) The specified intermediary is—

(a) any of the following persons who is able to satisfy the financial institution or the DNFBP that they have adequate procedures in place to prevent money laundering and terrorist financing—

(i) an accounting professional;

(ii) an estate agent;

(iii) a legal professional;

(iv) a TCSP licensee;

(b) a financial institution that is an authorized institution, a licensed corporation, an authorized insurer, an appointed insurance agent or an authorized insurance broker;

(c) a lawyer, a notary public, an auditor, a professional accountant, a trust or company service provider or a tax advisor practising in an equivalent jurisdiction, or a trust company carrying on trust business in an equivalent jurisdiction, or a person who carries on in an equivalent jurisdiction a business similar to that carried on by an estate agent, or an institution that carries on in an equivalent jurisdiction a business similar to that carried on by an intermediary financial institution, that—

(i) is required under the law of that jurisdiction to be registered or licensed or is regulated under the law of that jurisdiction;

(ii) has measures in place to ensure compliance with requirements similar to those imposed under Schedule 2 to the AMLO; and

(iii) is supervised for compliance with those requirements by an authority in that jurisdiction that performs functions similar to those of any of the relevant authorities or the regulatory bodies (as may be applicable); or

(d) in the case of a financial institution, an institution that—

(i) is a related foreign financial institution in relation to the financial institution; and

(ii) satisfies the conditions in subsection 18(3A).

S18(3A) The conditions are that—

(a) the related foreign financial institution is required under group policy—

(i) to have measures in place to ensure compliance with requirements similar to the requirements imposed under Schedule 2 to the AMLO; and

(ii) to implement programmes against money laundering and terrorist financing; and

(b) the related foreign financial institution is supervised for compliance with the requirements mentioned in paragraph (a) at a group level—

(i) by a relevant authority; or

(ii) by an authority in an equivalent jurisdiction that performs, in relation to the holding company or the head office of the financial institution, functions similar to those of a relevant authority under the AMLO.

Q. CESSATION OF PRACTICE BY FOREIGN FIRMS

1. Where a foreign firm intends to cease practice, it must notify the Society of the intended cessation in writing in a form approved by the Society at least 8 weeks prior to the date of cessation.

2. Where a foreign firm intends to cease practice, it must appoint an agent to deal with all consequential matters. The agent must be a law firm with at least 2 resident partners and can be a Hong Kong firm or a foreign firm in Hong Kong practising the law of the same jurisdiction as the closed foreign firm. The foreign firm shall notify the Society of the names and contact details of its sole practitioner or all of its partners and of the agent appointed when it notifies the Society of its intended cessation pursuant to paragraph 1. Any change to the contact details must be notified by the person to whom the change relates to the Society in writing within 7 days of such change.

3. A principal of the foreign firm as at the date of cessation shall ensure that:

   (a) where an existing appointment of the agent is for any reason terminated, another firm which satisfies the requirements as set out in paragraph 2 (the "substitute agent") is to be appointed within 7 days; and

   (b) any change to the particulars of the agent or the substitute agent is notified to the Society in writing within 7 days of such change.

4. (a) The agent whose appointment as such is terminated shall within 7 days of such termination apply in writing to the Council for directions to be given pursuant to Rule 8(2) of the Solicitors' Accounts Rules on the unclaimed balances on its client accounts pertaining to its appointment as the firm's agent.

   (b) The agent whose appointment as such is terminated and the substitute agent to whom any unclaimed balances on client accounts have been transferred from the former agent shall notify the Society in writing the total aggregate amount in the client accounts so transferred within 7 days of the transfer.

5. Notwithstanding the requirement in Rule 9(3) of the Foreign Lawyers Practice Rules to furnish a declaration in respect of the relevant calendar year, a principal of the foreign firm as at the date of cessation shall advise the Society in writing in a form approved by the Society within 14 days of the date of cessation of any change in the employment of staff of the foreign firm that occurred as a result of the cessation.

6. The Council may, in a particular case, waive in writing any provision of this Practice Direction, subject to such conditions as it may impose.

7. This Practice Direction will come into effect on 7 June 2010.

R. PROFESSIONAL INDEMNITY SCHEME

Background

The Professional Indemnity Scheme ("**PIS**") is a statutory scheme which is managed and administered by the Hong Kong Solicitors Indemnity Fund Limited (the "**Company**"). Generally speaking, the PIS provides indemnity to solicitors and employees of Hong Kong law firms in respect of civil liability incurred in connection with the practice of the law firms. All the terms and conditions of the PIS are set out in the Solicitors (Professional Indemnity) Rules (Cap. 159M) (the "**Rules**").

