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# **THE HONG KONG SOLICITORS' GUIDE TO PROFESSIONAL CONDUCT VOLUME 2**

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**THE LAW SOCIETY OF HONG KONG**

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- (iii) share telephone, computer or electronic equipment used for the transmission or storage of clients' confidential information.
- (3) Subject to the need to maintain clients' confidentiality, a solicitor may:
  - (i) share premises, staff and facilities with another solicitor with whom he is in partnership;
  - (ii) share services reasonably regarded as those of an independent contractor with any other solicitor or third party;
  - (iii) share premises, personnel and facilities where there is a formal association between two firms of solicitors;
  - (iv) share premises, management, employees and facilities where there is a registered association between a firm of solicitors and one or more foreign firms; and
  - (v) share premises, management, facilities and employees who are unqualified persons in accordance with the provisions of the Solicitors (Group Practice) Rules.
- (4) Where a building is shared with other business or where there are shared common areas:
  - (i) signs must indicate the premises of the solicitor so as to distinguish them from the premises occupied by others;
  - (ii) common areas must not give the appearance of being part of another business.
- (5) For the purposes of paragraph 3(iii), a "formal association" means an association between Hong Kong firms of solicitors where there is at least one partner common to each of the associated firms. It does not include an association between a Hong Kong firm and a foreign law firm.
- (6) [Repealed]
- (7) The prohibition on sharing of staff is not intended to prohibit short secondments of staff between firms or companies or organisations, for example, for staff development. In these cases, the secondee would be regarded as an employee of the Hong Kong firm.
- (8) This Practice Direction came into effect on 23 March 1992 and was amended on 26 September 1994 and 1 February 2003.
- (9) The Council may, in a particular case, waive in writing any provision of this Practice Direction, subject to such conditions as it may impose.

## 6. EMPLOYEES AUTHORISED FOR LEGAL VISITS TO PERSONS IN CUSTODY

- (1) Subject to the provisions of this Practice Direction, a firm is permitted to have a maximum of 10 clerks authorised to visit persons in custody ("authorised clerks").
- (2) A principal of a firm shall ensure that:
  - (a) each authorised clerk in his firm shall be properly supervised by a full-time solicitor in his firm who is ordinarily resident in Hong Kong;
  - (b) the supervising solicitor named in the application for authorisation of a clerk to visit persons in custody shall have sufficient relevant experience capable of affording appropriate supervision to the clerk;

- (c) for the purposes of sub-paragraph (b) above,
  - (i) any full-time solicitor in his firm with less than 2 years of post-qualification experience in the litigation practice shall not be made responsible for supervising any authorised clerk;
  - (ii) any full-time solicitor in his firm with at least 2 years of post-qualification experience in the litigation practice shall be made responsible for supervising not more than 2 authorised clerks; and
  - (iii) any full-time solicitor in his firm with at least 5 years of post-qualification experience in the litigation practice shall be made responsible for supervising not more than 4 authorised clerks.
- (3) For the purpose of this Practice Direction, a full-time solicitor shall not be taken into account in respect of more than one firm.
- (4) Application for authorisation of a clerk to visit persons in custody shall be made in a form approved by the Society.
- (5) A principal of a firm shall advise the Society in writing any change in the supervising solicitor named in the application within 14 days of such change and shall ensure that the new supervising solicitor has sufficient relevant experience capable of affording appropriate supervision to the authorised clerk in accordance with this Practice Direction.

## **7. CESSATION OF PRACTICE**

- (1) Where a solicitor practising as a sole practitioner or a firm intends to cease practice, he or the firm must notify the Society in writing in a form approved by the Society at least 6 weeks prior to the cessation date.
- (2) Where a firm ceases to practise in circumstances where there is no successor firm, the firm must appoint a solicitor holding a current unconditional practising certificate or a firm of solicitors to deal with all consequential matters, and notify the Society of that solicitor or firm.
- (3) This Practice Direction came into effect on 16 June 1997.

## **8. FORMAT OF ELECTRONIC COMMUNICATIONS**

- (1) All communications issued electronically from a firm of solicitors in the course of the professional practice of the firm must, subject to (3)(c) below, incorporate a "signature block" stating:
  - (a) the firm's name and address; and
  - (b) that a list of the firm's principals will be provided to the recipient of the electronic communication upon request;and must at the end state the name of the firm or of the individual who has authorised its despatch.
- (2) The issue of all such communications must be authorised by a person who is approved to do so for the purposes of this Practice Direction as follows:
  - (a) any solicitor who is a sole practitioner or partner in, or an employee of, or a consultant to, the firm;

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## **28. SOLICITORS (GROUP PRACTICE) RULES**

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### **ARRANGEMENT OF SECTIONS**

#### **Section**

1. Commencement
2. Interpretation
3. "Group practice" defined
4. General provisions
5. Name and style of group practice
6. Letterhead
7. Group practice management company
8. Reporting to Society
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### **Consequential Amendments**

