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## **19. Solicitors (Professional Indemnity) Rules**

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**1. Citation**

These rules may be cited as the Solicitors (Professional Indemnity) Rules.

**2. Interpretation**

In these rules, unless the context otherwise requires-

"authorized insurers" means persons carrying on liability insurance business or pecuniary loss insurance business and recognized as such by the Society;

"authorized reduction amount" means the amount of the reduction in the total amount of contribution authorized from time to time by the Council referred to in paragraph 2(7)(a) of Schedule 1;

"basic contribution" means the amount which is established by applying the formula set out in paragraph 2(1)(a)(i) of Schedule 1 (and which is represented by the letter "C" in such formula) as varied by paragraph 2(2), (3) or (7) of Schedule 1;

"certified public accountant" has the same meaning as in the Professional Accountants Ordinance (Cap. 50);

"Claims Committee" means the committee appointed by the Council or the Company with power to settle, prosecute or defend claims made under these rules or the former Rules;

"Company" means Hong Kong Solicitors Indemnity Fund Limited;

"contribution" means the contribution referred to in rule 4;

"firm" means the firm as from time to time constituted, whether of a sole practitioner or a partnership, carrying on the Practice;

"first indemnity period" means the period commencing on 1 October 1989 and expiring on 30 September 1990, both days inclusive;

"first Master Policies" means the 2 professional indemnity insurance policies entered into between the Society and authorized insurers effective on 1 October 1986;

"former Master Policy" means the master policy entered into between the Society and authorized insurers, expiring on 30 September 1986;

"former Practice", for the purposes of Schedule 1, means a Practice which no longer carries on business practising as a solicitor;

"former principal", for the purposes of Schedule 1, means a principal in a Practice on the date when such Practice becomes a former Practice;

"former Rules" means the Solicitors (Professional Indemnity) (Amendment) Rules 1986 and the Solicitors (Professional Indemnity) Rules 1987;

"former solicitor" means a person who has ceased by reason of death, retirement or otherwise to be a solicitor in Practice and who has been provided with Indemnity or insured under any Master Policy or former Master Policy or whose successors in business have been provided with Indemnity or insured under any Master Policy or former Master Policy including the estate and legal representatives of such person;

"fund" means the fund referred to in rule 3;

"gross fee income" means-

- (a) all professional fees, remuneration, commission and charges of any kind whatsoever which are rendered in connection with the indemnified's Practice; and
- (b) all income derived by any service, administrative or trustee company (other than any company which accepts moneys for investment other than as a trustee) or trust in so far as its activities are carried out solely in connection with the Practice but excluding any income derived by any company within this paragraph for services rendered to the indemnified's Practice or to any other company within this paragraph where and to the extent that such income is included in the gross fee income of the indemnified's Practice or of such other company as aforesaid;

"indemnified" means the firm named in the receipt referred to in rule 9, or any principal in the firm, any person employed in or in connection with the Practice (including any assistant solicitor, any solicitor who is a consultant in the firm, and any trainee solicitor), any solicitor who has ceased by reason of death, retirement or otherwise to practise as principal in the firm, any former employee employed in or in connection with the Practice (including any assistant solicitor, any consultant and any trainee solicitor as aforesaid) and the estate and the legal representatives of any of the foregoing, and also includes any service, administrative or nominee company or trust insofar as its activities are carried out in connection with the Practice;

"Indemnity" means the indemnity to which the indemnified or a former solicitor is entitled under rule 10;

"indemnity period" means a period (being a period during which either Indemnity or insurance under any Master Policy or former Master Policy has been or is being provided) commencing on 1 October in any year and expiring on 30 September in the following year, both days inclusive;

"insurance fund" means the fund or funds established and maintained by the Society under the former Rules as part of the Professional Indemnity Insurance Scheme;

"insured" means a person who is covered by professional indemnity insurance under the Professional Indemnity Insurance Scheme;

"Master Policies" means the first Master Policies and the second Master Policies, and Master Policy means any of such policies;

"panel solicitor" means a firm of solicitors appointed by the Company to act on behalf of an indemnified or a former solicitor in respect of any claim against the indemnified or a former solicitor covered under this Professional Indemnity Scheme;

"period of indemnity" means the period specified in the receipt issued under rule 9 or in the case of a former solicitor means the indemnity period;

"Practice" means the business of practising as a solicitor, including the acceptance of obligations connected with and incidental to such practice as -

- (a) trustee;
- (b) executor;
- (c) attorney acting under a power of attorney;
- (d) tax agent;
- (e) patent agent;
- (f) trade-mark agent;
- (g) company secretary;
- (h) company director; or
- (i) notary public, provided the solicitor is so qualified,

undertaken by the indemnified or his predecessor in business alone or with others, provided always that wherever any fees or other income accrue therefrom they inure to the benefit of that business;

"principal" means a partner or sole practitioner of a firm and shall also include any solicitor holding out as such a partner or sole practitioner;

"Professional Indemnity Insurance Scheme" means the professional indemnity scheme set out in the former Rules, which became effective on 1 October 1986 and which was replaced on 1 October 1989 by the Professional Indemnity Scheme;

"Professional Indemnity Scheme" means the professional indemnity scheme set out in these rules, as from time to time amended by agreement between the Society and the Company;

"related costs" means all costs and expenses incurred with authorized insurers' or the Company's consent in the defence or settlement of any claim against the indemnified or a former solicitor;

"relevant date" means-

- (a) the date when a claim for which Indemnity is provided is first made against the indemnified or a former solicitor;
- (b) where the circumstances which might give rise to such a claim first came to the notice of the indemnified or a former solicitor on a date earlier than the date referred to in paragraph (a), that earlier date; or
- (c) where the firm has ceased the Practice at the date referred to in paragraph (a) or (b) (as may be applicable), the date when the cause of action first accrued against the firm;

"second Master Policies" means the 3 professional indemnity insurance policies entered into between the Society and authorized insurers effective on 1 October 1987;

"unqualified staff" means persons who are not solicitors.

### **3. The fund**

- (1) The Society is hereby authorized to establish and maintain a fund in accordance with the provisions of these rules.
- (2) Subject to these rules, the fund shall provide indemnity against such loss as is mentioned in section 73A(1) of the Ordinance, in respect of the first indemnity period and each subsequent indemnity period and, subject to the former Rules, the fund shall provide indemnity against such loss as is mentioned in such former Rules.
- (3) The second Master Policies taken out and maintained and the certificates of insurance issued under such second Master Policies shall continue to provide cover subject to and in accordance with their terms in respect of their respective periods up to and including 30 September 1989.

### **4. Establishment and maintenance of the fund**

The fund shall be established and maintained by contributions which shall be made or caused to be made by solicitors in respect of the first and each subsequent indemnity period in accordance with the provisions of Schedule 1 and by payment into the fund of the insurance fund.

**5. Management and administration of the fund**

The fund shall be held, managed and administered in accordance with the provisions of Schedule 2 by the Company.

**6. Compulsory Indemnity**

- (1) Subject to rule 7, every solicitor who is, or is held out to the public as, a solicitor in Practice in Hong Kong shall be required to have and maintain Indemnity.
- (2) Any current practising certificate which has been issued to a solicitor who is required to have and maintain Indemnity and who fails to have Indemnity shall be suspended and such person shall not be qualified to act as a solicitor pursuant to section 7 of the Ordinance while he shall fail to have Indemnity.