The limit of indemnity provided under the PIS is set out in paragraph 2(1) of Schedule 3 to the Rules, which says:-

> *"The Indemnity covers that part of the indemnified's loss that exceeds the deductibles referred to in subparagraph (2) up to a sum not exceeding the difference between such deductibles and:-*
>
> *(a) for all claims first made before 1 October 2019 against persons who are entitled to be provided with Indemnity – HK$10,000,000 in respect of any one claim;*
>
> *(b) for all claims first made on or after 1 October 2019 against persons who are entitled to be provided with Indemnity – HK$20,000,000 in respect of any one claim."*

When an amount equivalent to the above limit of indemnity (the "**Maximum Amount**") is paid out for a claim made by an indemnified under the PIS at any point in time, the Company and Managers of the PIS (the "**Managers**") will cease to be actively involved in the handling of the relevant civil claim made against the indemnified. This will also happen when the indemnified's exposure under the relevant civil claim will very likely exceed the Maximum Amount and the Company decides to hand over future conduct of the claim to the indemnified's top-up insurers. In both situations, the Company and Managers will not be privy to information regarding the future developments and conclusion of such civil claims (the "**Claims Information**").

However, the Claims Information is necessary for the Company and Managers to ascertain the need to seek recovery (e.g. if the relevant civil claim is successfully defended with costs recovery from the claimant) and it is essential for review and future planning of the PIS (including review of its structure and its reinsurance).

Continuous obligation to provide Claims Information

1. This Practice Direction applies to all Hong Kong law firms, solicitors and registered foreign lawyers who fall within the definition of "indemnified" under Rule 2 of the Rules and who make a claim for indemnity under the PIS for which indemnity has been confirmed by the Company (the "**Indemnified**").

2. After the Indemnified is informed by the Company or Managers that the Maximum Amount is paid out at the time or the Company decides to hand over future conduct of the claim to the Indemnified's top-up insurers or to the Indemnified if there is no top-up insurance (the "**Notice**"), the Indemnified must inform the Managers in writing:-

   (a) on a quarterly basis of (i) the developments of the relevant civil claim (the "**Civil Claim**") and (ii) the amount of defence costs and disbursements incurred, since the last report until the final conclusion of the Civil Claim; and

(b) within 28 days after the conclusion of the Civil Claim (e.g. judgment or decision handed down by the court or settlement) or when the relevant information is available, whichever the later, of (i) the result of the Civil Claim; (ii) the total amount of damages, costs and/or disbursements paid to the claimant(s) (if any); (iii) the total amount of defence costs and disbursements incurred after the Notice; and (iv) the total amount of defence costs and disbursements recovered and paid by the claimant(s) (if any).

3. If an employee of a Hong Kong law firm falls within the definition of "indemnified" under Rule 2 of the Rules and has made a claim for indemnity under the PIS for which indemnity has been confirmed by the Company (the "**Employee**"), the principals of the Hong Kong law firm shall procure and ensure the Employee to comply with the obligations in paragraph 2 above as if the Employee is the Indemnified.

4. This Practice Direction will come into effect on 27 October 2022.

APPENDIX 1

REFERENCE TABLE

	ORIGINAL PRACTICE DIRECTIONS	DATE ISSUED	REVISED PRACTICE DIRECTIONS
1.	Witnessing of documents	09.01.75)	
1A.	Attestation of documents	07.04.86)	
1A.	Attestation of documents	14.04.86)	A1. Attestation of documents (Repealed on 01.01.02 and replaced by Practice Direction L which came into effect on 01.01.02 (revised on 19/08/02))
1B.	Attestation of documents	02.06.86)	
1C.	Attestation of documents	30.11.87)	
2.	Solicitors (General) Costs (Amendment) Rules 1974	09.01.75	- Repealed -
3.	Solicitors (General) Costs Rules - sale and purchase agreements - registration charges	15.10.76	- Repealed -
4.	Solicitors' bill of costs	10.02.77	B1. Solicitors' bills of costs
5.	Foreign law firms	07.05.77	- Repealed -
6.	Application for admission as solicitor of the Supreme Court of Hong Kong	23.08.77	E1. Applications for admission - citizenship / residence requirements
7.	Prison visits	01.10.77	- Repealed -
8.	Solicitors' notepaper and law lists	01.10.77	Solicitors' Practice Promotion Code 1992
9.	Instructions for brief	10.02.79)	F1. Instructions to Counsel
9A.	Delivery of briefs to counsel - counsel's fees	28.07.86)	
9B.	Measures to combat touting relating to criminal cases	23.11.87	- Repealed - (Replaced by rule 5D of (Revised 16.06.92) the Solicitors' Practice Rules which came into Effect on 30.04.93)