#### **Solicitors' Practice Rules**

13. Interpretation
14. Representation in conveyancing transactions

## 1. Commencement

[Omitted as spent]

## 2. Interpretation

(1) In these Rules, unless the context otherwise requires –

“business” (業務), in the context of business carried on by a solicitor or firm, means the business of practising as a solicitor or as solicitors;

“firm” (律師行) means a firm as from time to time constituted, whether of a sole practitioner or as a partnership, carrying on the business of practising as a solicitor or as solicitors;

“group practice” (律師聯合執業事務所) is to be construed according to that expression as it appears in section 3(1);

“group practice agreement” (律師聯合執業事務所協議) means an agreement between 2 or more solicitors or firms to conduct their businesses as members of a group practice;

“management company” (管理公司), in relation to a group practice, means the company referred to in section 7;

“member firm” (律師行成員), in relation to a group practice, means a member of the group practice that is a firm;

“member of a group practice” (律師聯合執業事務所成員) is to be construed according to that expression as it appears in section 3(1);

“member solicitor” (律師成員), in relation to a group practice, means a member of the group practice other than a member firm;

“Practice Rules” (執業規則) means the Solicitors' Practice Rules (Cap. 159 sub. leg.);

“practise” (執業) means to practise the law, and “practice” (執業) is to be construed accordingly;

“principal” (主管), in relation to a firm, means any partner of the firm or the sole practitioner constituting the firm, as the case may be.

(2) In these Rules, reference to a solicitor who practises within a group practice is a reference to a solicitor who practises –

- (a) as a member of a group practice;
- (b) as a principal of a member firm of a group practice; or
- (c) as an employee of or consultant to a member of a group practice

(3) For the purposes of these Rules, a solicitor is a consultant to another solicitor or to a firm if he agrees to undertake for remuneration work that forms part of the practice of the other solicitor or of the firm, other than in the capacity of –

- (a) an employee of the other solicitor or of the firm; or
- (b) a solicitor practising on his own account or in partnership.

**3. “Group practice” defined**

- (1) For the purposes of these Rules, 2 or more solicitors or firms conduct their businesses as members of a group practice if they conduct their businesses (or any part of their businesses) from the same address, separately but in mutual co-operation.
- (2) Any 2 or more solicitors or firms carrying on the business of practising as solicitors shall not conduct their businesses from the same address other than as members of the same group practice.

**4. General provisions**

- (1) A member of a group practice shall not –
  - (a) conduct his or its business or any part of his or its business; or
  - (b) hold himself or itself out as conducting his or its business or any part of his or its business,from an address other than the address from which he or it and the other member or members of the group practice conduct their businesses for the purpose of section 3(1).
- (2) A solicitor who practises within a group practice shall not practise or hold himself out as practising other than within the group practice.
- (3) A member of a group practice shall not employ or engage as a consultant, or continue to employ or engage as a consultant, any solicitor whom he knows to be otherwise practising within the group practice (whether as an employee of or consultant to any other member or in any other capacity).
- (4) For the avoidance of doubt, only a solicitor or firm that is conducting his or its business as a member of a group practice may be a party to the group practice agreement in relation to that group practice.

**5. Name and style of group practice**

- (1) A group practice shall be identified by –
  - (a) a Chinese name or an English name that has been approved; or
  - (b) a Chinese name and an English name that have been approved,by the Council under subsection (4).
- (2) The approved Chinese name (if any) of a group practice shall include the expression “律師聯合執業事務所” and the approved English name (if any) of a group practice shall include the expression “Group Practice”.
- (3) Approval shall not be given to a name that in the opinion of the Council –
  - (a) makes reference to any expertise;
  - (b) implies that the group practice has a particular affiliation or size;
  - (c) implies that the group practice is itself a legal entity;

- (d) is or may reasonably be regarded as being ostentatious, in bad taste, misleading, exploitative, deceptive, inaccurate, false, sensational, offensive or in any other way out of keeping with the dignity of the legal profession;
  - (e) is so similar to that of an existing group practice or firm as to be likely to be confused with it; or
  - (f) is inconsistent with any provision of the Practice Rules.
- (4) Subject to subsections (2) and (3), the Council may in its discretion, on application by 2 or more solicitors or firms who have agreed to conduct their businesses as members of a group practice, approve or reject any proposed name for the group practice.
  - (5) An approval may also specify the manner in which the name of the group practice is to be used in conjunction with the name of each member of the group practice.
  - (6) The Council may, if it thinks fit, determine that an approval previously granted under this section in respect of a name be withdrawn and, if such a determination is made, the approval shall cease to have effect for the purpose of subsection (1) on the date 6 weeks from the date on which it is made or on such later date as the Council may specify in the determination.
  - (7) Only a member of a group practice may use the name of the group practice in conjunction with his or its own name.
  - (8) For the purposes of these Rules, approval of the name of a group practice granted under subsection (4) does not cease to have effect merely because an existing group practice agreement is terminated upon the coming into effect of another group practice agreement that supersedes it.