**7. Exemption**

- (1) Rule 6 shall not apply to a solicitor or a class of solicitors for the time being exempted by the Council from compliance with these rules or to a solicitor or a class of solicitors engaged only in a category or categories of professional business specified by the Council.
- (2) The Council may-
  - (a) exempt from compliance with these rules any solicitor or any class of solicitors specified by the Council;
  - (b) exempt from compliance with these rules any solicitor or any class of solicitors engaged only in a category or categories of professional business specified by the Council;
  - (c) grant such exemption either indefinitely or for a specified period or subject to such other conditions as the Council may from time to time determine; and
  - (d) revoke any exemption granted.

**8. Production of documents and information**

- (1) Subject to subrule (3) every principal who is in Practice in Hong Kong shall, on or before 15 August in each indemnity period or such other date as may be allowed by the Council, produce to the Company or to a person specified by the Company-
  - (a)
    - (i) a certificate signed by a certified public accountant containing particulars of the gross fee income in accordance with this rule attributable to the Practice for the immediately preceding accounting year of the Practice; or
    - (ii) if a certificate mentioned in subparagraph (i) is not available, subject to the approval of the Council and terms, if any, the Council thinks fit, a certificate signed by a certified public accountant containing particulars of the gross fee income attributable to the Practice for the accounting year of the Practice ending not earlier than 31 March in the preceding year; and

- (b) such other information in connection with the Practice made up to 31 July (or other date as determined by the Council) in the same indemnity period required by the Company in a form approved by the Company for the purpose of assessing the contributions payable by that Practice, including the following:
  - (i) (in addition to the certificate referred to in paragraph (a)) particulars of the gross fee income attributable to the Practice for the immediately preceding accounting year of the Practice;
  - (ii) the names of all the principals in the Practice;
  - (iii) the names of all foreign lawyers in the Practice;
  - (iv) the names of all other solicitors, including assistant solicitors and consultants employed in or otherwise involved in the Practice;
  - (v) the names of all trainee solicitors in the Practice; and
  - (vi) the name and address of the firm carrying on the Practice.
- (2) Production with the approval of the Council of a certified public accountant's certificate of gross fee income for a period other than the immediately preceding accounting year of the Practice, in accordance with subrule (1)(a), shall not relieve any principal in that Practice of his obligation to produce to the Company a certificate in respect of the immediately preceding accounting year of the Practice and such certificate, when available, shall be produced immediately on demand by the Society or the Company.
- (3) If a principal in a Practice supplies particulars of the gross fee income of the Practice and the other information in connection with the Practice in accordance with subrule (1) or (2), the other principals in the same Practice shall not in addition be required to supply such particulars or information.
- (4) Subject to subrule (3), if any principal referred to in subrule (1) fails to show reasonable cause for not supplying particulars of the gross fee income of the Practice or the other information in connection with the Practice, in accordance with subrule (1) or (2) within 30 days of the receipt of notice from the Society requesting him to show reasonable cause for not supplying the particulars or the other information:
  - (a) such failure shall be an event of professional misconduct on the part of such principal and the other principal or principals in such Practice as at the date of such failure; and
  - (b) without prejudice to any other power or remedy of the Society, the Council may apply to the Court for an order compelling such principal or each of the other principals in the Practice to disclose such particulars and information.

#### **8A. Investigatory powers**

- (1) In order to ascertain whether full and accurate information has been provided in accordance with these rules and to obtain the information that has not been provided, the Company may appoint a person ("the appointed person") whom it thinks fit.

- (2) The Company may require a solicitor who is or was a principal of a Practice to produce to the appointed person accounting and other records and documents, information and explanations relating to the Practice specified by that person at times and places as specified by him.
- (3) Any solicitor to whom a requirement is made under subrule (2) shall comply with such requirement.
- (4) The appointed person -
  - (a) shall report in writing to the Company on matters about which he has been required by the Company to report; and
  - (b) may report to the Company on any other matter if he thinks it fit to do so,and the Company may then report any such matter to the Council.
- (5) A requirement under subrule (2) shall be made in writing and sent or delivered by the Company to the solicitor at the principal practising address of the solicitor last known to the Society or the Company.
- (6) Where a requirement is sent by registered post or recorded delivery to the address referred to in subrule (5), the solicitor to whom it is sent shall be deemed to have received it 2 days after the requirement is so sent.

## **9. Receipt**

Upon receipt of the initial contribution due in accordance with the provisions of Schedule 1, the Company shall issue a receipt in respect of the relevant firm and indemnity period or part of the indemnity period.

## **10. Entitlement to Indemnity**

- (1) Upon issue of the receipt referred to in rule 9, the indemnified shall be entitled to be provided severally with Indemnity out of the fund in the manner set out in rule 11 and to the extent, and subject to conditions and exclusions, set out in Schedule 3 against all losses to the indemnified whensoever occurring arising from any claim first made against the indemnified during the period of indemnity in respect of any description of civil liability whatsoever incurred in connection with the Practice or from any such claim made during or subsequent to the period of indemnity arising out of circumstances notified to the Company during the period of indemnity as circumstances which may give rise to a claim.
- (2) A former solicitor, if not provided with Indemnity under subrule (1), shall be entitled to be provided with Indemnity out of the fund to the extent set out in paragraph 3 of Schedule 3 against the losses and in respect of the civil liability referred to in subrule (1) arising from any claim first made against him during the currency of the Professional Indemnity Scheme as if a receipt referred to in rule 9 had been issued to him but no receipt pursuant to rule 9 will be issued and no contribution shall be payable.
- (3) Rules 11, 12, 13 and 16 and paragraphs 1, 4, 5, 7 and 8 (except subparagraph (9)) of Schedule 3 shall apply to a former solicitor as if he were an indemnified.

## **11. Provision of Indemnity**

- (1) Indemnity shall be provided in any one or any combination of the following ways-
  - (a) by payment, in or towards satisfaction of the claim or claimant's costs or both, to or to the order of the claimant making the claim;
  - (b) by payment, in respect of the claim, claimant's costs or costs and expenses incurred in respect of the defence, settlement or compromise of the claim or any combination of them, to or to the order of the indemnified against whom the claim is made;
  - (c) by payment, in or towards discharge of costs and expenses incurred in respect of the defence or settlement or compromise of the claim, to or to the order of the legal advisers, adjusters or other persons by whom or in respect of whose services such costs and expenses were incurred.
- (2) Notwithstanding any insolvency or bankruptcy of any indemnified, the Company may, for the purposes of subrule (1), decide in which or which combination of the above ways any Indemnity shall be provided.

## **12. Indemnity exclusively from the fund**

- (1) Indemnity shall be provided exclusively out of the fund and any claim thereto shall lie and be made solely against the fund.
- (2) The Company shall have no obligation to provide any Indemnity save to the extent that the same can be provided out of the fund.
- (3) In no circumstances shall any claim to Indemnity lie or be made against the Society or the Council.
- (4) Subject to rule 14, the fund shall be available exclusively for the purposes specified in rule 3.
- (5) In no circumstances shall the fund or any part thereof be available or be treated by any person as available (whether by virtue of any claim, attachment, execution or proceeding or otherwise howsoever) for or in connection with any other purpose.

## **13. Disputes**

Any dispute or difference concerning the existence in quantum of any liability for any contribution to be made or caused to be made by any solicitor in accordance with rule 4 or concerning any claim or the quantum of any claim to be provided with Indemnity in accordance with rules 10, 11 and 12 shall be referred to a single arbitrator to be appointed in default of agreement by the President of the Society for the time being.

Any such arbitration shall take place and be conducted between the indemnified who is a party to the dispute or difference and the Company representing the fund, and the arbitrator's decision shall be final and binding.

## **14. Continued maintenance and release of the fund**

- (1) Following the expiry of the last indemnity period in respect of which the fund shall provide indemnity, the fund shall continue to be held, managed and administered by the Company for so long as and to the extent that the Society, in the light of the reports made to it by the Company, may consider necessary or appropriate for the purpose of providing indemnity in respect of any claim made or intimated during any indemnity period or any insurance period under the former Rules, as the case may be, arising out of circumstances notified during



any indemnity period or insurance period, as the case may be, as circumstances which might give rise to such claim.

