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## 24. PRACTICE DIRECTIONS 1990

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### 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Practice Directions which dealt with publicity have been repealed and a new Solicitors' Practice Promotion Code is published separately.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 6 June 2005.

**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 [Repealed]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 [Repealed]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

**D. PRACTICE SUPERVISION**

1. Solicitors' employees qualified for admission in Hong Kong
2. Signature of post
3. [Repealed]
4. [Repealed]
5. Sharing an office and staff
6. Employees authorised for legal visits to persons in custody
7. Cessation of practice
8. Format of electronic communications
9. Bankruptcy

**E. TRAINEE SOLICITORS AND ADMISSION**

1. [Repealed]
2. Trainee solicitor contracts - approved forms
3. Trainee solicitors - absences from the office

**F. COUNSEL**

1. Instructions to counsel

**G. PROFESSIONAL STATIONERY**

1. Business letters
- 1A. Business letters - reference to foreign lawyers
2. Business cards

**H. OTHER MATTERS**

1. Election addresses

**I. PROFESSIONAL CONDUCT**

1. Surety for bail
2. "The Hong Kong Solicitors' Guide to Professional Conduct"

**J. INTEREST ON CLIENTS' ACCOUNT**

1. Requirement to pay interest
2. Minimum amount and time
3. Remedy available to client
4. Exceptions
5. Arrangement for no interest shall be void
6. Administration fee permitted

**K. CLIENT ACCOUNTS**

1. Duty to remedy breaches
2. Reconciliation of client accounts
3. Guidelines for accounting procedures and systems
4. Monitoring accountant

**L. ATTESTATION OF DOCUMENTS**

**M. LIMITATION OF LIABILITY BY CONTRACT**

**APPENDICES**

1. Reference Table
2. Form “A” Trainee Solicitor Contract
3. Form “B” Trainee Solicitor Contract
4. Form “C” Trainee Solicitor Contract
5. Guidelines for Accounting Procedures and Systems

## M. LIMITATION OF LIABILITY BY CONTRACT

1. Although it is not acceptable for a solicitor to attempt to exclude all liability to his clients, there is no objection as a matter of professional conduct to a solicitor seeking to limit his liability in business other than contentious business to his clients provided that the following conditions are fulfilled:
  - (a) he has in full force and effect valid professional indemnity cover in accordance with the requirements of the Solicitors (Professional Indemnity) Rules;
  - (b) the limitation of liability is not below the minimum level of cover required by the Solicitors (Professional Indemnity) Rules.
2. The limitation of liability is subject to the position in law and the general fiduciary obligations of solicitors to their clients. Relevant provisions include the following:
  - (a) Under section 59(2) of the Legal Practitioners Ordinance, a provision purporting to exclude a solicitor's liability for negligence in an agreement for fees in contentious business will be void.
  - (b) The Control of Exemption Clauses Ordinance
    - (i) prohibits, under section 7, exclusion or restriction of liability for death or personal injury resulting from negligence and requires exclusion or restriction of liability for other loss or damage resulting from negligence to satisfy the requirement of reasonableness;
    - (ii) states, under section 3(1), that the requirement of reasonableness is satisfied only if the court or arbitrator determines that the contract term was a fair and reasonable one to be included having regard to the circumstances which were, or ought reasonably to have been, known to or in the contemplation of the parties when the contract was made;
    - (iii) provides, under section 3(5), that in considering whether a contract term restricting liability to a specified sum of money satisfies the requirement of reasonableness, the court or arbitrator shall have regard in particular to the resources which he could expect to be available to him for the purpose of meeting the liability should it arise and how far it was open to him to cover himself by insurance;
3. Contractual terms are only binding if they are incorporated into a contract. Incorporation of a term into the contract is presumed if the parties have signed a written contract containing that term. However, a person wishing to rely on a particular term against a party that had not signed the contract would need to show that the term had been brought fairly and reasonably to the attention of the non-signing party. The more unusual the contract term the more effort needs to be made to bring it to the other party's attention. Accordingly, if a limitation of liability provision is contained in a solicitor's engagement letter, and the letter is not countersigned by the client, this provision will not bind the client unless the solicitor can show that the provision had been brought, fairly and reasonably, to the attention of the client and accepted by him.
4. Liability for fraud or dishonesty cannot be limited.
5. The contract of limitation may be affected by foreign law where the act or omission covered by the contract of limitation occurs outside Hong Kong or the governing law is not Hong Kong law.
6. This Practice Direction came into effect on 6 June 2005.
7. This Practice Direction is regarded as advisory.