## **6. Letterhead**

- (1) The following requirements apply in relation to the letterhead of a member of a group practice –
  - (a) the name of the group practice shall be displayed on the letterhead and shall appear as part of the address of the member;
  - (b) the name of the member shall be displayed on the letterhead and shall appear more prominently than the name of the group practice;
  - (c) the name of the group practice displayed on the letterhead shall not appear as forming part of the name of the member.
- (2) For the avoidance of doubt, rule 2B of the Practice Rules applies to a firm that is a member of a group practice as it applies to any other firm.

## **7. Group practice management company**

- (1) The members of every group practice shall, for so long as any member conducts his or its business as a member of the group practice, maintain an incorporated company with limited liability registered under the Companies Ordinance (Cap. 32) ("management company").
- (2) The objects of a group practice's management company as stated in the company's memorandum shall be limited to matters relating to the management of the affairs of the group practice or the members of the group practice as such.

- (3) A group practice's management company shall at all times during the currency of the group practice, as from the date by which a declaration of entry into a group practice agreement is required to be furnished to the Society under section 8(1), maintain registration as a business under section 6 of the Business Registration Ordinance (Cap. 310).
- (4) Only a person who is for the time being either a party to a group practice agreement or a principal of a member firm that is a party to a group practice agreement shall be eligible to become a director or shareholder of the group practice's management company; and any director or shareholder of a group practice's management company who ceases to be either a party to the group practice agreement or a principal of a member firm that is a party to the group practice agreement shall immediately resign his position as a director or tender his shares for sale in accordance with the articles of association of the company, as the case may be.
- (5) Any –
  - (a) goods, services, facilities or premises to be provided by a third party; or
  - (b) unqualified staff to be engaged,

for the benefit of the members of a group practice collectively or of any 2 or more members of the group practice shall be provided or engaged by or through the group practice's management company.
- (6) A group practice's management company shall not engage in any activity other than an activity that consists of or is related to the management of the affairs of the group practice or the members of the group practice as such.
- (7) The Chinese name of a management company shall include the expression “律師聯合執業事務所管理有限公司” and its English name shall include the expression “Group Practice Management Company Limited”.

## 8. Reporting to Society

- (1) Where a group practice name has been approved under section 5(4), the members of the group practice shall, within 14 days of any one of the members beginning to practise as member of the group practice –
  - (a) furnish the Society with a declaration, in a form approved by the Society and signed by all member solicitors and all principals of each member firm, declaring that they have entered into a group practice agreement and specifying –
    - (i) the date of the agreement;
    - (ii) the commencement date of the agreement; and
    - (iii) the parties to the agreement;
  - (b) notify the Society in writing in a form approved by the Society of the following particulars in relation to the group practice –
    - (i) the name of the group practice as approved by the Council under section 5;
    - (ii) the address of the group practice together with its telephone, fax, telex and DX numbers, where appropriate;
    - (iii) the names of the members of the group practice;



- (iv) the date on which each member began to conduct his or its business as a member of the group practice; and
- (c) notify the Society in writing in a form approved by the Society of the following particulars in relation to the group practice's management company –
  - (i) the name of the management company, the address of its registered office, its registration number under the Companies Ordinance (Cap. 32) and its registration number under the Business Registration Ordinance (Cap. 310);
  - (ii) the names of the directors and shareholders of the management company;
  - (iii) the address of the management company together with its telephone, fax, telex and DX numbers, where appropriate;
  - (iv) as regards any employee of the management company (whether part-time or full-time, whether remunerated or otherwise and whether or not performing duties as a staff member of the group practice), the employee's name, the number of the identity card issued to him under the Registration of Persons Ordinance (Cap. 177) and the Chinese commercial code appearing on that identity card, his date of birth, his position in the management company and the date on which his employment began.
- (2) The members of a group practice shall, within 14 days of such occurrence, notify the Society in writing in a form approved by the Society of any change in the particulars referred to in subsection (1) relating to the group practice.
- (3) Except on a formal resolution of the Council or as provided in subsection (4), particulars furnished under subsection (1)(c) shall not be disclosed by the Secretary General of the Society to any person.
- (4) Particulars furnished under subsection (1)(c) may be disclosed to any of the following persons where it is the proper business of that person to have access to such particulars for the purpose of ascertaining whether or not there has been compliance with these Rules or for dealing with the disciplinary consequences of any alleged breach of these Rules –
  - (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;
  - (f) employees of the Society.
- (5) For the avoidance of doubt, rule 5 of the Practice Rules applies in relation to a firm that is a member of a group practice as it applies in relation to any other firm.

## **9. Employment of unqualified staff**

- (1) The number of unqualified persons employed within a group practice (whether employed by a member of the group practice or by the group practice's management company) shall not exceed 6 plus 8 times the number of solicitors practising within the group practice.

