
24. PRACTICE DIRECTIONS 1990

PREFACE

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

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

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

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

Practice Directions which dealt with publicity have been repealed and a new Solicitors' Practice Promotion Code is published separately.

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

January 1990

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

This revised print is current as at 2 August 2004

A. CONVEYANCING

1. [Repealed]
2. Sale of flats in uncompleted developments by way of grant or sale of sub-leases
3. Solicitors' Accounts Rules
4. Rule 5C of the Solicitors' Practice Rules - sale of flats in uncompleted developments
5. Management of buildings - deeds of mutual covenant
6. [Repealed]
7. Sale and purchase of partitioned residential flats
8. Certified copies of title deeds
9. Rule 5C(1) of the Solicitors' Practice Rules
- 9A. Rule 5C(1) of the Solicitors' Practice Rules - Home Ownership Scheme and Private Sector Participation Scheme Conveyancing Transactions
- 9B. Rule 5C(1) of the Solicitors' Practice Rules - Financial Secretary Incorporated Lease Extension Cases
10. Rule 5C(1) of the Solicitors' Practice Rules
11. Rule 5C(1) of the Solicitors' Practice Rules
12. Rule 5C of the Solicitors' Practice Rules
Approved Forms A1 and A2 (for Consent Scheme)
Approved Forms B1 and B2 (for non-Consent Scheme)

B. COSTS

1. Solicitors' bills of costs
2. Solicitors (General) Costs Rules - equitable mortgage and legal charge
3. Solicitors (General) Costs Rules - assignment between subsidiary / associate companies

C. CRIMINAL CASES

1. [Repealed]
2. [Repealed]
3. Steps to be taken in criminal matters
4. Video evidence of children

6. EMPLOYEES AUTHORISED FOR LEGAL VISITS TO PERSONS IN CUSTODY

- (1) Subject to the provisions of this Practice Direction, a firm is permitted to have a maximum of 10 clerks authorised to visit persons in custody (“authorised clerks”).
- (2) A principal of a firm shall ensure that:
 - (a) each authorised clerk in his firm shall be properly supervised by a full-time solicitor in his firm who is ordinarily resident in Hong Kong;
 - (b) the supervising solicitor named in the application for authorisation of a clerk to visit persons in custody shall have sufficient relevant experience capable of affording appropriate supervision to the clerk;
 - (c) for the purposes of sub-paragraph (b) above,
 - (i) any full-time solicitor in his firm with less than 2 years of post-qualification experience in the litigation practice shall not be made responsible for supervising any authorised clerk;
 - (ii) any full-time solicitor in his firm with at least 2 years of post-qualification experience in the litigation practice shall be made responsible for supervising not more than 2 authorised clerks; and
 - (iii) any full-time solicitor in his firm with at least 5 years of post-qualification experience in the litigation practice shall be made responsible for supervising not more than 4 authorised clerks.
- (3) For the purpose of this Practice Direction, a full-time solicitor shall not be taken into account in respect of more than one firm.
- (4) Application for authorisation of a clerk to visit persons in custody shall be made in a form approved by the Society.
- (5) A principal of a firm shall advise the Society in writing any change in the supervising solicitor named in the application within 14 days of such change and shall ensure that the new supervising solicitor has sufficient relevant experience capable of affording appropriate supervision to the authorised clerk in accordance with this Practice Direction.

7. CESSATION OF PRACTICE

- (1) Where a firm intends to cease practice, the firm must notify the Society of the intended cessation in writing in a form approved by the Society at least 8 weeks prior to the date of cessation.
- (2) Where a firm intends to cease practice, the firm must appoint a firm of solicitors with at least 2 partners as its agent to deal with all consequential matters. The firm shall notify the Society of the names and contact details of its sole practitioner or all of its partners and of the agent appointed when it notifies the Society of its intended cessation pursuant to subparagraph (1). Any change to the contact details must be notified by the person to whom the change relates to the Society in writing within 7 days of such change.
- (3) A solicitor who was a principal of the firm as at the date of cessation shall ensure that:

- (a) where an existing appointment of the agent is for any reason terminated, another firm of solicitors with at least 2 partners (the “substitute agent”) is to be appointed within 7 days; and
 - (b) any change to the particulars of the agent or the substitute agent is notified to the Society in writing within 7 days of such change.
- (4)
 - (a) The agent whose appointment as such is terminated shall within 7 days of such termination apply in writing to the Council for directions to be given pursuant to Rule 8(2) of the Solicitors’ Accounts Rules on the unclaimed balances on its clients’ accounts pertaining to its appointment as the firm’s agent.
 - (b) The agent whose appointment as such is terminated and the substitute agent to whom any unclaimed balances on clients’ accounts have been transferred from the former agent shall notify the Society in writing the total aggregate amount in the clients’ accounts so transferred within 7 days of the transfer.
- (5) Notwithstanding the requirement in section 5(3) of the Solicitors’ Practice Rules to furnish a declaration in respect of the relevant calendar year, a solicitor who was a principal of the firm as at the date of cessation shall advise the Society in writing in a form approved by the Society within 14 days of the date of cessation of any change in the employment of staff of the firm that occurred as a result of the cessation.
- (6) This Practice Direction came into effect on 16 June 1997 and was amended on 2 August 2004.