## APPENDIX 1

## REFERENCE TABLE

<u>ORIGINAL PRACTICE DIRECTIONS</u>		<u>DATE ISSUED</u>	<u>REVISED PRACTICE DIRECTIONS</u>
1.	Witnessing of documents	09.01.75 )	
		)	
1A.	Attestation of documents	07.04.86 )	
		)	
1A.	Attestation of documents	14.04.86 )	A1. Attestation of documents (Repealed on 01.01.02 and replaced by Practice Direction L which came into effect on 01.01.02 (revised on 19/08/02))
		)	
1B.	Attestation of documents	02.06.86 )	
		)	
1C.	Attestation of documents	30.11.87 )	
		)	
2.	Solicitors (General) Costs (Amendment) Rules 1974	09.01.75	- Repealed -
3.	Solicitors (General) Costs Rules - sale and purchase agreements - registration charges	15.10.76	- Repealed -
4.	Solicitors' bill of costs	10.02.77	B1. Solicitors' bills of costs
5.	Foreign law firms	07.05.77	- Repealed -
6.	Application for admission as solicitor of the Supreme Court of Hong Kong	23.08.77	E1. Applications for admission - citizenship / residence requirements
7.	Prison visits	01.10.77	- Repealed -
8.	Solicitors' notepaper and law lists	01.10.77	Solicitors' Practice Promotion Code 1992
9.	Instructions for brief	10.02.79)	
		)	
9A.	Delivery of briefs to counsel - counsel's fees	28.07.86)	F1. Instructions to Counsel
9B.	Measures to combat touting relating to criminal cases of (Revised 16.6.92)	23.11.87	- Repealed - (Replaced by rule 5D the Solicitors' Practice Rules which came into effect on 30.4.93)

<u>ORIGINAL PRACTICE DIRECTIONS</u>		<u>DATE ISSUED</u>	<u>REVISED PRACTICE DIRECTIONS</u>
10.	Letterheads - solicitors' firms	22.06.81	Solicitors' Practice Promotion Code 1992
11.	Notepaper - assistant solicitors	15.07.81	Solicitors' Practice Promotion Code 1992
12.	Seminars and conferences	15.09.81	Solicitors' Practice Promotion Code 1992
13.	Sale of flats etc. in uncompleted developments by way of grant or sale of sub-leases	13.10.81	A2. Sale of flats in uncompleted developments by way of grant or sale of sub-leases
14.	Public notice of commencement to practise, opening of branch offices, admission and retirement of partners, etc.	19.07.82	Solicitors' Practice Promotion Code 1992
14A.	Public notice of commencement to practise, opening of branch offices, admission and retirement of partners, etc.	Undated	Solicitors' Practice Promotion Code 1992
14B.	Public notice of commencement to practise, opening of branch offices, admission and retirement of partners, etc.	Undated	Solicitors' Practice Promotion Code 1992
15.	Solicitors' Accounts Rules	24.08.82	A3. Solicitors' Accounts Rules
16.	Forms of trainee solicitor contract	28.12.82 )	E2. Trainee solicitor contracts – approved forms. (revised 21.2.92)
16A.	Forms of trainee solicitor contract	31.01.83 )	
16B.	Forms of trainee solicitor contract	23.03.83 )	
16C.	Minimum salary of trainee solicitors	10.11.86 )	
17.	Rule 5C of the Solicitors' Practice Rules - sale of flats in uncompleted developments	31.01.83 )	A4. Rule 5C of the Solicitors' Practice Rules – sale of flats in uncompleted developments
18.	Solicitors' clerks before Masters of Supreme Court in Chambers applications	15.08.83 )	- Repealed -
18A.	Solicitors' clerks before Masters of Supreme Court in Chambers applications	21.10.83 )	