- (2) The number of unqualified persons employed by any member of a group practice shall not exceed 8 times the number of solicitors employed full-time by that member.
- (3) For the purposes of this section, persons employed otherwise than by a member of a group practice (for example, by a service company established or maintained by the member) but for the purpose of the member shall be deemed to be persons employed by that member;
- (4) For the purposes of this section, in calculating the number of unqualified persons employed by a member of a group practice, the following shall not be taken into account –
  - (a) trainee solicitors working for the member; or
  - (b) full-time law students working for the member –
    - (i) on a full-time or part-time basis during holidays and breaks; or
    - (ii) on a part-time basis during the academic year.
- (5) Rule 4B(1) of the Practice Rules does not apply to a firm that is a member of a group practice.
- (6) Rule 4B(2) of the Practice Rules does not apply in relation to the employment by a firm that is a member of a group practice of an unqualified person who is in the employment of another member firm of the same group practice but who is not in the employment of any firm outside the group practice.

#### **10. Promoting of legal services**

- (1) No member of a group practice or principal of a member firm shall publicise or otherwise promote his, its or his firm's practice, or permit his, its or his firm's practice to be publicised or otherwise promoted, in a manner that gives the impression –
  - (a) that the group practice is a firm or a legal entity of any kind; or
  - (b) that any member of the group practice is in partnership with any other member of the same group practice.
- (2) No member of a group practice or principal of a member firm shall publicise or otherwise promote the group practice as such, or permit the group practice as such to be publicised or otherwise promoted.
- (3) For the avoidance of doubt, rule 2AA of the Practice Rules applies to and in relation to a solicitor who practises within a group practice as it applies to or in relation to any other solicitor.

#### **11. Professional relationship of solicitors within group practice**

- (1) A solicitor practising within a group practice who wishes to instruct any other solicitor practising within the group practice to undertake work entrusted to the instructing solicitor by a client shall obtain the written authorization of the client before instructing the other solicitor.
- (2) For the purposes of any rule of professional practice, conduct or discipline relating to conflict of interest or confidentiality, the various member solicitors and principals of member firms of a group practice shall be regarded as practising in partnership with each other.

- (3) Except as otherwise provided by express mention or necessary implication, nothing in these Rules is to be construed as providing that any member solicitor or principal of a member firm of a group practice is for any purpose to be regarded as practising in partnership with any other member solicitor or principal of a member firm of the group practice.

**12. Power of waiver**

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

**Consequential Amendments**

**Solicitors' Practice Rules**

**13. Interpretation**

Rule 1A of the Solicitors' Practice Rules (Cap. 159 sub.leg.) is amended by adding –

“group practice” (律師聯合執業事務所) and “member of a group practice” (律師聯合執業事務所成員) have the same meaning as in the Solicitors (Group Practice) Rules (L.N. 122 of 2002);”

**14. Representation in conveyancing transactions**

Rule 5C is amended by adding –

- “(8) This rule applies to 2 or more solicitors or firms conducting their businesses as members of the same group practice as it applies to any 2 or more solicitors practising in partnership or association.”

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## 18. Solicitors' Practice Rules

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### ARRANGEMENT OF RULES

#### Rule

1. Citation
2. General Conduct
  - 2AA. Prohibition against publicity etc.
  - 2A. Name of firm
  - 2B. Letterhead
3. Fee cutting
4. Sharing with non-qualified persons
  - 4A. Supervision of office
  - 4B. Control of employment of unqualified persons
5. Particulars relating to firms
  - 5A. (Repealed)
  - 5AA. Particulars relating to sole practitioner
  - 5B. Powers of Council
  - 5C. Representation in conveyancing transactions
  - 5D. Steps to be taken in criminal matters
6. Power of waiver
7. Transitional

Schedule 1

Schedule 2

Schedule 3

Schedule 4

Schedule 5

## 1. Citation

These rules may be cited as the Solicitors' Practice Rules.

### 1A. In these rules, unless the context otherwise requires -

"associated parties" (有聯繫各方) means 2 or more parties where-

- (a) one party is the holding company of the other party; or
- (b) one party is the subsidiary of the other party's holding company; or
- (c) the parties are related by blood, adoption or marriage,

and for the purpose of this definition, "holding company" (控股公司) and "subsidiary" (附屬公司) have the same meanings as in the Companies Ordinance (Cap. 32);

"association" (組織) refers to a situation where 2 or more firms of solicitors have at least one common solicitor;

"completed development" (已完成的發展) includes a development-

- (a) in respect of which a temporary occupation permit or an occupation permit has been issued under section 21(2) of the Buildings Ordinance (Cap. 123) after 16 August 1945, or which was completed after 16 August 1945; and
- (b) in respect of which, where a certificate of compliance is applicable, such certificate has been issued or deemed to have been issued, or the requisite consent to assign has been obtained from the Director of Buildings and Lands;