- (2) When the Society considers it unnecessary or inappropriate that all or any part of the fund should be held, managed and administered for such purpose, the Society may at any time require all or any part of the fund not so required to be released to the Society.
- (3) The Society shall apply such fund released to it, if and to the extent the Society considers it practicable, in any other way permitted by section 73A(2) of the Ordinance or for the benefit of the solicitors' profession as a whole in such manner as it may think fit.

**15. Failure to make payment**

- (1) If any principal liable to make payment under or in respect of the Professional Indemnity Scheme of any amount for which the indemnified is not provided with Indemnity or which is to be reimbursed to the Company on behalf of the fund without reasonable excuse fails to make payment of such amount on demand for payment of the same being made by the Society then such failure shall be an event of professional misconduct on the part of such principal.
- (2) A demand for payment of the amount referred to in subrule (1) shall only be made by the Society after the Company or their agent has given written notice to such principal that payment of such sum is required by the Company to reimburse the fund or for payment into Court, or settlement, or satisfaction of judgment on any claim and payment is not made within 14 days of such notice being given by the Company or their agent to such principal.

**16. Payment of amounts not covered by the scheme**

- (1) When an amount for which Indemnity is not provided is required by the Company or their agent for payment into court or settlement or satisfaction of judgment on any claim, the Company or their agent shall give notice in writing to the indemnified requiring payment of such amount and each principal in the firm shall thereupon become severally liable to pay the same to the Company.
- (2) If such amount is not paid to the Company within 14 days after service of such notice, the Company may pay the same on behalf of the indemnified and each principal in the firm shall thereupon become further liable to the Company for interest on such amount from the date of payment of the same by the Company at the same rate as allowed for a judgment debt from time to time under section 49 of the High Court Ordinance (Cap. 4).

**17. Panel of firms of solicitors**

A panel of firms of solicitors to conduct the defence of claims will be appointed by the Council, from which panel any panel solicitor is to be appointed.

**18. Reporting**

- (1) Notwithstanding his duty of confidentiality owed to any solicitor referred to in rule 6, the panel solicitor may report to the Claims Committee full details of any claim made against the Practice of which the solicitor is or was a principal or employee in respect of any act or omission which is the subject matter of a claim under the Professional Indemnity Scheme and may report to the Claims Committee the failure or refusal of the solicitor to co-operate with the panel solicitor concerning the claim.

- (2) Where it appears to the Claims Committee that there may have been professional misconduct, whether in relation to the circumstances giving rise to the claim, the handling of the claim, any failure or refusal to co-operate with the Claims Committee or the panel solicitors, or otherwise, the Claims Committee may at any time inform the Council of full details of such professional misconduct and the circumstances under which it was committed and supply the Council with any related documents.
- (3) Where the Claims Committee has informed the Council under subrule (2), the Council may take any action as it thinks fit, including referring the details and documents supplied by the Claims Committee to the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel.

## **19. The Council**

The powers conferred by these rules on the Society shall be exercisable by the Council as it may from time to time resolve.

**SCHEDULE 1****[rule 2, 4 & 9]****CONTRIBUTIONS TO FUND****1. Obligation to make contributions**

Every principal in Practice shall, in respect of himself and of all assistant solicitors and consultants in his firm, make or cause to be made the contributions as are set out in paragraph 2 in respect of that Practice.

**2. Calculation of contribution**

- (1) (a) Save in the cases referred to in subparagraphs (2) (when the amount of contribution shall be assessed by the Company as therein provided), (3) (which provides that the amount of the basic contribution shall be not less than the minimum amount as therein provided) and (4) (when the amount of contribution may be reduced as therein provided), the amount of all contributions for the first indemnity period and for each subsequent indemnity period shall be calculated -

- (i) according to the formula -  $C = (N * \$20,000) + (M * \$13,000) + S$

Where-

\* = multiplied by;

C = the amount (subject to any appropriate adjustment made under subparagraph (3)) of the basic contribution which may also be the contribution;

N = number of principals (as at 31 July immediately preceding such indemnity period);

M = number of assistant solicitors and consultants (as at 31 July immediately preceding such indemnity period); and

S = the amount established from the following table-

Gross fee income of the firm \$ Million	Amount \$
over 0 but not exceeding 5	2.64% x gross fee income
over 5 but not exceeding 6	142,000
over 6 but not exceeding 7	161,000
over 7 but not exceeding 8	181,000
over 8 but not exceeding 9	197,000
over 9 but not exceeding 10	212,000
over 10 but not exceeding 11	228,000
over 11 but not exceeding 12	241,000
over 12 but not exceeding 13	253,000
over 13 but not exceeding 14	265,000
over 14 but not exceeding 15	274,000
over 15 but not exceeding 16	281,000
over 16 but not exceeding 17	286,000
over 17 but not exceeding 18	290,000
over 18 but not exceeding 19	295,000

over 19 but not exceeding 20	299,000
over 20 but not exceeding 21	302,000
over 21 but not exceeding 22	306,000
over 22 but not exceeding 23	309,000
over 23 but not exceeding 24	313,000
over 24 but not exceeding 25	316,000
over 25 but not exceeding 50	1.27% x gross fee income (subject to a maximum amount of \$543,000)
over 50 but not exceeding 75	1.09% x gross fee income (subject to a maximum amount of 673,000)
over 75 but not exceeding 100	0.90% x gross fee income (subject to a maximum amount of \$732,000)
over 100	0.73% x gross fee income

and the gross fee income of the firm shall be determined by the particulars contained in the gross fee income certificate produced under rule 8(1)(a) plus a factor to be applied by the Company to this figure to compensate for the historical basis of the gross fee income calculation (such factor not to exceed 10%) and shall be subject to adjustment as provided in sub-subparagraph (b)(iv); or

- (ii) in the circumstances set out in subparagraph (6), according to the formula -  $F \times C$

Where-

$C$  = the amount (subject to any appropriate adjustment made under subparagraph (3)) of the basic contribution which may also be the contribution; and

$F$  = the appropriate factor referred to in subparagraph (6)(d).

- (b) (i) The contribution for the first indemnity period and for all subsequent indemnity periods shall be regulated by the number of principals, assistant solicitors and consultants engaged or employed in the Practice from time to time and the gross fee income of the firm.
- (ii) Information regarding gross fee income of the firm and unqualified staff and the information described as N and M in sub-subparagraph (a) shall be properly recorded and the indemnified shall at all times allow the Company to inspect such records.
- (iii) Particulars of the names and the position held in the Practice of every principal, assistant solicitor and consultant and the numbers of and positions held by unqualified staff at 1 October 1989 shall be submitted by the firm to the Company on or before 8 October 1989. Thereafter a return shall be sent to the Company on or before the last day of December, March, June and September in each year commencing on 31 December 1989 showing every subsequent change in such particulars (and

the date of such change) occurring since the date of the previous return.

