
10. Foreign Lawyers Practice Rules

ARRANGEMENT OF RULES

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Schedule Rules to be applied to foreign lawyers and foreign firms

1. Interpretation

In these Rules, unless the context otherwise requires -

"principal" means the sole practitioner or a partner of a foreign firm and shall also include any foreign lawyer who is held out or holds himself out as such partner or sole practitioner;

"Secretary General" means the Secretary General of the Society.

2. General conduct

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

- (a) his independence or integrity;
- (b) the freedom of any person to instruct a foreign lawyer of his choice;
- (c) his duty to act in the best interests of his client;
- (d) his own reputation or the reputation of foreign lawyers in Hong Kong; or
- (e) a proper standard of work.

3. Prohibition against publicity etc.

- (1) Subject to subsection (2), a foreign lawyer shall not publicise or otherwise promote his practice or permit his practice to be publicised or otherwise promoted.
- (2) Subsection (1) does not apply to anything done in accordance with the Solicitors' Practice Promotion Code as made under rule 2AA of the Solicitors' Practice Rules (Cap. 159 sub. leg.) from time to time by the Council with the prior approval of the Chief Justice, which Code shall be construed for the purposes of this subsection as if every reference in the Code to a solicitor were a reference to a foreign lawyer and every reference to a firm of solicitors were construed as a reference to a foreign firm or an Association.

4. Name of firm

- (1) Subject to subsection (2), the name of a foreign firm shall consist solely of the name or names of one or more foreign lawyers who are principals of the firm.
- (2) Subsection (1) shall not preclude -
 - (a) the use of the name of a predecessor or former partner in that practice;
 - (b) the use of the name of an overseas firm of which the foreign firm is a branch; or
 - (c) the use of a style or firm name -
 - (i) in use at the date of the coming into operation of these Rules; or
 - (ii) approved in writing by the Council.

5. Business letters

- (1) A principal of a foreign firm shall ensure that there is stated on all business letters issued in connection with the firm's practice -
 - (a) the name and address of the firm;
 - (b) the main jurisdiction in the law of which the firm practises, or the country of that jurisdiction;
 - (c) the names of all principals of the firm who are ordinarily resident in Hong Kong;
 - (d) if the name of any principal not ordinarily resident in Hong Kong is stated, a description of the person as non-resident;
 - (e) in respect of each individual whose name appears on the letter, his foreign jurisdiction of admission or the country of that jurisdiction, except that no such statement is required where the foreign jurisdiction of admission of the individual, or the country of that jurisdiction, is the same as that stated on the letter for the purpose of paragraph (b).
- (2) A principal of a foreign firm forming part of an Association shall ensure that on all business letters issued in connection with the firm's practice -
 - (a) the firm's name is more prominent than the name of any other firm;
 - (b) any reference to another firm in the Association clearly distinguishes that firm from any other that is not in the Association; and
 - (c) the firm's address in Hong Kong is more prominent than any other address.

6. Supervision of office

A principal of a foreign firm shall ensure that every office where his firm practises is and can reasonably be seen to be properly supervised in accordance with the following minimum standards -

- (a) every such office shall be managed by a foreign lawyer who shall normally be in attendance at that office during all the hours when it is open to the public; and
- (b) every office shall be attended on each day when it is open to the public by a foreign lawyer who holds an unconditional practising certificate of registration being either a principal of, or a foreign lawyer employed by, the firm and who shall spend sufficient time at such office to ensure adequate control of the staff employed there and afford requisite facilities for consultation with clients.

7. Sharing an office and staff

- (1) A principal of a foreign firm shall ensure that the firm's practice is conducted in self-contained premises, and that the firm's staff and facilities are under its exclusive control.
- (2) Subject to subsection (3), a principal of a foreign firm shall ensure that in the conduct of its practice the firm does not -
 - (a) share premises, which term includes waiting rooms and reception areas;

- (b) share staff, which term includes telephonists, receptionists and all other non-fee earning staff employed by the firm;
- (c) 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) a foreign firm may share services reasonably regarded as those of an independent contractor with any other foreign firm or third party;
- (b) a foreign firm forming part of an Association may share premises, personnel and facilities with any other firm in the Association,

but subject to the foregoing a principal of a foreign firm shall ensure that the firm does not share any services, premises, personnel or facilities with any other person.

(4) Where a building is shared by a foreign firm with another business or where there are shared common areas a principal of the foreign firm shall ensure that

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- (a) there are signs indicating the premises of the firm so as to distinguish them from the premises occupied by others;
- (b) common areas do not give the appearance of being part of another business.