"firm" (律師行) means a firm as from time to time constituted, whether of a sole practitioner or as a partnership carrying on the business of practising as a solicitor or as solicitors and whether conducted from one address or more than one address;

"group practice" (律師聯合執業事務所) and "member of a group practice" (律師聯合執業事務所成員) have the same meaning as in the Solicitors (Group Practice) Rules ;

"land" (土地) and "mortgage" (按揭) have the same meanings as in the Conveyancing and Property Ordinance (Cap. 219);

"lease" (租契) includes an original or derivative under-lease and an agreement for a lease;

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

"Secretary General" (秘書長) means the Secretary General of The Law Society of Hong Kong;

"uncompleted development" (未完成的發展) includes a development-

- (a) in respect of which neither a temporary occupation permit nor an occupation permit has been issued under section 21(2) of the Buildings Ordinance (Cap. 123); or
- (b) which is otherwise uncompleted; or
- (c) in respect of which a certificate of compliance where applicable has not been issued or deemed to have been issued.

"unconditional practising certificate" (無條件執業證書) means a practising certificate that does not contain a condition preventing its holder from practising on his own account or in partnership.

## 2. General conduct

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

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

### 2AA. Prohibition against publicity etc.

- (1) Subject to subrule (2), a solicitor shall not publicise or otherwise promote his practice or permit his practice to be publicised or otherwise promoted.
- (2) Subrule (1) does not apply to anything done in accordance with the Solicitors' Practice Promotion Code as made from time to time by the Council with the prior approval of the Chief Justice.

### 2A. Name of firm

- (1) Subject to subrule (2), the name of a firm shall consist solely of the name or names of one or more solicitors who are principals in the firm.
- (2) Subrule (1) shall not preclude-
  - (a) the use of the name of a predecessor or former partner in that practice; or
  - (b) in the case of a firm ("Hong Kong firm") that is established as a branch of a firm that is carrying on the business of practising the law in a foreign jurisdiction ("overseas firm"), the use of the name of the overseas firm if -
    - (i) for the period of 3 years immediately preceding the establishing of the Hong Kong firm, there had been a foreign firm of the same name practising or advising on the law of a foreign jurisdiction;
    - (ii) at least one of the principals of the Hong Kong firm is a partner in the overseas firm;
    - (iii) one of the principals of the Hong Kong firm had, for not less than 3 years during the 5 years immediately preceding the establishing of the firm, been a partner in, or a consultant to, or employed by, the foreign firm referred to in subparagraph (i) or the overseas firm; or

- (c) the use of a firm name-
  - (i) in use at the date of the coming into operation of this rule; or
  - (ii) approved in writing by the Council.

## **2B. Letterhead**

- (1) (Omitted as spent)
- (2) A firm shall state on the letterhead of all letters issued, whether by post or by facsimile, in connection with the firm's practice -
  - (a) the name and address of the firm;
  - (b) unless otherwise determined by the Council, the names of each of the principals of the firm who -
    - (i) has been admitted in Hong Kong as a solicitor;
    - (ii) holds a current practising certificate; and
    - (iii) is ordinarily resident in Hong Kong;
  - (c) in the case of a firm forming part of an association or Association, reference to the office or offices of the other firm or firms in the association or Association such that -
    - (i) the first-mentioned firm's name is more prominent than the name or such other firm or firms;
    - (ii) such other firm or firms is or are clearly distinguished from any other firm that is not in the association or Association; and
    - (iii) any reference to the office or offices of the firm or firms in the association or Association is clearly distinguished from the branch office or offices of the first mentioned firm referred to in subparagraph (i);
- (3) A firm may state on the letterhead of all the letters issued in accordance with subrule (2) -
  - (a) the name of any principal of the firm who is not ordinarily resident in Hong Kong, if and only if there is a description of the person as being non-resident in Hong Kong;
  - (b) the name of any assistant solicitor, associate or consultant in the firm who is not a principal of the firm, if and only if -
    - (i) he holds a current practising certificate; and
    - (ii) his status as such is clearly indicated;
  - (c) the name of any foreign lawyer employed by the firm, if and only if there is a description of the person as a person qualified to practise the law of a jurisdiction other than Hong Kong;

- (d) in respect of any person named in the letterhead, any honour or title held by him, including -
  - (i) Notary Public;
  - (ii) Justice of the Peace;
  - (iii) China-Appointed Attesting Officer;
- (e) in respect of any person named in the letterhead, any academic or professional qualification held by him, not being examination qualification which leads to such qualification;
- (f) the Chinese text of the name and description of the firm, if and only if it corresponds with the English text;
- (g) reference to other branch offices; or
- (h) in the case of a firm associated with an overseas firm or firms, any reference to any other firm or firms with which it is associated, if and only if such reference is in less prominent type and is clearly distinguished from the firm's branch office or offices and the office or offices of the other firm or firms in the association or Association.