- (iv) Upon receipt by the Company of the certificate of gross fee income and information pursuant to rule 8(1) to enable the Company to assess the contribution for the next period of indemnity, the Company will also, based on such information and the other information referred to in sub-subparagraph (b)(iii), calculate and adjust the contribution for the preceding indemnity period in accordance with the formula for calculating the contribution for such preceding indemnity period. Any difference in the amount of the assessed contribution paid for the preceding indemnity period and the contribution established by such calculation shall be met by a further payment by the firm, or in the event of the firm being dissolved prior to payment, by the principals of the firm immediately prior to such dissolution to the Company, or, notwithstanding paragraph 4, by a refund to the firm or such principals by the Company, as the case may be.
- (c) If any principal who is required to make contributions in accordance with paragraph 1 fails to provide the Company with a certified public accountant's certificate of the gross fee income or other information referred to in sub-subparagraph (b)(iii) pursuant to rule 8(1), then such principal and the other principal or principals, if any, in the Practice shall be jointly and severally liable to pay-
  - (i) for the first indemnity period, an amount equal to 400% of the total amount payable by the firm as premium under and in respect of the second Master Policies for the period from 1 October 1987 to 30 September 1988; and
  - (ii) thereafter, for each subsequent indemnity period an amount equal to 200% of the rate of contribution for the preceding indemnity period until such principal or principals have made disclosure of such particulars of the gross fee income or other information as was required.
- (d) Upon a principal making good all failures under sub-subparagraph (c), the Company shall assess the contribution payable in respect of the Practice. If the amount of the contribution as assessed-
  - (i) is less than the amount of the contribution paid, the difference shall be repaid to his firm without interest; or
  - (ii) exceeds the amount of the contribution paid, his firm shall upon demand pay to the Company the balance of the amount of the contribution together with interest on the amount of such balance at the rate of 4% per annum above the best lending rate from time to time of The Hongkong and Shanghai Banking Corporation Limited calculated from the date stipulated in or prescribed by the Society under rule 8(1)(c) until receipt of payment by the Company.
- (2) In the case of a solicitor or solicitors commencing a Practice during any indemnity period the contribution payable in respect of such Practice for the year of commencement of Practice shall be assessed by the Company based on the average contribution paid for the current indemnity period by firms of similar composition to the Practice and be paid pro rata and such basis shall continue to be applied until such Practice shall have submitted a certified public

accountant's certificate of gross fee income and other information in accordance with the foregoing provisions of this paragraph. The basic contribution payable by such Practice during any indemnity period shall not be less than \$20,000.

- (3) The basic contribution payable in respect of a Practice for an indemnity period shall not be less than \$20,000.
- (4) The contribution payable for an indemnity period shall be due and payable to the Company on or before 30 September immediately preceding the indemnity period but in the case of the first indemnity period it shall be payable on the date decided by the Society and in the case of a Practice referred to in subparagraph (2) the contribution payable for its first period of indemnity shall be paid forthwith on demand.
- (5)
  - (a) Notwithstanding anything to the contrary in this paragraph, the Company may, with the authority of a resolution of the Council, at any time during an indemnity period demand in writing from every principal who is required to make contributions in accordance with paragraph 1 at any time during the indemnity period when the demand is made such further sum as may be authorized by the Council to make up a deficit or anticipated deficit in the fund, and such principal shall be bound to pay such further sum to the Company within 30 days after the date of issue of such written demand.
  - (b) Subject to the amount of payments received from such principal being sufficient to cover the amount of the deficit or anticipated deficit, the sum which such principal shall be required to pay shall be that proportion of the deficit or anticipated deficit as the total amount of the contributions payable after appropriate adjustment as provided in subparagraph (1)(b)(iv) by such principal for the indemnity period when the demand is made bears to the total amount of the contributions payable after adjustment by all principals under the Professional Indemnity Scheme for such indemnity period, provided that such principal may be required to make an interim payment on account of the sum which such principal is to pay hereunder. Such interim payment (which shall be subject to subsequent adjustment) shall be that proportion of the deficit or anticipated deficit as the contribution paid by such principal for the indemnity period when the demand is made bears to the total amount of the contributions then paid for such indemnity period.
- (6)
  - (a) If during any period of 4 indemnity periods immediately prior to any indemnity period, an insurer or the Company on behalf of the indemnified has paid, or is deemed, pursuant to sub-subparagraph (b), to have paid, any claim, then the contribution payable for such indemnity period shall not be the basic contribution but shall be calculated in accordance with the formula set out in paragraph 2(1)(a)(ii) by multiplying the basic contribution by the appropriate factor established pursuant to sub-subparagraph (d).
  - (b)
    - (i) For the purposes of sub-subparagraph (a), if during any period of 4 indemnity periods immediately prior to any indemnity period, an insurer or the Company on behalf of a former Practice has paid any claim and a former principal of such former Practice is a principal at the relevant date, then the claim so paid shall be deemed to have been paid on behalf of the firm of which such former principal is a principal at the relevant date, except that where there is more than one former principal of such former Practice who is a principal at the relevant date the claim so paid shall be divided equally among each such former principal whose

share of such claim shall be deemed to have been paid on behalf of the firm of which such former principal is a principal at the relevant date.

- (ii) For the purposes of this sub-subparagraph, "the relevant date" means 31 July immediately prior to any indemnity period.
- (c) For the purposes of sub-subparagraph (d), claims paid during such period-
  - (i) shall not include-
    - (A) any amount in excess of \$10,000,000 in respect of any one claim;
    - (B) the amount of any claim paid by insurers under the former Master Policy on behalf of the indemnified prior to 1 October 1986 the full amount of which is paid by the indemnified to authorized insurers under the first Master Policies prior to 1 October 1986 provided that this exclusion shall only apply in respect of claims paid by insurers under the former Master Policy (and repaid by the indemnified) which do not exceed the aggregate of 50% of the premiums paid by the indemnified in respect of compulsory professional indemnity insurance in respect of the 4 indemnity periods prior to 1 October 1986;
    - (C) the amount of any deductible paid by the indemnified;
    - (D) the legal costs and disbursements incurred in successfully defending a claim made against the indemnified;
    - (E) the legal costs and disbursements (including defence and claimants' costs) paid in respect of a successful claim made against the indemnified under the former Master Policy; and
    - (F) the amount of any claim paid under or in respect of a policy of insurance other than the former Master Policy or the Master Policies or Master Policy;
  - (ii) shall include all legal costs and disbursements (including defence and claimants' costs) which are paid in respect of a successful claim made against the indemnified under the Master Policies or a Master Policy.
- (d)
  - (i) If claims so paid exceed 0% of the total amount of premiums or contributions paid in respect of the Practice in the 4 indemnity periods preceding the indemnity period but do not exceed 50% of premiums or contributions so paid, a factor of 1.06 shall be applied to the contribution.
  - (ii) If claims so paid exceed 50% of the total amount of premiums or contributions paid in respect of the Practice in the 4 indemnity periods preceding the indemnity period but do not exceed 100% of premiums or contributions so paid, a factor of 1.13 shall be applied to the contribution.