<u>ORIGINAL PRACTICE DIRECTIONS</u>	<u>DATE ISSUED</u>	<u>REVISED PRACTICE DIRECTIONS</u>
18B. Solicitors' clerks before Masters of Supreme Court in Chambers applications	04.05.84 ) )	
19. Hong Kong telephone directory listing - Yellow Pages	15.08.83	Solicitors' Practice Promotion Code 1992
20. Interviews about solicitors' practices	07.11.83	Solicitors' Practice Promotion Code 1992
21. Solicitors' employees qualified for admission in Hong Kong	10.01.84	D1. Solicitors' employees qualified for admission in Hong Kong
22. Signature of solicitors' letters	05.12.84 ) )	D2. Signature of post (revised 16.6.92)
22A. Signature by solicitors	11.02.85 )	
23. Seminars, conferences and interviews	07.10.85	Solicitors' Practice Promotion Code 1992
24. Employment of part-time clerks	04.11.85	- Repealed - (Replaced by rule 4B of the Solicitors' Practice Rules which came into effect on 30.4.93)
25. Witnessing of documents	23.12.85	A1. Attestation of documents (Repealed on 01.01.02 and replaced by Practice Direction L which came into effect on 01.01.02 (revised on 19/08/02))
26. Supervision of practices	17.03.86	- Repealed - (Replaced by rule 4B of the Solicitors' Practice Rules which came into effect on 30.4.93)
27. Warrants of arrest of judgement debtors (Order 49B, R.S.C.)	02.03.87	- Repealed -
28. Solicitors (General) Costs Rules - equitable mortgage and legal charge	23.03.87 ) ) )	



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

## APPENDIX 2

### FORM "A"

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

THIS TRAINEE SOLICITOR CONTRACT is made the

day of

BETWEEN

of

("the Trainee Solicitor")

AND

of

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

(the "Firm").

1. The Trainee Solicitor commenced employment with the Principal on the                      day of                      and will be employed by the Principal from that date for the period of                      months / years at a salary of \$                      per month / or at a salary of \$                      per month for the first                      months / year and at a salary of \$                      for the remaining months / year.
2. This contract shall not be terminated except by mutual agreement of the parties or by the Law Society of Hong Kong (the "Society") in the exercise of its powers under section 22 of the Legal Practitioners Ordinance.
3. The Trainee Solicitor and the Principal hereby acknowledge that they have considered the operation of Rule 11 of the Trainee Solicitors Rules and are aware of the potential consequences of any breach of the rule.
4. The Trainee Solicitor agrees to:
  - (1) faithfully and diligently work for the Principal in the profession of a solicitor of the High Court of the Hong Kong Special Administrative Region as a trainee solicitor;
  - (2) deal properly with the money and property of the Principal and the Firm and their clients or employees;
  - (3) treat with the utmost confidence all information relating to the Principal and the Firm and their clients and their business;

- (4) readily obey and execute the lawful and reasonable instructions of the Principal and any partner of the Firm and not be absent from the employment of the Principal without the consent of the Principal and to act with diligence, honesty and propriety; and
  - (5) complete and maintain an adequate training record ("the Record") and have it available for inspection by the Principal (or, if appropriate, by the Society) until the Trainee Solicitor has been admitted as a Solicitor of the High Court of the Hong Kong Special Administrative Region. The Record shall belong to the Principal and shall be in such form as the Principal shall reasonably prescribe but shall take the style of a Diary of the work and experience of the Trainee Solicitor or a series of checklists covering the basic legal topics in which the Principal has agreed to give the Trainee Solicitor the opportunity of gaining experience as specified in clause 5(1)(b).
  - (6) *\*(Insert any further clauses required, which must not override or negate the standard clauses).*
5. The Principal agrees to:
- (1) provide the Trainee Solicitor with the opportunity (either in the Firm's office or in that of another practising solicitor entitled to take trainee solicitors) to learn the basic skills and characteristics associated with the practice and profession of a solicitor of the High Court and in particular to:-
    - (a) provide the Trainee Solicitor with the opportunity to learn the principles of professional conduct and to practise a range of basic skills. These are:-
      - (i) communication
      - (ii) practice support
      - (iii) legal research
      - (iv) drafting
      - (v) interviewing
      - (vi) negotiation
      - (vii) advocacy.
    - (b) provide the Trainee Solicitor with proper training and experience in at least three of the following basic legal topics:-
      - (i) Banking
      - (ii) Civil Litigation
      - (iii) Commercial
      - (iv) Company
      - (v) Criminal Litigation
      - (vi) Family