8. FORMAT OF ELECTRONIC COMMUNICATIONS

- (1) All communications issued electronically from a firm of solicitors in the course of the professional practice of the firm must, subject to (3)(c) below, incorporate a “signature block” stating:
 - (a) the firm’s name and address; and
 - (b) that a list of the firm’s principals will be provided to the recipient of the electronic communication upon request;and must at the end state the name of the firm or of the individual who has authorised its despatch.
- (2) The issue of all such communications must be authorised by a person who is approved to do so for the purposes of this Practice Direction as follows:
 - (a) any solicitor who is a sole practitioner or partner in, or an employee of, or a consultant to, the firm;
 - (b) any lawyer qualified in his own jurisdiction who has satisfied the requirements of section 4 or 5 of the Overseas Lawyers (Qualification for Admission) Rules and has satisfied the requirements as to residence and who is so authorised by the firm;
 - (c) any of the following who is an employee of the firm, in relation to matters within such persons competence in each case but not otherwise:
 - (i) a foreign lawyer;

- (ii) Chartered Accountant or Certified Public Accountant whose qualification has satisfied the membership admission requirements of the Hong Kong Society of Accountants;
 - (iii) a member of the United Kingdom Institute of Trademark Agents or the Hong Kong Institute of Trademark Practitioners;
 - (iv) a United Kingdom Chartered Patent Agent who has entered on the United Kingdom register of Patent Agents under the provisions of the Register of Patent Agents Rules 1982 administered under the United Kingdom Patents Act 1977;
 - (v) a fellow of the Institute of Chartered Secretaries and Administrators or the Hong Kong Institute of Company Secretaries;
 - (vi) a person of comparable qualification and/or experience approved by the Council on application to it, subject to such conditions as the Council may think fit.
- (3) Where a person is approved to issue such electronic communications by virtue only of (2)(b) or (c) above:
- (a) that person's authority shall be in writing signed by the sole practitioner or a partner in the firm for the time being;
 - (b) the sole practitioner or, as the case may be, all partners of the firm or a partner designated in writing for that purpose shall be responsible for ensuring that the person:
 - (i) does not exceed his/her authority; and
 - (ii) complies with all relevant professional requirements; and
 - (c) the name of the approved person must appear at the end of the communication together with that person's status within the firm.
- (4) This Practice Direction is without prejudice to other Practice Directions, in particular Practice Direction D.2.
- (5) This Practice Direction came into effect on 1 January 1998 and was amended on 5 January 2004.

9. BANKRUPTCY

- (1) A solicitor shall notify the Society in writing within 7 days:
- (a) after he has filed a bankruptcy petition against himself with the Registry of the High Court; or
 - (b) after he has been served with a sealed copy of a bankruptcy petition by his creditor.
- (2) A solicitor shall notify the Society in writing within 7 days after the date of a bankruptcy order against him.
- (3) This Practice Direction came into effect on 24 November 2003.

E. TRAINEE SOLICITORS AND ADMISSION

1. [Repealed]

2. TRAINEE SOLICITOR CONTRACTS - APPROVED FORMS

- (1) Pursuant to rule 8 of the Trainee Solicitors Rules the following forms of trainee solicitor contract have been adopted:
- (a) form A (appendix 2) applies to trainee solicitors employed by solicitors in private practice;
 - (b) form B (appendix 3) applies to trainee solicitors working for the Government; and
 - (c) form C (appendix 4) applies to trainee solicitors employed in commerce and industry.

These forms must be used in all cases.

- (2) A trainee solicitor contract in form A, that is the form applicable to trainee solicitors employed by solicitors in private practice, must provide for a salary of not less than \$6,000 per month for the first year of the contract and \$7,500 for the second year.
- (3) Trainee solicitor contracts which do not provide for salaries of at least these amounts will not be accepted for registration.

3. TRAINEE SOLICITORS - ABSENCES FROM THE OFFICE

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

This Practice Direction came into effect on 4th December 1989.