### 3. Fee cutting

A solicitor shall not hold himself out or allow himself to be held out directly or indirectly and whether or not by name as being prepared to do professional business in contentious matters at less than the scale fixed by Rules of Court or by any other enactment or in any other matters at less than such scale as may from time to time be fixed by any enactment or by the Society.

### 4. Sharing with non-qualified persons

A solicitor shall not share or agree to share with any person not being a solicitor practising in Hong Kong his profit costs in respect of any business whether by way of paying or agreeing to pay a commission on business introduced by any such person not being a solicitor, or otherwise:

Provided that-

- (a) a solicitor carrying on practice on his own account may agree to pay an annuity or other sum out of profits to a retired partner or predecessor or the dependants or legal personal representative of a deceased partner or predecessor;
- (b) a solicitor who has agreed in consideration of a salary to do the legal work of an employer who is not a solicitor may agree with such employer to set off his profit costs received in respect of contentious business from the opponents of such employer or the costs paid to him as the solicitor for such employer by third parties of non-contentious business, against the salary so paid or payable to him and the reasonable office expenses incurred by such employer in connection with such solicitor and to the extent of such salary and expenses; and
- (c) a solicitor whose firm is a party to an Association may share fees and profits with the foreign firm or firms in that Association.



#### **4A. Supervision of office**

A solicitor shall ensure that every office where he or his firm practise 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 solicitor holding a current practising certificate who shall normally be in attendance at that office during all the hours when it is open to the public; and
- (b) every such office shall be attended on each day when it is open to the public by a solicitor who holds an unconditional practising certificate and has been admitted for at least 2 years (or such other period as the Council may permit), being either a principal of, or a solicitor 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.

#### **4B. Control of employment of unqualified persons**

- (1) A firm shall not employ unqualified persons in a number more than 6 plus 8 times the number of resident principals and solicitors employed full-time in that firm.
- (2) No firm shall, except with the written approval of the Council, knowingly employ any unqualified person who is in the part-time or full-time employment of another firm.
- (3) For the purposes of this rule -
  - (a) persons employed otherwise than by a 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 firm, full-time law students working full-time or part-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 solicitors employed full-time in a firm, a solicitor shall not be taken into account in respect of more than one firm.
- (4) A firm shall ensure that every name card of an employee who is an unqualified person, being a card which bears the name of the firm, includes a clear description of the capacity in which the employee is being employed.

#### **5. Particulars relating to firms**

- (1) Where after the commencement of the Solicitors' Practice (Amendment) Rules 1993, a firm commences business, the principal or principals shall, within 14 days of commencing the firm, advise the Society in writing of -
  - (a) the names of all the principals in the firm, and whether they are engaged by the firm full-time or part-time;
  - (b) the names of all other solicitors in the firm, and whether they are engaged by the firm full-time or part-time;
  - (ba) the names and such other details of all unqualified members of the firm, whether full-time or part-time, remunerated or otherwise, as may be required by the Society;

- (c) the address or addresses of the firm together with telephone, fax, telex and DX numbers, where appropriate;
  - (d) the firm name;
  - (e) evidence that they have complied with the Solicitors (Professional Indemnity) Rules (Cap. 159 sub.leg.); and
  - (f) the accounting period to be used by the firm.
- (1A) The principal or principals shall also, within 14 days of commencing 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 solicitors;
  - (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 firm, whether part-time or full-time, remunerated or otherwise and whether or not the employee is a solicitor -
    - (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 (regardless of when his firm commenced business) shall 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 subrule (1) or (1A) (whether or not that subrule otherwise applies) which occurs after the commencement of the Solicitors' Practice (Amendment) Rules 1993.
- (3) A principal 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 respect of the relevant calendar year in accordance with Form 1 in the Schedule.
- (4) Except upon formal resolution of the Council, the particulars furnished under subrules (1)(f), (2) in respect of particulars referred to in subrule (1)(f), and (3) 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 solicitors, their employees and trainee solicitors have been complied with or of dealing with the disciplinary consequences of any alleged breach thereof.

- (5) The particulars under subrules (1), (2) and (3) may be furnished by one principal on behalf of the other principals.

**5A. (Repealed)**

**5AA. Particulars relating to sole practitioner**

- (1) A solicitor who commences practice as a solicitor in his own name or under a firm name, where he is the sole proprietor of the firm (in this rule referred to as a "sole practitioner") 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 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 solicitor holding an unconditional practising certificate and who has consented in writing to so manage that practice;
  - (b) within 14 days of commencement of practice as a sole practitioner 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 solicitor mentioned in paragraph (a)(ii);
    - (ii) if that will has been lodged with another person by the sole practitioner, the name and address of that person.
- (2) A solicitor who practises as a sole practitioner shall -
  - (a) ensure that a testamentary provision as required under subrule (1)(a) remains in effect at all times during his practice as a sole practitioner, except for a period of 14 days after any change in the solicitor mentioned in subrule (1)(a)(ii);
  - (b) advise the Society in a form approved by the Society within 14 days of such occurrence of any change in any of the particulars referred to in subrule (1)(b).