- (vii) Insolvency
- (viii) Intellectual Property
- (ix) Property
- (x) Trusts, Wills and Probate;

- (2) provide, in the form specified in clause 4(5), a Record for the use of the Trainee Solicitor and each calendar month inspect the Record and discuss it with the Trainee Solicitor, or delegate another person to do so;
  - (3) decide, in consultation with the Trainee Solicitor, which courses conducted by the Society or other providers of courses accredited by the Society the Trainee Solicitor must attend to accumulate sufficient points to comply with the Continuing Professional Development Rules;
  - (4) allow the Trainee Solicitor paid leave to attend the courses referred to in clause 5(3); and
  - (5) pay any fees charged by the Society or accredited providers for the Trainee Solicitor's attendance at the courses referred to in clause 5(3).
  - (6) *\*(Insert any further clauses required, which must not override or negate the standard clauses).*
6. Any difficulty or dispute between the Trainee Solicitor and the Principal concerning the fulfilment of the provisions of this Contract or the conduct of either party in relation to this Contract may be referred by either of them to the Council of the Society for determination and the decision of the Council shall be final and binding on both parties.

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

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

\* Delete if inapplicable

Solicitor of the High Court of  
the Hong Kong Special Administrative Region

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

Solicitor of the High Court of  
the Hong Kong Special Administrative Region

**This contract must be witnessed by a Hong Kong solicitor holding a current practising certificate. It may be witnessed by a solicitor in the same firm as your principal.**

## APPENDIX 3

## FORM "B"

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

THIS TRAINEE SOLICITOR CONTRACT is made the

day of

BETWEEN

of

("the Trainee Solicitor")

AND

of

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

1. The Trainee Solicitor commenced employment with the Government on the            day of            and will be employed by the Government from that date for the period of            months / years at a salary of \$            per month / or at a salary which is equivalent to half the amount the Trainee Solicitor should receive in the Trainee Solicitor's substantive office with the Government\*.
2. This contract shall not be terminated except by mutual agreement of the parties or by the Law Society of Hong Kong (the "Society") in the exercise of its powers under section 22 of the Legal Practitioners Ordinance.
3. The Trainee Solicitor and the Principal hereby acknowledge that they have considered the operation of Rule 11 of the Trainee Solicitors Rules and are aware of the potential consequences of any breach of the rule.
4. The Trainee Solicitor agrees to:-
  - (1) faithfully and diligently work for the Principal in the profession of a solicitor as a trainee solicitor;
  - (2) deal properly with the money and property of the Principal or the Government or its employees;
  - (3) keep the secrets of the Principal or the Government and observe the Security Regulations and the Civil Service Regulations of the Government;

- (4) readily obey and execute the lawful and reasonable instructions of the Principal and not be absent from the employment of the Government without the consent of the Principal and to act with diligence, honesty and propriety; and
  - (5) complete and maintain an adequate training record ("the Record") and have it available for inspection by the Principal (or, if appropriate, by the Society) until the Trainee Solicitor has been admitted as a Solicitor of the High Court of the Hong Kong Special Administrative Region. The Record shall belong to the Principal and shall be in such form as the Principal shall reasonably prescribe but shall take the style of a Diary of the work and experience of the Trainee Solicitor or a series of checklists covering the basic legal topics in which the Principal has agreed to give the Trainee Solicitor the opportunity of gaining experience as specified in clause 5(1)(b).
  - (6) *\*(Insert any further clauses required, which must not override or negate the standard clauses).*
5. The Principal agrees to:-
- (1) provide the Trainee Solicitor with the opportunity (either in the Department or in another department of the Government under the supervision of an employee of the Government entitled to take trainee solicitors or in the office of a solicitor in private practice entitled to take trainee solicitors) to learn the basic skills and characteristics associated with the practice and profession of a solicitor and in particular to:
    - (a) provide the Trainee Solicitor with the opportunity to learn the principles of professional conduct and to practise a range of basic skills. These are:-
      - (i) communication
      - (ii) practice support
      - (iii) legal research
      - (iv) drafting
      - (v) interviewing
      - (vi) negotiation
      - (vii) advocacy.
    - (b) provide the Trainee Solicitor with proper training and experience in at least three of the following basic legal topics:-
      - (i) Banking
      - (ii) Civil Litigation
      - (iii) Commercial
      - (iv) Company
      - (v) Criminal Litigation
      - (vi) Family