- (iii) If claims so paid exceed 100% of the total amount of premiums or contributions paid in respect of the Practice in the 4 indemnity periods preceding the indemnity period but do not exceed 200% of premiums or contributions so paid, a factor of 1.33 shall be applied to the contribution.
- (iv) If claims so paid exceed 200% of the total amount of premiums or contributions paid in respect of the Practice in the 4 indemnity periods preceding the indemnity period but do not exceed 300% of premiums or contributions so paid, a factor of 1.53 shall be applied to the contribution.
- (v) If claims so paid exceed 300% of the total amount of premiums or contributions paid in respect of the Practice in the 4 indemnity periods preceding the indemnity period but do not exceed 400% of premiums or contributions so paid, a factor of 1.78 shall be applied to the contribution.
- (vi) If claims so paid exceed 400% of the total amount of premiums or contributions paid in respect of the Practice in the 4 indemnity periods preceding the indemnity period but do not exceed 500% of premiums or contributions so paid, a factor of 1.98 shall be applied to the contribution.
- (vii) If claims so paid exceed 500% of the total amount of premiums or contributions paid in respect of the Practice in the 4 indemnity periods preceding the indemnity period but do not exceed 600% of premiums or contributions so paid, a factor of 2.18 shall be applied to the contribution.
- (viii) If claims so paid exceed 600% of the total amount of premiums or contributions paid in respect of the Practice in the 4 indemnity periods preceding the indemnity period but do not exceed 700% of premiums or contributions so paid, a factor of 2.43 shall be applied to the contribution.
- (ix) If claims so paid exceed 700% of the total amount of premiums or contributions paid in respect of the Practice in the 4 indemnity periods preceding the indemnity period but do not exceed 800% of premiums or contributions so paid, a factor of 2.63 shall be applied to the contribution.
- (x) If claims so paid exceed 800% of the total amount of premiums or contributions paid in respect of the Practice in the 4 indemnity periods preceding the indemnity period but do not exceed 900% of premiums or contributions so paid, a factor of 2.88 shall be applied to the contribution.
- (xi) If claims so paid exceed 900% of the total amount of premiums or contributions paid in respect of the Practice in the 4 indemnity periods preceding the indemnity period but do not exceed 1 000% of premiums or contributions so paid, a factor of 3.00 shall be applied to the contribution.
- (xii) If claims so paid exceed 1000% of the total amount of premiums or contributions paid in respect of the Practice in the 4 indemnity periods preceding the indemnity period, a factor of 3.50 shall be applied to the contribution.



- (7) (a) Notwithstanding anything to the contrary in subparagraph (2), the Company may, with the authority of a resolution of the Council at any time during an indemnity period, reduce the total amount of the contributions established in accordance with subparagraph (2) which are payable by firms, during the next indemnity period by such amount as is authorized by the Council.
- (b) The benefit of such reduction shall be available only to those firms which are entitled to indemnity during both the indemnity period when the resolution of the Council referred to in sub-subparagraph (a) is passed and during the next indemnity period and shall be obtained by reducing the amount of the contribution payable by any such firm for such next indemnity period by the amount established in accordance with sub-subparagraph (c).
- (c) The amount by which the contribution of any such firm referred to in sub-subparagraph (b) shall be reduced shall be that proportion of the authorized reduction amount as the total amount of the contributions payable after appropriate adjustment as provided in subparagraph (1)(b)(iv) by that firm for the indemnity period when the resolution of the Council is passed bears to the total amount of contributions payable after adjustment by all firms under the Professional Indemnity Scheme for such indemnity period.

### 3. Decisions by the Council

For the purpose of determining the amount of any contribution required by these rules, the Council's decision shall be final and binding on all persons affected on any question arising as to-

- (a) the maximum amount of contribution or basic contribution payable for any indemnity period;
- (b) the number of principals in a firm at any date;
- (c) the number of unqualified staff employed for the purpose of the Practice at any date;
- (d) the number of assistant solicitors and consultants in a firm at any date;
- (e) any information or other matter on the basis of which any adjustment in contribution is assessed in accordance with paragraph 2(1)(b)(iv);
- (f) the amount of any additional contribution to meet the amount of any deficit or anticipated deficit under paragraph 2(5);
- (g) the calculation of the amount of any claim paid and claims loading under paragraph 2(6) and all matters which are to be included or excluded when establishing the amount of claims paid;
- (h) the date on which a Practice becomes a former Practice;
- (i) whether a firm is eligible to receive any benefit under paragraph 2(7)(b);
- (j) the amount of the reduction in the contribution payable by a firm under paragraph 2(7)(c).

### 4. No refund of contributions

A contribution is not refundable.

## SCHEDULE 2

[rule 5]

### MANAGEMENT AND ADMINISTRATION OF FUND

#### 1. Power of Company to manage fund

The Company shall hold, and have power to manage and administer, the fund, subject only to-

- (a) such directions, conditions and requirements as the Society may from time to time issue to or impose upon it; and
- (b) such arrangements as the Society may from time to time agree with it.

#### 2. General powers

Without prejudice to the generality of paragraph 1 the management and administration of the fund shall include power-

- (a) to collect and recover contributions due to the fund in accordance with Schedule 1;
- (b) to deposit or invest in such manner as the Company may determine all or any part of the fund, including any interest, dividends, profits, gains or other assets accruing to or acquired by the fund;
- (c) to arrange such insurances as the Company may determine in respect of the fund and its assets and the fund's liability under these rules and the former Rules to provide indemnity in respect of claims and costs and expenses; and to handle all aspects of any such insurances, including the payment of premiums thereon out of the fund and the making and recovery of claims thereunder;
- (d) to receive, investigate and handle claims to indemnity and other notices prescribed to be given to the Company by these rules, including settlement and compromise and making of ex gratia payments out of the fund in respect thereof and conduct of any dispute or difference referred to arbitration under rule 13;
- (e) to investigate and handle any claim made or intimated against any indemnified, insured or former solicitor in respect of which they are or may be entitled to be provided with Indemnity out of the fund or in respect of which the conduct is by these rules assigned to the Company, including settlement and compromise and making of ex gratia payments and conduct of any proceedings arising in respect of such claim;
- (f) to claim and recover reimbursement in respect of any sums paid by way of indemnity in any circumstances in which such reimbursement may be claimed under these rules or the former Rules;
- (g) to exercise any right of subrogation, subject to paragraph 8(6) of Schedule 3;
- (h) to maintain full and proper records and statistics (which, subject to paragraph 4, shall at all reasonable times be available on request to the Society for inspection and copying) as to the fund and all aspects of its management and administration;
- (i) to make to and review with, the Council annually and at any other time that the Council may require, written and (if the Council so requires) oral reports as to the fund and, subject to paragraph 4, its management and administration,

including recommendations as to the contributions which are or may be required in respect of past, present and future indemnity periods and the circumstances in which, extent to which and conditions and exclusions subject to which Indemnity should in any future indemnity period be provided out of the fund.

### **3. Additional powers**

The Company shall further have full power-

- (a) to engage the assistance of any third party in respect of any aspect of the management and administration of the fund;
- (b) to delegate to any third party any aspect of the management and administration of the fund;
- (c) to institute such proceedings and conduct such proceedings as it may consider necessary or appropriate for the due management and administration of the fund (including but not limited to the taking of proceedings to recover contributions due to the fund or any other payment payable in accordance with the terms of the Professional Indemnity Scheme or the Professional Indemnity Insurance Scheme from every principal liable to pay the same or from the firm in which he was a principal when the amount becomes or became due and payable) in its own name or (subject to prior consent of the Society) in the name of the Society;
- (d) to disburse or reimburse out of the fund all administrative and legal and other costs, overheads, fees and other expenses and liabilities incurred in respect of the fund, including without prejudice to the generality of the foregoing any such costs, overheads, fees and other expenses and liabilities incurred by the Society in respect of the establishment or maintenance, or the management, administration or protection, of the fund.

### **4. Use of information and documents**

Without prejudice to rule 18, and rule 11 of the former Rules, information and documents obtained by the Company about any particular Practice or member thereof in the course of investigating and handling any claim made or intimated or any circumstances notified as is mentioned in rule 10(1) or in paragraph 1(1) of the Schedule to the former Rules may be used by the Company for the purpose of preparation of general records, statistics, reports and recommendations (not identifying the particular Practice or member) for or to the Society, but shall not otherwise be disclosed or available to the Society without prior consent of the Practice (or any successor Practice thereto) or the member concerned.