	ORIGINAL PRACTICE DIRECTIONS	DATE ISSUED	REVISED PRACTICE DIRECTIONS
10.	Letterheads - solicitors' firms	22.06.81	Solicitors' Practice Promotion Code 1992
11.	Notepaper - assistant solicitors	15.07.81	Solicitors' Practice Promotion Code 1992
12.	Seminars and conferences	15.09.81	Solicitors' Practice Promotion Code 1992
13.	Sale of flats etc. in uncompleted developments by way of grant or sale of sub-leases	13.10.81	A2. Sale of flats in uncompleted developments by way of grant or sale of sub-leases
14.	Public notice of commencement to practise, opening of branch offices, admission and retirement of partners, etc.	19.07.82	Solicitors' Practice Promotion Code 1992
14A.	Public notice of commencement to practise, opening of branch offices, admission and retirement of partners, etc.	Undated	Solicitors' Practice Promotion Code 1992
14B.	Public notice of commencement to practise, opening of branch offices, admission and retirement of partners, etc.	Undated	Solicitors' Practice Promotion Code 1992
15.	Solicitors' Accounts Rules	24.08.82	A3. Solicitors' Accounts Rules
16.	Forms of trainee solicitor contract	28.12.82)	
16A.	Forms of trainee solicitor contract	31.01.83)	E2. Trainee solicitor contracts – approved forms (revised on 21.02.92, 06.10.08 and 27.09.10)
16B.	Forms of trainee solicitor contract	23.03.83)	
16C.	Minimum salary of trainee solicitors	10.11.86)	Revised on 27.09.10 and 01.01.18
17.	Rule 5C of the Solicitors' Practice Rules - sale of flats in uncompleted developments	31.01.83)	A4. Rule 5C of the Solicitors' Practice Rules – sale of flats in uncompleted developments
18.	Solicitors' clerks before Masters of Supreme Court in Chambers applications	15.08.83)	
18A.	Solicitors' clerks before Masters of Supreme Court in Chambers applications	21.10.83)	- Repealed -

	ORIGINAL PRACTICE DIRECTIONS	DATE ISSUED		REVISED PRACTICE DIRECTIONS
18B.	Solicitors' clerks before Masters of Supreme Court in Chambers applications	04.05.84	))	
19.	Hong Kong telephone directory listing - Yellow Pages	15.08.83		Solicitors' Practice Promotion Code 1992
20.	Interviews about solicitors' practices	07.11.83		Solicitors' Practice Promotion Code 1992
21.	Solicitors' employees qualified for admission in Hong Kong	10.01.84		D1. Solicitors' employees qualified for admission in Hong Kong
22.	Signature of solicitors' letters	05.12.84	))	D2. Signature of post (revised on 16.06.92 and 27.12.17)
22A.	Signature by solicitors	11.02.85	)	
23.	Seminars, conferences and interviews	07.10.85		Solicitors' Practice Promotion Code 1992
24.	Employment of part-time clerks	04.11.85		- Repealed - (Replaced by rule 4B of the Solicitors' Practice Rules which came into effect on 30.04.93)
25.	Witnessing of documents	23.12.85		A1. Attestation of documents (Repealed on 01.01.02 and replaced by Practice Direction L which came into effect on 01.01.02 (revised on 19.08.02)) (revised on 14.05.12)
26.	Supervision of practices	17.03.86		- Repealed - (Replaced by rule 4B of the Solicitors' Practice Rules which came into effect on 30.04.93)
27.	Warrants of arrest of judgment debtors (Order 49B, R.S.C.)	02.03.87		- Repealed -
28.	Solicitors (General) Costs Rules - equitable mortgage and legal charge	23.03.87	))	

ORIGINAL PRACTICE DIRECTIONS		DATE ISSUED	REVISED PRACTICE DIRECTIONS
28A.	Solicitors (General) Costs Rules - equitable mortgage and legal charge	23.03.87)	B2. Solicitors (General) Costs Rules equitable mortgage and legal charge
28B.	Solicitors (General) Costs Rules - equitable mortgage and legal charge	21.04.87)	
29.	Surety for bail	24.07.87	C3. Surety for bail
30.	Management of multi-storey buildings - deed of Mutual Covenant	26.10.87	A5. Management of multi-storey buildings – Deed of Mutual Covenant
31.	Solicitors' (General) Costs Rules - assignment between subsidiary / associate companies	14.12.87	B3. Solicitors' (General) Costs Rules – assignment between subsidiary / associate companies
32.	(1) Standard forms of sale and purchase agreements for Consent and Non-Consent Schemes (2) Standard provisions relating to payment of purchase money in Consent and Non-consent Schemes in sale and purchase transactions	14.03.88	A6. Standard provisions for payment of purchase money in Consent and Non-Consent Schemes
33.	Sale and purchase of partitioned residential flats	16.01.89	A7. Sale and purchase of partitioned residential flats
34.	Conveyancing practice - certified copies of title deeds	01.05.89	A8. Certified copies of title deeds
	Publicity Code 1990 (19. The Solicitor's Office)	01.01.90	D5. Sharing an office and staff (revised 24/11/92)
	Publicity Code 1990 (15. Election Addresses)	01.01.90	H1. Election addresses

APPENDIX 2

FORM "A"

Note: Rule 11 (1) of the Trainee Solicitors Rules (Cap.159J) provides that "subject to these rules, a trainee solicitor shall not hold an office or engage in an employment other than the employment under his trainee solicitor contract, and a period during which he has held such other office or engaged in such other employment is not effective employment as a trainee solicitor, unless the Society otherwise directs."