- (vii) Insolvency
- (viii) Intellectual Property
- (ix) Property
- (x) Trusts, Wills and Probate;

- (2) provide, in the form specified in clause 4(5), a Record for the use of the Trainee Solicitor and each calendar month inspect the Record and discuss it with the Trainee Solicitor, or delegate another person to do so;
  - (3) decide, in consultation with the Trainee Solicitor, which courses conducted by the Society or other providers of courses accredited by the Society the Trainee Solicitor must attend to accumulate sufficient points to comply with the Continuing Professional Development Rules;
  - (4) allow the Trainee Solicitor paid leave to attend the courses referred to in clause 5(3); and
  - (5) pay any fees charged by the Society or accredited providers for the Trainee Solicitor's attendance at the courses referred to in clause 5(3).
  - (6) *\*(Insert any further clauses required, which must not override or negate the standard clauses).*
6. Any difficulty or dispute between the Trainee Solicitor and the Principal concerning the fulfilment of the provisions of this Contract or the conduct of either party in relation to this Contract may be referred by either of them to the Council of the Society for determination and the decision of Council shall be final and binding on both parties.

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

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

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

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

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

\* Delete if inapplicable

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

## APPENDIX 4

### FORM "C"

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

THIS TRAINEE SOLICITOR CONTRACT is made the

day of

BETWEEN

of

("the Trainee Solicitor")

AND

of

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

1. The Trainee Solicitor commenced employment with the Company on the day of \_\_\_\_\_ and will be employed by the Company from that date for the period of \_\_\_\_\_ months/years at a salary of \$ \_\_\_\_\_ per month (or at a salary of \$ \_\_\_\_\_ per month for the first \_\_\_\_\_ months / year and at a salary of \$ \_\_\_\_\_ for the remaining months/year).
2. This contract shall not be terminated except by mutual agreement of the parties or by the Law Society of Hong Kong ("the Society") in the exercise of its powers under section 22 of the Legal Practitioners Ordinance.
3. The Trainee Solicitor and the Principal hereby acknowledge that they have considered the operation of Rule 11 of the Trainee Solicitors Rules and are aware of the potential consequences of any breach of the rule.
4. The Trainee Solicitor agrees to:-
  - (1) faithfully and diligently work for the Principal in the profession of a solicitor as a trainee solicitor;
  - (2) deal properly with the money and property of the Principal or the Company or its employees;
  - (3) treat with the utmost confidence all information relating to the Principal and the Company and its clients and its business;
  - (4) readily obey and execute the lawful and reasonable instructions of the Principal and not be absent from the employment of the Company without the consent of the Principal and to act with diligence, honesty and propriety; and



- (5) complete and maintain an adequate training record ("the Record") and have it available for inspection by the Principal (or, if appropriate, by the Society) until the Trainee Solicitor has been admitted as a Solicitor of the High Court of the Hong Kong Special Administrative Region. The Record shall belong to the Principal and shall be in such form as the Principal shall reasonably prescribe but shall take the style of a Diary of the work and experience of the Trainee Solicitor or a series of checklists covering the basic legal topics in which the Principal has agreed to give the Trainee Solicitor the opportunity of gaining experience as specified in clause 5(1)(b).
5. The Principal agrees to:
- (1) provide the Trainee Solicitor with the opportunity (either in the Company's office or in that of another practising solicitor entitled to take trainee solicitors) to learn the basic skills and characteristics associated with the practice and profession of a solicitor of the High Court and in particular to:-
- (a) provide the Trainee Solicitor with the opportunity to learn the principles of professional conduct and to practise a range of basic skills. These are:-
- (i) communication
  - (ii) practice support
  - (iii) legal research
  - (iv) drafting
  - (v) interviewing
  - (vi) negotiation
  - (vii) advocacy.
- (b) provide the Trainee Solicitor with proper training and experience in at least three of the following basic legal topics:-
- (i) Banking
  - (ii) Civil Litigation
  - (iii) Commercial
  - (iv) Company
  - (v) Criminal Litigation
  - (vi) Family
  - (vii) Insolvency
  - (viii) Intellectual Property
  - (ix) Property