8. Control of employment of unqualified person

- (1) A principal of a foreign firm shall ensure that the firm does not employ persons who are not foreign lawyers ("unqualified persons") in a number more than 6 plus 8 times the number of resident principals and foreign lawyers employed full-time in that firm.
- (2) For the purpose of this section -
 - (a) persons employed otherwise than by a foreign firm (such as by a service company set up by the principal or principals of the firm) but for the purposes of the firm shall be deemed to be persons employed in that firm;
 - (b) in calculating the number of unqualified persons employed in a foreign firm, full-time law students working part-time or full-time during holidays and breaks or part-time during the academic year shall not be taken into account; and
 - (c) in calculating the number of resident principals and foreign lawyers employed full-time in a foreign firm, a foreign lawyer shall not be taken into account in respect of more than one firm.
- (3) A principal of a foreign firm shall ensure that every name card of an employee who is an unqualified person, being a card which bears the name of the foreign firm, includes a clear description of the capacity in which the employee is being employed.

9. Reporting of particulars

(1) A principal of a foreign firm shall, within 14 days after the establishment of a place of business by the firm, advise the Society in writing in a form approved by the Society of the following particulars in respect of any member of staff of the firm whether part-time or full-time, remunerated or otherwise, other than a member of staff who is a foreign lawyer -

- (a) the member's name;
- (b) his identity card or passport number;
- (c) his Chinese commercial code, if applicable;
- (d) his date of birth;
- (e) his position in the firm; and
- (f) the date on which his employment began.

(1A) The principal of the firm shall also, within 14 days after the establishment of a place of business by the firm, advise the Society in writing in a form approved by the Society of the following particulars in relation to any service company engaged by the firm-

- (a) the name of the service company, its registered office, its Business Registration Number, the names of its directors and whether or not they are foreign lawyers;
- (b) the following particulars in respect of any employee of the service company, whether or not the employee has been provided as staff of the foreign firm, whether part-time or full-time, remunerated or otherwise, and whether or not the employee is a foreign lawyer-
 - (i) the employee's name;
 - (ii) his identity card or passport number;
 - (iii) his Chinese commercial code, if applicable;
 - (iv) his date of birth;
 - (v) his position in the firm or the service company; and
 - (vi) the date on which his employment began; and
- (c) the address or addresses of the service company together with telephone, fax, telex and DX numbers, where appropriate.

(2) A principal of a foreign firm shall, within 14 days of such occurrence, advise the Society in writing in a form approved by the Society of any change of the particulars required to be given in -

- (a) an application for registration as a foreign firm;
- (b) a return under subsection (1) or (1A).

(3) A principal of a foreign firm who is in practice at any time during a calendar year shall, not later than 31 January in the next calendar year, furnish to the Secretary General a declaration in a form approved by the Society as to the

following particulars in respect of the relevant calendar year -

- (a) the names of all the principals, employed foreign lawyers and consultants in the firm;
- (b) in respect of any principal, employed foreign lawyer or consultant in the firm who is also a principal or employee of another foreign firm or firm of solicitors in Hong Kong, or a salaried employee of a service company in Hong Kong, the name of the person and of the other firm or company and the person's position in the other firm or company;
- (c) in respect of any member of staff of the firm, whether part-time or full-time, remunerated or otherwise (except an employee who is a foreign lawyer) -
 - (i) the member's name;
 - (ii) his identity card or passport number;
 - (iii) his Chinese commercial code, if applicable;
 - (iv) his date of birth;
 - (v) his position in the firm; and
 - (vi) if applicable, the date during the calendar year on which employment began or ceased; and
- (d) if the firm engages a service company to provide staff for the firm, the name of any such company and the names of the directors of any such company.

(4) For the purposes of subsections (1) and (3), persons engaged as a member of staff otherwise than by a foreign firm (such as by a service company set up by the principal or principals of the firm) but for the purposes of the firm shall be deemed to be persons engaged as a member of staff of that firm.

(5) Except upon formal resolution of the Council, any particulars given to the Secretary General under subsection (3)(b) or (d) shall not be disclosed by the Secretary General to any person other than -

- (a) Council members;
- (b) members of Committees established by the Council;
- (c) a Solicitors Disciplinary Tribunal;
- (d) the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel;
- (e) counsel, accountants, solicitors and agents appointed by the Society; and
- (f) employees of the Society,

whose proper business it is to have access to such particulars for the purposes of ascertaining whether the provisions of these Rules or any other laws or regulations concerning foreign lawyers, employees of foreign lawyers or solicitors have been complied with or of dealing with the disciplinary consequences of any alleged breach thereof.

(6) The particulars required to be given under subsections (1), (2) and (3) may be given by one principal on behalf of the other principals.