THIS TRAINEE SOLICITOR CONTRACT is made the

day of

BETWEEN

of

("the Trainee Solicitor")

AND

of

(the "Principal"), a solicitor and a partner in the firm of

(the "Firm").

1. The Trainee Solicitor commenced employment with the Principal on the day of and will be employed by the Principal from that date for the period of months / years at a salary of $ per month (or at a salary of $ per month for the first months / year and at a salary of $ for the remaining months / year).

2. This contract shall not be terminated except by mutual agreement of the parties or by the Law Society of Hong Kong (the "Society") in the exercise of its powers under section 22 of the Legal Practitioners Ordinance.

3. The Trainee Solicitor and the Principal hereby acknowledge that they have considered the operation of Rule 11 of the Trainee Solicitors Rules and are aware of the potential consequences of any breach of the rule.

4. The Trainee Solicitor agrees to:

   (1) faithfully and diligently work for the Principal in the profession of a solicitor of the High Court of the Hong Kong Special Administrative Region as a trainee solicitor;

   (2) deal properly with the money and property of the Principal and the Firm and their clients or employees;

   (3) treat with the utmost confidence all information relating to the Principal and the Firm and their clients and their business;

(4) readily obey and execute the lawful and reasonable instructions of the Principal and any partner of the Firm and not be absent from the employment of the Principal without the consent of the Principal and to act with diligence, honesty and propriety; and

(5) complete and maintain an adequate training record ("the Record") and have it available for inspection by the Principal (or, if appropriate, by the Society) until the Trainee Solicitor has been admitted as a Solicitor of the High Court of the Hong Kong Special Administrative Region. The Record shall belong to the Principal and shall be in such form as the Principal shall reasonably prescribe but shall take the style of a Diary of the work and experience of the Trainee Solicitor or a series of checklists covering the basic legal topics in which the Principal has agreed to give the Trainee Solicitor the opportunity of gaining experience as specified in clause 5(1)(b).

(6) *(*Insert any further clauses required, which must not override or negate the standard clauses*).

5. The Principal agrees to:

(1) provide the Trainee Solicitor with the opportunity (either in the Firm's office or in that of another practising solicitor entitled to take trainee solicitors) to learn the basic skills and characteristics associated with the practice and profession of a solicitor of the High Court and in particular to:-

(a) provide the Trainee Solicitor with the opportunity to learn the principles of professional conduct and to practise a range of basic skills. These are:-

(i) communication

(ii) practice support

(iii) legal research

(iv) drafting

(v) interviewing

(vi) negotiation

(vii) advocacy.

(b) provide the Trainee Solicitor with proper training and experience in at least three of the following basic legal topics:-

(i) Banking

(ii) Civil Litigation

(iii) Commercial

(iv) Company

(v) Criminal Litigation

(vi) Family

(vii) Insolvency

(viii) Intellectual Property

(ix) Property

(x) Trusts, Wills and Probate;

(2) provide, in the form specified in clause 4(5), a Record for the use of the Trainee Solicitor and each calendar month inspect the Record and discuss it with the Trainee Solicitor, or delegate another person to do so;

(3) decide, in consultation with the Trainee Solicitor, which courses conducted by the Society or other providers of courses accredited by the Society the Trainee Solicitor must attend to accumulate sufficient points to comply with the Continuing Professional Development Rules and the Legal Practitioners (Risk Management Education) Rules;

(4) allow the Trainee Solicitor paid leave to attend the courses referred to in clause 5(3); and

(5) pay any fees charged by the Society or accredited providers for the Trainee Solicitor's attendance at the courses referred to in clause 5(3).

(6) *(*Insert any further clauses required, which must not override or negate the standard clauses*).

6. Any difficulty or dispute between the Trainee Solicitor and the Principal concerning the fulfilment of the provisions of this Contract or the conduct of either party in relation to this Contract may be referred by either of them to the Council of the Society for determination and the decision of the Council shall be final and binding on both parties.

Registration of this agreement shall not imply any approval by the Law Society of any further clauses added to the Law Society's standard form of Contract.

SIGNED by the Trainee Solicitor)
in the presence of :-)

Solicitor of the High Court of the Hong Kong Special Administrative Region/
Commissioner for Oaths/Justice of Peace

SIGNED by the Principal in the)
presence of :-)

Solicitor of the High Court of the Hong Kong Special Administrative Region/
Commissioner for Oaths/Justice of Peace

Notes:
* Delete if inapplicable

This contract must be witnessed by a Hong Kong solicitor/Commissioner for Oaths/Justice of Peace

Personal Information Collection Statement

The personal data of the data subject collected in this Contract ("the data") will be used by the Law Society of Hong Kong ("the Society") for the following purposes:

(i) The keeping of traineeship records to show the effective employment of trainee solicitors and related matters;
(ii) The exercise of the powers of the Society conferred upon it by the Legal Practitioners Ordinance (Chapter 159) and its subsidiary legislation; and
(iii) The performance of the functions of the Society in accordance with its Memorandum and Articles of Association and the attainment of the objects for which the Society is established.