(x) Trusts, Wills and Probate;

- (2) provide, in the form specified in clause 4(5), a Record for the use of the Trainee Solicitor and each calendar month inspect the Record and discuss it with the Trainee Solicitor, or delegate another person to do so;
  - (3) decide, in consultation with the Trainee Solicitor, which courses conducted by the Society or other providers of courses accredited by the Society the Trainee Solicitor must attend to accumulate sufficient points to comply with the Continuing Professional Development Rules;
  - (4) allow the Trainee Solicitor paid leave to attend the courses referred to in clause 5(3); and
  - (5) pay any fees charged by the Society or accredited providers for the Trainee Solicitor's attendance at the courses referred to in clause 5(3).
  - (6) \*(Insert any further clauses required, which must not override or negate the standard clauses).
6. Any difficulty or dispute between the Trainee Solicitor and the Principal concerning the fulfilment of the provisions of this Contract or the conduct of either party in relation to this Contract may be referred by either of them to the Council of the Society for determination and the decision of Council shall be final and binding on both parties.

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

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

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

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

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

Notes:

\* Delete if applicable

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

## APPENDIX 5

### GUIDELINES FOR ACCOUNTING PROCEDURES AND SYSTEMS

#### 1. Introduction

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

#### 2. General

- (1) Compliance with the Solicitors' Accounts Rules is the equal responsibility of all partners in a firm. They should establish policies and systems to ensure that the firm complies fully with the Rules. Responsibility for day-to-day supervision may be delegated to one or more partners to enable effective control to be exercised. Delegation of total responsibility to a clerk or book-keeper is not acceptable.
- (2) The firm must hold a copy of the current version of the Solicitors' Accounts Rules. The person who maintains the books of account must have a full knowledge of the requirements of the Rules and the accounting requirements of solicitors' firms.
- (3) Proper books of account should be maintained on the double-entry principle. They should be legible, up to date and contain narratives with the entries which identify and/or provide adequate information about the transaction. Entries should be made in chronological order and the current balance should be shown on client ledger accounts, or be readily ascertainable.
- (4) Ledger accounts for clients, other persons or controlled trusts should include the name of the client or other person or trust and contain a heading which provides a description of the matter or transaction.
- (5) Separate designated client accounts should be brought within the ambit of the systems and procedures for the control of client money and trust money, including reconciliations (see 5.4 below).
- (6) Manual systems for recording client money and controlled trust money are capable of complying with these Guidelines and there is no requirement on firms to adopt computerised systems. A computer system, with suitable support systems will, however, usually provide an effective means of producing the accounts and associated control information.

- (7) If a computer system is introduced care must be taken to ensure:
  - (a) that balances transferred from the old books of account are reconciled with the opening balances held on the new system before day-to-day operation commences;
  - (b) that the new system operates correctly before the old system is abandoned. This may require a period of parallel running of the old and new systems and the satisfactory reconciliation of the two sets of records before the old system ceases.
- (8) The firm should ensure that office account entries in relation to each client or trust matter are maintained up to date as well as the client account entries. Credit balances on office account in respect of client or trust matters should be fully investigated.
- (9) The firm should operate a system to identify promptly situations which may require the payment of deposit interest to clients.