9A. Particulars relating to sole practitioner foreign lawyer

(1) A foreign lawyer who commences practice as a foreign lawyer in his own name or under the name of a foreign firm, where he is the sole proprietor of the foreign firm (in this section referred to as a "sole practitioner foreign lawyer") shall -

(a) ensure that, at the commencement of his practice, there is in effect a testamentary provision which provides -

(i) for the management of his practice as a sole practitioner foreign lawyer after his death, pending the disposal or cessation of that practice; and

(ii) for such management to be carried out by a person who is a foreign lawyer holding an unconditional certificate of registration and who has consented in writing to so manage that practice;

(b) within 14 days of commencement of practice as a sole practitioner foreign lawyer advise the Society in writing in a form approved by the Society of the following particulars -

(i) the name, address, telephone number, fax number, telex number and DX number, where appropriate, of -

(A) the executor of the will which contains the testamentary provision as required under paragraph (a); and

(B) the foreign lawyer mentioned in paragraph (a)(ii);

(ii) if that will has been lodged with another person by the sole practitioner foreign lawyer, the name and address of that person.

(2) A foreign lawyer who practises as a sole practitioner foreign lawyer shall -

(a) ensure that a testamentary provision as required under subsection (1)(a) remains in effect at all times during his practice as a sole practitioner foreign lawyer, except for a period of 14 days after any change in the foreign lawyer mentioned in subsection (1)(a)(ii);

(b) advise the Society in writing in a form approved by the Society within 14 days of such occurrence of any change in any of the particulars referred to in subsection (1)(b).

(3) This section does not apply to a sole practitioner foreign lawyer where the foreign firm mentioned in subsection (1) is a branch of an overseas firm and is registered as a foreign firm under section 39B of the Ordinance.

(4) Except upon formal resolution of the Council, the particulars furnished under subsection (1)(b) or (2)(b) shall not be disclosed by the Secretary General to any person other than -

(a) Council members;

(b) members of committees established by the Council;

- (c) a Solicitors Disciplinary Tribunal;
- (d) the Tribunal Convenor of the Solicitors Disciplinary Tribunal Panel;
- (e) counsel, accountants, solicitors and agents appointed by the Society; and
- (f) employees of the Society,

whose proper business it is to have access to such particulars for the purposes of

- (i) ascertaining whether the provisions of these Rules or any other laws or regulations concerning the sole practitioner foreign lawyer have been complied with; or
- (ii) dealing with the disciplinary consequences of any alleged breach of those provisions.

10. Powers of Council to verify compliance with Rules

- (1) In order to ascertain whether the provisions of these Rules have been complied with, the Council, acting either -
 - (a) on its own motion; or
 - (b) on a written complaint lodged with it by a third party,may require any foreign lawyer to produce at such time and place as may be fixed by the Council, his books of account, bank pass books, loose-leaf bank statements, statements of account, vouchers and any other necessary documents for the inspection of any person appointed by the Council, and such person shall be directed to prepare for the information of the Council a report on the result of such inspection and any such report may be used as a basis for proceedings under the Ordinance.
- (2) Upon being required so to do a foreign lawyer shall produce such books of account, bank pass books, loose-leaf bank statements, statements of account, vouchers and documents at the time and place fixed.
- (3) Before instituting an inspection on a written complaint lodged with it by a third party, the Council shall require *prima facie* evidence that a ground of complaint exists, and may require the payment by such party to the Council of a reasonable sum to be fixed by it to cover the costs of the inspection, and the costs of the foreign lawyer against whom the complaint is made and the Council may deal with any sum so paid in such manner as it thinks fit.
- (4) The Council may make such order for the payment of the costs of any inspection required by the Council under this section as it thinks fit.

11. Power of waiver

The Council shall have power to waive in writing any of the provisions of these Rules in any particular case or cases, either unconditionally or subject to such conditions as the Council may think fit to impose.

12. Application of other Rules

The Rules specified in column 2 of the Schedule, with the necessary changes and specifically with the changes, if any, to those Rules specified opposite such Rules in column 3 of the Schedule, shall apply to foreign lawyers and foreign firms as if every

reference in those Rules to a solicitor were a reference to a foreign lawyer and every reference to a firm of solicitors were a reference to a foreign firm.

13. Transitional

- (1) Section 9A of the Rules as added by the Foreign Lawyers Practice (Amendment) Rules 2000 applies to a foreign lawyer who is in practice as a sole practitioner foreign lawyer immediately before the commencement of the Amendment Rules as it applies to a foreign lawyer who commences such practice after that commencement.
- (2) For the purposes of subsection (1), a foreign lawyer who is in practice as a sole practitioner foreign lawyer immediately before the commencement of the Foreign Lawyer Practice (Amendment) Rules 2000 shall be regarded as commencing practice as a sole practitioner foreign lawyer at the commencement of the Amendment Rules.

SCHEDULE

RULES TO BE APPLIED TO FOREIGN LAWYERS
AND FOREIGN FIRMS

Item	Rules	Changes
1.	Accountant's Report Rules (Cap.159 sub.leg.)	Every reference to a practising certificate shall be read as a reference to a certificate of registration as a foreign lawyer issued by the Society under the Foreign Lawyers Registration Rules
2.	Solicitors' Accounts Rules (Cap. 159 sub. leg.)	