It is obligatory for you to supply the Society with the data in this Contract except as otherwise indicated. The consequence for you if you fail to supply such data is that you will not have complied with the requirements of the Trainee Solicitors Rules.

The data may be provided to such persons within the Society whose proper business it is to have access to and assist in the management of the traineeship records and related matters. The data may also be provided to other persons who may help the Society in attaining the purposes above mentioned.

Any data that is provided to anyone outside of the Society will be restricted to what is necessary and not excessive to achieve any intended purpose.

You have the right to request access to and correction of the data. Any such request should be addressed to the Secretary General, the Law Society of Hong Kong, 3/F, Wing On House, 71 Des Voeux Road Central, Hong Kong.

The Privacy Policy Statement of the Society is available on its website at **www.hklawsoc.org.hk**.

APPENDIX 3

FORM "B"

Note: Rule 11 (1) of the Trainee Solicitors Rules (Cap.159J) provides that "subject to these rules, a trainee solicitor shall not hold an office or engage in an employment other than the employment under his trainee solicitor contract, and a period during which he has held such other office or engaged in such other employment is not effective employment as a trainee solicitor, unless the Society otherwise directs."

THIS TRAINEE SOLICITOR CONTRACT is made the

day of

BETWEEN

of

("the Trainee Solicitor")

AND

of

(the "Principal"), who are both employees of the Department of Justice / Legal Advisory and Conveyancing Office of the Lands Department / Land Registry / Companies Registry / Legal Aid Department / Official Receiver's Office / Intellectual Property Department* (the "Department") of the Government of the Hong Kong Special Administrative Region ("the Government").

1. The Trainee Solicitor commenced employment with the Government on the day of and will be employed by the Government from that date for the period of months / years* at a salary of $ per month / or at a salary which is equivalent to half the amount the Trainee Solicitor should receive in the Trainee Solicitor's substantive office with the Government*.

2. This contract shall not be terminated except by mutual agreement of the parties or by the Law Society of Hong Kong (the "Society") in the exercise of its powers under section 22 of the Legal Practitioners Ordinance.

3. The Trainee Solicitor and the Principal hereby acknowledge that they have considered the operation of Rule 11 of the Trainee Solicitors Rules and are aware of the potential consequences of any breach of the rule.

4. The Trainee Solicitor agrees to:-

   (1) faithfully and diligently work for the Principal in the profession of a solicitor as a trainee solicitor;

   (2) deal properly with the money and property of the Principal or the Government or its employees;

   (3) keep the secrets of the Principal or the Government and observe the Security Regulations and the Civil Service Regulations of the Government;

(4) readily obey and execute the lawful and reasonable instructions of the Principal and not be absent from the employment of the Government without the consent of the Principal and to act with diligence, honesty and propriety; and

(5) complete and maintain an adequate training record ("the Record") and have it available for inspection by the Principal (or, if appropriate, by the Society) until the Trainee Solicitor has been admitted as a Solicitor of the High Court of the Hong Kong Special Administrative Region. The Record shall belong to the Principal and shall be in such form as the Principal shall reasonably prescribe but shall take the style of a Diary of the work and experience of the Trainee Solicitor or a series of checklists covering the basic legal topics in which the Principal has agreed to give the Trainee Solicitor the opportunity of gaining experience as specified in clause 5(1)(b).

(6) *(*Insert any further clauses required, which must not override or negate the standard clauses*).

5. The Principal agrees to:-

(1) provide the Trainee Solicitor with the opportunity (either in the Department or in another department of the Government under the supervision of an employee of the Government entitled to take trainee solicitors or in the office of a solicitor in private practice entitled to take trainee solicitors) to learn the basic skills and characteristics associated with the practice and profession of a solicitor and in particular to:

(a) provide the Trainee Solicitor with the opportunity to learn the principles of professional conduct and to practise a range of basic skills. These are:-

(i) communication

(ii) practice support

(iii) legal research

(iv) drafting

(v) interviewing

(vi) negotiation

(vii) advocacy.

(b) provide the Trainee Solicitor the opportunity to gain reasonable experience in at least three of the following basic legal topics:-

(i) Banking

(ii) Civil Litigation

(iii) Commercial

(iv) Company

(v) Criminal Litigation

(vi) Family

(vii) Insolvency

(viii) Intellectual Property

(ix) Property

(xi) Trusts, Wills and Probate;

(2) provide, in the form specified in clause 4(5), a Record for the use of the Trainee Solicitor and each calendar month inspect the Record and discuss it with the Trainee Solicitor, or delegate another person to do so;

(3) decide, in consultation with the Trainee Solicitor, which courses conducted by the Society or other providers of courses accredited by the Society the Trainee Solicitor must attend to accumulate sufficient points to comply with the Continuing Professional Development Rules and the Legal Practitioners (Risk Management Education) Rules;

(4) allow the Trainee Solicitor paid leave to attend the courses referred to in clause 5(3); and

(5) pay any fees charged by the Society or accredited providers for the Trainee Solicitor's attendance at the courses referred to in clause 5(3).