### **3. Receipt of client money and trust money**

- (1) The firm should have procedures for identifying client money and trust money, including cash, when received in the firm, and for promptly recording the receipt of the money either in the books of account or a register for later posting to the client cash book and ledger accounts. The procedures should cover money received through the post, electronically or direct by fee earners or other personnel. They should also cover the safekeeping of money prior to payment to bank.
- (2) The firm should have a system which ensures that client money and trust money is paid promptly into client account.
- (3) The firm should have a system for identifying money which should not be in a client account and for transferring it without delay.
- (4) The firm should determine a policy and operate a system for dealing with money which is a mixture of office money and client money (or trust money), in compliance with rule 5 of the Solicitors' Accounts Rules.

### **4. Payments from client account**

- (1) The firm should also have clear procedures for ensuring that all withdrawals from client accounts are properly authorised. In particular, suitable persons, consistent with rule 7A of the Solicitors' Accounts Rules, should be named for the following purposes:
  - (a) authorisation of internal payment vouchers;
  - (b) signing client account cheques;
  - (c) authorising telegraphic or electronic transfers.

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

- (2) Persons nominated for the purpose of authorising internal payment vouchers should, for each payment, ensure that there is supporting evidence showing clearly the reason for the payment, and the date of it. Similarly, persons signing cheques and authorising transfers should ensure that there is a suitable voucher or other supporting evidence to support the payment.
- (3) The firm should have a system for checking the balances on client ledger accounts to ensure no debit balances occur. Where payments are to be made other than out of cleared funds, clear policies and procedures must be in place to ensure that adequate risk assessment is applied.

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

- (4) The firm should establish systems for the transfer of costs from client account to office account in accordance with rule 9(2)(c) of the Solicitors' Accounts Rules. Normally transfers should be made only on the basis of rendering a bill or written intimation. The payment from the client account should be by way of cheque or transfer in favour of the firm or sole principal.
- (5) The firm should establish policies and operate systems to control and record accurately any transfers between clients of the firm. Where these arise as a result of loans between clients, the written authority of both the lender and borrower should be obtained.

## **5. Overall control of client accounts**

- (1) The firm should maintain control of all its bank accounts opened for the purpose of holding client money and trust money. In the case of a joint account, a suitable degree of control should be exercised.
- (2) Central records or central registers must be kept in respect of:
  - (a) accounts held for client money, or trust money, which are not client accounts (rule 9(2)(a) of the Solicitors' Accounts Rules);
  - (b) joint accounts; and
  - (c) clients' own accounts (rule 9(2)(a) of the Solicitors' Accounts Rules).
- (3) In addition, there should be a master list of all general client accounts and office accounts. The master list should show the current status of each account; eg currently in operation or closed with the date of closure.
- (4) The firm should operate a system to ensure that accurate reconciliations of the client accounts, whether comprising client and/or trust money, are carried out once a calendar month. In particular it should ensure that:
  - (a) a full list of client ledger balances is produced. Any debit balances should be listed, fully investigated and rectified immediately. The total of any debit balances cannot be "netted off" against the total credit balances;
  - (b) a full list of unpresented cheques is produced;

- (c) a list of outstanding lodgments is produced;
  - (d) formal statements are produced reconciling the client account cash book balances, aggregate client ledger balances and the client bank accounts. All unresolved differences must be investigated and, where appropriate, corrective action taken;
  - (e) a partner checks the reconciliation statement and any corrective action, and ensures that enquiries are made into any unusual or apparently unsatisfactory items or still unresolved matters.
- (5) Where a computerised system is used, the firm should have clear policies, systems and procedures to control access to client accounts by determining the personnel who should have "write to" and "read only" access. Passwords should be held confidentially by designated personnel and changed regularly to maintain security. Access to the system should not necessarily be restricted to a single person nor should more people than necessary be given access.
- (6) The firm should establish policies and systems for the retention of the accounting records to ensure:
- books of account, reconciliations, bills, bank statements and passbooks are kept for at least six years;
  - paid cheques and other authorities for the withdrawal of money from a client account are kept for at least two years;
  - other vouchers and internal expenditure authorisation documents relating directly to entries in the client account books are kept for at least two years.
- (7) The firm should ensure that unused client account cheques are stored securely to prevent unauthorised access. Blank cheques should not be pre-signed. Any cancelled cheques should be retained.