**SCHEDULE 3**

**[rule 2 & 10]**

**EXCLUSIONS AND CONDITIONS**

**1. Exclusions**

- (1) Save as provided below, the fund shall not provide Indemnity in respect of the deductibles of any one claim as set out in paragraph 2(2):

Provided that -

- (a) the Company may pay or include in any payment made out of the fund in respect of any claim the whole or any part of any deductible applicable thereto, and in that event the firm in respect of which indemnity was or would have been provided over and above the deductibles shall thereafter on request reimburse to the Company on behalf of the fund the whole or (subject as further provided below) such part as the Company may request of any payment so made and interest on the amount of any payment so made from the date of the payment thereof at the same rate as allowed for a judgment debt from time to time under Section 49 of the High Court Ordinance (Cap. 4) and each Principal in such firm shall be jointly and severally responsible to the Company for such reimbursement accordingly; and

- (b) the Company may with the authority of the Claims Committee in any claim which is disposed of without -

- (i) any admission or finding being made or acceptance of liability on the part of the indemnified; or
- (ii) payment being made from the fund to the claimant in respect of his claim against the indemnified,

waive in writing in whole or part the Company's right to be reimbursed the amount of the deductible paid out of the fund, and amend or revoke any such waiver.

- (2) The Company will not provide Indemnity to the indemnified or a former solicitor in respect of-

- (a) (Repealed)

- (b) any claim arising from any notice received by the indemnified prior to 1 October 1989 from any person advising or intimating that it is the intention of such person to hold the indemnified responsible for any act or omission, and any legal proceedings brought in respect of any such act or omission, in connection with the Practice;

- (c) losses arising out of any claim-

- (i) for death, bodily injury, physical loss or physical damage to property of any kind whatsoever (other than property in the care, custody and control of any of the indemnified in connection with the Practice for which the indemnified is responsible, not being property occupied or used by the indemnified for the purposes of the Practice);

- (ii) for the payment of a trading debt incurred by the indemnified;
- (iii) brought about by the dishonesty, fraudulent act or fraudulent omission of any person who was a principal at the relevant time;
- (iiia) brought about by the dishonesty, fraudulent act or fraudulent omission of an employee of the firm or the indemnified unless the indemnified can prove or show to the satisfaction of the Company that such dishonesty, fraudulent act or fraudulent omission of the employee did not occur as a result of recklessness or dishonesty or a fraudulent act or fraudulent omission on the part of any person who was a principal at the relevant time in the conduct or management of the Practice;
- (iv) directly or indirectly caused by or contributed to, by or arising from ionising radiation or contamination by radioactivity from any nuclear fuel or from any nuclear waste from the combustion of nuclear fuel, the radio-active toxic explosive or other hazardous properties of any explosive nuclear assembly or nuclear component thereof; directly occasioned by pressure waves caused by aircraft or other aerial devices travelling at sonic or supersonic speeds; or from war, invasion, acts of foreign enemies, hostilities (whether war be declared or not), civil war, rebellion, revolution, insurrection, military or usurped power;
- (v) in respect of any liability incurred in connection with a Practice conducted wholly outside Hong Kong;
- (vi) made by Carrian Investments Limited ("CIL"), Carrian Holdings Limited ("CHL") or any of their respective subsidiary (which has the same meaning as in section 2(4) of the Companies Ordinance (Cap. 32)) or associate companies or by the shareholders, creditors or liquidators of any of them in respect of professional or other work done by the indemnified for or on behalf of or for the benefit of CIL, CHL or any of their respective subsidiary or associate companies at any time prior to the liquidation of such companies but the Company shall remain liable in respect of professional or other work done for or on behalf of or for the benefit of the liquidators of such companies;
- (vii) notwithstanding paragraph 7 but without prejudice to the generality of paragraph 8(8), where non-compliance by the indemnified with a condition of these rules has involved or led to a substantial prejudice, whether or not capable of measurement in monetary terms, to the handling or settlement of the claim;
- (viii) for wrongful dismissal or any other alleged breach by the indemnified in respect of any contract of employment; or for wrongful termination or any other alleged breach by the indemnified in respect of any contract for supply to, or use by, the indemnified of services, materials, equipment or other goods; or for any other relief in respect of any such contract;
- (ix) in respect of any undertaking given by any indemnified or on his behalf (whether in his own name or in the name of the Practice) to any person in connection with the provision of finance,

property, assistance or other advantage whatsoever to or for the benefit of him or any other indemnified or of his or any other indemnified's spouse or children or of any business firm, company, enterprise, association or venture owned or controlled by him or any other indemnified in a beneficial capacity whether alone or in concert with others, except to the extent that he shall establish that any such undertaking was given by him or on his behalf without him knowing that the undertaking was or was likely to be connected with the provision of any such finance, property, assistance or other advantage;

- (x) which arises from circumstances occurring when a receipt has not been issued to the indemnified under rule 9 because of the failure of any principal to comply with any provision of these rules;
  - (xi) which arises directly or indirectly from or is in any way connected with the fact that any Computer Equipment is not Year 2000 Compliant or any cost or expense incurred in preventing or remedying the same (except insofar as the Computer Equipment in question is not owned or operated by the indemnified or a company, the principal business of which is the provision of services ancillary to the indemnified's business of practising as a solicitor and such claim arises solely from advice which the indemnified has given to his clients in the course of his business of practising as a solicitor);
  - (d) a direct or indirect loss by the indemnified of the amount of his fees or profit costs and disbursements;
  - (e) a loss or expense incurred by the indemnified in connection with a claim against the indemnified, including a loss or expense however incurred whether in connection with the notification of the claim to the Company, the investigation of the claim by the Company or panel solicitor, the preparation of the defence and the defence of the claim and the settlement of the claim or in connection generally with the indemnified's obligations under paragraph 8(10) or otherwise, unless the Company has specifically agreed or specifically agrees in writing that it will pay them. For the purpose of this subparagraph loss and expense includes costs incurred by the indemnified in producing or reproducing and delivering files and documents required by the Company and panel solicitors, the costs incurred by the indemnified in respect of attendance at any meeting or court of law and the value of time expended by the indemnified in connection with the activities mentioned in this subparagraph.
- (2A) For the purposes of paragraph 1(2)(c)(iii) and (iiia), a person was a principal at the relevant time if he was a principal -
- (a) at the time of the event which was alleged to give rise to the claim;
  - (b) at the time when the claim was first made against the indemnified; or
  - (c) in the case of a claim which arose out of circumstances previously notified to the Company, at the time when such notification was given to the Company.
- (3) In subparagraph 2(c)(xi) (notwithstanding anything to the contrary in these rules) -
- (a) "Computer Equipment" includes but is not limited to any or any

combination or part of data, computer hardware, firmware, operating system, application, software, computer chip including microprocessor chip or embedded control logic which is integrated or incorporated into another product or component, and any equipment, system, medium or device for processing, transmitting, storing or retrieving data, irrespective of by whom it is owned or operated;

- (b) "Year 2000 Compliant" means that neither the performance nor functionality of any Computer Equipment is affected by any date or dates prior to, during or after Year 2000 and, in particular but without limitation, that -
  - (i) no value for current date will cause any interruption or error in operation;
  - (ii) date based functionality must behave consistently for dates prior to, during and after Year 2000;
  - (iii) in all interfaces and data storage, the century in any date must be specified either explicitly or by unambiguous algorithms or inferencing rules; and
  - (iv) Year 2000 must be recognized as a leap year.
- (4) The Company may at its discretion, having regard to all or any of the circumstances of any claim made against any indemnified as may seem relevant to the Company, waive the exclusion set out in subparagraph (2)(c)(xi) in respect of such claim (other than any claim arising from obligations attaching to that indemnified as a result of acting as a director or officer of any company, the principal business of which is not the provision of services ancillary to the indemnified's business of practising as a solicitor) in the event that that indemnified has completed and submitted to the Company before 30 September 1999 a questionnaire in a form to be determined by the Company to the satisfaction of the Company.