- (3) Except upon formal resolution of the Council, the particulars furnished under subrule (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 have been complied with; or
  - (ii) dealing with the disciplinary consequences of any alleged breach of those provisions.

#### **5B. Powers of Council**

- (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 solicitor 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 solicitor 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 solicitor 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 rule as it thinks fit.

**5C. Representation in conveyancing transactions**

- (1) Subject to subrules (2), (3), (4) and (5), a solicitor, or 2 or more solicitors practising in partnership or association, shall not act for both the vendor and the purchaser on a sale or other disposition of land for value.
- (2) A solicitor, or 2 or more solicitors practising in partnership or association, may act for both the vendor and the purchaser in the sale and purchase of a unit or other interest in an uncompleted development in respect of which the consent of the Director of Buildings and Lands is required to be given pursuant to the relevant Crown Grant and also in the completion of such sale and purchase.
- (3) A solicitor, or 2 or more solicitors practising in partnership or association, may act for both the vendor and the purchaser in the sale and purchase of a unit or other interest in an uncompleted development in respect of which the consent of the Director of Buildings and Lands is not required and also in the completion of such sale and purchase if and only if—
  - (a) he, or one of them, has deposited in the Land Registry or a District Land Registry a statutory declaration—
    - (i) in such form, and setting forth such facts, as the Council may, subject to the prior approval of the Chief Justice, from time to time specify; and
    - (ii) annexed to which are such documents as the Council may, subject to the prior approval of the Chief Justice, from time to time specify as documents to be so annexed; and
  - (b) the agreement for sale and purchase to be entered into by the vendor and the purchaser contains such clauses as the Council may, subject to the prior approval of the Chief Justice, from time to time specify for mandatory inclusion in the agreement.
- (4) A solicitor, or 2 or more solicitors practising in partnership or association, may act for both the vendor and the purchaser in the sale and purchase of a unit or other interest in a completed development by the owner of the whole development where in respect of the unit or interest no assignment has been executed since the date of the occupation permit or the certificate of compliance in respect of the development, whichever is required in respect of such sale and purchase, and if both are required, the earlier, and in the completion of such sale and purchase, if and only if the agreement for sale and purchase to be entered into by the vendor and the purchaser contains such clauses as the Council may, subject to the prior approval of the Chief Justice, from time to time specify for mandatory inclusion in the agreement.
- (5) Where pursuant to subrule (2), (3) or (4), a solicitor or 2 or more solicitors practising in partnership or association act for both the vendor and the purchaser in the sale and purchase of a unit or other interest in a development, that solicitor or solicitors may also act for the purchaser and the sub-purchasers in the sub-sale and sub-purchase of the unit or interest and in the completion of the sub-sale and sub-purchase if and only if the agreement or agreements for sub-sale and sub-purchase to be entered into by the parties contain such clauses as the Council may, subject to the prior approval of the Chief Justice, from time to time specify for mandatory inclusion in such agreement or agreements.

- (6) This rule shall not apply-
  - (a) if the parties are associated parties;
  - (b) to a sale or other disposition of land the consideration of which does not exceed \$1,000,000 or such other amount as the Council may, subject to the prior approval of the Chief Justice, from time to time determine, and in respect of which there is no conflict of interest;
  - (c) to a mortgage of land;
  - (d) to a lease of land; or
  - (e) to a sale or other disposition of land in respect of which the contract for sale and purchase was entered into before the commencement of the Solicitors' Practice (Amendment) Rules 1989 (L.N. 154 of 1989).
- (7) (Repealed)
- (8) This rule applies to 2 or more solicitors or firms conducting their businesses as members of the same group practice as it applies to any 2 or more solicitors practising in partnership or association.

#### **5D. Steps to be taken in criminal matters**

Where a firm acts for a client in relation to that client's criminal litigation the solicitor in charge of that matter shall take the following steps -

- (a) as soon as practicable and not more than 7 days after receiving instructions the firm shall confirm by letter to the client -
  - (i) the instructions given by the client;
  - (ii) the services to be provided by the firm;
  - (iii) the name of the solicitor in charge of the matter;
  - (iv) the fee to be charged or an estimate of such fee; and
  - (v) the name of counsel, his fee and any refreshers, or an estimate of such fee and refreshers,and the firm shall secure the written and signed agreement of the client to those terms;
- (b) if any material change occurs to the information contained in the letter provided to the client (for example, the identity of counsel) the firm shall within 7 days notify the client in writing of that change and secure the client's written and signed agreement to the change;
- (c) at the end of the case the firm shall promptly deliver to the client an account, signed by a solicitor personally, which includes -
  - (i) the name and court number of the case;
  - (ii) the name of any counsel retained;
  - (iii) the dates of any court appearances;