(6) *(*Insert any further clauses required, which must not override or negate the standard clauses*).

6. Any difficulty or dispute between the Trainee Solicitor and the Principal concerning the fulfilment of the provisions of this Contract or the conduct of either party in relation to this Contract may be referred by either of them to the Council of the Society for determination and the decision of Council shall be final and binding on both parties.

Registration of this agreement shall not imply any approval by the Law Society of any further clauses added to the Law Society's standard form of Contract.

SIGNED by the Trainee Solicitor)
in the presence of :-)

Solicitor of the High Court of the Hong Kong Special Administrative Region /
Commissioner for Oaths / Justice of Peace

SIGNED by the Principal in the)
presence of :-)

Solicitor of the High Court of the Hong Kong Special Administrative Region /
Commissioner for Oaths / Justice of Peace

Notes:

* Delete if inapplicable

This contract must be witnessed by a Hong Kong solicitor / Commissioner for Oaths / Justice of Peace.

Personal Information Collection Statement

The personal data of the data subject collected in this Contract ("the data") will be used by the Law Society of Hong Kong ("the Society") for the following purposes:

(i) The keeping of traineeship records to show the effective employment of trainee solicitors and related matters;
(ii) The exercise of the powers of the Society conferred upon it by the Legal Practitioners Ordinance (Chapter 159) and its subsidiary legislation; and
(iii) The performance of the functions of the Society in accordance with its Memorandum and Articles of Association and the attainment of the objects for which the Society is established.

It is obligatory for you to supply the Society with the data in this Contract except as otherwise indicated. The consequence for you if you fail to supply such data is that you will not have complied with the requirements of the Trainee Solicitors Rules.

The data may be provided to such persons within the Society whose proper business it is to have access to and assist in the management of the traineeship records and related matters. The data may also be provided to other persons who may help the Society in attaining the purposes above mentioned.

Any data that is provided to anyone outside of the Society will be restricted to what is necessary and not excessive to achieve any intended purpose.

You have the right to request access to and correction of the data. Any such request should be addressed to the Secretary General, the Law Society of Hong Kong, 3/F, Wing On House, 71 Des Voeux Road Central, Hong Kong.

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APPENDIX 4

FORM "C"

Note: Rule 11 (1) of the Trainee Solicitors Rules (Cap.159J) provides that "subject to these rules, a trainee solicitor shall not hold an office or engage in an employment other than the employment under his trainee solicitor contract, and a period during which he has held such other office or engaged in such other employment is not effective employment as a trainee solicitor, unless the Society otherwise directs."

THIS TRAINEE SOLICITOR CONTRACT is made the

day of

BETWEEN

of

("the Trainee Solicitor")

AND

of

("the Principal"), who are both employees of
("the Company").

1. The Trainee Solicitor commenced employment with the Company on the day of and will be employed by the Company from that date for the period of months/years at a salary of $ per month (or at a salary of $ per month for the first months / year and at a salary of $ for the remaining months/year).

2. This contract shall not be terminated except by mutual agreement of the parties or by the Law Society of Hong Kong ("the Society") in the exercise of its powers under section 22 of the Legal Practitioners Ordinance.

3. The Trainee Solicitor and the Principal hereby acknowledge that they have considered the operation of Rule 11 of the Trainee Solicitors Rules and are aware of the potential consequences of any breach of the rule.

4. The Trainee Solicitor agrees to:-

   (1) faithfully and diligently work for the Principal in the profession of a solicitor as a trainee solicitor;

   (2) deal properly with the money and property of the Principal or the Company or its employees;

   (3) treat with the utmost confidence all information relating to the Principal and the Company and its clients and its business;

(4) readily obey and execute the lawful and reasonable instructions of the Principal and not be absent from the employment of the Company without the consent of the Principal and to act with diligence, honesty and propriety; and

(5) complete and maintain an adequate training record ("the Record") and have it available for inspection by the Principal (or, if appropriate, by the Society) until the Trainee Solicitor has been admitted as a Solicitor of the High Court of the Hong Kong Special Administrative Region. The Record shall belong to the Principal and shall be in such form as the Principal shall reasonably prescribe but shall take the style of a Diary of the work and experience of the Trainee Solicitor or a series of checklists covering the basic legal topics in which the Principal has agreed to give the Trainee Solicitor the opportunity of gaining experience as specified in clause 5(1)(b).

5. The Principal agrees to:

(1) provide the Trainee Solicitor with the opportunity (either in the Company's office or in that of another practising solicitor entitled to take trainee solicitors) to learn the basic skills and characteristics associated with the practice and profession of a solicitor of the High Court and in particular to:-

(a) provide the Trainee Solicitor with the opportunity to learn the principles of professional conduct and to practise a range of basic skills. These are:-

(i) communication

(ii) practice support

(iii) legal research

(iv) drafting

(v) interviewing

(vi) negotiation

(vii) advocacy.