## **2. Determination of limit of Indemnity**

- (1) 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 \$10,000,000 in respect of any one claim.
- (2) The deductibles for the purpose of subparagraph (1) are-
  - (a) where the indemnified is a sole practitioner at the relevant date, the first \$30,000 in respect of any one claim;
  - (b) where the indemnified is a partnership, in respect of any claim against that partnership or its predecessors in business, the first \$20,000 of any one claim multiplied by the number of principals in the firm at the relevant date;
  - (c) in addition to sub-subparagraph (a) or (b), \$15,000 of any one claim multiplied by the number of assistant solicitors and consultants in the firm at the relevant date.
- (3) Notwithstanding subparagraph (2), the aggregate of the amounts set out in subparagraph (2)(a) or (b) and (c) in respect of any firm shall not exceed the first \$200,000 of any one claim.

- (4) (a) Where -
- (i) a claim ("first-mentioned claim") is made against the indemnified or a former solicitor in any indemnity period; and
  - (ii) one or more claim has been made against the same indemnified or former solicitor in that indemnity period or the 2 preceding indemnity periods;
- then in addition to the deductibles described in subparagraph (2)(a) or (b) and subparagraph (2)(c) and subject to subparagraph (3) -
- (iii) where the first-mentioned claim is the second such claim in the 3 consecutive indemnity periods referred to in sub-sub-subparagraphs (i) and (ii), the first-mentioned claim shall be subject to a further deductible of an amount equivalent to 50% of the deductible applicable to the first claim in those 3 indemnity periods;
  - (iv) where the first-mentioned claim is the third such claim in the 3 consecutive indemnity periods referred to in sub-sub-subparagraphs (i) and (ii), the first-mentioned claim shall be subject to a further deductible of an amount equivalent to 100% of the deductible applicable to the first claim in those 3 indemnity periods;
  - (v) where the first-mentioned claim is the fourth or any subsequent such claim in the 3 consecutive indemnity periods referred to in sub-sub-subparagraphs (i) and (ii), the first-mentioned claim shall be subject to a further deductible of an amount equivalent to 200% of the deductible applicable to the first claim in those 3 indemnity periods.
- (b) For the purpose of sub-subparagraph (a), a number of claims arising out of the same act or omission shall be treated as one claim.

### **3. Extent of former solicitors Indemnity**

- (1) (a) Where a former solicitor ceased to be a solicitor in Practice in Hong Kong on or before 30 September 1986, he shall be provided with Indemnity for that part of his loss which exceeds the relevant amount set out in sub-subparagraph (b) up to but not exceeding the relevant amount set out in sub subparagraph (c) in respect of any one claim.
- (b) Such former solicitor shall not be provided with Indemnity by the Company in respect of-
- (i) the first \$20,000 of any one claim where he was in Practice as a sole practitioner at the date when he ceased to be a solicitor in Practice in Hong Kong;
  - (ii) the first \$10,000 of any one claim where he was in Practice as a partner at the date when he ceased to be a solicitor in Practice in Hong Kong;
  - (iii) the first \$5,000 of any one claim where he was in Practice as an assistant solicitor or consultant at the date when he ceased to be a solicitor in Practice in Hong Kong.



- (c) The Indemnity under sub-subparagraph (a) shall not in respect of any one claim exceed the difference between the relevant amount set out in sub-subparagraph (b) and \$10,000,000 or any of the following amounts, whichever is the smaller-
- (i) if such former solicitor was in Practice as a sole practitioner immediately before he ceased to be a solicitor in Practice in Hong Kong, \$550,000;
  - (ii) if such former solicitor was in Practice as a sole practitioner immediately before he ceased to be a solicitor in Practice in Hong Kong and one or more assistant solicitors or consultants were employed in the Practice, \$550,000 plus an amount of \$200,000 multiplied by the largest number of assistant solicitors and consultants employed at any one time in that Practice within the 12 months preceding the date on which the sole practitioner ceased to be a solicitor in Practice in Hong Kong;
  - (iii) if such former solicitor was in Practice in partnership immediately before he ceased to be a solicitor in Practice in Hong Kong, an amount of \$350,000 multiplied by the number of partners in that partnership immediately before he ceased to be a solicitor in Practice in Hong Kong;
  - (iv) if such former solicitor was in Practice in partnership immediately before he ceased to be a solicitor in Practice in Hong Kong and one or more assistant solicitors or consultants were employed in that Practice, an amount of \$350,000 multiplied by the number of partners in that partnership plus an amount of \$200,000 multiplied by the largest number of assistant solicitors and consultants employed at any one time in that Practice within the 12 months preceding the date on which he ceased to be a solicitor in Practice in Hong Kong;
  - (v) if such former solicitor was in Practice as an assistant solicitor or consultant immediately before he ceased to be a solicitor in Practice in Hong Kong, \$200,000.
- (2) (a) Where a former solicitor ceased to be a solicitor in Practice in Hong Kong on or after 1 October 1986, he shall be provided with Indemnity for that part of his loss which exceeds the amount set out in sub-subparagraph (b) up to but not exceeding the difference between the relevant amount set out in sub-subparagraph (b) and \$10,000,000 in respect of any one claim.
- (b) For the purpose of sub-subparagraph (a), such former solicitor shall not be provided with Indemnity in respect of-
- (i) the first \$30,000 of any one claim where he was in Practice as a sole practitioner at the date when he ceased to be a solicitor in Practice;
  - (ii) the first \$20,000 of any one claim where he was in Practice as a partner at the date when he ceased to be a solicitor in Practice in Hong Kong;
  - (iii) the first \$15,000 of any one claim where he was in Practice as an assistant solicitor or consultant at the date when he ceased to be a solicitor in Practice in Hong Kong.

- (3) In applying rule 16 for the purpose of this paragraph, the reference to "principal" in that rule shall be taken as a reference to "former solicitor".

#### **4. Related costs**

For the purpose of calculating the indemnified's loss in any one claim, related costs shall be aggregated with the sum paid in respect of such claim and claimant's costs.

#### **5. Recoveries subsequent to claim settlement**

All recoveries or payments recovered or received subsequent to a claim settlement shall be applied as if recovered prior to such settlement and all necessary adjustments shall then be made between the indemnified and the Company.

#### **6. Maximum liability of the fund**

- (1) The aggregate liability of the fund for all claims arising from the same act or omission (whether or not made or intimated or arising out of circumstances notified during the same indemnity period) against any indemnified or former solicitor or any combination of persons entitled to Indemnity under these rules shall in no event exceed in total the Indemnity limit determined in accordance with paragraph 2 or 3, whichever is smaller.
- (2) If a payment exceeding the Indemnity limit is made to dispose of any claim or claims for loss (including related costs) the amount of any such related costs shall be limited to such proportion of such related costs as the Indemnity limit bears to the amount of the payment so made.

#### **7. Non-compliance**

- (1) Where non-compliance with any of these rules by the indemnified results in prejudice to the handling or settlement of a claim to Indemnity whether or not the prejudice would have entitled the Company to refuse to provide Indemnity in respect of the claim under paragraph 1(c)(vii), the indemnified shall upon request reimburse to the Company on behalf of the fund the difference between any sum paid out of the fund in respect of that claim and the sum which would have been paid in the absence of the prejudice and interest on the amount of the difference so paid from the date of the payment thereof at the same rate as allowed for a judgment debt from time to time under Section 49 of the High Court Ordinance (Cap.4) and each principal in such indemnified shall be jointly and severally responsible to the Company for such reimbursement accordingly.
- (2) It shall be a condition precedent of the right of the Company on behalf of the fund to such reimbursement that it shall first have provided full Indemnity for the indemnified by payment (up to the limits contained in paragraphs 2 and 3) in or towards satisfying, or in or towards enabling the indemnified to satisfy the claim and claimants' costs in accordance with the terms hereof.