- (iv) a note of any fees paid to counsel; and
- (v) the solicitor's profit costs and disbursements;
- (d) when money is received from a client in payment of fees or on account of costs or disbursements, the firm shall deliver a receipt to the client;
- (e) as soon as practicable, and in any event both before the relevant hearing and not more than 7 days after counsel has been instructed, the firm shall deliver a backsheet or other written instruction to counsel on which shall be endorsed (inter alia) -
  - (i) the name and personal signature of the solicitor in charge of the matter;
  - (ii) the name of the firm;
  - (iii) the name of the case (and the court number if known at the time);
  - (iv) the name of counsel; and
  - (v) the agreed fee and any agreed refreshers;
- (f) the firm shall only pay a counsel after receipt of a fee note, and payment shall only be made by cheque drawn on the office or client account of the firm;
- (g) the firm shall retain copies of all the above documents for not less than two years after the completion of the matter.

## **6. 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.

## **7. Transitional**

- (1) Rule 5AA of the Rules as added by the Solicitors' Practice (Amendment) (No. 2) Rules 2000 applies to a solicitor who is in practice as a sole practitioner immediately before the commencement of the Amendment Rules as it applies to a solicitor who commences such practice after that commencement.
- (2) For the purpose of subrule (1), a solicitor who is in practice as a sole practitioner immediately before the commencement of the Solicitors' Practice (Amendment) (No.2) Rules 2000 shall be regarded as commencing practice as a sole practitioner at the commencement of the Amendment Rules.

## SCHEDULE 1

## FORM 1

[rule 5]

## SOLICITORS' PRACTICE RULES

## PARTICULARS RELATING TO SOLICITORS' FIRMS

1.   
(full name as it appears on your practising certificate)

solemnly and sincerely declare as follows -

1. I am engaged in practice (on my own account / in partnership and am providing this return on behalf of my partners\*).
2. The name of my / our\* firm is
3. During the period 1 January \_\_\_\_\_ to 31 December \_\_\_\_\_, I / we\* have not shared with any person not being a solicitor practising in Hong Kong my / our\* profit costs in respect of any business, whether by way of paying or agreeing to pay a commission on business introduced by any such person or otherwise, except as set out in Schedule 1 / where a waiver of rule 4 of the Rules was granted by the Council on \_\_\_\_\_\*.
4. The number of principals, assistant solicitors and consultants in my / our\* firm as at 31 December \_\_\_\_\_, was -
 

Principals	<input type="text"/>
Assistant Solicitors	<input type="text"/>
Consultants	<input type="text"/>
5. All of the principals, assistant solicitors and consultants in my / our\* firm are resident in Hong Kong and are not principals or employees of another firm of solicitors in Hong Kong or a salaried employee of a company in Hong Kong, except as set out in Schedule 2.
6. The particulars of every employee who has joined my / our\* firm (except employees who are solicitors) since 1 January \_\_\_\_\_ are set out in Schedule 3.
7. The particulars of every employee of my / our\* firm (except employees who are solicitors) who is not included in Schedule 3 between 1 January \_\_\_\_\_ to 31 December \_\_\_\_\_ are set out in Schedule 4.
8. My / our\* firm engages a service company to provide staff for the firm and the details of this company are set out in Schedule 5. The particulars of the employees provided by this company are included in Schedules 3 and 4.

(Delete this paragraph if it does not apply.)

And I make this solemn declaration conscientiously believing the same to be true and by virtue of the Oaths and Declarations Ordinance (Cap.11).



day of \_\_\_\_\_ )

\* Delete one of the alternatives.

1. If your firm pays non-discretionary bonuses at certain times of the year by way of an additional month's salary, such as at Chinese New Year, put the total number of months salary paid, for example, 13. If your firm does not pay any non-discretionary bonuses, put 12 in the space.
2. Details of all discretionary bonuses, allowances or other payments made to staff in addition to salary must be shown in the columns relating to bonuses. If no such payments are made, put "not applicable" in these columns.

## **SCHEDULE 1**

Give details of all commissions paid to unqualified persons.

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## **SCHEDULE 2**

### **PART A**

List the names of all principals, assistant solicitors or consultants of your firm who are also employees or principals of another firm of solicitors in Hong Kong or a salaried employee of a company in Hong Kong, the name of the other firm or company and their position in the other firm or company.

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### **PART B**

List the names of all principals, assistant solicitors or consultants of your firm who are not resident in Hong Kong.

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## **SCHEDULE 5**

Name of Service Company:

Directors of the Company:

Note: If your firm engages more than one service company, details of all companies must be given.

This page and the preceding \_\_\_\_\_ pages are the Schedules referred to in the declaration  
of \_\_\_\_\_ made before me at Hong Kong this \_\_\_\_\_  
day of \_\_\_\_\_.

\_\_\_\_\_  
Commissioner / Solicitor / Justice of the Peace.