(b) provide the Trainee Solicitor with proper training and experience in at least three of the following basic legal topics:-

(i) Banking

(ii) Civil Litigation

(iii) Commercial

(iv) Company

(v) Criminal Litigation

(vi) Family

(vii) Insolvency

(viii) Intellectual Property

(ix) Property

(x) Trusts, Wills and Probate;

(2) provide, in the form specified in clause 4(5), a Record for the use of the Trainee Solicitor and each calendar month inspect the Record and discuss it with the Trainee Solicitor, or delegate another person to do so;

(3) decide, in consultation with the Trainee Solicitor, which courses conducted by the Society or other providers of courses accredited by the Society the Trainee Solicitor must attend to accumulate sufficient points to comply with the Continuing Professional Development Rules and the Legal Practitioners (Risk Management Education) Rules;

(4) allow the Trainee Solicitor paid leave to attend the courses referred to in clause 5(3); and

(5) pay any fees charged by the Society or accredited providers for the Trainee Solicitor's attendance at the courses referred to in clause 5(3).

(6) **(Insert any further clauses required, which must not override or negate the standard clauses).*

6. Any difficulty or dispute between the Trainee Solicitor and the Principal concerning the fulfilment of the provisions of this Contract or the conduct of either party in relation to this Contract may be referred by either of them to the Council of the Society for determination and the decision of Council shall be final and binding on both parties.

Registration of this agreement shall not imply any approval by the Law Society of any further clauses added to the Law Society's standard form of Contract.

SIGNED by the Trainee Solicitor)
in the presence of:-)

Solicitor of the High Court of the Hong Kong Special Administrative Region /
Commissioner for Oaths / Justice of Peace

SIGNED by the Principal)
in the presence of:-)

Solicitor of the High Court of the Hong Kong Special Administrative Region /
Commissioner for Oaths / Justice of Peace

Notes:

* Delete if applicable

This contract must be witnessed by a Hong Kong solicitor / Commissioner for Oaths / Justice of Peace

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(i) The keeping of traineeship records to show the effective employment of trainee solicitors and related matters;
(ii) The exercise of the powers of the Society conferred upon it by the Legal Practitioners Ordinance (Chapter 159) and its subsidiary legislation; and
(iii) The performance of the functions of the Society in accordance with its Memorandum and Articles of Association and the attainment of the objects for which the Society is established.

It is obligatory for you to supply the Society with the data in this Contract except as otherwise indicated. The consequence for you if you fail to supply such data is that you will not have complied with the requirements of the Trainee Solicitors Rules.

The data may be provided to such persons within the Society whose proper business it is to have access to and assist in the management of the traineeship records and related matters. The data may also be provided to other persons who may help the Society in attaining the purposes above mentioned.

Any data that is provided to anyone outside of the Society will be restricted to what is necessary and not excessive to achieve any intended purpose.

You have the right to request access to and correction of the data. Any such request should be addressed to the Secretary General, the Law Society of Hong Kong, 3/F, Wing On House, 71 Des Voeux Road Central, Hong Kong.

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APPENDIX 5

GUIDELINES FOR ACCOUNTING PROCEDURES AND SYSTEMS

1. Introduction

(1) These Guidelines, published under Practice Direction K.3, are intended to be a benchmark or broad statement of good practice requirements which should be present in an effective regime for the proper control of client money and trust money. They should therefore be of positive assistance to firms in establishing or reviewing appropriate procedures and systems. They do not override, or detract from the need to comply fully with, the Solicitors' Accounts Rules.

(2) It should be noted that these Guidelines apply equally to client money and trust money.

(3) References to partners or firms are intended to include sole practitioners.

2. General

(1) Compliance with the Solicitors' Accounts Rules is the equal responsibility of all partners in a firm. They should establish policies and systems to ensure that the firm complies fully with the Rules. Responsibility for day-to-day supervision may be delegated to one or more partners to enable effective control to be exercised. Delegation of total responsibility to a clerk or book-keeper is not acceptable.

(2) The firm must hold a copy of the current version of the Solicitors' Accounts Rules. The person who maintains the books of account must have a full knowledge of the requirements of the Rules and the accounting requirements of solicitors' firms.

(3) Proper books of account should be maintained on the double-entry principle. They should be legible, up to date and contain narratives with the entries which identify and/or provide adequate information about the transaction. Entries should be made in chronological order and the current balance should be shown on client ledger accounts, or be readily ascertainable.

(4) Ledger accounts for clients, other persons or controlled trusts should include the name of the client or other person or trust and contain a heading which provides a description of the matter or transaction.

(5) Separate designated client accounts should be brought within the ambit of the systems and procedures for the control of client money and trust money, including reconciliations (see 5.4 below).

(6) Manual systems for recording client money and controlled trust money are capable of complying with these Guidelines and there is no requirement on firms to adopt computerised systems. A computer system, with suitable support systems will, however, usually provide an effective means of producing the accounts and associated control information.