#### **8. General Conditions**

- (1) (a) The indemnified shall not admit liability for, or settle, any claim falling under rule 10 or incur any costs or expenses in connection therewith without the prior consent of the Company (such consent not to be unreasonably withheld), and subject to sub-subparagraph (c) shall procure that the Company shall be entitled at the fund's own expense at any time to take over the conduct in the name of the indemnified of the defence or settlement of any such claim, including any claim in respect of which the indemnified may become entitled to partial indemnity under any insurance with any insurers and any claim which

but for paragraphs 2(2), 3(1)(b) or 3(2)(b) would have fallen within the scope of the Indemnity provided by these rules.

- (b) Subject to sub-subparagraph (c) and to the limitation on the amount of the fund's liability contained in paragraphs 2 and 3, if the indemnified unreasonably refuses to consent to or to accept any proposed settlement made by the Company or continues any legal proceedings in connection therewith the fund's liability to provide Indemnity to the indemnified shall be limited to the amount for which the claim against the indemnified could have been so settled plus any related costs incurred up to the date of such refusal.
- (c)
  - (i) Where a difference or dispute arises between the indemnified and the Company regarding the contest or otherwise of actual or threatened legal proceedings relating to a claim, the difference or dispute shall be referred by the Claims Committee to a Senior Counsel (to be mutually agreed upon or failing agreement to be appointed by the President of the Society) for a determination whether the proceedings should be contested, and the Senior Counsel shall be instructed to certify whether or not he has found substantially in favour of the Company.
  - (ii) The determination referred to in sub-sub-subparagraph (i) shall be binding on the indemnified and the Company and shall be conclusive between them.
  - (iii) The Claims Committee shall make available to the indemnified a draft of the terms of the reference to the Senior Counsel, and the indemnified shall make available to the Claims Committee his comments, if any, on the draft within 7 days of the draft being made available to him.
  - (iv) If the comments of the indemnified are given in accordance with sub-sub-subparagraph (iii), they shall be sent to the Senior Counsel.
  - (v) Unless the Claims Committee otherwise agrees, it shall be a condition precedent to the making of a reference to the Senior Counsel that the indemnified deposits with the Company an amount fixed by the Claims Committee as security for the costs of the reference (in case costs have to be reimbursed by the indemnified under sub-sub-subparagraph (viii)) within 7 days of the Claims Committee requiring the indemnified to do so.
  - (vi) If the indemnified fails to deposit the amount in accordance with sub-sub-subparagraph (v), he shall be bound by the decision of the Claims Committee in respect of the difference or dispute referred to in sub-sub-subparagraph (i).
  - (vii) Subject to sub-sub-subparagraph (viii), the costs of the reference to the Senior Counsel shall be paid by the Company.
  - (viii) If the Senior Counsel certifies that he has found substantially in favour of the Company, the indemnified shall reimburse the Company for the costs of the reference to the Senior Counsel paid by the Company in accordance with this subparagraph.
  - (ix) Subject to sub-sub-subparagraph (x), where the costs of the reference are to be reimbursed by the indemnified, the amount referred to in sub-sub-subparagraph (v) may be applied by the

Company in or towards reimbursement of those costs to the Company.

- (x)
    - (A) If the amount deposited in accordance with sub-sub-subparagraph (v) is less than the amount payable by the indemnified in respect of the costs of the reference, the indemnified shall pay the balance to the Company within 7 days of the request made by the Company.
    - (B) If there is any surplus after the payment of the costs of the reference by the indemnified, it shall be returned to the indemnified without interest.
  - (xi) The balance mentioned in sub-sub-subparagraph (x)(A) shall be recoverable as a civil debt and shall carry simple interest at the judgment rate determined for the time being under section 49(1)(b) of the High Court Ordinance (Cap. 4) from the date of payment by the Company to the date of actual payment of the amount outstanding by the indemnified.
  - (xii) If the Senior Counsel does not find substantially in favour of the Company, the amount referred to in sub-sub-subparagraph (v) shall be refunded by the Company to the indemnified without interest.
  - (xiii) The Claims Committee may, in its sole discretion, extend or abridge any of the time limits specified under this sub-subparagraph (including the time limits mentioned in sub-sub-subparagraphs (iii) and (v)).
  - (xiv) For the purpose of sub-sub-subparagraph (i), "contest" includes a contest in respect of the defence, prosecution, appeal or taking of interlocutory or any ancillary steps or procedures in legal proceedings to which a claim relates.
  - (xv) For the purpose of this sub-subparagraph, costs of the reference to the Senior Counsel include fees of the Senior Counsel.
- (2) The indemnified shall procure that notice to the Company shall be given in writing as soon as practicable of-
  - (a) any claim made during the period of indemnity against the indemnified, which falls within rule 10;
  - (b) the receipt by the indemnified of notice from any person of any intention to make any such claim.
- (3) The indemnified shall also give notice in writing to the Company of any circumstances of which the indemnified becomes aware during the period of indemnity and which may (whether during or after the period of indemnity) give rise to any such claim.
- (4) Any notice to be given to the Company under subparagraph (2) or (3) must be received by the Company not later than the last day of the period of indemnity during which such claim is made, notice is received or circumstances become known, except that the Company may, in its sole discretion, accept such notification not later than 60 days following the last day of such period of indemnity.

- (5) If due notice is given to the Company under subparagraph (2)(b) or (3), any claim subsequently made (whether during or after the period of indemnity) pursuant to such an intention to claim or arising from circumstances so notified shall be deemed to have been made at the date when such notice was given.
- (6) The Company on behalf of the fund waives any rights of subrogation against any employee of the firm or indemnified save where those rights arise in connection with a dishonest or criminal act by that employee.
- (7) Notices to the Company to be given hereunder shall be deemed to be properly made if given to the Company at its registered office or to such other person or body as the Society may from time to time determine.
- (8) If the indemnified shall prefer any claim to Indemnity out of the fund knowing the same to be false or fraudulent as regards amount or otherwise the Indemnity shall become void only in respect of such fraudulent claim or that fraudulent part of an otherwise valid claim.
- (9) For the avoidance of doubt, any adjustment by way of claims loading which may at any future date or in respect of any future period be made by reference to any claim or claims first made or intimated during any period of indemnity is not loss arising from any such claim or claims under rule 10 and shall in no event be recoverable hereunder.
- (10) On request the indemnified shall give all information and assistance that the Claims Committee may reasonably require-
  - (a) in considering whether the indemnified is entitled to Indemnity out of the fund in respect of a claim which is made against the indemnified, or which may arise from a notice or circumstance of which notice is given to the Company under subparagraph (2) or (3); or
  - (b) in handling a claim which is made against the indemnified or a notice or circumstance of which notice is given under subparagraph (2) or (3).

## **9. Special condition**

Where the issue of a receipt under rule 9 has been withheld or delayed due to the failure of any principal to comply with any provision of these rules and while such receipt remains unissued a claim has been made or intimated against the indemnified or a former solicitor in respect of which such indemnified or former solicitor would otherwise have been entitled to be provided with Indemnity, then subject to paragraph 1(2)(c)(x), the Company shall provide such Indemnity by payment (up to the indemnity limit determined in accordance with paragraph 2) in or towards satisfying or enabling the indemnified or former solicitor to satisfy the claim and related costs and the firm shall thereafter upon request reimburse to the Company on behalf of the fund the whole or such part as the Company may request of any payment so made and interest on the amount of any payment so made from the date of the payment thereof at the same rate as allowed for a judgment debt from time to time under Section 49 of the High Court Ordinance (Cap.4) and each principal in such firm shall be jointly and severally liable to the Company for such reimbursement accordingly.