(7) If a computer system is introduced care must be taken to ensure:

(a) that balances transferred from the old books of account are reconciled with the opening balances held on the new system before day-to-day operation commences;

(b) that the new system operates correctly before the old system is abandoned. This may require a period of parallel running of the old and new systems and the satisfactory reconciliation of the two sets of records before the old system ceases.

(8) The firm should ensure that office account entries in relation to each client or trust matter are maintained up to date as well as the client account entries. Credit balances on office account in respect of client or trust matters should be fully investigated.

(9) The firm should operate a system to identify promptly situations which may require the payment of deposit interest to clients.

3. Receipt of client money and trust money

(1) The firm should have procedures for identifying client money and trust money, including cash, when received in the firm, and for promptly recording the receipt of the money either in the books of account or a register for later posting to the client cash book and ledger accounts. The procedures should cover money received through the post, electronically or direct by fee earners or other personnel. They should also cover the safekeeping of money prior to payment to bank.

(2) The firm should have a system which ensures that client money and trust money is paid promptly into client account.

(3) The firm should have a system for identifying money which should not be in a client account and for transferring it without delay.

(4) The firm should determine a policy and operate a system for dealing with money which is a mixture of office money and client money (or trust money), in compliance with rule 5 of the Solicitors' Accounts Rules.

4. Payments from client account

(1) The firm should also have clear procedures for ensuring that all withdrawals from client accounts are properly authorised. In particular, suitable persons, consistent with rule 7A of the Solicitors' Accounts Rules, should be named for the following purposes:

(a) authorisation of internal payment vouchers;

(b) signing client account cheques;

(c) authorising telegraphic or electronic transfers.

No other personnel should be allowed to authorise or sign the documents.

(2) Persons nominated for the purpose of authorising internal payment vouchers should, for each payment, ensure that there is supporting evidence showing clearly the reason for the payment, and the date of it. Similarly, persons signing cheques and authorising transfers should ensure that there is a suitable voucher or other supporting evidence to support the payment.

(3) The firm should have a system for checking the balances on client ledger accounts to ensure no debit balances occur. Where payments are to be made other than out of cleared funds, clear policies and procedures must be in place to ensure that adequate risk assessment is applied.

NB If incoming payments are ultimately dishonoured, a debit balance will arise, and full replacement of the shortfall will be required under Practice Direction K.1.

(4) The firm should establish systems for the transfer of costs from client account to office account in accordance with rule 9(2)(c) of the Solicitors' Accounts Rules. Normally transfers should be made only on the basis of rendering a bill or written intimation. The payment from the client account should be by way of cheque or transfer in favour of the firm or sole principal.

(5) The firm should establish policies and operate systems to control and record accurately any transfers between clients of the firm. Where these arise as a result of loans between clients, the written authority of both the lender and borrower should be obtained.

5. Overall control of client accounts

(1) The firm should maintain control of all its bank accounts opened for the purpose of holding client money and trust money. In the case of a joint account, a suitable degree of control should be exercised.

(2) Central records or central registers must be kept in respect of:

(a) accounts held for client money, or trust money, which are not client accounts (rule 9(2)(a) of the Solicitors' Accounts Rules);

(b) joint accounts; and

(c) clients' own accounts (rule 9(2)(a) of the Solicitors' Accounts Rules).

(3) In addition, there should be a master list of all general client accounts and office accounts. The master list should show the current status of each account; eg currently in operation or closed with the date of closure.

(4) The firm should operate a system to ensure that accurate reconciliations of the client accounts, whether comprising client and/or trust money, are carried out once a calendar month. In particular it should ensure that:

(a) a full list of client ledger balances is produced. Any debit balances should be listed, fully investigated and rectified immediately. The total of any debit balances cannot be "netted off" against the total credit balances;

(b) a full list of unpresented cheques is produced;

(c) a list of outstanding lodgments is produced;

(d) formal statements are produced reconciling the client account cash book balances, aggregate client ledger balances and the client bank accounts. All unresolved differences must be investigated and, where appropriate, corrective action taken;

(e) a partner checks the reconciliation statement and any corrective action, and ensures that enquiries are made into any unusual or apparently unsatisfactory items or still unresolved matters.

(5) Where a computerised system is used, the firm should have clear policies, systems and procedures to control access to client accounts by determining the personnel who should have "write to" and "read only" access. Passwords should be held confidentially by designated personnel and changed regularly to maintain security. Access to the system should not necessarily be restricted to a single person nor should more people than necessary be given access.

(6) The firm should establish policies and systems for the retention of the accounting records to ensure:

- books of account, reconciliations, bills, bank statements and passbooks are kept for at least six years;
- paid cheques and other authorities for the withdrawal of money from a client account are kept for at least two years;
- other vouchers and internal expenditure authorisation documents relating directly to entries in the client account books are kept for at least two years.

(7) The firm should ensure that unused client account cheques are stored securely to prevent unauthorised access. Blank cheques should not be pre-signed. Any cancelled cheques should be retained.

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